

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

FOR THE PLAINTIFFS:

A BETTER CHILDHOOD, INC.

Marcia Lowry

355 Lexington Ave.

Floor 16

New York, NY 100017

YETTER COLEMAN LLP

R. Paul Yetter

811 Main Street

Suite 4100.

4th Floor

Houston, TX 77002-6125

CHILDREN'S RIGHTS

Christina Remlin

Stephen Dixon

330 Seventh Ave.

4th Floor

New York, NY 10001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR DEFENDANT JAIME MASTERS/DFPS: TEXAS OFFICE OF THE ATTORNEY
GENERAL
Elizabeth Brown Fore
Kara Holsinger
Clayton Watkins
P.O. Box 12548
Austin, TX 78711-2548

FOR DEFENDANT CECILE ERWIN
YOUNG/HHSC: TEXAS OFFICE OF THE ATTORNEY
GENERAL
Reynolds Brissenden
Raymond Winter
Paul Moore
Noah Reinstein
300 W. 15th St.
WPC Bldg., 9th Floor
Austin, TX 78701

FOR DEFENDANT GREG ABBOTT: TEXAS OFFICE OF THE ATTORNEY
GENERAL
Patrick K. Sweeten
P.O. Box 12548
MC-009
Austin, TX 78711-2548

1 FOR THE CHILDREN'S SHELTER/FAMILY NORTON ROSE FULBRIGHT US LLP
2 TAPESTRY/ANNETTE RODRIGUEZ: Jay Dewald
3 Frost Tower
4 111 W. Houston St.
5 Suite 1800
6 San Antonio, TX 78205
7
8 MONITORS: PUBLIC CATALYST
9 Kevin M. Ryan
10 99 Wood Ave. So.
11 Ste. 301
12 Iselin, NJ 08830
13
14 TEXAS APPLESEED
15 Deborah Fitzgerald Fowler
16 1609 Shoal Creek
17 Ste. 201
18 Austin, TX 78701
19
20
21
22
23
24
25

	<u>INDEX</u>				
	<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1					
2	STEPHEN BLACK				
3	[By Ms. Fore/Ms.	20/140			
4	Holsinger]				
5	[By Ms. Lowry/Mr.				
6	Yetter]				
7					
8	JUSTIN LEWIS				
9	[By Ms. Fore/Mr.	32		78	
10	Watkins]				
11	[By Ms. Lowry/Mr.		62		
12	Yetter]				
13					
14	WILLIAM WALSH				
15	[By Ms. Fore/Mr.	103			
16	Watkins]				
17	[By Ms. Lowry/Mr.		168		
18	Yetter]				
19					
20					
21					
22					
23					
24					
25					

	<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1	ELLEN LETTS				
2	[By Ms. Fore/Mr.				
3	Watkins]				
4	[By Ms. Lowry/Mr.	103			
5	Yetter]				
6					
7	HECTOR ORTIZ				
8	[By Ms.	133			
9	Holsinger/Mr.				
10	Watkins]				
11	[By Ms. Lowry/Mr.		142		
12	Yetter]				
13					
14	CAROL SELF				
15	[By Ms. Fore/Ms.				
16	Holsinger/Mr.	149/176/179			
17	Watkins/]				
18	[By Ms. Lowry/Mr.		181		
19	Yetter]				
20					
21					
22					
23					
24					
25					

	<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1					
2	LANA ESTEVILLA				
3	[By Ms. Fore/Mr.	184		213	
4	Moore]				
5	[By Ms. Lowry/Mr.		206		215
6	Yetter]				
7					
8	ERICA BANUELO				
9	[By Ms. Fore/Mr.	217		234	
10	Moore]				
11	[By Ms. Lowry/Mr.		229		
12	Yetter]				
13					
14	WAYNE CARSON				
15	[By Ms. Fore/Mr.				
16	Moore]				
17	[By Ms. Lowry/Mr.	277			
18	Yetter]				
19					
20					
21					
22					
23					
24					
25					

	<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1					
2	SHIRLEY DWYER				
3	<i>[By Ms. Fore/Mr.</i>				
4	<i>Moore]</i>				
5	<i>[By Ms. Lowry/Mr.</i>	283			
6	<i>Yetter]</i>				
7					
8	ANNETTE RODRIGUEZ				
9	<i>[By Ms. Fore/Mr.</i>				
10	<i>Moore]</i>				
11	<i>[By Ms. Lowry/Mr.</i>	286			
12	<i>Yetter]</i>				
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 CORPUS CHRISTI, TEXAS; WEDNESDAY, MAY 5, 2021, 8:54 AM

2 THE COURT: Good morning. Let's call the case.

3 CLERK: Yes, Your Honor. The Court calls Civil
4 Action 11-84, MD et al v. Abbott et al. May we have
5 appearances, please.

6 MR. YETTER: Paul Yetter for the Plaintiff Children.

7 MS. FORE: Elizabeth Brown Fore appearing on behalf
8 for Defendant, Jaime Masters, in her official capacity as
9 Commissioner of DFPS. Along with me is Kara Holsinger and Clay
10 Watkins.

11 MS. LOWRY: Marcia Lowry for Plaintiffs from A Better
12 Childhood.

13 THE COURT: There are so many of you on mute and I
14 can't hear you.

15 MR. RYAN: Mr. Brissenden is on mute.

16 THE COURT: Yes, he is. Is that -- maybe he wants to
17 stay that way. There you go.

18 MR. BRISSENDEN: Good morning, Your Honor. Can you
19 hear me?

20 THE COURT: I can, thank you.

21 MR. BRISSENDEN: Good morning, Judge. Reynolds
22 Brissenden on behalf of HHSC and Executive Commissioner Johnson
23 of the Civil Medicaid Fraud Division of the Attorney General's
24 office. Also with us this morning is Raymond Winter, Civil
25 Medicaid Fraud Division Chief, and Deputy Chief

1 (indiscernible). We also have with us from our office Paul
2 Moore and Noah Reinstein, also from Civil Medicaid Fraud
3 Division.

4 MR. SWEETEN: Good morning, Your Honor. Patrick
5 Sweeten and Eric Hudson on behalf of the Office of
6 (indiscernible).

7 THE COURT: Could I have a chart of who is
8 representing who again?

9 MR. DIXON: Judge, Stephen Dixon of Children's Rights
10 on behalf of Plaintiff Children.

11 THE COURT: Okay, is that everybody?

12 WOMAN: (indiscernible), counsel, Children's Rights,
13 on behalf of Plaintiff Children as well. Good morning, Your
14 Honor.

