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00:02
So thank you everyone for coming to this conversation. It's a small intimate group. So it can be a conversation. And I'm here to update you on the ACL is work on family separation. time permitting, we can talk a little bit more about other current events happening in the immigration law world. And so this is your family separation and immigration law update, because of this small group. If you have questions, you know, we can we can entertain those as we go through, there's no need to hold them till the end. So just as a initial matter, who are we who is the ACLU, we've been around since 1920. We have a national office in New York City in in New York City and legislative offices in DC. And then every state has its own affiliate, each affiliate is a separate entity than the national organization. Although we have the same priorities and same principles. We're actually different entities, so we often co counsel with each other. In California, we have three affiliates. I am a senior staff attorney at the San Diego and Imperial County affiliate. So our work is primarily focused on civil rights issues happening in these two counties. But when we have local things of national scope to then we work with our national office quite a bit. The other so so we have three affiliates. The other one is the So Cal affiliate, which is located in Los Angeles, they have actually satellite offices in Orange County and San Bernardino. And in Kern County, and then the other affiliates in the NorCal affiliate, which is located in San Francisco, and has offices in Sacramento and other satellite offices as well. national headquarters

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have completed command and control, working at one of the affiliates take the case that perhaps the headquarters wouldn't approve.

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So the question is what happens when the national office and affiliates disagree about whether to take the case, the National Office doesn't have complete command and control. So we're more like franchises that operate with the same set of principles. We tend to agree on when things need to be moved forward, or if we disagree, we work those things through, there's usually good legal rationale for the disagreement. So I haven't in 10 years experienced case where we've had to conflict. But we are on Etsy, and it's, you know, I do know of cases where maybe other offices, including the National Office may have thought this is may want to take a different kind of approach, and the affiliates can do it on their own. The local affiliates been around since 1933. And you can see our mission there. It's essentially to protect and expand fairness and equity and do our work the community empowerment. We do strategic litigation, obviously, but a lot of work doing community empowerment policy advocacy in Sacramento and locally.

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When if and when I get money stays here, you can't give it to any of those are all of those words have contributed might contribute just to the San Diego portion?

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It's a question we get a lot. So what happens to your contributions when you give today CLE you can give locally to your local affiliate. If you'd like your work to be like your money to be placed on more local issues you would want to do that we do caught we do share some of our donations with national. If you want to go donate to more national scope work, you can donate directly to national if the money comes out of this region. National will often share that back with us. So there's the basics of how they divided out that's not my department. But you can do it either way, whichever way you see fit. And we would welcome all any and all donations allow us to hire more staff do the work that will we'll talk about now. So family separation to understand family separation. First, you have to understand what ice detention is. Okay. Ice detention is a civil a form of civil detention, civil detention, not criminal attention. Nobody in ice detention is they're serving time for a crime. They may have served time for a crime before and now ice thinks they're deportable, but they're not serving time for a crime. Now, civil attention is the same type of detention authority that was used to detain Japanese Americans post World War Two. It's the same authority that we're utilizing now to detain. It's supposed to be a limited scope, detention authority, because under the Constitution, Liberty is paramount. And so civil detention authority preventive detention is only justified in limited circumstances. Basically, to prevent someone from fleeing if someone's a flight risk while they go through the immigration process, or if they're too dangerous to put out on the street while they go through the immigration process. As I'll show you that this authority has been expanded quite a bit for people in ice detention. They are not appointed counsel. So they have to go through a very complex set of laws and navigate that on their own representing themselves from detention. They have no internet Access most of the time

very limited phone access. No attorney, they have to go up against an attorney from the Department of Homeland Security. And they have to make the arguments to an immigration judge who is an employee of the Department of Justice. And very frequently a former employee of the Department of Homeland Security. To understand what this entails, you can see some of the quotes from circuit courts describing the complexity of immigration laws. They are second only to the immigration to the Internal Revenue Code in terms of their complexity. We expect folks with minimal education's low language skills, very little link English language skills quick frequently, without an attorney to navigate this from a jail frequently these days run by private corporations. That's ice detention. For those jails, and who's paying for the jails? Well, the American taxpayers paying for those ships, surely her head, is it like heads on beds? It is a so we're gonna get to that in a moment. So the question is about costs. And if you want to see the growth of immigration detention, you can see how much it's grown. In the last since 1979, we used to see numbers in the 3000 range of people detained, that was who we anticipated were required to be detained. In the 80s, you started to see a little bit of an uptick as catch and release, which is a catch phrase now, but was a catch phrase then was challenged as a major problem to immigration enforcement. And in 1996, you saw in the last slide, the immigration law was amended IRA IRA, this law here made detention mandatory in a lot of situations that took away the ability to get bond hearings, which is a fundamental feature of civil custody in almost every other format. Congress basically took away that right for a number of types of immigrants, including those who present at ports of entry, and ask for asylum, they can't get bond hearings. DHS can parole them out, but it's entirely within their discretion. And that discretion is unreviewable. That comes into play a little bit later.

