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U.S. House of Representatives Committee on Homeland Security

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CROSSING THE BORDER: IMMIGRANTS IN DETENTION AND VICTIMS OF TRAFFICKING PART I AND II

HEARING

BEFORE THE

SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 15, 2007

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CROSSING THE BORDER: IMMIGRANTS IN DETENTION AND VICTIMS OF TRAFFICKING PART I

Thursday, March 15, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER, MARITIME,
AND GLOBAL COUNTERTERRORISM,
Washington, DC.

The subcommittee met, pursuant to call, at 10:20 a.m., in Room 311, Cannon House Office Building, Hon. Loretta Sanchez [chairwoman of the subcommittee] presiding.

Present: Representatives Sanchez, Jackson Lee, Thompson, Souder, and McCaul.

Ms. SANCHEZ. [Presiding.] The subcommittee will come to order.

The subcommittee is meeting today to receive testimony on "Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part I."

Good morning, everyone. Thank you for being with us today.

Today's hearing is the first in a two-part series that will examine the issues surrounding the treatment of migrants by Immigration and Customs Enforcement. And the first of the series, this hearing today, we will have two panels, which will primarily focus on the issue of detention.

I would like to begin by thanking our witnesses: Mr. John Torres, Mr. Richard Seiter, Ms. Michelle Brané, Ms. Christina Fiflis, and Mr. Michael Cutler. And thank you for joining us today to discuss these important issues.

With the end of the "catch and release" program, the Department of Homeland Security faces a daunting challenge: how to deal with hundreds, perhaps thousands, of migrants that have been detained in recent enforcement actions.

But the challenge is not only for law enforcement. It is also a humanitarian challenge. Our goal must not only be to detain migrants, but also to make sure that their detention is humane. And at the same time, we must explore alternatives to detention that meet our law enforcement goals and that may provide more humane conditions for these detainees.

Recently, reports have signaled that detention conditions and the treatment of detainees in administrative immigration detection have not been acceptable. I have found these reports very disturbing, and so have many of my colleagues. And I hope that this

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hearing will shed some light on the situation and lead to action points by which we can improve the conditions of these detainees.

And I am particularly interested in learning more about the Immigration and Customs Enforcement standards for care and custody of these detainees. These standards need to include a guarantee for detainees to be treated humanely and, of course, to have access to counsel.

It is also critical that the subcommittee gain a better understanding of how ICE and their detention contractors work together to meet these minimum standards. In addition, I am looking forward to hearing about alternatives to detention that can appropriately monitor individuals but ensure that they show up to all the necessary hearings.

As a nation, we must be committed to treating detainees appropriately, with respect for their dignity as fellow human beings and in accordance with our laws, our traditions, and, quite frankly, the idea of this great country.

Recent reports indicate that we have some work to do before we achieve all of this, and I hope this hearing gives us some sense of the progress that we have made on these issues.

And I would like to thank Ranking Member Souder for his interest in this topic, and I look forward to working with him on this and on other issues of importance in the future.

Thank you.

And now the chair will recognize the ranking member of the subcommittee, the gentleman from Indiana, for his opening statement.

Mr. SOUDER. Thank you very much, Madam Chair.

And I appreciate that this is our third hearing of this subcommittee already this Congress, all of which have focused on border security, gaining operational control over the borders of the United States, land, air and coastal is essential for national security, as it is ensuring that individuals who enter the U.S. illegally or bringing narcotics or other contraband traffickers are held accountable and removed as quickly as possible.

I would also like to thank our witnesses for being here today. I look forward to receiving an update from the Office of Detention and Removal Operations on what is needed to maintain the end of "catch and release" and the response, as well as from Mr. Richard Seiter from Corrections Corporation of America, to recent criticisms of detention standards.

I would also like to thank Michelle Brané and Christina Fiflis for being here, and I look forward to hearing more about the concerns your organizations have raised.

I would also especially like to welcome Mr. Michael Cutler and express my appreciation for your presence here today. I think you will add important insight and context to this discussion, based on your wealth of experience in the legacy Immigration and Naturalization Service and current work with the Center for Immigration Studies and other security advocacy groups.

The ability to detain illegal aliens prior to removal or admittance to the United States has proven to be a successful and critical homeland security tool. With the additional funding provided by Congress, DHS has been able to end the "catch and release" program along the border, where illegal aliens were released into U.S.

communities because there was no available bed space. More than 90 percent of these people never appeared for their court dates, and we have no idea where they are or what they are doing.

In fiscal year 2007, the Office of Detention and Removal was able to detain about 27,000 illegal aliens each day. Congress needs to conduct careful oversight over the available bed space to make sure that the DRO has the capacity, now and in the future, to continue to detain all aliens apprehended.

Additionally, I think we need to carefully consider options to further deter Mexican citizens from illegally entering the U.S. And while more physical border security will help, we may need to consider some detention possibilities.

The knowledge that they would not be detained actually led to non-Mexican illegal aliens to actually seek out Border Patrol agents and declare their illegal status. They were picked up, processed, given a notice to appear before an immigration judge at some later date, and then taken to the nearest bus stop to go wherever they want in the U.S.

In addition to the increase in detention bed space, DHS is finally taking advantage of the available enforcement tools that have been in the law for years. The expedited removal program, utilized by DHS for the past 2 years, allows illegal aliens not seeking asylum or expressing credible fear to be placed in immediate detention proceedings.

This program has allowed DHS to reduce the average detention stays for non-asylum seekers from 90 days down to about 20 days. The bottom line is that detention has proven an effective and critical tool in deterring aliens from illegally entering the United States, because they know they will be detained, pending removal.

Some concerns have been expressed about individuals with legitimate asylum claims being overlooked and mistakenly placed in expedited removal. This concern is something that must be continually reviewed to ensure that our border agents are well-trained to understand their responsibility to identify individuals with claims of fear.

There has recently been criticism of detention standards in DHS facilities. I believe that we have several witnesses here today to speak to these criticisms. There is no argument that we need to ensure that our detention facilities are secure, provide adequate nutrition, access to legal services where applicable, and run efficiently to process people through to either legal status within the U.S. or removal.

I look forward to hearing from our witnesses about how the detention system works, how it is being used to enhance Border Patrol, and where improvements are needed.

Thank you, Madam Chair, for your leadership. And I yield back.

Ms. SANCHEZ. Thank you.

And the chair now recognizes the chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you very much, Madam Chairman.

I am pleased that the subcommittee is holding the hearing today on an issue that has been of a great deal in the news lately.

I have long supported ending the policy of "catch and release," under which non-Mexicans who entered the U.S. without proper documentation were issued a notice to appear at a future hearing and then released. Of course, the overwhelming majority of these people did not appear for their hearing, but instead made their way to the interior of the country and disappeared into American society.

It is clear that "catch and release" was a failed policy. However, I am deeply concerned about the consequences of the department's new policy, often called "Catch and Return." Under this policy, virtually all other-than-Mexicans are being detained at facilities, either operated by or under contract to ICE, until they are returned to their country.

One of the issues I am concerned about, Madam Chairman, is the fact that, you know, families with children are also being held in these facilities. And I want to know from our first witness today what measures are being taken when children are involved in this situation, also, because, as you know, there are potential civil rights and civil liberties issues associated with it, as well as the general welfare of the children who are detained.

So I intend to work with my colleagues to ensure that, as the department implements tougher border enforcement and detention policies, we do so in a way that honors the rights and values that make our country great.

Mr. THOMPSON. So I look forward to the testimony, Madam Chairman, and I yield back.

Ms. SANCHEZ. Thank you, Mr. Chairman.

Other members of the subcommittee are reminded that, under the committee rules, opening statements may be submitted for the record.

So I welcome our sole witness on our first panel, Mr. John Torres, who is the director of the Office of Detention and Removal Operations of Immigration and Customs Enforcement. As director, Mr. Torres oversees 6,700 employees, including nearly 6,000 sworn law enforcement officers assigned to 24 field offices, and manages an operating budget of nearly $2 billion.

Prior to his appointment as director, he served as the acting DRO director for 15 months, overseeing unprecedented expansion of this program. Mr. Torres previously served as deputy assistant director for smuggling and public safety in the ICE Office of Investigations and as a special-agent-in-charge of the Newark ICE office, where he oversaw ICE's participation in several major multi-agency investigations.

Mr. Torres began his law enforcement career with the former Immigration and Naturalization Service in 1986.

And so, without objection, the witness's full statement will be inserted in the record.

And I now ask you, Mr. Torres, to summarize your statement for 5 minutes or less.

STATEMENT OF JOHN P. TORRES, DIRECTOR, OFFICE OF DETENTION AND REMOVAL OPERATIONS (DRO), IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

Mr. TORRES. Good afternoon, Madam Chairwoman Sanchez and Ranking Member Souder, Congressman Thompson and distinguished members of the subcommittee.

My name is John Torres. I am the director of the Office of Detention and Removal Operations at Immigration and Customs Enforcement. And it is my privilege to appear before you to discuss the enforcement mission of Detention and Removal Operations, or DRO.

Our office is responsible for promoting public safety and national security by ensuring the safe and efficient departure from the United States of all removable aliens through the fair enforcement of our nation's immigration laws. As such, our core mission is the apprehension, detention, and removal of inadmissible and deportable aliens.

The Office of Detention and Removal employs a number of tools to accomplish this mission. Using these tools, we have achieved considerable success in executing our mission. Some of the successes I will describe as follows.

We have increased detention capacity, thanks to Congress and the administration, with added resources. Since 2006, ICE has increased detention capacity by more than 7,500 beds in Alabama, Arizona, California, Georgia, New Mexico and Texas.

We have improved detention management. In addition to adding detention resources to prevent the release of illegal aliens, ICE has achieved a number of important successes in appropriately deploying this added capacity, such as utilizing larger regional detention facilities, creating a Detention Operations Coordination Center at our headquarters, and restructuring the detainee transportation system, and also expanding the use of alternatives to detention.

We have expanded the use of our legal authority. In 2006, the Department of Homeland Security utilized expedited removal authority under the Immigration and Nationality Act to streamline the processing of aliens arrested at the border.

We have also made numerous technological enhancements. In addition to increased detention capacity, improved management of that capacity, and mechanisms to improve removal and transportation processes, DRO has also used technological tools, such as an electronic travel document system and video teleconferencing capability, to streamline the removal process and reduce the number of days that people spend in detention.

Combined these tools have allowed DRO and DHS to realize significant and concrete gains in the detention and removal of illegal aliens, ultimately ending the practice of "catch and release" along the borders, something that people did not think could be done a year and a half ago.

The one loophole that remained, as we were ending "catch and release," was the practice of "catch and release" for families arrested on the border. This former "catch and release" practice created a border vulnerabilities that encouraged families to smuggle their children across the border, knowing that they would be released into the community.

In my 20-year career, I have seen too many pictures of children that have died in the back of 18-wheelers, vans and railroad cars while being smuggled into this country at the hands of callous smugglers who are driven by profits.

To deter this activity and to end "catch and release" at our borders, ICE created a family residential center in Texas, and it allows families to stay together in an appropriate setting.

In addition to adding detention space, we also expanded our alternatives to detention program to add enrollees to the program and reduce the costs of monitoring these enrollees under supervision. Under this program, the electronic monitoring program uses radio frequency ankle bracelets and telephonic reporting systems to remotely manage detention cases.

In addition, our intensive supervision appearance program utilizes home and office visits, mandatory curfews, as well as radio frequency ankle bracelets as an effective alternative to case management techniques.

In addition to these gains, and consistent with DRO's mission to promote public safety and national security, DRO has committed significant resources to the apprehension, detention, and removal of criminal and fugitive aliens.

With our criminal alien program, for example, ICE has worked very aggressively to transition that program from our Office of Investigations over to the Office of Detention and Removal Operations, where we can make the most of our specialized administrative immigration processing capabilities and expertise the streamline these removals.

In June of 2006, DRO established the National Detention Enforcement and Processing Offenders by Remote Technology, or the DEPORT Center, in Chicago, that supports the screening, interviewing, and removal processing of criminal aliens that are federally detained at our Bureau of Prisons facilities across the country.

Our national fugitive operations program, established in 2003, targets aliens who have been ordered removed by an immigration judge but have failed to comply with those orders. We currently have 53 teams nationally, and we plan to expand those teams to 75 by the end of the year.

The integrity of our immigration system requires fair and effective enforcement of our nation's immigration laws. By aggressively enforcing these laws, we seek to deter criminal and terrorist organizations who threaten our very way of life, and we seek to strengthen the legal immigration process for worthy applicants.

I would like to thank you, Madam Chairwoman and members of the subcommittee, for this opportunity to testify today on behalf of the men and women of DRO. And I look forward to answering any questions you may have.

[The statement of Mr. Torres follows:]

PREPARED STATEMENT OF JOHN P. TORRES

MARCH 15, 2007

INTRODUCTION

Good afternoon, Chairwoman Sanchez, and distinguished Members of the Subcommittee. My name is John Torres, and I am the Director of the Office of Detention and Removal Operations (DRO) at U.S. Immigration and Customs Enforcement

(ICE). It is my privilege to appear before you to discuss the enforcement mission of DRO.

DRO is responsible for promoting public safety and national security by ensuring the safe and efficient departure from the United States of all removable aliens through the fair enforcement of the nation's immigration laws. As such, DRO's core mission is the apprehension, detention, and removal of inadmissible and deportable aliens, the management of non-detained aliens as their cases progress through immigration proceedings, and the enforcement of orders of removal.

DISCUSSION

DRO employs a number of tools to accomplish this mission. Using these tools, DRO has achieved considerable success in executing its immigration enforcement mission.

Increased Detention Capacity: Since 2006, ICE increased its detention capacity by more than 7,500 beds in Alabama, Arizona, California, Georgia, New Mexico and Texas.

Improved Detention Management: In addition to adding detention resources to prevent the release of illegal aliens, ICE has achieved a number of important successes in appropriately deploying this added capacity:

- In 2006, DRO deployed a strategy to realize cost efficiencies, by relying more heavily on larger regional facilities and thereby realize economies of scale while relieving the burden on Field Offices facing detention shortages.
- ICE created the Detention Operations Coordination Center (DOCC) in July 2006. The DOCC monitors DRO Field Office detained dockets in order to coordinate movement of detained aliens from Field Offices with detention shortages to Field Offices with surplus capacity. The DOCC also actively ensures that all enforcement efforts by DRO and other apprehending entities are matched with adequate detention space. As a result the average daily population has risen from approximately 18,000 in July, 2006 to approximately 28,000 today.
- DRO began to restructure the detainee transportation system in order to utilize ICE staff and transportation resources as effectively as possible. In particular, DRO expanded the use of ground transportation in order to minimize inefficient and costly short-range Justice Prisoner and Alien Transportation System (JPATS) flights and increase flight service routes for longer, more cost-effective flights.
- DRO expanded its Alternatives to Detention programs to reduce the cost of monitoring aliens under supervision. Under this program, the Electronic Monitoring Program utilizes radio frequency ankle bracelets and a telephonic reporting system to remotely manage detention cases. In addition, the Intensive Supervision Appearance Program utilizes home and office visits, mandatory curfews, as well as radio frequency ankle bracelets, as effective alternative case management techniques.
- As detention space is added, DRO continues to ensure that all facilities comply with the 38 ICE National Detention Standards. These standards were developed in partnership with Nongovernmental Organizations, such as the American Bar Association, and building upon standards established by the American Correctional Association, meet or exceed correctional industry standards.

Expanded Use of Legal Authority: In 2006, the Department of Homeland Security employed Expedited Removal authority under the Immigration and Nationality Act to streamline the processing of aliens apprehended at or near the border. Under Expedited Removal, aliens who present no claim for asylum or other protection are removed under streamlined processes, which reduce both the period of time such aliens are detained and the enforcement resources necessary to secure orders of removal.

Technological Enhancements: In addition to increased detention capacity, improved management of that capacity, and mechanisms to improve removal and transportation processes, DRO has also used key technological tools to further its mission. These tools include the Electronic Travel Document system and Video Teleconferencing capability.

- The electronic travel document allows us to work with cooperating foreign governments to process and obtain travel documents required for removal electronically, avoiding the need for slower, less efficient, mail-based correspondence. This system has reduced the processing times for travel document issuance from weeks to days.
- Video Teleconferencing capability allows DRO to provide for remote interviews of detainees by foreign consular officials, thereby reducing the need for in-person interviews during the travel document issuance process.

Combined, these tools have allowed DRO and the Department of Homeland Security to realize significant and concrete gains:

- For example, in 2006, DRO made record use of JPATS. Compared to 10,352 movements in 1995, we moved 115,000 aliens in 2006. DRO is currently on pace to move 170,000 aliens through the use of JPATS in 2007.
- Also in 2006, DRO removed a record number of aliens—more than 190,000, of whom nearly 90,000 were criminal aliens.
- In addition, through the expanded use of Expedited Removal, DRO was able to decrease the time aliens spend in custody, effectively increasing the bedspace available for detention each year. Specifically, while the average length of detention for aliens in traditional removal proceedings is 89 days, the length of detention for aliens removed under Expedited Removal processing is 19 days.
- Finally, through the increased and more efficient use of bedspace, DRO now ensures that no alien apprehended at the border is released for lack of detention capacity, thereby effectively ending "catch and release" at our borders.

In addition to these gains, and consistent with DRO's mission to promote public safety and national security, DRO has committed significant resources to the apprehension, detention, and removal of criminal and fugitive aliens.

Criminal Alien Program: ICE has worked aggressively to transition criminal alien enforcement efforts from its Office of Investigations, while making the most of DRO's specialized administrative immigration processing capabilities and expertise.

- Most recently, 2007 began with an aggressive push to transition all remaining Institutionalized Criminal Alien Operations from the Office of Investigations to DRO. This transition is scheduled to be completed by June 1, 2007. Currently, 11 out of 24 DRO Field Offices have fully transitioned.
- In June 2006, DRO established the National Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center, a Chicago-based center that supports the screening, interviewing, and removal processing of criminal aliens detained in federal custody throughout the United States.
- Since its inception, DEPORT has screened nearly 10,000 cases, issued over 7,100 charging documents, located almost 100 alien absconders, and lodged more than 2,600 detainers.

National Fugitive Operations Program: Established in 2003 and tasked with locating, apprehending, and effecting the removal of fugitive aliens, the ICE National Fugitive Operations Program within DRO has been working aggressively to reduce the number of fugitive aliens.

- DRO has currently deployed 53 teams, nearly tripling the number of teams in 2005, and continues to work on deploying the additional 22 Fugitive Operations Teams funded by Congress.
- Team enforcement activities prioritize alien absconder cases in the following order: aliens identified as threats to national security; those who pose a threat to the community; those convicted of violent crimes; those with criminal records; non-criminal absconders.

State and Local Responses: In addition to partnerships with state and local law enforcement agencies under section 287(g) of the Immigration and Nationality Act ICE is taking steps to explore increasing responsiveness to state and local law enforcement agency requests for assistance. One example of these exploratory efforts is the creation of a pilot program in the Phoenix, AZ, metropolitan area to service such requests.

- Under this pilot program, which began in September 2006, ICE created a dedicated unit in DRO's Phoenix Field Office, called a Law Enforcement Agency Response Unit, to provide primary rapid response to law enforcement agency requests for assistance in immigration-related cases on a 24-hour-per-day, 365-day-per-year basis.
- From September 4, 2006, through March 4, 2007, this unit received 468 calls for assistance from state, local, and federal law enforcement agencies in the Phoenix area, encountering over 2,700 aliens.
- ICE will continue to study the successes of this pilot program and the feasibility of adopting similar programs in other localities.

CONCLUSION

The integrity of our immigration system requires fair and effective enforcement of our Nation's immigration laws. By aggressively enforcing these laws, we seek to

deter criminal and terrorist organizations who threaten our way of life, and we seek to strengthen the legal immigration process for worthy applicants.

I would like to thank you, Ms. Chairwoman and Members of the Subcommittee, for the opportunity to testify today on behalf of the men and women of DRO, and I look forward to answering any questions you may have.

Ms. SANCHEZ. Thank you, Mr. Torres. I thank you for your testimony.

I remind each member that he or she will have 5 minutes to question the witness. And I will now recognize myself for questions.

Mr. Torres, as you know, there have been a lot of recent reports in the newspaper and other news media and a great concern about the conditions of detention centers and the treatment of detainees at these centers. So my first question is: What are the government standards for care and custody of detainees?

Mr. TORRES. We actually have eight national detention standards, 36 of which were developed back in 2001 under the INS, in conjunction with nongovernmental entities and various organizations. A couple of years ago, we added two more detention standards. And, actually, right now, we are in the process of specifying those even more and adding family detention standards, in relation to the facilities that we have Berks, Pennsylvania, and down in Hutto, Texas.

We have an inspections program, a trained cadre of about 340 deportation officers across the country that are required to inspect all of our facilities, including those that are contracted through intergovernmental service agreements, once annually.

And then we also have a separate program where that is overseen by our Office of Professional Responsibility, and so the recommendations of those annual inspections are forwarded to OPR and then over to us to make implementations if there is any determination that any of those standards are not being met.

We also allow the Office of Civil Liberties and Civil Rights to review specific cases where there are allegations that we are not up to standards. And then we also allow, obviously, the inspector general and/or GAO can come in and take a look at some of these facilities, too.

Ms. SANCHEZ. So the first line of looking at whether you are meeting the standards or what is going on in these centers is actually from within ICE?

Mr. TORRES. Yes, actually, we will do an inspection to see whether or not a facility—for example, if we were to lease space from a county jail, we would do an inspection of that jail first to determine whether or not it would meet our standards.

If it does not meet our standards, we would go back to that county jail, advise them where it doesn't meet our standards, and to see whether or not they are willing to make improvements or modifications so that they would be up to our standards. If not, then we cannot contract with them.

Then, the second one is we inspect it just before it opens.

Ms. SANCHEZ. Just before it opens.

Mr. TORRES. Right.

Ms. SANCHEZ. And then when is the next time you would inspect it? Would you do random inspections from the people that are within ICE to go and take a look?

Mr. TORRES. Yes, from those that are trained within ICE, then it is required that, once it is opened, the facility is open, then there has to be at least one annual inspection. And if there were an incident to take place, for example, whether there was an allegation of a beating or a detainee were to pass away, then we can do spot checks, we can do special assessments, and we will send a team within 48 hours to do an assessment.

Ms. SANCHEZ. But these are all within the Department of Homeland Security and specifically within ICE?

Mr. TORRES. Those are done within ICE DRO. And then the reports are now forwarded over to the Office of Professional Responsibility within ICE, yes.

Ms. SANCHEZ. And when you talk about having the Office of Civil Liberties and Civil Rights take a look, how often have they come in to take a look at, let's say in the last year, to take a look at one of your detention centers?

Mr. TORRES. I don't have specific numbers on that. I am aware of at least a handful off the top of my head where there were specific incidents or, for example, they say, "We would like to go take a look at one of your facilities." And so I know there are several assessments ongoing.

Ms. SANCHEZ. And when you look at your facilities, do you contract out, so you don't run your facilities? You have a jail or something in the area where they are performing this function for you?

Mr. TORRES. Yes, to a certain extent. We have eight service processing centers which we own. We contract out fully another seven. And then the remainder—there is a total of about 330, give or take a few, that are contracted out to intergovernmental service agreements, either run by a county jail or run by a specific corporation specializing in detention.

Ms. SANCHEZ. So if you are contracting out and you are contracting out to local agencies, but they contract out to private people to run their jails, is that the way you get to the private sector? Or do you also make contracts specifically to the private sector contractors?

Mr. TORRES. We will go through the local governments, for example, and then the local government may enter an agreement with a private contractor in many of the cases. And regardless of whether we are contracting through the governments or with a county, for example, all of our facilities have to meet those standards.

Ms. SANCHEZ. And would you give those standards to the private contractor? Or what kind of guidelines do you give them? Do you say, "These are the 38, and you must meet each and every one of these"?

Mr. TORRES. It actually goes beyond the 38. We have our 38 standards posted on the ICE Web site. They are made available publicly. Anyone who is interested in doing business with DHS, ICE specifically, DRO for detention purposes, are made aware of what those standards are.

And then, within those standards, we have various checkpoints, anywhere from 200 to 400 checkpoints within each of those standards so that, when our officers go do an inspection, they perform an inspection in the field of a facility, they are required to submit their reports back into headquarters, now to OPR.

Last year, they were sending reports internally within Detention and Removal Operations. We changed that this past year, this fiscal year, and now those reports go to the Office of Professional Responsibility for review and recommendations for us and DRO to act upon.

Ms. SANCHEZ. And we have one vote on the floor right now, so I don't know how you all want to handle—do you want to try to roll, and I will go vote, and Mr. Thompson stays, or do you want to just go up for 10 minutes, then break, go over, take the vote and I will come back?

You want to recess for the 10 minutes and try to take your questions now, then recess for—and then we will break, and then we will come back. We have got a vote on the floor, and it is just one, so I think—and unless you all are going to play games after today.

Okay, I will now recognize the ranking member for 5 minutes.

Mr. SOUDER. Thank you.

Mr. Torres, do you know what percent of the people in your detention facilities are from people from countries on our terrorist watch list?

Mr. TORRES. Actually, Congressman, I don't have that percentage handy, but we can definitely get that for you. We have a breakdown by nationality of everyone we detain.

Mr. SOUDER. Do you keep a fairly good—do you get a fairly good data entry system on each person you do? And do you work with ICE about that data?

Mr. TORRES. Well, that is actually relative, sir, in the extent that our deportation software, our data system, that was developed probably about 25 years ago, and we are still operating under that system. One of our priorities this year is what we call DRO modernization, to actually make that more of a current type of database, where we can actually have management tools built in to do assessments, reviews.

So if you were to ask me today, "Can you tell me how many people you have that are a certain age, from a certain nationality in your detention?" It would probably take us about a week to pull that number down for you, because we would actually have to go in and reprogram the system to do that.

What we are striving to get is towards a better reservation system, better transportation system, real-time access so that we can tell you where everyone is today, where they are tomorrow, where they are in immigration process, as instantaneous as possible.

Mr. SOUDER. Part of this is a day-to-day management system, but part of it is to try to get to networks and smuggling organizations. And you have the best kind of information with which can be mined. Where did people get false IDs? Who did they arrange their transportation through? Who are their contacts inside the United States?

And the ability to get that information in a timely fashion, so we don't just take down individuals who are wandering in, but rather get to the systems would seem to be very closely correlated with your ability to have adequate software and programs that could pull the questions down, because—do you have a figure on how many have committed crimes, other than immigration-related crimes?

Mr. TORRES. Yes, we can get that. I don't have that off the top of my head, but you are exactly right, sir. We have an Office of Intelligence, where we work very closely within ICE and develop what we call Operation Last Call.

In effect, we work with other law enforcement agencies so that people that they may have interest in, we can come in and do interviews before we place them on planes or buses, to deport them from the country.

Mr. SOUDER. There have been some cases—do you know how many cases of individuals may—or is this prevalent, just a few, is it expanding—have, in effect, rented children or used children to come in as a family person when, in fact, they aren't?

Mr. TORRES. We actually receive reports from the Border Patrol, from Customs and Border Protection, before we open the family facility that indicated—and they didn't have numbers. And we are working closely with the Border Patrol and our detention facilities. Corrections Corporation of America, for example, may have statistics, and we are working with them to get those specifically.

But what we saw before we opened the family facility is that there were rent-a-family schemes, not just families that were bringing their children in knowing that they were not going to be detained, but we had families that either rented out their children, especially those who are younger that aren't easily interviewable, but also smugglers that would pay to bring a child, make it appear that a family was being brought into the country. And then, when they were arrested, they were released on their own recognizance, given a notice to appear before the court.

Mr. SOUDER. And to clarify here, we are here not talking about Mexican nationals. We are talking about OTMs?

Mr. TORRES. That is exactly right.

Mr. SOUDER. So they are bringing children from far away from the border?

Mr. TORRES. From far away from the border and also renting children from Mexico to pass them off as their own, yes.

Mr. SOUDER. Is there any additional penalties if you are caught doing that? It seems to me that would be a fairly significant crime in and of itself.

Mr. TORRES. Not specifically for that crime, sir. There are enhancements within the smuggling penalties themselves, under Title 18, 1324, for smuggling, transporting, harboring. There are aggravating conditions where the sentences may be longer, if you were to place someone's life in danger or the smuggling resulted in injury or death.

Mr. SOUDER. Prior to detention facilities, roughly 90 percent of OTMs weren't showing up—that is an estimate, obviously—to their hearings. Were there any differences in statistics between families or non-families? Or if, in fact, we released families, is it likely to be equally as prevalent there?

Mr. TORRES. The Executive Office of Immigration Review maintains those statistics, and that is where we received them from. It was roughly 90 percent of those that were not detained absconded ultimately. But those statistics were not broken down by individuals versus families.

But because that was occurring, those statistics were broadly applied across all of those different—whether they were individuals or families, and so working on that assumption that families were absconding as well as everyone else.

Mr. SOUDER. If it is 90 percent, presumably a fair percentage were.

Mr. TORRES. Presumably, yes, sir.

Mr. SOUDER. Thank you.

Ms. SANCHEZ. Thank you, Mr. Torres. You will do us a favor and we will give you about a 15-minute break? Maybe staff can show you where to get a cup of coffee or something, and I hope you will be back when we come back.

We have one vote on the floor, so we should be back shortly.

Mr. TORRES. I will be here.

Ms. SANCHEZ. Thank you. We stand in recess.

[Recess.]

Ms. SANCHEZ. The subcommittee is now back in order. And Mr. Thompson had to go and give a speech somewhere, and I don't see Mr. McCaul back, but maybe he will return.

In the meantime, I have some more questions I would like to ask you, Mr. Torres. And I am sure my ranking member may have some, also.

Mr. Torres, I have heard reports that a substantial number of the ICE detainees who do not have criminal records are being held in detention areas or centers with people who are more of a criminal population. Are you concerned that this—first of all, does that happen?

Secondly, are you concerned that this type of detention arrangement could endanger the non-criminal population? And what is the policy on whether criminal or non-criminal detainees are detained together and treated the same.

Mr. TORRES. Thank you, Madam Chairwoman.

As one of our detention standards and within our policies, we have a classification system where we use objective measures to assess the classification of each person that we take into detention. And we will take into account whether or not that they are a criminal or whether or not they are a risk to our officers or to the other inmates.

And, if they are determined to be a criminal or of risk to the general population or the officers, they are ranked at the highest level, which would be level three. Levels one and two are less dangerous, level one being the non-criminals, for example.

Our policies are that we don't mix the criminal level three, for example, with level one. And that is spelled out. That is part of our training curriculum, and also we use that as part of the inspections process, when we are doing our facility reviews. So we do not?

Ms. SANCHEZ. So you would say that non-criminals or people who you think are non-criminals would never be put in the same detention area as somebody who has got some sort of a criminal background?

Mr. TORRES. Correct. And if that is brought to our attention later—for example, we would not have murderers with non-criminals, people that have been convicted of murder on state statute,

for example, then house at the same level of classification with those that are non-criminals.

If somebody were to be brought to our attention later, like, for example, the person had been convicted of a crime internationally that we were unaware of and is later brought to our attention, we can reclassify that person and have them moved to an appropriate setting.

Ms. SANCHEZ. Great. I also recently learned that ICE has 190 staff assigned to the Willacy County Detention Center in Raymondville, Texas, but that only 20 of those are actually on staff. Can you tell me, is this reflective of staffing issues? Are you having trouble filling spots? Are you contracting spots out? Are there different classifications of staff that would make that seem that there is only 20 while there is supposed to be 109 there?

Mr. TORRES. There is a couple of different staffing models that we use, and I don't have the specific numbers for Willacy. But generally what I can speak to is that, under normal detention, under the traditional immigration 240 process, immigration removal before an immigration judge, we would have additional staff at those particular facilities to manage the case work, to manage the detainee docket, to arrange through obtain travel documents from a foreign government so that we can return that particular person.

In facilities such as Willacy, where we developed initially to use as an E.R. setting and then it eventually does evolve, there is a need for less staff because they are not going through the traditional immigration 240 process.

As we then bring on—well, what we have seen is that there is a level of deterrence that kicks in. And then we have to open up that facility to utilize it to its capacity to the non-expedited removal classification of detainee, and that is where we turn around and hire more staff, so that we can have it appropriately staffed by the correct amount of employees that we feel is necessary to manage that caseload.

In many instances, we do an assessment to see what is inherently governmental and then attempt to contract out the remaining positions, such as just security or transportation or those that would cook the meals, for example.

Ms. SANCHEZ. So if 190 staffers are supposed to be assigned to that facility, what does that mean, in your opinion?

Mr. TORRES. Without knowing the specific staffing of Willacy, in which we can get for you, what that tells me, 109 is going to be based on the number of detainees that are actually housed at a facility, how many employees it would take to manage that facility for case docket purposes. Also, we need a law enforcement officer, for example, to verify the departure, when you are actually removing somebody for future testimony purposes.

Ms. SANCHEZ. He would be within that 109 assigned?

Mr. TORRES. I would have to take a look and see if they are talking about 109 employees and contractors or just the 109 government employees.

Ms. SANCHEZ. And so when someone said to me that there were only 20 there on staff, do you think that that—and without knowing the specifics—

Mr. TORRES. It doesn't sound accurate, but that is something I would definitely—when we walk out of here, I will follow up on it.

Ms. SANCHEZ. If you could get that information for me, because, if, in fact, you have 109 slots but you have only got 20 people actually hanging out there, but you have determined, as you told me, the 109 slots, depending on the population, the detainee population, then it seems a little—something is not straight there.

Mr. TORRES. And if I may, in several of the facilities that we have opened over the past year, knowing that the hiring process and the background clearances take a certain amount of time, what we do is send in staff from other facilities.

For example, in Georgia, we have brought staff down from Buffalo, New York, for example, to staff it on a temporary basis, until we could get the correct complement of hiring completed and the background clearances approved. So we will staff a facility, for example, with TDY, temporary duty employees, for a significant amount of time, until we have the permanent staff come onboard.

So maybe there is a nuance there of permanent employees that are onboard versus how many there are actually allocated.

Ms. SANCHEZ. If you could get that information for me or try to figure out that one out, because that was a big concern when that was brought to my attention.

Let me just ask you a series of very quick questions. You have probably read all the newspaper accounts with respect to in particular the family retention facilities that we have, the one in Texas. In your opinion, are people mistreated in your facilities?

Mr. TORRES. No, they are not mistreated in our facilities.

Ms. SANCHEZ. In your opinion, are people getting the medical services that they need?

Mr. TORRES. Yes, in my opinion. Yes, they are.

Ms. SANCHEZ. On a timely basis?

Mr. TORRES. Yes.

Ms. SANCHEZ. What about the ability to speak the different languages that some of these detainees may have? Do you feel that you are adequately staffed to do that at this point?

Mr. TORRES. What we have is a contract that allows us to employ the interpreter's services through the telephone. We can call and operator for those languages that our officers don't speak so that we can then communicate effectively with the detainees.

Ms. SANCHEZ. Are you facing challenges in recruitment and retention of your agents that work in your detention facilities?

Mr. TORRES. I can't speak specifically to the detention facilities, and that would be something that we would definitely take a look at. But overall, within detention and removal operations, the morale overall from the officers that I visited over the past year and a half and the feedback that we are getting from those officers is that it is very positive, and that they feel the program is going definitely in the right direction, and that we are seeing very good recruitment lists for hiring of positions, I would say probably in the last 9 months for jobs that we have posted.

