

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

3	_____)	
4	DR. ORLY TAITZ)	
5	VS.)	CIVIL ACTION NO.
6	JEH JOHNSON, ET AL)	B-14-119
7	_____)	

MOTIONS
BEFORE THE HONORABLE ANDREW S. HANEN
AUGUST 27, 2014

APPEARANCES:

For the Plaintiff: DR. ORLY TAITZ
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For the Defendants: MR. DANIEL DAVID HU
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For the Defendants: MR. COLIN KISOR
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1 THE COURT: Thank you. Be seated.

2 Okay. We're here in B-14-119, Dr. Oraly Taitz versus Jeh
3 Johnson, et al.

4 Is it Taitz or Taitz?

5 DR. TAITZ: Taitz.

6 THE COURT: Taitz?

7 DR. TAITZ: Yes.

8 THE COURT: All right. And you're here representing
9 yourself.

10 Mr. Hu, I see you here for the government. Who else is with
11 you?

12 MR. HU: Daniel Hu for the United States. I'm local
13 counsel. Colin Kisor from OIL in Washington is lead counsel.

14 And I have with me at counsel table a number of witnesses to
15 assist us in answering the Court's questions that were put forth
16 in the Court's order of August 13th. I have Chief Kevin Oaks,
17 Chief of the Rio Grande Valley Sector, United States Border
18 Patrol. Eric Drootman, who's an attorney with Border Patrol in
19 Edinburg. Shara Michalka, who's with HHS in Dallas. Teresa
20 Brooks, supervisory field program specialist, South Texas
21 Division of Children's Services, Office of Refugee
22 Resettlement -- I know it's a mouthful -- Department of Health
23 and Human Services. And finally, Fred Fiero, Deputy Field
24 Office Director from Immigration Customs Enforcement.

25 THE COURT: All right. Let me start off by saying I was

1 probably overly aggressive in my order, considering where we
2 are. But given the nature of this, since it's actually a
3 request for a temporary restraining order, temporary injunction,
4 I may have been overly inclusive. But over the last two or
5 three weeks, I've had an opportunity to actually look at all
6 this in more detail.

7 Let me cover a couple of ground rules first. Dr. Taitz is a
8 lawyer. Mr. Hu, you and Mr. Kisor are lawyers. I mean, you
9 know, both sides know that courts only decide cases and
10 controversies. I mean, and I'm saying that with a purpose, and
11 not just because one of the issues before the Court is the
12 standing of the plaintiff, although that is an issue. But we're
13 not here -- I'm not here anyway to resolve any kind of
14 immigration crisis, to resolve any kind of political question,
15 to resolve any kind of issue of border security. I mean, as far
16 as I'm concerned, that's not before the Court.

17 And it's not -- unless it -- you know, something's
18 imperiling the health of somebody or there's a violation of law
19 going on or there's some legal basis, I mean, those kinds of
20 topics are not necessarily for a -- you know, to be decided by
21 courts. They're decided by Congress. They're decided by the
22 Executive Branch when appropriate. And so I wanted to make that
23 clear to begin with.

24 Ultimately there may be issues that we get into when we
25 start talking about likelihood of success on the merits that

1 bring in some of those issues, and we'll cross that bridge when
2 we get to it. But I just want -- I want both sides to know that
3 this is not a forum to resolve a political issue or a political
4 question. I mean, that forum in this case is Washington, not
5 Brownsville.

6 Okay. Now, procedurally let me cover a couple things, and
7 this -- Mr. Hu has been in front of me before. Dr. Taitz, you
8 have not been in front of me before, but let me get a couple
9 ground rules straight.

10 First of all, no one is to call my chambers about anything
11 to do with the case. I want to make that clear. I consider
12 that an ex parte contact in any form. So neither side should
13 call me, should call my law clerks, should call my secretary.
14 The only person that's authorized for anyone to call concerning
15 a case is Cristi; Cristi Sustaeta, my case manager. Cristi is
16 very good about returning phone calls. So you may get her voice
17 mail, but she will call -- she will call you back. I consider
18 anything other than that to be an ex parte contact with the
19 court, and I won't permit it. That's No. 1.

20 No. 2, and this may be -- I may not be accurate about this,
21 so I'm not saying this necessarily as an accusation. But,
22 Dr. Taitz, you have filed some items -- and particularly I'm
23 looking at document 27, which was the motion for me to sign
24 subpoenas. And what got filed -- and I don't know if this was
25 purposely or by accident -- was basically a three-page document.

1 The courtesy copy sent to the Court is much longer than that and
2 contains argument and support -- supporting documents that are
3 not in what was filed. That is not permissible. That is an
4 ex parte contact with me, and I won't permit that either.

5 I mean, if you want to file courtesy -- I love courtesy
6 copies. Don't get me wrong. They make things a lot easier for
7 me, especially at my age. I didn't grow up in the computer
8 generation. I'd much rather look at hard copy documents. But
9 if you're going to send it to me as part of a courtesy copy, you
10 better send it to the other side.

11 DR. TAITZ: May I respond? I have -- may I respond,
12 Your Honor?

13 THE COURT: Come to the microphone because I can't hear
14 you.

15 DR. TAITZ: Your Honor, I have filed with the court full
16 document and all the exhibits. When I saw that there were just
17 three pages, I assumed that they redacted for some reason, but I
18 sent to them the full document of the exhibits.

19 THE COURT: All right. That's why I said I wasn't
20 accusing anybody of anything.

21 DR. TAITZ: Yeah, yes.

22 THE COURT: But I wanted to make sure we all had the
23 ground rules straight, that anything that comes to me goes in
24 total to the other side and vice versa. And because again, I
25 consider -- if it had happened that way, I consider that would

1 also be an ex parte contact with the Court, and I won't permit
2 that either.

3 All right. I had hoped to have a full-blown hearing, and I
4 know the government has got their witnesses here, but I know
5 there's some controversy over whether Dr. Taitz's witnesses are
6 available, could be subpoenaed, are subpoenaed. The Court
7 signed or ordered subpoenas to be signed by the clerk's office.
8 When the Court did that, when I did it, I was under the
9 impression that this was -- that the witnesses had agreed.

10 DR. TAITZ: May I respond?

11 THE COURT: Hold on. Let me finish. Had agreed and
12 that the otherwise applicable geographical limitations was not
13 an issue. The government has since filed a motion to quash
14 saying those are an issue. Had I known that was not an agreed
15 thing, I would have not issued those without letting the
16 government weigh in. We can cross that bridge when we get to
17 it.

18 What I'd like to do is talk about standing first. And,
19 Dr. Taitz, let me say that I have not signed your motion for pro
20 hac vice because I haven't figured out whether you're a lawyer
21 in the case, a party in the case or both or neither. But since
22 you are a lawyer and since a party can always represent
23 yourself, you know, I considered you here representing yourself.

24 DR. TAITZ: Yes.

25 THE COURT: Let me start with what I think is an easy

1 one and see if we can get some common ground here before we go
2 forward. And, Mr. Hu, you or Mr. Kisor may -- either one of you
3 can respond to this.

4 If the government is effectuating a policy that is injuring,
5 directly injuring an individual, doesn't the individual have
6 standing to file a lawsuit to stop that policy?

7 MR. KISOR: May I approach the podium, Your Honor?

8 THE COURT: You may. You may.

9 MR. KISOR: As a general matter, the answer is
10 sometimes. The injured party would have to have standing, and
11 so the injury would have to be concrete and particularized. It
12 would have to be traceable to the defendants, in this case the
13 government's conduct, and the Court would have to have some
14 mechanism to redress it.

15 There are areas where an injured person who was injured --
16 been injured by some government employee or some governmental
17 policy by an agency who has a concrete injury can file a civil
18 suit under the Federal Tort Claims Act which acts as a waiver of
19 sovereign immunity. And what that person would first have to do
20 in order to exhaust is to file an administrative claim with
21 whatever agency the plaintiff claimed had injured him or her.
22 And then if 180 days have gone by and the claim was either not
23 adjudicated or denied, could file a federal tort claims lawsuit.

24 THE COURT: What about an ongoing tort, though?

25 MR. KISOR: I'm sorry, sir?

1 THE COURT: An ongoing tort.

2 MR. KISOR: It would -- an ongoing tort, I suppose the
3 Court could enjoin if there was otherwise standing and
4 jurisdiction.

5 THE COURT: And by standing, you mean if the ongoing
6 tort was proximately causing injury to that person, that person
7 would have standing to enjoin it.

8 MR. KISOR: If they had Article III standing and
9 prudential standing. And if the injury is so generalized as to
10 be injuring them and everyone else, then that becomes a
11 nonjusticiable political question under case law that discusses
12 prudential standing which we've cited in our brief.

13 And here what we have is a policy or a mechanism to enforce
14 the Immigration and Nationality Act, and -- and therefore, it is
15 so widespread and affects every American that it should be
16 resolved by the political branches under the political process.

17 THE COURT: Well, I mean, is it your position in this
18 case that Dr. Taitz doesn't have standing because we're not only
19 hurting her, but we're hurting everybody and that's okay?

20 MR. KISOR: No, Your Honor. The government's position
21 is Dr. Taitz does not have standing in this case because she
22 fails on all three prongs of the standing test. And in the
23 alternative, if she were able to succeed on all three prongs of
24 the standing test, would nonetheless lack prudential standing.

25 THE COURT: Because of?

1 MR. KISOR: Because under the case law, the alleged
2 injury is so abstract or generalized such as in the -- as an
3 example, in the proper operation of government, which is
4 essentially what she's challenging here, the proper operation of
5 government.

6 THE COURT: Why do you say it's proper?

7 MR. KISOR: Why do I say the current --

8 THE COURT: I mean, you're asking me to assume it's
9 proper.

10 MR. KISOR: It's proper because it's being administered
11 in accordance with the Immigration and Nationality Act, which is
12 Title 8 of the United States Code.

13 THE COURT: And so as long as you're doing that, or you
14 at least claim to be doing that, you can hurt anybody regardless
15 of the outcome?

16 MR. KISOR: Not necessarily, Your Honor, but first there
17 would have to be a showing that -- that there was the injury as
18 in the enforcement of the Immigration and Nationality Act or the
19 mechanism by which it's being implemented, the regulations.

20 THE COURT: Let me -- I tried to start with what I
21 thought was a simple example, and maybe I'm striking out here.

22 The federal government has a person that has Ebola in its
23 custody. And it takes that Ebola person and says: I'm going to
24 transfer that person out of our custody and put him in a
25 facility without warning anybody that he's got Ebola; put him in

1 a facility where he's being cared for by Mr. Jones, and I'm not
2 telling Mr. Jones he's got Ebola. And Mr. Jones later contracts
3 Ebola; and the immigrant that has Ebola continues to, you know,
4 run around loose infecting other people. And I don't know if
5 Ebola is an infectious process or not, but I'm using that as an
6 example.

7 You're telling me that no one can enjoin the federal
8 government from doing that?

9 MR. KISOR: Your Honor, what I was saying was that in
10 order to file a civil suit against the federal government to get
11 an injunction, there would have to be a waiver of sovereign
12 immunity, which is the mechanism by which the case could come
13 into federal court. So -- and it would be the plaintiff's
14 burden to establish the waiver of sovereign immunity. And in
15 this case we don't have one, or we don't have one identified in
16 the plaintiff's filings.

17 THE COURT: Okay. But so you're telling me that the
18 government can infect anybody it wants to in the United States
19 and no one has a remedy? That's what you're telling me. I
20 mean, I'm shocked you're taking that position.

21 MR. KISOR: Your Honor, that's not precisely what I'm
22 saying because the government has been sued under various
23 statutes for infecting people. I'm thinking of the Tuskegee
24 airmen case in the 1940s.

25 THE COURT: But I'm talking about an ongoing program

1 that is endangering Americans. And I'm not saying this one is.
2 I'm saying hypothetically there's an ongoing program that's
3 endangering Americans. And you're saying that no one can stop
4 it and that I don't have jurisdiction to even hear the case?

5 MR. KISOR: I'm saying -- Your Honor, under your
6 hypothetical, I can -- I can conceive of situations where that
7 would be true, but that's not this case.

8 THE COURT: I didn't say it was this case. That's why I
9 started with what I thought was an easy one, and then you
10 started saying no, and I thought -- you know, I was trying to
11 set the parameters on both ends and work my way in and --

12 MR. KISOR: Yes, Your Honor, I --

13 THE COURT: You already knocked down one of my
14 parameters by saying I didn't have jurisdiction to even stop
15 that.

16 MR. KISOR: Under your hypothetical, I -- I guess it
17 would depend. And I'm not prepared certainly to concede
18 standing in this case.

19 THE COURT: I wasn't asking you this case.

20 MR. KISOR: Yes, Your Honor. I -- in order to file a
21 civil suit, there would have to be standing and a waiver of
22 sovereign immunity, and I can conceive of waivers of sovereign
23 immunity. Certainly if the government is doing something
24 unconstitutional, the Court could enjoin or restrain it.

25 THE COURT: Okay. All right. Now, that was my

1 situation over here. My situation over here is more like the
2 *Clapper* case that was recently heard, although maybe even less
3 specific than that, and that is I'm just a taxpayer, and I don't
4 like what the government is doing with my money, and I think
5 it's a waste of time to fly these immigrants around the nation,
6 a waste of time and money. If nothing else, they ought to have
7 to take the Greyhound. And I assume it would be your position
8 in this one over here that there's never going to be standing.

9 MR. KISOR: That's correct, Your Honor. There isn't
10 going to be taxpayer standing unless there's a waiver of
11 sovereign immunity that expressly permits it. And in the
12 hypothetical that you just suggested, if everybody would have
13 taxpayer standing and everybody has 100 percent of opinions
14 across the spectrum, the government would get 100 different
15 suits, and the Courts would be asked to do 100 different things
16 to accommodate everyone; and that's why we have a political
17 process, to legislate and enact laws that way.

18 THE COURT: Okay. So, I mean, what I'm trying to do is
19 hone in on this case.

20 MR. KISOR: Yes, Your Honor.

21 THE COURT: Now, let's assume -- and again, this is
22 hypothetical because I'm not sure Dr. Taitz's complaint actually
23 vocalizes this. That she's saying: I work at a place where
24 immigrant children are being housed. They are being shipped
25 from South Texas where they're coming into custody either --

1 probably DHS custody and then ultimately maybe HHS custody, and
2 they're shipping them to a facility in South Texas (sic) I work.
3 There's no warning about any diseases they have. They don't
4 tell us anything about these kids. They show up, and I am asked
5 to take care of them. And all of a sudden I find out they've
6 got all these diseases and they make me sick.

7 And I'm assuming in this hypothetical that, No. 1, she's
8 actually set that out. And No. 2, that there's medical evidence
9 to support it, which so far I have not seen. But assuming those
10 two things, wouldn't she have standing to enjoin the government
11 or at least ask for an injunction?

12 MR. KISOR: I think that under -- if I understand your
13 hypothetical correctly, Your Honor, you're talking about an
14 employee of the United States?

15 THE COURT: I'm talking -- no. I'm talking about let's
16 say an independent contractor.

17 MR. KISOR: Okay. And so that would -- because if it
18 was an employee, there would be a worker's compensation issue
19 and there could be a worker's compensation lawsuit.

20 THE COURT: FECA Act.

21 MR. KISOR: FECA matter, exactly right, Your Honor. If
22 it is not an employee of the United States and the conduct is
23 tortious, there could be a Federal Tort Claims Act kind of case
24 to the extent that the plaintiff can show a state law tort,
25 negligence or willful endangerment or something.

1 THE COURT: Okay. But again, I'm not asking -- or the
2 plaintiff is not asking for damages. Plaintiff is asking quit
3 sending these sick kids all around the nation. You know, don't
4 send them off some place either without warning people that
5 they're sick; or two, waiting until they're well and then
6 sending them on.

7 MR. KISOR: Assuming that this is a concrete injury
8 that's traceable to some policy of the defendants, which I
9 believe -- or the government, which I believe is the first two
10 prongs of your hypothetical, so that your question goes to --

11 THE COURT: And I'm also assuming there's medical
12 evidence to support it.

13 MR. KISOR: Yes, Your Honor. And so if I understand
14 your question, it goes to the redressability prong of the
15 standing test. If I have that right, then I believe that that
16 would probably -- under that hypothetical would fail under the
17 redressability prong as a political question.

18 THE COURT: So the government could continue to put
19 people at risk and they'd have no remedy?

20 MR. KISOR: Well, there would be a remedy.

21 THE COURT: What would that be?

22 MR. KISOR: Assuming there was a waiver of sovereign
23 immunity, there could be monetary damages under the statutes
24 that permit that. There could be injunctive relief under the
25 Administrative Procedures Act. To the extent that it was a

1 final agency action, I suppose the APA operates as a waiver of
2 sovereign immunity. I don't think it's an issue in this case.
3 But under your hypothetical, Your Honor, a court would be able,
4 under the Administrative Procedures Act, to enjoin agency action
5 that was causing a present danger to people.

6 THE COURT: Okay. All right. All right. Ms. Taitz,
7 let me get you to --

8 MR. KISOR: If I may add one thing that --

9 THE COURT: Go ahead.

10 MR. KISOR: Assuming that the agency action was
11 arbitrary and capricious or not in accordance with law.

12 THE COURT: And what? I'm sorry. I didn't hear the
13 last. Arbitrary, capricious or?

14 MR. KISOR: Or not in accordance with law.

15 THE COURT: All right. Dr. Taitz, if you will -- Taitz.
16 I'm sorry if I mispronounce your name. Let me -- I'm going to
17 ask you the same questions I've been asking Mr. Kisor. And
18 maybe I'll skip right -- skip the hypothetical and go right to
19 it.

20 I mean, do you feel that you -- and by "you," I mean you,
21 Dr. Taitz, not lawyer Taitz. Do you feel you have standing as a
22 taxpayer to complain about this? And if so, why?

23 DR. TAITZ: Not only as a taxpayer, Your Honor. As a
24 matter of fact, I have brought the whole treatise of hundreds of
25 cases where citizens had standing to sue the federal government

1 on malfeasance and specifically in regards to immigration law
2 policies. If I may give to --

3 THE COURT: Cristi?

4 DR. TAITZ: I'm sorry. Actually this one.

5 MR. KISOR: Thank you.

6 DR. TAITZ: So this is actually very common. And I
7 would like -- if I may give you one more case. Here you go.
8 This is -- I would actually like to start with a case that --
9 where U.S. District Court Judge, Judge Lamberth in the District
10 of Columbia, has issued a ruling stating that the plaintiffs had
11 standing. And the reason I would like to start with this case,
12 because it has to do with what I am asking for, quarantine. And
13 that case didn't even talk about deadly diseases.

14 This case is Orchid Growers Association that has sued the
15 Department of Agriculture and stated that the orchids that were
16 brought to the United States of America from Taiwan, where
17 imported, in the pots, in the soil contained moss. And this
18 moss had a pest that might potentially affect orchids that --
19 those in Hawaii.

20 And Judge Lamberth has ruled that this association has
21 standing to bring a legal action stating that -- and Judge
22 Lamberth has found that because there is imminent injury, that
23 there will be an injury to their economic interests and their
24 ability to grow those orchids, he found standing.

25 And specifically the Court stated, as a matter of fact, very

1 similarly, the government stated that there is no standing. And
2 Judge Lamberth, who is, by the way, now here in Texas being a
3 senior -- retired senior judge wrote, "Unlike aliens" -- excuse
4 me just one second. I apologize.

5 It found, "The Court concludes contrary to defendants'
6 argument, that plaintiff has adequately demonstrated for
7 purposes of establishing standing that alien pests may invade
8 Hawaii and its native orchids through eggs laid in the sphagnum
9 moss in which maturing orchids are cultivated in Taiwan."

10 Further he stated, "That to establish the requisite Article
11 III standing, plaintiff bears the burden of demonstrating at an
12 irreducible minimum that it has suffered concrete particularized
13 injury which is actual and imminent; that injury is fairly
14 traceable to action of defendants; and the injury is likely
15 redressable by a favorable decision from the Court."

16 The Court has found, "Plaintiff alleges it will be -- it
17 will be injured -- potential, not actual -- but potential injury
18 both because of increased competition and because of possible
19 alien insect infestation resulting from imports."

20 He continues explaining that the acts of this pest in the
21 moss. And he stated, "Plaintiff further maintains they will be
22 injured economically by the Final Rule as well. Plaintiff will
23 no longer enjoy the advantage from domestic sales of mature
24 orchids, plants, and will not be able to produce nursery
25 products in a domestic environment free from invasive alien

1 plant pests. Defendant argue that plaintiff's claims are
2 conclusory and plaintiff has failed to produce any evidence to
3 support their assertions. The Court concludes, contrary to
4 defendant's arguments, that plaintiff has adequately
5 demonstrated for purposes of establishing standing that alien
6 pests may invade Phalaenopsis orchids that are cultivated in
7 Taiwan. Plaintiff has established that plaintiff's native
8 Hawaiian orchids may be injured in a concrete and particular way
9 by pests that may be introduced into the environment," and so
10 forth.

11 THE COURT: Well, isn't -- I mean, I don't mean to
12 interrupt you, but isn't that -- basically he's asking -- it's
13 gone through the APA, the Administrative Procedures Act, and
14 isn't this a request to enjoin a rule change by the Department
15 of Agriculture?

16 DR. TAITZ: Yes.

17 THE COURT: Isn't that a different situation than what
18 we have here?

19 DR. TAITZ: Well, what it is, what Mr. Kisor is stating
20 that you have -- that there has to be a waiver of immunity by
21 the government in order to sue the government. This is
22 absolutely not true. There are multiple cases where the
23 government was sued because specific policies have affected
24 citizens. In this case, the growers were standing (sic) that
25 potentially it will affect their orchids.

1 THE COURT: Well, isn't it -- but the ability to
2 challenge a new rule is built into the APA, isn't it?

3 DR. TAITZ: In this case, it's not -- actually they did
4 not -- I don't believe this is an APA. It's stating that it is
5 Department of Agriculture that they're suing. But it is an
6 example that suing -- that suing the federal government does not
7 require waiver of sovereign immunity.

8 Further, I would like to bring more cases that deal
9 specifically with immigration policies.

10 For example, in the legal treatise that I provided for Your
11 Honor, it's a treatise by a Professor Adam Cox who is a
12 professor in Princeton University. And he specifically argues
13 that citizens have standing, legally cognizable standing to
14 challenge immigration policies.

15 For example, a case of *Fiallo v Bell*. The Court has found
16 that immigration law regularly injures citizens by expelling or
17 excluding people with whom citizens wish to associate. And the
18 Court did find standing simply because the -- the plaintiffs in
19 this case were arguing that their equal protection rights are
20 affected and they cannot associate with their relatives.

21 Here my equal protection rights and my economic rights are
22 affected due to the fact that I am in imminent danger on daily
23 basis, ten or 20 times a day, from individuals who are being
24 transported to California and who have not just, you know,
25 something that affects plants, something that can be a deadly

1 disease. It affects my health and health of my employees.

2 THE COURT: Well, tell me -- wait a minute. Let stop
3 you there. Tell me how that is. It's not clear to me. I mean,
4 I've read -- I think I've read everything you filed. I hope I
5 have. But it's not clear to me under what basis you actually
6 see these immigrant children.

7 DR. TAITZ: Well, I am -- I am a doctor provider with
8 Denti-Cal and Medi-Cal. Those are specific government programs
9 where doctors are providing care for poor, for immigrants. The
10 doctors are typically checked. They check the office. They
11 check all of the certifications. And they -- the government
12 refers patients to me directly to my office. Many of those
13 patients are patients that are being transported by the
14 government.

15 Furthermore, in the State of California, what the government
16 is doing, it is paying every foster parent \$7,000 per month to
17 foster those illegal alien children. And --

18 THE COURT: According to the news yesterday, California
19 has said they'd take all these kids. I mean, that's what the
20 governor said. "Bring them on."

