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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Robert F. Kennedy Human)	
Rights, et al.,)	Civil Action
)	No. 25-cv-1270
Plaintiffs,)	
)	EVIDENTIARY HEARING
vs.)	
)	Washington, DC
U.S. Department of Homeland)	May 19, 2025
Security, et al.,)	Time: 11:00 a.m.
)	
Defendants.)	

TRANSCRIPT OF EVIDENTIARY HEARING
HELD BEFORE
THE HONORABLE JUDGE ANA C. REYES
UNITED STATES DISTRICT JUDGE

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1 understanding from the individuals who I've spoken to in those
2 offices is they have an approach to analyze them. They will
3 look to see if they have merit, they'll triage them to see if
4 there are trends, and then they work the portion that they can.

5 Q. And how would you describe the level of authority each
6 office has in resolving these complaints?

7 A. It's relatively minimal. So it's primarily a persuasive
8 influence. They do not have the ability to compel a change.
9 There is one caveat where CRCL, for -- I believe it's Section
10 504 complaints of the Rehabilitation Act, can require a change,
11 but they typically will recommend something to CBP or ICE or,
12 in CRCL's case, any component within DHS, and then that office
13 can decide to take action or not. And that's where the
14 programmatic recommendations for the cases -- they're typically
15 referring cases to the primary component and just saying please
16 take a look at this, we recommend X. But the component is not
17 typically obligated to act on that request.

18 Q. So you said they refer them to the primary components.
19 What is the role of the primary components in this process?

20 A. The primary components are not obligated to do anything.
21 They can take action or not. So, for -- a good example is that
22 CISOMB, which I'll use as an abbreviation for Citizenship and
23 Immigration Services Ombudsman. They'll refer cases back to
24 USCIS and they build up in a queue and it's another queue for
25 USCIS to work. And they can work it, but they don't have to.

1 Q. Those offices, the primary agents also handle these
2 complaints?

3 A. Yes. In all of the cases, there are offices of
4 professional responsibility, or OPR, in all of these, what I'll
5 call primary components, and they intake the same kind of
6 complaints as well, or questions. There's a robust contact
7 center at USCIS that has hundreds of employees to answer that.
8 There's an office of -- let me back up for a moment.

9 There's also the Office of the Inspector General of
10 the Department of Homeland Security and they intake these kinds
11 of complaints as well and either investigate and then -- and/or
12 forward to the primary component.

13 Q. And is there any other overlap in duties between -- or, any
14 work that these offices do in other parts of the department?

15 A. Yes. There's a substantial amount of engagement, public
16 engagement, that CRCL and OIDO did, and CISOMB as well.

17 When -- there is an Office of Partnership and Engagement at the
18 Department of Homeland Security. There's also an Office of
19 Public Affairs. And in my view, the primary duty to liaise
20 with the public is on those offices.

21 Q. How about FOIA requests, for example?

22 A. FOIA is handled by the Office of Privacy. And recently
23 there was a consolidation of those functions into the Office of
24 Privacy. It makes sense from a contracting and budget
25 perspective, and also a subject matter expertise perspective,

1 that the Office of Privacy would handle all FOIA requests for
2 the department.

3 Q. And how about any overlaps between the offices at issue?

4 A. There's a substantial amount of overlap between CRCL and
5 OIDO. Not so much CISOMB. But CRCL and OIDO will often get
6 the same complaints simultaneously and, to me, that seems
7 rather inefficient.

8 Q. Focusing back on the complaints. About how many complaints
9 does each office receive a year? Just an estimate.

10 A. So, CISOMB has received, most recently, about 25,000
11 inquiries a year. That number is historically very high and I
12 would expect that number to come down substantially. Their
13 number is typically more around 12,000 a year, but we saw
14 elevated immigration levels under the Biden administration.
15 Again, we expect that to come down, probably to 12,000 or less
16 this year.

17 CRCL saw about 3,000 complaints a year recently and
18 OIDO saw about 11,000 complaints filed.

19 Q. And about how many of these complaints do each offices open
20 in a year?

21 A. So, it varies.

22 THE COURT: Why don't you give us a per office and
23 per year, or a year?

24 BY MR. DAVIS:

25 Q. Last year you said that CRCL got -- was it 3,000? Do you

1 know? Do you have an estimate of how many of them were
2 actually investigated beyond the initial review?

3 A. My understanding is they worked about 20 percent of them.
4 And I'm not exactly sure -- I know that they opened, at a
5 minimum, 20 percent. I don't know that that means there were
6 recommendations issued in 20 percent, it could be. But I know
7 that they saw merit in opening 20 percent of those cases.

8 Q. And how about CIS for the last year?

9 A. CIS Ombudsman opened about 40 percent of those cases, and I
10 would say the substan -- from my understanding, a substantial
11 majority of those were forwarded to USCIS.

12 Q. For the OIDO office, how many did they recommend remedies
13 for?

14 A. Of the 11,000, my understanding is about 800 received some
15 kind of remedy or recommendation.

16 Q. Do you know how many detention facilities, approximately,
17 there are in the Department of Homeland Security?

18 A. It varies all the time, but somewhere between 250 and 300.

19 Q. And how many detention facilities did OIDO inspect last
20 year?

21 A. Last year they inspected about 22 facilities of that 250 or
22 300.

23 Q. And how did these offices determine whether that's
24 sufficient under their statutes?

25 A. I have not found evidence that there was -- like, what the

1 model they use to discern that is. I have asked employees of
2 those offices. There isn't, like, a clear rubric, so far as I
3 can tell. I suspect part of it is just resource constraints.
4 But beyond that, I don't know.