And so, within detention and removal operations, I would not say that that has been a problem for us.

Ms. SANCHEZ. Your detainees, do they have access to counsel?

Mr. TORRES. Yes, they do.

Ms. SANCHEZ. If I went there and asked them, did they get their access to counsel in a pretty straightforward, within a timely matter, would they say yes to that?

Mr. TORRES. Well, I can't anticipate what a person that is in our detention is going to say. Obviously, people that are in detention are not necessarily happy that they are in detention, and so there are a lot of things they could potentially say.

Ms. SANCHEZ. How long would you say that a detainee has to wait until he has access to counsel, he or she have access to counsel?

Mr. TORRES. Actually, upon arrest, they are provided with a list of services. When they are processed, they are again provided with a list of services. And then, when they are brought into our detainee facility, we provide them with—that list is posted again in some of the facilities or handed out. And then they are free to make telephone calls to anyone on that list that provides the free legal services.

Ms. SANCHEZ. They are free to make telephone calls? Does that mean they have—you have a telephone there, they can dial anywhere? Or does that mean they have to have, I don't know, 75 cents in their pocket to make that call?

Mr. TORRES. For those that are indigent, those calls can be free, yes.

Ms. SANCHEZ. And last question. How many children do you think you have in your detention center in the Texas family center?

Mr. TORRES. The numbers I saw about a week ago were about 176 to 180. And that fluctuates daily.

Ms. SANCHEZ. And that would be age levels 1 through under 18?

Mr. TORRES. Under 18, correct.

Ms. SANCHEZ. And how many of those children are going to school while in your facility?

Mr. TORRES. I don't have specific numbers who are going to school, but we do offer 7 hours a day of educational classroom.

Ms. SANCHEZ. In the detention facility?

Mr. TORRES. Yes, in fact, we are in the process right now of building out a couple—two additional trailers at the Hutto facility, in addition to the two that are already operating.

The two new trailers, which would be completed by the end of the month, well, one is for junior-high-level training and classroom services, and one is for the high-school-level schooling. And so there are a couple of rooms within the facility itself that are used for classroom purposes.

Ms. SANCHEZ. So you bring teachers in every day, Monday through Friday, to teach class?

Mr. TORRES. Yes, teachers come to the facility to teach.

Ms. SANCHEZ. And is it optional for the student to go or is it mandatory for the student to go to school?

Mr. TORRES. Actually, I am not sure if that is mandatory or optional. I know that?

Ms. SANCHEZ. I mean, it is mandatory in the United States for a child of that age to go to school, but I don't know if within your facility you mandate it.

Mr. TORRES. Yes, we can get an answer for you on that. I know that, when I toured the facility most recently, the classrooms had

many children, all taking the classroom-level education appropriate to their age.

Ms. SANCHEZ. Thank you, Mr. Torres.

Does the ranking member have any questions?

Mr. SOUDER. Thank you.

I want to make sure for the record—in answer to the questions where there are specific problems, you are not saying there aren't any problems? You are saying that the bulk of the cases, you believe, are being addressed?

Mr. TORRES. That is correct, Mr. Souder. There are instances where issues could be raised to our attention or that a specific detainee may have a complaint. And we have a process put in place where they can pass those complaints to us, they can either tell us in person, they could drop them in a suggestion box. They can also write letters, and then we act on those complaints.

And there are instances, for example, with hot water, where in the size of the facility, if you are closer to the hot water heater, the showers closer to the facility are warmer than if you are further away. And so we have taken measures to address that and place signs that say, "If you are using a shower further away from the heater," at that specific shower, it will say, "Please let it run for a few minutes and it will warm up," for example.

Mr. SOUDER. In the OTMs that we are discussing here, how many of those—do you have any idea of the percent who seek asylum who actually get asylum?

Mr. TORRES. I don't have the percentage of how many actually seek asylum. I have seen any estimates that, for example, those that make a credible fear claim for all nationalities, that as many as 90 percent to 95 percent—and I don't have the specific number handy—actually are granted credible fear.

And then the number drops dramatically for those that are actually granted asylum, based on those that were given a credible fear hearing.

Mr. SOUDER. So about one out of every five who gets the hearing is the best estimate that you have, because this is the most problematic, because the fact is, everybody else in the detention center has committed an unlawful act, meaning we are separating degrees of unlawful acts. Unless you, in fact, have a legitimate asylum question, you have committed a crime.

Mr. TORRES. That is correct, sir, both under the Immigration and Nationality Act, they are here—people are illegally here in the United States. They are present without status, or they have also committed a crime that could be punishable under federal code, under Title 8, USC 1325, for example, is the illegal entry.

While that is not actually prosecuted very often, the majority of people we house in detention are for violations of the INA.

Mr. SOUDER. Now, among the asylum seekers that—ironically, every member has stories about his district. And one of my cases is people—I have the largest population of people from Burma who are escaping persecution. In fact, 500 of the 800 in the United States who are Mon Shan, they are not all Burmese, many of them are persecuted by Burmese.

For asylum seekers, if they come in and wind up in the detention facilities, what protections are in place for them?

Mr. TORRES. They are allowed to have their hearings. They are detained in a setting that is consistent with our 38 national detention standards. And they have the same protections as other people that are in detention.

As soon as, you know, the decision is made whether or not they are granted asylum, if they are granted asylum, then they are appropriately released. What they can also do is have a hearing, a bond redetermination hearing, before an immigration judge. So just because we have them in detention, for example, they are entitled to ask through their counselor or through filling out a form, but for our detention officers, they can ask the judge to have their bond redetermined.

And if the judge decides to reduce the bond or set a bond or release them on their own recognizance, that would be up to the judge.

Mr. SOUDER. Now, one of the problems here are people who are claiming asylum and don't really deserve asylum. And they are backlogging the cases for those who really do deserve asylum.

Have you seen a decline? Because, clearly, the data that you are suggesting in both your written and your verbal suggest that it is a much shorter stay if you don't claim asylum. Expedited removal is doing that. If you claim asylum, you have a longer stay.

Has that seemed to have reduced the number of people who are claiming asylum?

Mr. TORRES. I don't have those statistics handy. Those are kept by the Executive Office of Immigration Review. The latest statistics we have from them indicate that 62 percent of those that apply for asylum are denied relief.

So, for example, if there were a frivolous claim, the logic is that the deterrence to frivolous claims for asylum is that you are going to be detained and then ultimately removed.

Mr. SOUDER. Is there an expedited process, because in certain countries, clearly persecution exists at a higher level for certain subgroups than individuals who may be pursuing some kind of individual angle? Do you look at logical clusters of people who are persecuted as part of a subgroup?

I gave the example of Burma, but even it could be in certain areas—although we are not dealing with Mexico here—but historically, El Salvador, or Guatemala, other countries around the world where a subgroup—I have a huge population from Chad. It may be the largest population of people now coming in from the Darfurian conflict. I have 1,500 Bosnians that have come into Fort Wayne.

Is there a different process when you know that a particular region or subgroup in a region is under heavy duress?

Mr. TORRES. Well, the process itself is managed by Citizenship and Immigration Services. And they have a separate asylum division, which is another agency apart of ICE. When people come into the United States illegally, if they make that claim, we are the entity that detains them, but that is a good question.

And that is something in our regular meetings with Citizenship and Immigration Services I can pose to them and maybe even use as an initiative that maybe we want to try in certain areas. I am not sure exactly whether they do that or not.

Mr. SOUDER. One last question. Do you think it would be helpful if we established or funded specifically as a line item additional language training for agents so that—it wouldn't necessarily be State Department standards, which is one of the difficult—as I have heard in Border Patrol questions before, is you don't need to speak State Department language standards.

But if we gave actual incentives to your agents, financial incentives to learn additional things, because, yes, you can call up on the phone, get somebody to come in who may or may not get there in a timely fashion. Meanwhile, if there were, in fact, chemical, biological, other types of things, it is not clear we could even read the package.

Mr. TORRES. That is a very interesting proposal. One of the things that we have done within our agency is we have re-implemented the Spanish-speaking criteria. It is a requirement now for all new officers and agents that we are hiring in the Detention and Removal Operations program, and they have to pass Spanish.

But for languages other than Spanish, we rely on that language interpreter service. I think that we would be more than willing to sit down with your staff and exchange some of those ideas so we can have that proposed language reviewed and vetted accordingly.

Mr. SOUDER. Thank you.

Ms. SANCHEZ. May I ask you one other question, Mr. Torres, since you are just a wealth of information, isn't he? I represent a large Vietnamese population, the largest one outside of Vietnam in the world, actually.

And I know that, in my county jail—let's say we have a criminal from Vietnam, and maybe he is a resident, and he commits a crime in the United States, he serves his time. Then we are supposed to deport him back to Vietnam. Vietnam doesn't take them back, so these people sit in my jail indefinitely, 5 years, 10 years.

Lots of them have been there, and we have never released them, so we don't want to release them because of the law. We don't want to release them back into society, but yet their home country won't take them back.

So my question to you is, what do you do if you have somebody that is in one of your detainee centers and you want to deport them, but their home country doesn't take them back?

Mr. TORRES. Very good question, Madam Chairwoman. The distinction for people that we detain while they are going through their removal process, they may be detained for extended periods of time, if they elect to appeal any decision and use all their appellate rights, on up through district court, all the way to the Supreme Court.

That could be as short as several months; if they take it all the way to the Supreme Court, it could be a couple of years. In a case of a criminal, for example, statutorily, we are mandated to detain that person in our custody and don't have the discretion to release them into the community.

Once they have been ordered removed by an immigration judge—there is a current Supreme Court decision known as Zadvydas that requires us to review the detention of every person that we have this order to remove at 90-day intervals.

For example, the first 90 days, unless we have some sort of reasonable foresee ability that we can remove that person to their home country, if we don't have that, we have to release them. That is by the Supreme Court decision, regardless of what crimes they committed in the United States, and how heinous those acts may have been.

If we think that we have an opportunity to remove them to their home countries, we can detain them for another 90 days, with 180 days being the limit. In very few instances where a person is such a threat to the community, we may use the authority of our assistant secretary or secretary to request to detain that person longer than 180 days, but that is not done very often.

So we take measures and ensure and implement steps that, when we do have to release a person like that, we place them on some sort of monitoring requirements, reporting requirements, possibly even an ankle bracelet, for example, so that we can try to take as many steps as possible to assure that that person won't commit another crime or pose a recidivist threat to the community.

Ms. SANCHEZ. So let me get this straight. You have got somebody who committed a crime, and you have got them in your detention center because they have come across the border or what have you. And so they are ready for deportation. Their country doesn't take them back. You review it 90 days later; the country doesn't take them back. You have to release them?

Mr. TORRES. That is correct.

Ms. SANCHEZ. Unless it is so—unless they are the Sam the Killer or whatever?

Mr. TORRES. That is right. That was a Supreme Court decision, and that is how we operate. So on the one side?

Ms. SANCHEZ. And what kind of status do they have in the country then?

Mr. TORRES. They don't have status. They are released—their status is, they have been ordered removed from the country. And so they are now back in the community, under some sort of reporting conditions, which are appropriate to what their status is, for example.

Ms. SANCHEZ. So they have to report into somebody every 6 months, let's say, still here in this country, have no status. So we have them sitting here in this country with no status, so they can't work. They can't go to school.

Mr. TORRES. That is correct.

Ms. SANCHEZ. They are just sitting there, because their country won't take them back, but we don't want to keep them in jail.

Mr. TORRES. That is correct. And so what we do is, on the other side of our Detention and Removal Operations, we have a unit that works—it is called a travel document unit. It liaisons internationally with foreign governments, and we seek to obtain agreements where we can remove people. And in certain instances, the secretary of state has the authority to impose visa sanctions on a country that refuses to take back their foreign nationals.

Ms. SANCHEZ. So if I happen to come from a country that doesn't take people back, in effect, I could be an illegal immigrant in the United States legally?

Mr. TORRES. You could also be a criminal illegal alien, yes.

Mr. SOUDER. One question on that. If the crime is committed in the United States, they would have to serve the sentence of that crime?

Mr. TORRES. That is correct, sir. If they committed the crime here and were sentenced to 25 years in prison, for example, they will serve the 25 years in prison, and they would be transferred to us.

Mr. SOUDER. And if the country wants to maintain its visa status—so it is presumably the problem I have seen in Salvador and Guatemala. We have sent more gang kids back, who basically weren't gang kids necessarily when they came to the U.S., got involved in U.S. gangs, we sent them back, and apparently they have police forces in Guatemala right now, partly because of the historic persecution of police forces, but they are overwhelmed now with the gang problem.

But because they want to keep the visa applications, they would have a reciprocal agreement. So, really, the biggest problem here would be countries that don't currently—which probably are the highest terrorist risk countries, that don't currently have or worry about whether their people can have visas.

Mr. TORRES. And there are some countries?

Mr. SOUDER. Like Burma, for Burma, for example, we have sanctions on Burma. So Burma has no incentive to take anybody back. That would be correct?

Mr. TORRES. Well, I don't know that they don't have an incentive, but with some countries, there is definitely less of an incentive.

Ms. SANCHEZ. Vietnam. Vietnam, we have visas with them, but they don't take their people back if they are criminals.

Mr. SOUDER. So my understanding is we could deny Vietnam the ability then to travel, but we haven't?

Ms. SANCHEZ. But we haven't.

Mr. TORRES. Well, for example, if a person who was granted a visa after a certain period of time in Vietnam, for example—I can't remember off the top of my head the specific year—they will take nationals back to their country if they were recognized after a certain year. Before that year, they will not issue a travel document for us to send that person back.

Ms. SANCHEZ. Thank you, Mr. Torres. Thank you so much for your enlightening information. And we will let you step down, and we will ask our second panel to come on up.

Mr. TORRES. It has been my pleasure. Thank you.

Ms. SANCHEZ. I would like to thank our second panel for being here. I would like to welcome the second panel of witnesses.

Sorry, I was looking for your resumes.

Our first witness, Mr. Richard Seiter, is executive vice president and chief corrections officer of Corrections Corporation of America, or CCA, a position that he held since January 2005. Previously, he served in a variety of roles with the Federal Bureau of Prisons, including serving as the assistant director for industries, education and training from 1989 to 1993.

He was also the director of the Ohio Department of Rehabilitation and Corrections from 1983 to 1988. And most recently, Mr. Seiter served as an associate professor in the Department of Sociology and Criminal Justice at Saint Louis University. He has au-

thored two textbooks on corrections, "Corrections: An Introduction" in 2005 and "Correctional Administration: Integrating Theory and Practice" in 2002.

Our second witness is Michelle Brané, director of the Detention and Asylum Program at the Women's Commission for Refugee Women and Children. The organization's mission is to improve the lives of refugee women, children and youth. She is co-author of a report released last month entitled "Locking Up Family Values: The Detention of Immigrant Families," which focuses on some of her organization's concerns regarding immigration detention facilities, particularly with respect to children.

Our third witness is Christina Fiflis of the American Bar Association's Commission on Immigration. And she received her B.A. from Scripps College in Claremont, California, in 1978 and her J.D. from Georgetown University Law Center in 1981.

She is licensed to practice law in the state of Colorado, where she also has an immigration law practice, and is admitted to the United States District Court to the District of Colorado and the United States Court of Appeals for the 10th Circuit. She was appointed to the ABA's Commission on Immigration in August.

And our final witness, Mr. Michael Cutler, a fellow with the Center for Immigration Studies. The Center for Immigration Studies is the nation's think-tank devoted exclusively to research and policy analysis of the economic, social, demographic, fiscal and other impacts of immigration on the United States. Mr. Cutler retired in 2002 after a distinguished career with the Immigration and Naturalization Service, a career that lasted over 30 years, and including 26 years of those years as a special agent.

And in 1991, he was promoted to the position of senior special agent and was assigned to the organized crime drug enforcement task force. Mr. Cutler has testified before Congress on issues relating to the enforcement of immigration, and, of course, he has appeared on numerous television and radio programs—we see you quite often—to discuss the enforcement of the immigration laws.

And so, without objective, I would like to submit the witnesses' full statements into the record.

And I now ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Seiter.

STATEMENTS OF RICHARD P. SEITER, EXECUTIVE VICE PRESIDENT AND CHIEF CORRECTIONS OFFICER, CORRECTIONS CORPORATION OF AMERICA

Mr. SEITER. Thank you. And good morning, Chairwoman Sanchez, Ranking Member Souder. I am pleased to be here.

My name is Rick Seiter. I am executive vice president and chief corrections officer of Corrections Corporation of America. I am pleased to be able to be here and honored to appear before the committee to share with you some of my perspective, based on 30 years of experience in the corrections and detention field.

My written testimony describes the history of our company and our participation in ICE, and I would like to address some of the specific issues of that partnership.

First, I want to emphasize that CCA does not set immigration policy regarding who should be detained and on grounds. That re-

sponsibility is clearly and appropriately invested with Congress and the administration.

Currently, CCA has seven detention facilities throughout the country for which we have ICE as our primary or exclusive customer. CCA's trained professional detention staff is responsible for the care of nearly 6,000 individuals who have been detained by ICE.

At these seven facilities, CCA works closely with ICE staff to ensure that our contracted facilities are meeting all applicable detention standards. These standards include ICE detention standards, as Director Torres talked about, applicable federal and state laws, as well as nongovernmental professional accreditation standards.

CCA is routinely audited by ICE to ensure contractual compliance. And CCA's ICE facilities are frequently accessed by federal, state and local government officials, as well as immigration attorneys and advocates. In short, the level of oversight and scrutiny of these facilities is extensive and is welcomed.

One of our ICE facilities is the T. Don Hutto Family Residential Facility in Taylor, Texas. This facility was contracted to support ICE in May 2006 as a major component of the effort to end the practice of "catch and release," while preserving the unity of alien families as they await the outcome of their immigration hearings or return to their home countries.

Since the center opened, we have worked closely with ICE to develop policies and procedures to address the unique mission of this facility. We are keenly aware of and sensitive to the special needs of the families that reside there and have taken significant steps to create the best possible environment for those families for the short time they are in our care.

In that regard, we have made major renovations to the facility. Housing areas were modified to ensure privacy and allow families the opportunity to socialize and interact with one another. Doors to individual family living areas provide ample privacy; however, are not locked to maximize freedom of movement.

Carpeting, homelike furnishings, plants, curtains, televisions and video games were added to housing units and other areas of the facility. Highchairs, play pens, and children's toys are provided. Outdoor recreational areas were modified to allow for soccer, basketball, baseball, and ping-pong. There is an outdoor covered picnic area, two large playgrounds, and an indoor gymnasium supplied with toys and sports equipment available daily.

Families live and eat meals together. We are also very proud of the 7-hour day of educational classes and recreation provided for school-aged children. As well, recreation is provided daily for non-school-aged children and their parents.

All families are together before and after the school day. Our school is staffed with 11 teachers, a principal, and other education staff to provide age-appropriate instruction. Medical services for the center are provided by the United States Public Health Service, in accordance with ICE standards.

Since its inception, CCA and ICE have worked closely together to create an environment suitable for families. From the questions to Director Torres, it is obvious that the subcommittee is very interested in the inspection process. I would like to also point out

that ICE maintains 33 staff at the facility, including a senior-level officer in charge. And so, in reality, they do continuous inspections.

We recognize and welcome this level of oversight for management of Hutto, as well as all of our other ICE facilities around the country. The Hutto Residential Center is a new and evolving program. We have learned from and made adjustments to the needs of this unique population.

We are proud of the partnership and professionalism demonstrated by our staff and the ICE counterparts who work on a daily basis in all of our facilities to meet the agency's critical mission. We value the confidence that ICE has placed in us for nearly 25 years and strongly believe that our work demonstrates the best qualities in public-private partnerships.

I believe we provide ICE the flexibility to respond quickly to changing developments and to meet its increasing demand in a safe, caring, and cost-effective manner.

In conclusion, I would invite all members of the subcommittee to visit Hutto or any of our other CCA facilities to see our operations first-hand.

I appreciate the opportunity to appear before you today, and I look forward to responding to any questions that you have.

[The statement of Mr. Seiter follows:]

PREPARED STATEMENT OF RICHARD P. SEITER

MARCH 15, 2007

Good morning, Chairwoman Sanchez, Ranking Member Souder and members of the Subcommittee. My name is Rick Seiter, and I am Executive Vice President and Chief Corrections Officer of Corrections Corporation of America. I am honored to be here today to testify on behalf of CCA, but I am also pleased to be able to share with you my perspective based upon 30 years of experience in the corrections and detention field. Prior to joining CCA in 2005, I spent most of my career in public service—working for 20 years with the Federal Bureau of Prisons in a variety of roles including warden at two facilities, and as Assistant Director of the Bureau's Industries, Education and Training Division during which time I served as Chief Operating Officer of Federal Prison Industries. Additionally, I was also the Director of the Ohio Department of Rehabilitation and Correction—a cabinet level position overseeing the operation of 18 facilities, a staff of 8,000 employees and an annual budget of $400 million. I further served as Associate Professor in the Department of Sociology and Criminal Justice at St. Louis University.

As Chief Corrections Officer for CCA, I oversee the operation of all 65 facilities managed by the company and its 16,000 employees. As background for you, CCA is the sixth largest corrections and detention system in the country, public or private. We manage more than 70,000 inmates and detainees and serve nearly half of all states, local governments and three federal agencies including the Federal Bureau of Prisons, ICE and the U.S. Marshals Service.

For nearly 25 years, Corrections Corporation of America has provided safe, secure and humane detention services on behalf of the Department of Homeland Security's Bureau of Immigration and Customs Enforcement. In fact, our first contract as a company was with this agency (then INS) in 1983 at a CCA facility in Houston, Texas. That contract for the Houston Processing Center remains in place today—an example of the quality of service and reliability our company provides to our government partners.

In my testimony I would like to provide members of the Subcommittee with an overview of our role in the immigration enforcement process. With that in mind, it is important for members to remember that CCA does not set immigration policy regarding who should be detained and on what grounds. That is a role that is clearly and appropriately vested with Congress and the Administration.

Our mission as a company and as a service provider to ICE is to meet the agency's needs by safely, securely, and humanely managing a portion of their detention population as they await immigration adjudication and deportation proceedings in accordance with the law and ICE standards. Currently, CCA has seven detention

facilities throughout the country for which the primary or exclusive customer is ICE. CCA's trained professional detention staff is responsible for the care of nearly 6,000 individuals who have been detained by ICE.

At these seven facilities, CCA works closely with ICE staff to ensure that our contracted facilities are meeting all applicable detention standards. These standards include ICE detention standards, applicable federal and state laws, as well as professional accreditation standards such as those of the American Correctional Association (ACA) and the National Commission on Correctional Healthcare (NCCHC). CCA is routinely audited by ICE to ensure contractual compliance. In fact, a typical facility that we operate for ICE has between 30 and 80 ICE staff on site depending upon the size of the facility. CCA's ICE-contracted facilities are frequently accessed by federal, state and local government officials as well as immigration attorneys and advocates. In short, the level of oversight and scrutiny of these facilities is extensive and is welcomed.

An example of this oversight and accountability can be found at the T. Don Hutto Family Residential Facility in Taylor, Texas. This facility was contracted to support ICE in May 2006 as a major component of the effort to end the practice of "catch and release." It is our understanding that the Department of Homeland Security believes that this facility provides an effective and humane alternative to maintain the unity of alien families as they await the outcome of their immigration hearings or the return to their home countries.

Since the facility opened in May 2006, we have worked closely with ICE to develop policies and procedures to address the unique mission of this facility. We are keenly aware of and sensitive to the special needs of the families that reside there and have taken significant steps to create the best possible environment for these families for the short time they are in our care. In that regard, we made major renovations to the facility, and many security measures, such as concertina wire atop perimeter fencing, have been removed. Housing areas were modified to ensure privacy and allow families the opportunity to socialize and interact with one another. Doors to individual family living areas provide ample privacy; however, as appropriate for the unique mission of this facility, these doors are not locked to maximize freedom of movement. Carpeting, homelike furnishings, plants, curtains, televisions and video games were added to housing units and other areas of the facility. Highchairs, play pens, and children's toys are provided. Outdoor recreational areas were modified to allow for soccer, basketball, baseball, and ping-pong. There is an outdoor covered picnic area, two large playgrounds and an indoor gymnasium supplied with toys and sports equipment available daily.

Families live and eat meals together. We are very proud of the seven-hour day of educational classes and recreation provided for school-aged children. As well, recreation is provided daily for adults and children 4 years old and under. All families are together before and after school. Our school is staffed by eleven teachers, a principal, and other educational staff and is operated year round to provide age-appropriate instruction. Core curriculum instruction is provided for students in English language arts, math, social studies and science. Additional instruction is provided with enhanced curriculum subjects such as computer training, music, art and cultural activities as well as physical education. Medical services for the center are provided by the U.S. Public Health Service in accordance with ICE standards.

Since its inception, CCA and ICE have worked closely together to create an environment suitable for families. All activities of the operation have been worked through ICE staff at the facility, at the San Antonio field office, and at Washington headquarters. In fact, ICE maintains 33 staff at the facility on a daily basis including a senior-level Officer in Charge and deportation officers, immigration agents, and administrative staff that oversee removal proceedings and monitor the contract. In addition, 25 Public Health Service staff are at Hutto to provide medical services to residents.

We recognize and welcome this level of oversight of our management of Hutto as well as our other ICE-dedicated facilities around the country. The Hutto Residential Center is a new and evolving program. We have learned and made adjustments over the past few months to meet the needs of this unique population. We are proud of the partnership and professionalism demonstrated by our staff and their ICE counterparts who work on a daily basis in all of our facilities to meet the agency's critical mission. We value the confidence that ICE has placed in us for nearly 25 years and strongly believe that our work exemplifies the best qualities in public-private partnerships. I believe we provide ICE the flexibility to respond quickly to changing developments and to meet its increasing demands in a safe, humane, and cost-effective manner.

In conclusion, I would invite members of the Committee to visit the Hutto facility and any other CCA facility to see operations first hand. I appreciate the opportunity

to appear before you today and look forward to responding to any questions you might have.

Ms. SANCHEZ. Thank you, Mr. Seiter. Thank you for your testimony.

I now recognize Ms. Brané to summarize her statement for 5 minutes.

STATEMENT OF MICHELLE BRANÉ DIRECTOR, DETENTION AND ASYLUM PROGRAM, WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN

Ms. BRANÉ. Thank you. Thank you, Chairwoman Sanchez and Ranking Member Souder.

As you mentioned already, my organization, along with Lutheran Immigration and Refugee Services, conducted a study and issued a report on the use of family detention by ICE.

The Immigration and Customs Enforcement currently has the capacity to house up to 600 individual family members. This is a drastic change from what the situation was before the opening of the Hutto facility in 2006.

DHS has presented this shift in policy as a response to their end of "catch and release," but in reality the situation is a little more complex than that. And, in part, the opening of the Hutto facility was an effort to be in compliance with congressional directives.

Before the opening of the Hutto facility, the majority of children and families—I am sorry, parents with their children—were either released as part of the "catch and release" program or separated. And the adults would be sent to an adult facility. The children, some as young as 6 months and nursing, would be sent to the Office of Refugee Resettlement, who is in charge of unaccompanied minors.

Congress discovered this and took immediate action. In report language of the 2006 appropriations bill, Congress articulated concern over the ongoing separation of parents from the children during DHS detention. In House report language, the House of Representatives "encourages ICE to work with reputable nonprofit organizations to consider allowing family units to participate in the intensive supervised appearance program where appropriate or, if detention is necessary, to house these families together in nonpenal, homelike environments until the conclusion of their immigration proceedings."

Such congressional directives were intended to preserve and protect the role of the family as a fundamental unit of our society. However, ICE chose to develop a penal detention model for the detention of families with no criminal backgrounds that is fundamentally anti-family and, frankly, un-American.

Let me tell you a little bit about the conditions we found at Hutto. And I will start by telling a story—some pieces of stories that some of the detainees told us.

Dominica—and I have changed her name, because her case is still in proceedings—was pregnant when she arrived at Hutto. And she arrived with two children, age 3 and 9. She told us that she slept together with her two children in the bottom bunk of the prison cell, because they were afraid at night, and she didn't want them separated from her.

When I asked about discipline procedures, her 9-year-old daughter told me that, if she didn't behave, she would be sent away and separated from her mother.

Threats of separation are commonly used at these facilities as a way of encouraging compliance, and very often what we found was that the punishments imposed on these children—most of them actually seem to be under the age of 12—were disproportionate to the activities. And very often, it was regular childlike activities of running, being too loud, or jumping on furniture.

Another woman, Carmen, who is also pregnant and arrived with her 5-month-old child, also an asylum seeker and a victim of trafficking, told us that she received no prenatal care for the several initial months that she was held at the facility.

After being at the facility for 2 months, she fainted and was taken to the hospital. She was told that she had a kidney infection, but was given no antibiotics. She was told to drink more water. When she was 7 months pregnant, she finally received her first prenatal exam.

Perhaps even more disturbing is the situation of her daughter. Five months old when she arrived at the facility, Lilly actually lost several pounds in the time that she was detained at Hutto. And while for adults or you and I, losing a few pounds might not be of concern, it might even be welcome, for a child under the age of 1, it is both dangerous and disturbing.

This should not be happening in the United States, and it especially should not be happening for children who are in U.S. custody.

Hutto is a former correctional facility. It still looks very much like a prison. And while changes have been made, such as paint and carpeting and disengaging the locks of prison cells, families still sleep in prison cells. Children as young as 6 years old are often separated from their parents at night.

And while the doors to the cells are not locked, because the locks have been disengaged, they are, in fact, not allowed to leave, really, because there is a laser beam that trips if the doors open.

Children at Hutto when we visited received only 1 hour of education a day, although I acknowledge that this has been rectified since our visit. Families receive no more than 20 minutes to go through a cafeteria line, get their food, seat their children, feed their children, and feed themselves. Many families, many mothers, in particular, express dismay that this was just not enough time to feed their children and themselves.

Families at Hutto receive only 1 hour of recreation, 5 days a week. And many of the children told us that they not been outside in months, even though there is quite a nice playground just outside of the gym area.

And access to counsel is limited, primarily because of the remote location and lack of attorneys available to provide the representation that they need.

Some changes have been made since media attention has been drawn to the Hutto facility. As mentioned earlier, children now receive more than an hour of education. They receive 7 hours of education a day.

The razor wires have been removed. Children are no longer required to wear uniforms as they were, at least that is what I have been told. I don't know if that is true.

And there have been some changes made to the cafeteria. However, these changes remain cosmetic and do not address the fundamental issue that the system of family detention is overwhelmingly inappropriate for families and that the Department of Homeland Security has failed to consider more appropriate, effective, and cost-efficient alternatives.

The Department of Homeland Security has presented the dilemma of "catch and release" and what to do with these families as being an alternative between "catch and release," splitting families and separating them, or detaining them at places like Hutto. We acknowledge that appearance rates under the former "catch and release" program were problematic, and we also acknowledge some of the concerns expressed about renting and trafficking of young children.

However, measures have been taken and further measures could be taken to address these issues and still remain a humane system.

Currently, ICE now fingerprints all children who come through, who are apprehended and come through their care. In doing this, the fingerprints are now entered into a database so that, if any child comes through more than once, they would be identified as the child that is most likely being rented or trafficked through.

In addition, more rigorous screening policies could be installed, both with Border Patrol and in the initial ICE screenings, to determine family relationships. Detention is not necessary or a practical way to address the issue of trafficking.

With respect to "catch and release," the current approach fails to take into consideration both Congress's directive to explore alternatives and the reality that alternatives already exist and pilots have already been used. Such alternatives are less costly, while ensuring that immigrants in proceedings appear at their hearings and that our immigration laws are enforced.

The alternatives range from parole to a program currently piloted that was described earlier called the intensive supervised appearance program. Congress, actually in 2006, appropriated $43 million to the Department of Homeland Security for alternatives to detention and lauded the program.

And my testimony includes more detailed language on this. But within that language and from DHS reports to Congress, the appearance rates for people within the ISAP program is at 94 percent. So they are effective in—appearance.

The cost is far less. At $22 a night, the cost is far less than the average $95 a night for traditional detention. And for family detention, the average daily cost per individual is more like $200 a day.

The Corrections Corporation of America receives $2.8 million per month to run the Hutto facility. This is based on a full capacity of 512, and they receive this although the facility has not been at capacity since its opening.

At the Berks facility, the other family facility, we met with a woman who had been detained with her 15-year-old son for 9 months. She was detained after going to pick her son up from ORR custody, where he had been apprehended after crossing the border

to join her, and she thought that she was only going to pick him up and then return home, so she left her 1-year-old U.S. citizen child at home with a neighbor, thinking she would return, you know, the next day or within the day.

Instead, she was detained and has been held at Berks without seeing her baby for 9 months.

A program such as ISAP or another program which I will describe shortly would be a much more appropriate, cost-effective and efficient way of dealing with this issue. Nongovernmental organizations have also contracted with immigration services—

[The statement of Ms. Brané follows:]

PREPARED STATEMENT OF MICHELLE BRANÉ

MARCH 15, 2007

The U.S. Department of Homeland Security (DHS) arrests over 1.6 million undocumented people each year, of which over 230,000 are subsequently held in administrative immigration detention.[1] The conditions and terms of immigration detention in the U.S. are equivalent to prison, where freedom of movement is restricted, and detainees wear prison uniforms. This is the case even though under U.S. law an immigration violation is a civil offense, not a crime. Nevertheless, the U.S. uses facilities owned and operated by Immigration and Customs Enforcement (ICE), the enforcement bureau within DHS, in addition to over 300 local and county jails from which ICE rents beds on a reimbursable basis.[2] Only half of these immigrants held in detention have actual criminal records, yet more than half of them are held in jails where non-criminal immigrants are mixed with the prison's criminal population.[3] In the case of families held toghether, none have a criminal conviction or background, and over 80% are held in a former prison where freedom of movement is restricted and children and their parents sleep in prison cells.

Dominica, a pregnant woman detained at Hutto with her two daughters, pointed out the impact that this penal environment has on a families' health and well-being, telling us:

At night we all sleep together in the bottom bunk of our cell because we are afraid. As my daughter Nelly says, "If you aren't good, they will take you away from your mom."

I am almost seven months pregnant. The doctor has told me for months that I need to eat more. But I can't. The food doesn't work here and I can't eat it. We don't get much time for meals—only a maximum of 20 minutes—and I have to feed my children first. They do not eat quickly. We are not allowed to take food out of the cafeteria, even if we haven't had time to finish. Something like bread or an apple—they take it away. It is so sad to throw something like that away because we couldn't eat it fast enough.

My mother has legal status in the United States. I am applying for asylum and am eligible for parole. But I requested parole over two months ago and I still haven't received a response. I'm afraid that I will have my baby in jail.[4]

Even without criminal convictions, immigrants may remain detained for months or even years as they go through procedures to decide whether they are eligible to stay in the U.S. or, after being issued a final order of removal, as the U.S. arranges for their deportation. The Department of Homeland Security has increasingly failed to follow its own policy directives for paroling these asylum seekers.[5] In addition,

[1] "Detention and Removal of Illegal Aliens," Office of Inspector General, Department of Homeland Security, April 2006; *www.ice.gov,* August 7, 2006; "Detention and Removal Operations: Alternatives to Detention," ICE Fact Sheet dated July 14, 2004, *http://www.ice.gove/pi/news/factsheets/06170detFS2.htm,* last modified March 17, 2006.