21 DR. TAITZ: Well, unfortunate -- well, Governor Brown
22 happens to be a liberal democratic who believes in open borders,
23 and he believes in North American Union and open borders.
24 However, Governor Brown does not represent all of the citizens.
25 And specifically this is a tort. And --

1 THE COURT: Wait, wait, wait, wait, wait. What's a
2 tort?

3 DR. TAITZ: In that the government is being, at the very
4 minimum, negligent or acting with reckless disregard to public
5 health and to human life in that it is transporting individuals,
6 knowing that those individuals are afflicted with infectious
7 diseases, with deadly diseases such as tuberculosis and rabies.
8 And I will go further in regards to those diseases. They are
9 transporting those individuals, and they are not warning the
10 public.

11 THE COURT: Where do you plead negligence?

12 DR. TAITZ: I cannot point specific area of the
13 pleadings because --

14 THE COURT: Here's one of the problems I have. I may
15 have some problems with Mr. Kisor saying I can never sue the
16 government even if they're out here making people jump off a
17 cliff, but here's one of the problems I have with you. I've
18 read your complaint several times, and you document your
19 argument fine. But it's hard for me to determine what your
20 actual causes of action are. I mean, you have a cause of action
21 basically based on Title 8, United States Code, Section 1324,
22 and I'm not sure you can sue somebody under that cause of action
23 even for negligence per se.

24 You have a cause of action that basically accuses the
25 government of treason. And you have pled -- and this one I

1 think you perhaps, maybe not adequately, but you certainly
2 raised a RICO cause of action. But I don't recall any
3 negligence pleading.

4 DR. TAITZ: Well, first of all, I am -- I am entitled to
5 sue under civil RICO. As an individual who was harmed, I am
6 entitled to -- to bring a civil RICO and bring wanton actions
7 and violations of criminal statutes under civil RICO.

8 Further --

9 THE COURT: Can you sue the government under RICO?

10 DR. TAITZ: I can sue government employees and
11 government officials in civil RICO. And I will be happy to
12 provide Your Honor with -- with precedents on that. There are a
13 number of precedents where government employees were sued in
14 civil RICO.

15 Further, there is negligence.

16 Thirdly, this -- the administration is employing medical
17 professionals who are supposed to check those individuals who
18 have infectious diseases, and they have to be quarantined. As a
19 matter of fact, I have a release from Health and Human Services
20 stating that individuals who have infectious diseases are
21 quarantined. However, this is not being done. So this is also
22 a medical --

23 THE COURT: How do you know it's not being done?

24 DR. TAITZ: Because I have a report from the Border
25 Patrol stating that individuals were transported from Texas to

1 California with open sores, open sores from scabies and other
2 diseases, with coughing, individuals who had tuberculosis, H1N1
3 virus.

4 And by the way, a couple of officers, if I might state, can
5 testify on the phone. I have an email stating that they did not
6 get an okay from the government to travel and testify until
7 yesterday after I already left for the airport. So for that
8 reason, they could not testify, but they are willing to testify
9 on the phone and confirm what I am stating.

10 Also you have a press release from a Border Patrol officer
11 who is a health -- who is health and safety officer with a local
12 union who specifically stated that individuals are not being
13 checked, and they are arriving with multiple infectious
14 diseases.

15 THE COURT: Mr. Kisor, what is the government's
16 position? I mean, are they checking these kids for health
17 problems?

18 MR. KISOR: Absolutely, Your Honor, and we have
19 witnesses here who can testify as to the manner that they're
20 being medically screened, both when they come into custody and
21 then subsequently. Individuals, for example, who have -- excuse
22 me -- tuberculosis, as an example, would be taken to a hospital
23 for treatment. And to the extent that they be quarantined
24 pursuant to, you know, hospital regulations about how to go
25 about that, that is absolutely happening. We have a witness

1 here today that can testify as to those processes if the Court
2 desires.

3 DR. TAITZ: May I respond?

4 THE COURT: Go ahead.

5 DR. TAITZ: Well, for example, they -- right here in
6 Texas in Laredo station, they had an individual, an illegal
7 alien, who individual died from rabies. He went into a coma and
8 was sent to Corpus Christi hospital where he died of rabies.
9 According to the information that I got from the doctor, 30
10 governmental employees, nurses and Border Patrol agents did get
11 shots from rabies. However, 700 detainees who were illegal
12 aliens did not get the shots, and they were just released.

13 So this -- I can sue -- and that's another cause of action
14 for medical malpractice, because as I'm receiving more
15 information, those -- those employees who worked specifically
16 for government-run detention camps or employees who are working
17 for this organization called Baptist Family Services have not --
18 are committing medical malpractice because they are allowing
19 individuals who have psychosis, who are suicidal, who have
20 infectious medical diseases, they're allowing them to be just
21 transported to different areas and dispensed around the country.
22 They are not getting proper treatment. So this is clear medical
23 malpractice.

24 And in this case, the defendants are the superior, are
25 respondeat superior.

1 THE COURT: Dr. Taitz, let me -- let's assume for a
2 minute it is medical malpractice. I mean, let me preempt
3 Mr. Kisor. I'm sure if I were in his position, I'd say even if
4 you had standing to bring the case you brought, you certainly
5 don't have standing to bring somebody else's medical malpractice
6 case.

7 DR. TAITZ: Oh, my medical malpractice case because I am
8 affected by the medical malpractice which is committed by those
9 healthcare officials who are not advising the public. And I
10 have reports stating that the medical officials were told to be
11 under a gag order not to disclose to the public the extent of
12 infectious diseases that we are seeing in those camps. So I am
13 affected, and I am in imminent danger until and unless the
14 recent redress of my grievance by this court.

15 THE COURT: Okay. You mentioned you were a -- you were
16 contracted, and I think perhaps I interrupted you because I had
17 asked you how exactly you were exposed to these children. Let
18 me go back and tell me factually how you are -- you provide
19 dental work?

20 DR. TAITZ: Yes.

21 THE COURT: To -- now, do you provide it -- in the last
22 six months, have you provided dental work to the alien children
23 we're talking about?

24 DR. TAITZ: Yes, on a daily basis.

25 THE COURT: All right. And through what -- are you a

1 contractor to the federal government?

2 DR. TAITZ: They -- the federal government places them
3 with foster families, and then they fall under Denti-Cal
4 program. It's -- there is Medi-Cal and Denti-Cal, government
5 programs where --

6 THE COURT: Okay. That's a California program?

7 DR. TAITZ: Well, it's actually connected to the federal
8 government. For example --

9 THE COURT: Well, I mean, it's administered -- it's
10 Denti-Cal, C-A-L, right? I mean, it means California, right?

11 DR. TAITZ: But it's -- actually it's the grant that
12 comes from the federal government.

13 THE COURT: No, I understand that. I just wanted to
14 identify it, because, I mean, obviously I don't think we have
15 Denti-Cal here in Texas.

16 DR. TAITZ: Yeah.

17 THE COURT: Okay. So you are treating these children.
18 And so let's say in the last six months or let's say since
19 January 1 of 2014, how many of these children have you treated?

20 DR. TAITZ: Several hundred probably.

21 THE COURT: And what do you treat them for?

22 DR. TAITZ: Well, they often come with pain. They --
23 many never had any dental treatment done in the countries of
24 origin, so I am in close contact. I'm doing extractions. I'm
25 doing root canals, fillings, crowns. And many of them, they

1 show up, they are coughing. They -- they have infectious
2 diseases. One of my assistants was -- got sick several times.
3 I got sick.

4 And when you are a dentist, you work in a very close
5 proximity with the patient and you deal with the patients. For
6 example, if I am drilling, the blood becomes airborne. As a
7 matter of fact, dentists are more at risk than others just
8 because we work with those machines. And the blood becomes
9 airborne. Saliva becomes airborne. It is in the air, so it's
10 very easy to get infected.

11 THE COURT: I think everybody would admit, even
12 Mr. Kisor if I held his feet to the fire, that if you're a
13 dentist and you're doing some dental work on somebody, they're
14 breathing on you. I mean, you're in close contact. I think
15 everybody agrees with that.

16 How do you -- and you know these are alien children because
17 of what?

18 DR. TAITZ: Because --

19 THE COURT: Do they have some kind of form that's filled
20 out or --

21 DR. TAITZ: They -- when -- actually they show up with a
22 card. This is a Denti-Cal card. And we make just a copy of the
23 card that they present, and then we bill the government. So I
24 have this card that they are presenting. I also take health
25 history where they're telling me that they just came in. They

1 came from whatever country. And --

2 THE COURT: Now, do you speak Spanish, or do you have
3 someone that speaks Spanish in your office?

4 DR. TAITZ: (Speaking Spanish.) I speak Spanish. And
5 also one of my assistants speaks Spanish. We also get people
6 who are not just from Central America. We have people coming
7 from other countries. I speak Russian. I mean, I speak several
8 languages. I have doctors who speak Persian. And I have people
9 who are from Africa.

10 Just the other week I saw somebody who was from Sudan. And
11 I actually asked him: Are you -- is there any Ebola in your
12 area? I just was worried about not tuberculosis, but Ebola.
13 And he said no, there's no Ebola in Sudan. But it is -- it is
14 the matter of public health.

15 By the way, I also would like to draw Your Honor's attention
16 to a recent case. And it was regarding Google Android consumer
17 privacy litigation. And what was interesting, that the Court --
18 and it's a 2013 case from Northern District of California.

19 And the Court have found that, "Plaintiff may satisfy the
20 injury in fact requirement to have standing under Article III
21 and may be able to bring a civil action without suffering
22 dismissal for want to standing to sue without being able to
23 assert a cause of action successfully."

24 So -- and I can provide Your Honor with a caption. It's --
25 it was United States District Court, Northern District of

1 California, March 26th, 2013, and it's 2D-2013-WL-1283236.

2 So in this case what I filed so far is an emergency motion
3 for stay. And if the standing is granted and -- I would like to
4 file a full complaint for a more definitive action. But what it
5 states, that even if I did not plead a specific -- specific --
6 it specifically states that even if I did not plead -- I did not
7 assert a successful -- a specific cause of action, if Your Honor
8 is not convinced whether it is negligence or that it is medical
9 malpractice or whether it is civil RICO, the Court can find that
10 there is standing to bring the complaint; and later on for
11 purpose of summary judgment, decide if -- if indeed the case was
12 proven.

13 So I also would like to bring several other cases that
14 specifically relate to immigration laws where standing was
15 found.

16 For example, *Abourezk v Reagan*. And it's a 1986 case, and
17 it is in the treatise that you have, Your Honor. The Court has
18 found -- it was a holding that citizens who invited foreign
19 speaker have standing to seek review of visa denials because
20 unquestionably are aggrieved by the State Department's resort to
21 Section 182 to keep out people they have invited to engage in
22 open discourse with them within the United States.

23 So in *Abourezk v Reagan*, the Court has found that people who
24 simply wanted to invite somebody as a speaker, and according to
25 immigration policies, he was not allowed to -- was not allowed

1 entrance, still the Court found that they had standing. This is
2 much more important issue for myself and for public health.

3 Further, *Pesikoff versus Secretary of Labor*. And that's
4 1974 case; D.C. Circuit, 1974 case. The Court found that
5 holding that putative employer had standing to seek APA review
6 of denial of labor certification for alien.

7 So here in *Pesikoff* -- and it's *Pesikoff versus Secretary of*
8 *Labor*, 501 F.2d 757, 760-61, District of Columbia Circuit, 1974.

9 Again, standing and possible grievance is minor. It's an
10 employer who wants to hire somebody as an illegal alien is
11 challenging immigration policies, and the Court has found
12 standing.

13 Further, in '83 case, it's -- I'm sorry. It's a 1996 case,
14 *Federation for American Immigration Reform, Incorporated versus*
15 *Reno*, 93 F, as in *Frank*, 3.d 897, 900, D.C. Circuit 1996. The
16 Court noted that plaintiff's theory of injury was that the rush
17 of immigrants resulting from the Mariel boatlift adversely
18 affects the welfare of the Federation's members by generating
19 unemployment and wage reductions by placing burdens on public
20 services such as hospitals and schools, especially in Miami
21 area.

22 So here is another case where the government has found that
23 individuals had standing to challenge the immigration policies
24 because those policies potentially, potentially will affect the
25 welfare of the public, meaning hospitals and schools and wages.

1 In my case, this is a much stronger standing because those
2 are specific individuals who are coming to my office, and that
3 affects my well-being.

4 THE COURT: Dr. Taitz, let me ask you this. Can't you
5 just not treat them? Can't you just say: I'm not going to
6 treat any of these people under this program that come from El
7 Salvador or Guatemala or Honduras or wherever the federal
8 government is shipping them in from?

9 DR. TAITZ: Well, Your Honor, then it will be economic
10 standing. One way or another, I will have standing because I
11 would be forced to stop my occupation. And there will be
12 definitely economic standing because I will lose big part of my
13 livelihood because I do see a lot of patients. And all I'm
14 asking for --

15 THE COURT: You could see some other patients.

16 DR. TAITZ: I see some other patients. However, the
17 contract -- typically government contracts are large contracts.
18 So I will definitely have economic standing if I would be forced
19 to -- to lose -- to lose big part of my livelihood because the
20 government is not disclosing the fact that individuals have
21 infectious diseases and because the government is not holding
22 those individuals in quarantine. As a matter of fact,
23 Department of Health and Human Services is claiming that they
24 hold individuals in quarantine. However, this is not being
25 done. And further on in the case, I will be happy to provide

1 further information, but I provided sufficient information just
2 for the purpose of standing.

3 Moreover, in *Northwest Forest Workers Association*, 688 F --
4 and it's the case from '93. The Court has -- holding was that
5 nonprofit organization concerned with the economic,
6 environmental and demographic effects of immigration had
7 standing to challenge immigration regulations on the ground that
8 the regulations improperly expanded the scope of a guest worker
9 program. And assuming, without deciding, that a nonprofit
10 immigration group's alleged economic injury stemming from Mariel
11 boatlift suffices for purposes of constitutional standing.

12 So this is a case that clearly states here the Northwest
13 Forest Workers Association did not plead any specific damages.
14 They just stated that the fact that the government is expanding
15 guest worker program will affect members of nonprofit economic,
16 environmental and demographic effects. So this is a very
17 generalized case, and the government has found standing.

18 So based on all of those standings, I have pled sufficient
19 facts for cognizable legal Article III standing. Whether
20 ultimately I will win or not, we don't know, but I believe that
21 I have pled sufficient for standing.

22 Moreover, I have noticed that the government -- here's
23 another case. This is not actually an immigration case, but
24 it's *Shaw v Reno*, 509 U.S. 630, comma, 651, 1993. And again, in
25 this case the government found standing where -- they stated,

1 "Extending standing to all federal taxpayers in a case
2 concerning whether a federal spending program violated
3 establishment clause."

4 *Akins. Akins*, 524 U.S. case. It was a case where a few
5 people were challenging FEC classification of AIPAC, claiming
6 something very minor, that American Israel Public Affairs
7 Committee should be called American Israel Public Action
8 Committee because -- and if they're being renamed by FEC, there
9 will be more information to the public.

10 And the Court in *Akins* has found -- and I guess it's in that
11 treatise. The Court in *Akins* found that plaintiffs had
12 standing. And what was their injury? All that we're looking
13 for is for the right to know about specific FEC filing of a
14 specific organization. Also --

15 THE COURT: Let me stop you here.

16 DR. TAITZ: Yeah.

17 THE COURT: Let me ask, Mr. Kisor, do you want to
18 respond to her general response to your motion to dismiss for no
19 standing? If not, there's some -- I want to move in a different
20 direction.

21 MR. KISOR: No, Your Honor. Although I would add only
22 two very minor points very briefly. The cases cited by
23 Dr. Taitz, at least from my understanding of the facts recited,
24 sound to me like APA cases in which there was an agency action
25 or regulation that was being challenged.

1 Secondly, when Dr. Taitz quoted *Federation for American*
2 *Immigration Reform*, which is at 90 -- as Dr. Taitz correctly
3 stated, 93 F.3d -- F.3d 897, D.C. Circuit 1996. What she was
4 quoting was the Federation's theory of injury there which had to
5 do with the rush of immigrations placing -- from Cuba placing
6 burdens on public schools and hospitals in Miami.

7 What the Court said was that the injury -- in its holding
8 what the injury to a citizen from admission of an alien is an
9 injury common to the entire population, and for that reason,
10 seems particularly well suited for redress in the political
11 rather than the judicial sphere. That was a prudential standing
12 case, Your Honor, and dismissed for lack of prudential standing.

13 DR. TAITZ: In this case, they actually found that --
14 the Court specifically found that there was standing. I'm not
15 sure in regards to prudential standing, but the initial standing
16 to bring the case was found in this case.

17 And by the way, Your Honor, if you'll look at this treatise
18 that I have given you, most cases actually have nothing to do
19 with APA. Most cases challenge specific immigration policies as
20 they affect the citizens.

21 And moreover, looking at *Akins* case and *Association for*
22 *Immigration Reform*, I did ask Your Honor if I can get pro hac
23 vice, if I -- if I can represent others similarly situated,
24 because there are indeed individuals who are doctors, nurses,
25 healthcare providers and actually Border Patrol agents who would

1 like to be represented if this can be certi -- if Your Honor
2 finds standing, if this can be certified as a class action.

3 THE COURT: Well, I think that's maybe putting the cart
4 before the horse, so let's --

5 DR. TAITZ: Yeah.

6 THE COURT: Let me -- let's do this. What I would like
7 to hear from, Mr. Kisor, if you have individuals that are here
8 that can testify about health hazards.

9 MR. KISOR: Yes, Your Honor.

10 THE COURT: And about screening procedures. For
11 instance, any of the screening procedures that go on in
12 compliance with *Flores*.

13 MR. KISOR: Yes, Your Honor.

14 THE COURT: I'd like to hear from those individuals and
15 so I can at least determine the -- maybe the motion for
16 temporary restraining order today, and then we'll get a schedule
17 for the ultimate resolution of the case.

18 MR. KISOR: Yes, Your Honor. May I invite Daniel Hu to
19 present that part of the government's case?

20 THE COURT: Dr. Taitz, you can be seated.

21 MR. HU: Your Honor, how would the Court like the
22 witnesses to be presented?

23 THE COURT: Well, I'd like you to start them off. But
24 what I'm -- I think both sides know what I'm interested in. I'm
25 interested in is the public being protected from communicable

1 diseases, because that's obviously one of Dr. Taitz's
2 complaints. And then when we're -- part of the government's
3 defense to this is we're complying with *Flores*. We're complying
4 with the other things, and I want somebody to tell me how you're
5 complying with *Flores*.

6 MR. HU: Okay. Actually the first -- the witnesses will
7 all be able to address each of those points, but there's
8 different stages when an alien is apprehended. They're
9 apprehended by Border Patrol, then under some circumstances are
10 transported by ICE. If it's a minor, they go to HHS-ORR. So we
11 actually have three witnesses.

12 THE COURT: Why don't we take them in chronological
13 order then.

14 MR. HU: So we start -- so then the United States would
15 call Chief Border Patrol Agent Kevin Oaks.

16 THE COURT: Sir, why don't you come up and be seated. I
17 don't know how long this is going to take. I hate to make you
18 stand there. I don't mind making lawyers stand, but I let
19 witnesses sit.

20 MR. HU: Your Honor, as a preliminary matter, the United
21 States has prepared some exhibit books. Here's one for the
22 Court. I've already provided one to Ms. Taitz, and if I might
23 give one to the witness.

24 THE COURT: You may.

25 MR. HU: Some of the exhibits do not address the -- what

1 the Court is interested in hearing about, although Exhibit No. 3
2 specifically is the *Flores* opinion.

3 I know you need to swear the witness.

4 (*Witness sworn.*)

5 THE COURT: All right. Be seated, sir.

6 Go ahead, Mr. Hu.

7 **KEVIN OAKS,**

8 the witness, having been first duly cautioned and sworn to tell
9 the truth, the whole truth and nothing but the truth, testified
10 as follows:

11 **DIRECT EXAMINATION**

12 BY MR. HU:

13 Q Please state your name.

14 A Kevin W. Oaks.

15 Q Mr. Oaks, how are you employed?

16 A I'm a Border Patrol agent.

17 Q What's your current job within the Border Patrol?

18 A I'm the chief patrol agent of the Rio Grande Valley Sector.

19 Q What is your responsibilities as the chief patrol agent
20 generally?

21 A I'm responsible for executing the mission of DHS, Customs
22 and Border Protection, and also the United States Border Patrol.

23 Q As part of your responsibilities as chief Border Patrol
24 agent, do you manage the -- or oversee the screening of aliens
25 for health reasons that are apprehended by the Border Patrol?

1 A I do. All -- any -- any person within our purview or within
2 our jurisdiction is provided a health screening.

3 Q Let's start from the time when an agent apprehends somebody
4 wherever they are apprehended. What initial health screens are
5 performed?

6 A The agents are trained at the Border Patrol Academy in basic
7 medical EMT, those kind of things at the academy level. Once
8 they're journeymen agents and they're in the field and they're
9 apprehending and arresting and interdicting people coming across
10 the border unlawfully, every person is interviewed because we
11 have to establish alienage and establish legal criteria for the
12 arrest.

13 After that there's a cursory search of each individual to
14 make sure there's no weapons, any broken bones or any issues or
15 any medical situations that they may have. And then they're
16 also interviewing these people in Spanish, or typically Spanish
17 language to ascertain if they have any medical injuries.

18 If they discover any serious medical injuries while they're
19 in the field, they're immediately transported either to one of
20 our EMTs or our medics or austere medics or paramedics. And if
21 the injury is severe enough, we will either medevac them to the
22 nearest hospital or call emergency medical services from the
23 local jurisdiction in order to get them to the nearest medical
24 facility as soon as possible.

25 Q Is this the same for minors or families that are

1 apprehended?

2 A Anybody that we encounter is provided the same level of
3 scrutiny.

4 Q So the initial medical screening, as I understand it, would
5 take place in the field at the time of apprehension. And the
6 person would be triaged if they're ill in some manner to go to a
7 hospital or to further processing?

8 A That's correct.

9 Q So assume with me hypothetically someone is picked up and
10 they were to tell the agent, "I'm from Liberia," and is
11 experiencing a high fever. Would that person be taken to the
12 Border Patrol station, or what would happen under that
13 circumstance?

14 A Well, typically if the agent has any indication that the
15 person that he is interviewing or has temporarily in his custody
16 would be a risk or hazard to any other populations, then we
17 would isolate them and provide a call to emergency medical
18 services to come do a further assessment to either remove them
19 from the field or take them to the nearest medical facility so
20 they can be screened appropriately.

21 Q Once the person is apprehended, they're transported for
22 processing is my understanding; is that right?

23 A Yes, sir.

24 Q Okay. Now, where is processing typically taking place?

25 A The processing -- initial processing and screening will take

1 place in the field because after establishing alienage, which is
2 what we have to do, if they're a minor or there's some other
3 indication that they're a different body, we try to identify,
4 you know, which sort of demographic by age, by country.

5 And particularly in terms of unaccompanied juveniles, we try
6 to make special provisions to transport them separately away
7 from other individuals, parent -- not parents, but other
8 populations. And when operationally feasible, we try to
9 transport them separately to a local processing center.

10 Q Okay. And where would the local processing center be here
11 in the Valley?

12 A Well, 312 miles of international boundary from Falcon Lake
13 to Boca Chica, so it could be any one of the stations: Rio
14 Grande, McAllen, Weslaco. We have five stations all along the
15 border, so whatever jurisdiction they're in.

16 Q So when they get to the Border Patrol station for further
17 processing, what health screenings are done?

18 A And so then typically at the sallyport, which is a large
19 building that's attached to the processing center, the aliens
20 will be brought in there, and they're separated and identified
21 by demographic. And then we also have Border Patrol EMTs and
22 currently medical staff at some of the facilities that are
23 specific to juveniles and -- and that population. And then they
24 will be screened before they're allowed into the processing
25 center because inside the processing center, we separate

1 everybody by age and gender and keep juveniles away from male
2 populations or adult populations.