15 THE COURT: Thank you. We are doing a volume check
16 here. Just one second. Thank you.

17 All right. I've got by way of organization to begin
18 with compliance. And I have sort of a cheat sheet that I'm
19 going to go by, and then the monitor's report, and then the
20 children without placements matter. Then heightened
21 monitoring, SSCCs, and ending with the fatalities.

22 And as I told you all in previous conversations, if I
23 find the need or the recommendation for sanctions, monetary
24 sanctions, then I will continue this for another day. I know
25 the Defendants tried to file too much for electronic filing

1 yesterday. And I think, Ms. Fowler, pursuant to my directions,
2 explain to you what I would consider and what I would not
3 consider today.

4 Now, that doesn't mean that you can't use these
5 exhibits in a future hearing now that the monitors have them
6 all, or at least Ms. Fowler does. Actually, she has looked at
7 mine, but she needs her own set and Mr. Ryan needs his set.
8 And those can be used in a future compliance hearing if I
9 continue any of these matters. Is that understood by
10 everybody?

11 MS. FORE: Yes, Your Honor. Thank you.

12 THE COURT: Okay. So I'm not saying you can never
13 use this. It's just that if it hadn't been verified by the
14 monitors, there's no point in looking at it today. And again,
15 I'm not going to punish you with any kind of sanctions without
16 giving you even more of an opportunity to comply in another
17 hearing.

18 And it occurred to me when we were doing Ms. Fowler's
19 response to y'all's exhibits -- proposed exhibits that never
20 got filed, so I don't have to worry too much with them -- but
21 that the new attorneys might not have understood the prior
22 parameters of what would be considered. So I think now you do.
23 And she also, as you noticed, sent that email to Mr. Yetter and
24 Ms. Lowry so everybody would be on the same page with this.

25 And then I want to tell you overall how pleased I am

1 with DFPS and HHSC in their efforts. They're not all perfect,
2 and we'll talk about those over the next couple of days. But
3 the efforts overall have been really to me remarkable. I am
4 pleased to note that HHSC Commissioner Young has -- I've read
5 some media reports, so I feel that I need to say this on behalf
6 of the Commissioner Young and Commissioner Masters, that you
7 both have clearly understood these orders and are now making
8 great strides in compliance with these orders, with these
9 remedial orders.

10 And HHSC, responsible for licensing and closures.
11 And out of the 24 total closures, DFPS has terminated a
12 contract in four, HHSC suspended licenses in two, and eight
13 have voluntarily relinquished after being placed on heightened
14 monitoring. And I think it is clear that both of these
15 entities understand the importance of the safety of the
16 children. How to get there, maybe we may have differences.

17 But for example, Commissioner Masters reacted
18 immediately after the last -- after the contempt hearing to
19 change the downgrade -- I think Mr. Yetter called it the
20 Downgrade Committee, to abolish that whole layer. And that was
21 so important and so responsive to the safety needs of the
22 children and it was very impressive. And I can't tell you what
23 it's meant to have a DFPS Commissioner that understands where
24 the Court is coming from even though I think she's only been on
25 the job a year-and-a-half. Commissioner Young, I also have

1 wonderful things to say for both of you.

2 But I want to remind all of you that out of the 23
3 closures -- and we didn't include The Landing on this, which
4 was closed for another reason. They also had an RTB, a right
5 to believe. But out of those 23 closures, there were 238
6 right-to-believe complaints that were verified, 2,438 minimum
7 standards violations, again, not including The Landing, which,
8 as you know, was reopened by the same owners of Prairie Harbor
9 with the same director.

10 And while we're talking about minimum standards, when
11 this all began, I thought that minimum standards by HHSC meant
12 a fire extinguisher was missing or the plumbing was inadequate
13 or those kind of physical things to the premises. And it turns
14 out that it means they are rated for one thing, medium, medium-
15 high, high, and low. And those citations for minimum standards
16 include areas of discipline and punishment and emergency
17 behavior interventions, lack of supervision. And these are
18 very, very important child safety needs. Inappropriate
19 restraint of children is also minimum standards violations.
20 And so I wanted to make sure that the public understands that
21 minimum standards is really a very low bar. And I am impressed
22 with HHSC's performance in this area.

23 Now, if anybody on the phone call has any reason to
24 think that any of these closures were made for other than
25 safety reasons, for the safety of the children, please let me

1 know. And I am particularly concerned -- I am reminded that
2 HHSC also revoked licenses in nine of those 23. So they have
3 been very active.

4 Does anyone at all on this call have any reason to
5 think that HHSC closures or revocations are DFPS cancelling of
6 contracts was for any reason other than safety needs of the
7 children? I mean, this is the time to tell me if you think
8 this has been arbitrarily or capriciously done by either
9 entity. All right.

10 With that, I think we'll go into -- any questions so
11 far? And you all feel free to raise your -- I don't know if I
12 can see raised hands. But let me know if you have any comments
13 to make.

14 And let's start with compliance with Remedial Order
15 3.

16 Mr. Yetter, you and Ms. Lowry and Children's Rights
17 represent the children. How do you want to proceed in this? I
18 can do the short summary or you can call witnesses.

19 MR. YETTER: Your Honor, why don't we -- some of
20 these according to the Monitor's Reports I don't think are
21 disputed at all. And so perhaps the Court can just address
22 those. And if any of the state entities has some issue, that
23 they can raise it and then we can deal with it at that point.

24 THE COURT: Well, in RO3 we start with the SWI phone
25 calls. And those have improved dramatically from abandoned

1 calls that were -- 18 percent of all calls were abandoned in
2 the first Monitor's Report. Now it's down to 13 percent.

3 This is not a perfect score by any means. And I
4 thought we could talk about -- but I'm not going to do
5 sanctions for this. On average, callers waited in the second
6 report for 2.3 minutes, which is much shorter, a 70 percent
7 improvement from the first report. So I thought you could tell
8 me as we went along from the state, are there any obstacles
9 that I can help you with or the monitors can help you with to
10 make this closer to a hundred percent?

11 MS. FORE: Your Honor, our witness on that issue is
12 Mr. Stephen Black. So I'd like to call him to testify at this
13 point.

14 THE COURT: Okay. And again, not what you've done in
15 the past, because now I'm impressed. All right? I'm already
16 impressed. What I want to hear from are how we can make this
17 even better.