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So that's the law. And because of that law, you see the growth. So where we were at less than 5000, then at 79, we're now at record numbers 35,000. Plus, there's an average day I've seen numbers up in 47,000 reigns, there's capacity for 47,000 beds in the United States. And frequently those beds are filled, certainly under the administration. The current administration, that tends to be the case, you see a little dip there in 2016, when there was a lot more parole authority being wielded, but even under the previous administration, these laws requiring attention. And so you see these numbers skyrocket. And so the question before that slide was who's paying? Well, the DHS budget assumes that attention costs $122 a night per person. That is varies by contract. So in San Diego, we have otay Mesa, in Imperial County, we have the Imperial detention facility. The one here is run by core civic, which is a private company, when Imperials run by MTC Management Training Center, a private company, they both operate at 140 some odd dollars a day under 42. I think the number is they get paid no matter what, for 600 people doesn't matter, the contract has been negotiated. So that if there's even if there's only a need to detain 100, they're getting paid for 600. So you can bet this is the government's paying for it. They're going to use it. And that has been at various times Congress has mandated detention, like a certain amount of beds be paid for in the 30,000 range. And so it's these like pre authorization

expenditures. And it's very expensive, very expensive, particularly in light of today's technology where you can put an ankle monitor on somebody, and the ACLU will never say that ankle monitors the best way to do something. But if you ask anyone who's detained, they would much rather be out on an ankle monitor than in a detention center. And the ankle monitors cost $13 a day, at most, and are widely perceived and widely shown to be effective. They have a 90 some odd percent appearance rate, which is good as you can get in any in any bail situation. That's all going out the door to private companies. Okay, these private companies then use the inmates for the detainees for labor. They don't pay them any more than $1 $2 a day. And so they're making money hand over fist when the when the deficit when the when the big recession hit. The only companies that were making money, not the only but one of the few companies that are making money. We're a Corrections Corporation of America, which is now core civic, GEO Group. These are the two largest detention providers in the country. So who ends up in ice detention, there's generally I put this in three categories. There's exceptions. It's a lot of lawful permanent residents people that were here lawfully that committed crime. they've served their time, the way anyone would. But unlike a US citizen who served their time and then gets released to the community, they then get transferred to ice if ice thinks the crime makes them deportable, essentially, the crime revokes their green card. In the 80s. These crimes were very limited murder, rape, kidnapping, those very violent crimes in the 1996 law, and since those crimes have been expanded to include simple drug possession is mandatory detention, drug possession for sale, which anyone that does criminal defense work, knows can entail having your fix for today and your fix for tomorrow. If you're an addict, right? You get a position for sale conviction on that every time you're an aggravated felony once you have that possession for sale conviction. And so that mandates detention for a lot of folks, that's category one. Because corporations involved in this are the two biggest corporations that are involved in this are GEO Group and corrections corporation of america now called core civic, and they're both publicly held. So they actually have stockholder meetings that you can get on the phone and hear their plans and hear them talking about how this particular election is going to be good for business and how prior to that election, they were looking to get out of the detention business and get into more reentry work and how things shift. So that's all very public knowledge. The second group of people you see are people who have been living in the United States already, but have a lawful status, whatever the issue is, they crossed unlawfully or their parents cross unlawfully, and they were when they were kids, and they were brought here unlawfully. These are the dreamers you hear about. There's all varieties of people that are living here undocumented, and have been living here for a long time. I often say these are my kids friends at school, these are my neighbors. These are these in a border community like San Diego, the population of folks in this position is not small. And then there's asylum seekers, whether you present at a port of entry.

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Or you cross unlawfully with a with the help of a coyote or something like that. Once you're

apprehended and most in this region are apprehended when they do that. They end up in ice detention. Those are the three basic categories of folks that end up in there. And it's in this situation where we can now understanding the backdrop how we can we can talk about family separation. So the case is called Miss l v ice. You can see a timeline there. To give you an understanding of how we got involved in this case, we at the ACLU of San Diego actually run a Know Your Rights legal orientation program for detainees in the Imperial detention center. That's a remote detention center out in Calexico, where they have about 700 detainees because of its remoteness and the lack of legal infrastructure out there most folks are on represented. So most of those 700 are unrepresented. So we go out there once a month to just present to detainees tell them what their rights are. Tell them what asylum is, how do you get out if you have a right to get out those kinds of things. around October of last year, through that program, we first started to encounter something we never seen before, which is remember this this four foot tall Guatemalan indigenous lady saying I showed up with my son, I don't know where he is. They took him from me two months ago, and I just don't know where he is. And we started to see a few cases like that pop in, we were just helping them individually find their kids, get them back together. Through talking with our national office who is doing similar work and connect with groups doing similar work in other states, we realized this was a trend that this was a policy that was growing. Yes, question.

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just seen right now. I just saw a case of a woman pushing an eight month old baby through underneath a fence. Right? What's gonna happen to that baby in that plane?