5 Q. Have the statutes ever offered any guidance on how these
6 are to be handled, or how many?

7 A. No, there's nothing in the statutes, as I understand them.

8 THE COURT: I'm sorry, was there an objection?

9 MS. GILBRIDE: Objection. Calls for a legal
10 conclusion.

11 THE COURT: Sustained.

12 MR. DAVIS: I'd move on.

13 THE COURT: Before you do that, you said that there
14 was 22 inspections of facilities last year. What happens after
15 an inspection? Is there a report written up?

16 THE WITNESS: Yes. Typically -- it will take a few
17 months, but typically there is a record findings and then that
18 report of finding is sent to ICE or CBP with recommendations
19 that they either accept or don't.

20 THE COURT: Can I find those? If I wanted to look at
21 those reports, could I look at them?

22 THE WITNESS: I don't know that they were ever
23 public. I'm honestly not sure.

24 THE COURT: How many of those recommendations went up
25 to ICE? And then how do we find out if ICE does anything with

1 those recommendations?

2 THE WITNESS: ICE will typically respond in writing
3 to these reports. I don't know what that format looks like,
4 though. I haven't been able to find any.

5 THE COURT: You haven't been able to find any?

6 THE WITNESS: Yep.

7 THE COURT: Okay. All right.

8 BY MR. DAVIS:

9 Q. So you mentioned some other statutory roles that these
10 offices hold. What about the, sort of, oversight and advisory
11 side of it?

12 A. So there is what I would call a programmatic oversight
13 role, where CRCL folks will make recommendations. And it might
14 not necessarily be linked to a specific case, but it could. So
15 they may intake -- out of 1,000, they may see there's a
16 commonality of, let's say, 500 of those cases and then they say
17 okay, we have something we need to examine here and there's a
18 persistent problem at TSA. TSA, we should look at this because
19 we have 500 complaints about the same thing.

20 So that winds up being in a report at the end of the
21 year, or recommendations in writing to the component. And it's
22 similar for OIDO and CISOMB, it's the same thing, there's a
23 back and forth that ultimately winds up in the annual report.
24 USCIS is required to respond to those recommendations.

25 THE COURT: One second.

1 Mr. Martinez, can you please put a mic in front of
2 Ms. Gilbride and make sure to turn it on? Because otherwise
3 I'm not able to hear the objections.

4 All right. Sorry. Go ahead.

5 BY MR. DAVIS:

6 Q. Let me back up a second. Why weren't you able to find some
7 of the reports from the detention facility -- from the
8 detention ombudsman?

9 A. To be honest, the recordkeeping of the office when I went
10 into it didn't match, like, normal recordkeeping procedures
11 that I would know of and know where to find stuff.

12 THE COURT: When did you go into the office?

13 THE WITNESS: Over the last couple of months that I'm
14 asked to look into it.

15 THE COURT: Okay. All right.

16 THE WITNESS: And so I did talk to staff there. I
17 mean, they do have reports. They have documentation, to be
18 sure, but not everything was well categorized. A lot of
19 documents were just not findable. Again, it's not to say that
20 if we asked, let's say, the chief information officer to pull
21 all the data in a forensic way, that they can't find it. It
22 was not readily available, other than, like, the annual
23 reports.

24 BY MR. DAVIS:

25 Q. You said you had talked to some of the people in the

1 office. Could you explain to us what you talked to them about?

2 A. Yeah. So for all the offices I asked: How do they run?
3 How do you think they should run? What are some problems that
4 have been found in the past and what would you change, if you
5 wanted to change anything, and then --

6 THE COURT: They said we should fire everybody?

7 THE WITNESS: Right, so that was not their
8 recommendation.

9 THE COURT: Yeah. No, I didn't think so.

10 A. So they had some recommendations for substantial changes.
11 And I also asked them if there were urgent cases, open cases of
12 note that I needed to know about. None were flagged at that
13 time, or at all. But there were -- what was told to me by CRCL
14 was there is a workload for urgent medical requests that came
15 from detainees. And the executives who were at CRCL at that
16 time were working that queue and forwarding those requests to
17 ICE, as per normal handling.

18 BY MR. DAVIS:

19 Q. Was that happening after the March 21st, notice?

20 A. Yes.

21 Q. Moving back to some of the other statutory roles. What
22 about the congressional reports, what can you tell us about
23 those?

24 A. So CIS ombudsman has a report to deliver -- has a
25 requirement to deliver a report to Congress by June 28th or

1 June 30th of every year. CRCL has an annual required report,
2 maybe a semiannual as well, and that has to be made public.
3 The CISOMB report only has to go to Congress, could be made
4 public. And then OIDO has an annual reporting requirement.

5 Q. And do the offices do anything other than the statutory
6 work that's required?

7 A. They do.

8 MS. GILBRIDE: Objection. Vague. Lacks foundation.

9 MR. DAVIS: Your Honor, I think --

10 THE COURT: I'll let that one go.

11 Go ahead, sir.

12 A. Yes. They do a lot of what we call discretionary work.
13 And so primarily that's in the realm of advocacy and public
14 engagement and travel. Lot of, like, foreign travel,
15 international travel. Lot of marketing. Lot of quite
16 expensive marketing. And, again, the public engagement is
17 largely discretionary and somewhat duplicative with other
18 offices in the department.

19 THE COURT: I'm sorry. What was duplicative?

20 THE WITNESS: The public engagements.

21 THE COURT: That was duplicative with what other
22 offices?

23 THE WITNESS: Office of Partnership and Engagement
24 and Office of Public Affairs.

25 THE COURT: Okay. So can you give me an example?

1 THE WITNESS: Sure. So stakeholder engagements, that
2 would be the same type of audience and subject matter as FORA,
3 held by USCIS, because they have their own external affairs
4 director. There's the --

5 THE COURT: Could you give me like an actual example?
6 Like, they held a meeting on medicine in detention facilities
7 and that same type of meeting was held by this other office.