18 MS. FORE: And, Your Honor, I did have two
19 housekeeping matters.

20 THE COURT: Me too.

21 MS. FORE: I can certainly hold off and we can take
22 those up later.

23 THE COURT: Tell me about the privilege for the
24 housekeeping matter.

25 MS. FORE: We have no issue with the emails between

1 Annette Rodriguez and Trevor Woodruff being made public. Thank
2 you for letting us know.

3 THE COURT: Okay. So those now the monitors can
4 place in a further report. And I'll give the monitors leave to
5 make those available to the plaintiffs, make that one thread
6 available. And all the rest of the matters we've taken care of
7 by privilege because the monitors don't need the other two
8 threads and attorney-client privilege are the deliberative
9 process, which I want to comment was kind of silly. But
10 nonetheless, they don't want it, so I don't need to make a
11 ruling.

12 MS. FORE: And then the other --

13 THE COURT: I think we've resolved the documents
14 issue. Have we? You are all trying to -- you don't need any
15 exhibits for today unless you want to file them now, or what
16 are we doing with that?

17 MS. FORE: Well, we are going to call the help desk
18 and see if we can figure out what technical problem we had last
19 night.

20 THE COURT: You sent me --

21 MS. FORE: What's that?

22 THE COURT: I got in my chambers last night, at 4:45
23 in the late afternoon, five boxes of documents, of binders from
24 DFPS. And I was sitting there laughing, saying not only do I
25 not have time to read them as I'm preparing for today, but

1 there's no way you're going to get those electronically filed.
2 So I was hoping you would use my directions to pare that down.

3 MS. FORE: I appreciate those comments certainly.

4 And --

5 THE COURT: I'm just trying to help you, as you would
6 say.

7 MS. FORE: Yes. And I really do appreciate your
8 comments very much, and I will keep that in mind for the next
9 time certainly, Your Honor.

10 We did go back and double-check and verify which
11 exhibits had been provided to the monitors before April 15th
12 and which ones had not. So we would like to move to enter in
13 evidence --

14 THE COURT: It's not April 15th. April 15th was not
15 the cutoff date. It's what you used for your compliance
16 reports in January, the documents you used for those. And
17 there were just a couple of areas that the monitors were able
18 to update their report based on some new documents received in
19 April. But on the average, most of those documents are not
20 going to come in.

21 I suggest that between now and any future time that
22 you confirm with the monitors to see which documents they
23 object to. None of us had time to review those five boxes of
24 documents last night.

25 MS. FORE: Okay.

1 THE COURT: So I suggest you don't attempt to do
2 anything with those until we have another hearing.

3 MS. FORE: Okay.

4 THE COURT: For your information, from hearing to
5 hearing, this is kind of a constant problem. Every time we
6 have a contempt or a hearing like this, DFPS and HHSC come up
7 with brand-new things and brand-new policies that they say are
8 going to cure the whole deal. And then months later, the
9 monitors have the -- the verification. Sometimes they cure,
10 and sometimes they get worse. Just saying. So it's not
11 impressive to me or moving the needle in any way to do those
12 new studies and new policies at this time except to give us a
13 heads up that this is what you're trying to do.

14 MS. FORE: I appreciate that.

15 THE COURT: I just won't accept it as gospel until
16 the monitors get it verified.

17 MS. FORE: And is it helpful for the Court to have
18 documents that show, for example, whole times through February
19 or March? I'm just trying to get a sense so that I know for
20 today and ongoing what the Court finds helpful.

21 THE COURT: Why don't you confer -- if you don't need
22 any of those documents today, confer tonight if you want to
23 with the monitors, see what documents they have been able to
24 look at and verify that you propose. Just give them a few that
25 you really need for tomorrow. Okay?

1 MS. FORE: Understood. Thank you, Your Honor. We'll
2 do that.

3 THE COURT: Ms. Fowler, Mr. Ryan, is that going to
4 work?

5 MS. FOWLER: Sure.

6 THE COURT: Okay. Mr. Ryan, are you there?

7 MR. RYAN: Yes, Your Honor.

8 THE COURT: Is that going to work do you think?

9 MR. RYAN: Yeah. That will be fine. Thanks, Your
10 Honor.

11 THE COURT: Okay. No five boxes, please. Because
12 that's not going to do.

13 Now, you had other housekeeping matters also that you
14 wanted to bring up?

15 MS. FORE: Those were the only two I had, Your Honor.
16 Thank you.

17 THE COURT: Okay. So I think we're set. You're
18 going to call a witness about the phones.

19 MS. FORE: That's right.

20 THE COURT: The ESWI calls.

21 MS. FORE: And Mr. Stephen Black -- sorry.

22 THE COURT: Do you have any witnesses right now that
23 we can do a massive oath with?

24 MS. FORE: We could do our three witnesses on -- I'm
25 sorry, we have two witnesses on R03, Stephen Black and Justin

1 Lewis.

2 THE COURT: And are they both on the line?

3 MS. FORE: They are, Your Honor. They are in the
4 DFPS witness box, and there are two of them you'll see right
5 there.

6 THE COURT: Okay. The way we do the oath is that Ms.
7 Purifoy asks these two people to raise their right hand, she
8 administers the oath, and then addresses them each by name so
9 the affirmative answer comes separately on the record. Okay?

10 Okay, Ms. Purifoy?

11 CLERK: Yes, Your Honor.

12 Mr. Lewis and Mr. Black, please raise your right
13 hands. Do you swear the testimony you are about to give in the
14 case now before the Court will be the truth, the whole truth,
15 and nothing but the truth, so help you God?

16 Mr. Lewis?

17 MR. LEWIS: I do.

18 CLERK: Mr. Black?

19 MR. BLACK: I do.

20 THE COURT: Okay, then. Proceed with Mr. Black, or
21 however you want to do it.

22 DIRECT EXAMINATION OF STEPHEN BLACK

23 BY MS. FORE:

24 Q So, Mr. Black, Judge Jack had a question a moment ago
25 about how statewide intake can improve beyond the point where

1 it is now with respect to hold times. Do you have any thoughts
2 on that?

3 A To get to this point was a massive undertaking we did with
4 the retraining of our staff. And so I think going forward, I'm
5 really looking at two things. One is we've had pretty good
6 retention over the past year-and-a-half. But wherever we do
7 have vacancies, we would make sure those get refilled as soon
8 as possible to keep our workforce up to its current population.
9 And then also looking at our workforce management capabilities.
10 You know, as calls trickle in, as seasons change, as schools go
11 in and out, that does affect where the volume has peaks and
12 valleys. And so address those -- to address the call volume at
13 this point, we need to pay attention to where those peaks are
14 so we can reallocate our resources where they can be most
15 useful.