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So the question is, what would happen to someone who's coming in with a child through the fence? She didn't cross right. Pushed underneath the fence. Okay, us. So let me come to that question because we're gonna get to how people get into this into the situation. And that's a it's a valid question. What happens to kids that come they're truly unaccompanied? what's supposed to happen when a child comes to United States without a parent is present United States with no parent involved? It's an unaccompanied child. Those kids are taken into shelter like environments run by the Office of Refugee Resettlement. And those environments, largely though there's exceptions that came out in the news, what were the conditions in the places are not so good at all. They're largely run like family shelters like like you would see in child welfare services. Kids get a little bit of education. They don't get appointed counsel. But they're not in prison uniforms. They largely can like sleep in a bed and that kind of thing, until they can find a sponsor for an unaccompanied child, for suffer child is left in the United States with no parents. That is what's supposed to happen. The child goes into government custody. And the governor, the government agency, or are they supposed to try to find a sponsor to take that child or a foster home or something like that, and it's supposed to be short term custody, the child may eventually be

removed. For a baby, it's hard to imagine how that child could go through removal proceedings without an attorney. But but that's generally the process is a kid actually be put through removal proceedings? While they go through this or custody, this foster home situation?

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The baby identity, is it legal for the authorities to think getting samples?

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Is it legal? So the question is, is it legal to take DNA samples to test the identity they quit? The answer is yes. Generally speaking, the government has a lot of authority at the border to determine who people are coming into the border. There are consent issues that I would push back on the same can't just take DNA forcibly you have to conceive to get informed consent from somebody. But yes, generally speaking, the government does have the authority to verify who it is that's coming in. That's different than other contexts, like other law enforcement contexts,

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representation assigned for prevent from the invasion of the privacy or prevent from any abuses.

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That's right. So the question the comment is pointing out that a child with no legal representation then is already exposed has no ability to push back on whether DNA should or can be taken away the informed consent can be given is one of the big issues we see with the lack of appointment of counsel in minors cases, one of my colleagues just argued a case on I think it's, say Tuesday yesterday on the Ninth Circuit on bonk, arguing for required appointment of counsel for minors in removal proceedings. And so that case, we lost that case on before three judge panel. The case went on bunk and it was argued yesterday, I can't predict what will happen this 11 judges, they all have different views. What's the

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theory for assigning counsel in this civil context? This is a very strange

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hybrid so that the appointment of counsel arguments are the arguments for appointment of counsel in most contexts deal with the deprivation of liberty and issue, it's all to ensure the due

process right to a fair hearing, can you get a fair hearing the way it is, in any civil process, you're entitled to that now in some civil processes, you don't need something as robust as appointment of counsel to challenge maybe the denial of social security benefits, something like that. But in a situation where the right to a fair hearing is very much called into question by the custody status, these are very much criminal like proceedings for children custody status, the lack of understanding the complexity of the law, the complexity of the relief available. That's that's the justification for the argument that a counselor is required in certain types of civil cases, including immigration cases. And we'll see if the Ninth Circuit agrees. So going back to the family separation issue, we started seeing this last fall, we started to put the pieces together with our national organization that this was a budding policy. And we encountered Miss L. She was a Congolese asylum seeker who came with her seven year old daughter, who was then ripped away from her she came all the way everyone in the government in the in the in the administration now says you're supposed to come she presented at the Thai port of entry, asked for asylum as you're supposed to lawfully as you have the lawful right to. And she still had her child taken from her flown to a shelter in Chicago. And then she was held in otay. Mesa, she was not told where the child was, was not given contact information, anything like that. And we encountered her they had not talked for months. That's the situation we were dealing with on the ground. So we met with her. Just a backup, this is family separate this is we talked about family separation. This is family separation, sort of in its newest and coolest incarnation. For those of us doing immigrant rights work, we've been talking about family separation for decades. When you pick up one of those three groups of people, someone who is an LPR living in this country who has committed a crime, who's supposed to go back to their home into their children, and you put them in ice custody, you're separating them from their family as well. It's just more like the way the criminal justice system separates families. This is sort of a crueler spin off of that where two people come together a mother and child Father and child asking for this country's help at the same time, and then they're ripped apart.

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So we can come aside, the question is how does the government make up for the emotional damage? The fact is, that's going to remain to be seen a lot of the damage is permanent, and we can come to that damage. It's it's created more problems than, than they could have anticipated. So the government started doing this, they did not have And as we'll see, in a moment, they didn't have any infrastructure for keeping track of anybody. And so once the short child is taken from Miss L, our client, and all of these parents, they were then put into the government system is unaccompanied minors, the situation you described earlier, where the child is alone, and then put into a shelter system, where then the child is is treated as an unaccompanied minor, even though they were accompanied by their parent when they showed up.

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isn't the same corporations that are running all of this, like in variations of I mean, in other words, is there one multi technical organization that actually has to keep track of world for billing purposes of W now,