8 THE WITNESS: I would say same audiences. Off the
9 top of my head, I don't remember specific topics, but like AILA
10 engagements, where primarily the same topics are discussed
11 between USCIS and then CISOMB, and then there would be tension
12 in the department, why department offices under the same
13 department are saying different things about policy, when, for
14 example --

15 THE COURT: Can you give me an example of one?

16 THE WITNESS: I don't have one off the top of my
17 head.

18 THE COURT: Okay.

19 BY MR. DAVIS:

20 Q. Do you have any examples of any of the, sort of,
21 international public engagement or anything like that?

22 A. One example that stands out is the head of -- or, the
23 acting head of CRCL took a trip to the Hague and testified on
24 civil liberties issues at the Hague, and that stands out as a
25 particularly high travel expense, which does not seem to be

1 linked to a statutory function.

2 Q. Okay. And what is the department's plan with these offices
3 going forward, at a high level?

4 A. The plan is to perform the statutory duties of the offices.

5 THE COURT: How is that going to happen?

6 THE WITNESS: So, right now we're in the process of
7 forming our plan. The secretary's office has asked me to come
8 up with a notional plan for the two offices of which I am not
9 the head. And I could give quite a bit of detail about the
10 office of which I am the current head. But, at a high level,
11 for the offices of which I'm not the head, the idea is to
12 refocus on the statutory functions and build up based on, like,
13 a staffing model that would be needed to perform those
14 functions.

15 THE COURT: But give me like an actual what that
16 means.

17 THE WITNESS: Yeah. So we know X amount of cases are
18 expected to come in to OIDO. So we would know how many in the
19 prior staffing worked on cases, because it turns out to be
20 quite a small percentage. And so then that might be a place to
21 start with where to restaff on the casework side.

22 But then there's a second piece of that, which is the
23 classification. We want to make sure the right series, OPM job
24 series is being used to hire. I have looked at it and found
25 that perhaps they did not have the right individuals in the

1 in charge?

2 THE WITNESS: Correct.

3 THE COURT: And you're basically tasked with, so far
4 as I can tell, trying to find out from the lawyers the bare
5 minimum that these offices have to do and then staff up to do
6 that?

7 THE WITNESS: Not quite the bare minimum. I'm
8 talking to the individuals, the senior executives who are the
9 heads of these offices, Public Partnership and Engagement,
10 Privacy Office, all of the offices that had touch points with
11 these offices and to figure out what needs to be done and where
12 there is value in any of the discretionary work.

13 THE COURT: But when you figure out what needs to be
14 done, you're just asking the lawyers: What do I have to do
15 under the statute, right?

16 THE WITNESS: And these other stakeholders who could
17 say whether or not there was value in some of the discretionary
18 activities.

19 THE COURT: Have they given you any values with
20 discretionary activities?

21 THE WITNESS: Some of the public engagement might
22 have value.

23 THE COURT: Like what?

24 THE WITNESS: Stakeholder meetings, for example, with
25 advocacy groups, some of that may -- the way it's been

1 presented to me is there may be value in helping the
2 operational components like TSA, CBP, and ICE do their jobs
3 more effectively if we engage with certain groups who can bring
4 concerns ahead of time.

5 THE COURT: Okay. But right now, whatever the
6 statutory duties are, you're not alone able to do it all,
7 right?

8 THE WITNESS: No, not alone. But what we're doing is
9 we're taking a beat -- their expectation is that new leadership
10 will be appointed soon by the secretary and then resuming the
11 functions.

12 THE COURT: What's the plan -- when will that happen?

13 THE WITNESS: I don't know when the secretary will
14 make the decision, but I've been told very soon.

15 THE COURT: Who has told you that?

16 THE WITNESS: Advisors to the secretary.

17 THE COURT: Who are the advisors? I mean, we could
18 do this all day. Who were the advisors to the secretary who
19 told you that?

20 THE WITNESS: A number of them. We could start with
21 the general counsel, acting --

22 THE COURT: Names.

23 THE WITNESS: -- general counsel --

24 MR. DAVIS: Your Honor, I think this is getting a bit
25 into deliberative processes here --

1 THE WITNESS: No.

2 THE COURT: Okay. Did you get any -- basically, did
3 you get any papers or anything from anybody?

4 THE WITNESS: No.

5 THE COURT: Just we're firing all these people, we
6 need to figure out how to start over?

7 THE WITNESS: No papers.

8 THE COURT: All right. Go ahead.

9 BY MR. DAVIS:

10 Q. So you said about 300 employees were getting RIF'd, is that
11 right?

12 A. Yes.

13 Q. Could you break that down by office for us?

14 A. Approximately 147 from CRCL, about 118 from OIDO, and about
15 40 from CISOMB.

16 Q. How does that compare to staffing historically?

17 A. So those numbers are quite high historically. For example,
18 OIDO started with three employees and that ballooned to 118 in
19 the last year or two. CRCL had less of an increase, but they
20 historically were somewhere about 30 or 40 positions lower than
21 where they are now.

22 THE COURT: I'm sorry, which office was that?

23 THE WITNESS: CRCL.

24 THE COURT: Give me the numbers again.

25 THE WITNESS: Sure. So CRCL, currently 147; OIDO,

1 118; and CISOMB 40. And then historically they were around 20
2 and then they doubled in size in the last two to three years.