[2] "Treatment of Immigrant Detainees Housed at Immigration and Customs Enforcement Facilities," Office of Inspector General, Department of Homeland Security, December 2006, pp 2, available at *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07–01_Dec06.pdf.*

[3] "Critics Decry Immigrant Detention Push," Associated Press, June 25, 2006, stating that over 57% of ICE detainees are held in local and county jails.

[4] Interview conducted by Michelle Brané, Don T, Hutto Residential Center, December 4, 2006, the name has been changed to protect the individual while her case is pending.

[5] Asylum-seekers are technically eligible for parole. (see: Memorandum from Office of INS Deputy Commissioner, "Implementation of Expedited Removal," March 31, 1997, reprinted in 74 *Interpreter Releases* (April 21, 1997). § 212(d)(5)(A) reads "The Attorney General may, except

Continued

several recent studies and reports have demonstrated that the Department has failed to comply with its own detention standards at these facilities. The recent report from the Department of Homeland Security Office of the Inspector General found violations of the Immigration and Customs Enforcement's own Detention standards at all five adult facilities it visited, including failure to provide timely and responsive medical care and a safe and appropriate environment.[6]

Rebecca, detained at Hutto with her three sons, underscored the reality of these health concerns, stating:

My children and I were sick a lot but we didn't receive good medical care. Mostly the guards told us not to bother them with sick requests. But sometimes I would try anyway. My children all had a skin infection but I couldn't get any medicine for them until they began to bleed from the rash. My son vomited frequently, but when I asked for medical attention the staff told me that they would need to see vomit to believe that he was sick. Another time I had uterine pain, and I went to see the nurse. The nurse told me that she wasn't allowed to prescribe medicine and put me on the list of detainees who needed to see the doctor. But I had to wait for the doctor to be called in on an emergency. The doctor doesn't have time to see everybody because he's only there one day a week. Finally, more than a week later, the doctor came for an emergency call in the middle of the night, and the guards woke my children and me up at 3:00 am and took us to see him.[7]

For all immigrant detainees, ICE reported an average stay of 64 days in 2003 (32 percent for 90 days or longer).[8] By contrast, asylum-seekers who were eventually granted asylum spent an average of 10 months in detention, with the longest period being 3.5 years.[9] Some individuals who have final orders of removal, such as those from countries with whom the U.S. does not have diplomatic relations or those from countries that refuse to accept the return of their own nationals, may languish in detention indefinitely.[10] At the Berks Family Shelter in Pennsylvania we met with a woman asylum seeker and her three young daughters who had been detained for more than two years.

Unless other reasons exist, such as danger to the community or threat to national security, detention is an inefficient solution for asylum seekers or individuals for whom removal is not a possibility. For such situations, where detention does not meet the ends for which it is intended, the individual should either be released on

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as provided in subparagraph (B) or in section ***214(f),*** in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.") Official DHS policy tends to favor their release so long as their identity has been verified, they have established a credible fear of return, demonstrated they have community ties, and pose no risk to national security. However, parole release rates for asylum seekers vary widely depending upon where in the country the individual is detained, ranging from districts that have rather liberal parole policies to districts that parole virtually no one. For example, in FY 2003, only 0.5% of asylum seekers subject to expedited removal were released in the New Orleans district prior to a decision on their case. By contrast, during the same year, in Harlingen, Texas 98% of asylum seekers were released on parole. Despite these dramatic inconsistencies, DHS has not promulgated regulations to promote a consistent implementation of parole criteria. The authority to grant parole rests with ICE, the same authority that detains asylum seekers and there is no independent review of parole decisions, not even by an immigration judge. (See U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal, (Washington, D.C., February 8, 2005))*

[6] Department of Homeland Security Office of the Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities,* Report No. OIC–07–01, December 2006. p. 1–2.

[7] Interview conducted by Emily Butera, Don T, Austin, Texas, December 5, 2006, the name has been changed to protect the individual while her case is pending.

[8] US Detention of Asylum Seekers and Human Rights, By Bill Frelick, Amnesty International USA, March 1, 2005, *http://www.migrationinformation.org/Feature/display.cfm?id=296*

[9] Id. citing *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers.* Boston: PHR and the Bellevue/NYU Program for Survivors of Torture, 2003.)

[10] *Zadvydas v. Davis,* 533 U.S. 678 (2001), held that the US does not have the power to hold non-citizens indefinitely in these situations, required a case-by-case basis review for supervised release of detainees within a reasonable period after the non-citizens are ordered removed. Unfortunately, these reviews mandated by Zadvydas have never operated effectively and most detainees do not receive timely custody reviews and fewer are released as a result of these determinations. In a series of reports, CLINIC tracked these review programs and found them to be empty promises for most indefinite detainees. For more information see *http://www.cliniclegal.org/Programs/IndefiniteDetainees.html.*

parole or to an alternative to detention program so that detention space is used in an effective and humane manner. DHS has systems in place to facilitate this, but continues to expand detention rather than utilize these other demonstrably workable options.

On any given day the U.S. government has the capacity to detain over 600 men, women and children apprehended as family units along the U.S. border and within the interior of the country. The detention of families expanded dramatically in 2006 with the opening of the new 512-bed T. Don Hutto Residential Center. This facility is owned and operated by the Corrections Corporation of America (CCA), a private company that is the founder of the private corrections industry and owns and operates correctional facilities across the country. The Hutto facility has been at the center of a flurry of media reports criticizing the harsh treatment of families, and in particular of children.[11]

The recent increase in family detention represents a major shift in the U.S. government's treatment of families in immigration proceedings. The Department of Homeland Security has presented this shift as the end of "Catch and Release," but the situation is more complex. This one size fits all approach to deterring by detaining has unintended consequences, including creating a situation in which the US government is violating its own standards for care and custody, as well as its obligations under international law. In addition, this emerging preference for family detention is an effort to comply with a Congressional directive to preserve family unity, but the policies and procedures for family detention in their current guise are effectively undermining Congress's intent. Prior to the opening of Hutto, the majority of families were either released together from detention or separated from each other and detained individually. Children were placed in the custody of the Office of Refugee Resettlement (ORR) Division for Unaccompanied Children's Services, and parents were detained in adult facilities.

Congress discovered this and took immediate action to rectify the situation, in keeping with America's tradition of promoting family values. In the report language of the 2006 appropriations bill Congress articulated concern over the on-going separation of parents from their children, some as young as nursing infants, during DHS detention. In S.Rept. 109–273 (2006), the Senate "directs ICE to submit a report by February 8, 2007, assessing the impact of the Hutto Family Center in Williamston, Texas, on the number of families required to be separated, and providing updated forecasts of family detention space needs for the next 2 years." In H.Rept. 109–476 (2006), the House of Representatives "encourages ICE to work with reputable non-profit organizations to consider allowing family units to participate in the Intensive Supervision Appearance Program, where appropriate, or, if detention is necessary, to house these families together in non-penal, homelike environments until the conclusion of their immigration proceedings."

Such Congressional directives were intended to preserve and protect the role of the family as the fundamental unit in our society. However, ICE chose to develop a penal detention model for the detention of families with no criminal backgrounds, that is fundamentally anti-family and un-American.

This Committee, therefore, should insist that DHS submit its report to Congress as mandated by Congress for February 8, 2007 concerning family detention. Congress should also insist that DHS articulate the specific steps it will take to work with non-profit organizations to facilitate family participation in alternatives to detention such as the ISAP program and housing in non-penal, homelike environments.[12]

Lutheran Immigration and Refugee Service and the Women's Commission for Refugee Women and Children visited both the T. Don Hutto Residential Center and the Berks Family Shelter Care Facility in the period between October 2006 and Jan-

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[11] See Sylvia Moren, *Detention Facility for Immigrants Criticized, Organizations Laud DHS Effort to Keep Families Together but Call Center a 'Prison-Like Institution,* Washington Post February 22, 2007, p A03; Lisa Ogle, Williamson orders more schooling for detainee kids, In renewing jail contract, court says Taylor facility must follow state and federal education guidelines, American Statesman, January 31, 2007; *Don't punish children for acting their age. Our Opinion: Mistreatment of Families in Immigration Prisons Must End,* The Miami Herald, Editorial, March 7, 2007; Hernán Rozemberg, *Center that houses detained families scrutinized,* San Antonio Express News, February 10, 2007; Paul Meyer, *Media gets look at immigrant center,* The Dallas Morning News, February 10, 2007; Nicole Gaouette and Miguel Bustillo, *Immigration's net binds children too,* Los Angeles Times, February 10, 2007; Ralph Blumenthal, *U.S. Gives Tour of Family Detention Center That Critics Liken to a Prison* New York Times, February 10, 2007; and over 200 other media outlets.

[12] A homelike setting is not akin the "Hutto Family Center", a euphemism, since "the Hutto Family Center" is a private prison operated for profit which houses over 500 members of family units with parents and children in prison uniforms at any given time.

uary 2007 and talked with detained families as well as former detainees. What we found was disturbing:

- Hutto is a former criminal facility that still looks and feels like a prison, complete with razor wire and prison cells.
- Some families with young children have been detained in these facilities for up to two years.
- The majority of children detained in these facilities appeared to be under the age of 12.
- At night, children as young as six are separated from their parents.
- Separation and threats of separation were used as disciplinary tools.
- People in detention displayed widespread and obvious psychological trauma. Every woman we spoke with in a private setting cried.
- At Hutto pregnant women received inadequate prenatal care.
- Children detained at Hutto received one hour of schooling per day.
- Families in Hutto received no more than twenty minutes to go through the cafeteria line and feed their children and themselves. Children were frequently sick from the food and losing weight.
- Families in Hutto received extremely limited indoor and outdoor recreation time (only one hour per day, five days a week) and children did not have any soft toys.
- Access to Counsel is extremely limited due to the remote location.

Some changes have been made since media attention and our report "Locking Up Family Values: The Detention of Immigrant Families"[13] raised questions about the Hutto facility in particular. Children at Hutto now receive more than one hour of recreation five days a week, they receive 8 hours of education a day, razor wire has been removed from the perimeter of the facility, children are no longer required to wear uniforms, hair conditioner is now provided free of charge, and accommodations have been made in the cafeteria including baked potato instead of mashed and a spice bar. However, these changes are cosmetic and do not address the fundamental issue that the system of family detention is overwhelmingly inappropriate for families and that the Department of Homeland Security has failed to consider more appropriate, effective and cost efficient alternatives. Immigration and Customs Enforcement has initiated discussions to develop a set of standards for these facilities, but thus far there has not been willing to discuss an end to family detention or the development of a non-penal, homelike model. Yet the current system of family detention, which relies on a prison model, is not appropriate or efficient for these reasons:

- The model strips parents of their role as arbiter and architect of the family unit.
- It places families in settings modeled on the criminal justice system.
- There are no licensing requirements for family detention facilities because there is no precedent for family detention in the United States.
- There are no standards for family detention, but both facilities violated the 1996 Flores v. Reno settlement agreement outlining standards for children and Immigration and Customs Enforcement Detention Standards.[14]

In the Homeland Security Act of 2002 (HSA), Pub L. No. 107–296 S. 49, 116 Stat. 2153 (2002), Congress transferred the responsibilities for care, custody and placement of unaccompanied children from Legacy Immigration and Naturalization Service to the ORR, acknowledging that the INS had a poor track record in caring for children over the last two decades. The INS suffered from a fundamental conflict of interest while acting as police officer, prosecutor and guardian of the children at the same time. Additionally, the INS typically prioritized law enforcement considerations over child welfare considerations in violation of the Flores Settlement. For example, the INS placed one third of unaccompanied children, including those children with very minor behavioral problems and those lacking any serious physical threat, in secure detention juvenile jails due to lack of bed space in shelter facilities.

Neither of the family detention facilities currently in use provides an acceptable model for addressing the reality that there are families in our immigration system. Although there is precedent in the adult detention system for the use of alternatives to detention and other pre-hearing release systems,[15] The Department of Homeland

[13] Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families,* New York, February 2007, (available at *www. womenscommission.org)*

[14] Stipulated Settlement Agreement, *Flores v Reno,* Case No CV85–4554–RJK (C.D. Cal. 1996) and U.S. Immigration and Customs Enforcement, *Detention Operations Manual. http://www.ice.gov/partners/dro/opsmanual/index.htm.*

[15] See Appendix D, ''UNHCR Report on Alternatives to Detention of Asylum Seekers and Refugees.''

Security has unfortunately made no effort to expand these programs to include families.

Based upon these findings, our report recommends the following systemic changes to the U.S. government?s treatment of families in immigration proceedings:

- Discontinue the detention of families in prison-like institutions.
- Parole asylum seekers in accordance with international standards and ICE's own policy guidelines.
- Expand parole and release options for apprehended families.
- Implement alternatives to detention for families not eligible for parole or release.
- House families not eligible for parole or release in appropriate, nonpenal, homelike facilities.
- Expand public-private partnerships to provide legal information and *pro bono* legal access for all detained families, and to implement alternative programs.

The Department of Homeland Security has presented the dilemma of what to do with these families as a choice between catch and release, splitting families, or detaining them in facilities like Hutto. We acknowledge that the appearance rates under "catch and Release" were problematic. We also acknowledge DHS's concerns regarding trafficking and cases in which prospective migrants would "rent" children to accompany them on the border crossing, thereby ensuring that they would be released on their own recognizance should they be caught.[16] However, the concerns regarding trafficking can be addressed through more rigorous screening of family relationships and are already being addressed through ICE's new policy of fingerprinting everyone who is apprehended—including children—and entering them into a database. With this new procedure, any child who comes through more than once with a different adult will be identified. This practice both protects children from trafficking and serves as a deterrent to traffickers. The detention of families is not necessary or helpful in addressing trafficking concerns. The current approach fails to take into consideration both Congress's directive to explore alternatives and the reality that alternatives exist. Such alternatives are less costly to the taxpayer while ensuring that immigrants in proceedings appear for their hearings.

These alternatives range from releasing specific groups such as asylum seekers, on their own recognizance or 'paroling' them, to programs currently in use through an Immigration and Customs Enforcement Program known as ISAP—the Intensive Supervised Appearance Program. In addition, our criminal justice system uses a wide range of pre-hearing release programs that are effective and cost efficient. Some of these have already been tried in the immigration context. These alternative programs are infinitely less expensive than traditional detention, are more humane, and still meet the valid enforcement concerns of the government. Some government-initiated programs labeled as "alternatives to detention" may in fact be "alternative forms of detention." This is the case if they impose undue restrictions on an individual's liberty, even if the individual is not physically held in a prison or prison-like setting. The ideal model for an alternative to detention program for immigrants in the U.S. creates partnerships between DHS and private, non-profit organizations that are granted the responsibility to supervise and refer people to community services. These programs, as explained below, have shown great success. The use of detention should be limited to situations when it is necessary and proportional. There are instances in which detention may be the only appropriate way of protecting community safety or national security, ensuring appearance rates at immigration hearings, or guaranteeing effectuation of orders of removal. Beyond these limited justifications, however, detention is the most expensive and inhumane way of achieving results that may be met through alternative programs. Nevertheless, DHS continues to expand its detention capacity, despite the availability of effective alternative programs.

In the past decade, the use of detention as an immigration enforcement mechanism has tripled, with detention becoming more the norm than the exception in U.S. immigration enforcement policy. In 1996, the INS[17] had a daily detention capacity

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16 Department of Homeland Security Immigration and Customs Enforcement, ''DHS Closes Loopholes by Expanding Expedited Removal to Cover Illegal Alien Families,'' news release, May 15, 2006, http://www.ice.gov/pi/news/newsreleases/articles/060516dc.htm.

17 The Homeland Security Act of 2002 abolished the Immigration and Naturalization Services (INS) and created three separate immigration bureaus now within the Department of Homeland Security. These three agencies consist of the U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Since 2003, ICE has had jurisdiction over immigration enforcement, including detention and removal responsibilities.

of 8,279 beds.[18] By 2006, that daily capacity had increased to 27,500 with plans for future expansion.[19] At an average cost of $95 per person/per day, immigration detention costs the U.S. government $1.2 billion per year.[20] Thousands of those in immigration detention are individuals who, by law, could be released. Two such groups are asylum seekers without sponsors for parole and people whose removal orders are over 90 days old and who pose no danger to the community or national security of the United States. Both of these groups are in need of alternative programs as holding them any longer than immediately necessary is not only inhumane, it is fiscally irresponsible and an inefficient and ineffective use of detention. While the absconding rate for immigration cases in general may be high—there is no indication that it is high for these particular groups and in fact community based alternatives programs have shown that the large majority (up to 96%) of these individuals appear for their hearings when released.

In H. Rept. 109–699 (2006), Congress appropriated a record funding of $43,600,000 to the Department of Homeland Security for alternatives to detention for detained adults. According to H. Rept. 109–476 (2006), the House of Representatives explained that "The Alternatives to Detention program addresses aliens who are not mandatory detainees, but are deemed likely to appear at their immigration hearings. Programs for electronic monitoring devices and telephonic reporting, and especially the intensive Supervised appearance Program (ISAP), contribute to more effective enforcement of immigration laws at far less cost ($22/night) than for detention ($95/night). The first full year of the ISAP program has seen significant success with 94 percent of participants in the eight pilot cities appearing at immigration proceedings, compared to 34 percent for non-ISAP participants. In at least one case, the results showed a 98 percent appearance rate, a much higher rate of compliance with court orders, and gained EOIR agreement to expedite such cases. The Committee recommends an additional $5,000,000 for this promising program, with the expectation that it be expanded to at least two more cities."

In FY 2007, Congress appropriated an increase of $16.5 million to DHS in order to expand its alternatives to detention programs such as ISAP. DHS, however, did not spend this $16.5 million on alternatives but instead used it to repay accounts which supplemented the FY 2006 funding. The total increase in FY 2007 therefore amounted to approximately $5,388,000.

In appropriating funds to DHS for alternatives to detention, Congress has indicated that its intent is to fund community-based, supervised release programs modeled after the Vera Institute of Justice's Appearance Assistance Project (Vera Project). The Vera Project was a three year study (February 1997—March 2000) of a supervised release/assistance program funded by INS. It studied over 500 participants at both general and intensive levels of supervision in three groups: asylum seekers, people convicted of crimes and facing removal, and undocumented workers from detention facilities in the New York area. Generally, the Vera Project proved to be significantly less expensive than detention. Overall, 91% of non-citizens released to the Vera Project appeared at all required hearings, compared to a 71% appearance rate for comparison groups of non-citizens who had been released on bond or parole but did not have any of the extra supervision of the Vera Project.

ICE's main alternatives program, ISAP, was commenced in July 2004 and has been operated in eight cities: Baltimore, Philadelphia, Miami, Kansas City, St. Paul, Denver, San Francisco and Portland with 1,600 participants including asylum seekers, immigrants undergoing removal proceedings and others. The FY 2007 increase allowed for the expansion of ISAP to two additional sites.

The Intensive Supervised Appearance Program (ISAP) is a pilot program for aliens who who are not subject to mandatory detention. ICE has contracted with an organization called Behavioral Interventions to run ISAP. Participants are assigned to a case specialist who monitors them with tools such as electronic monitoring (bracelets), home visits, work visits and reporting by telephone. Case specialists will also assist participants in obtaining pro-bono counsel for their hearings and help them to receive other types of assistance to which they may be entitled and which help ensure appearance. The Department of Homeland Security has reported that ISAP has a 94% appearance rate. It also costs a fraction of what formal deten-

[18] U.S. Commission on Immigration Reform, *Becoming An American: Immigration and Immigrant Policy,* September 1997, pp. 139, 140.

[19] DHS Fact Sheet: ICE Accomplishments in Fiscal Year 2006, Release Date: October 30, 2006, stating, "ICE also increased its detention bed space by 6,300 during the fiscal year 2006, bringing the current number of funded beds to 27,500 immigration detainees."*http://www.dhs.gov/xnews/releases/pr* 1162228690102.shtm

[20] "Immigration Enforcement Benefits Prison Firms," The New York Times, July 19, 2006; "Detention and Removal of Illegal Aliens," Office of Inspector General, Department of Homeland Security, April 2006; *www.ice.gov,* August 7, 2006.

tion costs. While some detainees in the current system are in expedited removal and held for short periods of time and therefore it may not be practicable to assign them to programs like ISAP, many are asylum seekers or have court cases pending and as mentioned above, are detained for longer periods. In the case of the Hutto facility—most of the families detained are seeking asylum and will have cases pending in court for several months. The costs of the ISAP program are approximately $22 per individual per day as opposed to an average of about $95 a day for detention and closer to $200 a day for family detention.

Reports from the field indicate that the ISAP program is being used for persons who would not normally be detained at all instead of as an alternative to detention. The program is a better solution for resolving "catch and release" than the tent cities and traditional prison facilities currently being used by the Department. It is more in keeping with our American value and a more efficient use of tax dollars.

The government pays the Corrections Corporation of America (CCA) $2.8 million dollars per month to run the Hutto facility in Taylor Texas. This sum is intended to cover the expenses of running the facility at its full capacity of 512 individuals. Currently and since its opening the facility has not been at full capacity and has housed an average of about 400 individuals, at a cost to the government of $212 a day per person costing the taxpayer $33.6 million per year or roughly $31 million over the cost of using ISAP. Although a simple mathematical calculation would suggest that with this low average occupancy rate CCA should have additional resources in their budget for the administration of Hutto, charitable organizations have been requested to provide toys and religious materials for the facility. Williamson County receives $1 a day per person detained.

At the Berks facility we met a woman who had been detained with her 15 year old son after going to pick him up from ORR custody where he had been held after being apprehended crossing the border to join her. She had left behind her U.S. citizen infant son with a neighbor, thinking that she would only be away for one day. When we met her she had not seen her baby in over 9 months. The child was still with the neighbor and the child's father was visiting occasionally. This situation of U.S. citizen children being separated from their parents and left in precarious situations is unnecessary and can be avoided with programs that already exist.

NGO based Alternative Pilot Programs have been shown to be effective as well. Non-governmental organizations under contract to the immigration service have provided supervision, and, in some cases, housing in community shelters and assistance in locating pro bono attorneys to help with their claims. These projects have been cost-effective and have produced high appearance rates at hearings. A study conducted by the Vera Institute for Justice between February 1997 and March 2000 found that alternatives saved the federal government almost $4,000 per person while showing a 93% appearance rate for asylum seekers at all court hearings.[21] Other NGO programs have met with similar success. In New Orleans, the legacy INS released asylum seekers and people with over 90-day-old removal orders to a program run by Catholic Charities with a 96% appearance rate.[22] In another program coordinated by Lutheran Immigration and Refugee Service (LIRS), the legacy INS released 25 Chinese asylum seekers from detention in Ullin, IL to shelters in several communities. This program achieved a 96% appearance rate.[23] There are currently NGO's across the country that could modify or expand their current programs if approached by the Department of Homeland Security as encouraged in H.Rept. 109-476 (2006), where the House of Representatives encouraged "ICE to work with reputable non-profit organizations to consider allowing family units to participate in the Intensive Supervised Appearance Program, where appropriate. ."

In sum, DHS has declared an end to catch and release and presents detention as the only solution, citing lack of appearance at hearings as the primary reason. There are however many less restrictive forms of detention and many alternatives to detention that would serve our nation's protection and enforcement needs more economically, while still providing just and humane treatment. In the rare cases in which detention is necessary, DHS should cease to contract with companies imposing a corrections model on a population that is in administrative detention. Standards should be effectively enforced. The detention of families where detention is necessary should be in non-penal, homelike environments as recommended by Congress. Parole policies should be implemented. DHS should work with the NGO com-

[21] Vera Institute of Justice, Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program, June 7, 2000, Volume I, pg. 32.

[22] Joan Treadway, "Detainees get chance to change their lives," New Orleans Times Picayune, Jan. 22, 2001, pg. B–3.

[23] Esther Ebrahimian, "The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention," Detention Watch Network Nes, August/September 2000, p. 8.

munity to develop alternative programs and DHS should expand its use of ISAP to families and others who would fit well into the program.

We understand that DHS is responsible for the difficult task of protecting our borders and enforcing immigration laws. We are confident that our recommendations provide a valuable framework for enforcing our laws, ensuring appearance at immigration hearings, and preserving American values through the humane and just treatment of those seeking protection at our borders. I welcome the interest this committee has taken in this matter and encourage you to continue to press for viable, cost effective solutions.

I declare under penalty of perjury that the forgoing is true and correct. Executed on this 13th Day of March 2007.

Ms. SANCHEZ. Ms. Brané, I am sorry, you have doubled your time, so we will ask for specifics during question time, but I really need to get to the other witnesses here.

Next on the list would be Ms. Fiflis, to summarize your statement, please, in 5 minutes.

STATEMENT OF CHRISTINA FIFLIS, MEMBER, COMMISSION ON IMMIGRATION, AMERICAN BAR ASSOCIATION

Ms. FIFLIS. Thank you, Madam Chair and Ranking Member Souder.

As noted, I am an immigration practitioner in the Denver metro area. I currently represent over 120 individuals who have been detained in the El Paso Servicing Process Center or in the Denver GEO Detention Center.

But I am here as a member of the American Bar Association Commission on Immigration. And on behalf of the ABA, I appear at the request of ABA President Karen Mathis to express the ABA's views on a number of issues related to immigration detention, in particular our ongoing concern over the lack of meaningful access to legal information and legal representation experienced by many immigrants in detention. We appreciate this opportunity to share our views.

The ABA, as you know, is the world's largest voluntary professional organization, with over 400,000 members worldwide. We continuously work to improve the American system of justice and to advance the rule of law.

The Commission on Immigration directs the association's efforts to ensure fair treatment and full due process rights for immigrants and refugees in the United States. The commission engages in advocacy, education and outreach, and operates pro bono programs that serve the most vulnerable immigrant populations, including asylum seekers and unaccompanied minors.

The ABA is deeply committed to ensuring that foreign nationals in the United States receive fair treatment under the nation's immigration laws. The importance of meaningful access to legal representation and materials for individuals in immigration detention cannot be overstated.

While immigrants are in administrative, as opposed to criminal proceedings, the consequences of removal are severe. Removal may result in permanent separation from family members and communities, or violence and even death for those fleeing persecution, yet immigrants have no right to appointed counsel, and those in detention must either try to find lawyers or represent themselves from inside detention facilities.

Furthermore, in addition to facing cultural, linguistic, or educational barriers, and traumatization, particularly in the case of asylum seekers, detainees have virtually no direct access to sources of evidence or witnesses; legal representation is indispensable.

The many obstacles to obtaining legal representation faced by immigrants in detention are one reason that the ABA opposes the detention of non-citizens in removal proceedings, except in extraordinary circumstances, such as when an individual presents a threat to national security or public safety or presents a substantial flight risk.

The decision to detain a non-citizen should be made only in a hearing that is subject to judicial review. We are concerned about the growing reliance on detention, and instead support humane alternatives that are the least restrictive necessary to ensure that non-citizens appear in immigration proceedings.

When detention is used, uniform and consistent standards are essential to ensure safe and humane conditions and protect detainees' statutory and constitutional rights. For that reason, during the late 1990s, the ABA engaged in a lengthy negotiation process with the then-INS, currently ICE, to develop current ICE detention standards.

The standards, which took effect in January 2001, are comprehensive and encompass a diverse range of issues. The ABA was instrumental in developing the four legal access standards, which include access to legal materials; access to group presentations on legal rights; telephone access; and visitation.

An additional legal access standard, entitled detainee transfers, was subsequently adopted by ICE, with the encouragement and support of the ABA.

As a key stakeholder in developing the standards, the ABA is committed to their full and effective implementation. In 2001, the Commission on Immigration established the Detention Standards Implementation Initiative.

Under the initiative, the commission recruits volunteer lawyers to participate in special delegations to tour selected detention facilities and report their observations on standards implementation, with an emphasis on legal access standards. The delegation reports are then presented to ICE, and the findings are discussed in regular meetings between ICE and the ABA.

While the development of the detention standards was a positive step, ICE's annual inspection process alone is not adequate to ensure detention standards compliance. In the 6 years that have passed since the standards went into effect, the lack of legal enforcement mechanism has seriously undermined their effectiveness.

For that reason, the ABA recently expressed its strong support to the Secretary of Homeland Security for a petition for rulemaking by several organizations to promulgate detention standards into regulations. The ABA believes that promulgating regulations would help ensure that detained immigrants are treated humanely and have meaningful access to the legal process.

The ABA regularly receives information on detention issues through our own pro bono projects in Harlingen, Texas, and Seattle, Washington, as well as from individual attorneys and immi-

grant advocacy groups, and direct letters and phone calls from detained immigrants around the country.

Since 2003, we have received letters from detainees at over 100 facilities across the United States. We would like to highlight a few of the recurring issues that we believe are cause for serious and continuing concern about the state of our immigration detention system.

One of these issues is the transfer of detainees. In 2001, the ABA adopted a policy opposing the involuntary transfer of detainees to facilities that impede an existing attorney-client relationship, opposing transfers to distant locations, opposing the use and construction of detention space in remote areas where legal assistance generally is not available for immigration matters.

In 2004, the detainee transfer standard was added to ICE's national detention standards, requiring ICE to take into account whether a detainee is represented when deciding whether to transfer him or her. Factors ICE must consider include, according to the standard, "whether the attorney of record is located within reasonable driving distance of the detention facility and where immigration court proceedings are taking place."

Despite this standard, we are aware that, over the past few months, ICE has been regularly transferring hundreds of immigration detainees who already have counsel from East Coast facilities to the Port Isabel Detention Center in South Texas. Legal services for indigent immigrant detainees in South Texas are scarce, yet 3,200 detention beds are available.

Facilities on the East Coast are closer to metropolitan areas, where representation is more abundant. Transfer detainees can no longer meet with their attorneys, and the local immigration judges regularly deny motions by counsel to appear telephonically.

Existing counsel must either find local counsel to make appearances, travel to south Texas, or withdraw. The service providers in south Texas are only able to serve a fraction of this high volume of detainees. These transfers are resulting in a lack of access to counsel for detainees, which is precisely what the transfer standard sought to prevent.

Another serious issue is lack of telephone access. Over the past year alone, detainees in 16 states told us that they have had difficulty using telephones. Without telephone access, detainees cannot find counsel or obtain critical evidence and other information to prepare their cases pro se.

ICE's telephone access standard provides for reasonable and equitable access to telephones, with at least one telephone per 25 detainees, telephones in proper working order, quick repairs, and free legal service provider and consulate calls, among others.

Specific problems detainees report, however, include basic mechanical issues, unavailability of phone cards for purchase, exorbitant phone card fees, improper deduction of funds from phone cards, inability to make free calls to consulates and free legal service providers, all as required by the standards.

[The statement of Ms. Fiflis follows:]

PREPARED STATEMENT OF CHRISTINA FIFLIS

MARCH 15, 2007

Madam Chair, Ranking Member Souder and Members of the Subcommittee:

Good Morning. My name is Christina Fiflis and I am a member of the American Bar Association Commission on Immigration. On behalf of the American Bar Association, I appear today at the request of ABA President Karen Mathis to express the ABA's views on a number of issues related to immigration detention, in particular our ongoing concern regarding the lack of meaningful access to legal information and legal representation experienced by many immigrants in detention. We appreciate this opportunity to share our views.

The American Bar Association is the world's largest voluntary professional organization, with a membership of over 400,000 lawyers, judges and law students worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law in the world. The Commission on Immigration is comprised of 13 members appointed by the ABA President, and directs the Association's efforts to ensure fair treatment and full due process rights for immigrants and refugees within the United States. The Commission advocates for statutory and regulatory modifications in law and governmental practice consistent with ABA policy; provides continuing education to the legal community, judges, and the public about relevant legal and policy issues; and develops and assists the operation of pro bono programs that encourage volunteer lawyers to provide high quality representation for immigrants, with a special emphasis on the needs of the most vulnerable immigrant and refugee populations, including unaccompanied immigrant children.

The ABA is deeply committed to ensuring that foreign nationals in the United States receive fair treatment under the nation's immigration laws. The importance of meaningful access to legal representation and materials for individuals in immigration detention cannot be overstated. While immigrants in detention are in administrative, as opposed to criminal proceedings, the consequences of removal are severe. Removal may result in permanent separation from family members and communities, or violence and even death for those fleeing persecution. Yet, immigrants have no right to appointed counsel and must either try to find lawyers or represent themselves from inside detention facilities. For all who face removal, legal assistance is critical for a variety of reasons, including a lack of understanding of our laws and procedures due to cultural, linguistic, or educational barriers. Asylum seekers in particular may find it extremely difficult to articulate their experiences or to discuss traumatic situations with government officials. Detainees, however, face the additional obstacle of having virtually no direct access to sources of evidence or witnesses; legal representation is therefore indispensable.[1]

The many obstacles to obtaining legal representation faced by immigrants in detention is one reason that the ABA opposes the detention of non-citizens in removal proceedings except in extraordinary circumstances, such as when the individual presents a threat to national security or public safety, or presents a substantial flight risk. The decision to detain a non-citizen should be made only in a hearing that is subject to judicial review. We are concerned about the growing reliance on detention, and particularly about proposals to increase the use of mandatory detention. The ABA instead supports the use of humane alternatives to detention that are the least restrictive necessary to ensure that non-citizens appear in immigration proceedings

For those that are detained, it is essential to provide uniform and consistent standards to ensure that facilities housing federal detainees are safe and humane and protect all detainees' statutory and constitutional rights. For that reason, during the late 1990's, the ABA, along with other organizations involved in pro bono representation and advocacy for immigration detainees, engaged in a lengthy negotiation process with the then-Immigration and Nationality Service (now Immigration and Customs Enforcement, or "ICE") to develop the current ICE Detention Standards. The Standards, which took effect in January 2001, are comprehensive and encompass a diverse range of issues, including access to legal services. The ABA was instrumental in developing the four "legal access" standards, which include: Access to Legal Materials; Access to Group Presentations on Legal Rights; Telephone

[1] American Bar Association, American Justice Through Immigrants' Eyes, 2004, at 53, available at *http://www.abanet.org/publicserv/immigration/americanjusticethroughimmigeyes.pdf*. According to one study, asylum seekers are four to six times more likely to succeed if represented. *See* A. Schoenholtz and J. Jacobs, "The State of Asylum Representation: Ideas for Change," 16 *G'town. Immig. L.J.* 739—740 (Summer 2002). See also *http://uscirf.gov/countries/global/asylum*__refugees/2005/february/legalAssist.pdf at 239.

Access; and Visitation. As discussed below, an additional "legal access" standard, entitled Detainee Transfers, was subsequently adopted by ICE, with the encouragement and support of the ABA.

As a key stakeholder in developing the Standards, the ABA is committed to their full and effective implementation. In 2001, the Commission on Immigration established the Detention Standards Implementation Initiative (Initiative). Under the Initiative, the Commission recruits lawyers, law firms, and bar associations to participate on a *pro bono* basis in special delegations to tour selected detention facilities and report their observations on the facilities' implementation of the Standards, with an emphasis on the four legal access standards. The delegation reports are then presented to ICE and the findings discussed in regular meetings between ICE and the ABA.

While the development of the Detention Standards was a positive step, it appears that ICE's annual inspection process alone is not adequate to ensure detention standards compliance. In the six years that have passed since the Detention Standards went into effect, it has become clear to us that the lack of a legal enforcement mechanism has seriously undermined the effectiveness of the Standards. For that reason, the ABA recently expressed its strong support to the Secretary of Homeland Security for a petition for rulemaking by several organizations to promulgate the Detention Standards into regulations. The ABA believes that promulgating regulations would help ensure that detained immigrants are treated humanely and have meaningful access to the legal process.