3 Q Is also the screening that's done in the sallyport area so
4 that individuals who might be ill are not mixed in with the
5 population who is not ill?

6 A That's correct.

7 Q What sort of screening is done in the sallyport area of the
8 Border Patrol station?

9 A Well, there's a cursory physical inspection of all the skin
10 parts to make sure there's no open lesions, because some of the
11 things that we typically see will be scratches and bruises and
12 bumps because it's an arduous journey that these people are
13 traveling from El Salvador or Guatemala, you know, transiting
14 all the way through Mexico and then staging on the south side of
15 Mexico, crossing the Rio Grande and into the brush. And the
16 brush country along the border is some of the most difficult and
17 challenging terrain that you'll find in Texas.

18 And frequently there are lots of injuries that aren't
19 related to any communicable disease that we treat locally:
20 Scrapes, bruises, bumps, cuts, those kind of things. And if
21 there's anything that's identified that appears to be anything
22 other than a scrape or bruise or bump, then, you know, there's a
23 next level of triage in -- our medical people will treat those
24 immediately there on the scene. And if it warrants it, we'll
25 call EMS to transport them from the station to the nearest

1 hospital.

2 Q What if --

3 THE COURT: How are these medical people at the Border
4 Patrol trained?

5 THE WITNESS: Well, sir, the -- we have several hundred
6 EMTs that are trained at the EMT level and certified. Sir, we
7 also have paramedics, austere medics. And then we currently
8 have a contract with like physician's assistants and nurse
9 practitioners.

10 THE COURT: So is there one at the Border Patrol office
11 24/7?

12 THE WITNESS: Typically right now we've scaled back
13 because of the lack of apprehensions that we've had in the last
14 couple of months.

15 THE COURT: Lack of apprehensions?

16 THE WITNESS: Yes, sir. We went from approximately 1200
17 apprehensions in a 24 hour down to about 600.

18 THE COURT: Okay. Go ahead, Mr. Hu.

19 BY MR. HU:

20 Q So during -- that brings up a good point. During what we'll
21 call the surge, I guess at the peak sort of apprehension period
22 as I understand it was in the late May, early June 2014 time
23 frame?

24 A Yes, sir, that's correct.

25 Q About how many apprehensions were you doing a day at that

1 point?

2 A It was between nine to 12 or 1300, depending upon the day of
3 the week, for that time period.

4 Q So sort of on an -- the maximum capacity, about how many
5 people would you have in custody in the Valley during one of
6 those days?

7 A In one of those days, I think the peak was about 5200 people
8 that we had in custody at one time.

9 THE COURT: What are the estimates of the number of
10 people that you don't apprehend?

11 THE WITNESS: Well, sir, I don't have that information.
12 But generally when we look at our interdiction effectiveness
13 rate, which takes into account technology, manpower, all the
14 intelligence reports, electronic surveillance, detection and
15 monitoring, the aerial assets that we use to track and all that,
16 we're -- we are showing about an 83 to 84 percent effectiveness
17 rate.

18 BY MR. HU:

19 Q And during --

20 THE COURT: That's on the individuals you know are
21 coming over, and you're capturing 83 percent of those?

22 THE WITNESS: The known ones, absolutely, sir.

23 THE COURT: All right. But then there's some percentage
24 obviously that's unknown, and you can't calculate that.

25 THE WITNESS: That's correct, sir.

1 THE COURT: All right. Go ahead.

2 BY MR. HU:

3 Q And, of course, because you don't know about these people in
4 the unknowns, if they're bringing some sort of communicable
5 disease into the United States, there's nothing you can do about
6 it?

7 A That's correct.

8 Q Now, the -- during this peak where you had approximately
9 5200 people in custody, how many of those were minors or
10 families, family units?

11 A At the peak it was approximately two -- we had 2,000
12 children in custody, a combination between family units and
13 unaccompanied.

14 Q Okay. And would you --

15 A Which equated to about 60 percent of the total, those total
16 apprehensions during that time frame.

17 Q And describe to the Court what a family unit is for your
18 purposes.

19 A A family unit is a mother, father, immediate family
20 relative.

21 Q With the child?

22 A With child.

23 Q Or children?

24 A Or children.

25 Q So the -- they go through screening at the sallyport area;

1 then they're put into the Border Patrol facility. Let's talk
2 just about -- let's talk about minors because that's what this
3 case apparently is about.

4 What about minors when they come in unaccompanied and
5 they're into the Border Patrol facility? What further
6 processing is done at that time?

7 A Well then, once they come into the facility, we try to batch
8 them in age groups. Obviously we try to keep 14 to 17-year-olds
9 away from the very younger ones and partition them out and
10 partition them by gender.

11 And then the agents process them and screen them:
12 Fingerprints, photographs, collect all their biographical data,
13 determine where they're from. We're also required under the
14 TVPRA to do CBP Form 93, which is a specific screening criteria
15 that looks at -- to ensure and screen for, you know,
16 victimization of any of the juveniles and some of the things
17 that they go through.

18 Once that's done, we establish that, then we contact Office
19 of Refugee Resettlement to place these children to set time
20 frames when they can be taken out of Border Patrol custody.
21 Once they're completely processed and then -- and put into
22 ORR-HHS custody.

23 THE COURT: How do you determine whether any of these --
24 and I use the word "children" advisedly because most of the --
25 at least the press have reported that most of these people were

1 anywhere from 14 to 17 or older. I mean, how do you determine
2 if they're -- have any kind of criminal background, gang
3 affiliation membership? What do you do for that?

4 THE WITNESS: Well, sir, we have ASID (sic) teams which
5 are intelligence identification teams. And what they do is
6 specifically screen every one of the populations and bodies.
7 And they're looking for connections to human trafficking, to
8 organized smuggling, looking at gang affiliations, looking if
9 there are any other aliens that are in jeopardy that weren't
10 picked up in the group when they were originally arrested,
11 looking at trying to connect some of these to stash houses so we
12 can continue with our targeting effort. And then --

13 THE COURT: You check their fingerprints?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. And do you contact the country
16 from which they came to find out if they have any kind of
17 criminal record there?

18 THE WITNESS: Sir, we don't have that capability except
19 through -- we do do some limited Interpol screening, but many of
20 those countries do not have the same kind of databases that we
21 do. And so we do do checks. If we do identify a gang member
22 that's a juvenile, we have a mechanism to speak to some of
23 the -- the government agencies that we have working out of the
24 embassies to screen some of those individuals.

25 THE COURT: So what happens if you identify someone

1 that's an MS-13 member?

2 THE WITNESS: We will pull them out of the population.
3 ICE Enforcement Removal Operations will be notified. ORR will
4 be notified, and we'll make special provisions to remove them
5 from that population.

6 THE COURT: Go ahead, Mr. Hu.

7 BY MR. HU:

8 Q Okay. So the screening is done, and then it's my
9 understanding that if they're going into custody of ORR, once a
10 placement is made if it's within the Valley, you would transport
11 the minor to ORR. Alternatively, if the placement is being made
12 outside the Rio Grande Valley, ICE would handle the
13 transportation?

14 A Yes, sir, that's correct.

15 Q And then so any further medical screening would be done
16 either by ICE or ORR at that point?

17 A Right, because they -- both those entities have provisions
18 to do medical screening before they're allowed in their
19 respective custody and placed in facilities.

20 Q Let's talk about family units. Family -- when you have a
21 family unit come in, they are processed again, but what happens
22 after they're processed?

23 A Once they're completely processed, then -- and in each one
24 of our facilities, what we did was we had several of the
25 stations that were specifically just to house and process

1 juveniles and then the same for family units. And we had ICE
2 ERO agents effectively embedded in our operations, and they
3 helped do the screening and processing and help make those
4 determinations on where those bodies of people would go. And
5 then ICE ERO would make the determination whether those people
6 were held in custody or what would happen after that. They
7 would make that final determination.

8 Q They would make a -- or at least they would be released
9 or -- or put into ICE custody is what you're telling me?

10 A Yes, sir.

11 Q So again, the medical screening, if they're put into ICE
12 custody, would be done by ICE?

13 A Yes, sir.

14 Q I neglected to show you an exhibit. I'm going to hand you
15 what's been marked as Exhibit 4. Chief Oaks, what is Exhibit 4?

16 A This is a Form I-213 which is a record of deportable --

17 Q And who prepares this just in general?

18 A Border Patrol agents.

19 Q So is this the final record that's prepared when an alien is
20 still in Border Patrol custody before they move on to ORR, ICE,
21 or wherever?

22 A Yes, sir.

23 Q Okay. And this is done for every alien that is apprehended;
24 is that right?

25 A That is correct, sir.

1 Q Now, this particular example, Government Exhibit No. 4, is
2 done for an unaccompanied juvenile, right?

3 A Correct.

4 Q And if you'll turn with me to page 4 and look sort of toward
5 the middle bottom. I guess one of the questions in the form is,
6 "What is the current health of the juvenile, and does the
7 juvenile have any health problems that he has admitted?"

8 "Answer: The juvenile states and appears to be in good
9 health."

10 Who prepares and makes that assessment?

11 A That would be a Border Patrol agent and then based on any
12 health screening that's done.

13 Q Okay. So he wouldn't make this just solely on his or her
14 own, but would also have consultations if need be with a
15 healthcare professional?

16 A Absolutely, because he wouldn't be able to put this in a
17 government document if it wasn't true.

18 THE COURT: He has a consultation with a healthcare
19 professional? There's a doctor out there?

20 THE WITNESS: At some of our facilities, we have
21 contracted medical staff, yes, sir.

22 THE COURT: And so whenever they bring these in, they
23 have a doctor look at these kids?

24 THE WITNESS: It depends upon the circumstances. If the
25 juvenile was very ill and transported to the hospital, I have

1 all those medical records. And then our health screenings at
2 the stations, whether they're done by our medics or our austere
3 medics or the contracted healthcare professionals that we have
4 on staff. And then also it's an oral admission by the juvenile
5 himself.

6 THE COURT: Well, that's what I'm asking, though. I
7 mean, if the kid thinks he's okay, the Border Patrol asks him,
8 "How are you feeling?" And he says, "I'm feeling fine," you
9 still have him see a doctor at this point in time? I'm shocked
10 at that.

11 THE WITNESS: No, I can't imagine that would be on every
12 case, sir.

13 THE COURT: Okay.

14 BY MR. HU:

15 Q But I guess the question is, is there a doctor available or
16 a medical professional available if it appears that the
17 individual needs a medical assessment?

18 A Absolutely. And if they're not currently available on site,
19 they will be transported to the nearest medical facility.

20 Q Does Border Patrol do TB screening?

21 A We do not.

22 Q What about screening for scabies?

23 A We generally screen for all those. And if we're talking
24 about the population we had, the medical staff there that was
25 treating those scabie patients on site, particularly here in

1 Brownsville where one of the juvenile hubs was located, we had
2 showers and the medical staff facility that would treat children
3 for lice and scabies on site at the Border Patrol station before
4 they were transported out of our custody.

5 THE COURT: And if they're treated for that, are they
6 isolated?

7 THE WITNESS: I'm sorry, sir?

8 THE COURT: Are they isolated from the other population?

9 THE WITNESS: All the juveniles that are there and
10 isolated in -- there's individual cells at the processing center
11 so you can --

12 THE COURT: So everybody is isolated?

13 THE WITNESS: They can be isolated and then isolated in
14 offsite facilities as well.

15 BY MR. HU:

16 Q During the surge, about how many -- were you able to
17 actually process all the people apprehended here in the Rio
18 Grande Valley?

19 A We were not.

20 Q So what was Border Patrol's solution to the problem?

21 A So the problem -- for a little background information, if I
22 may, Your Honor?

23 THE COURT: Go ahead.

24 THE WITNESS: We're generally prepared for most
25 instances where you have surges because over the course of the

1 three decades that I've been a Border Patrol agent, we've seen
2 different populations and surges throughout the United States.
3 As you recall back in Arizona, there were, you know, massive
4 numbers of people crossing. Here in the Rio Grande Valley in
5 the '80s, in the '90s, also in the year in the 2000s, there were
6 different populations of surges that we had to address.

7 And we anticipated that we would see additional family units
8 and juveniles based on, you know, predicted factors and previous
9 years and looking at the apprehensions that were coming through.
10 But we didn't anticipate that the volume would be what it was.

11 And so --

12 BY MR. HU:

13 Q And just if I might stop you. Turn with me to Government
14 Exhibit No. 2 in your binder.

15 A Yes, sir.

16 Q If you can see with me the numbers. And let me know if I'm
17 correctly reading this. That for fiscal year '13, the
18 apprehension -- the apprehensions was 4,762. But for fiscal
19 year '14 through July, it was 48,161 in family units here in the
20 Rio Grande Valley. And for unaccompanied minors, it went from
21 16,820 in fiscal '13 through July of this year to 46,307. Is
22 this what you mean by an unprecedented surge?

23 A Yes, sir, that would cover that.

24 THE COURT: But surely you anticipated that.

25 THE WITNESS: Well, we didn't quite -- to be honest with

1 you, sir, didn't quite anticipate that volume. We figured it
2 would go up, you know, substantially, but not as quickly and as
3 rapidly as what we see here in the statistics.

4 THE COURT: All right.

5 BY MR. HU:

6 Q So with this surge in volume, how did you handle the
7 processing and health screening?

8 A Well, so in a previous year looking for efficiencies in
9 processing, because the majority of this population that RGV is
10 apprehending and interdicting in the last years have been people
11 from countries other than Mexico which requires an additional
12 level of processing. And in order to gain some efficiencies,
13 because it takes sometimes an hour to two hours to process each
14 alien, depending upon any kind of background factors, previous
15 criminal -- I mean, there's a whole level of scrutiny that goes
16 into processing these.

17 And so looking at building efficiencies, we designated
18 several of the stations to be exclusively for family units and
19 for juveniles, and then also to, you know, screen all these
20 people and come up with a centralized processing center. So we
21 had a dedicated group of agents that you can learn how to
22 process very rapidly.

23 And then we also instituted a program called virtual
24 processing, whereas we would -- agents from slower sectors, El
25 Paso, Tucson, San Diego and some of those places didn't have the

1 volume of traffic, we could get those agents on and help
2 process. And so we built that to the point where we were able
3 to process 100 alien files or 500 alien files a day.

4 And then when it surged to where we had to produce 1200
5 alien files a day, it put us in a little bit of a situation.
6 And so then what we did was ask for reinforcements, and we
7 brought in an initial surge of 150 agents and then a follow-up
8 surge of another 125 agents so we could use that -- those --
9 that body of people to specifically just process those family
10 units and the unaccompanied children.

11 Q What -- but did you also have to transport some of the
12 family units and children to other places to be processed?

13 A Absolutely. And it required us -- because we weren't able
14 to process fast enough. Until we could catch up, we bussed
15 family units and juveniles to Laredo and Del Rio. We put them
16 on flights to Tucson to be housed at the -- at the Border Patrol
17 office in Nogales where they have a centralized processing
18 center. And then we did several flights to California as well.

19 Q To San Diego?

20 THE COURT: Those are not commercial flights? These are
21 private flights, contracted flights?

22 THE WITNESS: These were contracted through ICE, ERO and
23 FEMA.

24 THE COURT: Okay. But they're not public flights?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. And did they see a doctor before
2 they were transferred, any of them?

3 THE WITNESS: The same standard screening. Many of them
4 we did a basic medical screening and triage and then also did a
5 preliminary processing to identify and get basic biographical
6 data and pictures. And then the final processing and additional
7 medical screening was done once they were transported and landed
8 in those respective locations.

9 BY MR. HU:

10 Q So you were able to do some medical screening here in the
11 Rio Grande Valley, but it was not finalized until after the
12 aliens got to San Diego, Nogales or wherever?

13 A Right. And these are -- and this is Border Patrol facility
14 to Border Patrol facility.

15 Q So there was no interaction with the public at any time?

16 A None that I'm aware of.

17 Q And during this time if someone did have a serious health
18 matter, they would be taken out of this pool, so to speak, and
19 put -- and sent to a hospital or other facility?

20 A They wouldn't be allowed to fly.

21 Q Okay.

22 A And generally transported either.

23 Q Okay. What about if someone had scabies? Would they be
24 allowed to be transported?

25 A Generally not. We would treat them before they were able to

1 fly. However, a few did get transported.

2 Q All right. So now -- so I think after the surge -- now that
3 the surge is over, are we able to do the full processing here
4 again in the Rio Grande Valley?

5 A In fact, we opened a separate central processing center over
6 by the McAllen, Texas, Border Patrol station that was
7 specifically designed, built and is fully operational for the
8 purpose of dealing exclusively with juveniles.

9 THE COURT: Why do you think the surge is over?

10 THE WITNESS: What do I think of the surge, sir?

11 THE COURT: Yeah. Why do you think it's over?

12 THE WITNESS: There's many factors. You know, you see
13 different surges of different bodies of people over the years,
14 economic conditions, repatriation with the family units that are
15 already here. I mean, I think there's --

16 THE COURT: If the --

17 THE WITNESS: I don't think there's --

18 THE COURT: If the president or whomever, powers that be
19 announce that the people that have just come get to stay, aren't
20 we going to have another surge? I mean, won't you be
21 overwhelmed with people?

22 THE WITNESS: I can only testify to the Rio Grande
23 Valley and Border Patrol operations and what we would do to
24 minimize the impact.

25 THE COURT: Well, I mean, you've talked to some of these

1 people, haven't you, some of the people that came in in the last
2 six months?

3 THE WITNESS: I have not personally, no, sir.

4 THE COURT: All right. So you don't know that they came
5 up here because they were convinced that the government was
6 going to let them stay?

7 THE WITNESS: I've read a lot of the intelligence
8 reports. And then during our daily briefings talking to my
9 intelligence agents, you know, they cite many factors, and --

10 THE COURT: Isn't that one of the factors that has been
11 repeatedly mentioned, that they think they're going to get to
12 stay?

13 THE WITNESS: Well, so I came in during the Reagan
14 administration, sir, and the Border Patrol doctrine over the
15 course of the years has been pretty steady, and it's about
16 securing the border. And each administration that I've worked
17 for has had its own policy and sort of oversight on --

18 THE COURT: I'm not asking you to criticize the
19 administration. I understand you work for them. What I'm
20 asking you is, isn't that one of the factors that has been
21 mentioned by these people, that they think they're going to get
22 to stay?

23 THE WITNESS: I think it -- I think if anybody that's --
24 that has an opinion in government has something to say about
25 immigration or immigration reform, that people in foreign

1 countries could construe it that way.

2 THE COURT: All right. So the answer to my question is
3 yes?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Now, let me ask you about --
6 you've mentioned you've been there. What are we doing to secure
7 the border? I mean, these people weren't arrested in a
8 different country. They were arrested in the United States.

9 THE WITNESS: And the good news, sir, is that we are
10 arresting them. And if we weren't, that wouldn't be so good.
11 But generally speaking, if we take a look at my current
12 operations in the Rio Grande Valley, you know, I have thousands
13 of agents that are deployed through nine stations.

14 THE COURT: Okay. But I didn't make my question clear.
15 That's not -- let me rephrase it.

16 We don't stop anybody at the border, do we? You don't have
17 your agents on the river.

18 THE WITNESS: Absolutely. They're on the river 24/7.

19 THE COURT: They're on the river?

20 THE WITNESS: Absolutely.

21 THE COURT: And they turn people away and say: Don't
22 land here. Go back to Mexico.

23 THE WITNESS: Well, some of them will try to cross
24 surreptitiously. Family units will turn themselves in to
25 anybody once they cross.

1 THE COURT: That's not what I asked you.

2 THE WITNESS: Clearly, sir, I'm not understanding.

3 THE COURT: I'm asking if I am on the Mexican side, I'm
4 in Tamaulipas, and I swim the river and your Border Patrol guy
5 is standing on the bank of the river. And I come up -- you
6 know, he sees me. I swim right at him. I mean, he's not going
7 to keep me from coming in the country, is he?

8 THE WITNESS: You'll be interdicted and arrested, but
9 it's not a deterrence.

10 THE COURT: Okay. So, I mean -- and that's the point of
11 my question is look, we are not -- we didn't prevent any of
12 these people or even try to prevent them from actually landing
13 in the United States.

14 Well, here's my for instance. Mr. Hu just admitted or
15 offered 4, Exhibit 4. This is a 16-year-old Guatemalan who was
16 arrested 2 miles east of the Rio Grande.

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay? All right. So he is 2 miles into the
19 United States. No one was on the border securing the border
20 saying, "Do not come into the United States." What we do is we
21 let people come in and then we arrest them.

22 THE WITNESS: Well, we don't have any jurisdiction to
23 stop people outside the United States, so --

24 THE COURT: Well, the United States border goes to
25 halfway across the Rio Grande.

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. So they're well into the United
3 States by the time they land.

4 THE WITNESS: Well, so if they're crossing and they're
5 in the river, we will not interdict them in the river.

6 THE COURT: Okay. And we will do nothing to prevent
7 them from crossing, is my question.

8 THE WITNESS: Well, I think -- you know, operationally
9 speaking, I think with the boats and some of the static
10 technology that's out there, that that is a deterrence and it
11 keeps them from crossing in geographic areas.

12 THE COURT: I mean, you might deter them. You might
13 say: Okay. There's a camera up there. The Border Patrol may
14 see me. But as far as anything the United States Government is
15 doing, whether it be Border Patrol or anybody else that you know
16 of, no one is trying -- tries to prevent these people from
17 actually landing foot in the United States.

18 THE WITNESS: Well, sir, I think currently if we take a
19 look at some of the diplomatic efforts that are going on through
20 the State Department and through DHS, I think that we are doing
21 a pretty good job of messaging some of the dangers.

22 THE COURT: What have we done? Tell me, what have we
23 done in El Salvador?

24 THE WITNESS: Well, we've done a pretty good messaging
25 campaign. I know the State Department is engaged and DHS is

1 engaged also. I know the executive branch is engaged in
2 consultations with specifically El Salvador, Guatemala and
3 Honduras.

4 THE COURT: Well, I don't -- define for me "engaged."
5 What are they doing?

6 THE WITNESS: Well, I couldn't tell you specifically,
7 sir.

8 THE COURT: All right. Well, that's -- no one seems to
9 know specifically.

10 All right. Go ahead, Mr. Hu.

11 BY MR. HU:

12 Q Just as a follow-up to one of the Court's questions. Isn't
13 Border Patrol doing a public affairs campaign in Spanish to
14 communicate the dangers of sending unaccompanied children on a
15 long journey as a deterrence?

16 A It is, and those are targeted for El Salvador, Guatemala,
17 Honduras and Mexico.

18 Q And also is it your understanding that our government is
19 spending millions of dollars through the Central American
20 Regional Security initiative and other efforts for securing the
21 border?

22 A There's ongoing efforts and there have been, and I've been
23 involved in those previously where, you know, you have DOJ
24 types, you know, teaching the rule of law. We're looking at
25 customs, you know, and some of the transit areas, looking at

1 building up their border forces. Also the military is engaged
2 in Central and South America.

3 THE COURT: Well, didn't -- during this influx of --
4 didn't Mexico just essentially open their border and let people
5 come up from El Salvador and Guatemala into the United States?
6 I mean, weren't there trainloads of kids coming north?

7 THE WITNESS: They're -- The Beast, as you refer to it,
8 I've read those articles in the paper. And we have -- our
9 intelligence, you know, indicates that some of that was going
10 on, absolutely.

11 BY MR. HU:

12 Q If you'll turn with me to Government Exhibit No. 3 in your
13 binder. That is the *Flores* settlement. And the Court I know
14 has asked earlier what Border Patrol has done to comply with the
15 *Flores* settlement vis-a-vis medical screening for these
16 children. And I would ask you to please address that.

17 A So in terms of the *Flores* settlement, at our -- you know, we
18 screen every single juvenile to, you know, ascertain and
19 determine their country of citizenship and origin, try to
20 determine their age, where they come from, provide whatever
21 relief in terms of, you know, food, water. They're fed
22 regularly, health and medical screening, and then processing
23 with the ultimate responsibility of putting them in -- into --
24 with ORR.