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right. And so the question is, is there one entity at the top, whether you're talking about a private corporation or an agency? And the answer to both questions is no. These are different corporations. The corporations that run the or are shelters for unaccompanied minors are different, largely nonprofit organizations. One is called Southwest Key. That's the one that operates here in San Diego County. And then agencies are all different agencies do they have the ultimate boss at the top, same boss at the top? Yes, of course, but but the agencies don't communicate with each other the way while for anyone that worked in government work the way you would expect, they communicate as well, as you would expect. big government bureaucracies communicate, which is which is essentially Not at all. So we filed our complaint on behalf of Miss I alleging that you took the kid away. And the essential legal theory is just like any other family law situation where you try to take child parental custody rights away. You can only do that if there's a danger to the child, or there's unfitness issues to the parent. Those are the standards. And we essentially tried to take those state standards that are constitutional in nature, and apply them to the situation of an arriving asylum seeker at our borders or crossing our borders. And so we filed the complaint, as happens a lot when we do our detention work, DHS releases our plaintiffs immediately. That's an attempt to move the case out. When we identify injustice, they try to move the case out so they don't get a ruling against them. But we amended the complaint very quickly to add another plaintiff and then filed for class certification. class actions preserve the ability preserve against mootness, right, because you have a constantly evolving class people coming in and coming out. And so that's a strategy to prevent this sort of mootness attack. So we did that. quickly after we filed we drew judge sobra, Dennis abroad who is a federal judge locally, and he ordered DNA test for the child. He said, Look, if you're ripping them away, and you're saying you're not sure that this is the child, the child, then let's take a DNA test and sort this out once and for all. I think in the beginning, it seemed he I don't want to presume what's in a judge's mind. Certainly not on camera. But there was some skepticism, I think about what's truly happening here and some of his opinions his opinion on the motion to dismiss. You can see it it's a lot of if what plaintiffs say is true, this is really troubling, right. But it was it was unclear where he was on this, but the DNA test results come back. They're a match. And Michelle and her daughter were united, they're still reunited. They're living in a shelter in the Chicago area. And they're doing quite well. Going through the asylum process together as has always happened.

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We then so that was March, I think when we did the class wide motion the the class, wide preliminary injunction motion to get the judge to try to stop this process. After that, in April, Jeff Sessions flew out or May, Jeff Sessions flies out to San Diego. I don't know if y'all remember this on the beach, and announced the zero tolerance policy. Prior to that announcement, the government had already admitted about 700 family separations under this policy that as it existed, both people that crossed unlawfully and people who presented at ports of entry. After the announcement of the zero tolerance policy, that zero tolerance policy basically said, if you cross unlawfully in the United States, that's a misdemeanor, and we're going to prosecute you for that misdemeanor. Now, before that didn't always happen. Sometimes, yes, but often prosecutors use their discretion, prosecutors, in every prosecution context use prosecutorial discretion to determine whether to use court resources to pursue a particular case. And frequently, they would say, look, this is an asylum seeker. Let's not prosecute this person, if the person turned themselves into Border Patrol, as most of these folks do, let's not prosecute this person. These are misdemeanors, we only have so many judges, we have the busiest criminal docket in the country here, the Southern District. Let's not bogged down resources with these misdemeanors after zero tolerance was announced. That stopped so everyone who crossed some awfully whether you're seeking asylum, whether you cross because a coyote told you to whether you tried to present in the government turns you away, which is the thing that happens frequently, you got no other way to come in, except that way, whether you turned yourself in or not everyone prosecuted. And that is what when you look back on this period of time, we started to see all these protests in the news and all the horrific stories. That's when the population ballooned up separating families from 700, to what we now assumed to be 2600, at minimum, but the government's identified as 2600, at minimum. And so you see there, Jeff Sessions announces your tolerance, chaos ensues. That was a month of protests, American people came out in mass to make their voice heard is really an impressive thing to see from where we were litigating this. We were wondering, Is everybody seeing this as our judge seeing this, and we just sat there for a month while this happened, we're waiting for an indication from Dutch abroad what he was going to do. And finally in in June, June 6, he rules on the government's motion to dismiss it says lucky for plaintiffs, they are true here. This is unlawful. We can't just take children away without this is a two basic due process principle, cannot give parents an opportunity to be heard there have to be standards for when you do this. And that was June 6. So that was our first indication that in hindsight, it seems crazy. But in during those moments, during those tense months, we didn't know what the judge would do, there was a very real possibility in our minds, that the judge would say this is perfectly legal, there's a lot of authority at the border. This is a deterrent strategy. I mean, we would disagree with all these things. But but there was a real possibility that we weren't going to win. That's that's the way it felt in sort of the trenches. Conflict co sort of cautious confidence, but we didn't have any signal from the judge what he was going to do until June 6. Then June 20, Donald Trump scientists got an executive order to keep families together, it's the affording Congress an opportunity to address family separations, affording Congress an opportunity to address the problem he created. And he

and Jeff Sessions created is what that executive order says. And that basically said it's his government's policy to keep families together. Once that was issued, then Judge sobro ruled on a preliminary injunction motion, and said, Look, this isn't gonna be a problem going forward, according to this executive order. We'll come to that. But there's a world of people who the executive order doesn't cover who were separated, and let's just deal with that. And you should have very strong ruling on the preliminary injunction motion saying this is inhumane. I didn't pull language from it. But ah, the order is back there, if you want to pull it. Where you should it is the handout. That's the handout there. Yeah. Where he describes the process, in his view of it, don't suppose a very deliberate, cautious and I think, very thoughtful judge in terms of how he approaches things, he wasn't getting up on a pedestal to lambaste anybody. He approached it in what I think a very methodical way and and managed to in an authentic and legally sound way lambaste them without having to get all sort of on a political stump about it.