3 THE COURT: I'm sorry, what was the size increase for
4 CRCL?

5 THE WITNESS: Approximately 30 or 40.

6 THE COURT: In how long?

7 THE WITNESS: I think two to three years. It's a
8 little hard to track with the way HR is recorded.

9 BY MR. DAVIS:

10 Q. And could you repeat on OIDO, how many they had and how
11 many it's increased to?

12 A. So they started with two or three and now they have 118,
13 and that was within maybe a two-year span.

14 Q. Okay. And how many employees in each office handled
15 complaints?

16 A. So, it varied. In CRCL there were about 20 caseworkers.
17 OIDO, it's a little hard to tell, but it sounds like around 20
18 or thereabout as well, although it's hard to tell there, and
19 their duties were a little bit more -- a little less defined.
20 And then CISOMB had about 12 -- maybe 10 to 12 caseworkers.

21 Q. And how many staff were the offices required to have?

22 A. There is no minimum requirement.

23 Q. What about the local ombudsman for CIS?

24 A. So there is a requirement in statute for CISOMB to have a
25 local ombudsman in every state. There has never been local

1 ombudsmen. And that was, it seems to me, an unfunded mandate
2 from Congress because there was never more than 50 employees in
3 the office, let alone 50-plus headquarters staff. And talking
4 to the now-deputy ombudsman, who was the acting ombudsman, he
5 said that was just -- there was never money to fulfil that
6 requirement, so it was never fulfilled.

7 Q. And following the March 21st notice, right after, how many
8 people were actively working in these offices?

9 A. There were three senior executives in CRCL actively working
10 and doing their jobs. There is one executive in OIDO, and then
11 a senior executive in CISOMB.

12 Q. Are federal employees --

13 THE COURT: I'm sorry. You said that there's a
14 statutory -- your interpretation is the statute requires local
15 ombudsman in every state?

16 THE WITNESS: Yes.

17 THE COURT: But that there was not money for that?

18 THE WITNESS: Right.

19 THE COURT: But now we have 20 to 40 people there in
20 headquarters?

21 THE WITNESS: Right.

22 THE COURT: So there would be money for at least 40
23 of local ombudsmans, right?

24 THE WITNESS: If no one performed the headquarter
25 functions, yes.

1 THE COURT: Okay. But no one is performing them
2 right now, right?

3 THE WITNESS: Right now, I am performing them and my
4 deputy is performing them.

5 THE COURT: So, 39?

6 THE WITNESS: Right.

7 THE COURT: Okay. All right.

8 BY MR. DAVIS:

9 Q. Is there any other way that the work of these offices gets
10 done, other than federal employees?

11 A. Oh, yes. There's contracts. There are quite a few
12 contracts, and many of those contracts are still in place and
13 actively in a paid status, and those contracts --

14 THE COURT: Which are those?

15 THE WITNESS: There's a few. I don't remember all of
16 them off the top of my head, but --

17 THE COURT: That are currently working, they're
18 currently being paid?

19 THE WITNESS: Yes, they're currently being paid and
20 working and they're primarily focused on adjudication of
21 medical issues and casework, the core casework contracts.

22 THE COURT: Who are those contracts with?

23 THE WITNESS: Oh, I don't remember the names.

24 THE COURT: How many contracts?

25 THE WITNESS: The ones still in the pay status, about

1 ten.

2 THE COURT: And how much money is going into those?

3 THE WITNESS: At least 10 million, probably more,
4 that we're talking now, like an annual spend.

5 THE COURT: For a total?

6 THE WITNESS: Total. Total.

7 THE COURT: Okay. And there's no plans to end those
8 contracts?

9 THE WITNESS: No. I deliberately recommended to the
10 office of contracting that they keep them running, that they
11 are absolutely necessary, and they will be left in a pay
12 status.

13 THE COURT: So they've told you they're going to be
14 left in pay status?

15 THE WITNESS: Yes.

16 THE COURT: All right.

17 BY MR. DAVIS:

18 Q. Were there any contracts that were not left in pay status?

19 A. There were some that were canceled. So I have a long
20 history as a contracting expert with the government. I was at
21 one time a certified contracting officers' representative. I
22 was the executive over USCIS's largest contract for years and
23 so I know what large contracts should look like, and small
24 ones, and what they should not look like, and there were some
25 that were plainly duplicative.

1 exposure to extreme temperatures; suppression of speech and
2 religious worship protected by the First Amendment; denial of
3 medical care for chronic, urgent, and emergency conditions that
4 has led to preventable illness and death; and discriminations
5 from officials on the basis of race, gender, sexual
6 orientation, disability, and other abuses.

7 And I have, for example, a declaration at 15-5 from a
8 Lilian Serrano, at paragraph 8, who writes of a complaint that
9 CBP gave migrants held at the OADS only one bottle of water and
10 one granola bar per day, had only one portable toilet for
11 hundreds of migrants and provided no showers, handwashing
12 stations or feminine hygiene products, even though migrants
13 were being held at the sites for up to a week.

14 I mean, I could go on. I'm not saying that you were
15 trying to downplay it. I'm not accusing you of anything. But
16 these are serious issues. I guess what I want to know is, like
17 right now if these issues are coming to the fore, which I
18 assume they are, who is dealing with those?

19 THE WITNESS: At the moment, we are reviewing those
20 complaints, but not taking action on them.

21 I will say there is one case mentioned in the
22 complaint where the allegation was made that ICE attacked
23 several detainees conducting a hunger strike. If you look at
24 the timeline there, it is indicative of a typical timeline
25 response from OIDO and CRCL. Six months to even acknowledge

1 receipt and a year before a paper recommendation was issued.

2 So these are not claims that -- these are not offices
3 that supplant 911 or officers on the ground. They have an
4 important oversight function, but they are not quick. And so
5 the two-month or so intervening period here, when -- six months
6 to acknowledge receipt, a year to issue recommendations, we
7 are -- like, the timeline is not substantially slowed, if we
8 could staff back up and work these cases efficiently.