25 MR. HU: Your Honor, I move the admission of Government

1 Exhibits 2, 3 and 4. Exhibit 2 being the statistics he
2 testified about; 3, the *Flores* settlement documents; and 4, a
3 redacted sample of a processing document.

4 THE COURT: All right. They're admitted.

5 MR. HU: I have no further questions.

6 THE COURT: Dr. Taitz, questions?

7 Dr. Taitz, why don't you come over here where you can see
8 the witness better.

9 **CROSS-EXAMINATION**

10 BY DR. TAITZ:

11 Q Good day, officer. First of all, I wanted to state that I
12 really appreciate all the hard work you're doing, and I'm not
13 here to criticize you. I'm just as a doctor trying to find a
14 way where the Border Patrol agents and the public are protected
15 from infectious diseases or people who have criminal record in
16 the countries of origin. So just I wanted to state I'm not in
17 any way against the hard -- you and the hard work of this being
18 done by you.

19 So first of all, I wanted to confirm, you -- isn't it true
20 that you stated that in none of the stations there are medical
21 doctors? You don't have any doctors in any of the stations; is
22 that correct?

23 A We have contracts for some of the locations to do medical
24 screenings.

25 Q But not with doctors. You stated that the contracts are

1 with nurses; no doctors, right?

2 A There are doctors. There are -- in terms of during the
3 surge, at many of the stations we had Coast Guard doctors and we
4 had health -- public health service doctors --

5 Q By the way, I'm not contagious.

6 A -- provided through FEMA during the surge. And now we've
7 scaled that back down because we're arresting a very small
8 population of unaccompanied juveniles.

9 Q So at the moment there are no doctors. If -- if you think
10 that somebody is sick, then you have a contract. You can send
11 the person to a hospital; is that correct?

12 A We do send people to the hospital, correct.

13 Q But there are no doctors who routinely check each and every
14 person; is that correct?

15 A In the stations?

16 Q Yes.

17 A Not in every station. There's not a full time doctor.

18 Q Okay. Now, what I have proposed is quarantine, whereby all
19 the people who are crossing the border are in a -- one location.
20 We have FEMA locations where the doctor can check every person
21 before they are transported to California and other states.

22 Wouldn't that -- wouldn't you agree that if a doctor checks
23 each person, it would help public health, and it would help to
24 prevent infectious diseases; is that correct?

25 A We're talking about a population of 241,000 people in the

1 Rio Grande Valley. I'm not sure how we would do that.

2 Q Well, you don't say that 240,000 are crossing the border
3 every day, right?

4 A No.

5 Q How many people are crossing the border every day in Rio
6 Grande Valley?

7 A It depends upon the time of year.

8 Q On average.

9 A Currently, you know, we're less than a thousand every day.

10 Q Okay. So it's -- I -- so it's feasible to have a facility
11 where a medical doctor checks a thousand people or a couple
12 doctors check a thousand people who cross the border to make
13 sure that people who have diseases are not released in general
14 population; therefore, those people will get care. It will help
15 them, and it will help general population. Wouldn't you agree
16 that that's feasible, to check a thousand people?

17 MR. HU: Your Honor, I would like to object. One,
18 because I want to make it clear that we're talking only about
19 apprehensions, not about every person who crosses the border,
20 legally or otherwise.

21 THE COURT: I think that's understood, but it's clear
22 we're talking about the people they've apprehended.

23 Go ahead. You can answer.

24 THE WITNESS: I'm still -- I'm not sure how we would --
25 how that would be accomplished.

1 BY DR. TAITZ:

2 Q Well --

3 A I'm looking at it in terms of our operations and the
4 operational impact because, you know, I believe that the -- the
5 current medical screening that we do do for the population of
6 people that we see identifies any serious risk that we can
7 isolate and take out of that population and provide the proper
8 medical care for.

9 Q But you admitted that you are not a doctor and you don't
10 have doctors, right?

11 A That's correct.

12 Q So wouldn't you agree just as doctors check children,
13 American children that start school, that -- usually there is
14 well-being check and vaccination. Wouldn't you agree that
15 children that cross the border and before they're being sent to
16 general population, it would benefit public health if a medical
17 doctor, somebody who went through medical school, has license,
18 knows what he or she is doing, checks those individuals at one
19 facility before they're being released? Wouldn't that help
20 public health?

21 A I imagine it would, yes.

22 Q Okay. Thank you.

23 I have another question for you. You stated that illegal
24 aliens are being transported; that you contract buses and planes
25 to transport them to California and other facilities. Isn't it

1 true that those contractors work with you only maybe one or two
2 days a week, right? For example, I know that in California, you
3 were transporting people twice a week, right?

4 A You would have to confer with ICE ERO because I can't answer
5 that question.

6 Q Okay. But it's --

7 A Yeah. What I'm saying is I don't know.

8 Q Sure, sure. But these are contractors, outside contractors,
9 right? Those planes are not owned by the government. The
10 government has a contract with a private company and rents buses
11 and rents planes, right?

12 A I can only speak to the Border Patrol --

13 Q Yeah.

14 A -- has a contract to transport aliens from the field to our
15 processing centers. In terms of the aircraft, I don't know.

16 Q Sure. So you have a contract with a company, right? What
17 is the company that you're using?

18 A It's G4S, which I think is a subcomponent of Wackenhut.

19 Q Okay. So the days that they do not transport detainees,
20 they work somewhere else, right? They can transport children to
21 school, or they can transport anybody anywhere, right?

22 A No, because that's an exclusive contract with the Border
23 Patrol, so they work for us 24/7.

24 Q Okay. What about planes? Because to California, the planes
25 were coming about twice a week.

1 A Ma'am, I --

2 Q You don't know?

3 A I can't answer that question because I don't know.

4 Q Okay. So if -- if, for example, a company like aircraft
5 company, airline private contractor is transporting people on
6 other days, and you admitted that you transported some people
7 with scabies. Then on the other days when they are transporting
8 other individuals, those individuals will catch scabies because
9 it's everywhere, on the seats, everywhere on the plane; is that
10 correct?

11 A I don't know.

12 Q But you admitted that on several occasions, you did
13 transport individuals with scabies?

14 THE COURT: Dr. Taitz, he's -- unless you're going to
15 qualify him as a physician, I don't think he could even guess to
16 that.

17 DR. TAITZ: Okay.

18 BY DR. TAITZ:

19 Q Okay. I have -- I would like to draw your attention to a
20 report by the Inspector General of the Department of Health --
21 of -- Department of Homeland Security, Mr. John Roth. And --

22 DR. TAITZ: May I?

23 THE COURT: You may approach. You can take it up there.

24 DR. TAITZ: May I?

25 THE WITNESS: Thank you.

1 DR. TAITZ: I thought I had four copies, but --

2 THE COURT: I have a copy of this.

3 DR. TAITZ: Okay.

4 THE COURT: Cristi, why don't you give that so Mr. Hu
5 can have a copy.

6 MR. HU: Thank you, Your Honor.

7 BY DR. TAITZ:

8 Q I would like to draw your attention to page 3. After
9 additional observations, Inspector General is stating, "Many
10 UAC," which is unaccompanied children, "and family units require
11 treatment for communicable diseases, including respiratory
12 diseases -- respiratory illnesses, tuberculosis, chicken pox and
13 scabies. UACs," unaccompanied children, "and family units
14 illnesses and unfamiliarity with bathroom facilities resulted in
15 unsanitary conditions and exposure to human waste in some
16 holding facilities."

17 Then I'm going down to bullet No. 3. "DHS employees
18 reported exposure to communicable diseases and becoming sick on
19 duty. For example, during a recent site visit to the Del Rio
20 USBP station and Del Rio port of entry, CBP personnel reported
21 contracting scabies, lice and chicken pox. Two CBP officers
22 reported that their children were diagnosed with chicken pox
23 within days of the CBP officers' contact with a UAC who had
24 chicken pox. In addition, USBP personnel at the Clint station
25 and Santa Teresa station reported that they were potentially

1 exposed to tuberculosis."

2 Will that be a correct assessment by the Inspector General?

3 A Well, so the Clint is in El Paso, Texas. It's an El Paso
4 sector, so I can't comment on that. Then Del Rio sector and the
5 Del Rio port of entry are separate facilities from the Rio
6 Grande Valley. So I can't comment on that other than, you know,
7 to take it at face value, that the Inspector General's report
8 has been published. And if that's what the finding is, then
9 that's what the finding is.

10 Q Okay. Did you have cases of scabies? You said you had,
11 right?

12 A Yes, ma'am.

13 Q How about tuberculosis? Did you have -- did you have cases
14 of tuberculosis?

15 A I'm not aware of any.

16 Q What about rabies?

17 A I have not ever seen a case of rabies in my 30 years.

18 Q Lice?

19 A Lice, yes.

20 Q H1N1?

21 A I think we did have one case that was initially diagnosed as
22 H1N1 virus; but then after that, it was downgraded to something
23 else.

24 Q What about -- are you familiar with the incubation period of
25 scabies? Do you know what's incubation period?

1 A No, ma'am.

2 Q Incubation period is -- it's period of time from the moment
3 a person contracts the disease and until it shows the signs of
4 the disease. For example, Judge Hanen mentioned Ebola, which is
5 a deadly disease. There are 21 days from the moment the person
6 contracts Ebola where the virus replicates in the body and until
7 he shows signs of disease, 21 days. So he might be contagious,
8 but he does not show signs.

9 So do you -- would you -- so you don't know what is the
10 incubation period for different diseases?

11 A No, ma'am, I don't.

12 Q So if a medical doctor were to check those people, the
13 doctor could prescribe and state that those people, for example,
14 need to be in incubation for specific -- for specific diseases,
15 right?

16 MR. HU: I object, Your Honor. Speculation.

17 BY DR. TAITZ:

18 Q Okay. Well, in scabies -- how quickly -- you said there
19 were several cases of scabies, right?

20 A Yes, ma'am.

21 Q And you said some were transported to other stations?

22 A Yes, ma'am.

23 Q How quickly were they transported?

24 A I don't recall the exact time frames, but it would have been
25 within 24 or 48 hours.

1 Q Do you know that the incubation period for scabies is two
2 months? So for the period of two months, those people would be
3 infecting others.

4 So do you feel, as somebody who is concerned about
5 well-being of Border Patrol officers and the public, that it
6 will benefit to keep people with scabies in quarantine for two
7 months?

8 MR. HU: Objection, Your Honor. He's not a doctor.

9 DR. TAITZ: But he is -- but he is signing the papers
10 allowing people out of custody. You just provided --

11 THE COURT: I sustained the objection, doctor. Go to
12 your next question.

13 BY DR. TAITZ:

14 Q Okay. I would like to draw your attention to -- I'm sorry.

15 DR. TAITZ: May I approach the witness?

16 THE COURT: You may.

17 DR. TAITZ: I'm sorry.

18 By the way, Your Honor, may I introduce into evidence the
19 report by the Office of Inspector General that I just discussed
20 with the witness?

21 THE COURT: Any objection, Mr. Hu?

22 MR. HU: No objection.

23 THE COURT: All right. It's admitted as Defendant's 1.

24 DR. TAITZ: Thank you.

25 BY DR. TAITZ:

1 Q You have in front of you a document that actually was
2 already submitted to the court, and this is a press release that
3 was made on July the 1st -- July the 4th by the officer in
4 California, health officer in the local Border Patrol union.

5 Can you review -- I'll give you a few minutes just to look
6 at this report.

7 And paragraph 3 on the report states, "Chief Beeson, you
8 have stated that all the detainees underwent health screening by
9 FEMA personnel and were declared medically sound for
10 transportation to California." However, this report states that
11 officers were infected.

12 He's saying, first paragraph, "This morning I received a
13 report from one of our agents what I have been fearing to hear.
14 Two agents from Brown Field Station in Otay Mesa, California,
15 developed a rash yesterday after processing detainees from
16 Texas. One of the agents sent me this picture of the rash and
17 advised me he was diagnosed with scabies by his doctor and had
18 to apply pesticide cream all over his body and leave it on
19 overnight. When the agent got home, he -- he changed in his
20 garage and put his clothes in the washer. He immediately went
21 to bed. The next morning he saw the rash. The agent is married
22 with two small children. On top of that, the agent carpools
23 with another agent and now is possibly exposed. To make matters
24 worse, the agent put his" --

25 MR. HU: Your Honor, it's not a question.

1 BY DR. TAITZ:

2 Q Okay. I wanted you to comment on this. You have provided a
3 document showing that you did triage, you checked those
4 individuals, but here there is a report that you transferred
5 from here, from Texas, individuals who had open sores of scabies
6 and several -- as a matter of fact, 50 Border Patrol officers
7 were exposed and several, I believe 11 in total, were affected.
8 So do you have a comment to this?

9 A Well, you know, it's my job to do -- you know, my number one
10 priority is the safety and health of my agents. This is a union
11 document; so, I mean, I can't -- I don't -- I don't have any
12 comment on where these cases came from. The union says it came
13 from Texas, but I don't know that.

14 But I can assure you that I will do and have done everything
15 in my power to ensure that my agents are safe.

16 Q Well, I'm sure -- I'm sure you're doing the best you can,
17 but my concern is that you're not a medical doctor. So even if
18 you're doing everything you can, it is -- simply based on this
19 document, it's not enough to help the officers. So do you feel
20 that quarantine and examination by medical doctor could have
21 helped prevent this from happening?

22 MR. HU: Objection, speculation.

23 THE COURT: I'm going to let him answer that if you
24 know. Would it -- either quarantine, examination by a medical
25 doctor and/or both help prevent injuries to other Border Patrol

1 agents? If you know the answer to that or have a feeling on
2 that, you can answer. Otherwise you can --

3 THE WITNESS: Well, last year in the Rio Grande Valley,
4 there was a case of chicken pox, and that population and the
5 people that had the chicken pox were quarantined, isolated and
6 treated by medical professionals. And then once they were fit
7 and deemed to go into custody, they were transferred to ICE ERO
8 custody. So in that instance, it did work.

9 BY DR. TAITZ:

10 Q Now, you said that there was a case of chicken pox. But
11 again, if we are talking about incubation period, if somebody
12 might have chicken pox or any other disease and he is during the
13 incubation period, he's not showing signs, then he would be
14 transported. He would not be put in quarantine. You put in
15 quarantine only people who showed actual lesions, red spots,
16 right?

17 A The ones that we can positively identify.

18 Q Exactly. But the ones who were in the incubation period,
19 meaning they don't have spots yet, they would be infectious, but
20 you just don't know, right?

21 A Ostensibly that could be correct.

22 DR. TAITZ: Your Honor, may I introduce into evidence
23 this press release from the Border Patrol agent?

24 MR. HU: The government objects, Your Honor. It's --
25 it's hearsay. She's not laid the proper foundation.

1 THE COURT: Sustained.

2 DR. TAITZ: Your Honor, I would like -- after the
3 officer testifies, I would like to bring as a rebuttal witness
4 the officers that were subpoenaed. They were actually prevented
5 from flying because they didn't get authorization from the
6 agency timely, but they're willing to testify on the phone.

7 THE COURT: Okay. I'll cross that --

8 DR. TAITZ: You'll decide later. Okay.

9 BY DR. TAITZ:

10 Q I have further questions. In regards to criminal record,
11 you -- isn't it true that you do not have a criminal record from
12 other countries? You can only check criminal record in the
13 United States of America?

14 A If the criminal record is in Interpol, we will have assess
15 to that.

16 Q But very few countries have criminal record in Interpol,
17 correct?

18 A I assume that's correct.

19 Q So majority of them you do not have?

20 THE COURT: Do Honduras or Guatemala or El Salvador
21 participate in Interpol?

22 THE WITNESS: I don't know, sir.

23 BY DR. TAITZ:

24 Q Okay. I would like to draw your attention --

25 DR. TAITZ: May I?

1 THE COURT: You may.

2 BY DR. TAITZ:

3 Q This is an article stating, "Immigration crisis.
4 Tuberculosis spreading at camps." And in this article, it
5 stated that at -- there are several facilities by Baptist Child
6 and Family Services, Lackland Air Force Base and Fort Sill in
7 Oklahoma, and they're talking about tuberculosis epidemic. And
8 my question is, do you guys do skin tests for tuberculosis?

9 A Border Patrol?

10 Q Yeah.

11 A No, ma'am.

12 Q And you don't do any x-rays also, right?

13 A No, ma'am, we don't.

14 Q So people who have this deadly disease might actually be
15 transported somewhere else like California and somewhere else.
16 You just have no means of checking them; is that correct?

17 A Border Patrol does not.

18 Q Okay. Now, I have another document that I wanted you to
19 comment on. And that's a letter from Transportation Security
20 Administration to Honorable Kenny Marchant, Texas Congressman.

21 We have -- this is a letter that was sent by TSA, and it
22 relates to a concern by the U.S. Congressman and that
23 individuals are allowed to fly on commercial airlines without
24 any photo IDs, only with a piece of paper which states, "Notice
25 to appear for immigration hearing, deportation hearing." And

1 what TSA is saying, that in those situations, they contact
2 Border Patrol to verify identity.

3 Have you personally been contacted by the TSA to verify
4 identity of individuals who are about to board the planes?

5 A Have I personally?

6 Q Yeah.

7 A No.

8 Q Do you know of anybody among officers that you work with and
9 associate with that was requested to verify identity for TSA?

10 A Yes, ma'am.

11 Q Is -- could you provide to the Court any -- any evidence of
12 that?

13 A So at the McAllen and Brownsville airport and Harlingen
14 airport, Border Patrol agents are assigned there 24/7 and assist
15 any law enforcement agency, whether it's the county or TSA or
16 anybody else that has jurisdiction within the airport to screen
17 for any of those kind of --

18 Q No, no, I understand. I understand it's happening here
19 because we're on the border. What I'm asking about is people
20 released from custody. They're transported to California, and
21 they're flying across country from California to New York,
22 because in New York there might be a judge who gives 90 percent
23 asylum to people. And so this person boards a plane, and TSA
24 allows them to fly just with a piece of paper saying, "Notice to
25 appear."

1 Have you ever gotten any -- any phone calls from TSA saying
2 we want to verify if this person with this piece of paper, that
3 he's who he says he is?

4 A No, ma'am, I have not.

5 Q Thank you.

6 In -- there was a case of rabies in Laredo where a patient
7 was sent to Corpus Christi. Do you have any knowledge of that
8 case?

9 A No, ma'am.

10 Q Are you aware of the alert that was sent with medical
11 examiners working in this area in that missionaries are
12 traveling to Africa and then they're coming to Mexico, and that
13 some of the individuals who coming through the border from
14 Mexico might got infected with Ebola? Are you -- do you have
15 any knowledge of this?

16 A No, ma'am, I don't.

17 Q Did you get any training in regards to Ebola?

18 A I personally have not.

19 Q Are you aware that this is a deadly disease, highly
20 contagious?

21 A Yes, ma'am.

22 Q But the government did not provide you with any training how
23 to diagnosis patients with Ebola or how to deal with them?

24 A Well, I can tell you that between Department of Homeland
25 Security and CDC and other agencies within government through

1 their alert systems and through our operation centers in
2 Washington, D.C., that any of those alerts, in the same vein as
3 we would transport intelligence information, are pushed to all
4 the field components and regional components in order to alert
5 agents and officers of like an Amber alert and like many others.
6 In terms specifically of Ebola, I'm not aware of that.

7 Q You're not aware. Are you aware that multiple nations have
8 suspended any flights to the nations that have Ebola? You have
9 any knowledge about that?

10 A No, ma'am.

11 Q Thank you.

12 I would like -- I would like to draw your attention to
13 another document. This document is a manual that is given by
14 U.S. Customs and Border Protection. And I would like to draw
15 your attention to second page of the document, Section 3.8. It
16 states, "CBP media and public affairs policy must be executed
17 with discretion and the use of sound judgment, as every
18 possibility cannot be predicted and covered by written policy
19 statement. However, the unauthorized disclosure of official
20 information to the media may be the basis for criminal and civil
21 sanctions and administrative disciplinary action."

22 Are you aware of any officers who were sanctioned for
23 speaking up against -- about different diseases?

24 A In the Rio Grande Valley Sector, I'm not aware of any.

25 Q How about other officers in other sectors?

1 A No, ma'am, I'm not.

2 Q Have you tried -- for example, we're talking about scabies.
3 Have you tried to alert the public about scabies; that, you
4 know, there are individuals with scabies who are crossing the
5 border?

6 A So in terms of our community engagement, we've been very
7 much engaged with city mayors, all the local law enforcements.
8 We have a unified command function down here through South Texas
9 campaign and also through our own efforts in terms of working
10 because we have an exceptional level of support from state and
11 local law enforcement, and we do regularly talk about those at
12 our intelligence meetings.

13 And then also engagement with the NGOs, because I've invited
14 every NGO that wanted to visit any of these facilities,
15 including the ACLU, to come and inspect our facilities and take
16 a --

17 THE COURT: For the record, what's an NGO?

18 THE WITNESS: It's a nongovernmental organization like
19 the United Way, ACLU, Catholic Charities, some of the ones that
20 we've dealt with directly.

21 THE COURT: And you've talked to all these groups about
22 scabies and other diseases?

23 THE WITNESS: Not myself personally, no. But we have
24 alerted many of these, and they're aware of the situations.
25 Because when we brief them, particularly the head of the

1 Catholic Charities came down from Washington, D.C., and I gave
2 him a tour of the McAllen facility and outlined in detail some
3 of the issues that we had, including some of the people who we
4 isolated, the medical care that we're providing to the juveniles
5 and others.

6 THE COURT: Catholic Charities were intimately involved
7 with helping with the immigrant children, weren't they?

8 THE WITNESS: They're very much engaged in helping with
9 family units once they were released from our custody, yes, sir.

10 THE COURT: Go ahead, counsel.

11 BY DR. TAITZ:

12 Q What about having a press release so that members -- have
13 you done any press releases in the media, on TV or radio or
14 newspapers so that the appearance of school children and
15 children would know about presence of infectious diseases? Have
16 you done those?

17 A We have done press releases in the past about some of the
18 dangers of crossing.

19 Q But how long ago was it?

20 A Most recently -- it was probably four weeks ago when Gil
21 Kerlikowske, the commissioner of Customs and Border Protection,
22 came down. And we did a public service announcement at
23 Anzalduas Park there in McAllen, Texas, talking about the media
24 campaign that we were doing and executing in Mexico and Central
25 America in terms of some of the things that were coming out.

1 Q Officer, I didn't ask about the press release about danger
2 of crossing. I asked a specific question. Did you do a press
3 release --

4 A I personally have not.

5 Q So there was no press releases here. So we have all those
6 people with scabies crossing the border. They're being
7 released. In four days, September 1st, those children will be
8 enrolled in school. They will be sitting next to other
9 children, and those children will be infected. And you didn't
10 feel it was necessary to do a press release so that parents and
11 children will know about it?

12 MR. HU: Objection, argumentative.

13 THE COURT: You can answer the last half of that.

14 THE WITNESS: I have personally not done any press
15 releases.

16 BY DR. TAITZ:

17 Q Thank you.

18 I received actually a transcript that was an interview done
19 by ear, nose and throat specialist, and it -- who appeared on
20 Fox News. And I have a certified transcript of it where the
21 doctor was asked about the danger. She's a well known African
22 American ear nose and throat specialist, who's -- Dr. George
23 stated, "Well, the problem is that people are being brought into
24 the country, but they are not being medically checked. And
25 those that are checked, you know, it's not enough time to figure

1 out whether or not they're carrying a disease. Things like
2 tuberculosis are very slow growing, so you might actually be
3 communicable, but you might not have outward signs of it.

4 "And then these people enter parts of the country in
5 antiviral neighborhoods and get exposed to healthcare workers,"
6 like myself, "families, church individuals who would potentially
7 be looking at a health crisis, and nobody is really talking
8 about it."