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And that's where we ended up. Then the issue for the next for the rest of the summer until now is how to implement the settlement. The judge said, put all these families back together, let's figure it out. And so he started ordering weekly status conferences, sometimes twice a week, we all get together, we all show up in court. In July, my colleagues from our national office basically lived in a hotel in San Diego, because we were in court so frequently to identify who are these families that have been separated? What's happening to them? How can we find them and how can we get them back together? Now it's no easy task. So this is our class definition is basically all adult we represent the class of parents since the lawsuit. Another lawsuit is filed Mmm, that represents the class of children. The cases have been merged. So there's there's firms representing the children, firms representing the parents. That's us and the government. Class steps is for the parents are parents who have been in immigration custody or are currently have a minor child who is separated from them who's in government custody. And the separation occurred without these justifications that are traditional and due process law. The judge carved out exceptions. So if you have a criminal history as a parent, and that was just the term Hugh's criminal history, he he carved it out of the class. That may, I don't want to speculate as to why but but you can see for reasons of commonality for class unique commonalities, everyone have the same claim. And perhaps there was some concern that these folks with criminal histories of varying degrees, raise different issues than someone who had no criminal history. I'll talk in a moment about what these criminal histories look like in my experience, he carved out folks with communicable diseases, which is understandable one, you have to separate in those situations sometimes, although albeit temporarily, he was careful to carve out families that have been living here already, he didn't want this to get bigger than than everyone else. And those that were subject to the executive order we just mentioned, and except these deadlines, by July 10, so that gave them two weeks, three night, all the really little kids, which there were about 100 of them, and then another month, or a month in total to reunite everybody else, which we now know that about 2600 that the

government identify. The first major dispute was what do we do when we reunite them, the government took the position that we have to detain them in custody, these are mandatory detention cases, they're arriving asylum seekers, that is not true. While those folks are not eligible for bond hearings, the government has the discretion and always has, and has exercised regularly to parole people out to let people out of detention under appropriate circumstances. Most of these folks have family they're coming to stay with, most of these folks would be fine with an ankle monitor or weekly ice check ins, they have a destination, you don't need to detain and they're not dangerous, these parents, most of them so so. But there was a fight the government's that we have to keep them all in custody. But the Flores case prevents us from keeping children in custody longer than 20 days. The forest case is a settlement that goes back to the 80s, where the ACLU and others sued the government because they were keeping kids in jail like facilities for really long periods of time. And it resulted in settlement that basically said that basically led to this program I described earlier, where kids are kept in, in shelter like conditions. And, and they can be in short term detentions conditions, but really only for short periods of time, which has since sort of been interpreted to be 20 days by the case, that's a la case. So is in the form of this settlement is the form of an order. So there's a there's an order approving the settlement. And there have been many attempts by the government over the last three decades to modify the settlement. The two judges that have overseen this case, because one passed away, have generally kept the settlement in place as it is, many of the protections are now in regulation and statute. Also,

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I forget all the really fine details of the orders. But it seems to me that if the order is stable, and hasn't been challenged, I would challenge it later except by way of just simply violating it and trying to get you the move off of first base. Yeah. You don't move. They don't have a direct attack on the order. That's

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and so that's exactly right. So So the question is, if you're subject to a settlement agreement that's been approved by the court, how do you get out of that, which is what the government wants nothing more to do. And you have to move the original court to amend the agreement. And you usually have to show some change circumstance that was negotiated in bad faith or the facts have changed on the ground. And every time the government's tried to do that the Flores court overseeing the cases rejected it. They tried to get in here, because the situation here was we want to attain all these families. We only have so much family detention space. There's a couple of tenths of centers for moms and children in Texas that hold I forget the numbers somewhere in the 1000s. And then a place for dads and kids that holds like 30 in Pennsylvania. So there was a real space issue. And the judge basically said, I'm not going to tell you who to detain and who not to

detain. That's not my authority, which is correct. But you don't have to attain all of them. So you decide who you let out and who not. While all that was happening, the government went to the forest court and asked to modify the injunction there. I don't know if I put this language in. I did. Oh, I did. And this is what the forest court said in July. So this is after our injunction was ordered. The government goes to the florist Court to say modify the injunction in the florist court says this is just a cynical attempt on an ex parte basis to shift the responsibility to us. For an agreement you agree to, this is what you agree to, you have to do it. And you figure it out. It's not my problem, essentially, this and this is judge g in the central district. Yeah, because they suck because of the rush with which the our court had ordered the reunifications to happen. They went an ex parte because they needed to get a quick ruling from the Flores court. And so the Flores court applies with a quick ruling that basically said no, you can't modify the injunction just to detain these families for longer than the 20 days I've already authorized. So there's two sort of legal maneuvers happening at once. More than that, even because all these other cases were coming in on an individual basis. Just based on the fact that there's no basis for ex parte Well, yeah, I don't want to get into why judgy handled it the way she did, I assume, you know, hitting the merits of the of the thing was deemed sort of the most Prudential thing to do in light of what's everything that was happening is a very, this is a very public, these are all very public things happening. And to kick it on it on a procedural technicality probably would have been. I don't know, I don't want to speculate but but

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this appeal would be our procedural extra screw up. As opposed to that we want to challenge the order.