9 THE COURT: Okay.

10 BY MR. DAVIS:

11 Q. How does the department handle, sort of, these immediate
12 urgent needs that are raised in complaints?

13 A. Well, so the department generally -- I mean, the first
14 response should always be from the officers on the ground.
15 Right? And so if a detainee has a complaint, the officers
16 there are the first individuals who can provide a remedy.

17 The department intakes through the Office of the
18 Inspector General and then the office intakes through the
19 offices that we're discussing here. But typically the remedy
20 looks like a written recommendation to the primary component
21 that the primary component either accepts or did does not
22 accept.

23 Q. How do these offices remedy individual issues or complaints
24 like some of the ones the judge was mentioning?

25 A. Typically, a caseworker will ask -- and this is how it

1 always is -- a caseworker will ask ICE or CPB to provide the
2 remedy as appropriate, and then they take whatever action they
3 deem fit.

4 Q. How often are these individualized, versus more systemic,
5 the recommendations?

6 A. It depends on the office. So CRCL almost entirely deals
7 with the higher-level programmatic. Even where there are
8 allegations of individual rights deprivations, it's not an
9 immediate response. I don't know what the mix is between
10 programmatic and casework and that's a hard comparison to do.
11 Yeah, I just don't know.

12 Q. And so, going forward, how do you -- you mentioned a plan,
13 how do you plan on ensuring that these offices meet their
14 statutory duties?

15 A. So, at a high level, the plan is to make sure we have the
16 right number and the right type of job, of federal civil
17 servant identified, and to begin priority hiring actions for
18 those individuals, contractors, get them spun up, if they need
19 to increase.

20 So as we look at the mix of staffing, contractors did
21 a lot of the work of these three offices. Perhaps the right
22 mix going forward, a mix that's more efficient for the
23 government is more contracting. And that is on the table and
24 one of the primary recommendations that I will be making, is to
25 scale up the amount of contractors. And then something I've

1 contractees yourself?

2 THE WITNESS: I could, yes.

3 THE COURT: All right. What else?

4 THE WITNESS: And then, again, details. Absolutely
5 details. But then there there's a larger piece for the Office
6 of the General Counsel because there are attorneys assigned to
7 that work who are expert in CRCL-type work. They will be --

8 THE COURT: They haven't been fired?

9 THE WITNESS: No. No, they work for the general
10 counsel.

11 THE COURT: All right. And then OIDO?

12 THE WITNESS: OIDO. The plan there is, again, I
13 think we need at least 10 and maybe 20 to do both casework and
14 then inspections. As I've said before, I think inspections
15 were not handled correctly. And, so, the plan there is --
16 again, contractors, they relied heavily on contractors and I
17 want to look at that contract carefully because there were a
18 lot of complaints made on that contract, some of them quite
19 serious PREA complaints.

20 THE COURT: What is that?

21 THE WITNESS: Prison Rape Elimination Act. So there
22 are quite a few complaints that were quite very serious on that
23 contract. I want to see what's going on there. It strikes me
24 that it was not managed correctly and diligently overseen. And
25 then, again, detailees as well.

1 THE COURT: Okay. All right.

2 BY MR. DAVIS:

3 Q. Just for clarity sake, the numbers that you gave for the
4 offices you're not currently in charge of, those are just sort
5 of your personal thoughts and recommendations?

6 A. Yes.

7 Q. And how will it be determined what the correct staffing is?

8 A. The resources, those always control. So we can't do more
9 than we're allocated or appropriated to do. So, you know, it
10 will be whatever we can do within the appropriation amount.

11 THE COURT: I'm sorry. But right now the
12 appropriation has been for tremendously more people than you
13 now say you need.

14 THE WITNESS: Yes.

15 THE COURT: So why would appropriations be an issue?

16 THE WITNESS: Well, right now there is a certain
17 allocated amount, but then we're coming up on fiscal year '26
18 and that will be a different budget and we don't know what that
19 budget will look like.

20 THE COURT: Okay.

21 BY MR. DAVIS:

22 Q. And what -- have you engaged in any analysis in the last
23 couple of months on what the work should look like going
24 forward in your role? Could you explain any of that?

25 A. Yes. So it's largely what I just said. The analysis is

1 that there are queues and those queues have a certain size,
2 they have a certain pending status, an age status, what we
3 would call, and then there's a certain amount of work that
4 needs to be done or should be done in a certain amount of time.
5 And that mix of contractors, employees, and detailees to
6 perform the statutory functions is what that work looks like.
7 And then a handful or a few individuals to perform the annual
8 reporting requirements as well.

9 Q. And so what is being done right now with the complaints in
10 these different offices? We've made some mention of that, but
11 could you expand --

12 A. Right. So, the urgent medical requests that come in are
13 being worked and forwarded to the respective component, and the
14 other complaints are being reviewed and triaged and then
15 prioritized for when leadership is appointed. That's for two
16 of the offices. And the office I'm the head of, we're working
17 those inquiries.

18 Q. And we talked a little bit about, from the Enriquez
19 declaration, some of the outstanding complaints that were filed
20 by the plaintiffs. Do you recall that?

21 A. Yes.

22 Q. And what would the office do with those complaints going
23 forward?

24 A. So, what CRCL, for example, would do with one of those
25 complaints is if that is open, which it seems to me that it is

1 open, we would investigate whether or not it has merits. I
2 would see if CRCL has drafted anything for that particular
3 complaint and then we would issue the recommendations, if they
4 had merit. And that's with any case. And then, you know, one
5 thing I do want to work on or look at is the timeliness of the
6 responses. I know there is a high volume of complaints, but it
7 seems to me that six months to acknowledge receipt of a
8 complaint that has merit is a long time and I'm not convinced
9 that more staff means a faster response time.