Apart from the Detention Standards Implementation Initiative, the ABA regularly receives information on detention issues through reports from our own *pro bono* projects in Harlingen, Texas and Seattle, Washington, as well as from individual attorneys representing detained immigrants, national and local immigrant advocacy groups, and direct letters and phone calls from detained immigrants around the country. Since 2003, we have received letters from detainees at over one hundred facilities across the United States. While limitations of time and space prevent us from providing a comprehensive list of current problems, we do want to highlight a few of the recurring issues that we believe are cause for serious and continuing concern about the state of our immigration detention system.

One of these issues is the transfer of detainees. In 2001, the ABA adopted a policy opposing the involuntary transfer of detainees to facilities that impede an existing attorney-client relationship, transfers to distant locations, and the use and construction of detention space in remote areas where legal assistance generally is not available for immigration matters. In 2004, the Detainee Transfer Standard was added to ICE's National Detention Standards, requiring ICE to take into account whether a detainee is represented when deciding whether to transfer him or her. Factors ICE must consider include "whether the attorney of record is located within reasonable driving distance of the detention facility and where immigration court proceedings are taking place."[2]

Despite this Standard, we are aware that over the past few months, ICE has been regularly transferring hundreds of immigration detainees from east coast facilities to the Port Isabel Detention Center (PIDC) in South Texas.[3] These individuals often have lawyers and family members in the states where they were originally apprehended, and facilities on the east coast are located closer to metropolitan areas where legal representation is more widely available. Legal services for indigent immigrant detainees in South Texas are scarce, yet 3,200 beds are available for detainees at PIDC and the Willacy County Processing Center in Raymondville, Texas. Detainees can no longer meet with their attorneys, and the local Immigration Judges regularly deny motions by counsel to appear telephonically for removal hearings. Existing counsel must either find local counsel to make appearances, travel to South Texas, or withdraw from their clients' cases. The service providers in South Texas are only able to serve a fraction of the high volume of detainees in need of assistance when their original attorneys are forced to withdraw. These transfers are resulting in a lack of access to counsel for detainees, which is precisely what the Transfer Standard sought to prevent.

Another serious issue is lack of telephone access for detainees. Over the past year alone, detainees in 16 states told us that they have had difficulty using telephones. Without telephone access, immigrants are cut off from the ability to find legal counsel or obtain critical evidence or other information to prepare their case pro se. ICE's Telephone Access Standard provides for reasonable and equitable access to telephones, with at least one telephone per twenty-five detainees, telephones in proper working order, quick repairs, and free legal service provider and consulate

[2] *http://www.ice.gov/doclib/partners/dro/opsmanual/DetTransStdfinal.pdf*

[3] Locations include New York, Massachusetts, Virginia, and Florida.

calls, among other things.[4] Specific problems detainees report in their correspondence, however, include basic mechanical issues, unavailability of phone cards for purchase, exorbitant phone card fees, improper deduction of funds from phone cards, inability to make free calls to consulates and free legal service providers as required by the Standards, lack of receipt of the Notice of Telephone Privileges as required by the Standards, lack of posting and/or translation of phone use instructions, lack of privacy, and an insufficient amount of phones per detainee.

Other common concerns regarding legal access relate to law libraries and legal correspondence. Some report having no access to the law library, while others indicate that there are insufficient or outdated research materials[5] and not enough functioning typewriters, computers, or printers. We have also been told that mail either does not arrive or is delayed, and legal mail ("Special Correspondence") is opened outside the presence of detainees and outgoing legal mail is inspected, contrary to the Standards. Finally, some report a lack of private consultation rooms for meetings with counsel. In July 2006, the ABA provided this information to the Government Accountability Office to assist in its review of ICE's iplementation of the Detention Standards.

In 2006, the ABA was one of several entities requesting that the U.S. Department of Homeland Security's Inspector General (IG) conduct an audit of ICE's compliance with the Detention Standards. In addition to evaluating the legal access standards in particular, we requested that the IG review detainee handbooks for accuracy and thoroughness. The IG's recently issued report, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities,* highlighted several of the issues that have consistently been reported to us year after year.

Without appropriate access to legal resources and representation, the only information detainees are oftentimes presented with comes from federal law enforcement authorities. This can create serious issues of concern. The ABA has received reports of what appears to be an increasing and inappropriate use of stipulated removal orders. Immigrants serving sentences for crimes including illegal entry are approached by government officials while in custody, and warned that if they do not sign a stipulated removal order, they will face lengthy immigration detention and ultimate deportation. As a result, detainees who may in fact be eligible for immigration relief such as asylum perceive that they have no other choice but to sign the order or face prolonged detention and certain deportation. Those who sign the orders forego their right to appear before an Immigration Judge. Pursuant to regulation, the Judge may ultimately sign the order provided he or she determines that the individual's waiver was voluntary, knowing, and intelligent,[6] even without seeing or speaking with the individual.

One of the ways that detained immigrants can be provided with appropriate legal information is through Legal Orientation Programs (LOP). The LOP program is administered by the Executive Office of Immigration Review, and is currently in place in six detention facilities around the country. Under this program, an attorney or paralegal meets with the detainees who are scheduled for immigration court hearings in order to educate them on the law and to explain the removal process. Based on the orientation, the detainee can decide whether he or she potentially qualifies for relief from removal. Persons with no hope of obtaining relief—the overwhelming majority—typically submit to removal. According to the Department of Justice, LOPs improve the administration of justice and save the government money by expediting case completions and leading detainees to spend less time in detention.[7] Since the inception of the program, the ABA has provided LOPs at the Port Isabel Detention Center in South Texas, and can unequivocally attest to the benefits that these presentations bring both to detainees and the immigration court system. The ABA supports expansion of the Legal Orientation Program to all detained and non-detained persons in removal proceedings.

In conclusion, the ABA is deeply concerned about the state of immigration detention in the U.S. and wants to emphasize particularly the need for accountability to ensure that detainees have consistent, fair access to counsel and the legal system. We believe that a number of steps should be taken to address these concerns, in-

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[4] *http://www.ice.gov/doclib/partners/dro/opsmanual/teleacc.pdf.*

[5] These statements are consistent with the report of the United States Commission on International Religious Freedom, which indicated that not one of the 18 facilities visited by USCIRF contained all the materials (or updates) listed in DHS detention standards. *See* Craig Haney, *Report on Asylum Seekers in Expedited Removal,* 186 (United States Commission on International Religious Freedom, 2005).

[6] 8 C.F.R. §1003.25

[7] U.S. Department of Justice, Board of Immigration Appeals, "The BIA Pro Bono Project is Successful" (Oct. 2004); U.S. Department of Justice, Executive Office for Immigration Review, "Evaluation of the Rights Presentation" (Jan. 2000).

cluding: promulgating immigration detention standards into regulation; using humane alternatives to detention for those who do not present a substantial flight risk, or threat to national security or public safety; where detention is appropriate, providing detention bed-space in populated areas where legal assistance is more readily available and not transferring detainees away from existing counsel; and expanding the Legal Orientation Program to individuals in immigration proceedings nationwide. Each of these steps would significantly assist immigration detainees' access to legal information and representation, a necessary step toward addressing many of the serious problems in our immigration detention system.

Thank you, again, for this opportunity to share our views.

Ms. SANCHEZ. Thank you. I am going to cut you off at this point, because we are going to get to Mr. Cutler. And I am sure we will have plenty of questions to ask you about the rest of the standards.

Mr. Cutler, if you will, for 5 minutes.

STATEMENT OF MICHAEL CUTLER, FELLOW, CENTER FOR IMMIGRATION STUDIES

Mr. CUTLER. Sure.

Good afternoon. Chairwoman Sanchez, Ranking Member Souder, it is an honor to testify before this committee on the important issue of the detention of aliens seeking political asylum in the United States.

And I hope that my perspectives, based on my many years working at the former INS, can be helpful to you, as you consider the critical issues concerning the issue of the detention of illegal aliens in the United States.

Our nation has a proud tradition of providing refuge to people fleeing persecution in their respective native countries; however, we also know that those who would enter our country to do harm to our country have found in our kindness potential weakness.

While our nation's porous borders, especially the border that separates the United States from Mexico, has received quite a bit of attention, the reality is that it is estimated that perhaps as many as 40 percent of the illegal aliens who are present in the United States at the present time did not enter our country by running our nation's borders and circumventing the inspections process, but rather by entering the United States through a port of entry and then going on to violate the terms of their admission, overstaying their visas, working illegally, or committing crimes.

Immigration benefit fraud is a huge problem within the immigration bureaucracy and one that has been documented in a number of GAO and OIG reports. False claims concerning political asylum are simply a category of such fraud. There have been numerous instances where an alien will apply for political asylum as a last ditch effort to avoid deportation.

In some cases, aliens apply for political asylum as a strategy to overcome his inability to secure a visa for the United States. And among those who have gamed the system have been terrorists.

Janice Kephart, a former counsel for the 9/11 Commission, testified before the Senate Committee on the Judiciary on March 4, 2005, at a hearing entitled "Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel."

She made a couple of statements at that hearing about political asylum worth considering today, as we consider issues relating to political asylum. Quoting Janice, "Political asylum and naturalization are two of the benefits most rampantly abused by terrorists."

She also stated that, in her recent study of 111 terrorists, 23 lacked proper travel documents or sought to avoid deportation and claimed political asylum. To cite a few of the many examples of terrorists who exploited political asylum to attempt to avoid being deported from the United States, I will cite four prominent examples.

On July 31, 1997, Gazi Ibrahim Abu Mezer and an accomplice were arrested by members of the New York City Police Department when they received information that Mezer and his roommate had constructed bombs they were planning to use in a suicide bomb attack on the New York City subway system.

Prior to Mezer's arrest, while out on bail, he posted, in conjunction with the INS, he filed an application for political asylum in an effort to remain in the United States. Mezer was subsequently found guilty of a number of serious crimes, including violation of 18 USC 2332, conspiracy to kill a United States citizen; 18 USC 924, knowingly and intentionally using and carrying a firearm during and in relation to a crime of violence; 18 USC 1546 and 3551, knowingly and intentionally possessing a counterfeit alien registration card.

As a result of his conviction, he was sentenced to life imprisonment.

On January 25, 1993, Mir Aimal Kansi, a citizen of Pakistan who had applied for political asylum, waited outside the headquarters of the CIA in Virginia with an AK–47. He opened fire on vehicles driven by CIA employees arriving for work. He killed two of those employees and wounded three others.

After a worldwide manhunt, he was arrested, brought to the United States, tried, convicted and ultimately executed.

Ramsi Yousef, the mastermind of the first attack on the World Trade Center complex on February 26, 1993, and Sheikh Omar Abdel Rahman, the spiritual leader of the terrorists involved in that attack, had more in common than the attack on that World Trade Center complex that left six people dead, hundreds injured, and approximately a half billion dollars in damages inflicted on that iconic landmark and the surrounding buildings. They had both applied for political asylum.

While the "catch and release" program implemented along our nation's southern border has received much publicity with the administration finally addressing that huge gap in the Border Patrol operation, seeking to provide more detention space for illegal aliens apprehended by the Border Patrol, and a more expeditious removal procedure for aliens arrested by the Border Patrol along the southern border.

However, the "catch and release" program has not only plagued our nation's efforts to remove illegal aliens apprehended by the Border Patrol; it also is a factor in the interior enforcement program for which ICE bears the responsibility.

Statistically, at least 85 percent of illegal aliens who are released from custody fail to appear when they are required to do so, either to show up for an immigration hearing or to present themselves for removal once they have been ordered deported. The notice to appear, the administrative instrument that initiates a removal proceeding for an illegal alien, is often referred to as a "notice to disappear" by cynical immigration enforcement personnel.

It is essential that we provide adequate detention facilities to make certain that aliens, who would likely abscond if they had the opportunity, be denied that opportunity to flee.

Because of the inherent risks to the safety and well-being of our nation and our citizens, I would strongly urge that aliens who apply for political asylum be kept in a detention facility until their true identities can be determined, along with a proper determination being made of their credible fear should they be returned to their home country.

I believe that it is essential to provide comfortable detention facilities for these aliens who are illegally in the United States and have applied for political asylum, especially if they are accompanied by their families.

In this perilous era, it is my judgment that, while our officials conduct investigations of the bona fides of claims of credible fear articulated by applicants for political asylum, that we have the way to detain such aliens until they are determined to pose no threat to our country and have, indeed, met the requirements to be eligible to be granted political asylum.

However, should an alien be proven to not be eligible to be granted political asylum, whether because he committed fraud or because he actually poses a threat to our national security, retaining such an alien in custody would deny him the ability to abscond and embed himself in our country.

When we look back into the history of the enforcement of the immigration laws of our country, Ellis Island was the gateway to our nation for so many of our forebears. Indeed, my own mother first set foot on American soil when she stepped off the ship that brought her to this country, and she stepped onto Ellis Island, a few short years before the start of the Holocaust in Europe that resulted in the death of many members of my own family, including my grandmother for whom I am named.

Ellis Island was, in effect, the waiting room for the United States that provided our immigration inspectors, public health officers and other officials with ample opportunity to properly screen aliens seeking to begin their lives anew in this magnificent land of opportunity.

Our nation still needs to properly screen those who wish to share the American dream, to make certain that we would have an opportunity to seek to uncover those who might be hiding among them and who, given the opportunity, would create an American nightmare.

I look forward to your questions.

[The statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MICHAEL W. CUTLER,

MARCH 15, 2007

Chairman Thompson, Ranking Member King members of Congress, ladies and gentlemen, it is an honor to testify before this committee on the important issue of the detention of aliens seeking political asylum in the United States. I hope that my perspectives based on my many years working at the former INS can be helpful to you as you consider the critical issues concerning the issue of the detention of illegal aliens in the United States as they apply for political asylum.

Our nation has a proud tradition of providing refuge to people fleeing persecution in their respective native countries; however, we also know that those who would

enter our country to do harm to our country have found in our kindness, potential weakness. While our nation?s porous borders, especially the border the separates the United States from Mexico has received quite a bit of attention, the reality is that it is estimated that perhaps as many as 40% of the illegal aliens who are present in the United States did not gain entry into our country by running our nation's borders and circumventing the inspections process at a port of entry, but did, in fact enter our country through a port of entry and then went on to violate the terms of their admission into the United States by overstaying their authorized period of admission, securing illegal employment or becoming involved in criminal activities.

Immigration benefit fraud is a huge problem within the immigration bureaucracy and one that has been documented in a number of GAO and OIG reports. False claims concerning political asylum are simply a category of such fraud. There have been numerous instances where an alien will apply for political asylum in a last ditch effort to avoid deportation. In some cases, aliens apply for political asylum as a strategy to overcome his inability to secure a visa for the United States. Among those who have gamed the system to gain access to our country have been terrorists.

Janice Kephart, a former counsel to the 911 Commission testified before the Senate Committee on the Judiciary on March 4, 2005 at a hearing entitled,—Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel. She made a couple of statements at that hearing about political asylum worth considering today as we consider issues relating to political asylum:

> "Political asylum and naturalization are two of the benefits most rampantly abused by terrorists."
>
> "In my recent study of 118 terrorists, 23 who lacked proper travel documents or sought to avoid deportation claimed political asylum"

To cite just a few of many examples of terrorists who exploited political asylum to attempt to avoid being deported from the United States I would ask you to consider four prominent cases:

On July 31, 1997 Gazi Ibrahim Abu Mezer and an accomplice were arrested by members of the New York City Police Department when they received information that Mezer and his roommate had constructed bombs they were planning to use in a suicide bombing of the New York City subway. Prior to Mezer?s arrest, while out on bail he posted in conjunction with an arrest by the INS, he filed an application for political asylum in an effort to remain in the United States. Mezer was subsequently found guilty of a number of serious crimes including:

- USC § 2332; conspiracy to kill a U.S. citizen;
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aliens, who would likely abscond if they had the opportunity, be denied that opportunity to abscond.

Because of the inherent risks to the safety and well being of our nation and our citizens, I would strongly urge that aliens who apply for political asylum be kept in a detention facility until their true identities can be determined along with a proper determination being made of their credible fear should they be returned to their home country. I believe, however that it is essential to provide comfortable detention facilities for these aliens who are illegally in the United States and have applied for political asylum, especially if they are accompanied by their families. In this perilous era, it is my judgment that while our officials conduct investigations of the bona fides of claims of credible fear articulated by applicants for political asylum, that we have the way to detain such aliens until they are determined to pose no threat to our country and have, indeed, met the requirements to be eligible to be granted political asylum. However, should an alien be proven to not be eligible to be granted political asylum wither because he committed fraud or because he actually poses a threat to our national security, retaining such an alien in custody would deny him the ability to abscond and embed himself in our country.

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I look forward to your questions.

Ms. SANCHEZ. Thank you, Mr. Cutler.

And I will thank you all for your testimony, and I am going to take some time here to ask a few questions.

Mr. Seiter, Ms. Brané had some pretty sad things to say about your operation of the facility up there in Texas. Did those conditions really exist that she talked about, before you fixed them?

Mr. SEITER. She was correct in that we did not offer a 7-hour school day until recently. It has continually increased.

The issues that she talked about in health—I think she mentioned two areas of health care. Our responsibility is to make sure that every detainee, every resident has access to health care, that is provided by the United States Public Health Service, and I can't comment on exactly those cases, but we certainly do nothing to limit care.

Residents may, twice a day—or may place requests to see medical professionals in boxes that are located around the center. And those requests are picked up twice a day. And my understanding is that PHS has the commitment to see people within 24 hours. I don't know that that always happens; I am sure it does not, but I know that is their commitment.

Ms. SANCHEZ. So you just have these boxes, "I want to go see a doctor, I am pregnant 7 months, I want to go see a doctor, or I put in a request to see a doctor for prenatal care." DHS personnel or your personnel pick up these things from the suggestion box or request box? And who reviews them?

Mr. SEITER. The PHS staff review them, and they triage them and decide at what level and how soon they will see someone.

Ms. SANCHEZ. And the doctor facilities or the nurse facilities, are they at your facility?

Mr. SEITER. Yes, they are. They are right in the middle of the facility.

Ms. SANCHEZ. And how many people do you have in your facility right now, total family, plus kids and everything?

Mr. SEITER. Between 410 and 420.

Ms. SANCHEZ. —410 and 420. And how many—and so you have this facility that is staffed by the government for medical care. And how many people are staffing that? Do you know how many doctors we have on staff or how many nurses?

Mr. SEITER. I believe that our medical complement is 25.

Ms. SANCHEZ. Twenty-five throughout the day?

Mr. SEITER. Twenty-five total staff, yes.

Ms. SANCHEZ. Throughout the day?

Mr. SEITER. Yes.

Ms. SANCHEZ. Do you have examination rooms? Or is there more complicated equipment there?

Mr. SEITER. Well, it would probably appear very much like a common general practice office that you or I might go to. There is a waiting area. When you go in there, there are examination rooms, three or four, that a mid-level provider might first see a patient.

There is a space for physicians, who would then also see patients. There is a dental area and a full-time dentist. There is mental health staff. There is an X-ray machine. So it would look very much like that.

For anything more serious that could not be handled in the clinic, they would be taken outside to contracted community hospitals.

Ms. SANCHEZ. But you really couldn't understand if you had 25 people sitting there in the medical center, and you have the center on your facility, why somebody would take 3 or 4 months to get a prenatal care exam? You couldn't imagine that that could happen?

Mr. SEITER. I would wonder why that would happen.

Ms. SANCHEZ. Okay. How much time do families get to go outside to recreate these days? How many hours a day?

Mr. SEITER. The children that are in school have 2 hours during the Monday through Friday school day, an hour of recess during the school day, and then an hour in the evening. Those children also have 4 hours on Saturday and 4 hours on Sunday.

Any adult or non-school-aged child has 3 hours, Monday through Friday.

Ms. SANCHEZ. Three hours in total Monday through Friday?

Mr. SEITER. Three hours each day.

Ms. SANCHEZ. Three hours each day?

Mr. SEITER. Monday through Friday. And then 4 hours each day on Saturday and 4 hours each day on Sunday. So they have got a total of over 20 hours a week that they may go outside to recreation or to the gym.

Ms. SANCHEZ. Ms. Brané, were you the one that said that they had 1 hour?

Ms. BRANÉ. Yes. At the time of our visit, they were receiving 1 hour, 5 days a week, and none on the weekend.

Ms. SANCHEZ. Refresh my memory. When was your visit?

Ms. BRANÉ. December 24, 2006.

Mr. SEITER. Madam Chair, if I may also say, during the day when the children are not in school, but the parents and the non-school-aged children, they are in a day room area. And provided in that day room area are toys, games, video games, and table games for recreation.

Ms. SANCHEZ. Computers?

Mr. SEITER. No. There is a computer lab, but not in the housing area. And those are available 18 hours a day.

Ms. SANCHEZ. Computers are available 18 hours a day?

Mr. SEITER. No, the day room area.

Ms. SANCHEZ. The day room area. Are computers available to, let's say, heads of household?

Mr. SEITER. There is a computer lab that is daily available to students that are in school. And I do now know how often it is available to parents that would like to go to the?

Ms. SANCHEZ. Is there an Internet connection, do you know?

Mr. SEITER. I do not. I would be happy to find that out and get back to you.

Ms. SANCHEZ. Yes, I would like that.

I am going to let my ranking member ask a question as soon as I finish with just this one.

How are your detention centers different than the jails that you operate as a private company? I mean, what kind of different training do you give your staff that handles detainees versus staff that would handle a county jail or whatever one of your other clients might be?

Mr. SEITER. Well, it depends. In some ways, it is different; in some ways, it is not.

We are responsible for the care, for the safety, and for the security of the detainees or the criminals that we hold. And depending on the classification of that and how serious the background of the individual, if they are a criminal, they would receive different kinds of training for that.

We operate facilities for ICE that are both for criminal aliens and for non-criminal aliens. And so the criminal aliens are probably more like the prisons that we operate for the federal government, the Federal Bureau of Prisons, or the U.S. Marshals Service, or the 20 states that we service.

For the non-criminal ICE facilities, those are a little bit different. And for the family facility, that training would have to be even more different.

I was pleased to be able to spend some time with Michelle this morning, before the hearing, talking about their recommendation to develop some special kind of training for families. And we are going to follow up on that and see if they can help us identify some particular curriculum that they think would be appropriate for this unique population.

Ms. SANCHEZ. But your staff wouldn't bark or threaten or be punitive towards children if they were talking too loud, would they?

Mr. SEITER. You know, when I heard that, I tried to imagine exactly what would happen. And let me kind of put what I envision is probably the range, from being there myself and understanding an institutional environment.

There has been no families removed from Hutto for violating policy. And, as I said, our responsibility has been a safe environment for children. I wouldn't doubt that, if children were doing something that someone did not feel was safe, that they might ask them, the parent to ask them, just as you would in any other environment.

But we are very sensitive to the concerns of the families. Our philosophy is not one to bark orders. It is one to be communicative and proactive in dealing with the people under our car.

And can I say that someone would bark orders at them to tell that child to stop that? I can't say they wouldn't, but the responsibility for the overseeing the behavior of the children, we emphasize is that of the parent.

Ms. SANCHEZ. Children can be a little trying. Sometimes I have barked at them.

The ranking member has graciously allowed Ms. Jackson Lee, who has a markup vote going on, to ask a question before she has to leave. So with that, I will yield over for a question to Ms. Jackson Lee.

Ms. JACKSON LEE. Let me thank both the chairwoman and, as well, the ranking member. Thank you for indulging me.

This is a very important hearing. We happen to be called for votes, and I would like to thank the witnesses for their testimony.

Mr. Seiter, I think the chairwoman had my line of questioning. The propensity of the Corrections Corporation of America is predominantly prisons, is that right?

Mr. SEITER. That is correct.

Ms. JACKSON LEE. Do you have a basis of the percentage?

Mr. SEITER. Of our business, about 6,000 of our 70,000 beds are contracted with ICE and would therefore be ICE detention facilities.

Ms. JACKSON LEE. Let me just—as my time moves quickly—say to you that we are not attempting to pull your fingernails out. And I hope that you appreciate our consternation.

Particularly, the Hutto unit is in the state of Texas, and this message goes to, I guess, the ICE witness or the government witness, is that members of Congress want to see the truth so that we can be, if you will, the solution to the problem. And quick cleanups and correct-ups really does not help.

I offered an amendment to the border security bill under Chairman Sensenbrenner that had the premise of secure alternatives to penal institutions for the infirm, the elderly, families. So I appreciate my good friend, Mr. Cutler, who wants to ensure that the bad guys and maybe gals do not run amok, if you will.

But I am incensed, first of all, that children are in a penal institution. You cannot deny that Hutto, the Hutto facility, is a prison. And many of these people are under the civilian premise, asylum seekers and others.

And I would just like to ask—is it Ms. Fiflis?—as to whether or not an idea such as the secure alternative to a penal system for the elderly, the infirm and family members would be a reputable response.

Ms. FIFLIS. Yes, Congresswoman Jackson Lee, it would be. In fact, that is one of the action points, if you will, that the ABA

wants to propose here, these types of humane alternatives to detention.

Ms. JACKSON LEE. Well, I will let you look at the amendment we had last year and hope, with the kindness of this committee, we might move in that direction.

And forgive me, Ms. Brané?

Ms. BRANÉ. Brané, yes.

Ms. JACKSON LEE. Brané, so it is with an accent. Ms. Brané, you listed, I guess, a lot of the challenges we faced at this particular unit. When did you go to that unit?

Ms. BRANÉ. In December, December of 2006.

Ms. JACKSON LEE. Okay, so it is within a 6-month period. And you saw a lot of egregious elements.

Would you believe that an alternative setting, other than what we call a penal institution, could begin to, one, secure—that is, of course, you know, our responsibility—but, as well, respond to some of the issues that you saw, children in a penal system, the elderly, the infirm, pregnant women who may need extra care?

Ms. BRANÉ. Yes, absolutely, Congresswoman. In fact, we recommend alternatives. And there is a wide range of alternatives that could take into account some of the concerns that we have about enforcement or the dangerous elements that may be trying to enter the country.

So these alternative programs could address that by requiring identification, that identification be established, that they not be found to be a threat to society or a danger to our society, et cetera. But, yes, absolutely, alternatives would be the right approach.

Ms. JACKSON LEE. Many of us are destined to visit the area, but, again, I say to Mr. Seiter, we don't want cosmetic fixes, which I believe is what ICE was trying to do.

Are these people incarcerated in jails or open rooms with beds? How are they—I am talking to Ms. Brané.

Ms. BRANÉ. At the Hutto facility, it is a pod system, if you are familiar with the prison pod system.

Ms. JACKSON LEE. Yes.

Ms. BRANÉ. So families sleep in prison cells that still look very much like prison cells, although they have been painted and carpeted.

And then there is a general rec area, as described by Mr. Seiter, that has some televisions. And at the time that we were there, we didn't see toys in that room, but apparently now there are toys.

Ms. JACKSON LEE. Well, let me conclude. Mr. Seiter, as I said, this is not an intentionally pointed direction, but I think we are wrong to have these kinds of facilities. I think we can do better.

I have seen the one that you have in Houston, so I know the kind of structure it is. But we are talking about a real difficult mountain for you to climb. You are in the business of prisons. This has to have some divide as to what we are doing.

Madam Chairwoman, this whole topic, I think, is vital, particularly how treat people in the whole question of families. And I will look forward to working with you.

And I thank the Ranking Member for yielding to me, and I look forward to working with the panel. I yield back.

Ms. SANCHEZ. Thank you, Ms. Jackson Lee.

We will now listen to the ranking member for 5 minutes or as much time as you may consume.

Mr. SOUDER. I think it is important to distinguish for the record here that at least 38 percent, from what we have heard, don't seek asylum, and they are, in fact, criminals.

They have committed the crime of entering the United States and probably presenting false IDs, by definition, or they wouldn't be in the facility. That is a political debate as to how we deal with that, but under current law, that is indisputable.

This 62 percent, which is apparently a declining percentage, that declare asylum, only one-fifth of those are proven to be really asylum seekers. And, quite frankly, my heart goes out to those who are true asylum seekers who are legitimate asylum seekers.

And I am amazed, because, when I hear these kind of questions, I am just shocked that families who aren't true asylum cases would put their kids in this kind of situation by breaking laws. These aren't even Mexican illegals who are right on the border and we have much more—these are people who traveled great distances to violate American law.

And I think that there ought to be more outrage. And, quite frankly, while I understand, traditionally, if you have broken a law, and you go to prison, your children, you don't have family reunification.

And while that is a good goal, quite frankly, much of what I am hearing here on health care, on access to a gym, on whether or not there is a computer lab, people in rural America and urban America who are citizens, who don't break the law, don't have, and that there is a balance here, other than the true asylum seekers, who are in a kind of limbo court position here, who, in fact, are being abused by people who aren't seeking asylum or falsely seeking asylum, because they felt it would be their interest.

And, to some degree, some of those may have a legitimate case. And there are all sorts of legal questions with that.

But I particularly want to get into a question of the difficult question of asylum. And I had a couple of questions for Mr. Cutler. And let me ask the two questions, and I would be interested in your response.

One of the challenges we have in the visa jumpers that you referred to is, I know from—this is not classified; it was told to me by Caribbean country leaders, in fact, the head of the Caribbean Group—that Muammar Gaddafi had been literally putting people in, establishing 5-year residency in E.U. islands in the Caribbean so they could get citizenship and then move in the United States.

A similar thing is, is that, where there is asylum questions, which complicates our questions when people make claims, and we try to do deportation process, and you have worked with this.

But in asylum seekers, even in the many that come into my area, for example, many Iraqis in my area used to be CIA agents—public forum meeting, not something I was told by the CIA—who were, that means by definition they were in the Republican Guard.

Iraqis in my area would not meet with each other in my office, because they believed several of those who sought asylum in the United States were, in fact, planted Saddam agents with the goal of killing some of the leaders, particularly coming out of Detroit.

I won't comment on whether that was verified or not, but let's just say it was a real dispute, and they wouldn't even meet in my congressional office for fear of killing each other.

By nature, many even true asylum seekers are either—some are just poor people like from Darfur who are just being persecuted, but they come from violent areas. And even the question of asylum, how do we sort this through? And if we don't have these kind of detention facilities, if 90 percent have historically absconded, what type of risk are we having if we don't have the detention facilities?

It isn't like an occasional absconding. And if we have kind of looser alternative ways, who is going to, in effect, be the bail bondsman? Who is going to take the liability for these type of cases?

Mr. CUTLER. Well, it is an excellent point that you are making. Look, the bottom line is that terrorists want to be able to embed themselves in our country.

When the head of the FBI, Robert Mueller, spoke before the Senate Intelligence Committee, he spoke about his concern about sleeper agents. And, you know, we often hear about how, if we just let people come in that want to work, then the sun will shine and everything will be okay in the kingdom.

The bottom line is, that a day before an attack, a terrorist is likely to go to the job that he or she has held for the last year or 2, creating a fictitious identity, hiding in plain sight. And that is the reason that I make a strong point in my own testimony that, before we allow people out among us, we need to be very careful that we are not putting people out there who are intent on doing harm to us.

Back in the mid–1980s, I was in a situation where we arrested a guy who was apparently a dishwasher. He was a citizen of Egypt. And we finally caught him, and we really had to make an effort. He was running across the roofs of cars in a parking lot.

We finally brought this guy in for landing, brought him back to his apartment. We found shopping bags filled to the brim with coupons. We have received the information, the intelligence that we should have received as agents, and we had no place to go with that intelligence.

And this is something that you might want to consider addressing in some appropriate way. But when we got back to that apartment for those coupons, we had no idea what we witnessed. We ultimately removed this guy.

And months later, to my chagrin and, quite frankly, I was really worked up, there was a story on TV about how Yassir Arafat had sent terrorists to our country to commit coupon fraud in order to generate millions of dollars in funds that was being used to buy explosives, weapons and so forth to carry out terrorist attacks around the world.

We have got a very serious problem, because fraud right now is a huge issue. And to go just a little bit beyond that—and I know we are limited on time, but I think this is very, very important.

Our people at USCIS are constantly chasing their own tails, trying to keep pace with the backlog. So the easiest way to keep the backlog in control is to just process applications quickly and approve things. So we wind up giving citizenship and residency to people who may well be terrorists.

We just had a guy who was working as a private contractor, as a translator, on a military base in Iraq. He was a naturalized United States citizen. And now USCIS has to admit that they don't even know what his real name was.

So this constant battle of the overflow of applications encourages more people to file more fraudulent applications, which further puts things back further, which causes the system to have to run faster. I use the analogy, it is kind of like Lucy at the bon-bon factory on steroids, but these aren't candies. These are applications for citizenship and other immigration benefits.

And, in fact, one of the terrorists that I cited, the guy that was involved with the bombing of the subway, had canceled, had withdrawn his application for political asylum because he got involved in a marriage. So this whole thing is a matter of needing to be able to hold onto people, but we need the resources.

You have got about 3,000 ICE agents right now dedicated to enforcing the immigration laws for the entire country. I am a New Yorker, and New York has been found to be the safest big city in the United States by the FBI Uniform Crime Report, if you look at their stats.

But New York, with its eight million residents, that covers about 400 square miles of area, has 37,000 or 38,000 police officers. Here we have a multiple of the number of residents in the city of New York living illegally in our country, they are scattered across a third of the North American continent, and we have about 3,000 agents to try to do all those various, very critical interior enforcement missions, including employer sanctions, going after the fraud, participating in task forces, as I did for a number of years.

So they are juggling as fast as they can, and the job isn't getting done. So the fraud slips by, and political asylum is just one of the ways that these folks seek to embed themselves.

You talked about the documents. You know they are not even giving document training to the new agents going through ICE to help them to identify fraudulent identity documents? They are not getting the language training that they need.

We are being told that we are waging a wage on terror, and when we fly, we have got to take our shoes off so that we don't conceal bombs in our shoes, as Richard Reid did, but yet Richard Reid, the shoe-bomber, was a British national who had access to that airplane and would have had access to our country under the aegis of the visa waiver program.

So if you look at this, the immigration system is dysfunctional. It is not one issue: This is a boat with a whole bunch of holes in it, and we are trying to plug a couple of holes.

Well, you don't know need to be a rocket scientist to understand that, if we don't plug all the holes in the boat, the boat is going to wind up on the bottom of the lake. This issue of detention is critical, but it is only, unfortunately, one of many holes that the immigration system is now suffering from.

I know I have gone a little bit, you know, off from point, but what I am trying to get across is the idea that we are so vulnerable, because there are so many areas of exploitation. The terrorists who attacked our nation on 9/11—and I have to tell you, the ashes from 9/11 landed on my home, and I worked as a volunteer

with 9/11 families for Secure America. They used 364 different aliases, 19 people.

So if we can't get a handle on all of this, we have got serious problems ahead, I fear.

Ms. SANCHEZ. I thank the ranking member.

You know, you mentioned that we are talking about—when I look at this, I look at just the fact that America holds its standard high, with respect to human rights around the world.

And so, in asking about what type of situation exists, in particular for families and for children, I think it is important to note that we in the United States have a doctrine, if you will, that—and it stems from way back when we began this country with indentured servitude, that the children of parents who commit a crime have committed no crime. And it is not their fault.

And, you know, we looked at this doctrine in particular when California passed Proposition 187, which tried to limit children going to school, and saying that, you know, we never go after the children of people who may be entering this country without the right documents, because it is not the children's fault.