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Right? For whatever reason, Judge D, hit the merits of it and said you can't modify it in this way. And so we had a situation where parents said, parents and children based where we landed with this was parents and children can basically agree to stay together in government custody for longer than 20 is allowed, if that's what they agreed to do, after being informed of their rights not to have to go through that. We had to go through a whole lot of machinations on the notice and the and the opportunity to train these parents go see them, counsel them on their rights. That's when the children's council came in to make sure the kids rights were being defended. Separately, which, which I think was appropriate to do. And so that's where we ended up with the government held some of these families. But at the end of the day, they ended up because of the lack of space. And they saw they were cornered, they ended up releasing the vast majority of these families once they reunify them. But the reunification was not easy. Okay, this wasn't just, I have kid here who I know this kid's parent is here, and they're both in my custody. As I mentioned earlier, the once the child was marked on accompanied in the government databases, that was

the denotation, that that marked them. So you couldn't just pull a database, the government didn't have enough forethought to say I'm gonna do a separation database that we can then pull to identify folks, these kids went into the category of unaccompanied minors, like all unaccompanied minors, so when it came time to unify them, there literally had to be a hand review of every file of every unaccompanied minor in the country, to identify to see if you could find evidence, in sort of the write ups of whether there was separation. Sometimes there was sometimes there wasn't more viewers had to be done. They had to talk to the kids through their social workers. Send these kids are really small, so it's hard to figure out. And so you see the court first describing the problems that there are three agencies each had its own boss, and they did not communicate. And the families were lost in the process. children know where the parents were the parents to know where the children are. None of this was thought out. None of this was was was in any sort of articulate or thoughtful way. So there was cruelty, if that's your view of it, magnified by ineptitude in terms of its implementation. And that's what led to the chaos or YG. Office Inspector General, which is the government oversight agency also did a review in September basically sound the same found the same thing. They struggled to identify track and reunify families that were separated. They didn't have an understanding of what they were doing. The parents weren't notified of their rights. Essentially, what the YG found is a massive failures on the government side of things. But after a lot of work, this is where we are now. The government identified 202,667 separated children, coding 103 of what we've been calling a tender age under five of those more than 2000 have been reunited. Nearly 2000 those in the United States, they're all going through the process now. immigration process. Many had been deported. The government numbers on this have changed. We're still trying to figure out why they changed so much.

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But at least 166 parents who were deported remember they're deported because they were quickly found out to be eligible for asylum. They were interviewed on their asylum applications at a time they were set. From their small children, and they were counted last case, and deported prior to the injunction. So the injunction forbade, we got to a place where no one could be deported. But some people had already been deported. And they were deported without their children and their children were here in United States. And so we had to find folks in it's not like, this is like going to downtown San Diego and finding folks, these are people who are sent back to their home countries, they go up into the mountains, where they're from, where there's not a lot of cell phone service, or cell phone access, or phone access, or internet access. There's indigenous languages being spoken, you have to wind up roads, we sent people, you know, to speak in villages to hear Has anyone heard of a family being separated, and of course, family being separated, if you're from that a lot of people have had their families separated. But then you have to so you do a lot of these false positive interviews where people were separated, but in a more traditional, I was deported under the regular deportation process. So there was a lot of work in

finding folks. That was done, we got to we have to think a lot of civil society law firms that came in to help us with the resources, there's there's no way we could have done this, just as the ACLU 369 children were discharged under appropriate circumstances, that generally means the sponsor was found for them. And a sponsor was found instead of the parent either because the parent had been deported, and didn't want the child back. Many of these folks fled for a reason and said, I have an aunt, the child can go with them, this child should not come back to Honduras with me. So there was that was about 369 of those. Yeah, he said the Civil War. How many firms? So, you know, it's hard to say with the amount of cases that have come in, we have a we have a sort of a strategic planning group that dealt with the read of cases of deported parents, there was at least two big law firms involved in that, plus a lot of civil society, nonprofits, internationally. And Nash in within United States. And in Central America, they were all collaborating. foot soldiers in the process, all of the above so so we have firms that were sort of operating as lawyers and data holders trying to organize everything. We had people on the ground literally foot soldiers, on mopeds going to villages trying to interview people to find to find folks, we'd have a lot of good contact information for parents, some of the kids were in our custody. And and it turns out, the kids had their parents phone number, but overall, it wasn't given that we had to go to judge supply and say, we think our our has these phone numbers, and they're not giving them to us. And and our judge, the brother had to order them to literally like arranged three way phone calls because the kids are talking about parents, but we couldn't talk to the parents coordinating. So there's a steering committee, I honestly because national took over once, once we got into this stage of the process, I've stepped back. I don't know the name of the firm, and I wish I did. But it is it is a big firm in on the East Coast has basically been running a big a big sort of internet multinational law firm that had had offices in Central America. So it was a good sort of fit. We still have 173 kids in custody who were separated. Most of them will never be reunited the kids, the parents have said don't send them home. This not safe here.