10 Q. Why aren't you convinced of that?

11 A. Because there's a number of factors that, from my review,
12 may have led to a delayed response. There was a lot of
13 thinking of the politics and liaising with components and
14 different stakeholders weighing in on recommendations that I'm
15 not sure is absolutely necessary. And this is a recommendation
16 that I would make, that the offices move faster and do a more
17 analytical triaging of the complaints. And where something is
18 truly urgent and has merits, that you separate them out and
19 respond faster. And then other ones that need longer
20 investigation or that aren't as clear that they have merit,
21 that they can perhaps take longer.

22 But again, this would be for the future leadership to
23 decide. But I would like to see a better risk stratification
24 of these complaints so that the most serious ones don't take a
25 year to close out.

1 presented it to me. If you ask them, they have jurisdiction
2 over every kind of claim, to include everything covered by
3 OIDO. And this is one of the big inefficiencies I uncovered
4 and I think needs to be deconflicted.

5 So CRCL, including the complaint in one of the briefs
6 here, seem to receive all of the complaints that OIDO did, or
7 at least of a certain kind, and also chose to act on them, from
8 what I can tell. I don't have evidence of a crosswalk between
9 CRCL and OIDO to ensure they weren't doing the same work.

10 Q. OIDO and CRCL did enter into a memo of understanding to
11 share functions and assign functions between them to avoid --
12 to do just the sort of deconfliction that you're speaking
13 about. That's actually covered in the OIDO report that you
14 have in front of you, the MOU and the deconfliction mechanism.
15 Are you familiar with that?

16 A. I'm familiar with the MOU. I'm also familiar with
17 anecdotal reports that that did not work in practice.

18 Q. Do you know how many new OIDO cases have been opened since
19 March 21st?

20 A. No.

21 Q. The report that we've been looking at from OIDO, at page
22 11, talks about the most common topics of the complaints, that
23 many OIDO complaints involve allegations of inadequate medical
24 care causing serious medical problems. Can you tell me how
25 many OIDO complaints have come in since March 21st involving

1 decided, oh, the out-of-office is say what the RIF said?

2 THE WITNESS: Correct.

3 THE COURT: Go ahead.

4 BY MS. GILBRIDE:

5 Q. Speaking of the RIF, I would like to find out what you know
6 about the process leading up to the RIF, and even backing up
7 from that, to the memo that was sent to OPM on March 7th. Were
8 you consulted about the memo that was sent to OPM on March 7th?

9 A. No. That was some weeks before I had any involvement with
10 these offices.

11 Q. And were you consulted about the RIF before the notices
12 went out on March 21st?

13 A. No.

14 Q. Have you seen the memo that went to OPM on March 7th?

15 A. I don't believe so.

16 Q. So you may not know the answers to this question -- these
17 next couple questions either, but I'll ask and you can tell me.

18 Between the executive order being issued on February
19 11th and the memo going to OPM on March 7th, was any analysis
20 conducted, to your knowledge, of positions across DHS, across
21 all of the components of the department to determine which
22 positions were performing statutory functions and which were
23 performing discretionary functions?

24 A. I do believe that analysis was conducted. I know it was
25 conducted because I conducted it, or led the doing of that for

1 the office of the general counsel.

2 Q. Okay. And as part of that analysis, who was consulted
3 about the functions being performed by CRCL, CISOMB and OIDO?

4 A. I don't know.

5 MR. DAVIS: Objection. I think we're getting into
6 deliberative process.

7 THE COURT: Well, he doesn't know, right?

8 THE WITNESS: I don't know.

9 BY MS. GILBRIDE:

10 Q. I take it you don't know if anyone in CRCL was consulted?

11 A. I don't know.

12 Q. You don't know if anyone from CISOMB was consulted?

13 A. I don't know.

14 Q. And you don't know if anyone from OIDO was consulted?

15 A. I don't know.

16 Q. Do you know if anyone from OGC was consulted?

17 A. About those offices, I do not know. We were certainly
18 consulted about our own positions.

19 Q. Okay. Do you know if DHS has conducted RIFs before the
20 February 11th executive order?

21 A. I don't know. I'm trying to think back to my history. I
22 don't know. Not at the offices that I was at when I was at
23 them.

24 Q. Do you know, anecdotally or in any other way, how long
25 those RIF processes took to plan and to implement?

1 Q. And you are not the decisionmaker with regard to the
2 staffing levels that are laid out in that plan, correct?

3 A. Correct.

4 Q. And when you started this process of evaluating the work of
5 the three offices, were you starting from scratch? Or was
6 there anyone else within the department who had begun looking
7 at these functions and handed something off to you?

8 A. There was no other person in the department who has
9 performing the task that I'm performing and looking at them.
10 The existing work is what was provided to me by the leaders of
11 those offices at the time.

12 Q. So as of March 21st, when the decision was made to conduct
13 the RIF and place everyone on administrative leave, as of that
14 time, to your knowledge there was no plan for how the work of
15 the offices would continue?

16 A. I was not aware of a plan.

17 Q. And that plan, as we've heard you describe it, has three
18 main components; detailees, hiring new full-time staff, and
19 hiring contractors, is that accurate?

20 A. Yes. There's another component that I would add, which is
21 technology. There are a lot of tools that could be brought to
22 bear to risk-stratify the workloads, to triage and then to run
23 analytics, keyword searches, for example, on the claims in
24 queue so that we can elevate the most urgent or relevant,
25 full-of-merit claims possible in those workloads.

1 Q. So the role that you envision for technology is to separate
2 meritorious complaints from non-meritorious complaints?