16 Q And how many employees does statewide intake have at this
17 time?

18 A At this time for the intake specialist position, about
19 317.

20 Q And how many open positions do you have that you're
21 currently hiring for?

22 A We're looking at possibility filling three vacant
23 positions as of this summer.

24 THE COURT: You know, I'm going to interrupt when I
25 think of things. It happens at my age. I'm going to ask each

1 of the three parties, from the Governors, to HHSC, to DFPS, if
2 anyone believes that any of those three parties is
3 misinterpreting the Court's remedial orders or the injunction.

4 Okay, I'll take it by your silence that there is no
5 one that thinks there is a misinterpretation going on.

6 I have a couple that I want to bring to your
7 attention as we go along, however. But go ahead.

8 BY MS. FORE:

9 Q And you talk about peaks and valleys. Can you describe in
10 a little bit more detail what you mean by peaks and valleys?

11 THE COURT: This is one of the big deals, is there
12 has been no in-person teaching in a lot of the schools. And
13 that's a huge problem with SWI calls, not having that resource
14 of teachers to call in. So that's one that we all know. Any
15 others? And doctor's appointments. You know, kids are not
16 going to see their doctors for normal immunizations or what
17 have you, so the doctors aren't seeing them.

18 BY MS. FORE:

19 A I would agree with that. We did see a drop in medical
20 professional calls, a slight drop between fiscal year '19 and
21 fiscal year '20. Most of those medical professional calls have
22 returned as most school reporting has returned in recent
23 months.

24 Also, just being a 24/7/365 call center, just throughout
25 the workweek into the weekends, you will see some differences

1 in call volume based on time of day and day of the week.

2 Q And do you have particular months of the year that are
3 higher volume?

4 A April is typically the highest volume. School is still in
5 session and it's also child abuse prevention month. So that's
6 always our number-one month. Also September, particularly
7 October, once the school year begins, those fresh months into
8 the school year also see a high volume.

9 Q And can you --

10 MS. FORE: Judge Jack, I was going to move on to a
11 different issue relating to statewide intake, but please stop
12 me if you want to --

13 THE COURT: I'm fine.

14 MS. FORE: -- if you want me to -- okay.

15 BY MS. FORE:

16 Q What's a screener?

17 A A screener is a staff member who looks at a certain subset
18 of intakes after the initial decision is made by the intake
19 specialist. And then that screener reviews history, makes
20 contacts to see if the intake needs to progress to an
21 investigation stage.

22 Q And have screeners always been a part of statewide intake?

23 A They have not. They joined statewide intake on November
24 1st of 2020.

25 Q And why did the screeners become a part of statewide

1 intake?

2 A We felt if they came over, we could improve screening
3 practices in a number of ways. We could provide them
4 additional training specifically to the intake functions of
5 DFPS. We could also tighten the parameters around making
6 intakes of PNs and we could also bring more consistency to the
7 screening practices.

8 Q So what does statewide intake do with a report that
9 doesn't meet the definition of abuse, neglect, or exploitation,
10 but it involves a child in operations regulated by HHSC?

11 A When the intake specialist gets a phone call or an
12 internet report that does not meet abuse/neglect definitions
13 but does involve a child in a licensed placement, those are all
14 sent to HHSC Residential Care as a possible standards
15 violation.

16 Q And once the assessment is made and the documentation is
17 completed as an intake, what happens next?

18 A For an RCCI intake, it is going to go to -- well, most
19 RCCI intakes are going to go to screening. Other intakes may
20 go to our routing coordinator depending on the time of day and
21 the priority. A high priority intake that comes in after hours
22 will be called out to an on-call investigator.

23 Q And what factors determine how long an intake specialist
24 spends on a given intake?

25 A It's really going to boil down to the length of the call.

1 Some of our quickest calls typically come from professional
2 reporters because it's usually not the first time calling, so
3 they know the routine and information we're going to be asking
4 for. It also depends on the number of concerns the reporter
5 has. Sometimes one phone call may lead to multiple intakes or
6 multiple reports just depending on the dynamics of that phone
7 call.

8 Q And you talked a minute ago about the decrease in calls
9 from schools. What was the percentage of that decrease?

10 A The difference between fiscal year '19 and fiscal year '20
11 was about a 25 to 26 percent decrease in school reporters.

12 Q And now that schools have begun to reopen, have you seen
13 an increase in calls?

14 A We have. By the time the fall arrived where schools were
15 at least meeting virtually, we've seen an increase in school
16 reporting for September, October, those months. Still not to
17 the same point they were in the fall of 2019. But as of March,
18 the school reporters have returned to regular typical year
19 numbers.

20 THE COURT: How much more staff do you need to
21 address not only your retention concerns, but the increased
22 calls that are going to start coming in once it's a hundred
23 percent in-person school?

24 BY MS. FORE:

25 A If we can fill the vacancies we have this summer, we

1 should have the same amount of staff that we had in fiscal year
2 2019 when school reports were what they are today. And so I
3 believe that would be enough.

4 Q And so was that the three open positions that you have,
5 Mr. Black?

6 A Yes, ma'am.

7 Q And what do you anticipate will be --

8 THE COURT: Okay, sorry. Is that enough staff, three
9 new, to anticipate your needs?

10 THE WITNESS: Well, it returns us more to our fiscal
11 year 2019 numbers. Like I said, we've had very low turnover
12 over the past year-and-a-half.

13 THE COURT: Except in your January certification, you
14 said that you were going to need increased staff in your future
15 projections.

16 THE WITNESS: So to get to those future projections,
17 I believe the end of this year we have it set for about 5.6
18 minutes. If we're going to maintain what we reached in fiscal
19 year '20. Which I believe is the 4.6 minutes, then that would
20 take additional staff than what we would have.

21 THE COURT: How many?

22 THE WITNESS: I would have to look back at past
23 projections. We typically run some formulas based on hold
24 times. To get to five-minute hold times guaranteed based on
25 current projections, you know, the initial outlook was about

1 100 new intake specialists.

2 THE COURT: A hundred? Okay. And how are you going
3 to get those? What are the plans? DFPS, what are the plans to
4 get these people on board?

5 THE WITNESS: A request that large would either come
6 through additional funding or reallocation of the positions.

7 THE COURT: Has an application been made for new
8 funding?

9 THE WITNESS: We did put in a request to fund our cap
10 positions. Our cap positions are bit higher positions. So we
11 did enter requests to get those cap positions filled as well.