So I think it is incredibly important that children have a safe environment in which to grow up in, whether they are in this country or not. It is not through their own fault.

And that is a reason why I am particularly very interested in their medical needs, in the education they receive, in the play time that they have, because it is a doctrine of this nation that children are so important. And it has been upheld ever since the beginning of the formation of this country.

I would like to just ask one last question, because we have to end the session with—going to be another committee meeting, as you know, and we are going to have votes in just a few minutes, they tell me.

This goes to the fact that Ms. Fiflis—am I pronouncing it right? I am sorry.

Ms. FIFLIS. Fiflis.

Ms. SANCHEZ. Fiflis. Okay, Fiflis.

Ms. Fiflis, Mr. Torres was here in an earlier panel. I don't know if you got to hear his testimony, but he mentioned that everybody gets legal representation, that phones are available if they can't afford the phone. I asked them that direct question, can you afford—what happens if, you know, it is too expensive to make that phone call?

I mean, his answer was everybody—you know, you get free calls, you have access. I mean, he seemed to think there was no problem with respect to lawyers and having representation, if you were hanging out in the middle of Texas. And I haven't been down there, but I am assuming there is not too much around it.

Just for the record, would you explain to us once again something called very basic legal access, that is also one of the basic human rights that we uphold in this country, what you have seen? And I don't know if Ms. Brané wants to join in on this, but I want to get for the record this whole issue of legal access.

And the reason I asked about computers and Internet was not because I want them sitting there playing "Brick-Basher" or whatever these games are, but because sometimes Internet is an easy

way to discuss with the outside world, especially legal terms, what is going on.

Can you sort of—just for the record—again let us know, how difficult is it for families to get legal representation if they have been moved from the original area where they have had their lawyer or if they are now in this detention center and they are seeking to find a lawyer to help?

Ms. FIFLIS. Thank you, Madam Chair.

Well, there are two categories of sources which would yield the factual responses to your questions. One category are the reports that are issued by the detention initiatives implementation committee reports, which are confidential. Our agreements, the ABA's agreement with ICE is to keep those reports confidential. We cannot provide you information that resides in those reports.

The second category, the other category of information that is responsive to your question involves, as I testified, the letters and other communications from detainees themselves, as well as their legal counsel.

I suppose a third category is my own experience in representing detained individuals, but I am here on behalf of the ABA.

I can tell you that access to legal counsel, legal information is very difficult. Access to other services in the detention facilities are also very difficult.

My experience in representing the 120-plus detainees that I currently represent, out of the Swift raids in Greeley, is, in fact, you know, my individual experience as an immigration practitioner. But I got a very hard and fast lesson in the denial of legal access or access to legal representation and legal information.

And if I may, I just would like to address Ranking Member Souder's concerns about frivolous asylum applications along those lines. Provision of access to legal representation and legal information would, I believe, dramatically diminish the filing of frivolous asylum claims.

When people have a correct understanding of the law and are represented adequately by competent attorneys, they won't file. They will be advised against frivolous asylum applications, because there are severe penalties for doing that.

But in terms—I also would like to address.

Mr. SOUDER. May I ask a follow-up question to that?

Ms. FIFLIS. Certainly, thank you.

Mr. SOUDER. How would you do that? You mean at the border, at a raid, that rather than having the litigation process, could you provide something to them, saying that there are additional penalties for frivolous, and here are the basic criteria of eligibility?

Ms. FIFLIS. Yes, absolutely. Either private attorneys who have access to detainees, after they have been processed, will advise them of that, or the legal orientation programs, which are, I think, exist in only six or eight facilities out of the hundreds that exist in this country. And the legal orientation programs, that advice is rendered.

Mr. SOUDER. Thanks.

Ms. FIFLIS. If I may address your question about telephone access, telephone access is a huge problem. In some facilities, attorneys are permitted to make telephone calls to their clients; in some

facilities, they are not permitted to make telephone calls to their clients.

In the El Paso Service Processing Center, with which I have had experience, that is such a facility. It is a huge facility. I don't know the capacity there, but I believe it is about 1,300, versus the GEO Aurora facility, which is 400-plus.

GEO Aurora allows attorneys to call in. El Paso doesn't. When you can't telephone your clients, it is impossible to prepare them for their hearings before the judges. It is impossible to advise them of, for example, they shouldn't be filing frivolous asylum claims.

In those facilities where attorneys can't call in, detainees are permitted to call out, but sometimes the charges are a dollar per minute. Most recently in Denver, there was a full week—this is, granted, an unusual circumstance—but a full week where the phones were broken.

There is one phone in that facility that attorneys can call into. When I want to call my clients, I call them after 9 o'clock at night, because I know the other attorneys won't be working. The telephone access is a huge problem.

Ms. BRANÉ. I think she pretty much covered what I would have said. The only thing that I would add is that, very often, the telephones—I mean, she talked about a week with the phones broken completely. But the service where you are supposed to be able to call out free of charge to certain nonprofits who provide legal representation very often do not work.

And, also, we have had several detainees report to us that guards often will take the phone out of their hand and hang it up when they are talking to their attorney.

Ms. SANCHEZ. I thank the witnesses for all of your testimony and the members for their questions. And as you know, there is an incredible amount of work being done in the Congress.

And I know that there are many competing hearings going on with us today, so many of the members of the subcommittee may have additional questions for you. And we will ask you to respond quickly in writing to those questions.

And hearing no further business, the subcommittee stands adjourned. Thank you so much.

[Whereupon, at 12:51 p.m., the subcommittee was adjourned.]

CROSSING THE BORDER: IMMIGRANTS IN DETENTION AND VICTIMS OF TRAFFICKING PART II

Tuesday, March 20, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER, MARITIME,
AND GLOBAL COUNTERTERRORISM
Washington, DC.

The subcommittee met, pursuant to call, at 3:11 p.m., in Room 311, Cannon House Office Building, Hon. Loretta Sanchez [chairwoman of the subcommittee] presiding.

Present: Representatives Sanchez, Cuellar, Souder, and Bilirakis.

Ms. SANCHEZ. [Presiding.] Good afternoon. The subcommittee will come to order.

The subcommittee is meeting today to receive testimony on "Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part II." Today's hearing is the second in a two-part series that is examining the issues surrounding the treatment of migrants by Immigrations and Customs Enforcement.

Today's hearing will have two panels, which will primarily focus on the issue of human trafficking. I would like to begin by thanking our witnesses: Mr. Gabriel Garcia; Lieutenant Derek Marsh, all the way from Westminster, in Orange County, California; Ms. Ann Jordan; and Mr. Victor Cerda.

Thank you for joining us today to discuss these important issues.

In our last hearing, we discussed the challenges that the government faces in enforcing our immigration laws and ensuring that all people held in the government's custody are held and treated humanely, and finding effective alternatives to detention.

Today, we have the opportunity to focus on the challenges the government faces in disrupting and dismantling human trafficking operations and ensuring that victims of trafficking are supported and treated accordingly.

It is estimated that there are 600,000 to 800,000 trafficked across borders annually, and between 2 million and 4 million more are trafficked within their own countries. All these people, women and children, they are the primary victims of trafficking. So given the scope of this problem, we must continue to look at improving our ability to stop human trafficking.

In today's hearing, I hope to discuss the ways the federal government and nongovernmental organizations are collaborating to stop human trafficking and provide support for the victims of trafficking.

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I am also interested to learn what may need to be done to allow enhanced collaboration between the different entities that are working to stop trafficking. I know that in my district in Orange County, California, human trafficking has unfortunately been a great concern in our communities and for our local law enforcement.

The Orange County Human Trafficking Task Force was established in response to our community's needs. It brings together local law enforcement, federal agencies, and community service organizations to respond to the needs of trafficking victims. It also provides a forum to find ways to use the knowledge and experience of victims to aid law enforcement in a way that is sensitive to the trauma that is suffered by the victims of trafficking.

I am very proud of the work that the Orange County Human Trafficking Task Force is doing, and I am also proud of the federal assistance that we have been able to provide to the said task force. These are the kinds of initiatives that we should be supporting, initiatives that mobilize local intelligence and resources, and that come from and are supported by our communities. This is the way that the federal government will have the best chance to stop human trafficking in the United States.

I also would like to thank my ranking member, the gentleman from Indiana, because I know he has a very big interest and has for a long time in this whole issue of trafficking and political asylum and really how we treat people who rightfully have a place to be here in the United States. I look forward to working with him on this issue.

I will now recognize the ranking member of the subcommittee, the gentleman from Indiana, for an opening statement.

Mr. SOUDER. Thank you, Madam Chair.

I would like to thank our witnesses for being here today.

On our first panel, I look forward to hearing from Mr. Gabe Garcia from Immigration and Enforcement, ICE, on the investigations of human trafficking and the similarities in the criminal networks and techniques with criminal organizations involved in smuggling people and contraband.

On the second panel, I would like to welcome Ann Jordan from Global Rights and Lieutenant Marsh from Orange County. I am very interested in your views on how human trafficking organizations operate and what tools are at our disposal to dismantle these criminal organizations.

Lastly, I would like to welcome Victor Cerda, who is the former director of the Office of Detention and Removal and now is a practicing immigration lawyer.

I think that you will have a lot to offer this subcommittee as a follow-up to Part I of this hearing on the role detention plays in securing the border, particularly as it relates to asylum seekers and victims of trafficking. I am also interested in your perspective on the judicial review process for these cases and what changes might be necessary in that area to facilitate the review process.

During the hearing last week, John Torres, director of ICE's Office of Detention and Removal Operations, along with several private-sector witnesses, testified before the subcommittee on the issue of detention standards for illegal aliens, with particular focus

on the detention of children and asylum seekers. Concerns were raised about the amount of education, federal staffing, and medical care provided to illegal aliens.

I am particularly interested in following up during this hearing on options to address the 90 percent absconder rate for aliens not held in detention and the security risks associated with releasing individuals that have not been fully vetted and either granted admittance or ordered deported.

We heard several examples where illegal aliens have exploited political asylum to avoid detention and remain in the U.S. For example, murderer Aimal Kasi and the 1993 World Trade Center bomb plotters Ramzi Yousef and Sheik Omar Abdel Rahman, who were granted political asylum.

During this hearing, I hope through testimony and questions to explore how human trafficking and narcotics smuggling cases are investigated, particularly how DHS is able to investigate and dismantle criminal organizations, and whether there is or could be links between these organizations and terrorist groups.

Human trafficking is now considered a leading source for profits for organized crime, together with drugs and weapons, generating billions of dollars.

In addition to the horrible human rights abuses suffered by victims of human trafficking, these pipelines can be used by smuggling and trafficking organizations for the clandestine entry of undocumented aliens and may be exploited by terrorists to gain entry into the United States and attack our critical infrastructure.

Several years ago, in 2004, there were public reports by people in the State Department providing evidence that terrorist groups are using human trafficking to acquire recruits, and that some terrorists are abducting children and making them child soldier slaves.

At the same time, Secretary Powell was quoted as saying that human trafficking could very well help to finance terrorist activity. Additionally, Italy's Secret Service has reported that Al Qaida is in the business of smuggling illegal immigrants into Europe to fund terrorist activities.

While many of these concerns cannot be discussed in a public hearing, I am very concerned that not enough work is being done analyzing these links. This is an area I hope the subcommittee investigates a significant amount of time in this Congress.

Thank you, Madam Chair, for yielding the time, and I look forward to continuing to closely work with you on this subject.

Ms. SANCHEZ. Great. I know that you are very interested in this subject.

And I am grateful for the other members who are attending. I will remind them that, under the committee rules, opening statements may be submitted for the record.

I welcome our sole witness on our first panel, Mr. Gabriel Garcia, ICE headquarters program manager of the Human Smuggling and Trafficking Unit. In that position, he is responsible for focusing on the criminal organizations that exploit global pipelines to bring undocumented aliens into the United States for profit. His responsibilities include providing guidance and operational support to our field agents.

Agent Garcia's experiences include serving tours of duty with the United States Marine Corps and the United States Army. He was deployed in Desert Storm to Iraq as a military policeman, where he supervised a prisoner-of-war forward collection point. Also as a Border Patrol agent and a special agent in San Diego California, he was deeply involved in major human smuggling cases that involved wiretap operations.

Without objection, the witness's full statement will be put into the record. I ask you, Mr. Garcia, to summarize your statement in 5 minutes or less.

STATEMENT OF GABRIEL GARCIA, PROGRAM MANAGER, HUMAN SMUGGLING AND TRAFFICKING UNIT, OFFICE OF INVESTIGATIONS, ICE

Mr. GARCIA. Good afternoon, Chairwoman Sanchez and distinguished members of the subcommittee. It is a distinct honor to appear before you today to have the opportunity to share with you ICE's role and our efforts in the fight against human trafficking. It is a crime that is global in scope, a crime that hinges on the victimization of vulnerable men, women and children, a crime that is a modern-day form of slavery.

ICE is the investigative arm of the Department of Homeland Security, with broad statutory authorities, expertise and jurisdiction that reaches beyond the U.S. borders to countries overseas. Our 56 attache offices work hand-in-hand with foreign governments to identify and pursue the full scope of the criminal enterprise.

I emphasize this because success against human traffickers worldwide lies in partnerships?partnerships with foreign governments, partnerships with nongovernmental organizations or NGOs, partnerships here in the United States with local, state and federal law enforcement agencies, Health and Human Services, the Department of State, the Department of Justice Civil Rights Division and their newly established Human Trafficking Prosecutions Unit, as well as the community at large.

The human trafficking cases that I provide to you in my written statement really emphasize the reasons why we should foster and maintain productive and proactive relationships with those entities.

Equally as important, though, is the employment of the victim-centered approach. That means that we recognize that victims have rights and that they require services and immigration relief to stabilize and rebuild their lives. I would like to note that the DHS secretary has delegated to ICE the authority to provide continued presence, or CP, which is a short-term immigration relief that is provided to victims of trafficking, which allows them to stay and remain in the United States for up to 1 year.

Victims' can petition for long-term immigration relief as well. This is in the form of a "T" visa. "T" visa applications are filed with another DHS agency, the U.S. Citizenship and Immigration Service, or USCIS. A "T" nonimmigrant may remain in the United States for up to 3 years, and then apply for adjustment of status to that of a lawful permanent resident.

At ICE, the victim-centered approach simply means that we place equal value to the rescue and stabilization of victims, as to

the prosecution of traffickers. To that end, ICE has over 300 victim coordinators nationwide. These are agents with specific training. They are the bridge to the NGO community.

We are also engaging in an aggressive outreach campaign to educate local, state and federal law enforcement and NGOs on how to identify human trafficking, the services and immigration relief available to trafficking victims, the roles of NGOs, and the distinction between human smuggling and trafficking in persons.

We also provide a toll-free number or tip line for human trafficking leads. We have developed laminated wallet-sized cards and brochures for law enforcement officers, as well as a DVD to be played at police roll calls. We also continue to focus on the statutory responsibility to train our own agents by mandating completion of a work-based human trafficking course developed as part of ICE's Virtual University.

Equally important is the training of law enforcement officers and NGOs domestically and abroad. We have hosted and participated in numerous training sessions on human trafficking and victim issues for combined audiences of law enforcement prosecutors, and NGOs.

We have developed human trafficking training modules, which are part of the permanent curricula at the International Law Enforcement Academies in Bangkok, Budapest, and San Salvador. These training modules focus on investigative methodologies, as well as victim identification, interviews and services.

I recently returned from a Human Trafficking Experts Working Seminar hosted in Vienna by the United Nations. The working group consisted of 15 experts from the law enforcement and NGO communities throughout the world. Another ICE agent and I were the sole U.S. representatives at this law enforcement forum. The purpose of this working group is to develop human trafficking law enforcement training modules to be used as templates throughout the world. ICE was honored to share our expertise and methodologies at this global event.

I would also like to highlight the importance of information exchange. ICE holds the directorship of the Human Smuggling and Trafficking Center, in which the Departments of Homeland Security, State and Justice, as well as the intelligence community, are principal stakeholders. The center serves as a fusion mechanism for intelligence, law enforcement and other information to bring more effective international action against human traffickers, smugglers, and criminals that facilitate clandestine terrorist travel.

Lastly, ICE's approach toward human trafficking has resulted in the initiation of nearly 300 investigations, 184 arrests, and over $1 million in seizures in fiscal year 2006. More importantly, during the same timeframe, we provided continued presence to 142 trafficking victims, which is approximately 74 percent of the total number issued within the U.S. government.

In conclusion, ICE has the unique organizational ability to investigate human trafficking with a global reach, and provide short-term immigration relief to trafficking victims. We will continue to expand our outreach and training efforts to share our expertise in employing the victim-centered approach as we continue to build global coalitions.

I hope my remarks today have been helpful and informative. I thank you for inviting me, and I will be glad to answer any questions you may have of me at this time.

[The statement of Mr. Garcia follows:]

PREPARED STATEMENT OF GABRIEL GARCIA

MARCH 20, 2007

Chairwoman Sanchez and Members of the Subcommittee, it is an honor for me to appear before you today to share U.S. Immigration and Customs Enforcement's (ICE's) efforts against human traffickers who exploit men, women and children—a form of modern-day slavery.

Among the Department of Homeland Security (DHS) law enforcement agencies, ICE has the most expansive investigative authority and the largest force of investigators. Our mission is to target the people, money and materials that support terrorist and other criminal activities. The men and women of ICE accomplish this by investigating and enforcing the Nation's immigration and customs laws. ICE aims to systematically disrupt and dismantle the international and domestic operations of human traffickers, identify and seize assets and illicit proceeds, and identify systemic vulnerabilities that may be exploited by criminal elements to undermine immigration and border controls.

I would initially like to provide an important clarification and necessary distinction between the terms "human smuggling" and "human trafficking." These are not interchangeable terms. ICE views human smuggling as the importation of people into the United States involving deliberate evasion of immigration laws. Human trafficking on the other hand is sex trafficking in which a commercial sex act is induced through the use of force, fraud, or coercion; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or sex trafficking, in which a commercial sex act is induced by force, fraud or coercion. However, there need not be any force, fraud or coercion in cases of commercial sex acts where the victim is under 18. Simply stated human smuggling is transportation-based and human trafficking is exploitation-based.

The Department of State estimates that 600,000 to 800,000 people are trafficked across international borders each year. Men, women and children are trafficked into the international sex trade and into forced labor situations throughout the world. Many of these victims are lured from their homes with promises of employment; instead, they are forced or coerced into prostitution, domestic servitude, farm or factory labor or other types of labor.

Given the international scope of human trafficking, we at ICE maintain a global perspective and foster strong international relationships through our 56 Attaché offices located throughout the world. Our ICE Attachés work with host country law enforcement to better coordinate investigations and to fully identify and pursue the full scope of the criminal enterprise.

This is accomplished by targeting recruiters, brokers, document providers, travel agencies, corrupt officials, smugglers and businesses engaged in criminal activities at source and transit countries. ICE also works with its foreign law enforcement partners to target the many bank accounts, wire transfers and funding mechanisms that fuel the criminal enterprise.

To exemplify worldwide collaboration, I'd like to talk about two of our recent cases. A human trafficking investigation was initiated based on information received from the ICE Attaché, Moscow, Russia, involving the possible trafficking of a Russian national. The ICE Attaché reported that the Ministry of Foreign Affairs in Yekaterinburg, Russia, received information from a concerned mother that her daughter was being held against her will at a Florida residence. This lead was forwarded to the respective domestic field office. ICE agents located the victim and determined that she was held against her will, beaten, and forced into prostitution by the defendant in this case. The victim was placed under the care of a service provider. The ICE Attaché in Moscow worked with a Russian anti-trafficking NGO who contacted the victim and counseled her until the victim felt comfortable and agreed to cooperate. The trafficker was arrested, indicted and ultimately pled guilty to trafficking charges.

The second human trafficking case was started similarly by the mother of a trafficking victim reporting to the U.S. Embassy in Mexico City that her daughter had been kidnapped and was being held against her will at a New York residence. This

information was forwarded to our agents in New York who subsequently located and rescued the daughter as well as several other women. Our investigation disclosed that the women had been romantically lured by male members of the Carreto family, who forced them into prostitution through physical abuse and threats to their children, who were cared for by the traffickers' mother in Mexico. The two lead defendants in this case were each sentenced to 50 years imprisonment for sex trafficking, which is the longest sentence imposed on a human trafficker since the enactment of the Trafficking Victims Protection Act. Two women were also indicted on human trafficking charges in this case and were fugitives in Mexico. Recently, one of these women was extradited to the United States to stand trial.

We at ICE recognize that cooperation and collaboration can and should extend beyond the law enforcement community. Non-Governmental Organizations (NGOs) play a vital role in the fight against human trafficking. For law enforcement agencies to have any level of success, we must establish and maintain productive and proactive relationships with NGOs. We at ICE employ a victim-centered approach utilizing over 300 victim/witness coordinators nationwide—these are agents with specific training that are the bridge to the NGO community.

We not only seek to prosecute traffickers, but to rescue and stabilize trafficking victims. We also recognize that victims have rights and require services and temporary immigration relief to stabilize them. In each of the cases cited above, we rescued trafficking victims and granted them "Continued Presence," which is also part of our "victim-centered approach." The DHS Secretary has delegated to ICE the authority to provide "continued presence," which is a short-term immigration protection which allows certified victims of trafficking to remain in the United States for up to one year to enable them to apply for "T" nonimmigrant status. Applications for "T" nonimmigrant status are filed with another DHS agency, the United States Citizenship and Immigration Services (USCIS), which reviews and adjudicates these applications. Typically, those who have been granted "continued presence," if otherwise eligible, are granted "T" nonimmigrant status. A "T" nonimmigrant may remain and accept employment in the U.S. for up to 3 years and then apply for adjustment of status to that of a lawful permanent resident.

The immediate provision of stabilizing services is only possible through strong partnerships with other Federal partners and the NGO community. Once adult victims are issued CP or "T" nonimmigrant status, they may be able to access a wide range of federal benefits and services through certification from the Department of Health and Human Services.

No case better highlights the great relationship between ICE and NGOs than Operation Traveler, an investigation that was launched based on information provided by an NGO.

In mid 2004, ICE agents executed the final phase of Operation Traveler, serving search warrants at three seemingly middle-class bungalows in suburban New York. What they found was one of the most horrific cases of human trafficking and slavery in recent U.S. history. Inside those homes were 69 Peruvians—including 13 children—being held in over-crowded and unsanitary conditions. They were brought to the United States by a couple who identified their victims in Peru, gave them false documents, coached them on how to lie to U.S. Embassy officials, and helped them enter the United States on fraudulently obtained tourist visas. They charged the victims smuggling fees ranging from $600 to $13,000 per person. In addition to the smuggling fees, the victims were required to pay the couple "rent" for living in those squalid conditions. The victims were forced to turn over their passports, given jobs and held in virtual bondage.

Fortunately, the victims in this case were rescued. They are now under federal protection, and the lead defendant was sentenced to 15 years in a federal prison. An additional success story in this case, is that after the enforcement action, the positive relationship between NGOs and ICE led to the identification of 25 additional trafficking victims. The fact that the initial lead was provided by the NGO, and after the enforcement action, 25 additional victims were identified underscores the need to have a productive and proactive relationship between law enforcement and NGOs.

As evidenced by the cases I cited, success in the fight against trafficking lies with partnerships. As important as partnerships, though, are outreach and training. We at ICE are engaged in an aggressive outreach campaign to educate local, state and federal law enforcement and NGOs on how to identify human trafficking, the services and immigration relief available to trafficking victims, the roles of NGOs and the distinction between human smuggling and trafficking. We also provide a toll free number or tip line for human trafficking leads. We've developed laminated wallet-size cards and brochures for law enforcement officers and a DVD to be played at police roll calls.

We continue to focus on the statutory responsibility to train our own agents by mandating completion of a web-based human trafficking course developed as part of ICE's Virtual University. Equally important is the training of law enforcement officers and NGOs domestically and abroad. We have hosted and participated in numerous training sessions on human trafficking and victim issues for combined audiences of law enforcement, prosecutors and NGOs. We developed human trafficking training modules, which are part of the permanent curricula at the International Law Enforcement Academies (ILEA) in Bangkok, Budapest, and San Salvador. These training modules focus on investigative methodologies as well as victim identification, interviews and services.

I recently returned from a Human Trafficking Experts Working Seminar hosted in Vienna by the United Nations Office of Drugs and Crime. The working group consisted of 15 experts from the law enforcement and NGO communities throughout the world. Another ICE agent and I were the sole U.S. representatives. The purpose of this working group is to develop human trafficking law enforcement training modules to be used as templates throughout the world. ICE was honored to share our expertise and methodologies at this global event.

Lastly, I would like to highlight the importance of information exchange. ICE holds the directorship of the Human Smuggling and Trafficking Center (HSTC). The Departments of Homeland Security, State and Justice, as well as the intelligence community are integral stakeholders. The HSTC serves as a fusion center for intelligence, law enforcement and other information to bring more effective international action against human traffickers and smugglers, and criminals facilitating terrorists' clandestine travel. ICE and the HSTC work closely together on human trafficking and smuggling issues.

In conclusion, ICE has the unique organizational ability to investigate trafficking in persons with a global reach and provide short-term immigration relief to trafficking victims. We will continue to expand our outreach and training efforts to share our expertise in employing the victim-centered approach as we continue to build global coalitions.

I hope my remarks today have been helpful and informative. I thank you for inviting me and I will be glad to answer any questions you may have at this time.

Ms. SANCHEZ. Thank you, Mr. Garcia.

I am now going to take my time and ask you a few questions with respect to your testimony.

Going back to the CP status, in testimony submitted by the second panel that is going to come after you, one of the things that they said was that there has been a big delay in ICE's processing of CP applications in the past year.

Do you know how long it is currently taking to process a CP application for a victim of trafficking? Do you understand or know why that delay is happening? Is it a lack of resources? And what do we need to do to reduce that backlog and decrease the processing time? And what do you think is an acceptable amount of time to process that?

So what do you think the time is now? Do you know if there is a delay? Do you know why the delay has occurred? How can we solve that? And how long do you think it should take to process?

Mr. GARCIA. The CP application process lasts approximately 1 month. There has been some turnover within that section of resources. Therefore, the timeline for a CP application process should decrease. The ideal time for us to be able to process a CP process should be approximately 2 weeks.

Ms. SANCHEZ. So do you think it was just because of the switchover of people or do you think we actually need to put some more resources so that we can get down to that 2 weeks?

Mr. GARCIA. It is the turnover of personnel.

Ms. SANCHEZ. So it is just the turnover, but you are getting the new personnel in and you are training them and all?

Mr. GARCIA. Correct.

Ms. SANCHEZ. Okay. Can you explain the ICE process for handling victims of trafficking identified during enforcement actions? Can you tell us how you would handle adult victims? How you would handle accompanied minors? And how do you handle unaccompanied minors?

Mr. GARCIA. Absolutely. I think I would like to preface this by stating that it is seldom encountered when a trafficking victim identifies themselves as a trafficking victim. Traffickers are experts in manipulation of human beings.

We have this perception that there is a need for physical restraints or physical abuse for these traffickers to have control over trafficking victims. But what happens is that they employ what we call mental means of coercion, which a subtle threat to a family member or threat to that victim, or threat that the family would assume the debt of that trafficking victim, may actually force them to stay within that situation.

Therefore, this is the mental state that we encounter in trafficking victims. They have been traumatized. We recognize that. So upon encountering a potential trafficking victim at an enforcement action, our goal is to be able to determine whether or not that person is a trafficking victim.

So therefore we go through an interview process. The interview process is extensive. We work hand-in-hand with nongovernmental organizations. Like I said, our goal is to determine whether or not that person is a trafficking victim.

Ms. SANCHEZ. Do you do it yourself, or do you have outside organizations help you to do that? What about language and all of that?

Mr. GARCIA. We provide the linguists. When we plan a medium-scale to large-scale operation, we prepare with the linguistic skills. We reach out in advance to nongovernmental organizations to at least give them advance notice so that they could be prepared to handle the volume of potential victims that we are going to encounter. It depends on the scale of the operation. We have engaged in some large-scale enforcement operations in which we have encountered up to 100 potential trafficking victims.

Therefore, what we do is we arrange lodging, which we pay through our funding, and we take a period of time, and normally it takes about a week's time in the large-scale operations, to be able to determine whether or not they are trafficking victims. And we are there with NGOs. NGOs are doing their interviews and we are doing the law enforcement interviews.

We also provide culturally sound food, with appropriate clothing throughout the enforcement operation, and it is a secure environment and a covert environment. Therefore, it wouldn't be public where the processing interviews are taking place.

Ms. SANCHEZ. If you are going to do a raid, let's say, where you think that there are 50 people enslaved, and yet you have the traffickers there. How do you ensure that you are going to get the traffickers and you are going to do the law enforcement piece to them? And at the same time, handle the trauma that these trafficked people are going through?

Mr. GARCIA. It is a challenge. This is why corroboration of information is essential for us to be able to identify the traffickers themselves. But what is encountered at times is that you may have

enforcers that may be women that may be among the potential victims that we encounter. This is where isolating the victims and doing the extensive interviews from the law enforcement perspective and the NGOs, we are able to identify who these enforcers are and take them out of the equation, because they do have an influence on the victims of trafficking.

Ms. SANCHEZ. And lastly, what trends are you seeing with respect to human trafficking, especially into the United States? Predominantly what parts of the world are they coming from? Are there certain schemes that are being used? What are you seeing lately as far as trafficking? I know it is up, even though we have spent a lot of effort worldwide to try to bring it down and make other countries aware of how important this is to stop.

Mr. GARCIA. It is a global issue and it is a hidden crime. We encounter every typology of recruiting mechanisms that are out there, from classified ads, from town visits, from romantic lures, even word-of-mouth as a recruiting mechanism. Sometimes we will ask ourselves, how could word-of-mouth be a positive recruiting mechanism for these traffickers?

What I will pose is that if a victim of trafficking has the opportunity to call back home at the source country, to any family member or friends, more than likely that person is not going to tell them that he or she was forced into a commercial sex situation or slavery situation. More than likely they are going to say that they are employed as a nanny or working in a factory, et cetera.

So what this does is it fuels this positive marketing campaign back at the source country, where the relative or the friend is telling the neighbor, "See, my relative went to New York to this person and he or she is doing great." This fuels a positive marketing campaign for these traffickers.

So the typologies for recruiting mechanisms are broad in scope, and the same for the purpose of the exploitation here in the United States. We encounter domestic servitude situations, other forced labor situations, as well as commercial sex. So what we encounter is broad in nature.

Ms. SANCHEZ. Thank you, Mr. Garcia.

I will now recognize for his 5 minutes Mr. Souder of Indiana.

Mr. SOUDER. Thank you.

I know it is extremely critical to stay victim-centered, but is your first cut a security cut? In other words, how do you factor security in when you are doing detainees and studying this trafficking?

Mr. GARCIA. There is room for us to have a victim-centered approach and still counter the two-pronged threat. The public safety threat is the exploitation part of the infrastructure, as well as the national security threat, which are the criminal travel networks that traffickers use to facilitate the transnational movement of foreign nationals.

Therefore, in the employment of the victim-centered approach, as soon as we are able to corroborate information on the particular exploitation of potential victims, at that point we develop an operational plan to engage in a reactive enforcement action. Normally, this could be viewed by different law enforcement agencies as just being reactive in nature, but that is not so. A reactive situation can be made into a proactive, comprehensive, transnational investiga-

tion in which we are able to identify and pursue the full scope of the criminal enterprise.

That means at the source country, transit country and the destination country?the infrastructure in the source country being that of document providers, travel agencies, brokers, corrupt government officials; and the same thing with the transit countries, where you have your staging brokers. And of course, here in the United States, you have your transportation infrastructure, your distribution infrastructure, and your receiving infrastructure, in addition to your exploitation infrastructure at the end of the process.

Mr. SOUDER. Do you see that these prostitution rings and sex slave rings also do other types of human trafficking, such as drug smuggling or other contraband smuggling?

As I mentioned in my opening statement, the Italians say that some of that in Europe seems to be moving over to potentially funding terrorism. Do you see that in any cases that you can talk about in open mic?

Mr. GARCIA. Traffickers use criminal travel networks. Criminal travel networks rely on transnational alliances. They rely on loose confederacies. Because of that fact, they can engage in the movement of other commodities as in narcotics, money, et cetera. Therefore, yes, that is something that is encountered from the criminal travel network perspective. Yes.

Mr. SOUDER. What percentage of illegal trafficking would you say is prostitution, sex slaves-related, as opposed to making garments illegally or trafficking in labor?

Mr. GARCIA. I could tell you from the attorney general's report. The majority of it is going to be focused on the purpose of commercial sex, in contrast to labor. This is what we have encountered as an agency, but this is where outreach and training are so important.

With our boots on the ground, which is state and local law enforcement that encounter the types of situations on a daily basis, as well as foreign governments, as well as NGOs?all of us are engaged in a training campaign so that we can identify the indicators.

Mr. SOUDER. Do you have detailed records? If so, could you submit them to us, that would separate that, and would also show how much it is people being sold into sex slavery for use of one person versus for prostitute purposes, or the different variations of this?

And also if you have, just in broad terms?I assume you have some kind of report that you have put together; I think I have seen Mr. Miller's report before when he was at the State Department?that we could show in our record what percent may be under a certain age?

Increasingly from Asia, young minors are sold for prostitution or for individual sex slavery, and even underage marriages, which are illegal, but in some of those countries they are trying to get away with that.

Mr. GARCIA. The statistics that I can provide are the demographics of the trafficking victims in which we provide continued presence. A majority of these are going to be from Latin America and Asia, the countries being Mexico, El Salvador and Korea, as

well as for extensions for continued presence, which would include the country of Peru.

The majority of these are from large-scale cases. What I mean by that is enforcement operations and investigations that yielded us encountering a large number of trafficking victims. I will note Peru being one of them in which it was a case in which we encountered over 60 trafficking victims.

Mr. SOUDER. Thank you.

Ms. SANCHEZ. Mr. Cuellar of Texas is recognized for 5 minutes.

Mr. CUELLAR. Thank you, Madam Chair.

Chief Garcia, thank you very much for the service that you provide, particularly in my hometown of Laredo. I want to thank them for starting Operation Blackjack, which I believe has been a model for different parts of the country.

You all have, what, about 56 attaches in other nations. That includes the Republic of Mexico also, I assume?

Mr. GARCIA. Correct, sir.

Mr. CUELLAR. Are you familiar with the missing Laredo Americans that we have had? I think we have lost about 60 Americans? Are you familiar with that particular issue?

Mr. GARCIA. No, not at all.

Mr. CUELLAR. Okay. Could I ask you to?and I have a copy of a Web page. I will get this. It is called LaredoMissing.com. We have had some young ladies?Yvette Martinez is 27 years of age, attended high school in Laredo and Laredo Community College. There is Brenda Cisneros, that attended school there in Laredo. And some other ones that have been missing.

We have been having difficulty working with our counterparts across the river in trying to get this information. I would ask you if you could get back to the committee, or in particular get back to me, on some specific answers through your investigative cooperations that you have with your host country, which is Mexico. I think the problem has been that we jus haven't got a single answer from across the river on this.

I know that our Homeland Security will be heading sometime in the future to Mexico and will bring it up, but we would like to follow up specifically on the missing Americans that we have in Laredo, or should I say, basically you have Laredo; they go across the river.

For example, the two young ladies that I am talking about, and there are other ones, Yvette Martinez and Brenda Cisneros went to a concert in Nuevo Laredo. They called their mom after the concert and said, "Mom, we are coming home." They never got to the bridge.