3 A. Every complaint would need to be read by a human. But
4 given as we've seen the offices do not work the majority of
5 these cases, by far, then what we're looking to do is help
6 expedite the processing of those claims that might have been
7 opened in the past.

8 So, for example, if there's a certain type of claim
9 that was consistently opened at a higher rate by these offices,
10 then we want to find those faster so that they can then be
11 worked by the staff.

12 Q. So I wanted to go back to this idea of complaints, how
13 quickly a complaint is opened. You mentioned that you had read
14 the briefing in this case. Do you recall the example that is
15 mentioned in our brief of one of the complaints that was filed
16 by RFK Human Rights regarding an individual with epilepsy who
17 was in detention, brought a complaint under Section 504. That
18 complaint was successfully resolved, even though a formal
19 investigation was never opened.

20 Are you familiar with complaints that are just resolved
21 at the facility level, without an investigation formally being
22 opened so that they would show up in the statistics of opened
23 complaints?

24 A. Yes. I'm not familiar with that particular complaint.
25 But, yes, I'm aware that some complaints were resolved at the

1 facility level.

2 Q. If a complaint is resolved at the facility level, would you
3 consider that successful?

4 A. Yes.

5 Q. Good outcome?

6 A. Yes.

7 Q. One of the things that you mention in your declaration,
8 paragraph 9, in terms of what your plan is for the agencies or
9 for the offices, is that you will, you know, make sure that
10 they cease all discretionary activities. Of course, right now
11 all activities are ceased, but when they resume operations, do
12 you have a list in your plan of what you consider the
13 discretionary activities to be?

14 A. I do have a list of recommendations to make to department
15 leadership as to what I believe -- and this part has been
16 cleared through the Office of the General Counsel -- what is
17 statutorily required and what I believe to be discretionary.

18 Q. Okay. So what are the activities that fall into the
19 discretionary category?

20 A. So primarily I would characterize it as public engagement
21 that is duplicative with other public engagement going on in
22 the department. And then travel, travel that is not directly
23 linked to work functions. So by that I do not mean travel to a
24 detention facility, but I mean international travel, or travels
25 to give speeches that don't have a clear nexus to the work and

1 do not advance the mission of the department.

2 Q. Okay. So any other discretionary activities besides travel
3 and public engagement to work -- duplicative public engagement?

4 A. Yes. For example, marketing expenditures that don't
5 clearly advance the mission of the office. For example, OIDO
6 spent millions of dollars, and maybe tens of millions of
7 dollars -- depending on how the contracts were worded, it's a
8 little bit unclear -- but, at a minimum, millions of dollars on
9 what I would call swag. So these are OIDO emblems on
10 windbreakers, hats, coffee mugs, anything that you can stick a
11 logo on they bought it and gave it out and I don't see how that
12 advances the mission.

13 Q. With regard to what you described as duplicative public
14 engagement, who would be authorized, in your view, to determine
15 if a public engagement activity is duplicative or not?

16 A. I don't think there's one answer. I mean, it certainly
17 would start with the secretary and deputy secretary. But
18 something like engagement, jurisdiction, in my view, belongs
19 with the assistant secretary for public affairs and the head of
20 the Office of Partnership and Engagement.

21 Q. Okay. With regard to detailees, which is one of the
22 components of your strategy, how long do details typically
23 last?

24 A. Oh, it ranges. I would say the average detail is probably
25 six months, but oftentimes they'll go at least a year,

1 Q. And CRCL in particular is also required to make information
2 public about the complaints that it has received and resolved?

3 MR. DAVIS: Objection. I think that calls for a
4 legal conclusion.

5 THE COURT: I'm sorry. Ask the question again.

6 BY MS. GILBRIDE:

7 Q. Is it your understanding that CRCL is required to publicly
8 disclose information about the complaints that it has received
9 and resolved?

10 THE COURT: Well, I mean, to the extent he's
11 testifying that what's publicly required to be published is
12 being published, he has a right to know what he thinks is
13 publicly required to be published, which I think is part of the
14 question. So overruled. In your view.

15 THE WITNESS: I am not aware of that requirement or,
16 at a minimum, I'm not sure that that means that every
17 recommendation issued is required to be posted.

18 BY MS. GILBRIDE:

19 Q. And with regard to FOIA requests, which there had been a
20 FOIA office within CRCL, who is currently handling FOIA
21 requests for these three offices?

22 A. The Office of Privacy is handling all requests for them,
23 and has been continuously since around March 21st. So there
24 has been a concerted effort to consolidate all FOIA requests
25 processing across the department in the Office of Privacy

1 because that is where the contract vehicles and the federal
2 government employee expertise exists. It is the most efficient
3 way to do it and they are intaking and processing all CRCL,
4 CISOMB, and OID FOIA requests and have been continuously.

5 Q. And for other components of DHS, or just for those three?

6 A. No. So headquarters privacy is handling all offices in
7 headquarters and then each component has its own FOIA or
8 privacy office handling theirs.

9 Q. With regard to report to Congress, you mentioned the annual
10 reports for each of the three offices. But didn't CRCL also
11 have an obligation to report on the -- with regard to delegated
12 law enforcement functions under 8 USC 1357 to have additional
13 reporting requires about that?

14 MR. DAVIS: Objection. I think that's still a legal
15 conclusion.

16 THE COURT: What's your understanding?

17 THE WITNESS: I'm not immediately familiar with it.
18 I do know there are other statistics-based recording
19 requirements. I believe they can be rolled into the annual
20 report, but in my discussions with our counsel, my
21 understand --

22 THE COURT: No, no, don't talk to me about
23 discussions with counsel because then all things kind of blow
24 up and my life becomes more difficult than I want it to be.