12 THE COURT: What's a tap? I'm sorry, say that again?

13 THE WITNESS: We have what we call an FTE Cap. It's
14 the number of positions available to statewide intake.

15 THE COURT: Oh, cap, c-a-p.

16 THE WITNESS: That's fine.

17 THE COURT: Thank you. So ca you tell me, Ms. Fore,
18 what's going on with getting the funding for this?

19 MS. FORE: We don't have information on that right
20 now, Your Honor. I can certainly look into it and give you
21 that information.

22 THE COURT: Well, that's kind of a biggie. How about
23 we put that on for tomorrow and get that -- find that out.

24 MS. FORE: Certainly.

25 THE COURT: Thank you.

1 BY MS. FORE:

2 Q So, shifting topics a little bit, Mr. Black. What are the
3 different priority levels that are given to an intake?

4 A There could -- it's going to vary by program. But looking
5 at our programs that involve children, we are looking at a P1,
6 a P2, and then the Priority None category.

7 Q And how did the Priority None policy recently change?

8 A We narrowed down the ability to take a Priority None. So
9 looking at statewide intake, we have our intake specialists
10 positions, and then we have our screeners. The Priority None
11 did not change for intake specialists. They can never take a
12 Priority None for an RCCI intake. And then from the screening
13 standpoint, we narrowed down their options for making an intake
14 a Priority None to few reasons. Either the allegations have
15 been previously addressed in a different intake, or the
16 facility in question does not fall into the RCCI or RCCL
17 jurisdiction category.

18 Q And what exactly is a Priority None? So we're clear on
19 that concept.

20 A Yeah. Priority None is when an intake has been determined
21 not to need an additional step, basically. It does not need to
22 progress to an investigation stage.

23 THE COURT: Did you review where the monitors
24 disagreed with you on a much smaller percentage than in the
25 first report? Did you review those disagreements and --

1 THE WITNESS: Yes, Your Honor, I did.

2 THE COURT: And did you revise your PNs to RTBs or at
3 least further investigation?

4 THE WITNESS: We did. I wouldn't say they got
5 revised to RBTs, because you get to that point after the
6 investigation.

7 THE COURT: Right.

8 THE WITNESS: But we did revise it and make sure they
9 went to investigation as appropriate.

10 THE COURT: All right. Thank you. Because I noticed
11 that the downgrading by SWI, they were first assigned to P1 or
12 P2 were -- the downgrades dropped from 33 percent in the first
13 report to 12 in the second report. But I think even more since
14 you started -- since you eliminated after September that level
15 of review, what we call the Downgrade Committee.

16 THE WITNESS: That's correct.

17 MS. FORE: And, Your Honor, I was going --

18 THE COURT: I should note for the record the monitors
19 didn't identify any referrals involving maltreatment in
20 licensed foster care that were inappropriacy downgraded in
21 October or November after the new policy started.

22 Go ahead. You were going to say something.

23 MS. FORE: I apologize. I didn't mean to interrupt,
24 Your Honor.

25 THE COURT: I interrupted. It's all okay to

1 interrupt me. If I don't like it, I'll just scream and holler
2 or, you know, knock you off video or something. But just don't
3 worry about it.

4 MS. FORE: Thank you.

5 THE COURT: This is more of a conversation anyway
6 than a hearing to me.

7 MS. FORE: Yeah, I appreciate that. So in that
8 spirit, I was going to go through and talk about the queues and
9 which queues see the highest percentage and what the hold times
10 were for the highest percentage queue. Would that be helpful
11 to the Court or...

12 THE COURT: I think I've got it here.

13 MS. FORE: Okay.

14 THE COURT: But go ahead. Can you do it just
15 quickly?

16 MS. FORE: Absolutely.

17 THE COURT: In fact, you are welcome to just tell me
18 what they are as a proffer.

19 MS. FORE: Okay. So in fiscal year 2018 for the
20 abuse hotline English queue, the average hold time was 11.9
21 minutes. In fiscal year 2019, it was 7.8 minutes. And in
22 fiscal year 2020, it was 4.6 minutes. And again, that was for
23 the abuse hotline English queue, which is the queue that I
24 understand receives the most calls.

25 Is that correct, Mr. Black?

1 THE WITNESS: That is correct.

2 THE COURT: Any problem with that proffer, Mr. Yetter
3 or Ms. Lowry?

4 MR. YETTER: No, Your Honor.

5 THE COURT: Okay. So this is just simplified if you
6 want to just offer these items that we all agree on.

7 MS. FORE: That's right. So the hold times improved
8 from fiscal year 2018 to fiscal year 2020 by 61 percent.

9 And then moving to -- and as Mr. Black said, based on
10 current staffing levels, we project that the fiscal year 2021
11 average hold time will be 5.6 minutes. And then moving on to
12 abandonment rate --

13 THE COURT: Those estimates, we need to know more
14 about the funding for the positions to maintain that level.
15 And that seems to be crucial.

16 MS. FORE: Yes, Your Honor.

17 THE COURT: Okay. Moving on.

18 MS. FORE: Yeah. Then moving to abandonment rates.
19 So the number of abandoned calls in fiscal year 2018 for the
20 abuse hotline English queue was 159,340. For the same queue in
21 fiscal year 2019, it went down to 101,000. And then for fiscal
22 year 2020 for the same queue, it went down again to 77,863
23 abandoned calls. So the percentage of abandoned calls went
24 down from 34.1 percent to 22.9 percent. And in fiscal year
25 2020, the percentage of abandoned calls is 18.5 percent.

1 And then with respect to the Foster Care Ombudsman
2 line, the average hold time for calls received from that line
3 is 0.2 minutes. And that's all I have for the proffer, Your
4 Honor.

5 THE COURT: Any objection to the proffer?

6 MR. YETTER: No, Your Honor.

7 THE COURT: Okay. Moving on to the next item.

8 MS. FORE: So that is all I have for Mr. Black. So
9 we could move to Mr. Lewis.

10 THE COURT: I'm just -- you know, we don't have --
11 the monitors reminded me that we can't validate the fiscal year
12 '18. So let's not go beyond -- before '18. Let's start with
13 July of '19 and go forward with proffers if that's okay.