Eventually, the father found the car in a police impound in Nuevo Laredo, so you can gather what basically happened there. After the police, they had no idea what was going on, or they had no information.

I really, really would appreciate it if you can use your attache and get me some specific answers on this particular issue.

Mr. GARCIA. Absolutely.

Mr. CUELLAR. Thank you.

Thank you, Madam Chair. I don't have any other questions at this time.

Ms. SANCHEZ. I thank the gentleman from Texas.

I now recognize the gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you very much, Madam Chair. I appreciate it.

Thank you, Mr. Garcia.

Like many Americans, I am deeply concerned about the 90 percent absconder rate that our immigration system has. What steps is ICE taking to help alleviate this unacceptable situation?

Mr. GARCIA. Sir, that is a question that I would like to take for the record.

Mr. BILIRAKIS. Sure.

Mr. GARCIA. That is outside my scope of expertise.

Mr. BILIRAKIS. Okay. You don't want to attempt it, either?

Mr. GARCIA. This would be for the record.

Mr. BILIRAKIS. Okay. All right. How long does it take for the U.S. to determine the true identity of someone seeking asylum?

Mr. GARCIA. As is or akin to any person attempting to make entry into the United States, we run names through different indices?immigration indices, federal indices, criminal indices. Therefore, a determination can be made on the true identity of an individual from the U.S. perspective and from information that we have in our databases I would say rather quickly.

Now, information that would further identify an individual from the source country, that would take additional time. That is something that can work trough our attaches.

Mr. BILIRAKIS. Do you prematurely release individuals from detention before we know their true identity beyond a reasonable doubt?

Mr. GARCIA. I would like clarification: This is anyone that we encounter?

Mr. BILIRAKIS. Yes.

Mr. GARCIA. If we disposition the person prior to knowing the true identity?

Mr. BILIRAKIS. Yes.

Mr. GARCIA. Basically, with biometrics and information that we have, that is run through the indices here in the United States. So if that individual doesn't have any derogatory information or any additional information that would identify that individual, that person may be released because we don't have the derogatory information.

Mr. BILIRAKIS. Okay. Do you have the capability to detain these individuals? Do you have the capability to detain these individuals, in general?

Mr. GARCIA. We have the capability to detain individuals, yes.

Mr. BILIRAKIS. Okay. Thank you very much. I appreciate it.

Thank you, Madam Chair.

Ms. SANCHEZ. I thank the gentleman from Florida.

Lastly, Mr. Garcia, have you at ICE identified any connection between human traffickers and terrorism? In other words, is this a way that the terrorists are financing? Is there any connection? Have you been able to identify the people who are bringing in people for commercial sex or the garment industry or other things, do they have a connection to terrorism?

Mr. GARCIA. There was a tasking to the Human Smuggling and Trafficking Center under the purview of the Senior Policy Operating Group, or SPOG, which is the governing body over human trafficking policy issues. As I recall, there is no distinct link between terrorist financing and human trafficking.

Ms. SANCHEZ. So people who are bringing in humans for this type of purpose, commercial sex and work and indentured servitude, are doing it for the money?

Mr. GARCIA. Yes. It is financially motivated.

Ms. SANCHEZ. And lastly, how much do you think we catch, versus how much is really happening coming into the United States?

Mr. GARCIA. Trafficking is a very hidden crime, and its victims very seldom self-report.

Ms. SANCHEZ. What would you estimate? Do we catch 10 percent of it, 50 percent of it?

Mr. GARCIA. I could only report really what we encounter. Now, this is why we find it important for us to continue the training campaigns and the outreach campaigns, because the more people learn how to identify trafficking in persons, we are going to be able to identify more trafficking victims.

Ms. SANCHEZ. But you think there is more out there?

Mr. GARCIA. Absolutely.

Ms. SANCHEZ. Double what you have encountered? Do you stumble upon it a lot of times? Does it really take assets focused right on the issue in order to get to it?

Mr. GARCIA. We normally encounter these situations through various forms, through information provided by different sources; information provided into the tip lines. As a government, we are moving to actually engage and move towards proactive means of identifying traffickers and situations, working hand-in-hand with source countries and transit countries.

Therefore, yes, there is room for us to be able to identify additional victims. We have only touched the surface of the issue. I can only report what we encounter.

Ms. SANCHEZ. Thank you, Mr. Garcia.

I don't know if my ranking member has any final comments.

Mr. SOUDER. I wanted to follow up to your question, because it is similar to one I asked. You said that you felt that the nexus was the travel organizations who are often or could be similar travel organizations to narcotics contraband or terrorist networks.

In other words, it wasn't necessarily the same individual who is smuggling people and prostitution and sex slavery, but the organizations that they use could be the same?

Mr. GARCIA. Absolutely. I wanted to make the distinction that when we are talking about the traffickers, the trafficking infrastructure, and the distinction between that and the criminal travel network, the trafficking infrastructure we are looking at the recruiters, brokers, et cetera, in the source country. And then you have your exploitation infrastructure in the United States.

What is in the middle is the criminal travel network. Therefore, that is the infrastructure that may be engaged in the movement of other commodities.

Mr. SOUDER. Do you see much Russian or Eastern European trafficking?

Mr. GARCIA. Yes.

Mr. SOUDER. Are they involved in other organized crime as well?

Mr. GARCIA. Yes.

Mr. SOUDER. So that wouldn't necessarily be true of that subgroup?

Mr. GARCIA. Correct.

Mr. SOUDER. Some of us feel prostitution, by definition, is sex slavery. Are they entitled to asylum?

Mr. GARCIA. What trafficking victims are entitled to are the immigration will relieved for the short term, or they can apply for long-term immigration relief. Now, if that person comes from a country in which they can apply for asylum, I believe so. But I could only account for the immigration relief that we can provide as an agency, which would be continued presence.

Mr. SOUDER. So the only thing you can is what again? Continued presence?

Mr. GARCIA. As an agency, U.S. Immigration and Customs Enforcement, the authority that we have is to issue continued presence, which is the short-term immigration relief.

Mr. SOUDER. Okay. So you are not involved in who gets asylum and who doesn't?

Mr. GARCIA. Correct.

Mr. SOUDER. So our questions on accelerated asylum are not your decision?

Mr. GARCIA. Correct.

Mr. SOUDER. Okay. I am interested in this question, because ironically one of the huge debates that I have been involved in, and others, and it is in the second panel's testimony, which unfortunately I have a major meeting I have to go to. I am going to try to get back for the end of the second panel. But there is obviously a huge debate about how prostitution plays into the international debate.

Basically, according to witnesses in the second panel, I am one of the bad guys because I believe groups that encourage or don't discourage prostitution should not get federal funds. At the same time, I, ironically, because I believe prostitution is sex slavery, would be more amenable to asylum. If it is viewed as not that, you don't have the same eligibility.

So this debate is likely to continue as a sub-part of this issue and how we rectify it. But that is what I wanted to sort out. That isn't really going to affect you because you just hold people until asylum cases are resolved. So the whole question of prostitution is irrelevant for the purposes of this hearing.

Thank you.

Ms. SANCHEZ. I thank the gentleman from Indiana. If you want to leave your question at this point written, I will certainly put it forward to our panel and hopefully get you information faster than if you wait to submit it later, if you are not going to be around.

Mr. SOUDER. Hopefully, I can get back.

Ms. SANCHEZ. Okay. Thank you.

Thank you, Mr. Garcia, for your testimony.

I am sure the panel?and we have a very busy day today. You have probably seen all the elevators and everything else jam-packed. So everybody has heavy schedules today, but I am sure some of my colleagues will probably have some questions for you in writing. I know that you have a couple already on record that you said you would submit.

So expect us to get back to you and please submit them in a quick manner, if you will.

Mr. GARCIA. Absolutely. It would be an honor. Thank you.

Ms. SANCHEZ. Thank you.

And then I am going to welcome the second panel of witnesses, if they will come forward.

I do welcome the second panel of witnesses.

Our first witness, Dr. Derek Marsh, has worked at the Westminster Police Department for almost 20 years, serving for the last 3 years with the Detective Bureau. In that assignment, he has been responsible for all detectives at the department, the Property Bureau, the Forensic Services Bureau, the Computer Forensics Unit, and the Court Liaison.

Also, Lieutenant Marsh became involved with human trafficking shortly after his assignment to the Detective Bureau. His participation in the Orange County Task Force began 3 years ago, and he is currently the co-chair of the task force. Lieutenant Marsh holds a master's degree in human behavior from National University.

Our second witness will be Ms. Ann Jordan, an attorney who has specialized in protecting the rights of trafficked persons for more than a decade. As director of the Global Rights Anti-Trafficking Initiative, she trains and collaborates with Global Rights staff in using and training others in human rights-based legal advocacy to combat trafficking. She works with an international network of anti-trafficking nongovernmental organizations.

She also is a founding coordinator of the Freedom Network USA, the only nationwide anti-trafficking network. Ms. Jordan has worked as a law professor at the Chinese University of Hong Kong. She was a Fulbright Scholar and has written extensively on the human rights of women in Asia and the rule of law in Hong Kong. She holds a J.D. from Columbia Law School and a B.A. from Columbia University.

Our third witness is Victor Cerda. He is currently the partner in Washington, D.C.'s office of Siff & Cerda, and focuses his legal practice on complex immigration matters. In 2005, Mr. Cerda concluded a 10-year government career in immigration at the Department of Homeland Security. At the department, Mr. Cerda served as the acting chief of staff and counsel to the assistant secretary of U.S. immigration and customs enforcement, what we know as ICE.

As counsel, he provided policy and operational oversight over a myriad of ICE mission areas, including detention and removal, the worksite enforcement national strategy, customs investigations, and high-profile immigration removal cases, including national security cases. Mr. Cerda concluded his ICE career as the acting director of the Office of Detention and Removal Operations. He is a graduate of Brown University and received his J.D. from DePauw University.

I welcome all of you. I look forward to your testimony.

Without objection, the witnesses' full statements will be inserted into the record.

I now ask each of you to summarize your statement in 5 minutes or less. I will begin with Lieutenant Marsh.

Welcome, and in particular, too, because he is from Orange County. Welcome to the committee.

STATEMENT OF LIEUTENANT DEREK MARSH, CO-DIRECTOR, ORANGE COUNTY (CA) HUMAN TRAFFICKING TASK FORCE

Lieutenant Marsh. Thank you. Good afternoon.

First, I would like to thank Congresswoman Sanchez and the committee for the invitation to speak about issues impacting human trafficking collaborations. I hope you find my local law enforcement perspective beneficial.

The Orange County Human Trafficking Task Force and I are relative newcomers to the issues surrounding human trafficking. Still, my roles as both an active law enforcement officer and the co-chairperson of the task force, have permitted me to develop both operational and administrative points of view.

Operationally, I see two primary concerns: first, the severe definition of "human trafficking"; second, the severe definition of "trafficking" creates extreme prosecution thresholds which undermine local and federal investigations.

The severe language used to define human trafficking at the federal level has been repeated at the state level. Our agency's experience over the past 3 years indicates traffickers use psychological means of force, fraud or coercion far more frequently than physical assault or torture. Potential federal and state cases are not pursued due to the severely myopic definition of "trafficking" and victims are not being identified or served.

Trafficking in humans has evolved to mean the exploitation of children, women or men for the purposes of labor or the commercial sex trade by the use of physical or psychological force, fraud or coercion. Federal and state legislation should reflect this more comprehensive reality or cases and victims will continue to be lost.

We have worked several cases in the past 3 years in collaboration with ICE and the FBI. All of these cases involved the use of psychological force, fraud or coercion by the traffickers. However, without the severe elements of physical abuse or torture, federal prosecutors refused to become involved. Because the state law mirrors the federal law, state prosecutors refused as well.

For example, our most recent case involved women from Malaysia and Singapore working in a series of residential brothels. They were solicited and recruited to come to the United States from their home countries; met at the airport where their passports, personal documents and valuables were immediately taken; taken to the brothel, which was secured by closed-circuit TV and surveillance surrounding the location, and brothel security.

Naturally isolated by language, social and cultural barriers, their money was controlled by the traffickers and the women were escorted everywhere they went. No outright physical abuse or torture was used. When the 8-month investigation ended and arrests were made, neither federal or state prosecutors would file human traf-

ficking charges because it did not meet the extreme threshold established by law.

Administratively, I see two primary concerns, too: first, economic sustainability of the task force efforts and objectives; and second, human trafficking measures and outcomes are divergent. Economic sustainability of task forces is fundamental to their success, regardless of whether they are in locations where there are point-of-entry issues or locations where trafficking victims are transported or transactions take place.

Federal mandates assure federal agency interest and NGO missions and compassion ensure their interest as well. However, local law enforcement interests are best maintained by financial support. From an enforcement perspective, this translates into funding for relevant training and investigative overtime. I would suggest in addition enforcement collaborations would best be served by paying for local officers to be dedicated to an enforcement task force.

Local frustrations mirror federal frustrations in not being able to realize the estimated number of trafficking victims. In large part, the limited definition of "trafficking" undermines realizing the broad scope of the issue, and hinders the identification and rescue of victims. On another level, unclear measures and vague outcomes expected from human trafficking prevention, protection and prosecution efforts add to the confusion.

While the issues are complex, the divergence between projections and actual counts is real. These inconsistencies influence local law enforcement decisions to participate in human trafficking task forces. Until the representations about trafficking reflect the outcomes of task force efforts, getting local law enforcement to participate, much less collaborate, will continue to be problematic.

In conclusion, I would like to thank the subcommittee again for inviting me to come and speak. I would also like to thank Sergeant Tom Feener for accompanying me today and offering his support and feedback in developing our thoughts on the issue.

And finally to say I didn't really mention NGOs during the course of my speech because I have been so impressed with their compassion and inspired by it. It is really not a question of whether they are going to participate. It is how we get them to participate in these investigations and support the victims once we find them.

I am prepared for any questions you may have. Thank you.

[The statement of Lieutenant Marsh follows:]

PREPARED STATEMENT OF LT. DEREK J. MARSH

MARCH 20, 2007

Introduction

I became involved in working with federal, state, and local agencies regarding human trafficking in 2004. I joined the Orange County Human Trafficking Task Force (OCHTTF)—at that time, a loose knit, unfunded collaboration of agencies concerned with the issues surrounding human trafficking. Over the course of the next three years, my agency (the Westminster Police Department, CA) attempted to proactively pursue human trafficking cases while teaming with Immigration & Customs Enforcement, the Federal Bureau of Investigation, the Department of Labor Wages & Hours Division, and a host of passionate, non-governmental agencies, indirectly headed by CSP, Inc.'s Director of Victim Services Ronnetta Johnson.

Currently, thanks to Congresswoman Loretta Sanchez, the OCHTTF receives funding for administrative support and law enforcement outreach, training, and overtime. Thanks to Marissa Ugarte of the Bilateral Safety Corridor Coalition, via

a contract with the Department of Health & Human Services, OCHTTF participates in the Unity Coalition program funding, allowing for dedicated efforts to be made regarding community outreach and awareness. Our meetings have gone from quarterly to monthly, with attendees filling the room. Recently, OCHTTF participated in formal strategic planning sessions, and our members are more focused than ever on developing meaningful partnerships to support our primary goal of eliminating human trafficking. Local university representatives, namely Vanguard University's Sandie Morgan and California State University Fullerton's Rosalina Camacho and Dr. Rebecca Dolhinow, have coordinated seminars and symposiums on human trafficking leading to the participation and raised awareness of hundreds of people. The OCHTTF has been fortunate, both in supporters, resources, and an ever increasing willingness to participate by its stakeholders.

Yet, for most of the three years I have participated as the co-Chair for OCHTTF, we have experienced ongoing collaboration challenges, too. Four of the most significant issues with which I have experience, include:

1. The "severe" definition of human trafficking at the federal level, which has been mirrored by many states as well (including California), has hampered the ability of prosecutors to pursue human trafficking charges against subjects. This is especially true with regards to the commercial sexual exploitation aspect of trafficking.
2. Balancing local and federal approaches to the investigative process.
3. Economic sustainability impacts the capacity and efficacy of human trafficking task forces.
4. Disparate estimates and actual measures regarding human trafficking victims and nebulous outcome expectations contribute to the unwillingness of local law enforcement to dedicate resources (i.e., personnel) to human trafficking task forces and enforcement efforts.

"Severe" Human Trafficking

The emphasis on "severe" human trafficking has undermined many potential human trafficking investigations. The federal severe definition has cascaded into the state definitions, and has become a crutch, used predominantly during commercial sex trafficking, to nullify local efforts to charge suspects with human trafficking. A reassessment of the severe definition of human trafficking is warranted to determine if it can be modified to address the realities local law enforcement is more likely to encounter.

As the panel knows, the federal law regarding human trafficking (HT) originated as a grassroots concern regarding domestic and international trafficking. Non-government organizations (NGOs) led the campaign to have the Trafficking Victims Protection Act of 2000 (TVPA) adopted as law. Before 2000, federal prosecutors had no law directly addressing human trafficking; instead other federal statutes had to be applied in order to prosecute suspects in human trafficking. NGOs and supporters used testimonies of trafficking victims to provide an international and domestic viewpoint underscoring the imperative to have a federal law created. They relied on egregious examples of human trafficking to make their points. General and personal narratives of beatings with hangers, gang rapes, murders, kidnapping, threats of death, chaining victims to beds, extended isolation, forced abortions, food, water and medical deprivation and inescapable debt were used to demonstrate the compelling need for HT laws and victim support. The fact these stories were true added a crucial human dimension to the issue.

Severe human trafficking cases, both domestic and transnational, provide compelling narratives. During the course of my relatively short involvement with human trafficking, every seminar and training I have attended emphasizes these cases, creating an expectation of extreme, inhumane treatment leveled against unwitting immigrants. Federal agencies in Orange County, California, recently completed our first human trafficking prosecution involving child slavery. The case facts paralleled many of the severe depictions of human trafficking: the female child was sold into slavery by her parents in Egypt, kept in the garage on a urine soaked mattress for years, had to perform menial chores at the private residence, was not allowed outside contact, including education, and had to wash her clothes out of a bucket while the traffickers and their children enjoyed all the modern amenities. This case shocks the conscience of most people.

This case, however, is not representative of the commercial sex exploitation cases involving illegal immigrants we have encountered and attempted to develop at the local level. Instead of outright force and physical coercion, we are finding victims who are subjected to more psychological and situational coercion and duress tactics. In one case, we discovered residential brothels using women from Malaysia and Singapore. Before we knew all of the information below, we offered to have the local

ICE agents and Assistant United States Attorney take the case, but it was rejected. In this case, which is still undergoing prosecution for state charges of pimping and pandering, the following conditions were found to exist:

- Their passports, identification of all types, and valuables were immediately taken
- The women are naturally isolated by language, social and cultural barriers
- Brothels were secured with closed circuit TV, cameras surrounding the location, and staff
- The money the women take in and receive are controlled by the traffickers
- The victim's movements are controlled by the suspects (escorted everywhere)
- Consequence for taking a day off—placed off site at a bad motel at their expense with escort.
- They were required to work 21 day cycles, with 7 days off, in accordance with their menstrual period.

In further contrast to severe trafficking, they received significant monetary compensation for their "services." This case was considered a pimping and pandering case due to the lack of "severe" elements associated with the prostitution of the women.

This case is not atypical of the cases we have found when attempting to proactively pursue commercial sex exploitation of illegal immigrants. I had the privilege to participate in a panel with Dr. Laura Lederer (of the State Department) and Lisa Thompson (trafficking advocate for the Salvation Army) a month ago. Both claimed all human trafficking is necessarily severe, and that the term severe was added to the TVPA of 2000 to ensure its passage. I appreciate the need for legislative compromises, but would question the need to keep this terminology seven years after the statute has been in effect.

Regarding commercial sex exploitation, Farley et al. (2003)[1] surveyed prostitutes in nine countries (including the United States) and found that 87% had experience at least one incident of violence, 57% of prostitutes have been raped, a majority (68%) showed clinical symptoms associated with post traumatic stress disorder, and 89% responded that they needed to get out of prostitution. These findings and others led the authors to conclude their report disputes the contention "that prostitution is qualitatively different from trafficking" (Farley et al., 2003).

My personal perspective on the situation is this: The federal government did not want to get into the business of enforcing prostitution in the domestic arena, but was compelled to take a stand in reference to confirmed reports of severe human trafficking. The severe terminology and the transnational emphasis on victims addressed the need to condemn human trafficking without getting involved with pimping and pandering at the local-state levels. However, human trafficking has evolved over the seven years of the statute, and now we have domestic trafficking of citizens, with a special focus on juveniles, who are considered trafficking victims based on their age (less than 18 years old). In the meantime, states began adopting human trafficking laws, predominantly mimicking the severe language of the federal law.

But the application of human trafficking into the domestic venue has muddied the perception of its relevant elements, especially with regards to the immigrant emphasis and egregious acts. How do you claim a 17 year old American citizen who is a prostitute with a pimp is a human trafficking victim and an 18 year old American citizen who is a prostitute with a pimp is not? In application of the law over time, human trafficking has transformed into protecting children, women and men from labor and sexual exploitation, regardless of citizenship. If there is no qualitative difference between a prostitute and a trafficking victim as Farley et al. (2003) assert, and teenage prostitutes who are American citizens are human trafficking victims, then pimps are human traffickers—exploiters of people who prostitute.

A logical next step is to draw parallels between American pimps and panderers (*domestic* human traffickers exploiting citizens) who are able to create psychological dependency in their prostitutes (exploited citizens) and the pimps and panderers (*transnational* human traffickers exploiting immigrants) who are able to create psychological dependency in their prostitutes (exploited immigrants). And how much easier must it be to psychologically entrap a foreign national with severe language, social and cultural limitations (especially if they are here illegally with no documents) than it is to entrap an American citizen? The severe definition of trafficking, along with the many egregious narratives substantiating it, serve to undermine the less dramatic but significantly more prevalent exploitations of immigrants and citi-

[1] Farley, M., Cotton, A., Lynne, J. et al. (2003). "Prostitution & trafficking in nine countries: An update on violence and posttraumatic stress disorder", *Journal of Trauma Practice, vol.2,* 33–74. Retrieved from *www.prostitutionresearch.com.*

zens. The language of the federal law is overdue to be changed to reflect the current research findings and federal enforcement practices.

The good news at the local level is we do not require a human trafficking law to arrest traffickers. We have an array of local laws and some federal laws that can provide significantly more jail time than typical human trafficking convictions. From a local perspective, I have still made an arrest and provided the opportunity for victim services to exploited people. And, if a local law enforcement agency becomes aware of a rare egregious case involving severe human trafficking, I have no doubt they would actively pursue the case, collaborating with as many federal and local agencies as necessary in order to complete the investigation and prosecution.

The bad news at the local level is local law enforcement is reticent to engage their limited resources in pursuit of human trafficking suspects and victims when previous state laws suffice and local political and organizational imperatives do not necessarily seek to forward the vague and apparently contradictory federal statutes. Based on my experience, federal agencies will not collaborate unless juveniles are identified or severe elements can be proven before arrests are made. In the end, extreme legal definitions mitigate local and federal enthusiasms from a daily commitment perspective.

Balancing Local and Federal Investigative Approaches

The Westminster Police Department has had the opportunity to partner with ICE & FBI in several potential commercial sex exploitation investigations involving immigrants. These investigations revealed significant differences in the federal versus local expectations regarding the normal course of human trafficking investigations. The federal perspective, from a 10,000 foot view, relies on intelligence gathered via surveillance, PEN registers, and wire taps over months (and sometimes, years) to fully describe the criminal enterprise, identify as many of the suspects as possible, assess potential assets, and develop as much of the case prior to arrests as possible. In part, I have been led to understand this investigative process is a result of the federal prosecution requirements. Also, federal agencies have access to greater personnel and technical resources, which allows for these long term investigative techniques to be employed more readily. In addition, substantial, intricate, long-term cases can lead to accolades for the involved agents, as well as potential positive career options.

The local approach to investigations involves a more short-term, pragmatic view of the investigative process. Suspects, victims and customers are our primary sources of reliable intelligence: surveillance is used to confirm the activity, and we wait (usually) until the arrests are made to get call histories out of the phones belonging to the involved parties. We do not have the personnel resources to devote to several months of investigation; our local imperatives must be balanced with these attempts to achieve federal priorities. For example, we received information from a reliable informant regarding a residential brothel operating on the borders of our city. We staked out the location, confirmed the traffic, secured and served a state search warrant involving Korean immigrants being sexually exploited. This investigation led to a higher level suspect, whom managed multiple residential brothels using primarily Korean immigrants. In summary, the local-state approach involves a more rapid turnaround, an emphasis on arrestees and victims providing the most credible information and a culture which rewards investigators who complete the most investigations using the limited amount of technical and personnel resources available.

These differences in approach at the federal and local levels are not insurmountable; but role clarification and agreed upon information sharing is critical to successful collaborations. Local investigators can be a productive resource for federal agents, generating arrests, victims, and some basic technically related intelligence (like cellular phone records). Federal agents can supplement this intelligence through their extensive records systems, as well as assisting in services required by illegal immigrants in conjunction with NGO victim service providers, as appropriate. This aggregate intelligence can then be leveraged with the more extensive resources available to federal agencies to identify and dismantle criminal enterprises. The success of this model relies on the ongoing cooperation of all the agencies involved, and involves a commitment to share intelligence throughout all phases of this process.

Economic Sustainability

Attempting to administer a task force without financial backing is problematic, at best. Non-funded task forces are at the mercy of the collateral discretion of agencies that wish to participate. OCHTTF was non-funded for two and half years. We held quarterly meetings, many of which were sparsely attended. Participation in strategic planning, goal setting, and information sharing was dependent on the discretionary capacity of the participants. In fairness, federal agencies participated and

shared their perspectives most consistently; in large part, their participation reflected the federal mandates under which they operated. Non-government organizations participated with relative consistency, too; their degree of participation seemed to reflect how closely their mission mirrored OCHTTF's. Local law enforcement participation was anemic; the Westminster Police Department was the only consistent participant in OCHTTF while it was non-funded, and that was primarily because of my central role in the task force. Without financial support, task forces are ad hoc, at best. Their ability to accomplish strategic and tactical tasks is inconstant. Their capacity, in the sense of ongoing personnel and planning commitments, is haphazard.

On the other hand, being co-Chair of a funded task force is invigorating. Many more agencies attend much more consistently. Attendees are more willing to participate in short-term requests for outreach and training. More minds contribute to strategic planning and goal setting, creating a more synergistic and comprehensive local human trafficking agenda. More federal agencies participate than before, and more NGOs attend, as well. Local law enforcement participation doubled, thanks to grant from Congresswoman Loretta Sanchez; however, local law enforcement participation is still a significant challenge.

The local law enforcement challenge will require funding to be more directed at assigning personnel to enforcement activities and/or investigative overtime. Without this type of funding, local imperatives will override the federal focus on human trafficking investigations, prosecutions, and the subsequent protection of victims and prevention of ongoing victimization. One possible ameliorative to this issue would be to federally support businesses with transnational presence to focus their corporate citizenship initiatives towards local human trafficking task forces. I do not consider this kind of support a panacea; however, corporate sponsorship of seminars, symposiums, and other related events might reinforce the participation of local agencies.

In addition, federal financing of task forces in the future might want to emphasize the creation of enforcement task forces joining federal, state, and local public safety components. In my experience, this would probably best be coordinated by county law enforcement, though I hesitate to proffer this model as the only viable possibility. Funding for counties willing to create a task force, regardless of having significant points of entry, should be considered. The current emphasis on counties with significant points of entry discourages the creation and participation of local law enforcement in trafficking investigations. The bottom line is that there are many more jurisdictions than the 42 currently funded that have the potential for identifying and prosecuting human trafficking.

Overall, local law enforcement does not appear to be motivated to participate simply because a local task force has received funding. Funding opportunities should be tied to local agency participation not just at task force meetings, but also with respect to enforcement activities.

Conflicting Victim Estimates and Unclear Outcomes

It is no secret there exist significant discrepancies between the estimates of human trafficking victims and the actual victims we have been able to identify. Without belaboring the issue, the recent Government Accounting Office report (GAO–06–825, July 2006) titled *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts,* identifies many of the challenges associated with accurately representing human trafficking activities and victims. The GAO report addresses the international aspects of trafficking; the findings resonate with local perceptions, as well. The most pertinent discussion referenced the lack of performance measures, which have led to vague outcomes (p. 3). At a different level, these vague outcomes are a consequence of the disparity between the severe definitions of trafficking at the federal and state levels of government versus the less than severe cases our investigations indicate are significantly more prevalent. It is difficult to generate local enthusiasm for human trafficking, much less local and federal collaborations, without clear expectations regarding human trafficking enforcement efforts.

Conclusion

I have attempted to address four areas that impact local and federal collaborations. The semantics of the human trafficking legislation is crucial, and is resulting in trafficking cases not being identified, investigated and prosecuted as such. The frustrations in finding cases involving trafficking, but not severe trafficking, put strains on the federal and local collaborations and information sharing commitments. Investigation methodologies can also hamper trafficking investigations and effective collaborating. Clarifying roles and expectations of federal and local enforcement personnel goes a long way towards building mutual trust. Economics are a

basic reality: personnel time is money, as are the lost opportunities a local agency incurs by committing resources to any enforcement activity. Paying local law enforcement for their participation in human trafficking activities, especially investigations, goes a long way towards ensuring their presence. Finally, challenges in estimating and tracking trafficking cases are a result of the three other issues discussed. Applicable laws, clear role expectations and program funding all support finding more victims, and helping to determine achievable measures and performance outcomes.

Overall, co-Chairing the OCHTTF has been extremely rewarding. Everyone shows a passion for protecting victims and preventing the exploitation of people, and many have dedicated many hours to ensuring these crimes are not forgotten. NGOs' commitment is remarkable; their dedication to this cause has centered my efforts on more than one occasion. I would like to thank the Committee for its time and willingness to hear and listen to my perception of issues, as a local law enforcement representative, impacting human trafficking. I hope my insights, as narrow as they may be, contribute to your greater understanding of the local dynamics of human trafficking.

Ms. SANCHEZ. Thank you, Lieutenant.

I will ask Ms. Jordan to summarize her testimony in 5 minutes or less.

STATEMENT OF ANN JORDAN, PROGRAM DIRECTOR, INITIATIVE AGAINST TRAFFICKING IN PERSONS, GLOBAL RIGHTS

Ms. JORDAN. Thank you, Madam Chair.

I am honored to participate in today's hearing and to speak about trafficking six years after the passage of the Victims of Trafficking and Violence Protection Act. In my brief time, I would like to discuss three areas of great concern to my organization, as well as to others.

The first issue focuses on resources for NGOs and law enforcement on human trafficking. The first part of this is the need for the U.S. to maintain its anti-trafficking focus on the 13th Amendment prohibition on slavery and involuntary servitude.

Current federal law enables prosecutions of all enslavers and provides protection for all victims. Among those convicted to date are the enslavers of a 10-year-old Egyptian girl in Orange County, California who was held in a dark, unventilated garage, forced to take care of the house and five children, deprived of an education, and subjected to emotional and psychological abuse.

Also convicted were the traffickers in the largest case to date of 275 women and men from Vietnam and China who were held in forced labor in American Samoa and subjected to threats, serious physical assaults, inadequate nourishment, rapes, and an endless cycle of debts?all of which was enforced by security guards.

However, this broad framework is being eroded by a U.S. campaign that equates prostitution with trafficking and is redirecting resources to end prostitution, rather than to end trafficking.

The campaign is based on the unproven belief that all prostitution, even legal prostitution in Nevada, is trafficking, and so criminalizing prostitution, including clients, is presumed and promoted as a means to stop prostitution and to stop trafficking for prostitution. It also ignores the reality that clients, brothel owners and pimps are arrested by the thousands each year, yet prostitution and trafficking into forced prostitution continues.

The campaign is included in a 2003 amendment to the TVPA, the trafficking law which requires grantees to adopt a policy stating

they do not promote, support or advocate for the legalization or practice of prostitution using U.S. government funding and even non-U.S. government funding.

At first blush, this might appear to be a reasonable requirement because organizations obviously are set up to help trafficking victims, and even those refusing to adopt the policy do not promote prostitution. However, the law is highly problematic.

First, it is a gag rule. It prevents service providers, activists, scholars and organizations to exercise their First Amendment right of freedom of speech, and it prevents them from using their non-U.S. government funds to debate, analyze and speak out freely about the question of a relationship between the legalization of prostitution and human trafficking, thereby cutting off the free flow of ideas necessary for developing effective do-no-harm policies.

It is also causing organizations to restrict their activities in who they work with. It is causing organizations to reject U.S. funding by the organizations that are highly qualified and been funded in the past. And it has caused some harm to actual victims of women in prostitution because it has increased the stigma and promoted foreign governments to really crack down on women in prostitution.

The campaign is also reflected in the reauthorization act in 2005 that calls for research on sex trafficking, which by definition in federal law includes all prostitution. It establishes a grant program for state and local law enforcement. Now, we believe that there is a large role for the federal government to play in addressing the harms of prostitution and the causes leading youth and adults to enter into prostitution in the first place, and that prevent them from exiting.

The federal government could, and I think should, provide much-needed compassionate and supportive funding for treatment services and prevention programs. However, shifting money and federal staff to investigate and prosecute non-trafficking prosecution activities would be a bad outcome. First, there are dedicated trafficking units in Justice and the FBI and in ICE, and their task would be diverted to going after prostitution.

Second, prostitution is not per se a violation of the 13th Amendment, so it is not really a federal crime unless there is a federal law involved and federal resources would be shifted.

Very quickly, I also want to just highlight a number of issues that service providers say that they confront in working with people who are trafficked. I don't have time to discuss them all. They are in my testimony.

But we have situations in the United States now where unaccompanied children are languishing in inappropriate housing, and HHS needs to be empowered to determine that the child is a victim of a severe form of trafficking, and transfer them quickly to an unaccompanied refugee minor program. Right now, it is Justice or Homeland Security that makes that decision, which it shouldn't be doing because it is actually interrogating the children.

Next, we believe that trafficked children should not be interrogated unless and until HHS has made an independent finding based upon expert opinion that the child is stable and competent. Even when there is a raid, those children are highly traumatized and should not be interrogated by somebody who is a law enforce-

ment official who may have no understanding of the issues these children are faced with.

Interviews with children, anyway, should be kept in confidence by the Office of Refugee Resettlement in HHS which now shares this information with the Department of Homeland Security.

The last issue, which I won't go into, is there is a continued need for children to be able to bring their parents here to the United States to protect them and be with them. Now, the process is very slow. There is a need for people who are parents and family members who are already in the United States to have a legal status so that they are not subject to possible deportation while they are trying to help their family member who has been a victim. All of this is more fully explained in my testimony.

Thank you, Madam Chair, for this opportunity. I look forward to answering any questions you may have.

[The statement of Ms. Jordan follows:]

PREPARED STATEMENT OF ANN JORDAN

MARCH 20, 2007

Thank you, Madam Chair. I am honored to participate in today's hearing and to speak about human trafficking, six years after the passage of the Victims of Trafficking and Violence Protection Act of 2000.

My organization, Global Rights, is an international human rights organization operating in the United States and numerous countries around the world. We work with local partners and activists to challenge injustice and to amplify new voices in national and international fora. We believe that real change occurs from the ground up and so we and our partners typically work with the most disadvantaged and marginalized members of society, including people who have been trafficked and who are vulnerable to trafficking, as well as other human rights abuses.