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Or the parent has been deemed to have one of these criminal histories that's 55 of them. These criminal histories look some some are serious criminal histories that in a state court proceeding might justify taking a child. Others would never justify taking a child in a state court proceeding. Someone who was alleged to have been in again, but who ran from Guatemala once the never charged with being in a gang never convicted of being in a gang never convicted of a crime, just alleged by the El Salvador or Guatemala or a Honduran government to be in a gang then fled, essentially admitting to the United States when they fled. I'm running because this this game wants me and that criminal history of El Salvador says they have a criminal history they were deemed out of the class. And the government would not reunify, were not ordered to reunify them. So that's 55 kids and we have this Heartbreakers. We have a mom detained still no Thai who had a four year old who had a serious conviction but a 20 year old serious conviction, a 20 year old possession for sale. She smuggled some drugs across the border. That's not a small

amount. It was a serious crime. 22 years ago, she served time. Five years ago, she then came out she had children. She has cleaned up her life but because of the criminal history, she wasn't in the class. They were never unified. We're still working on getting that she's five now getting the girl out to family and I've already talked about the difficulty finding deported parents, the government originally identified 414 different a 20 deported parents were deported without their children. That number has now come down. And we're still, again, I'm not in the weeds of this, but we're still working with the government to figure out why that number came down. By the time sometimes the government says, Well, it turns out it wasn't the parent, it was the grandma. And we will either not order to reunify grandma and granddaughter, or it was the aunt or it was the big brother. But that's not I mean, that's they came down a couple 100. And that's not a couple 100 cases like that. So we're still trying to figure that out. They said a lot were just miss identified. They weren't actually separated in this way under this policy. So that stuff that there is still work happening, even though the vast majority of these families have been reunified. Yes. So this sort of Yep. So the question is, are the sponsors involved, put to a background check, O r r, which holds the unaccompanied minor this became an issue in the case, O R, which holds a copy of minors has very robust screening procedures for sponsors. And so they were applying those same really robots. So that's a home visit. That's background check on the sponsor background check on the sponsors, roommates. Often there's a lot of people living in the house, really robust to ensure that the unaccompanied truly unaccompanied minors not placed in a harmful environment. That is a month long investigation. That happens anytime we release and truly in a couple of minor to a sponsor. And that's not necessarily a bad thing. They were playing that same process to release kids to their own parents. And so that's why Dre ended up dragging on, we ended up advocating for a more expedited process. Yes, you can background check people there in the house. But these are parents unless you're saying it's not the parent. If you're saying it's not the parent, do a DNA check real quick. Or find it verified in some other way, and reunify them. But in general, these background checks do happen. Who decides? Who decides the criteria for who becomes a sponsor, that's Office of Refugee Resettlement. So that's the agency that houses the children, they develop best practices in the best interest of the child for how to release. Generally speaking, there have not been a lot of generally speaking not I mean, there's always one offs, a lot of complaints about that, under the new administration, something has changed. We used to let kids sponsor out to relatives who are also going through the immigration process. On documented going through the immigration process, the government has under this administration signed a memorandum of understanding between our who takes care of the children and ice that they will share information about all sponsors. And so now someone who comes forward in that posture, who has not been apprehended by ice in the past, can be apprehended by ice. And so you see a lot less people coming forward, to take custody, the children to go through the process together.

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It's more strict, and there's more at risk for the sponsor than there ever was before. And so you see a lot more kids staying in or custody. So these are the ongoing issues we're dealing with. One is what do you do, we resolve this one. A lot of kids who are going through their own process after separation and parents are going through their own process, were deemed ineligible, because they failed their credible fear interviews, most we argued failed because they were preoccupied with where the heck is my child, they didn't prepare their case didn't have a chance to talk to a lawyer, they were only using any free time that to try to find their kids. And so we negotiated deal with the government to basically just reopen all those cases, look at them again. We've basically found attorneys for most of those folks, and they get another more fair shot at it. Many have passed someone, someone we always say all we ever advocate for is a fair process and removal. Not everyone's going to get asylum. But if you get a fair process, and you lose, and that process is fair, and you get deported. Well, you know, at least you've gotten a fair process. And so that's, that's what we've gotten is called Honest to God. Well, so they're the so we sort of do the civil litigation side of it. And then in terms of who does the removal defense, the immigration cases, that's a lot of other nonprofits that focus on that particular type of law and they have programs for recruiting firms and private attorneys, training them up giving them pro bono guidance here and cut in San Diego. We have cost Quinney Law Center, Jewish Family Services Catholic Charities in the immigrant Justice Project, which is run by the ABA for organizations that represent detained individuals, they would all happily take volunteer lawyers, they would train you up in immigration law and hope that you would represent someone in detention, they would happily mentor you through the program. Who is that? Procopio? So procopius? I used to work at Costco and Elliot Procopio volunteers a lot with Casa Cornelia. So there are firms that do donate a lot of resources to this on the ground work. We're still debating whether legal guardians are involved or parents within the class. That's something that's teed up for the court. And we're debating what happens to kids that were released from our our to a sponsor, prior to the court's order, are they entitled to be reunified with their parents wherever the parent might be? Even if the parents still in custody? In do we work? So these are little disputes? They're not that little but their disputes that are still working themselves out?