14 MS. FORE: Okay.

15 THE COURT: But for historical basis, I understand
16 your proffer.

17 MS. FORE: Thank you, Your Honor, for letting me know
18 that. Shall I move forward with Mr. Lewis?

19 THE COURT: Please.

20 MS. FORE: Okay.

21 DIRECT EXAMINATION OF JUSTIN LEWIS

22 BY MS. FORE:

23 Q Mr. Lewis, what's your current position with DFPS?

24 A I am currently the director of Childcare Investigations.

25 Q And how long have you held that position?

1 A Since April 16th of 2021.

2 THE COURT: Sorry, you've been what?

3 THE WITNESS: Director of Childcare Investigations
4 since April 16th. So --

5 THE COURT: Thank you.

6 MS. FORE: He is new to the position.

7 BY MS. FORE:

8 Q And how long have you been employed with DFPS?

9 A Since November of 2015.

10 Q And tell us a little bit about your employment before you
11 came to work for DFPS?

12 A Before I came to work for DFPS, I was a Texas Peace
13 Officer since 2001. I worked various positions, patrol and
14 investigations, administration, and then I came here. My
15 investigations experience was in criminal investigations and
16 prosecutions of child abuse cases.

17 Q What are your responsibilities as director of childcare
18 investigation?

19 A I oversee the different divisions in the childcare
20 investigations program. The residential childcare
21 investigations, the daycare investigations, and our groups that
22 monitor quality and our complex investigations.

23 Q And so you heard we just talked to Mr. Black about
24 statewide intake. What happens after statewide intake assesses
25 information and makes a determination that it meets the

1 (indiscernible) of abuse, neglect, or exploitation?

2 THE COURT: Oh, you know what? Mr. Yetter, did you
3 have questions of Mr. Black? Or Ms. Lowry? I didn't even ask
4 you. He's not even calling back if we do.

5 MR. YETTER: No, Your Honor. No questions.

6 THE COURT: Sorry to interrupt. Go ahead.

7 BY MS. FORE:

8 A So once those determinations are made that there is a
9 possibility of abuse, neglect or exploitation, the case is sent
10 to a routing supervisor, and that routing supervisor or router
11 sends the case to the field investigator for investigations.

12 THE COURT: Who is Norton Rose representing here
13 today?

14 MR. DEWALD: Your Honor, my name is Jay DeWald. I am
15 with Norton Rose Fulbright and I am here with Annette
16 Rodriguez, the CEO of Family Tapestry --

17 THE COURT: Okay.

18 MR. DEWALD: -- the SSCC for Region 8A.

19 THE COURT: Got it. Okay, thank you.

20 MR. DEWALD: Thank you.

21 BY MS. FORE:

22 Q So how exactly does CCI as a division become involved
23 after statewide intake makes a determination of abuse, neglect,
24 or exploitation?

25 A They make that determination, it's to see if the child

1 that is alleged to be the victim resides in a licensed facility
2 or a foster home. And then it comes to my division for an
3 investigation.

4 Q And in 2021, has DFPS made efforts to improve the quality
5 of investigations?

6 A We have.

7 Q And what steps has DFPS taken to improve the quality?

8 A The first step we took, the biggest step was we put in a
9 request for a great many number of personnel. The increase in
10 personnel will decrease investigation time, decrease response
11 times for initiations and face-to-face contact, eliminate the
12 investigative gaps, the time gaps in the investigation, and it
13 will keep the cases to where they are closed within a timely
14 manner.

15 Q And so has DFPS made a request of the legislature for an
16 exception (indiscernible)?

17 A Yes, ma'am.

18 Q And in how many FTEs or full-time employees has DFPS
19 requested?

20 A We've requested an additional 58 FTEs to come to the CCI
21 program.

22 Q And if those resources are authorized by the legislature,
23 how will they be used?

24 A Thirty-eight will be additional field investigators, six
25 supervisors, one program administrator, one complex

1 investigation manager, one field director, and then 11 other
2 support staff.

3 Q And if those additional resources are authorized by the
4 legislature, when will those positions become available?

5 A September 1st, 2021.

6 Q Let's talk for a minute about the --

7 THE COURT: When do we find out whether these support
8 staff are going to be authorized?

9 THE WITNESS: I'm not sure, Your Honor. It's in the
10 legislature right now. It's up to them. I'm not sure what
11 their timeline is on approving of these positions or not.

12 MS. FORE: Your Honor, I'd be happy to look into that
13 and see if I can get any additional timeline.

14 THE COURT: Thank you.

15 BY MS. FORE:

16 Q So let's talk about the backlog project. In Clint Cox's
17 January of 2021 declaration, he refers to a backlog project
18 that began in June of 2000. I've also seen reference to a
19 backlog project from January of 2021. Are there two backlog
20 projects or one?

21 A There's two. And they were differentiated because they
22 were under different management and had different focuses.

23 THE COURT: What are they? What are the two
24 backlogs?

25 THE WITNESS: So the original backlog started in

1 January -- I'm sorry, June of 2020. And they focused on
2 reducing the number of cases that were already in backlog.
3 When we moved to the January 2021 backlog project, there was a
4 renewed focus not only on the cases that were overdue and in
5 backlog, but also on the front end for cases that are new
6 intake and cases that have been open for less than 30 days.
7 Workers in the field were given distance to keep those from
8 rolling into backlog as well.

9 THE COURT: The monitors tell me that in -- do you
10 remember we had this huge backlog in the contempt hearing,
11 seven-hundred-and-something cases I think. I can't remember
12 the exact number. But I understand from the monitors that you
13 somehow closed in March 443 RRCI investigations, which is four
14 times the rate of closure of the -- by month over the last
15 year. How did you do that without the increased staff?

16 THE WITNESS: We brought in -- well, we actually
17 increased staff.

18 THE COURT: Okay.

19 THE WITNESS: But we brought in staff from different
20 divisions.

21 THE COURT: Where?

22 THE WITNESS: Starting in January of 2021, there were
23 26 special investigators assigned to assist RRCI workers with
24 cases that were already in backlog. And then in February we
25 assigned --

1 THE COURT: Where were they brought in from? Where
2 did you get those 26 workers?

3 THE WITNESS: They were special investigators
4 assigned throughout the state. The special investigations
5 division is another division in the investigative -- the child
6 protective investigations program. And they were brought in to
7 assist.

8 THE COURT: So what do they usually do before they
9 were brought in to --

10 THE WITNESS: Special investigators are former police
11 officers with law enforcement --

12 THE COURT: What? Former police officers? Okay.

13 THE WITNESS: Former police officers with
14 investigative experience in child abuse and neglect cases on
15 the law enforcement side. So typically what their job is is to
16 assist traditional CPI with child death cases, complex cases,
17 serious physical abuse, sexual abuse. They assist the CPS
18 groups with missing children, children in care that have run
19 away. They assist with various case backlog projects where we
20 assist other groups that are having staffing issues. They are
21 kind of the detective division for the traditional CPI, but
22 they do a ton of other paths as well.