9 So do you feel that this is a correct assessment of what's
10 happening?

11 A Well, in terms of anybody that comes in my custody as a --
12 according to my previous testimony, I stated that we do do
13 health screenings with all those people that come into our
14 custody. And once they leave our custody and either go to the
15 United States Marshal Services if we're criminally prosecuting
16 them, the Marshal Service will not accept anybody that has any
17 sort of current infections.

18 The same thing holds true with ICE ERO. They will not take
19 anybody into their custody until they're medically cleared by
20 us. And then ICE or Health and Human Services Office of Refugee
21 Resettlement does extensive medical screenings for juveniles,
22 including tuberculosis tests and mental health screening and all
23 those other kind of wrap-around services.

24 Q Now, have you seen Korans, Muslim prayer rugs, any of the
25 artifacts showing that the people who are crossing the border

1 are not coming only from Central America, but coming from
2 countries which are known for sponsoring terrorism?

3 A We arrest people from 142 countries.

4 Q 140 -- and among them, are there people who come from
5 countries that are known for association to terrorist
6 organizations?

7 A Yes.

8 Q Okay. And do you feel that placing those people at least
9 for a temporary quarantine for two months might benefit national
10 security versus just letting them go?

11 MR. HU: Objection, Your Honor. We're here talking
12 about the health concerns and health risks, not national
13 security.

14 THE COURT: Well, I'm going to sustain it to that
15 question, but I don't think this is completely irrelevant.

16 Ask your next question, Dr. Taitz.

17 DR. TAITZ: That's it, Your Honor. Thank you. I just
18 would like afterwards to bring a rebuttal witness via phone
19 possibly. Thank you.

20 THE COURT: If someone comes in from, I don't know, pick
21 a country, Iraq, Afghanistan, Iran, and I assume they're
22 processed just like any other individual?

23 THE WITNESS: Well, if we identify somebody from one of
24 those special interest countries, when we run them through our
25 databases, they will ping against them certain databases that

1 would identify them if they had previously been encountered in a
2 hostile environment. Also they're run through every system that
3 Border Patrol and CBP has access to, which is very extensive,
4 including just about every database that you can think of.

5 And so if you're from Afghanistan or Syria or Iraq, you
6 would be isolated, and then further interviews by ICE, HSI and
7 Federal Bureau of Investigation looking for any derogatory
8 information. And if any was found, they would -- either one of
9 those entities would take those individuals into custody and
10 remove them from our presence, and they would deal with them in
11 their own manner.

12 THE COURT: And if they're not found, are they just
13 given a notice to return and let go?

14 THE WITNESS: Generally speaking, they're all put into
15 ICE ERO custody and a determination and immigration hearing is
16 their next step.

17 THE COURT: Okay. Any follow-up, Mr. Hu?

18 MR. HU: One follow-up point, Your Honor.

19 **REDIRECT EXAMINATION**

20 BY MR. HU:

21 Q During her cross-examination, Dr. Taitz talked about the
22 feasibility of a doctor seeing each of these individuals. Under
23 the *Flores* settlement, what -- and the regulatory framework
24 we're under, how much time frame do you have to get
25 unaccompanied minors out of your custody and placed?

1 A Well, so in *Flores* and TVPRA, my timeline is 72 hours.

2 Q So time is essentially of the essence once a child is picked
3 up to get them processed and placed?

4 A Not only is it -- it's a priority to ensure that we process
5 and remove the juveniles from our custody as soon as possible,
6 and they're prioritized at the head when operationally feasible.

7 Q So if it's on a weekend when a doctor may not be available
8 or something like that, it's simply not feasible. It's more
9 important to get them placed, isn't it?

10 A Well, they will get -- they will eventually get screened and
11 placed, yes.

12 MR. HU: That's all I have, Your Honor.

13 THE COURT: Under the TVPRA, I mean, you basically turn
14 many of them over to the Department of Health and Human
15 Services?

16 THE WITNESS: Yes, sir. Generally all of them except
17 for the contiguous territories of Mexico or Canada.

18 THE COURT: All right. And so by -- you've complied
19 with your portion of the act by turning them over to the -- a
20 different government agency?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. All right. You can step down.

23 THE WITNESS: Thank you.

24 THE COURT: Counsel, let's take ten minutes.

25 *(Recess taken from 3:44 to 3:59.)*

1 THE COURT: All right. Be seated.

2 Mr. Hu, who's our next witness?

3 MR. HU: The United States calls Teresa M. Brooks.

4 THE COURT: If you'd come up and be sworn, please.

5 *(Witness sworn.)*

6 THE COURT: Go ahead and be seated.

7 **TERESA BROOKS,**

8 the witness, having been first duly cautioned and sworn to tell
9 the truth, the whole truth and nothing but the truth, testified
10 as follows:

11 **DIRECT EXAMINATION**

12 BY MR. HU:

13 Q Please state your name.

14 A Teresa M. Brooks.

15 Q How are you employed?

16 A I work for the U.S. Department of Health and Human Services,
17 Administration for Children and Families, Office of Refugee
18 Resettlement, Division of Children's Services.

19 Q So you've been sitting here in the courtroom through Chief
20 Oaks' testimony, so I'm going to cut right to the chase here.
21 So you oversee the ORR, that's Office of Refugee Resettlement
22 programs, when unaccompanied minors are sent to ORR from Border
23 Patrol; is that right?

24 A Yes, sir. I do for the Rio Grande Valley.

25 Q And you're responsible for the entire Rio Grande Valley?

1 A And Corpus Christi.

2 Q And Corpus. And were you here for the surge, so to speak?

3 A Yes, sir.

4 Q How long have you been in this supervisory field program
5 specialist role?

6 A I've been a supervisor for one month, and I have been with
7 ORR-DCS for seven years and nine months.

8 Q So when -- how is it that the unaccompanied minors from -- I
9 assume they're mainly both Mexican and other than Mexicans or
10 both?

11 A The majority are other than Mexican.

12 Q Okay. How are the minors, how do they get to ORR custody,
13 the process?

14 A Following being apprehended by Border Patrol or another
15 federal entity, the federal entity contacts ORR-DCS for a
16 referral for placement. ORR checks their capacity for the
17 programs in the local area where the child was apprehended or
18 throughout the nation, depending on the situation, and the child
19 is then placed by age, gender in the appropriate setting in
20 accordance with *Flores versus Reno* and TVPRA.

21 Q So what sort of time frame under those, the settlement and
22 statute do you have to place a child?

23 A 48 hours.

24 Q And that's from the time you get them --

25 A Border Patrol notifies us.

1 Q -- an email. And how are you notified?

2 A Normally we are sent an email that has a intakes form that
3 all entities have been provided with.

4 Q During the surge, were you able to make the 48 hour
5 requirement?

6 A No, sir, not all the time. We weren't able to make the
7 designations within 48 hours.

8 Q And how soon were you able to make the designations during
9 the surge?

10 A I'm not sure what the longest time period was. There were
11 times when it went up to five to six days.

12 Q And once the children do come into ORR custody, it's my
13 understanding these are not federal facilities the children are
14 housed at. They are contract facilities?

15 A They are grant funded facilities. It's like a contract.
16 It's a cooperative agreement.

17 Q Give us some examples of some of the grant funded facilities
18 here in the Valley.

19 A We have International Educational Services. We have
20 Southwest Key Services. We have Lutheran Social Services of the
21 South. We have Baptist and Child Family Services.

22 Q And which of these does the health screening?

23 A All programs utilize -- do health screening within 24 to 48
24 hours of the child arriving onto their campus. Each program is
25 responsible under their cooperative agreement and under the

1 *Flores* and TVPRA to ensure that the child is screened by a
2 medical professional: Physician, a nurse practitioner,
3 physician's assistant for well child checkup. Children are
4 normally then screened for TB, and they receive immunizations if
5 there's no record of immunizations, those that are required by
6 the state that the program is housed in. All of our programs
7 are state licensed by the licensing body of the state just as a
8 domestic shelter would be.

9 Q So, for example, children who come to the programs here in
10 the Rio Grande Valley would be screened -- would be given all
11 the necessary immunizations that would be required, for example,
12 to go to public school in Texas?

13 A Yes, sir.

14 Q And if you're not sure whether they have the immunization,
15 what do you do?

16 A They're reimmunized.

17 Q Okay. What sort of TB screening is done?

18 A Normally a PPD, which is a plant into the arm of the child
19 to see if it reacts. If the PPD is positive or there's not a
20 possibility of doing a PPD, the child is given a chest x-ray.
21 If that would not be positive, then we would go ahead and do a
22 blood test to check for PPD. Occasionally we cannot do a PPD or
23 a chest xray on a child due to pregnancy or other conditions,
24 but all children are screened.

25 Q What about screening for chicken pox?

1 A The children are not normally screened for chicken pox
2 unless that we know that they are -- have been exposed because
3 they receive the chicken pox vaccine. They are normally kept
4 segregated during the first few days of their stay with ORR
5 until their PPD is cleared and they have been vaccinated long
6 enough that they should not be considered communicable with the
7 chicken pox vaccine.

8 THE COURT: Now, are we talking about unaccompanied
9 minors in all this discussion?

10 THE WITNESS: Yes, sir.

11 THE COURT: We're not talking about family units?

12 THE WITNESS: No, sir.

13 BY MR. HU:

14 Q It's my understanding, and correct me if I'm wrong, family
15 units, it's all under ICE. And we have a different witness.

16 A Family units are all under CBP and ICE.

17 MR. HU: So we have a different witness for that, Your
18 Honor.

19 BY MR. HU:

20 Q Okay. So scabies. What sort of screening is done for
21 scabies?

22 A That's done when the children come in. They're rechecked.
23 Like I said, it's a well child checkup, so they're -- all their
24 skin is checked. They're checked for lesions. They are checked
25 for any rashes, injuries. If they appear that they have

1 scabies, they are then given the scabies treatment. They are
2 kept isolated from other children until the treatment is
3 effective.

4 If they were in contact with other children, then the other
5 children in that particular area would be checked also and
6 treated if needed.

7 Q What sort of protection is given to workers at these
8 programs to make sure they don't get scabies, chicken pox,
9 tuberculosis, et cetera, from the children?

10 A All of our youth care workers and workers at the programs
11 receive 40 hours of training per year. That includes how to
12 deal with communicable diseases and how to deal with ill
13 children, including universal precautions. And the children who
14 come in, occasionally if they are coughing and they think --
15 they will wear a mask. It's a surgical mask. And children -- a
16 child that's suspected to possibly have tuberculosis or
17 something, any child -- any person working with them would wear
18 possibly an N95 mask to be protected from that.

19 If we find a child is positive for TB, the child is
20 immediately removed, placed in a negative flow area where they
21 would be treated or transported if needed to a medical facility.

22 Q You have a negative flow area available in South Texas?

23 A Yes, sir, we have several.

24 Q Okay. In your experience on the surge, how many TB positive
25 children did you encounter?

1 A TB positive, we had one.

2 THE COURT: Tell me -- you may have said this and I just
3 missed it. Tell me what a negative flow area is.

4 THE WITNESS: That means that you're in a room instead
5 of the air being pushed into the room, it's pulled out. And
6 then it's recycled so that none of that air is from the rest of
7 the facility.

8 THE COURT: Okay.

9 THE WITNESS: It reduces airborne diseases.

10 BY MR. HU:

11 Q And what this does is it makes sure that the tuberculin
12 bacteria don't get into the facility and infect other people but
13 just goes out into the world?

14 A Yes, and it can't survive there.

15 Q During the surge, it's my understanding that you worked
16 closely with the Texas Department of Health on health issues?

17 A Yes, sir. I was part of the UGC.

18 Q The what?

19 A The Unified Command Group here in the Rio Grande Valley that
20 mirrored the national response in Washington. In addition to
21 our usual and customary working with local health departments
22 and ergo, the state health department for the unaccompanied
23 alien children, we had two -- we had calls once to twice a week
24 with Dr. Lakey, who is head of the state health department
25 concerning all of the health issues with the undocumented

1 aliens, family units, individual aliens and UC.

2 Q Now, for -- after the initial screening, what's done for
3 children who might be ill while in ORR custody? What provisions
4 do you have, how do they get their doctor visits and checkups,
5 things like that?

6 A Each of our facilities runs a sick call on a daily basis
7 where the child can say that they feel unwell and they would be
8 seen by a medical professional on that day. If a child does not
9 say, but a youth care worker or foster parent or something
10 notices that the child is ill, as soon as they notice the child
11 is ill, they are scheduled to go to a doctor's appointment. If
12 there's no doctor available, they are taken to either a 24 hour
13 clinic or to the emergency room.

14 Q Is there any cost issues that would result in the denial of
15 medical care for these children?

16 A No, sir. There's no cost issues on -- we don't provide
17 cosmetic care. But on medical care, there's no cost issues.
18 The children -- there's no preauthorization required to take a
19 child to an emergency room.

20 THE COURT: It's all paid for by the taxpayers?

21 THE WITNESS: Yes, sir.

22 BY MR. HU:

23 Q What about screening for lice? What's done in that area?

24 A All of the children when they come into ORR care are
25 screened for lice, and they are all lice shampooed unless they

1 were previously lice shampooed at the Border Patrol stations.
2 If they come in and they have -- were previously shampooed for
3 lice and still have active lice, the pediatrician is contacted
4 and it is confirmed that the child can be reshampooed. They are
5 reshampooed, and I have youth care workers who are wonderful
6 people and will sit with a nit comb and comb out. And we do
7 haircuts.

8 Q And finally I know -- does the state require that they get
9 flu shots?

10 A No, but ORR does during flu season, and it varies by states.
11 Texas does not. But other states that do, we give the shots for
12 the states that do. All of our facilities have to meet state
13 requirements for the states that they are located in.

14 MR. HU: That's all the questions I have, Your Honor.

15 THE COURT: Dr. Taitz?

16 What happens if they refuse a shot?

17 THE WITNESS: We have 30 days to talk them into it under
18 state guidelines, and we have -- I do not have --

19 THE COURT: Do you offer to take it for them and show
20 them it doesn't hurt?

21 THE WITNESS: I actually have. I have talked many
22 four-year-olds into going and getting their shots. Usually it
23 requires a bag of dumplings, lollipops, but it has happened.

24 **CROSS-EXAMINATION**

25 BY DR. TAITZ:

1 Q Good day, Ms. Brooks.

2 A Hello.

3 Q So again, just what I stated to the officer, I'm not
4 criticizing you. I'm just trying to find ways to protect both
5 the children and the public.

6 So first of all, I wanted to know, are you a doctor?

7 A No, ma'am.

8 Q Do you have medical training?

9 A Yes, ma'am.

10 Q Which is?

11 A I was a medical laboratory specialist in the Army.

12 Q So you worked in a lab, right?

13 A Yes.

14 Q Not as a registered nurse?

15 A No, sir. No, ma'am. Sorry.

16 Q No, sir. Okay. Now, isn't it true that most individuals
17 that cross the border actually do not end up in those camps;
18 that they're being released to relatives?

19 A I don't know, ma'am. Most of the people who cross the
20 border, I don't know the percentages. I only work with
21 unaccompanied children.

22 Q So --

23 THE COURT: Doesn't the *Flores* settlement require
24 unaccompanied children to be released to a parent or guardian?

25 THE WITNESS: Yes, sir, after we do the reunification

1 process, which takes approximately 21 days.

2 THE COURT: Who does that?

3 THE WITNESS: The grant funded providers with my
4 oversight.

5 THE COURT: Okay. It's under your jurisdiction?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. Go ahead.

8 BY DR. TAITZ:

9 Q Okay. So do you have medical doctors checking every person
10 that's under your care?

11 A Yes.

12 Q Or just -- you have medical doctors?

13 A We have medical doctors that our programs contract with or
14 medical professionals, nurse practitioners or physician's
15 assistants who give each child a checkup coming in the door.
16 And then if a child has additional, they do go to a medical
17 doctor, DO, MD, whatever specialist they need.

18 Q So the answer is actually no. You said that only if a nurse
19 thinks that a person needs to see a doctor, he would see --

20 A Not a nurse. A nurse practitioner or physician's assistant.

21 Q Oh, I'm sorry. Either nurse practitioner or physician's
22 assistant. So most children do not see a doctor?

23 A No, a lot of them do. We only have nurse practitioners and
24 physician's assistants in a very few programs. Most of our
25 programs are contracted with local pediatricians.

1 Q But you send -- it's not a situation -- I'm just trying to
2 clarify. It's not a situation that a doctor comes to the
3 facility and checks every child.

4 A No, we take the children to the doctor.

5 Q If -- if you think that the child is sick?

6 A No, all children.

7 Q Each and every child sees a medical doctor? Is that what
8 you're saying?

9 A Each and every child sees a medical professional.

10 Q No, no, no.

11 A Okay. And some programs only use doctors. Some of our
12 programs use nurse practitioners or physician's assistants.
13 Those are few and far between.

14 Q So it would be untrue to say that every child sees a doctor.
15 Some might see a doctor, but it's not a program where every
16 child sees a doctor.

17 A The majority do.

18 Q So as you stated, in some instances they see a doctor, but
19 not every child --

20 A Not 100 percent.

21 THE COURT: Let her finish her question.

22 Finish your question, Dr. Taitz.

23 BY DR. TAITZ:

24 Q So not every child sees a doctor, right?

25 A Not 100 percent.

1 Q Yeah. Further, you do not know if those children have or
2 some of -- actually you don't know if they're actually children,
3 if they're minors. For most of them, you do not have any actual
4 photo IDs from the country of origin; is that correct?

5 A No, ma'am, we don't have photo IDs.

6 Q So somebody who let's say 25. He comes from Central
7 America. He's petite. He might say he's 17. You don't know if
8 he's really 17, right?

9 A No, ma'am. Not until I receive his identification.

10 Q And you don't get any criminal record from the countries of
11 origin; is that correct?

12 A Not usually, ma'am.

13 Q So somebody who hypothetically is a 25-year-old gang member
14 or cartel member might be put in your facility with God know how
15 many children. You just wouldn't know; is that correct?

16 A It could happen, yes.

17 Q Thank you.

18 Further, you are releasing those children to individuals who
19 are just sponsoring those children. Do you require any bail?

20 A We're not allowed to under the --

21 Q You're not allowed to?

22 A Not under the law, ma'am.

23 Q So when people -- but those children have no IDs. And a
24 person comes and says: Well, this is my relative and this is my
25 relative and ten other people are my relatives. You don't

1 really know if they're relatives; is that correct? You can't
2 tell?

3 A Well, we do obtain birth certificates from all involved
4 parties and confirm them with the consulates.

5 Q You get birth certi --

6 THE COURT: You get birth certificates from every one of
7 these kids?

8 THE WITNESS: I get copies of birth certificates for
9 every one of these children, yes, sir.

10 THE COURT: And you have birth certificates for every
11 relative that they're turned over to?

12 THE WITNESS: Yes, sir, copies of.

13 THE COURT: Really?

14 THE WITNESS: I don't get originals, but I get copies
15 of. And they can and are confirmed. And in grand part with
16 the -- in great part with the consulates of the countries.

17 THE COURT: And what happens if their relatives are in
18 the country illegally? Does the government do anything about
19 that?

20 THE WITNESS: I'm not law enforcement, sir.

21 THE COURT: I didn't ask you that. Answer my question.
22 Does the government do anything about that?

23 THE WITNESS: Not HHS.

24 THE COURT: So you have their birth certificate. You
25 know they're in the country illegally, and you do nothing about

1 it?

2 THE WITNESS: We report when the child --

3 THE COURT: Answer my question. You do nothing about
4 it.

5 THE WITNESS: I am answering your question, sir.

6 THE COURT: All right.

7 THE WITNESS: We report when the child is released, to
8 whom they're released to the Department of Homeland Security.

9 THE COURT: And do you tell them that this person that
10 you're releasing them to is in the country illegally?

11 THE WITNESS: Yes, sir.

12 THE COURT: And so the Department of Homeland Security,
13 if they -- do they do anything about it?

14 THE WITNESS: I don't know.

15 THE COURT: Okay. So the people that are supposed to be
16 protecting the people who reside in the United States legally
17 know that these people are in the country illegally because you
18 tell them?

19 THE WITNESS: We provide them with the document, yes,
20 sir.

21 THE COURT: What document?

22 THE WITNESS: It's called a discharge notification.

23 THE COURT: And what all -- what kind of information is
24 on that?

25 THE WITNESS: The child's name, the child's address, the

1 child's A number, the sponsor's name, the address of the
2 sponsor, and the status of the child and the sponsor.

3 THE COURT: Who does the determination that they're
4 going to show up at whatever hearing they're ordered to show up
5 at?

6 THE WITNESS: That would be under the Court.

7 THE COURT: Well, the *Flores* settlement requires that.

8 THE WITNESS: Okay. We provide the sponsor. They sign
9 that they will be taking the child to court.

10 THE COURT: That's what I'm asking. Who does that?

11 THE WITNESS: ORR has them sign a document stating that
12 they will take the child to court.

13 THE COURT: All right. And you are ORR?

14 THE WITNESS: Yes.

15 THE COURT: Okay. So whoever -- who makes the
16 determination that this is a responsible individual you're
17 leaving the child with?

18 THE WITNESS: ORR, sir.

19 THE COURT: All right. And what steps do you take to
20 make sure these are responsible people?

21 THE WITNESS: The child -- when the child comes through
22 the door, the child is assessed under TVPRA. They receive also
23 additional assessments. Then we contact family members in
24 country of origin, family members here. The grant funded
25 programs have case managers who are trained in assessing --

1 getting information and assessing the information to find out if
2 it is, in fact, the relative. Is this relative going to be
3 taking care of the child, meeting the child's needs, ensuring
4 that the child goes to school, goes to court, medical needs,
5 fed.

6 THE COURT: How do they do that? You just ask the
7 parent? Say, "Are you going to make sure he goes to school?
8 Are you going to make sure" -- or there's some other
9 investigation that goes on?

10 THE WITNESS: There's a series of interviews, and we
11 also do background checks on all sponsors.

12 THE COURT: You do background checks?

13 THE WITNESS: Yes, sir. On non-parent sponsors, we
14 actually do fingerprint checks.

15 THE COURT: Okay. But if it's a parent --

16 THE WITNESS: We do an Internet background check.

17 THE COURT: What do you find out?

18 THE WITNESS: Mostly not much.

19 THE COURT: That's what I wondered.

20 THE WITNESS: But if we find that the child -- we do
21 find criminal histories at times. And after that, the case goes
22 from a normal track to a more involved track where we have to
23 determine if a child can go to someone, what the criminal
24 history is and --

25 THE COURT: You mean a criminal history other than being

1 in the country illegally?

2 THE WITNESS: Yes, sir.

3 THE COURT: So you actually turn children over to not
4 only somebody that is in the country illegally, but also
5 somebody that has a criminal record?

6 THE WITNESS: If they're traffic violations.

7 THE COURT: And what if they're not traffic violations?

8 THE WITNESS: Then most likely --

9 THE COURT: What's the demarcation line? That's what
10 I'm asking.

11 THE WITNESS: It would depend on the rela -- the
12 relationship that the child has with the parent. Then if we
13 have to deny a parent, it actually has to be done through the OR
14 director in Washington.

15 THE COURT: Okay. I mean, I get a lot of defendants in
16 my court that say, "I came back in the country because of my
17 family. I wanted to do it because of my family." And I'm
18 sitting there holding their medical -- I mean their criminal
19 history, and they got deported for abusing their family and
20 beating them up. What do you do to make sure that doesn't
21 happen?

22 THE WITNESS: Well, if it's abuse or neglect of the
23 child, they wouldn't be -- the child wouldn't be placed there.

24 THE COURT: Okay. So that you -- you get that kind of
25 information? That's what I'm trying to ask.

1 THE WITNESS: Yes, sir, we check -- in a case where we
2 suspect that, we actually do child abuse and neglect checks with
3 each of the family protective services.