In my brief time, I would like to discuss three issues that are of great concern to my organization, as well as other organizations:

1. The problematic consequences that arise from the U.S. government conflating trafficking with prostitution;
2. The gaps in the federal trafficking legislation with regard to the special status of trafficked children; and
3. The need for broader relief and a quicker process for granting victims and their family members immigration relief.

1. THE U.S. MUST MAINTAIN THE ANTI-TRAFFICKING FOCUS ON THE 13TH AMENDMENT PROHIBITION ON SLAVERY AND INVOLUNTARY SERVITUDE.

Current federal law enables prosecutions of all enslavers and provides protection for all victims. The 2000 Victims of Trafficking and Violence Protection Act defines traffickers as people who use force, fraud or coercion to hold adults or children in forced labor, slavery, involuntary servitude or debt bondage or to cause adults to perform commercial sex acts. It further defines trafficking as causing a minor to engage in commercial sex acts, with or without force, fraud or coercion. Thus, the federal law ensures that all victims of trafficking into homes, brothels, fields, streets and factories are recognized and that all traffickers and enslavers are subject to federal prosecution. It recognizes that traffickers are equal opportunity enslavers who are more than willing to treat human beings, including children, as chattel in violation of the 13th Amendment prohibition on slavery and involuntary servitude.

From 2001 through 2005, 298 defendants have been charged with trafficking offenses and 140 have been convicted as of the end of 2005.[1] Among those convicted were the enslavers of a 10 year old Egyptian girl in Orange County, California, who was held in a dark, unventilated garage, forced to take care of the house and 5 children, deprived of an education and subjected to emotional and physical abuse.[2] Also

[1] Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons, FY 2005, p. 16.

[2] United States v. Ibrahim and Motelib (2/2/05) (C.D. Cal.)

convicted were the traffickers the largest case to date, that of 275 women and men from Vietnam and China who were held in American Samoa in forced labor, and subjected to threats, serious physical assaults, inadequate nourishment, rapes, and an endless cycle of debts, all of which were enforced by security guards.[3]

The law has also provided benefits and services to 841 victims from 2001 to 2005. While certainly more resources would increase the number of cases uncovered and prosecuted and victims served, the law remains, nonetheless, an excellent roadmap for further expansion and deserves our support.

However, this broad framework is being eroded by a U.S. campaign that equates prostitution with trafficking and is redirecting resources to end prostitution rather than to end trafficking. This anti-prostitution focus is affecting delivery of services to victims and we are concerned that federal investigators and prosecutors could be assigned to non-trafficking prostitution cases instead of 13th Amendment trafficking, slavery, forced labor and involuntary servitude cases.

Over the last six years, the broad scope of the U.S. anti-trafficking policy has been gradually narrowed to fit an anti-prostitution agenda that is based on the unproven belief that all prostitution (even legal prostitution in Nevada) is trafficking, and so criminalizing prostitution, as well as clients, is promoted as a purported means to stop prostitution and to stop trafficking for prostitution. This approach assumes that, once all men who buy sex are in prison, all women in prostitution will magically disappear and find other means of support. It also ignores the reality that prostitution is illegal in almost the entire United States and that clients, brothel owners and pimps are arrested by the thousands each year, yet prostitution and trafficking into forced prostitution continues. Obviously, the law enforcement approach has had little impact upon the underlying factors that lead to prostitution and that enable traffickers to force people into prostitution (and other sectors).

This anti-prostitution approach is reflected in policies and laws that have produced negative, but not unexpected, consequences. The major vehicle for enforcing this approach upon the non-governmental sector is a 2003 amendment to the TVPA that restricts funding to organizations that adopt a policy stating that they do not 'promote, support or advocate for the legalization or practice of prostitution'.[4] Organizations must pledge not to use U.S. government funding and *even non-U.S. government funding* in any way that the U.S. might decide violates the prohibition. At first blush, this might appear to be a reasonable requirement because organizations set up to help trafficking victims (even those refusing to adopt such a policy) do not promote prostitution. Nonetheless, the law is highly problematic at many levels.

The anti-prostitution 'gag rule' deprives grantees of the First Amendment right to freedom of speech. It forces U.S. grantees to relinquish their First Amendment right and forces non-U.S. grantees to relinquish their internationally-recognized right of freedom of speech and thought, including the right to debate, analyze and speak out freely, even about the question of a relationship between legalization of prostitution and human trafficking. The trafficking 'gag rule' only permits debate, research or discussion on the relationship between criminalization of prostitution and trafficking. Thus, university grantees cannot hold conferences in which legalization is discussed and grantees cannot attend such conferences, write about the impact of criminalization on women in prostitution or trafficking, or engage in activities that may be perceived by the US as 'promoting, supporting or advocating' legalization of prostitution.

One grantee, out of fear of losing funding, prevented a prominent, highly-respected expert from attending an international workshop in which participants discussed trafficking, prostitution, labor, migration and the U.S. gag rule. Also, many organizations have purged prohibited words such as 'sex work' and 'harm reduction' from their materials and websites because they know that U.S. officials are scanning websites in search of prohibited words, alleged by U.S. officials to be evidence of 'promoting' prostitution. Obviously, the gag rule is cutting off the 'free flow of ideas' needed to develop sound and effective evidence-based policies on human trafficking and prostitution, which both affect the lives of millions of people around the world.

The gag rule is also causing organizations to restrict activities for fear of losing U.S. funding. The terms 'promote, support or advocate' are vague and, in my research with organizations in 6 countries,[5] not one US government official has been able to explain to anyone what these words mean. In many countries, the U.S. is one of the main donors on trafficking, which is causing some foreign NGOs to stop

[3] United States v. Kil Soo Lee et al. (D. Hawaii)
[4] Trafficking Victims Protection Reauthorization Act of 2003, PL 108–193.
[5] United States, Russia, Poland, Moldova, Nepal and Thailand.

working with people in the sex sector or collaborating with NGOs working with sex workers.

Despite the lack of guidance on what violates the gag rule, we do know that organizations cannot receive U.S. funding if they support of the rights of persons in the sex sector or support sex worker collectives, even if the women are simply asking for legal protections from police and client violence, education for their children, 100% condom usage, support to keep children out of prostitution and rescue trafficking victims, as well as the panoply of rights that non-sex workers take for granted. We have a report of a grantee that stopped allowing a collective of sex workers to use its premises for meetings apparently out of concern that the presence of sex workers on the premises talking about their work and their rights would threaten the organization's U.S. funding. We do not believe the U.S. should be using its considerable resources and power to undermine the ability of any people, even those in the sex sector, from seeking their basic rights.

The gag rule leads to qualified NGOs rejecting US funding. My research also reveals that the anti-prostitution gag rule is causing effective and respected organizations to cease applying for US funding because they are not willing to make any statements or take a position that could jeopardize their relationships with, or further stigmatize, the women with whom they work. They prefer to remain grounded in the reality of their countries and refuse to accept money to promote a policy that they know is counterproductive and ineffective in reducing prostitution or trafficking in their own countries.

The anti-prostitution language contributes to the stigma suffered by persons in the sex sector. People working in the sex sector are subjected to discrimination, exclusion and social condemnation. When a woman is trafficked into the sex sector, she is subjected to the same type of treatment from society and even family members and so her contact with service providers must be non-judgmental, non-reformist and compassionate. Since U.S. funded service providers must now declare their opposition to the industry into which many women are trafficked, those service providers cannot say or do anything that might remove the stigma of prostitution from the victim, since that could be interpreted as 'supporting' prostitution. Partner organizations that work extensively with people in the sex sector, including trafficked women, report that, if a woman feels any negativity coming from the service provider she is highly likely to walk out and stop receiving much-needed services, and also not cooperate with law enforcement.

Furthermore, victims who do not feel comfortable with their service providers may find their only way to make a living is to return to prostitution as a quick means to support themselves and their families back home, and perhaps to pay off the debt incurred by them and their family members for migrating. If they feel that non-judgmental support is unavailable, they may decide to simply disappear into the underground economy, even into prostitution, rather than submit to demoralizing treatment by service providers who have signed the anti-prostitution gag rule.

One Asian organization reports that U.S. influence on its government and funders is creating divisions and increasing the stigma against people in prostitution. The U.S. is promoting an anti-prostitution agenda in many countries under the banner of 'anti-trafficking' and, in some places, it is dividing the anti-trafficking community and demonizing the very sex workers who are working to stop child prostitution and trafficking into prostitution. The U.S.-led campaign against prostitution is also indirectly giving permission to governments to crack down on women in prostitution and to harass women migrants suspected of being prostitutes. It is also undermining efforts to create a regional network of sexworkers that could collaborate on health, HIV/AIDs, rights, anti-trafficking and other issues.

These negative consequences would be removed if grantees were no longer required to give up their First Amendment right to use their *non-U.S. government resources* to work with all persons in need of their care, to speak out against injustice and to engage in research and to debate all of the causes and consequences of trafficking, including an exploration of the possible impact of legalization, as well as the criminalization, of prostitution on trafficking.

A second manifestation of the anti-prostitution campaign encroachment upon anti-trafficking work is a section of the 2005 Trafficking Victims Protection Reauthorization Act[6] that focuses resources on non-trafficking anti-prostitution activities. We are concerned that these provisions could be used to divert federal funding, investigators and prosecutors to concentrate on non-trafficking prostitution cases. As mentioned previously, the definition of trafficking requires the use of force, fraud or coercion except in cases involving minors caused to engage in 'commercial sex acts.' Trafficking falls under the 13th Amendment pro-

[6] Sections 201–207.

hibition of slavery and involuntary servitude, all of which negate the free will of the individual and constitute grievous human rights abuses. The law covers all trafficking of persons in the United States into homes, brothels, factories, streets and farms. It also covers trafficking of foreign nationals and U.S. citizens and trafficking into and within the United States. It does not cover prostitution (or farm work, domestic work or factory work) unless the above conditions are met.

However, the 2005 Reauthorization Act lays the groundwork for federal investigator and prosecutor involvement in non-trafficking prostitution cases as well as diverting trafficking funding to non-trafficking prostitution cases. It calls for research on "sex trafficking," which includes prostitution as well as trafficking into prostitution.[7] It also establishes a grant program for state and local law enforcement to carry out anti-prostitution activities. We are concerned that this law could divert scarce and badly-needed anti-trafficking resources to non-trafficking prostitution activities.

We do believe there is a large role for the federal government to play in addressing the harms of prostitution and the causes leading youth and adults to enter into prostitution in the first place and preventing them from exiting. Too little is done and too little compassion is evident in our society's current zeal to lock up sex workers and its willingness to ignore the plight of these vulnerable and marginalized members of our society. The federal government could provide much-needed compassionate and supportive funding for treatment, services and prevention programs. However, the funds for such work should not reduce the resources or the investigatorial or prosecutorial manpower needed to find and prosecute trafficking enslavers and to protect their victims.

Shifting money and federal staff to non-trafficking prostitution activities would be a bad outcome on several counts. First and most importantly, such a focus could undermine and weaken the ability of the newly-created and highly-specialized Justice Department Trafficking Unit and the 32 plus specialized trafficking task forces[8] to carry out their mandates. The task forces are elite units of experts whose job is to prosecute 13th Amendment violations involving enslavement of extremely vulnerable people on U.S. soil. Without adequate dedicated resources for slavery, trafficking and forced labor cases, it would be highly likely that children like the girl held in involuntary servitude in Orange County and forced laborers like the 275 workers held in American Samoa would not be rescued and their traffickers would not be prosecuted as resources would be focused on prostitution-related crimes. Traffickers would be free to operate with impunity.

Second, although earning money off of prostitution is a crime in most of the United States, it is not a violation of the 13th Amendment unless trafficking, slavery, involuntary servitude or forced labor is involved. Federal resources must continue to be deployed to stop the 'worst of the worst' predators—the trafficking enslavers. Third, prostitution is, in the majority of cases, a state-level offence, and tens of thousands of pimps, brothel owners and clients are prosecuted by local jurisdictions each year. Federal law enforcement intervention simply is not warranted without a request from local officials and federal resources would simply be wasted in duplicating the efforts of local law enforcement officials. Fourth, prostitution cases that could be handled by state courts would clog federal courts. Fifth, prosecutors would have to find a federal link to the crime, which is not necessary at the state level, certainly making it more difficult to achieve federal convictions.

It is important to ensure that resources—financial and otherwise—for *trafficking* are adequate and not shifted in any way for *non-trafficking prostitution* cases. If members of Congress wish to fight 13th Amendment crimes as well as seek solutions to the problem of prostitution, then it has the power to authorize separate resources for both. Funding for trafficking and anti-prostitution investigations, prosecutions and services and support should be kept separate and trafficking funds should not be considered fungible resources for combating prostitution.

2. The 2000 VTVPA does not fully take into account the special needs of trafficked children.[9]

The needs and special circumstances of children[10] were not sufficiently considered in drafting the 2000 TVPA. Although the 2003 and 2005 Reauthorization bills con-

[7] Sex trafficking "means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." 22 USC 7102(9).

[8] Established by the Departments of Justice, Health and Human Services, Homeland Security, Labor and State, as well as NGOs.

[9] I would like to thank Melanie Orhant at Break the Chain Campaign for contributing extensively to this section.

[10] For the purposes of this paper, the children are non-U.S. citizens or Legal Permanent Residents.

tained some provisions for trafficked children, systematic solutions must be enacted to address the numerous issues that service providers, attorneys and trafficked children confront when they negotiate the legal system. Among the many concerns of service providers discussed below, the first issue is the most in need of urgent attention.

Unaccompanied children are languishing in inappropriate housing and HHS should be empowered to transfer them quickly into the Unaccompanied Refugee Minors program. Congress recognized that minor victims of a severe form of trafficking should not be compelled to speak with law enforcement in order to receive visas, protections and services and so minor victims do not need the T visa requirement to "comply with a reasonable request of law enforcement." Accompanied minors, who live with family members or guardians, are able receive a T visa and benefits without having to speak with law enforcement. Once they obtain their T visa, the Office of Refugee and Resettlement (ORR) issues a Letter of Eligibility that enables them to receive benefits on par with refugees.

However, unaccompanied children are not so lucky. They have no guardian or parent or any supervised living situation and so they need long-term placement and care in the Unaccompanied Refugee Minors (URM) program.[11] Children who are detained by Immigration are placed in the Division of Unaccompanied Children Services (DUCS) program, which is funded and monitored by ORR. Trafficked children in the temporary DUCS detention and other unaccompanied trafficked minors need to be moved into the long-term URM foster care program.

In order to get into the URM program, ORR must issue a Letter of Eligibility for the child. According to the Interagency Memorandum of Understanding between the Departments of Health and Human Services, Homeland Security and Justice signed in 2004, minors will receive a Letter of Eligibility only after Justice or Homeland Security determines that the minor "has been subjected to a severe form of trafficking in persons."[12] The determination is made after an interview by Justice or Homeland Security with the unaccompanied child, which effectively negates the protections Congress included in the 2000 TVPA to protect minors from the stress of such interviews. Unaccompanied minors are forced to meet the same requirement as adults to cooperate with law enforcement.

Unaccompanied minors who are unwilling to speak with law enforcement are pushed into a legal limbo in which they can either try to fend for themselves or being held as a 'material witness' and being forced to testify. In some cases, it could result in the child being faced with possible deportation.

> **Example:** A trafficked child was placed in removal proceedings and sent to the DUCS program. Her attorney informed her of her options—to speak with law enforcement or forego services—and she decided not to talk to law enforcement. As a result, she was sent back to her home country where she had nobody to take care of her and had no social support.

Despite the fact that a large percentage of trafficking victims are children, only 34 letters granting eligibility for benefits to child trafficking victims were issued in FY2005, partly due to this mandatory requirement for minors to cooperate with law enforcement. This entire process and this result runs contrary to the intent of Congress.

Members of Congress have called upon HHS to rescind the practice of requiring children to cooperate with law enforcement in order to receive letters of eligibility.[13] "By providing benefits and services to child victims as soon as they are identified, HHS will be in the best position to protect children and provide a safe and stable environment. Whether a child ultimately decides to serve as a witness in the prosecution of his traffickers is a decision the child can make after his situation has been stabilized." The response of Michael O. Leavitt, Director of HHS, was failed to address Members' concerns and simply reiterated existing policy to refer to Justice and Homeland Security.[14] He also stated "that HHS will [not] accept unreasonable delays in the enrollment of the juvenile or that the juvenile. . ."

From the child's perspective, what is a "reasonable" delay when it comes to living in an unstable situation, living in a DUCS facility, not receiving treatment for the serious trauma of trafficking and not receiving dental or medical care? Is it reasonable for a child to wait a day? a week? two months?

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[11] Funded and monitored by ORR and administered by Lutheran Immigration and Refugee Service (LIRS) and U.S. Conference of Catholic Bishops (USCCB).

[12] See attached Memorandum of Understanding.

[13] See attached letter to Secretary O. Leavitt, U.S. Department of Health and Human Services dated July 26, 2005 from Senator Sam Brownback, Congressman Frank R. Wolf, Congressman Joseph H. Pitts, Congressman Christopher H. Smith, and Congressman Tom Lantos.

[14] See attached letter of Michael O. Leavitt dated September 23, 2005.

Example: An unaccompanied child is a victim of horrible case of trafficking in which she was beaten, abused, denied access to medical care, school, sleep and food and generally treated like a slave. Her attorney submits information to Justice and, after making numerous phone calls, an interview is finally arranged a month later. In the meantime, the child is living in very precarious living arrangements, in the basement of a house, is not attending school, has very little money, and is not being looked after by a responsible adult. Several weeks later, Justice finally tells ORR to issue a Letter of Eligibility, which allows the girl to enter the URM program. Ironically, officials treated this as a "fast" case because the child was on the verge of "aging" out, meaning she was going to turn 18 soon and be ineligible for the URM program. Given the conditions under which this child was living, almost two months is certainly not 'fast'.

Furthermore, HHS claims it does not allow Justice or Homeland Security to veto cases, but a veto is unnecessary since HHS relies upon the decision of Justice or Homeland Security. Thus, each time neither agency interviews an unaccompanied minor, they are 'vetoing' the case and each time they delay an interview, they are at least temporarily 'vetoing' a case. This result is not and was not the intent of Congress. Unless Congress steps in, minor victims of trafficking will continue to be denied their right to a safe living environment and immediate assistance.

An easy solution to the anomalous status of trafficked minors would be to empower HHS with exclusive authority and responsibility to make prompt determinations that a child is a victim of a severe form of trafficking. HHS would then be able to move children swiftly into the URM program where they can receive necessary emergency assistance such as medical care, relocation, family reunification, and mental health care.

One proposed solution for members to consider is contained in HR 270, which was introduced by Congressmen Smith and Wolf, in which they propose that HHS is to have exclusive jurisdiction for determining whether or not a child is a victim of trafficking.[15]

Trafficked children should not be interrogated unless and until they are assessed to be stable and competent. Trafficked children are often picked up in raids and immediately interrogated by law enforcement officials who have no understanding of the fragile state of the trafficked child. Congress has determined that trafficked children should be spared the trauma of working with law enforcement in order to receive immigration relief and services. Similarly, children who have been psychologically and physically abused, even raped, should not be interrogated unless the Department of Health and Human Services has made an independent finding based upon an expert opinion that the child's mental and physical health is stable and that the child is competent and capable to participate as a witness in such efforts.

Once minor children are identified as victims, their derivatives (family members) should receive parole, humanitarian assistance, or continued presence derivative status, whichever is appropriate. Under current law, parents, unmarried siblings under 18, spouse and children of a T visa holder under 21 (when filing the T visa application) may apply for a derivative T visa. However, many children do not receive a T visa for years and so they are separated from their family members for long periods of time, while they undergo very stressful circumstances, particularly if they are involved in an ongoing criminal litigation. Many children are forced to choose between returning home to be reunited with family members or pursuing criminal and civil sanctions against their traffickers. This is not a choice that a child should have to make.

Family members are also often at risk of violence from the traffickers back home. The trafficking law requires the government to "protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates."[16]

Example #1: The parents of an unaccompanied child in the URM program want to come to the U.S. because the organized criminal group that trafficked the child to the U.S. has threatened them in phone calls and visits warning them that their child should not testify.

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[15] Amending 22 U.S.C. 7105(b)(1) by adding: (i) DETERMINATION—With respect to a person referred to in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph, if credible evidence is presented on behalf of the person that the person has been subjected to an act or practice described in section 103(8), the Secretary of Health and Human Services shall promptly make a determination of the person's eligibility for assistance under this paragraph.

[16] 22 USC 7105(c)(3)

> **Example #2:** An unaccompanied child was picked up in a raid and has been working with law enforcement. She has been diagnosed a severe illness. The trafficker is threatening the child to harm her mother if she doesn't pay off the debt. Additionally, the mother and brother are being directly threatened in the home country. This child's mother and eligible siblings should be allowed into the country prior to her T visa being approved.

Victims are much more able to recover from their experiences and to participate in investigations and prosecutions with the active support of their families and in the knowledge that their family members are safe from these types of threats, which are often acted upon to silence a witness.

Interviews with children in the DUCS program should be maintained in confidence by ORR. According to Amnesty International 5,385 minors were in immigration custody in 2001[17] and Lutheran Immigration Refugee Services reports that more than 7,000 undocumented children are presently in immigration custody.[18] Under the TVPA, victims of a severe form of trafficking who are in federal custody shall not, to the extent possible, be detained in facilities inappropriate to their status as crime victims. It follows, then, that trafficked children should be identified as such and then placed in a suitable facility.

Currently, there is no requirement that children entering the DUCS program be screened for trafficking. Nonetheless, the DUCS program is conducting a trafficking screening and, if a potential trafficking case is identified, these children are being referred for an in-depth intake called the "Trafficking Addendum." We applaud the DUCS program for this screening but are concerned with the use of the collected information. The Trafficking Addenda are submitted to ORR, which turns them over to Homeland Security. By turning over the Addenda to Homeland Security, ORR is violating the right of children not submit to an interview with law enforcement. In essence, the DUCS interview becomes a law enforcement interview that is carried out without the child's knowledge or consent, the presence of an attorney, a *guardian ad litum,* or even a basic understanding of how the information was to be used.

Children should be screened in the DUCS program as potential trafficking victims *without* having to submit to a de facto law enforcement interview. However, Homeland Security, with the participation and acquiescence of ORR, cannot be allowed to make an end run around the clear intent of Congress to protect children from being retraumatized and revictimized interviewing them without their permission, since the interview could lead to the forced participation of the child in a criminal case.

We call on Congress to correct this situation and ensure that the information collected is kept confidential and not turned over to law enforcement.

3. VICTIMS AND THEIR FAMILY MEMBERS NEED A QUICKER MEANS TO OBTAIN IMMIGRATION RELIEF.[19]

The process for granting Continued Presence immigration relief is exceedingly slow and harmful to victim recovery. Continued Presence (CP) provides temporary non-immigrant status and allows holders to receive an Employment Authorization Document (EAD) and access to refugee benefits. It is a quick way to solve a trafficked person's immigration issue until a T visa is eventually granted (or denied). Federal law enforcement officials may apply for CP but CP requests are processed by Immigration and Custom Enforcement (ICE). In the past, ICE was able to process these applications quickly. However, in the last year, victims of trafficking and law enforcement have been facing delays in the processing of CP applications by ICE. Delays with ICE have caused victims of trafficking to wait months for CP.

Delays by ICE cause trafficked persons numerous problems. The most egregious is the months the individual must live without an EAD, legal immigration status and access to benefits. Even when victims have come forward to work with law enforcement, CP is often, for whatever reason, delayed for an unreasonable amount of time. When trafficking victims have to wait months with no immigration relief or ability to work in sight, some decide to disappear and abandon the investigation, because they believe they will be better off working illegally than remaining indefinitely in legal limbo without the ability to support themselves and often their families back home.

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[17] "Why am I here? Children in Immigration Detention," Amnesty International, *http://www.amnestyusa.org/refugee/pdfs/children_detention.pdf*

[18] The Division of Unaccompanied Children's Services (DUCS), *http://www.lirs.org/InfoRes/faq/DUCS.html*

[19] I would like to thank Melynda Barnhart, Director, Anti-Trafficking Initiatives, International Rescue Committee for contributing extensively to this section.

Without CP and an EAD, victims are unable to rebuild their lives. They are unable to work, lack access to medical care, are separated from their family members for long periods of time, and live in increased fear for themselves and their family members back in the home country, to name just a few of the problems endured by victims without CP.[20] This immigration benefit was intended to be a quick solution to keep victims of trafficking temporarily safe in the US while they worked with law enforcement to investigate and prosecute their traffickers. Trafficking victims should not have to wait months for temporary revocable immigration relief.

Thus, we believe that CP should be mandatory if law enforcement opens a trafficking or related case. If evidence shows that it is highly likely a person has been trafficked, and even if a lesser crime is eventually charged, CP should be mandatory and applications for CP should be processed within 30 days.

CP derivative status should be granted immediately to family members of trafficking victims who are in the U.S. Derivatives in the United States currently do not have access to parole or work authorization based on a grant of CP to the potential victim-witness. CP derivative status is not available and so family members in the U.S. can be out of status until they receive a derivative T visa, possibly years after the victim receives CP. As a result, family members are unprotected from removal and could be separated from their children, including trafficked children. They do not have access to a work-permit or public benefits until a T Visa has been filed and derivative status has been granted.

In many states, derivatives without proof of an immigration status are unable to obtain a driver's license or state issued identification. Moreover, if it is necessary to relocate the victim and his/her family members because of safety concerns, then all family members need some form of valid and current identification to travel. In many cases, victims are not able to obtain employment immediately or for many months after captivity because of physical and psychological trauma or because they are minors.. With CP, family members in the country could provide much-needed financial support to the victim until she or he is able to enter the workforce.

Family members of CP recipients should be paroled into the U.S. under a derivative status. The risk of harm to family members is always present in the victim-witness' mind. In order to ease the victim's concerns and facilitate collaboration, family members outside of the United States should be paroled under CP derivative status immediately upon the issuance of CP to the victim. Not only does this guarantee that family members are secure, as required by 22 USC 7105(c)(3), but also provides family support for victims, especially those who are minors. An exception should be carved out to ensure that family members who were involved in the trafficking scheme are not paroled in just as they are not admissible or eligible to obtain a T-visa.

Thank you, Madam Chair, for allowing me this opportunity to speak. I would be happy to answer any questions you or members of the Committee may have.

Ms. SANCHEZ. Thank you, Ms. Jordan.

And now we will hear for 5 minutes or less from Mr. Cerda.

STATEMENT OF VICTOR CERDA, PARTNER, SIFF & CERDA LLP

Mr. CERDA. Good afternoon, Madam Chair. It is my privilege to appear before you as your committee evaluates our immigration system.

I would like to highlight some observations from my experience at ICE on efforts to combat human trafficking organizations that prey on vulnerable migrant populations.

Today, human trafficking has emerged as a lucrative global criminal industry that harms not only the victims themselves, but also the communities in the United States that must deal with these ruthless and often violent organizations. Clearly, ICE must continue its efforts to identify, criminally investigate, and ultimately dismantle trafficking rings. These efforts should be done with the same strength and focus DHS has placed on securing our borders.

[20] A related issue we would like to highlight is the need for increased funding for ICE to pursue trafficking investigations.

It should be understood that DHS's emphasis on border security is not exclusive of combating human trafficking, and does not occur at the expense of trafficking investigations. As you may know, many trafficking organizations exploit vulnerabilities at our borders and in our immigration system to transport their victims, including women and children, into the U.S. for exploitation and profit. In fact, increased border security may actually help to decrease the incidence of trafficking, and increase our ability to capture these criminals.

Further, intelligence and information obtained from apprehended individuals may spur investigations into trafficking operations. Ultimately, enhanced border security will deter trafficking and prevent further victimization. Combining our nation's immigration investigative expertise with customs authorities and capabilities through the creation of ICE in 2003, created not only an enhanced ability to dismantle trafficking organizations with criminal and civil charges, but also the ability to attack their financial resources through asset forfeiture.

Where trafficking cases under the Legacy INS would go cold and result solely in a civil immigration violation, the newly blended expertise in tracking assets across the world has proven an invaluable weapon to continue and expand investigations into trafficking organizations.

Another example of ICE's enhanced capabilities is the use of Civil Asset Forfeiture Reform Act notices, an authority not utilized in Legacy INS. With this authority, ICE investigators can now attack trafficking organizations by identifying the assets of those that blindly or willfully permit their properties to be used by trafficking organizations to exploit their victims for profit.

More importantly, these new capabilities have led ICE to other trafficking victims. Recent successful ICE trafficking investigations in New York City and Florida demonstrate these positive advances. While ICE utilizes its federal authorities in this mission, coordination and cooperation with state and local entities, as well as NGOs, has proven extremely beneficial. In fact, such coordination is almost essential for continued future success.

For example, arrests that could have been treated as an isolated incident of prostitution have resulted in the identification of large national trafficking organizations as a result of cooperation between ICE and state or local authorities. The nature of trafficking and trafficking rings demand such cooperation in order to be truly effective against these organizations.

I point out that this reality flies in the face of blanket policies by some state and local governments prohibiting their law enforcement agencies from partnering with ICE. Hopefully, the goal of combating traffickers will encourage the dismantling of such barriers in the interest of more effective enforcement.

Congress is supporting highlighting the importance of this issue by appropriating additional anti-trafficking resources. Ensuring implementation of the Trafficking Victims Protection Act of 2000 has also been critical. Additional support to federal, state and local anti-trafficking efforts, including NGO support, are critically important as a means to effectively address this issue.

In conclusion, I applaud this committee's effort to review and enhance our immigration processes. To say the least, it is a challenging task at hand. This hearing and last week's important hearing on detention issues will hopefully assist in this task. My written testimony includes additional thoughts on the role of detention in immigration.

Regardless of the challenge, change is needed to help improve the system so that our nation's immigration system actually ensures our national security, while preserving our rich tradition as a nation of immigrants. Hopefully, legislative efforts will be taken to this effect soon.

Thank you again for the opportunity to appear before you today. I would be pleased to answer any questions.

[The statement of Mr. Cerda follows:]

PREPARED STATEMENT OF VICTOR X. CERDA

MARCH 20, 2007

Good afternoon, Madame Chair, Ranking Member Souder, and distinguished Members of the Subcommittee. It is my privilege to appear before you to discuss the critical role of detention in our Nation's immigration policy, particularly as it pertains to human trafficking. My name is Victor X. Cerda, and I am a founding partner of the law firm Siff & Cerda LLP in Washington with a practice focused on immigration law and homeland security. Prior to this, I served for 10-years with the legacy Immigration and Naturalization Service and the recently created U.S. Immigration and Customs Enforcement (ICE), holding various titles including Chief of Staff and General Counsel. Prior to my departure in 2005, I was the Acting Director of Detention and Removal Operations (DRO).

First, I would like to acknowledge the efforts of the men and women of ICE DRO who I personally believe have the most challenging mission in immigration. They are responsible for the apprehension, detention, and physical removal of individuals ordered deported. They must be effective in their mission in order to support our national security, protect the community from criminal aliens, and maintain the integrity of our immigration system. They are the funnel point for almost all of the removal cases in our immigration system, and are responsible for concluding the proceedings in instances where a removal order is issued. At the same time, recognizing our rich tradition as a Nation of immigrants, they must perform their duties in a manner that recognizes the importance of treating those in their care in a humane manner. It was a privilege and a learning experience to have worked with them during my government career.

I would like to share my perspective on why I believe detention is a critical and necessary factor in our Nation's attempt to enhance our immigration processes. Before explaining the underpinnings of these thoughts, I would like to highlight a case that exemplifies in my opinion the complexity of the challenge we face in evaluating our immigration system and the role of detention for immigration purposes. In 2004, a sympathetic story on the detention of a Buddhist "nun" fleeing persecution from China was prominently displayed on the front page of the Washington Post. Understandably, the story caused a significant outcry from the public and some members of Congress. Adding to the concerns was the fact that she had been granted asylum by a judge, a decision that was under appeal by ICE while the "nun" remained in custody. Ultimately, ICE decided that she should be released while the appeal was pending, as the immigration judge had made a credibility finding on her identity and her claim of persecution. At the same time, an ICE investigation was ongoing regarding her claim and identity. After her release, ICE's investigation determined that her claim was completely fraudulent and that she was not in fact a nun. She was arrested and charged with fraud and eventually pled guilty in district court, admitting she was not a nun. The issues of this case reflect those seen in hundreds of immigration cases in the country each day. Unfortunately, immigration issues and cases do not always lend themselves to a black and white distinction, despite prominent articles in the press.

The Need for Detention in the Immigration Process:

Fortunately, the case of the purported nun did not involve a national security threat. It did however highlight the national security vulnerabilities and issues of

fraud in our immigration system, in this instance our asylum system. Unfortunately, we as a Nation have witnessed the potential deadly consequences of these vulnerabilities as they were exploited by individuals seeking to harm our Nation. Indeed, we should not forget the fact that 9/11 did not mark the first time the Twin Towers were subject to a terrorist attack. It was two asylum seekers who were released while their claims were pending—Ramzi Yousef and Sheik Rahman—who successfully carried out an attack on the World Trade Center in February 1993. Other past examples of terrorists exploiting vulnerabilities in our immigration system include Aimal Kasi's killing of CIA employees outside of Langley in 1993 and Abu Mezer's almost successful plot to bomb New York City subways in 1997—both had claimed asylum in the U.S. These costly lessons serve as a strong argument on the important role detention plays in the immigration context, even with respect to asylum seekers.

In addition to national security concerns, the need for detention is clearly spelled out in our abysmal 85-90% absconder rate that our immigration system experiences. These numbers make clear that the "honor system" that we heavily relied upon in the past did not work. As a result, we face a fugitive alien population of over 500,000 individuals that without drastic change in our strategy will continue to mushroom at a rate of over 40,000 new fugitives per year. We can all confidently conclude that something has gone awry. Detention has been the only proven guarantee for compliance with detention orders.

Properly, ICE is aggressively exploring alternatives to detention in hopes of identifying a medium ground aside from outright release or detention that actually is effective in addressing the lack of respect for judicial hearings and orders of removal. Initial results appear positive and perhaps some will become more permanent mechanisms for addressing bona fide asylum seekers and victims of trafficking. However, the fact that our current laws treat fugitives who willfully disregard an order of removal the same as an individual who does in fact comply with a removal order may prove the undoing of any alternative to detention aimed at enhancing compliance with removal orders. It will be interesting to see the effects of these alternatives on compliance with removal orders. In the meantime, however, it is difficult to fault ICE's reliance on detention in its attempts to gain control over our borders and to enhance the integrity of our immigration system. Catch and return is a positive step forward in this goal.