23 THE COURT: So -- okay. So they were pulled away I
24 guess from their other duties to do this.

25 THE WITNESS: Yes, ma'am, that's correct.

1 THE COURT: So have you checked -- have you
2 investigated the quality of those closed cases, those
3 investigations that were closed so quickly?

4 THE WITNESS: Yes, ma'am. Our --

5 THE COURT: Who did that?

6 THE WITNESS: Our Complex Investigations Division.
7 They read -- it was not only the 26 initially, but we brought
8 in 88 total special investigators and five master investigators
9 from across the state. So we had an additional over 90
10 investigators working directly on this backlog.

11 THE COURT: That's impressive. So who did the
12 quality reviews, the case reads?

13 THE WITNESS: So for the case reads for these cases
14 that were being looked at on the backlog project, our Complex
15 Investigations Division are the ones that read and approved
16 these cases. So --

17 THE COURT: And that's separate from the 88 people
18 you brought in to investigate?

19 THE WITNESS: Yes, ma'am. Those are additional staff
20 as well.

21 THE COURT: How many staff are in that office?

22 THE WITNESS: Seven, I believe. Seven or --

23 THE COURT: Seven. So seven reviewed those 443 cases
24 for quality?

25 THE WITNESS: I believe. There may have been a

1 handful more. But right around that number.

2 THE COURT: Thank you. So the monitors have not yet
3 reviewed those closures. You don't think they'll find any
4 problems with the quality of those closures and investigations?

5 THE WITNESS: We're going to -- they're going to find
6 some of the same problems that they found in the cases before,
7 especially with the time gaps. Because before the special
8 investigators started on this project, these cases --

9 THE COURT: They were months old. They were months
10 old.

11 THE WITNESS: They were already old. Yes, ma'am. So
12 they're going to find those problems. There is absolutely no
13 way around that. But the overall -- what they were able to do
14 once they got the cases, I have full confidence that they are
15 good quality.

16 THE COURT: Okay. Thank you. Go ahead. I'm sorry.

17 BY MS. FORE:

18 Q So, Mr. Lewis, can you explain what exactly a master
19 investigator is?

20 A So a master investigator is from the traditional child
21 protective investigations ranks. They are tenured
22 investigators, tenured CPI investigators that do high-quality,
23 efficient work. They would be considered -- I guess you would
24 say they're the subject matter experts in the investigations
25 field. They work well without direct oversight. They are sent

1 around the state to handle hotspot regions, areas that are
2 having staffing difficulties, areas with large caseloads. So
3 they're kind of a quick-react force that comes out and assists
4 in those capacities.

5 Q And we were just talking about quality, and I apologize if
6 I missed you saying this. But did the -- how did the Complex
7 Investigations Division support field efforts with respect to
8 the quality of investigations?

9 A So we have -- in the CCI division we have two facets of
10 quality checks. We have a quantitative quality check, and
11 that's our quality assurance team, our QAT team. And they are
12 the ones that look to make sure that timeframes are met, the
13 statutory required things are done.

14 The Complex Investigation Division tends to focus more on
15 content. They look at what is done in the interviews and the
16 investigations, not just timeframe. So they are more of what
17 was done, not how quick or how long did it take something. So
18 the complex investigation team, when they were reading these
19 cases, they were reading for content. They were making sure
20 that witnesses that needed to be talked to were interviewed,
21 reports, documents that were needed were gotten, those type of
22 things.

23 THE COURT: I was looking at the monitor's
24 information to me. The oldest investigation that you all
25 closed in March was 26 months old. And 230, 51.9 percent were

1 not timely. And out of all of those 443, there were only 60,
2 or 13.5 percent, of right-to-believe -- or reason-to-believe,
3 sorry. That's kind of a low rate, isn't it?

4 THE WITNESS: I'm not sure what the rate was before
5 that.

6 THE COURT: I'll ask the monitors.

7 MS. FORE: And so you talked about the shifting --
8 oh, I'm sorry, Your Honor. Did you have something?

9 THE COURT: I will, but keep going.

10 BY MS. FORE:

11 Q You talked about the shifting of the master investigators
12 and the special investigators to the backlog project. Are they
13 still working on the backlog project?

14 A No. Sort of. Part are. The part that were originally
15 dedicated directly to the cases that had already gone into
16 backlog, they have gone back to their normal duties. We still
17 have approximately 40 special investigators that are still
18 assisting CCI staff on the front end with new cases, cases that
19 are less than 30 days, to keep them from rolling to 30 days or
20 older until we can get our new staff approved, hired, and
21 trained.

22 THE COURT: Mr. Lewis, how do you foresee keeping
23 that up? Do you need more staff to do it did you say and a
24 budget increase? Did you check on that also?

25 THE WITNESS: Yes, ma'am. We've already been

1 approved for a certain number of those, but we're still waiting
2 on the legislative appropriations approval for the large
3 number.

4 THE COURT: How many more do you need?

5 THE WITNESS: Really we need all 58.

6 THE COURT: Thank you.

7 BY MS. FORE:

8 Q And the shift in staff with respect to those master
9 investigators and the special investigators that we just talked
10 about a moment ago, do you anticipate that that reduction will
11 have a negative impact on Remedial Order 3 compliance?

12 A I do not. With the backlog gone, that allows the CCI
13 investigators to focus on the cases at hand. It gives them
14 more time to focus on the cases that are coming in. The
15 continued assistance from the special investigators that are
16 still assigned to the CCI division to help on the front end is
17 allowing for better focus on the investigations, on the content
18 of the investigations instead of running from timeframe to
19 timeframe to timeframe. It's reducing those gaps in the time
20 of making contact and making these interviews. So I think the
21 quality is still going to be there.

22 THE COURT: And, Mr. Lewis, did you read the
23 Monitor's Report for the RCCI Division, the part of RO3? Did
24 you all relook at some of those 18 cases that the monitors
25 thought were inappropriately ruled out of the 365

1 investigations?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And what did you determine?

4 THE WITNESS: Our Complex Investigations Division is
5 still going through those.

6 THE COURT: Okay.

7 THE WITNESS: But a very general overview, we agree
8 with the monitors on 61 percent of those cases.

9 THE COURT: Thank you.

10 THE WITNESS: That there were severe deficiencies.
11 We have -- on 70 percent of those already, we have had
12 conferences with three levels of staff. The field investigator
13 if they are still here, the supervisor, and the program
14 administrator.