4 THE COURT: All right. Wonder if they're guilty of just
5 theft or burglary?

6 THE WITNESS: That would depend on whether they were
7 convicted or the charges were dismissed.

8 THE COURT: Well, I'm assuming now they're convicted.

9 THE WITNESS: Then it would be highly unlikely that they
10 would be sponsoring a child unless it --

11 THE COURT: Well, it's their kid.

12 THE WITNESS: Then it would go to the OR director, and
13 he would make that determination.

14 THE COURT: So it gets kicked upstairs to somebody that
15 you work for?

16 THE WITNESS: Yes, sir.

17 THE COURT: But it's possible they could still turn over
18 the child to somebody that's not only illegally in the country,
19 but also somebody that has a criminal history?

20 THE WITNESS: It is possible.

21 THE COURT: Okay. Go ahead, Dr. Taitz.

22 BY DR. TAITZ:

23 Q In regards to vaccinations, if a child tells you that he got
24 shots, you would believe him, right?

25 A No.

1 Q Well, how can you tell if the child had shots or not?

2 A We don't. Unless we get an actual documented record, the
3 child gets revaccinated.

4 Q Okay. Are you aware of the epidemic of rabies that was here
5 in Laredo facility? Do you have any knowledge of that?

6 A No.

7 Q Do you have a manual in regards to Ebola?

8 A No.

9 Q So individuals might come -- are you familiar with the
10 incubation period?

11 A Yes.

12 Q So if somebody who is coming during the incubation period of
13 Ebola, the facility wouldn't know what to do, right? There is
14 no manual on Ebola, right?

15 A No. We have manuals on what to do for various contagious
16 diseases and what to do if a child comes in and is febrile or
17 has any symptoms that are not --

18 Q So would you believe -- would you think that if Judge Hanen
19 issues a decision stating that there has to be a manual that
20 the -- that employees have to be trained and advised in regards
21 to deadly disease Ebola where can be up to 90 percent mortality,
22 do you think it would help public health to provide this kind of
23 information?

24 A I don't know. I'm not a physician.

25 Q But you said that you have medical training.

1 A I'm a medical laboratory technician.

2 THE COURT: Yeah, go to your next question. She's not
3 qualified to answer that.

4 DR. TAITZ: Okay, okay.

5 BY DR. TAITZ:

6 Q So in regards to criminal records, you do not get any
7 criminal records for the individuals who come into your custody;
8 is that correct?

9 A Only those provided by DHS.

10 Q You mean by the Border Patrol?

11 A Or ICE.

12 Q Oh, but the Border Patrol agent just testified that they do
13 not have criminal records from the country of origin because --

14 A For the most part.

15 Q Pardon me?

16 A For the most part.

17 Q So the only criminal record would be from here. So a person
18 can be a murderer or rapist from El Salvador, Venezuela. You
19 just don't know. You don't have a criminal record.

20 A No.

21 Q You don't. And this person would be in the facility with
22 several hundred children, right?

23 A No.

24 Q But if you don't know his criminal record, how -- why would
25 you separate him?

1 A We wouldn't separate him, but we don't have facilities that
2 have several hundred children.

3 Q Okay. I'm sorry. What's the biggest facility you have?

4 A 250.

5 Q Okay. I'm sorry. Not several hundred, but 200. Sorry. My
6 mistake.

7 Now, are you familiar with the practice of recycling of
8 minors where the same coyotes are using the same minors that go
9 through the system, then they go back to Mexico, and then they
10 come with new family units? Are you familiar with this
11 recycling practice?

12 A No.

13 Q No.

14 A I don't work with family units.

15 Q Now, do you issue -- do you have -- can you provide the
16 Court any press releases to the communities in regards to -- for
17 example, you said you had many cases of lice. Can you provide
18 the Court with any press releases to the community, to parents,
19 to children, to doctors that you have many children with lice,
20 as you stated, so that when they go to school in four days,
21 September 1st, you know, that the parents and other children are
22 aware of this?

23 A The children don't have lice when they leave our custody.

24 Q And because you said that you call the emergency room and
25 they told --

1 A No. We treat the children when they come in with lice. The
2 children are usually in our custody for approximately 21 days.
3 They are not released if they have lice.

4 Q Really. Well, I have -- I would like to draw your attention
5 to the next document.

6 A Thank you, ma'am.

7 Q This is a report by Todd Starnes in American Dispatch. And
8 it is my understanding that Baptist Child and Family Services
9 work with you?

10 A They're contracted, yes.

11 Q And I'm going to read just a few paragraphs from this
12 report, and I would ask you to comment about what you know about
13 it.

14 It specifically -- the report states, "Medical staff warned:
15 Keep your mouth shut about illegal immigrants or face arrest."
16 And it states, "There were several of us who wanted to talk
17 about the camps, but the agents made it clear we would be
18 arrested, a psychiatric counsel told me. We were under orders
19 not to say anything. The sources said workers were guarded by a
20 security force from a Baptist Family and Children Services which
21 the Department of Health and Human Services hired to run the
22 Lackland camp."

23 They were called brown shirts.

24 "It was a very submissive atmosphere, the coordinator said.
25 Once you stepped into the grounds, you abided by their laws, the

1 brown shirt laws."

2 Further they're talking --

3 THE COURT: Wait, wait, wait. Doctor, ask a question.

4 DR. TAITZ: Yes. I apologize, Your Honor.

5 BY DR. TAITZ:

6 Q So are your employees allowed to talk to the public about
7 problems in the facilities; for example, epidemics of be it lice
8 or scabies or other diseases? Are they allowed to talk about
9 it?

10 A If they're qualified to do so.

11 Q So who is qualified to do so?

12 A Most likely our physicians on staff.

13 Q But you said you don't have physicians on staff. You have
14 nurse practitioners, right?

15 A No, that's to work with the children. ORR has a medical
16 team, and they have physicians on their staff in Washington that
17 work with the CDC.

18 Q Oh, they have physicians in Washington, and they know about
19 medical condition of children in Texas or California? They know
20 about it?

21 A We report them -- we report illnesses up to them on a daily
22 basis, yes, ma'am.

23 Q So the -- let me understand. The doctor in Washington knows
24 about what's happening here. But the doctor from Washington
25 doesn't make the trip to Texas and doesn't make the trip to

1 California. So what does he know?

2 A She actually does visit the facilities on a regular basis.

3 But she gets reports on a daily basis from the facilities with

4 lists of what medical incidents have occurred.

5 Q How many facilities do you have?

6 A Throughout the nation right now, I'm not sure.

7 Approximately 90.

8 Q 90 facilities. And how many children are in those 90

9 facilities approximately?

10 A I'm not sure today.

11 Q Just a ballpark idea. Several thousand?

12 MR. HU: Objection, speculation.

13 THE WITNESS: Thank you.

14 BY DR. TAITZ:

15 Q You said the largest facility is 200 children?

16 A That's the capacity.

17 Q And the smallest is what?

18 A 32.

19 Q 30. So it's about 50. And you have, you said what, 200

20 facilities?

21 A No. Approximately 90.

22 Q 90. So -- so it's -- you have 50 -- so it's 5,000 children.

23 You just multiply, correct?

24 MR. HU: Objection, speculation.

25 THE COURT: Sustained.

1 DR. TAITZ: Just simple math.

2 BY DR. TAITZ:

3 Q So you have 5,000 children who are on custody, in custody,
4 and you have just one doctor in Washington, D.C.?

5 A No, ma'am. We have a medical team, and we have two
6 physicians that work with that team.

7 Q I'm sorry. It's not one, it's two.

8 A Yes.

9 Q For 5,000 children who --

10 A We have two physicians and a medical team.

11 Q Okay.

12 MR. HU: Your Honor, I object to the foundation of the
13 question. It's based on speculation, the number.

14 BY DR. TAITZ:

15 Q Well, you are the manager of the ORR, right? And you -- I'm
16 sorry. You work for --

17 A ORR, and I have oversight of this region. I'm not a manager
18 for ORR in total.

19 Q Okay. So -- but you stated medical team, it means nurses
20 or -- right? And in terms of doctors, you said you have two
21 medical doctors in Washington, D.C., right?

22 A Uh-huh.

23 Q And -- so you have 90 facilities. Let's say average of 50
24 children. So you have about 5,000 children, and you have two
25 doctors. Wouldn't you think that if Judge Hanen were to order

1 more doctors to review those children, that would help public
2 health?

3 A I can't answer that.

4 MR. HU: Object to speculation.

5 BY DR. TAITZ:

6 Q Okay. Next have you -- so have you done specific press
7 releases -- you don't know of any press releases in regards to
8 any specific diseases made for the public, right?

9 A I don't know of them.

10 Q You don't know. Have you personally -- have you visited
11 those Baptist Family -- Family and Children Services camp that I
12 talked about?

13 A Which one?

14 Q They have several of those, several camps with detention
15 facilities that are managed by this private company called
16 Baptist --

17 A Child and Family Services.

18 Q -- Child and Family Services. It's not a charity. It's not
19 a Baptist charity. It's just a company that calls itself
20 Baptist Family Child and Family Services.

21 A It's a --

22 Q Have you visited any of those facilities?

23 A Okay. Yes.

24 Q Do you have -- it is my understanding that they're supposed
25 to have electronic files, reports in regards to medical problems

1 in those centers, right? Is that correct?

2 A Yes.

3 Q So if the Court were to assume jurisdiction over this
4 follow-up of *Flores v Reno*, which was originally in California.
5 If the Court were to assume jurisdiction and were to ask you for
6 those reports, you would be able to provide it to the Court so
7 the Court would see how many people are actually sick with
8 different diseases, right?

9 A ORR would be able to do that, yes.

10 Q Now, if children are in incubation period, you wouldn't know
11 about it, right? You wouldn't know. Let's say if there is
12 scabies, it's two months incubation, and children are there only
13 for 21 days. So the child who is still in incubation period
14 would be just released; is that correct?

15 A I don't know. I'm not a medical professional.

16 Q Okay. Are there any medical checks for the relatives that
17 are taking those kids?

18 A No, ma'am.

19 Q If --

20 DR. TAITZ: May I actually -- Your Honor, in
21 *Nava-Martinez*, you mentioned that you did not see the actual
22 complaint of *Flores v Reno*, and I wasn't sure if you --

23 THE COURT: Complaint or the settlement?

24 DR. TAITZ: Complaint. I've got the actual complaint.
25 It is sealed, but apparently it was published in Michigan. And

1 my concern is if I may just -- I know the government has the
2 actual complaint because you were the parties, so you do have
3 the complaint. But I believe Your Honor never got the --

4 THE COURT: You can submit it to me; but if it's sealed,
5 I'm not going to unseal it.

6 DR. TAITZ: Well, it's not sealed because they published
7 it in Michigan Law Journal.

8 THE COURT: Who published it?

9 DR. TAITZ: Apparently the attorney for the plaintiffs
10 went ahead and published the complaint in Michigan Law Journal.

11 THE COURT: Okay.

12 DR. TAITZ: And I put the URL on top where you can
13 verify that it's there.

14 THE COURT: Okay.

15 BY DR. TAITZ:

16 Q So my question, the reason I mentioned this *Flores v Reno*
17 lawsuit, you said that you're following guidelines of *Flores v*
18 *Reno*; is that correct? There the actual issue was -- the main
19 issue of individuals who were incarcerated or in detention
20 facility was to allow other people, not relatives, to post bail
21 for them. Because if parents are illegal aliens, they wouldn't
22 come to post bail. They don't want to be caught. So *Flores v*
23 *Reno* now allows other people to post bail.

24 So I'm trying to understand what is going on. You -- if
25 you -- on one hand you are saying that you're following *Flores v*

1 Reno which requires bail. But on the other hand, you said
2 you're not allowed to take bail to assure that those people will
3 show up for deportation hearings. So what is going on? Can you
4 explain this?

5 MR. HU: Your Honor, I need to object. I think this is
6 calling for a legal conclusion if she's trying to interpret the
7 *Flores* settlement. And I don't see any relevance to the *Flores*
8 complaint because obviously the case was settled, and the
9 settlement agreement may have terms that were different than the
10 original allegations, whatever they may have been, so I don't
11 believe this line of questioning is appropriate.

12 THE COURT: Well, I think you can answer your practice,
13 whatever it is. I mean, if you ask for bail or don't ask for
14 bail, you can answer that.

15 THE WITNESS: ORR does not request bail.

16 BY DR. TAITZ:

17 Q But do you know why? Is there any reason for you not to ask
18 bail to assure that individual who are released will appear for
19 deportation hearings?

20 A No. I don't know.

21 Q You don't know. Is there any way to check where those
22 people are going after they're being released? Do you guys ever
23 track those people? For example, they're released to somebody
24 in Texas. They travel to California. And do you track what's
25 happening with those children?

1 A Once they're released, no.

2 Q No. I would like -- I'm sorry. I would like to draw your
3 attention to several documents relating to tuberculosis. So I
4 have here -- you can see a picture of an individual who was
5 refusing treatment for tuberculosis and who came from an area
6 with resistant -- with tuberculosis resistant to antibiotics.

7 Can you look at the picture? How old do you think this
8 gentleman is?

9 MR. HU: Objection, Your Honor. Speculation and --

10 DR. TAITZ: Okay.

11 THE COURT: Sustained.

12 BY DR. TAITZ:

13 Q Could he -- when you -- so when you process individuals, you
14 don't know what is their real age. You don't know who they
15 really are; is that correct?

16 MR. HU: I think this has already been answered, Your
17 Honor.

18 BY DR. TAITZ:

19 Q Would you know -- for example, would you be able to provide
20 the Court with records of TB vaccinations and other vaccinations
21 to -- let's say if Your Honor -- if Judge Hanen decides to take
22 jurisdiction, would you be able to provide the Court with
23 records in regards to vaccinations, in regards to healthcare
24 records and so forth?

25 A Yes, ma'am.

1 Q So those records -- if, for example, a person was in one of
2 your facilities and he is currently in California and he is
3 arrested for refusal to take medication for tuberculosis, would
4 we be able to check what was happening in your facility and
5 what's happening right now; is that correct?

6 MR. HU: Objection to speculation.

7 THE COURT: If you know the answer, you can answer it.
8 But otherwise just tell her you don't know.

9 THE WITNESS: I'm not sure.

10 THE COURT: Okay.

11 BY DR. TAITZ:

12 Q Now, *Flores v Reno* stated that -- there are two provisions
13 there. One provision is that individuals can be released from
14 custody if -- if they're not -- they do not present harm to
15 themselves and others and -- and if the government can be
16 assured that they will appear for the court hearings.

17 So when you release those individuals, how do you comply
18 with this -- with this stipulation stating that, for example,
19 they will appear at the court hearing for deportation? How do
20 you comply with this? How do you assure that they will appear
21 for deportation hearing?

22 MR. HU: Objection, Your Honor. I think she may be
23 asking a legal question on the interpretation of *Flores*. But
24 the other thing is the question has already been asked and
25 answered about appearances.

1 THE COURT: Well, let me ask it a different way.
2 Whoever -- I mean, ORR is in charge of actually delivering the
3 minor child to whomever, correct?

4 THE WITNESS: We do the release. It depends on where
5 the child is located, whether the sponsor --

6 THE COURT: Well, if you're a child in Texas and the
7 parent is in Idaho, how does the child get from Texas to Idaho?

8 THE WITNESS: Depends on whether the parent determines
9 they want to come to pick them up or they want the child to be
10 brought to them.

11 THE COURT: Well, let's assume the parent doesn't come
12 and get them.

13 THE WITNESS: Then the child will be flown to the
14 airport closest to where the parent lives.

15 THE COURT: All right. So let's assume they flew from
16 San Antonio to Boise.

17 THE WITNESS: Okay.

18 THE COURT: All right. Who does that?

19 THE WITNESS: ORR grant funded provider.

20 THE COURT: All right. So you're -- it's under not
21 maybe your auspices, but it's under ORR's auspices, correct?

22 THE WITNESS: Yes.

23 THE COURT: I have to get you to answer out loud. She
24 can't take down a nod of the head.

25 THE WITNESS: Sorry.

1 THE COURT: All right. And then so the person -- that
2 child is accompanied by someone.

3 THE WITNESS: Yes.

4 THE COURT: All right. And it's a -- it's either a ORR
5 employee or one of their contractor's employees.

6 THE WITNESS: Yes.

7 THE COURT: All right. So we fly not only the child
8 from San Antonio to Boise, we fly the person that's watching out
9 for the child from San Antonio to Boise.

10 THE WITNESS: Yes.

11 THE COURT: All right. And so we take them to the
12 address. We, the contractor, or the ORR authorized person takes
13 the child, accompanies him, and they go to their parents' house
14 in Boise.

15 THE WITNESS: No, sir. We only go to the airport.

16 THE COURT: Okay. What happens there?

17 THE WITNESS: The sponsor has to come to the airport
18 along with bringing all of their identification, et cetera, that
19 they have already turned into us, and then they pick the child
20 up at the airport.

21 THE COURT: All right. And so when does all the
22 investigation take place? Before you put them on a plane?

23 THE WITNESS: Yes.

24 THE COURT: Okay. And now when they get to Idaho, do --
25 isn't there a form that they have to sign?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. And that form, one of the things
3 they have to swear they're going to do is ensure the minor's
4 presence at all future hearings, right?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Now, why do we think that
7 someone who's in the country illegally would show up at a
8 hearing or bring their kid to an immigration hearing? I mean,
9 that defies common sense, doesn't it?

10 THE WITNESS: I don't know. I'm not a parent of a --

11 THE COURT: You didn't make the rules. You're just
12 following them.

13 THE WITNESS: That is the law as it is at this time.

14 THE COURT: All right. It's not the law. Let me
15 correct you there. It's the practice.

16 Okay. But all they have to do is say: Yes, we'll show up,
17 and sign -- is it a form I-134?

18 THE WITNESS: I don't remember, but I think so.

19 THE COURT: Okay. But it's basically an affidavit of
20 some sort?

21 THE WITNESS: Yes, it's an affidavit.

22 THE COURT: They sign it and they take the kid and leave
23 the airport. And as far as ORR is concerned with that child,
24 you're done with him.

25 THE WITNESS: For the most part.

1 THE COURT: Okay. What would cause you to have more
2 jurisdiction over him?

3 THE WITNESS: If we have children who need additional
4 services, either mental health or medical, we do have a
5 provision under TVPRA where we provide post release services or
6 contracted social workers to continue to have contact with the
7 family for a period of six months or for pendency of the
8 immigration court process.

9 THE COURT: So as long as there's an immigration case
10 pending, we pay medical care for them?

11 THE WITNESS: No, they --

12 THE COURT: Just social service care.

13 THE WITNESS: The social service person goes out and
14 checks and makes sure that the medical care and everything is
15 going on if the child had additional needs.

16 THE COURT: But that's voluntary.

17 THE WITNESS: Yes.

18 THE COURT: Okay. Who -- what happens if they -- if
19 they decide, okay, the Feds now know where we live. We live in
20 Boise. They know I'm here illegally. They know the kid is here
21 with me now, and so they move to Montana. What happens?

22 THE WITNESS: They move to Montana.

23 THE COURT: Okay. And who keeps track of them when they
24 do that?

25 THE WITNESS: That would be supposedly immigration

1 court.

2 THE COURT: All right. But does anybody really keep
3 track of them?

4 THE WITNESS: I don't work for the Immigration
5 Department.

6 THE COURT: All right. You don't know.

7 THE WITNESS: (Shakes head.)

8 THE COURT: You don't know. You need to answer
9 verbally.

10 THE WITNESS: I don't know. Sorry.

11 THE COURT: You're shaking your head. The court
12 reporter will just write down, "Witness shakes head," and we
13 don't know which way they're shaking, so -- all right.

14 DR. TAITZ: That's it, Your Honor.

15 THE COURT: Mr. Hu, any other questions?

16 MR. HU: Just two points on redirect.

17 **REDIRECT EXAMINATION**

18 BY MR. HU:

19 Q You were asked a question about whether HHS can release
20 certain information about these children. You are under
21 guidance. You know what HIPPA is, right?

22 A Yes.

23 Q Okay. Would HIPPA prevent you from releasing certain
24 information?

25 A It's my understanding that these children are not U.S.

1 citizens, so they're not -- HIPPA is not applicable for them.

2 Q Okay. And the second point is if you would turn to
3 Government Exhibit No. 3. I think you have that white binder in
4 front of you. And flip with me to page 10. Are you with me?

5 Okay. This is the *Flores* settlement papers, paragraph 15.
6 "Before a minor is released to INS custody, among other things,
7 they -- the custodian has to sign a form ensuring the minor's
8 presence at future proceedings before the INS and immigration
9 court."

10 Is this paragraph of *Flores* still being used by ORR, or has
11 it been superseded by regulation?

12 A To my knowledge, it's still being used.

13 Q Okay.

14 MR. HU: That's all I have, Your Honor.

15 THE COURT: All right. Thank you, ma'am.

16 MR. HU: We have one final witness, Your Honor.

17 THE COURT: Let's hear from him.

18 MR. HU: United States calls Alfredo Fiero.

19 (*Witness sworn.*)

20 THE COURT: Go ahead and be seated, sir.

21 **ALFREDO FIERO,**

22 the witness, having been first duly cautioned and sworn to tell
23 the truth, the whole truth and nothing but the truth, testified
24 as follows:

25 **DIRECT EXAMINATION**

1 BY MR. HU:

2 Q Please state your name, sir.

3 A Alfredo Fiero.

4 Q How are you employed?

5 A I'm employed by the Department of Homeland Security.

6 Q And what is your current job?

7 A I'm the deputy field office director.

8 Q Where?

9 A For Immigration and Customs Enforcement, Removal Operations.

10 Q And where are you based?

11 A I'm based out of El Paso, Texas, sir.

12 Q Did you from some time -- from time to time work here in the

13 Rio Grande Valley?

14 A Yes, sir, I did.

15 Q Specifically did you work here during the surge?

16 A Yes, sir.

17 Q What was your role here during the surge?

18 A I oversaw all the operations for the southern operations for

19 Enforcement Removal Operations.

20 Q When you said southern operations, from where to where is

21 southern operations?

22 A Everything in the Rio Grande Valley to Laredo.

23 Q Okay. So basically the entire Texas, New Mexico border?

24 A Yes, sir.

25 Q Up to Laredo?

1 A Yes, sir.

2 Q I'm going to limit my questions when I'm talking today about
3 unaccompanied minors and family units. We're not going to talk
4 about ICE's role for everybody else because it's my
5 understanding that's where the Court wants me to focus.

6 It's my understanding that ICE's role with respect to
7 unaccompanied minors is the unaccompanied minors are apprehended
8 by Border Patrol. And then if they can transfer the
9 unaccompanied minor to ORR custody here in the Valley, Border
10 Patrol takes care of that arrangement. However, when an
11 unaccompanied minor is going to an ORR placement outside the Rio
12 Grande Valley, that's an ICE function?

13 A Yes, sir, that's correct.

14 Q What exactly is ICE's role with unaccompanied minors
15 vis-a-vis this transportation function?

16 A ICE's role in that function is once ORR has informed us that
17 a placement has been found for that child, ICE makes the
18 transportation arrangements to get that child from let's say
19 here to let's say Pennsylvania. We will coordinate with the
20 office in Pennsylvania to send the officers here to the Rio
21 Grande Valley, pick up that child. We would take him. We would
22 facilitate taking that child to the airport, turn the child over
23 to the officers coming from that respective field office. That
24 office turns around and takes that child back to the designation
25 that ORR has given us, and they would turn the child over.

1 Q So, for example -- and these children, are they medically
2 screened by ICE?

3 A What we do, sir, is any time a child is moved, we have
4 another documentation, the 216, which tells us that the child is
5 going to be taken from point A to point B. We do have the
6 documentation that Border Patrol has drafted up on the I-213
7 which tells us that the child is in good health.

8 With that said, if we go on a commercial airline, we take
9 that, that the child is in good health, and we proceed to our
10 destination.

11 MR. HU: If I might approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. HU:

14 Q I'm showing you what's been marked and admitted in evidence
15 as Government Exhibit No. 4. In Exhibit 4, it appears that this
16 juvenile was apprehended here in the Rio Grande Valley but
17 ultimately was going to Arkansas. So would this be someone you
18 would transport from the Rio Grande Valley to Arkansas?