25 MR. DAVIS: Thank you, Your Honor.

1 already working those cases, as well as the deputy ombudsman
2 working them, and the report is being written. So the
3 statutory functions are being performed.

4 Now, they're going to be performed to a much higher
5 degree in the very near future and if I can get three or four
6 detailees on in a week -- or, two weeks, rather, and there were
7 10 to 15 caseworkers in CISOMB prior, we're already a good way
8 of the way there within a couple of weeks to working that
9 queue. And again, there is no specific timeline for when that
10 queue gets worked or an obligation to respond to every inquiry.

11 BY MS. GILBRIDE:

12 Q. And with regard to the offices that you know less about,
13 which are -- I think your estimates had those at higher
14 staffing levels, that would presumably take a somewhat longer
15 period of time, correct?

16 A. Well, to staff to higher levels, it would probably take a
17 little bit longer, but not necessarily. And let me explain why
18 that is. So I've been in touch with the Office of the Chief
19 Human Capital Officer and they understand that when new
20 leadership is in place and wants to hire for these offices,
21 that hiring has to go through an expedited pipeline. And so
22 what that means is expedited handling within the Chief Human
23 Capital Office and using hiring authorities within the civil
24 service or the accepted service that can hire faster than the
25 typical hiring timeline.

1 So that understanding has already been reached. So
2 new leadership would have access to expedited hiring to staff
3 these offices up. And you don't have to hire in series, you
4 can hire in parallel. So there's no reason new leadership
5 couldn't hire ten simultaneously.

6 Q. Would any of the people who were working for these offices
7 up until two months ago be eligible for rehire?

8 A. If -- if they are RIF'd, they are eligible. They have --
9 right now they would -- so if -- when they're RIF'd, they would
10 have, I believe, ICTAP preference or some kind of rehire
11 preference, yes. About a third of the employees impacted by
12 the RIF have chosen to take the deferred resignation program,
13 so they have elected to separate from the government. And I
14 believe those agreements, they have opted to not return to
15 government service. But the others, if they are in fact RIF'd,
16 they would have rehire preference.

17 Q. And as fast and expedited as that hiring authority might
18 be, wouldn't it have been faster for people just not to have
19 lost their jobs in the first place, than to have to lose their
20 job, then go through a reapplication process to get rehired
21 again?

22 A. Faster, yes. Again, speed is not the only goal with the
23 refocusing of functions here.

24 Q. So, given that you are not the ultimate decisionmaker and
25 we have functions that are currently not being performed at

1 travel and the secretary was in a meeting. But he said if we
2 could respectfully have until 10 a.m. tomorrow to get you a
3 response on your question?

4 THE COURT: Perfect.

5 MR. SMITH: Thank you.

6 THE COURT: Where is he going?

7 MR. SMITH: I don't think I can say, Your Honor.

8 THE COURT: All right. Probably not the Hague.

9 REDIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q. Just a couple more questions, Mr. Sartini, then you can get
12 out of here.

13 THE COURT: Well, after mine.

14 MR. DAVIS: Besides whatever the judge wants, of
15 course.

16 BY MR. DAVIS:

17 Q. Did you have any conversations with outgoing leadership
18 about the functions of these offices?

19 A. Yes.

20 Q. What conversations about, sort of, outstanding complaints
21 did you have?

22 A. I asked if there were urgent or important complaints that
23 needed to be attended to within the next few weeks or some near
24 period, and I was told the answer was no, other than the urgent
25 medical requests that came in and were being worked by an SES

1 in that office.

2 Q. Were you told about any that were close to lapsing?

3 A. No. I was told that the queues were all in pretty good
4 shape.

5 Q. Okay. And the EEO functions of CRCL, is that internal or
6 is it outward facing?

7 A. Say that again.

8 Q. The EEO functions of CRCL, is that internal or is that
9 outward facing?

10 A. My understanding is that's internal. If an employee files
11 an EEO complaint, like a supervisor has discriminated against
12 me because of the color of my skin, that's an internal matter.

13 Q. Do any of the primary components handle their EEO issues?

14 A. All of the large operational primary components have EEO
15 shops and deal with their own.

16 Q. And when we talk about the Rehabilitation Act, that's
17 public accommodations, things like that?

18 A. Yes.

19 Q. And are these issues addressed in other ways on the ground?

20 A. Oh, yes, often they are. So, for example, if an
21 accommodation is needed in detention, the ICE or CBP officers
22 and staff are always the first line to provide that. They are
23 closest to the situation.

24 Q. And if there are outstanding complaints that are nearing
25 the time period, will the office be handling those as soon as

1 they can?

2 A. Yes. And if I were the incoming leadership, the first
3 thing I would do is look at the oldest complaints and then I
4 would simultaneously look at any complaints that seemed to be
5 urgent but might not be old. And so it's a two-part handling
6 of the workload, which is standard in government caseload
7 management.

8 Q. And you were asked about -- you said that the FOIA
9 functions are being handled by the privacy office. Was that
10 ever true in the past?

11 A. Oh, yes. So, it used to be that the Office of Privacy
12 handled all of DHS headquarters. And only in the last few
13 years -- I'm not sure, but somewhere within the last two, three
14 years CRCL fought with -- internally to take that function
15 back. There was disagreement, but they did take it back and
16 now the plan is to -- well, for the plan, it's already
17 happened, at least a month ago, probably more, to fully
18 centralize it back in the Office of Privacy.

19 MR. DAVIS: No further questions, Your Honor.

20 THE COURT: All right. I just have a few questions
21 for you. You would agree with me that individuals in -- held
22 in detention centers are human beings?

23 THE WITNESS: Of course.

24 THE COURT: And they're entitled to safe, clean
25 accommodations?