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So core civic I, the question is, is core civic trying to expand its services to allow for more family attention. One I know for certain core civics is expanding its serve its overall bed space. They're doing San Diego they're gonna expand by 500. This year, up from 1000, to about 1500. They run the family detention centers in Texas. We don't have family attention in California. Thank goodness. And so are they I don't know whether they're trying to expand. I have to assume they are I the government is trying to push for more funding for family detention. There's a fight policy fight. No, no, just nationwide. There's a policy fight in DC, about whether to fund more family detention or whether to find more humane alternatives. We're short on time. So I want to leave a little time talk about other ongoing things. In case we ran out of time on the family separation

thing, let me just touch on these really quickly. This zero tolerance policy led to, as I mentioned, more misdemeanor prosecutions without a concomitant growth in the court, or the Federal Defender system. And say you've seen 12 100% increases in misdemeanor prosecutions in San Diego, the judges are taught your federal judges are tired. They're overworked. Right now they are handling way more cases than they could have ever imagined. And they're doing it now to do mass prosecutions of misdemeanors. That's what operations streamline is. They haul people in in groups, advise them of their rights in groups. here in San Diego, the federal defenders are very, very forcefully advocating in a way that you don't see where this is operational in Texas and other places. And they are getting time to advise their clients individually, but they're still getting group pleas and things like that. Which sort of cut against what we envision is true due process. And the other most recent thing that's happened is the administration tried to basically ban asylum for folks that cross between the ports of entry, they have a policy of turning people away at the ports of entry, and not pressing them in expeditiously, but then they won't process them for asylum. If they cross between ports of entry. They did that on November 9, we sued the same day, Austin a bunch of other organizations. The Northern District, California stopped the policy. It's It's It's It's pretty squarely unlawful. It's just not what Congress authorized Congress's if you're in the United States very specifically, if you're in United States, no matter whether even if you cross them awfully you can apply for asylum. So the district courts should try to stop it. On Friday. The Ninth Circuit upheld it. Judge Bybee wrote the opinion he's a Reagan appointee, who goes not always favorably on immigration cases. And even he read this as unlawful. And that was Friday. And we'll see where we go from there. That is just some of the updates on immigration law. There's a whole bunch of other things that do not a lot of time to get into. I'm happy to field Any other questions. As we mentioned, we're obviously very busy trying to keep up with everything that's going on and fight back where we can. So all of your sort of interest in this issue is very appreciated. Got it seems like DNA is the analog DNA is become the analog date DNA is being treated much more like fingerprinting, then true sampling of your entire biological materials. You understand my reference? Yeah. Yeah. It's there's a lot of cutting edge work to be done on surveillance use of DNA. There are, there's no shortage of ways that to make sure there's real limitations on government overreach in terms of what they can surveil and what they can Did

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you explain again? Early timeline? What was the policy shift? What are your children?

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When when it erupted from 700 to more than 2000? Or more specifically,

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I've heard the defense say that the Obama administration had the same policy in place. Can you explain why we do that? So

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yeah, so that the Obama administration never had a systemic separation of parents and their children who present together, the Obama administration did deport a ton of people. They had sort of a set of priorities of who they wanted to deport. But there were certainly situations under every administration where families living in United States mixed status families, someone who's got a US citizen child, and undocumented older brother, who's a dreamer under these DACA eligible kids, and an undocumented Mom, where the undocumented mom is picked up by ice and deported and that separates that family that's been happening for decades. That is different. But whether it's meaningfully different I don't know that's that's fair debate. I don't know that it is. But that was different than this policy, which is family presents, or comes United States asking for our protection together. And then they're ripped away with no knowledge of where the other one's going. Right? At least when I strips families, strips Amman out of a home in in Barrio Logan, or wherever they're doing their enforcement, they will wait for someone to come pick up the kid that they're leaving home alone, there's a little bit of law enforcement discretion involved. This was none of that this was a forcible sometimes trickery to separate, enforceable separations, this is a much different variety of the same kind of thing. So this was a, this was a design policy to we are you deter migration to United States. And of course, if you're fleeing harm in Honduras, you are not keeping up with current events, the United States, you run for your life, you're not necessarily paying attention to what the latest trend in enforcement is on the United States side. So we would argue we'd argue that even as a turret strategy, whether that's a lawful basis to detain someone in civil detention, it's not. But it's just a bad strategy anyway. And so that's, that's the shift that we saw. Okay. There's a whole, there's a whole universe of bad going on, and the immigration rights for immigrants rights world, if there's any positive out of this, more people are paying attention to how we treat immigrants in our communities, and what we do to them in a way that we didn't before. And so if you take the long view, hopefully we can get some movement on a more humane and fair system. I think it can be done both ways. You can get fairness you can get order. And you can also get humanity

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justifies present themselves. And yeah, I mean, this seems completely at odds with every idea of adulthood responsibility, juvenile behavior, all the kinds of things that you hear about being a military, the wrong word, but in some way dispositive of whether the person can contract and make a decision. Yeah. And yet, they're making the most important decisions about their liberty, with respect to understand how to even process it's,

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it's really it's without an ad litem, so it's very This is about children's representing themselves again, the case is CJ CL, V. Whitaker, it was argued on Monday, I encourage you to watch the video of the argument. My colleague, Eileen was brilliant, in my opinion, the government lawyer less so you will see that you will see the 11 judges on bonk, articulating various versions of what you're saying some perfectly willing to accept that there are some children that small children can in some situations represent themselves. And it grows out of this deference we perceive to have for immigration policy decisions, I think is inappropriate in certain contexts. So then the camels nose is fully possible, all bets are off. Well, now we hope we're really hopeful. There are at least these seem to be some movement that there is some minimum age where a child can't represent themselves. At least everyone seemed to agree on that. But But yeah, it's it's difficult work. But but we're hopeful that the Ninth Circuit, the on bunk panel will come to a different conclusion than the three judge panel. So thank you for your time.