19 A Yes, sir.

20 Q That's what I have for unaccompanied minors. And your role,
21 once you get to Arkansas in that instance, would be to turn the
22 child over to ORR at that point?

23 A Yes, sir, that's correct.

24 Q And ICE is out of the picture?

25 A That's correct.

1 Q The second area I want to talk about --

2 THE COURT: Hold on a minute.

3 MR. HU: Okay.

4 THE COURT: So even though you're turning them over to
5 somebody that's in the country illegally, the Office of
6 Enforcement and Removal neither enforces the law nor removes the
7 individual?

8 MR. HU: Your Honor, I believe he testified he's turning
9 them over to ORR, Department of Health and Human Services, not
10 to the guardian. This is simply part of the -- it's not the --
11 it's not the final process.

12 Is that right? This is only for --

13 THE WITNESS: Yes.

14 MR. HU: -- that 21 day holding period, because during
15 the surge, there weren't enough beds for unaccompanied minors
16 here in the Rio Grande Valley, so they were sent all over the
17 place.

18 THE COURT: I'm not following you, Mr. Hu.

19 MR. HU: Let me see if I can rephrase the questions,
20 Your Honor.

21 BY MR. HU:

22 Q So ICE's role for unaccompanied minors is not --

23 THE COURT: This is just during the surge?

24 BY MR. HU:

25 Q No, this is --

1 A It's an everyday practice, Your Honor.

2 Q It's an everyday practice to move the unaccompanied minor
3 from wherever they're apprehended to wherever ORR places them?

4 A Yes, and we turn them over to ORR.

5 Q This is not moving them from ORR custody to the parent,
6 guardian or whatever?

7 A That is correct. ICE does not have any function in that,
8 that exchange.

9 THE COURT: So if you took a -- an individual like the
10 individual in Exhibit 4 --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- from here to Arkansas, once you got them
13 in Arkansas, you would re-turn them over to ORR?

14 THE WITNESS: Yes, sir.

15 THE COURT: And then ORR, whatever they did with it,
16 would be outside the purview of what you do?

17 THE WITNESS: That is correct, sir.

18 THE COURT: All right.

19 BY MR. HU:

20 Q Now let's talk about family units. Again, just what's your
21 understanding of what a family unit is for purpose of this
22 testimony?

23 A A family unit is somebody that ERO has identified or the
24 arresting agency has identified as a parent, immediate relative
25 with children.

1 Q Okay. So family units come to ICE from Border Patrol
2 typically; is that right?

3 A That is correct, sir.

4 Q And a family unit, what medical screening is done for a
5 family unit when they go from Border Patrol custody to ICE
6 custody?

7 A When they arrive into a detention setting, a family
8 residential center, we have IHSC medical staff at all our
9 residential facilities. The IHSC staff who have doctors, have
10 practitioners, have nurses will see that whole family and
11 provide a broad range of treatment for the family.

12 Q Okay. Does everybody see a doctor when they come into an
13 ICE family housing center?

14 A They do at some point in time, sir, yes.

15 Q Now, it's my understanding you're also the current
16 supervisor of the Artesia Center in -- where, Artesia, New
17 Mexico?

18 A Yes, sir, I am.

19 Q And what about when people come to Artesia? Do they all get
20 to see a doctor?

21 A Yes, sir.

22 Q Screened? Every single one of them?

23 A Every single one of them. They are all seen by a doctor.

24 IHSC has medical staff who are doctors who have mental
25 healthcare. Physicians as well. Everybody gets an initial

1 screening. Within a certain amount of days, they get another
2 complete review of their medical health.

3 Medical is available to them 24/7. Our medical staff is
4 there 24/7. They are given medication. They are -- we have
5 pill lines where when the medical doctors identify that somebody
6 needs medication, they -- they have a certain timeframe where
7 they set up pill lines, and those families come and receive the
8 medication that has been prescribed for them.

9 Q And is it my understanding the other facility here in Texas
10 is Karnes?

11 A Yes, sir, that's correct.

12 Q And are you the supervisor over Karnes as well?

13 A No, sir, I am not.

14 Q Do you know one way or the other whether there's a medical
15 doctor available that screens everyone at Karnes?

16 A Yes, sir, there is. I'm aware of that.

17 Q Now, how do these family units get from the Rio Grande
18 Valley to Artesia, for example?

19 A They were flown there from the Rio Grande Valley.

20 Q Do you use charter aircraft, or do you fly commercial?

21 A We use charter aircraft, ICE aircraft.

22 Q Okay. Are they screened medically before they're placed on
23 the ICE aircraft to make sure they don't have some communicable
24 disease?

25 A Yes, sir. Again, they receive the screening that Border

1 Patrol initially gave them. ICE air has their own medical
2 staff. So when we get those individuals from the Border Patrol,
3 we take them to the flight line. All the documentation that we
4 have is provided to that medical individual for the flight line
5 or for that charter. That individual reviews all the
6 information that has been given. If that person at the time
7 sees something that we may not have caught, that medical
8 provider will say this particular family or this particular
9 person cannot fly. If everything is good, everybody gets
10 allowed on the plane.

11 THE COURT: What about adults?

12 THE WITNESS: Yes, sir.

13 THE COURT: We've been -- in the newspaper lately
14 there's all this stuff about all they have to do is show a
15 notice of appear and they can board a commercial airline. I
16 mean, other than when they get arrested by Mr. Oaks and his
17 staff and they get brought in, other than their initial, do they
18 automatically get their notice of appear -- to appear and then
19 they can fly commercial without any medical screening?

20 THE WITNESS: No, sir. If they are in our custody,
21 before we release them, they would have to be medically cleared
22 before they leave that detention center.

23 THE COURT: Would they be in your custody?

24 THE WITNESS: Adults?

25 THE COURT: Yeah.

1 THE WITNESS: Yes, sir.

2 THE COURT: So everybody that ever gets arrested gets a
3 medical screen before they're released?

4 THE WITNESS: If they come into our custody, yes, sir.

5 THE COURT: Okay. I mean, what does that mean, "if they
6 come into our custody"? I mean --

7 THE WITNESS: Well, for those --

8 THE COURT: Let's take somebody from Honduras --

9 THE WITNESS: Yes, sir.

10 THE COURT: -- comes into the country. 18-years-old, so
11 he's not technically a minor.

12 THE WITNESS: Yes, sir.

13 THE COURT: He gets picked up by Border Patrol. They
14 bring him into the station. The Border Patrol agent takes a
15 look at him in the field. He looks okay. Asks him how he's
16 feeling. He's saying I'm feeling all right. And he gets
17 brought into the station. No complaints there. People figure
18 out he's not a Mexican alien, so he's considered an OTM, and
19 they give him a notice to appear, and then they let him go at
20 some point in time. Where else is he checked medically?

21 THE WITNESS: Well, at that time, he would just have the
22 Border Patrol screening that he had. However, with Border
23 Patrol, as the chief had mentioned earlier, those people do not
24 have travel documents to go back to the country, so most likely
25 they would be turned over to ERO to place in our adult detention

1 centers.

2 When they arrive in our adult detention setting, everybody
3 gets a TB x-ray. Usually within four hours we get a result back
4 as to if that's a positive x-ray or not. They get initial
5 screening. Within 14 days they get another complete medical
6 screening, and they are housed in our adult detention
7 facilities.

8 THE COURT: So every illegal alien that comes into the
9 country gets that?

10 THE WITNESS: If they come into enforcement --

11 THE COURT: No, no, no, no. You keep saying "if."

12 THE WITNESS: Well, Your Honor, the reason why I say
13 "if," because it is possible for that person to be released on
14 their own recognizance.

15 THE COURT: That's what I'm asking about. That's
16 exactly the situation I'm asking about.

17 THE WITNESS: If that person gets released on their own
18 recognizance --

19 THE COURT: And they get a notice to say: Okay. Show
20 up in five months or whatever for your hearing.

21 THE WITNESS: Yes, sir. They would have only the
22 initial screening that was done by the arresting agency.

23 THE COURT: And then they could get on a commercial
24 airline and fly anywhere they wanted in the United States?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay.

2 BY MR. HU:

3 Q Well, back to family units. We've talked about when they're
4 in the facilities. And then what is the continuing medical care
5 that's received while they're in custody? What medical care is
6 available?

7 A What -- based on the -- based on what the doctors found for
8 them, you know, if they have colds or they have scrapes or
9 whatever, they go see the doctor any time they want to.

10 Q They have like a sick call or something like that?

11 A Yes, sir. Well, in the family settings, they can go 24/7.
12 They do have sick call. They do have appointments. However,
13 they can show up whenever they want to.

14 Q Now, it's my understanding that the -- there's inadequate
15 bed space in these family holding centers; is that right?

16 A Inadequate bed space?

17 Q In other words, there's not enough beds for everybody who's
18 apprehended.

19 A That is correct, sir.

20 Q So what do you do with the people where there's no beds?

21 A Those people are released on their own recognizance.

22 Q Where are they released?

23 A They're released to either family members or an address that
24 they give us.

25 Q What if they don't have any family here?

1 A We -- it's -- we've also worked with the Catholic Charities,
2 so we -- if we have a family who has no family members, we will
3 contact our Catholic Charity resources, and we will ask them to
4 take custody of the family until somebody can be identified.

5 Q So during the surge, it's my understanding that there was
6 inadequate bed space. What were you doing with family units in
7 the last couple months here in the Rio Grande Valley
8 specifically?

9 A The families were be taken -- were taken to the Harlingen
10 resident office. They were processed there. We did as best as
11 we could to identify people. As the chief had mentioned, we
12 also had people in his stations where we would call and, as best
13 as we could, find family members. If we could not find family
14 members, then we were -- we reached out to our Catholic Charity
15 supporters. We drafted up a notice to appear, and then we
16 released them into the custodies of either family members or the
17 Catholic Charities.

18 Q Or if there were none of the above, were they taken to the
19 bus station here in Harlingen?

20 A We had coordination. Not in Harlingen. We did have in
21 Brownsville and in McAllen, and we worked with the city managers
22 there as well because they brought up the concern of a lot of
23 people sitting in their bus station. So we did have numerous
24 meetings with the mayor and with the county attorneys where we
25 set up time frames. And we started working with our Catholic

1 Charities. So they would go to the Catholic Charities first;
2 and then based on the bus tickets that they had, they were then
3 taken to the bus stations.

4 THE COURT: Where would they have bus tickets to?

5 THE WITNESS: Most of them were up north, sir.

6 THE COURT: But, I mean, do they -- I mean, places -- if
7 they don't have family, I mean, do they just -- you just -- did
8 they get to pick a city, or did y'all pick it for them?

9 THE WITNESS: No, sir. Most of the -- most of the
10 families that we dealt with, they all had somebody here or
11 some -- they knew somebody, whether it was a family member, a
12 relative of a family member or friends. And when we were at the
13 chief Border Patrol station, we made those contacts then. And
14 we would tell them buy a ticket out of -- these are your two
15 choices. Either out of Brownsville, out of McAllen. And the
16 families would provide a ticket, and we would coordinate with
17 the Catholic Charities or ourselves to take them to those bus
18 stations.

19 THE COURT: The family would provide the ticket, or the
20 government would provide the ticket?

21 THE WITNESS: No, the families. The government did not
22 buy tickets.

23 THE COURT: What did they do with the individuals
24 that -- where somebody didn't have money to buy a ticket?

25 THE WITNESS: That did not, sir?

1 THE COURT: Yeah. I mean, what if somebody says: I
2 have family in Chicago or I have good friends in Chicago. I'd
3 like to go live in Chicago. What happens to them?

4 THE WITNESS: So we would contact those people, their
5 friends in Chicago. Chicago would buy the ticket, the bus
6 ticket from Harlingen to Chicago or McAllen to Chicago.

7 THE COURT: Okay. So the -- and if -- and my question,
8 though, is assuming their friends say: Look, we don't have the
9 money to do that.

10 THE WITNESS: Correct.

11 THE COURT: Then what happens to them?

12 THE WITNESS: Then we would turn them over to the
13 Catholic Charities. We had an agreement that the Catholic
14 Charities would support us in those matters.

15 THE COURT: What were all these news reports -- and I'm
16 not saying they're accurate, so I don't want you to take this
17 the wrong way -- but where they said: Hey, we see all these
18 illegal aliens walking around. They just got off the bus with
19 \$100, and they're just walking around in downtown McAllen or
20 downtown Phoenix or whatever. I mean, how did that happen or
21 did it happen?

22 THE WITNESS: That I cannot speak to, sir. I only saw
23 that on the news. I don't know how --

24 THE COURT: I mean, you know what I'm talking about.

25 THE WITNESS: Yes, I know what you're talking about

1 because I saw it on the news, but I do not know how they got
2 there.

3 THE COURT: Okay. Go ahead, Mr. Hu.

4 BY MR. HU:

5 Q What medical screening is done before the family units are
6 taken to the bus station by ICE?

7 A It was just the initial screening that was given by the
8 Border Patrol.

9 Q So that's it. So if there was a disease problem of some
10 sort and for whatever reason Border Patrol didn't catch it, that
11 was it?

12 A Correct. And it is where -- because we worked with our
13 Catholic Charities as well, if an agent maybe caught it, an ERO
14 agent or the Catholic Charities caught it, then we would make
15 the arrangements to take them to the doctor.

16 Q So there were medical -- there was medical available through
17 Catholic Charities is what you're telling me?

18 A Yes, sir, I believe there was.

19 Q Okay. Now, once these individuals or the families are
20 issued notices to appear, what efforts are made to keep track of
21 them when they go to, as the court suggested, Chicago? Are they
22 supposed to report in? What are they supposed to do?

23 A So what they would do is they are told where to report.
24 Because the NTA, the notice to appear would then be filed in
25 that jurisdiction. So we would have them report to our

1 detaining officers there.

2 Now, what happens is that gets filed with -- the notice to
3 appear gets filed with the courts in that respective area. The
4 courts will then track the notice to appear. The families are
5 required by the law that every time they move, they are to turn
6 in a document saying: I'm leaving Chicago, let's say, and I'm
7 going to go to Austin, Texas. They are required to notify the
8 courts of that move so that the courts can then change the
9 jurisdictions from one place to another.

10 Q What happens if they give a fake address?

11 A Then they would end up most likely receiving an order in
12 absentia when the court date appeared.

13 Q An order for removal in absentia?

14 A Yes, sir, that's correct.

15 Q What efforts does ICE do to comply with the *Flores*
16 settlement?

17 A Our biggest role in the *Flores* settlement, sir, is the time
18 restraint and getting -- and assisting in getting them within
19 their 72 hours to the location that they're supposed to be.

20 Q And that's really your only role. Otherwise it's ORR or the
21 Border Patrol?

22 A That is correct, sir.

23 MR. HU: That's all I have, Your Honor.

24 THE COURT: Dr. Taitz?

25 DR. TAITZ: Yes.

CROSS-EXAMINATION

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BY DR. TAITZ:

Q Good day, Mr. Fiero. I have just a few questions.

A Yes, ma'am.

Q So you stated that you receive those illegal aliens from Border Patrol, and the medical screening is done by Border Patrol; is that correct? Now, the Border Patrol agent that just testified earlier stated that they do not have doctors on staff. So from the moment -- basically from the moment the person crosses the border and goes into your custody and gets out of your custody, no doctor actually checks this person, right? Is that correct?

A What group are we talking about?

Q People that are being released on their own recognizance.

A You're talking about family members?

Q Yes.

A Then that would be correct.

Q Now, you -- you also do not do any checks, any criminal records from the country of origin; is that correct?

A If we -- if we take people into our custody, whether they're family groups or adults, we run as many checks as we can. As the chief had mentioned, the Interpol. We also have access to Interpol.

Q But chief -- does Venezuela work with Interpol? Does Venezuela provide criminal record of individuals through the

1 Interpol?

2 A I don't know if Venezuela does or not.

3 Q What about El Salvador?

4 A To my knowledge, I don't know.

5 Q Honduras?

6 A I don't know.

7 Q So, I mean, if you would have been getting routinely reports
8 from Interpol, you would have seen reports from Venezuela,
9 Honduras and El Salvador; is that correct?

10 A If they're in the Interpol system, then, yes, we would have
11 seen it.

12 Q So if you don't know anything about it, it's reasonable to
13 assume that they do not provide those records to Interpol; is
14 that correct?

15 A I -- I couldn't answer that because I don't work for those
16 governments.

17 Q Aside from Interpol, do you make any request or have any
18 records of any requests made to the governments of those
19 countries to check if those people have criminal record? Do you
20 make any requests for information?

21 A We do have -- Enforcement Removal Operations does have a
22 mechanism to do that.

23 Q But do you do it?

24 A For adults, yes, we do.

25 Q And so you -- how many -- how many adults went through your

1 custody?

2 A How many what? I'm sorry.

3 Q How many adults went through your custody approximately like
4 from 2013, 2014?

5 A I don't have that number for you, ma'am.

6 Q Do you have a number of how many -- the number of adults
7 where you checked the criminal record and received criminal
8 records from the countries of origin?

9 A I don't have that number.

10 Q But if you were to have those records, you would be able to
11 provide it to the Court. Will you?

12 A Yes, ma'am, we would.

13 Q Can you estimate how many records do you receive
14 approximately?

15 A Well, I do know the Border Patrol or the resident agency
16 always runs criminal history checks here in the United States.
17 Now, in an adult population, which we also deal with, we do have
18 mechanisms where we can notify our consulates. We also work
19 with the PGR. We have other means that we do or the PGR is
20 seeking these individuals.

21 Q I'm sorry, PGR is?

22 A It's like the FBI. It's like the Mexican FBI to our FBI
23 here.

24 Q But we actually don't know how many criminal records you
25 actually received. You cannot provide the Court with any -- any

1 documents. I mean, you're testifying today. And do you have
2 any documents that you can show the Court?

3 A What I'm saying is if we had that number, I could provide
4 it. We do have a means of identifying people that have criminal
5 records outside of the United States.

6 Q No, I understand that you might have means. The question is
7 whether it is done.

8 A Yes, it is done. I'm talking about in adult population.

9 Q But what percentage on -- approximately on what percentage
10 of adults, illegal aliens that go through your facilities you
11 have criminal records that you can provide the Court?

12 A I don't have a number for you.

13 Q Just a ballpark idea.

14 A I don't have that number for you.

15 MR. HU: Objection. I don't want him to speculate.

16 DR. TAITZ: Yeah, okay.

17 BY DR. TAITZ:

18 Q Do you have any records that you can provide to this court
19 of any warnings that you've made to the public in regards to
20 individuals with possibly scabies, lice or some other diseases?

21 A No, I do not.

22 Q Are there any such -- do you issue any such warnings to the
23 public?

24 A I do not.

25 Q Do you know of anybody who is issuing such warnings?

1 A No, I do not.

2 Q Are you familiar with the practice of recycling children
3 where the same children are being used by coyotes, by human
4 traffickers to come with different illegal aliens to basically
5 traffic illegal aliens with those children as family units?

6 A No, I am not familiar with that.

7 Q So it is your testimony that you never heard of this
8 practice of recycling children?

9 A Not until you mentioned it today. That's the first time
10 I've heard that term.

11 Q Okay. Not using that term, but have you seen instances
12 where the same children were used to bring to the United States
13 multiple individual? This child goes to U.S. with several
14 people, then he goes back to Mexico, and then the same child
15 comes with more people and the whole village comes like this.

16 A No, I have not seen that.

17 Q You have not seen the same child coming with multiple
18 individuals?

19 A No, ma'am, I have not.

20 Q When you -- you said that you take the children to different
21 areas in the U.S. Do you have the criminal record of
22 individuals who take custody of those children?

23 A We turn them over to ORR, so I would imagine that ORR
24 screens their own staff. We do not turn them over to another
25 family. We turn them over to ORR.

1 Q Oh, so you turn them over to ORR representative. So you
2 wouldn't have any record. You don't know who are the people who
3 are sponsoring those children?

4 A That's correct. I do not know. ERO does not know.

5 Q Now, are you aware of instances where people from countries
6 sponsoring terrorism, countries that are linked to radical
7 Islamic terrorist organizations crossing the U.S. border? Are
8 you familiar with those instances?

9 A Yes.

10 Q Any of those individuals come to your custody through either
11 minors where they state that they are under 18 or as family
12 units?

13 A I have not seen that situation.

14 Q So where would they go, though? I mean, you're aware of
15 those people, so how do -- where do they go?

16 A I'm aware of adults that are in those settings. I'm not
17 aware of minors.

18 Q Okay. So, oh, you are aware of adults?

19 A Yes.

20 Q So what happens to those individuals?

21 A Once the Border Patrol or the arresting agency is done
22 processing them, they would turn them over to ERO custody. They
23 would be placed into administrative proceedings.

24 Q Do you have knowledge in regards to tuberculosis epidemics
25 among individuals that are being transported to different

1 states?

2 A Do I have knowledge about what? I'm sorry.

3 Q Tuberculosis epidemic. People with tuberculosis.

4 A I have not seen that myself.

5 Q Now, you stated that in your facilities, everybody is being
6 screened. So if the Court wanted to verify that this is indeed
7 happening, would you be able to provide records showing that
8 indeed everybody was screened?

9 A I would petition for the medical staff to do that, yes.

10 Q Have you received or have you ever provided your employees
11 with a manual in regards to Ebola epidemic?

12 A I have not.

13 Q So let's say you have individual who comes from Africa,
14 visited Africa. You are transporting. You don't know what
15 signs to look for or what to do in this case?

16 A That's correct. I have not received that training.

17 Q Okay. Have you ever visited any Baptist Family -- Child and
18 Family Services detention facilities?

19 A I have not.

20 Q I would like to draw your attention to a document. This was
21 a release under Freedom of Information Act stating that ICE --
22 in 2013 ICE freed 36,007 convicted criminal aliens from
23 detention. And among them, 193 individuals with homicide
24 convictions, 426 sexual assault convictions, 303 kidnapping
25 convictions, 1,075 aggravated assault convictions, 1,160 stolen

1 vehicle convictions, 9,187 dangerous drug convictions, 16,017
2 drunk or drugged driving convictions, and 303 flight escape
3 convictions.

4 And I wanted -- I would ask you to comment on these
5 statistics. Why are those people being released? And, first,
6 yes, why are those people being released?

7 MR. HU: Your Honor, I got to object. That's obviously
8 done on individual case-by-case basis. I don't think this
9 witness is being offered for this type of testimony.

10 THE COURT: Mr. Fiero, you don't know the answer to
11 that, do you?

12 THE WITNESS: No, sir, I do not.

13 THE COURT: All right.

14 BY DR. TAITZ:

15 Q From your experience, in 2013 and 2014, have you seen more
16 illegal aliens crossing the border?

17 A I have not. I don't work on the front lines as the chief
18 and his staff does. I just see the people that are being sent
19 to us from the arresting agencies.

20 Q Do you know how many people are being transported from Texas
21 to other states, for example, as unaccompanied minors?

22 A I do not.

23 Q Have you been given any guidelines -- what is the basis for
24 you transporting those individuals to other states? Why are you
25 doing this, and who is paying for it?

1 A Who are we talking about?

2 Q When we're talking about unaccompanied minors that you are
3 transporting from Texas to, let's say, California where I live
4 and other states, what is the legal basis for it? Do you have
5 like a law, a manual stating why you are doing this, why those
6 people are being transported to other states? Why, for example,
7 the relatives don't show up to pick up their children? Any
8 answers? Do you have any knowledge?

9 A I can't speak to that because I wasn't the one who made
10 those decisions.

11 Q And are you aware of who is paying for all this
12 transportation?

13 A Again, in which setting are we speaking to?

14 Q Unaccompanied minors.

15 A If we're using charter flights, then ICE operations is
16 paying for it.

17 Q So you are paying. So the U.S. Government is paying for
18 transportation of those unaccompanied minors to different areas
19 around the country to deliver them to their relatives; is that
20 correct?