The Need for Detention Standards and Their Effective Implementation:

While detention in my opinion is a necessary tool under the current statutes and immigration processes, there is still the need to treat all detainees with respect and dignity. That need is even more pronounced in the context of dealing with families, children, and trafficking victims. The detention standards that were initially established in collaboration with the American Bar Association in 2001 play a key role in ensuring that ICE's detainees receive proper treatment and are afforded sufficient access and tools to exercise their immigration rights. Theses 38 standards establish the conditions that are to apply nationally to all ICE detainees. These are supplemented by additional criteria that ICE establishes and that must be met before a facility or contractor is permitted to house ICE detainees. The promulgation of these standards was an achievement; however, implementation of these standards is an equally important mission that ICE must continually meet. Aside from DRO reviews, multiple levels of potential external agency review, ranging from the ABA, the United Nations, ICE Office of Professional Responsibility (OPR), DHS' Office of Civil Liberties and Civil Rights, DHS' Office of the Inspector General (OIG), and the General Accounting Office ensure compliance with detention standards and civil rights laws. All of these entities have authority to tour or audit these facilities and most have exercised this authority. The process is very open to review and has been for some time. Facilities housing ICE detainees undergo at least one yearly review for compliance, and allegations of mistreatment are referred to ICE OPR and the DHS OIG for investigation. Where standards are not being followed, action should be taken immediately to correct these deficiencies, and absent progress, the facilities should no longer be used. Similarly, DRO officers and contractors should be trained sufficiently on the standards and should be held to the highest standards when caring for detainees.

The unique factor surrounding families, children, and trafficking victims require additional care and consideration than the general population. Efforts to create family friendly environments should be pursued, as well as viable alternatives to detention that meet both the individual's and the government's needs. Training and efforts should be undertaken to ensure that the unique needs of this population are in fact recognized and understood by both ICE and its contractors. Intelligence and questioning should be utilized to identify genuine trafficking cases as well as gen-

uine asylum seekers. That being said, I would have to express my disagreement with any view that would eliminate any type of detention for such populations.

The Need to Deter Life Threatening Border Crossings:

Aside from my previously noted concerns regarding fraudulent immigration claims, protecting and deterring life-threatening border crossings by families is a factor supporting DHS' family detention strategy. DHS, in its efforts to control the border, faces sophisticated criminal smuggling organizations that will take any steps necessary to ensure their financial livelihood. Smugglers do not view their "clients" as human beings, but rather perceive them as potential profit if they succeed in not only getting them across the border, but doing so in a manner that does not lead to their detention. Smuggling organizations will adapt their strategies based on DHS' initiatives to secure our borders. In this light, the implementation of the Catch and Return policy posed a new DHS tactic that threatened smuggling organization's financial interests. As anticipated, these organizations evaluated all remaining options for successful smuggling. One of the initial loopholes identified by smuggling gangs involved the use of children and family units to avoid detention given DHS' past policy favoring release of families and adults with children, even after the expansion of expedited removal. As a result, there was an increase in the use of "rented" children and organizations encouraged individuals to bring their family on the treacherous journey across the border, often through desert environments that pose a grave challenge to young male adults, let alone children.

When evaluating and considering the issue of children and families, the concept of deterrence must be considered. In light of smuggling organizations using children as decoys and encouraging individuals to bring their spouse and children on the treacherous border crossing, it is essential to deter these strategies in hopes of preventing harm and death to vulnerable individuals. DHS has no other recourse but to take the strongest tactic to discourage this practice and in all likelihood save the lives of numerous family members and minor children. To take any other approach in the interest of families that may be perceived by the smuggling organizations or desperate economic migrants as a "loophole" similar to the failed Catch and Release policy, may in fact induce deadly consequences. While it is understandable to question the policy and the conditions of confinement, I believe it is equally important to view the overall goal of deterring dangerous risks and avoiding the unnecessary loss of life.

Victims of Trafficking:

While trafficking was not an area directly under my operational control while at ICE, I would like to take a moment to highlight some observations from my ICE experience on the human trafficking situation and organizations that prey on populations. ICE must continue to focus on identifying, criminally prosecuting and dismantling trafficking rings with the same strength and focus aimed at deterring smugglers from risking families in dangerous border crossings. It should be understood that DHS' emphasis on border security does not come at the expense of trafficking investigations, as most trafficking organizations have exploited vulnerabilities in our porous border and our immigration system to move vulnerable populations including women and children into the U.S. for exploitation and profit. Trafficking of vulnerable populations has emerged as a lucrative global criminal industry and threatens not only the victims being trafficked, but also the communities in the United States that must deal with these ruthless and often violent organizations. I believe advances have been made in successfully dismantling these criminal organizations since ICE's inception. ICE's capabilities not only to criminally charge such organizations but also to attack their financial resources through asset forfeiture have been a positive result of the merging of customs and immigration expertise. Whereas immigration cases before would go "cold" and be treated as a minor immigration ring, the legacy custom's capabilities in tracking assets and property across the Nation and internationally has proven a new invaluable tool against trafficking organizations. Congress has supported these efforts with resources and any support to continue and enhance these new techniques both at ICE and in the state and local community should continue.

While ICE utilizes its federal authorities in this mission, coordination and cooperation with state and local entities has proven extremely beneficial in the past. In fact, such coordination is almost essential. For example, simple arrests and investigations that may have initially been perceived as a local isolated incident involving a brothel have as a result of ICE and state or local taskforces resulted in the identification and dismantling of national and international trafficking organizations. Clearly, within the goal of border security and control, the identification and elimination of such organizations should remain a priority within ICE.

Finally, similar to the context of dealing with families, efforts should be made to recognize the circumstances of genuine victims of trafficking and accommodations in the handling of their cases should be made, to include consideration of any benefits they may be entitled to, considerations on their housing or custody status, and consideration to their safety and protection from elements of the trafficking organizations that have preyed on them before. I believe the sensitivity involving victims of trafficking is understood at ICE and that efforts are made to address the unique needs of this population as any investigation or prosecution progresses.

Considerations Aside from Detention:

While I perceive the use of detention as a necessary factor in our immigration system, I will close by highlighting other areas that should be considered. First, we should recognize that despite the challenge DHS faces in securing our borders, it does exercise prosecutorial discretion in the detention context numerous times every day across the country, particularly with respect to investigations involving victims of trafficking. The system in certain contexts affords this flexibility and it should continue to be used when appropriate. Second, we should continue to explore alternatives to detention in an attempt to identify a solution that objectively serves both the individual's interests and the government's interest in ensuring integrity in our immigration system. Finally, as you explore ways to reform the process, we may benefit by exploring the question of why it takes our Nation months if not years to come to a "yes" or "no" answer on whether an individual or family under our laws should be permitted to remain in our country or be deported? While detention may be necessary in many cases, the length of detention which is often determined by the legal and judicial processes is something that we control. Similarly, genuine victims of trafficking should be able to have their claims for benefits as such victims reviewed and adjudicated properly and efficiently. Judicial and attorney resources to eliminate backlogged court dockets and prolonged periods of judicial review are factors that should be considered in the scheme of comprehensive immigration reform. Adjudication resources should be committed to those seeking benefits as victims of trafficking. A prolonged and delayed process, caused by the currently overwhelmed judicial and legal systems does not benefit the genuine asylum seeker, victim of trafficking or the government. If detention is required, shortening any decision making process would decrease the burden on the government and benefit individuals as they exercise their rights under our immigration laws.

Conclusion:

In conclusion, I applaud this Committee's effort to review our immigration processes and attempt to address the numerous flaws in our immigration system that we as a Nation have witnessed since the last major attempt to reform our immigration laws. To say the least, it is a challenging task at hand. Regardless, change is needed to help improve the system so that our Nation's immigration laws and processes actually ensure our national security while preserving our rich tradition as a Nation of immigrants. Hopefully legislative efforts will be taken to this effect soon. Thank you again for the opportunity to appear before you today, and I would be pleased to answer any questions you may have.

Ms. SANCHEZ. Thank you, Mr. Cerda.

And again, thank you to all of you.

I would like to ask all of you some questions, and I would like to begin with Lieutenant Marsh.

Lieutenant Marsh, as you know, we have a large Asian population in particular in Orange County these days. I know the City of Westminster is very blessed to have a large Vietnamese population there. I had a friend of mine recently tell me that he lives in a particular city, not yours, in Orange County, and across the way he had a Vietnamese family that he was friends with.

This gentleman had a young daughter, 16, and he said one day a leader of an Asian gang came and took his daughter and kept her for 2 years as a sex slave not too far away, and threatened the daughter that if she left the bed, basically, that the whole family would be killed.

This lasted for a couple of years, and then finally this young lady was returned to her home. The whole neighborhood knew this. My friend knew this. Everybody knew this was going on, but they were

so afraid of the retaliation by this particular Asian gang that nobody said anything and never brought it up to local law enforcement or anybody else. They let it happen.

Why is that? Are we so out of control that really our law enforcement can't take care of these types of gangs and things going on?

Lieutenant Marsh. I would hope not. We have taken a lot of efforts at the Westminster Police Department to outreach to our Vietnamese community, which is approximately 37 percent of our population. It is distressing to hear of a situation like that, and that a neighborhood would know and they wouldn't feel comfortable coming to the police.

Ms. SANCHEZ. And this was a mixed neighborhood. It was Anglo, it was Hispanic, it was Asian. The whole block knew, grown people.

Lieutenant Marsh. I don't know how to respond other than I would hope that they would feel comfortable talking to somebody from law enforcement.

Like I said, with Westminster Police Department, we go out and do active community involvement activities with them, both at the Vietnamese, Hispanic and English-speaking communities. I am glad to hear it wasn't in Westminster, number one.

But if you are going to ask me "does it happen," it probably does, but we do everything within our power, or if we had a remote hint of something like that, we would be all over it. That is a technical term.

Ms. SANCHEZ. "All over it"?

Lieutenant Marsh. All over it. Yes.

[Laughter.]

Ms. SANCHEZ. Talk to me about the collaboration that you have seen with ICE and the FBI, especially since you put together this task force. I know that you all have been part of leading this effort in Central Orange County.

Is it working? What else do you need in order to do a better job of getting information and getting backup and everything when you are doing the legwork that it takes to find these in-flight people?

Lieutenant Marsh. Well, I will say that our work with ICE and FBI has proven very beneficial. I think that they are following their federal mandates. They are compassionate and dedicated to pursue these investigations. I think there are threshold issues regarding what constitutes human trafficking and what does not. That sometimes gets in the way of pursuing cases more actively, and to pursue them beyond just the point of the initial arrests.

If I were to say, again back to what I have written before, the first thing I would say is that we need to have a better at least understanding of the law, or a better definition of "trafficking" so we can pursue more psychological force, fraud and coercion over the more severe physical abuse forms, though of course those do exist as well.

Ms. SANCHEZ. I think you said this. I just want to get a clarification that sometimes it takes a lot to get these cases done. It takes a lot of local law enforcement work, and then the prosecutors don't prosecute because the laws are not written, or because maybe there was no physical torture or something of the sort.

How does that make you feel? And sometimes when you come up to that, do you just say, well, we are just not going to do it because we know we are not going to get a prosecution on this?

Lieutenant Marsh. We don't investigate towards prosecution. Whether it is pimping or pandering, whatever, we are going to take care of business. We are going to get these victims out of that situation.

We have had victims that were being prostituted that actually qualified for federal aid as trafficking victims, even though the people who were the brothel owners or traffickers were only considered pimps at that point. The end result doesn't matter to us as far as whether they support it.

Is it frustrating? Absolutely. Do I think that we could do a much better job and leverage both local and federal resources, both personnel and financial and surveillance and all kinds of other resources? Absolutely. But we are still going to go out there and address prostitution, brothels, and anything to do with that.

Plus, again, I don't see it too much, but obviously there are labor issues as well, domestic servitude, folks in restaurants, things like that, that need to be addressed, too.

Ms. SANCHEZ. What about the rest of you, Ms. Jordan and Mr. Cerda? Do you believe that the laws should change to reflect more of this mental imprisonment, if you will, versus physical and torture? Reaction?

Ms. JORDAN. From my understanding of the federal law, the definition, there is a new section in the federal law that is called "forced labor," and that does include psychological coercion. It was specifically put in there at the request of DOJ prosecutors who were having that specific problem, in that there was a limitation in federal law on using psychological coercion as a basis for prosecuting somebody under a slavery or involuntary servitude statute.

So I guess my question would be: Is there a problem even with that language that doesn't allow prosecutors to use psychological coercion? Or is it simply an unwillingness of prosecutors because that is more difficult, perhaps, when you don't have the physical manifestation on a body or something like that? I don't know what the answer is.

Ms. SANCHEZ. Mr. Cerda, both from having been on the other side and now as an immigration lawyer on these complicated cases, what would you say? Is the law okay for us to be able to get what we need? Or do we need to change that?

Mr. CERDA. I think right now you are looking at the early stages of the law. The challenges you face, as you pointed out, is that generally these organizations to prey on their own communities, and the coercion, the code of silence that they enforce is a significant challenge for any law enforcement officer to establish a case. So those are the realities you face in the development of the case.

The law has been modified to try to address what has been identified as an early shortcoming with respect to the labor situation. I think you see how that develops in terms of case law, in terms of the ability of prosecutors to present, and also the ability of victims, as well as those supporting the victims, how it affects their ability to try to encourage the prosecutors to accept the case.

At the federal level, regardless of what the arena is, what the law is, the burden is generally high, given the strain on the federal judiciary system in terms of accepting cases, that you do have to have your facts, yours T's crossed, your I's dotted. Right now, I do believe the law as it stands does afford an opportunity, but it is a challenging environment to develop a case.

Ms. SANCHEZ. So you think because it is a harder case to really get your hands around that prosecutors may be walking away from some of this?

Mr. CERDA. I think you have that, where clearly having myself presented before a judge on the government's behalf, you want a case that you can uphold and that withstands scrutiny, whether it is with a judge or an appeal on review. You don't want bad case law developed.

In the immigration context and trafficking context as a whole, the organizations smuggling and trafficking are ruthless. The Chinese organizations are notoriously ruthless, not only with the victims here, but their families in China. Same thing with Russian organized crime. The code of silence in those communities is pretty impressive in terms of the stifling effect is has on case development.

Ms. SANCHEZ. Mr. Cerda, you talked about, and I asked this of Lieutenant Marsh earlier, you said that there wasn't as much collaboration going on with some of the local law enforcement.

Can you elaborate on what you meant by that, and what you think we could do to make more of that happen? Because it seems to me in Orange County at least, we are really taking care of business in trying to work together.

Mr. CERDA. As we hear the debate on immigration, it is a very volatile, emotional debate. Some communities jump to judgment in the position of saying, "we are not going to be looking at immigration issues or cooperation with ICE." Other communities, it appears like Orange County is one of those, there is coordination with ICE to really try to use the laws, both state, local and federal immigration included, to try to address the trafficking threats out there.

Ms. SANCHEZ. So are you saying that maybe the local agencies that don't want to work are ones that want to be more of a sanctuary for people without the right documents? Or are they on the other side, the ones who just don't want to have anything to do with immigration, therefore we are not going to deal with the federal government because you are not doing anything anyway.

Mr. CERDA. I think the political bodies, when addressing or contemplating debating the sanctuary issue with respect to immigration, should be careful not to be too broad, to the effect that their broad statements, mandates of non-cooperation on immigration issues, actually may impede cooperation on trafficking and smuggling investigations with ICE.

Clearly, the bottom line here with everyone that I have heard is that to really address trafficking, it is a partnership effort with state and local entities, as well as NGOs. Anything that impedes that communication or the potential for that communication to exist, I think favors trafficking organizations.

Ms. SANCHEZ. Thank you.

Ms. Jordan, I wanted to ask you, because I had asked Mr. Garcia in the earlier panel about CP, and the fact that we had gotten information that continued presence status to victims was taking way too long. And he said that he thought under the current mode of operation that they were shooting for a month, but he really thought it should be taking no longer than 2 weeks.

What is your reaction to that explanation? How long do you think it is really taking? And why do you think it is taking that long?

Ms. JORDAN. Okay. I am not a service provider, so I rely upon others who are actually the service providers. What I have been told is that it may take them a month once they actually receive the application, but there first has to be a determination through an interview with the victim that somebody is, you know, they have to decide whether or not the person is or is not a victim of trafficking, and that can take months.

So it is really the process of when ICE or the other federal agency interviews the person, and then makes the request. I have been told it can take even up to 8 months in total. So that 1 month is probably correct, but the rest of it is much longer, and apparently in the past, for a while it was done much more quickly?this process of determining that somebody is a victim of trafficking, and then getting CP fairly quickly?but that is not the case now.

Ms. SANCHEZ. Okay. Thank you.

And lastly, Ms. Jordan, your testimony refers to the complicated process that trafficked children go through, being transferred between several government programs.

What are your recommendations for how to simplify and improve the bureaucratic process so that we can provide better support and care and nurturing, really, for these children who have been traumatized?

Ms. JORDAN. I think the first issue that was raised was that when children are found, they should not be re-traumatized immediately by going through any kind of an interrogation by federal law enforcement. They should immediately be put into a safe system, and there is this program that is carried out by ORR on behalf of ICE, which is called DUCS, Division of Unaccompanied Children Service. So the children go into that.

But the process right now is that once children are either in that system or they are outside of the system, they are kind of on their own. They go to see a service provider. There has to be a determination made that this person is, first of all, a minor; and secondly, is the victim of a severe form of trafficking. And then ORR issues a recommendation that this child go into the Unaccompanied Refugee Minor Program, which is really an excellent program to take care of children.

The problem is that the way that the statute is written, it says that ORR has to do this in consultation with Justice and Homeland Security. What ORR has turned this into is getting Homeland Security or Justice to actually tell them that this child is a victim of a severe form of trafficking, which then means that the child has to be interrogated by either Homeland Security or Justice, which means that the child is being interrogated in a way that was never intended by Congress. The statute itself doesn't require Homeland

Security or Justice to say that the child is a victim of a severe form of trafficking. All it says is that ORR has to consult.

So what we want is a process, then, once this child has come to the attention of ORR, that ORR itself makes the determination that the child is a victim of a severe form of trafficking, and does not subject a child to this interrogation by Homeland Security or Justice. Then they can consult with them and they can tell them about this, but they don't turn over the information about the child because that would, in essence, also be an interrogation of the child unbeknownst to the child without advice of counsel or anything else.

Then once ORR determines that the child is a victim of a severe form of trafficking, that child should be moved immediately into the Unaccompanied Refugee Minor Program, because it is really the safest and best place for a minor child to be, and it is the only way that these children can access services.

Ms. SANCHEZ. Thank you.

With that idea that we are going to try to push some legislation this year to help in this arena, is there anything that I haven't asked, or some point that you would like to see asked from a policy standpoint, or from changing the bureaucratic process that people have to deal with? Is there a point that I haven't raised, or that you haven't told me that you think is important for us to know and have on record?

I will start with Mr. Cerda.

Mr. CERDA. Now that I am a little free, not being in government service, I always vouch for the need for resources. Clearly, resources under state, local and the NGO level, as well as the ICE level, the federal level, are something that should be contemplated when trying to determine how effective we truly can be against trafficking organizations.

The enforcement mission is drained. It has a lot of missions, a lot of fronts that it has to deal with. Trafficking is one of them. It is always a difficulty to prioritize, but clearly you have to, and additional resources will make those decisions a little easier and highlight the need for a focus on trafficking.

Ms. SANCHEZ. Thank you, Mr. Cerda.

Ms. Jordan?

Ms. JORDAN. I think the most important thing that we can do at this point, because we have had 6 years of experience with the law, we know how it works and how it doesn't work, really is to take a look at the law from the perspective of the victims. The children and the adults also, but particularly the children because I was involved in the 2000 legislation and I know that we just didn't get around to really focusing enough on the issue involving children and family reunification with victims.

So I think kind of trying to look at the entire process from the perspective of the victims, and are we really accomplishing the goals that were set out in 2000. That kind of information, you know, there are many organizations that could speak with you and give you first-hand knowledge about the limitations of the law. I think that would be an excellent place to start, to make sure that we respect the rights of all of the undocumented immigrants who come here and are victimized in our country.

Ms. SANCHEZ. Great. Thank you.

And lastly, Lieutenant Marsh?

Lieutenant Marsh. I think you have made great strides. I don't want to minimize any of that. In a lot of my testimony, I feel almost negative, and I don't want to make it seem that we are not doing great deeds, and I don't think people from the NGO perspective or the federal perspective are trying their hardest to get things done.

I think that the lack of documented successful prosecutions in human trafficking, though, should be a type of red flag to let you know, and I know there does exist some language reference to psychological coercion, fraud, force. It is not really being followed through with at the prosecutorial level. It is also not being mimicked at the state level legislation.

If there is some way for your subcommittee or yourself or others to follow through with having those changes emphasized, or having a change of methods of change of priorities, follow through with in those different agencies, I think you would find many more human trafficking cases, more victims to support, and that we would be able to deal with a lot of the things that Ms. Jordan has been discussing, and Mr. Cerda, in reference to victim support and the services they need to make sure that they get reintegrated and dealt with all the emotional trauma they have had to go through.

Ms. SANCHEZ. Great.

I thank all the witnesses for your valuable testimony.

I know that many of the members will have additional questions for you in writing. I would ask you again to get quickly back to us once we ask you those questions.

Hearing no further business, the subcommittee stands adjourned.

Thank you.

[Whereupon, at 4:28 p.m., the subcommittee was adjourned.]

APPENDIX

FOR THE RECORD

PREPARED OPENING STATEMENTS

PREPARED OPENING STATEMENT OF HON. SHEILA JACKSON LEE

MARCH 15, 2007

Thank you, Chairwoman,am Sanchez and Ranking Member Souder for convening this very important hearing on the timely topic of the issues related to the detention of other-than-Mexican (OTM) immigrants who have been apprehended after crossing our borders illegally. I thank the witnesses for their attendance and look forward to their insightful testimony.

Madam Chair, detention is a major enforcement issue. Mexican nationals who are apprehended crossing the southern border without proper documentation are returned to Mexico, usually the same day or the following day. However, OTMs are subject to different processes because Mexico will not accept them. Once Border Patrol fingerprints and processes such aliens and determines their nationality, verifies that they do not have any outstanding warrants, and confirms that they are not on any terrorist watch lists, they are designated for removal.

Until recently, after an OTM was placed in the removal process Border Patrol would contact the Office of Detention and Removal Operations (DRO) within ICE to determine whether DRO had adequate bed space available for that OTM. If space was available, the alien would be detained. However, due to space limitations, OTMs were often released with a notice to appear before an immigration judge at a later time. Not surprisingly, very few OTMs actually appeared for their court date leading many to deride the policy as "catch and release."

Alien smugglers sought to exploit this situation by bringing children across the border along with groups of smuggled strangers, attempting to pass the groups off as family units. As family units, the smuggled immigrants were almost certain to be released under the "catch and release" policy.

The use of expedited removal, coupled with increased detention bed space, allowed the Department to declare an end to the policy of catch and release in August 2006, and replace it with a policy of "catch and return" where 99 percent of OTMs are apprehended and detained. Under the policy, for the first time, significant numbers of families with children are being detained and removed from the U.S.

Immigration and Customs Enforcement (ICE), the largest investigative branch of the Department of Homeland Security sought to address this problem by providing special facilities for families to remain together while awaiting their proceedings. One of these facilities resulted from the acquisition of the T. Don Hutto Correctional Center through and Inter-Governmental Service Agreement with Williamson County, Texas. Corrections Corporation of America (CCA) operates the 512-bed facility under a contract with Williamson County. The facility was opened in may 2006 to accommodate immigrant families in ICE custody. But history has shown that good intentions often go astray, which is what happened at the Hutto Detention Center.

Due to the increased use of detention, and particularly in light of the fact that children are now being housed in detention facilities, many concerns have been raised about the humanitarian, health, and safety conditions at these facilities. In a 72-page report, *"Locking Up Family Values: The Detention of Immigrant Families,"* released last month by two refugee advocacy organizations, the Women's Commission for Refugee Women and Children and the Lutheran Immigration and Refugee Service concluded that the T. Don Hutto Family Residential Center and another family detention center, the Berks Family Shelter Care Facility, were modeled on the criminal justice system "where residents are deprived of the right to live as

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a family unit, denied adequate medical and mental health care, and face overly harsh disciplinary tactics."

Every woman we talked to in these facilities cried, said Michelle Brané, director for Detention and Asylum at the Women's Commission. She stated further that, "Many of the children were clearly sad and depressed. Some feared separation from their parents, a common threat used to ensure that children behaved according to facility rules. Alternatives exist that are not punitive and that keep families together while also addressing the enforcement concerns of the government."

In addition, the report found that:

- Hutto is a former criminal facility that still looks and feels like a prison, complete with razor wire and prison cells.
- Some families with young children have been detained in these facilities for up to two years.
- The majority of children detained in these facilities appeared to be under the age of 12.
- At night, children as young as six are separated from their parents.
- Separation and threats of separation were used as disciplinary tools.
- People in detention displayed widespread and obvious psychological trauma. Every woman we spoke with in a private setting cried.
- At Hutto, pregnant women received inadequate prenatal care.
- Children detained at Hutto received only one hour of schooling per day.
- Families in Hutto received no more than twenty minutes to go through the cafeteria line and feed their children and themselves. Children were frequently sick from the food and losing weight.
- Familes in Hutto received extremely limited indoor and outdoor recreation time (only one hour per day, five days a week).
- Access to Counsel is extremely limited due to the remote location.

After the report was issued, changes were instituted at the Hutto facility, including additional recreation time for the children, removal of the razor wire, and an end to the requirement that children wear uniforms at the facility. However, the groups that authored the report remain concerned that these improvements are largely cosmetic in nature, and do not address the fundamental problems of housing children in this type of a detention facility.

Similarly, in December 2006, the Department's Inspector General (IG) issued a report that examined health and safety standards, as well as the overall conditions of confinement, at many of the facilities. In the report, the IG noted instance where:

- detainees did not receive required medical screenings;
- non-emergency medical requests were not responded to in the required timeframe;
- hunger-strike and suicide-watch detainees were not properly monitored;
- detainees were injured because of unsafe bunk bed construction and excessively hot water;
- lack of ventilation, inconsistent food service, and pests made living conditions poor;
- staff did not properly keep records of detainees' detention files;
- unprocessed detainees were held longer than the allowed 12 hours and usually in rooms to small to accommodate the number of detainees being held;
- adequate clothing was not provided and the washing of dirty clothes was irregular; and
- visitation time was cut short.

In sum, the IG made 13 recommendations addressing areas of non-compliance and ICE proposed actions to implement nine others. While ice did take many actions to quickly remedy the IG's findings, some concerns still exist today.

I have addressed this problem of detention facilities in Section 622 of my Save America Comprehensive Immigration Act of 2007, H.R. 750. It would provide for a wide range of human and cost-effective alternatives to detaining families and other vulnerable populations in prison facilities. These alternative settings would be more humane while still ensuring an undocumented immigrant's appearance before immigration officials for removal or a hearing.

These secure alternatives would be based on the best practices utilized by the Appearance Assistance Program and the Department's own Intensive Supervision Appearance Program which has achieved remarkably high compliance rates for aliens.

It would address the need to provide non-penal facilities for members of vulnerable populations needing specialized care such as the families arrested with their children, aliens with serious medical or mental health needs, aliens who are mentally retarded or autistic, elderly aliens over the age 65, and victims of trafficking or criminal operations rescued by governmental authorities.

The program would be implemented by non-govermental organizations in order to achieve a cost savings for the Department. This also would facilitate the alternative placement of members of vulnerable populations found by the Department not to be a flight risk or danger to the community.

Placements would be based on the undocumented immigrant's need for supervision. The placements would range from individual or organizational sponsors and supervised group homes to a supervised, non-penal community setting that has guards stationed along its perimeter.

An undocumented immigrant's selection for the program would entirely be within the discretion of the Department, and it would not convey any rights or benefits under the Immigration and Nationality Act. The Department's decisions regarding the use of the program would not be subject to administrative or judicial review.

We have to find a way to ensure that the families and other vulnerable populations of detained immigrants are not housed in penal settings as if they are convicted criminals. We must not compromise on our humanity and decency.

Thank you Madam Chairwoman. I look forward to the testimonies of the witnesses, and I yield back the remainder of time.

PREPARED STATEMENT OF HON. BENNIE G. THOMPSON

THURSDAY, MARCH 15, 2007

• I am pleased that the Subcommittee is holding a hearing today on an issue that has been in the news a great deal lately—the detention of other-than-Mexicans who have been apprehended crossing our borders illegally.

• I have long supported ending the policy of "catch and release," under which non-Mexicans who entered the U.S. without proper documentation were issued a notice to appear at a future hearing and then released.

• Of course, the overwhelming majority of these people did not appear for their hearing, but instead made their way to the interior of the country and disappeared into American society.

• It is clear that catch and release was a failed policy.

• However, I am deeply concerned about the consequences of the Department's new policy, often called "catch and return."

• Under this policy, virtually all other-than-Mexicans are being detained at facilities either operated by or under contract to ICE until they are returned to their home country.

• The unprecedented rate at which the Department is detaining people raises questions about how to ensure their health and welfare and basic civil rights while in custody.

• Also, for the first time ever, a significant number of families with children are being held in these detention facilities.

• I am greatly troubled by some of the allegations we have heard about the treatment of children who are caught up in these unfortunate circumstances through no fault of their own.

• That is why I am interested in hearing testimony today about what Immigration and Customs Enforcement is doing to address these concerns.

I also want to explore whether there are equally effective and less costly alternatives to detention that may be appropriate, particularly when children are involved.

• I intend to work with my colleagues to ensure that as the Department implements tougher border enforcement and detention policies, we do so in a way that honors the rights and values that make our country great.

PREPARED OPENING STATEMENT OF HON. SHEILA JACKSON LEE

MARCH 20, 2007

Mr. Chairman, I want to first thank you for holding this important hearing. I also would like to thank our witnesses today for their important testimony. The purpose of this hearing is to examine human trafficking issues. The United States is one of the leaders in the fight against human trafficking, and this is reflected in the recent legislation that defines and expands the U.S. Government's role in the war against human trafficking.

The Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. 106–386, established new forms of protection and provided for additional assistance for the victims of human trafficking; revised the criminal statutory provisions and enhanced the penalties that are available to federal investigators and prosecutors; and its expanded the United States international role in preventing trafficking.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. 108–193, reauthorized the TVPA and established additional responsibilities for the U.S. Government's anti-trafficking operations. For instance, it required new information campaigns to combat sex tourism, established the Senior Policy Operating Group on Trafficking in Persons, and required a yearly report from the Attorney General to Congress on the U.S. Government's activities to combat trafficking.

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. 109–164, reauthorized the TVPA again and created new anti-trafficking resources, such as grant programs that assist state and local law governments in dealing with human trafficking. It also expanded the victim assistance programs.

The interagency Human Smuggling and Trafficking Center (HSTC) brings together federal agency representatives from policy, law enforcement, intelligence, and diplomatic sectors, so they can work together on a full-time basis to achieve increased effectiveness and to convert intelligence into effective law enforcement and other action. This includes the Department of State (DOS), the Department of Homeland Security (DHS), and the Department of Justice (DOJ). The HSTC also serves as a clearinghouse for trafficking information.

Increased collaboration also is needed between the U.S. government and the state and local agencies who assist in dealing with human trafficking. This includes increased efforts to find victims, to ensure that they receive whatever support is available, and to efficiently provide them with whatever other services are available.

Federal, state, and local authorities also need to cooperate in monitoring and combating labor trafficking within the United States. frequently, migrant workers are recruited from underdeveloped countries to work in countries where low-cost foreign labor is in demand. when they begin their new employment, they find themselves in a state of involuntary servitude. To prevent these nations of human trafficking from leaving, the unscrupulous employers confiscate and hold travel documents, and they use confinement, the threat of physical force, and withholding wages.

I also believe that federal, state, and local agencies need to better monitor the use of family-based visa petitions to bring women and children into the country. According to a Government Accountability Office (GAO) study that I requested last year, in FY2005, at least 398 of the U.S. citizen and lawful permanent resident petitioners who filed family-based visa petitions were on the National Sex Offender Registry that is maintained by the Federal Bureau of Investigations.

It seems unlikely to me that 398 convicted sex offenders would have the knowledge and the contacts needed to bring women and children into the country that way. There may be a criminal organization that is facilitating these arrangements. In any case, we need to know whether the sex offenders are using our immigration laws to bring innocent, unsuspecting victims into the United States. Among other things, my foreign Anti-Sex Offender Protection Act would establish a task force of Federal, State, and local law enforcement agencies to investigate the cases in which it appears that the foreign woman or child may be at risk.

Again, thank you Mr. Chairman for holding this important hearing and I look forward to the testimony of our witnesses.

PREPARED OPENING STATEMENT OF THE HON. MARK SOUDER

MARCH 20, 2007

Thank you Madame Chair. I would like to thank our witnesses for being here today. On the first panel, I look forward to hearing from Mr. Gabe Garcia from Immigration and Customs Enforcement (ICE) on the investigations of human trafficking and the similarities in the criminal networks and techniques with criminal organizations involved in smuggling people and contraband.

On the second panel, I would like to welcome Ann Jordan from Global Rights and Lt. Marsh from Orange County. I am very interested in your views on how human trafficking organizations operate and what tools are at our disposal to intercept and dismantle these criminal organizations. Lastly, I'd like to welcome Victor Cerda. As the former Director of the Office of Detention and Removal and now as a practicing immigration lawyer, I think that you will have a lot to offer this Subcommittee as a follow up to Part I of this hearing on the role detention plays in securing the border, particularly as it relates to asylum seekers and victims of trafficking. I am also interested in your perspective on the judicial review process for these cases and what changes might be necessary in that arena to facilitate the review process.

During the hearing last week, John Torres, Director of ICE?s Office of Detention and Removal Operations, along with several private sector witnesses, testified before the Subcommittee on the issue of detention standards for illegal aliens with particular focus on the detention of children and asylum seekers. Concerns were raised about the amount of education, federal staffing, and medical care provided to illegal aliens.

I am particularly interested in following up during this hearing on options to address the 90% absoconder rate for aliens not held in detention and the security risks associated with releasing individuals that have not been fully vetted and either granted admittance or ordered deported. We heard several examples where illegal aliens have exploited political asylum to avoid detention and remain in the U.S. For example, murderer Mir Aimal Kansi and 1993 World Trade Center bomb plotters Ramzi Yousef and Sheik Omar Abdel Rahman were granted political asylum.

During this hearing, I hope through the testimony and questions to explore how human trafficking and narcotics smuggling cases are investigated, particular how DHS is able to investigate and dismantle criminal organizations and whether there is or could be links between these organizations and terrorist groups.

Human trafficking is now considered a leading source of profits for organized crime, together with drugs and weapons, generating billions of dollars. In addition to the horrible human rights abuses suffered by victims of human trafficking, these pipelines can be used by smuggling and trafficking organizations for the clandestine entry of undocumented aliens, and may be exploited by terrorists to gain entry into the United States and attack our critical infrastructure.

Several years ago (2004), there were public reports by people in the State Department providing evidence that terrorist groups are using human trafficking to acquire recruits and that some terrorists are ?abducting children and making them child soldier slaves.? At the time, Secretary Powell also was quoted as saying that human trafficking could very well help to finance terrorist activity.[1] Additionally, Italy's secret service has reported evidence that al-Qaeda is in the business of smuggling illegal immigrants into Europe to fund terrorist activities.[2]

While many of these concerns cannot be discussed in a public hearing, I am very concerned that not enough work is being done analyzing these links and this is an area I hope the Subcommittee invests a significant amount of time this Congress.

Thank you Madame Chair for yielding the time and I'll close by again thanking the witnesses for being here and I look forward to your testimony.

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[1] CNN Transcript: Insight with Correspondent Jonathan Aiken, Human Trafficking in Japan, *http://transcripts.cnn.com/TRANSCRIPTS/0408/19/i_ins.01.html*

[2] Italy sees al-Qaeda link to human trafficking, The News International, September 8, 2003, *http://www.freerepublic.com/focus/f-news/978250/posts*

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