21 A On our charter flights, that is correct.

22 Q Now, those -- are you familiar, for example, charter flights
23 to California?

24 A I was not involved in those charter flights to California.

25 Q And other states. Now, do you charter private companies,

1 right, as needed? For example, now there is less of a surge,
2 but now it's because it's really hot. Come September, October
3 when it's going to be cooler, we'll see another surge. So you
4 contract those flights and buses as needed; is that correct?

5 A ICE Air Operations has a contract to use charter planes to
6 move people and remove people from the United States.

7 Q So on the times -- the times that they do not fly illegal
8 aliens for ICE, they're flying other people; is that correct?

9 A I am not in charge of air operations, so I don't know
10 what --

11 Q You don't know?

12 A -- they do.

13 DR. TAITZ: No further questions. Thank you.

14 THE COURT: Anything else, Mr. Hu?

15 MR. HU: No redirect, Your Honor.

16 THE COURT: Mr. Fiero let me ask you, and you may not
17 know this. What percentage of -- whether they're children or
18 adults that get turned over to other individuals who are in the
19 country illegally and that are ordered to show up at a hearing
20 five months from now, six months from now, whenever it is, what
21 percentage of them actually show up?

22 THE WITNESS: Your Honor, I do not know that because
23 they show up to the office -- to the immigration courts, and the
24 immigration court is a different entity from Enforcement Removal
25 Operations.

1 THE COURT: I figured you might say that.

2 Ms. Brooks, do you or Mr. Oaks, do you know the answer to
3 that?

4 MR. OAKS: No, sir, I don't.

5 MS. BROOKS: No, sir.

6 THE COURT: Okay. You can step down, sir.

7 THE WITNESS: Thank you, sir.

8 MR. HU: Your Honor, this concludes the government's
9 witness presentation.

10 THE COURT: All right. Dr. Taitz, I understand -- well,
11 let me ask you, do you have any witnesses here you want to put
12 on?

13 DR. TAITZ: Yes, Your Honor. I have two witnesses.
14 They're Border Patrol agents.

15 I also wanted to show you the emails and that response to
16 motion to quash a subpoena. And those -- if I may forward to --
17 specifically today a subpoena -- a motion to quash the subpoena
18 was filed, and it was filed today in the morning. I haven't
19 heard -- I hadn't had a chance to review it completely.

20 But one of the four Border Patrol officers who specifically
21 asked me to contact this court and seek subpoenas, supposedly
22 based on what the government is saying, is now saying that he
23 did not want to testify.

24 I have here an email from Gabe Pacheco, who is media
25 representative and spokesperson for the union who's stating,

1 "We're writing on the -- we're waiting on the agency, DHS-CBP,
2 U.S. Border Patrol to confirm with Department of Justice in the
3 morning of August 26th, 2014. I'm willing to comply with the
4 court order to appear in front of Judge Andrew S. Hanen;
5 however, I cannot move forward without their confirmation.
6 Everyone named -- everyone named in the subpoenas and court
7 order are willing to appear in court in front of Judge Andrew S.
8 Hanen. We are all in the same situation. Waiting."

9 And you can see it says Monday, August 25th, 2014, 7:34 PST.
10 So those officers are actually under an order where they need to
11 get an okay from the --

12 THE COURT: Well, I will -- I'll address that in a few
13 minutes. Let's go ahead and hear the witnesses that you have
14 here today.

15 DR. TAITZ: Yes. So they wanted to appear on the phone
16 if that would be possible.

17 THE COURT: I'm not going to do that. Do you have any
18 witnesses that are here?

19 DR. TAITZ: No, no, they -- they could not -- they did
20 not get an okay from the government timely, so they could not
21 board the planes.

22 THE COURT: Here's what I'm going to do. First of
23 all -- well, let me clarify a couple things. First of all --
24 and, Mr. Kisor, you can answer this; or, Mr. Hu, you can answer
25 this. Where is the *Flores* settlement codified? I mean, you

1 suggested that to a witness, Mr. Hu, it's been codified.

2 MR. HU: No, Your Honor. The *Flores* settlement and
3 statute have to be read together. The *Flores* settlement was --

4 THE COURT: What statute?

5 MR. KISOR: The TVPRA, Your Honor.

6 THE COURT: Okay. All right. I assumed that.

7 MR. HU: And that's the codification that I was
8 referring to.

9 THE COURT: Okay. I thought you were saying it was
10 additionally --

11 MR. KISOR: That's in 8 U.S.C., Your Honor.

12 THE COURT: That's No. 1.

13 And then No. 2, my second question is your Exhibit No. 1,
14 the Napolitano memo, I mean, this basically applies to DACA,
15 right?

16 MR. HU: That is correct, Your Honor.

17 THE COURT: And that's a situation -- this is not a DACA
18 situation, right?

19 MR. HU: Right. It doesn't apply to these people, any
20 of the folks that we're talking about.

21 THE COURT: That's why I was trying to figure out why it
22 was here.

23 MR. KISOR: That's correct, Your Honor.

24 MR. HU: We put it in as a potential exhibit in case the
25 Court wanted to hear DACA testimony since we would need it for

1 that purpose. But since DACA doesn't apply and --

2 THE COURT: Well, I'm assuming, given the criteria it
3 takes to implicate the DACA, that it doesn't apply to any of
4 these -- you know, anybody that's come in the country in the
5 last eight months.

6 MR. HU: That's correct, Your Honor.

7 MR. KISOR: That's correct, Your Honor. It's from
8 June 2012.

9 MR. HU: Anyone that's coming illegally. Under DACA you
10 can actually -- there is a parole provision where you can come
11 and go if you're already approved.

12 THE COURT: Now, is DACA also what we commonly refer to
13 as the Dream Act?

14 MR. KISOR: No.

15 THE COURT: Or dreamers, people that come in under DACA?
16 Are they, quote-unquote, dreamers?

17 MR. KISOR: Some of them, Your Honor. Those are two
18 different terms. The Dream Act, which actually hasn't passed
19 Congress, so it's a --

20 THE COURT: Well, that's what I wondered.

21 MR. KISOR: Yeah. DACA was -- DACA was an executive
22 order that -- or USCIS program that because the Dream Act wasn't
23 enacted was something akin to it, but it falls a little short of
24 the total contours of the proposed Dream Act, I believe.

25 THE COURT: All right. So anybody that is referring to

1 these -- the minors that have come in or the -- or the adults
2 that have come in in what we'll call the surge, the last eight
3 months, I mean, to call them dreamers is just incorrect.

4 MR. KISOR: Yes, that's correct, Your Honor. DACA will
5 not apply to those people. They have to have been in the United
6 States as of the date of the memo, which is June 2012.

7 THE COURT: Okay. All right. Okay. Let's --

8 DR. TAITZ: May I respond to this, Your Honor?

9 THE COURT: Yes.

10 DR. TAITZ: DACA relates to what is happening today here
11 at the border and all over the country because DACA is a magnet,
12 and this magnet has caused this surge. It was suggested that it
13 has to do with other factors. However, we have seen definitely
14 when DACA was enacted in 2012, after it was enacted in 2013 and
15 '14, we've seen a surge of illegal aliens.

16 It is true that in the last couple -- this month there was a
17 little bit of a drop, but it is, according to experts,
18 associated with just hot weather. As the weather will get
19 cooler, we will see another surge. And therefore, DACA was
20 never evaluated in terms of its constitutionality. Was it ever
21 constitutional for the Secretary of Health and Human Services
22 wholesale to grant waiver of deportation to possibly millions of
23 people.

24 Moreover, people who are crossing the border, we don't know
25 who they are. They have no IDs. And later on they can always

1 state that they've been here before 2012.

2 THE COURT: Okay. Well, I -- I'm not going to go into
3 that because it doesn't apply to what we're here today. The
4 reason I went into it is because I think -- I think you are
5 right, that loose talk, both by government officials, lay people
6 and press people, that somehow that the DACA will apply is an
7 incentive to people because they don't know. I mean, half the
8 United States population probably thinks it applies.

9 You know, so you can't blame someone from Guatemala or El
10 Salvador thinking it might apply. I mean, it's a reasonable
11 assumption. So to that extent, Dr. Taitz, I agree with you that
12 it probably is an incentive, but I don't really think it applies
13 to anything we're here today about.

14 All right. Here's what I want to do. And the reason -- I'm
15 going to explain the reasons behind it. And, Dr. Taitz, this is
16 why I don't want to listen to your witness. It's not that I
17 don't want to do it, but I don't need to.

18 I'm denying the motion for temporary restraining order. And
19 I know it's maybe ambiguous whether that applies or not, and I'm
20 doing it on this basis. I'm doing it on the basis of the
21 likelihood to succeed on the merits prong because I'm not sure
22 there is a likelihood of success on the merits based on the
23 current pleading with regard to Dr. Taitz as the plaintiff.

24 And that's -- in doing that, I'm actually saying two things.
25 One, questioning, Dr. Taitz, whether you have standing. And,

1 two, while I'm doing that, I'm also questioning it in regards to
2 what I can actually say is a fair reading of your complaint.
3 And the reason I'm going to such lengths to explain that is I'm
4 not positive that you might not, with a better drafted
5 complaint -- and I use the word better. I don't mean that as a
6 criticism. But as a more concise, directed complaint, you might
7 be a good plaintiff or you might have standing, but I don't
8 think you have standing based on what's before the Court right
9 now.

10 So I'm -- I'm denying the temporary restraining order. I'm
11 going to allow you until September 12th to amend your complaint.
12 I'm giving the government until October 3rd to respond to that.
13 And by respond, I mean either by answer or by motion to dismiss.

14 And, Dr. Taitz, I'm going to allow you -- I got the wrong
15 date here -- to October 17th to reply to the government's --
16 what I -- I mean, you may or may not want to reply. If it's
17 just an answer, you probably don't need to reply. But if it's a
18 motion to dismiss, you probably want to comply -- rely. I'm
19 going to give you until October 17th to do that.

20 I'm setting the injunction hearing on October 29th at 10:00.

21 Cristi, I haven't talked to you about that. Look at the
22 29th and make sure I can do that.

23 Okay. Now, I explained the basis on why I'm doing this for
24 a couple reasons. But one of the reasons is to explain to
25 Dr. Taitz why I don't need to hear from the Border Patrol

1 agents, because there's nothing they can say that can cure your
2 complaint. So I'm not saying that they might not have relevant
3 information to give. They may very well have relevant
4 information to give. I mean, those are the guys on the front
5 line. And anybody that's read any of my opinions on this topic
6 knows how important a job I think they perform and how they work
7 under adverse circumstances doing admirably well for this
8 country. So they may have something to offer, but not -- not in
9 support of your complaint under -- and by your complaint, I mean
10 what your personal complaint is when you compare it to the
11 complaint you've actually filed in the courthouse.

12 Now, let me talk about that complaint. And I don't normally
13 give drafting hints; but to the extent this is a drafting hint,
14 I'm giving it.

15 You don't need to make any kind of political argument. You
16 don't need to make any kind of quoting of the press. What you
17 do need to do is lay out causes of action in a concise manner
18 because I'm not going to decide a political issue. I've tried
19 my best to stay out of that. I mean, it's topics like this
20 you're necessarily dealing with stuff that is -- that's
21 controversial. But, you know, causes of action, facts in
22 support of those cause of action, but actually personal facts as
23 to you because you're the plaintiff.

24 Now, the only way I see this going forward beyond that --
25 this next stage is kind of what I was talking to Mr. Kisor

1 earlier about, and that is, is if you're going to have to have
2 some expert support for your damages. Otherwise I don't see you
3 having standing even under an amended complaint.

4 Now, I know that -- I actually gave this some thought before
5 the hearing because I was trying to figure out -- it's kind of
6 the cart before the horse. Which do you hear first, the
7 standing issue or -- let's say I rule on standing. The first
8 thing Mr. Hu is going to do -- and he's an old medical
9 malpractice lawyer, and I know what he's going to do. He's
10 going to file a motion for summary judgment saying, hey, you've
11 got no proof of this. And unless you have medical proof that
12 somehow these acts caused these injuries, you lose anyway.

13 So, I mean, I'm not necessarily being Carnac the
14 prognosticator to predict that if you get by the motion to
15 dismiss stage, you're going to get turned around and hit with a
16 motion for summary judgment. Quite frankly, a lot of times in
17 these instances, I'll just say I'm going to consider the motion
18 to dismiss as a motion for summary judgment. And this is the
19 kind of case I might do it in.

20 But -- but until I know that you're a plaintiff, I'm not
21 going to consider any of the class stuff. I'm not going to
22 consider pro hac vice motions. It doesn't make any sense,
23 because that is putting the cart before the horse, and I'm not
24 going to do that.

25 DR. TAITZ: Your Honor, I would like to bring other

1 plaintiffs who have standing. However, because I am from
2 California, I would not be able to do it without pro hac vice,
3 so I'm asking --

4 THE COURT: Dr. Taitz, let me suggest to you, not that
5 we're not open for business. We're always open for business.
6 We seem to get more business than we can say grace over. But if
7 you're in California and the other plaintiffs are in California,
8 perhaps California ought to be where the case is, not here.
9 Especially if that's where the proof is and if that's where the
10 illegal alien children are, I mean, that's suggesting to me that
11 it ought to be California where this ought to happen.

12 Now, I understand the allegation that the kids that may have
13 caused you harm originally came from Brownsville, and that's why
14 I didn't transfer this case. But if you're talking about
15 actually representing some other individuals and they're all in
16 California --

17 DR. TAITZ: They're not all in California. Some of them
18 are here.

19 THE COURT: Well --

20 DR. TAITZ: Because if -- if you grant pro hac vice and
21 I can bring other individuals, you would see a much stronger
22 case on multiple levels with multiple causes of action.

23 THE COURT: I'll take it a step at a time. I'm dealing
24 with the case that's in front of me right now. And I'm not -- I
25 don't want to go out and solicit more business. I don't think a

1 judge is in that field. So if there's another case filed, I'll
2 consider that case. Right now we're going to resolve this one.

3 And so, Cristi, did we -- did you take a look at the 29th?
4 Okay. So -- no, I said 10:00, right?

5 Okay. All right. Cristi has checked, and we're okay on
6 October 29th at 10:00.

7 MR. HU: One housekeeping matter, Your Honor. This case
8 is calendared for initial pretrial conference at 2:30.

9 THE COURT: I'm knocking that out. That's not going to
10 happen. Because that's one of the reasons I was going to go
11 ahead and proceed here.

12 All right. From the government's standpoint, Mr. Hu,
13 Mr. Kisor, is there anything else we can accomplish today?

14 MR. KISOR: One further housekeeping matter, Your Honor.
15 There are -- subsequent to us filing the response to the order
16 to show cause, Dr. Taitz filed a number of additional motions.
17 Can the government not respond to those motions?

18 THE COURT: Well, let me -- I had a list of those. Hold
19 on. Let me bring up one of them at least because I think we
20 need to resolve that today. One of them includes the argument
21 over these witnesses.

22 Now, given the time period I just granted, I don't think
23 there's any reason why Dr. Taitz can't take their depositions.
24 They're in California. She's in California. One of you may
25 have to go to California or a U.S. attorney that's out there can

1 represent the government. But to the extent that they have
2 relevant information to give toward the hearing on the 29th, you
3 can take their depositions. Or if they're willing to appear,
4 they can appear. You know, give them time to schedule a day off
5 to come over here.

6 But -- so to the extent that there is a motion to quash
7 their appearance today, I guess, in effect, I've granted it.
8 But I'm not necessarily going to quash it on a different -- on a
9 basis where she could do it properly out in California.

10 MR. KISOR: Your Honor, part of the government's motion
11 was a protective order because what Dr. Taitz would be asking
12 these Border Patrol witnesses about would be information that
13 they -- that is the property of the Border Patrol.

14 THE COURT: Such as?

15 MR. KISOR: Such as information that may be law
16 enforcement sensitive. Information that may be part of the
17 deliberative process privilege, anything that they have been
18 trained on in the scope of their employment. These are agency
19 witnesses, not third party witnesses.

20 THE COURT: I'm going to allow the government to object
21 to privileged information that is not medically related. Now,
22 by privileged and by not medically related, I don't mean we can
23 invade the medical privacy privilege that these individuals may
24 have, so I'm not suggesting that be invaded. What I am
25 suggesting is that Dr. Taitz can ask: All right. How many

1 cases of TB did you have?

2 MR. KISOR: Can you --

3 THE COURT: How old were the people that had them?

4 MR. HU: I think this may be based on this letter that I
5 objected to that she was trying to offer into evidence earlier
6 today. And in there it talks about some specific individuals,
7 and I think this really could create some privacy issues if the
8 witness were to talk about a co-worker's medical condition,
9 sometimes embarrassing medical conditions, and I think that that
10 creates some serious privacy concerns.

11 THE COURT: Well, let me -- I mean, first of all,
12 they're only going to testify as to their personal knowledge. I
13 guess if they have personal knowledge of someone else's medical
14 condition, they could testify to that. But even if that's true,
15 I don't think there's any reason that we have to name names.

16 DR. TAITZ: They didn't.

17 THE COURT: You can say, "Do you have any knowledge
18 of -- do you work with anybody that's contracted a disease?"

19 MR. HU: These are union officials, and I think they'll
20 be testifying about their membership and their members.

21 THE COURT: Well, to the extent they have personal
22 knowledge, they can probably do that.

23 MR. HU: All right.

24 THE COURT: But, I mean, I don't think there's -- I
25 don't see there's anything that -- now, if these -- there may be

1 individuals that come forward and say: Sure, I'll testify. I
2 got scabies. I caught TB or whatever. If they want to testify
3 about their own condition, I don't see any reason why they
4 couldn't. But I don't think -- if it's about a third party, I
5 don't think there's any reason to name names.

6 Now, with regard to security matters such as border security
7 or, you know, how do you operate on the border on Tuesday,
8 Wednesday and Thursday versus over the weekends, I mean, I'm
9 going to allow the government to assert their privilege on that.
10 And if they're -- if we have to clean it up, if I look at it and
11 think they overasserted it, we can clean it up by a telephone
12 deposition.

13 MR. KISOR: Your Honor, with respect to these
14 depositions, if these are third party witness depositions, the
15 government wouldn't necessarily be defending these depositions.
16 They would get their own counsel, so the government would be
17 asserting privilege over documents and information that these
18 witnesses may -- might have that are the property of the Border
19 Patrol.

20 For example, if the deposition notice says bring with you
21 any documents that you have, but those documents are Border
22 Patrol documents, the witnesses obviously can't do that. So I
23 think this is going to create some issues that's going to result
24 in a flurry of last minute motions.

25 THE COURT: Let's do this. Let's do this. Y'all get

1 together, both sides. Work it out to the extent you can. And
2 between now and when the depositions are scheduled, let's do it
3 in the next couple weeks. I'll resolve any problems that remain
4 before the depositions ever happen. We can do that on the
5 phone. You know, you can write me a letter and say: Judge, we
6 worried about A, B, C and D. We agreed on A, B and C, but we
7 can't agree on D, E and F or whatever, and we'll fix it. But
8 there's no --

9 And I guess I want to reemphasize this. And it's a little
10 bit in flux because I've given Dr. Taitz a chance to replead.
11 But I'm not trying and I don't consider this case -- I'm not
12 trying the whole immigration system. I mean, this case is what
13 I'm concentrating on. So let's stay in the bounds of something
14 semi-relevant. I mean, I asked some questions that even today
15 could be considered irrelevant except based on her current
16 pleading, I was asking a lot of those because I thought they
17 might be relevant to likelihood of success. And that's --
18 that's why I asked them.

19 But let's keep -- keep it framed to Dr. Taitz's claim
20 against the Border Patrol and the medical issue we're talking
21 about because that's your claim.

22 Now, ultimately if there are more plaintiffs, you know,
23 we'll cross that bridge when we get to it.

24 MR. KISOR: Your Honor, if I might suggest that it may
25 be more orderly or it may be orderly if -- since there's only

1 about two weeks before the amended complaint and the
2 government's response, if we could have these depositions not
3 scheduled at any point before the government's response.
4 Because between when the complaint comes in and when the
5 response is due, that is a document that is going to need review
6 by multiple agencies. And I think the position of the
7 government would be that depositions couldn't go forward unless
8 and until Dr. Taitz demonstrates standing.

9 But logistically for Mr. Hu's and my schedule, that week
10 between 9/12 and 10/3, those two weeks we're going to be working
11 on the response to the motion or the response to the amended
12 complaint, I should say. So perhaps we could do the depositions
13 after a ruling on the standing and perhaps after the 17th when
14 Dr. Taitz can reply because I don't want to jam up her schedule
15 either.

16 THE COURT: Well, I guess -- I mean, the only problem I
17 have with that is of course I don't know what they're going to
18 testify to. But some of their testimony may actually affect her
19 standing issue. If they're going to talk about, yeah, we -- you
20 know, we had all these kids that had all these diseases and we
21 sent them over to Dr. Taitz to have their teeth checked. I
22 mean, I don't know what they're going to say.

23 MR. KISOR: Yes, Your Honor. But for a motion to
24 dismiss, she could assert facts, and we would have to assume
25 that those were true for the purpose of establishing standing.

1 So it wouldn't necessarily be that she would -- she would
2 certainly need the evidence before a motion for summary
3 judgment, for example. But under a 12(b)(6) motion or a
4 12(b)(1) motion, we would -- we would assume whatever facts that
5 she put in the complaint as true.

6 THE COURT: All right. Here's what I'll do. I'm going
7 to leave the schedule like it is. Dr. Taitz, after you've filed
8 your amended complaint, if you feel that their testimony -- and,
9 I mean, I said just a minute ago kind of flippantly that I don't
10 know what they're going to testify to. I think I know what
11 they're going to testify to. But if you think it somehow
12 affects your standing issue, then file something with the court.
13 But keep in mind, you know, what we're talking about is your
14 right to claim injury on the basis of this government policy;
15 you personally. I mean, and I'll be glad to listen to some
16 other argument; but other than that argument, I'm not seeing
17 standing.

18 MR. HU: So then no depositions until after she files
19 her amended complaint?

20 THE COURT: Right.

21 MR. KISOR: And only with the Court's permission?

22 THE COURT: Yes. But -- and, Dr. Taitz, what I want
23 from you, if you feel the need of it is: Judge, I need to
24 depose Joe and Harry and Tom because they're going to testify to
25 X, and I want to have that evidence.

1 DR. TAITZ: Well, I would like to depose actually the
2 officials here in Texas who are transporting children to
3 California, children that are afflicted with --

4 THE COURT: Well, keep in mind -- keep in mind what
5 Mr. Kisor just referenced. And that is on a motion to dismiss
6 that's properly crafted, I'm going to assume what you say is
7 true. Now, I can certainly see why you want to do that maybe
8 before a motion for summary judgment.

9 DR. TAITZ: Okay.

10 THE COURT: But as he pointed out, you know, if you
11 tailor your complaint to your -- to your own damages and your
12 own claims, you know, I'm going to assume -- because the law
13 tells me I have to, I'm going to assume that they're true,
14 because that's the standard for a motion to dismiss.

15 But I -- if you point out some place where it's relevant on
16 the motion -- even on the motion to dismiss, I'll look at it.
17 I'm not telling you no. I'm telling you no right now. But I'm
18 not telling you no forever.

19 All right. Because I -- I mean, my goal with the -- I want
20 to get down the road on this case.

21 Okay. Anything else, Mr. Kisor?

22 MR. KISOR: No, Your Honor.

23 THE COURT: Mr. Hu?

24 MR. HU: No, Your Honor.

25 THE COURT: Dr. Taitz, anything else from you?

1 DR. TAITZ: No.

2 THE COURT: All right. Thank y'all.

3 *(Court adjourned at 5:49.)*

4 * * *

5 (End of requested transcript)

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7 I certify that the foregoing is a correct transcript from
8 the record of proceedings in the above matter.

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10 Date: September 5, 2014

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/s/ _____
Signature of Court Reporter
Barbara Barnard

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