15 THE COURT: Mr. Lewis, are these things painful to
16 you, when the monitors say these were inappropriately done, or
17 is it helpful?

18 THE WITNESS: Both.

19 THE COURT: Okay.

20 THE WITNESS: I hate to see it, but --

21 THE COURT: Painfully helpful?

22 THE WITNESS: Yes, absolutely.

23 THE COURT: Okay. Thank you.

24 BY MS. FORE:

25 Q So because I'm a worst-case scenario thinker, if you

1 weren't to see any downward trend with respect to compliance of
2 RO3, what would you do?

3 A So coming from the special investigations division, I have
4 a really good relationship with that director and also our
5 associate commissioner. We've talked about this. And the
6 assistance from the SIs and the MIs is kind of on a sliding
7 scale at this point. If we need the additional assistance, the
8 additional assistance will come back. As we started getting
9 our positions filled and trained and out working, that will
10 shift over to where they'll go back to more of their
11 traditional jobs. So we're staying on top of it and we're
12 going to make sure that it stays here and continues to get
13 better.

14 Q So we talked with Mr. Black a moment ago about the
15 Priority None policy change. What was the effect on your
16 division when the Priority None policy did change?

17 A It greatly increased the number of cases that went out to
18 the field for investigation. So it put more cases on
19 workloads.

20 Q And so in -- at the start of the January 2021 backlog
21 reduction project, CCI had 772 open investigations, correct?

22 A Yes, ma'am, that's correct.

23 Q And of those open investigations, 404 cases were cases
24 involving the PMC class, is that right?

25 A Yes.

1 Q So 30 days later, about on March 13th of 2021, how many
2 open investigations were there?

3 A 676.

4 MS. FORE: And, Your Honor, I was going to ask about
5 April 16th, but I don't want to go to a date that you are
6 uncomfortable with.

7 THE COURT: Well, if you've got some new data that
8 the monitors can subsequently verify, I'll accept the
9 testimony. I just won't accept it as verified.

10 MS. FORE: Okay.

11 BY MS. FORE:

12 Q So looking again about 30 days after that, on April 16th,
13 2021, how many open investigations were there at that time?

14 A 371.

15 THE COURT: And we are talking about PMC children
16 only, right? Because that's where all my figures are.

17 THE WITNESS: That was -- okay. That was total, Your
18 Honor.

19 THE COURT: Okay.

20 THE WITNESS: The PMC class in April was 168.

21 THE COURT: Thank you. It's important -- you know,
22 it's fine that you give me the figures for both because it puts
23 it in context. So I appreciate that. Thank you.

24 BY MS. FORE:

25 Q And overall how many cases were closed as a result of the

1 backlog project?

2 A Now, this figure that I'm going to give you, it's the only
3 figure I have, is for both current and backlog cases. And it's
4 not broken down PMC, TMC. But it was 1,383 cases.

5 Q Thank you for that clarification. Appreciate that. So in
6 March of 2021, did RCCI receive approval to hire additional
7 investigators?

8 A Yes.

9 Q And how many?

10 A So at the beginning of March, we were given the approval
11 to hire ten additional investigators. And those were positions
12 that were appropriated from other areas of child protective
13 investigations. And then later in March we were given
14 authorization to hire what we call ten hire heads. So they
15 were not for positions that we currently had in budget, but we
16 were given permission to hire them pending or in advance of
17 legislative approval. So for a total of 20.

18 Q So turning our attention to 24-hour awake night
19 supervision. What has CCI done since its January 25th meeting
20 with the monitors with respect to 24-hour awake night
21 supervision?

22 A The division made it to where any time that there is an
23 investigation in a facility that requires the 24-hour awake
24 supervision, the investigators, when they are conducting their
25 investigation, will ask the children, you know, are they awake,

1 do you have any concerns, are there staff that aren't watching
2 you at night. If there are concerns, if there is anything that
3 points at that, then we notify DFPS contracts via email and
4 then we notify HHSC as well.

5 Q And how did you make sure that staff understood those new
6 directives?

7 A The directives were sent from the top to the field staff.
8 The field staff had to sign an acknowledgement and send those
9 to their supervisor. Their supervisor had to certify that they
10 had acknowledgements from everybody, and it worked its way back
11 up the chain to the director.

12 Q What is the January blueprint -- go ahead, Your Honor.

13 THE COURT: No, I was just thinking about the 24-hour
14 awake supervision. I might want to talk about that now, which
15 is a different RO. But in the monitor's report there were some
16 issues with that. And also in the DFPS investigations they
17 found people that were sleeping that were supposed to be awake,
18 night supervising. Some guy had gone to the bathroom at a
19 filling station and left all these children alone, which is
20 very peculiar. In other words, there was nobody there.

21 So what I wanted to suggest in the future, we can
22 handle this one of two ways. As an enforcement matter when you
23 find that happening and when the monitors resume their in-
24 person visits, which will be in June, you cannot pay those
25 facilities for every child every night in a placement that does

1 not have the appropriate awake night supervision. That's
2 certainly inconsistent with the court's orders. Sleeping and
3 going to the bathroom at a filling station is not going to
4 work. You cannot pay them, or I can sanction you in the full
5 amount of whatever would have been paid to that facility for
6 that night for all the children there. Just a suggestion. One
7 of those two things has got to happen, or we have to fix the
8 problem of late-night supervision.

9 And the same kind of remedy for the CPD, if I've got
10 the right acronym for that. When we go to the Monitor's
11 Report, that's Remedial Order 1, which requires all caseworkers
12 to go through the CPD training program, which at this time I
13 think for DFPS is about a 91-day program. Is that right, Mr.
14 Lewis? Or are you the one to ask about this?

15 THE WITNESS: I know for my division, it's about a
16 seven-week program.

17 THE COURT: Okay. But oddly enough, the SSCCs are
18 able to do this in a fraction of the time without any
19 certification concluded. I can't remember exactly what the
20 figures are to engage and OCOK. But they are not doing the
21 full program, or they are doing such an abbreviated form and
22 unable to certify when it begins and when it concludes, which
23 is another problem with the SSCCs. That has to be remedied.

24 One of the reasons I have the SSCCs here is that they
25 -- it appears from the Monitor's Report that they do not

1 exactly understand that the Court's orders apply to them as
2 well through DFPS and HHSC. And so those are -- the issue are
3 safe placements. These children have to have safe placements.
4 And it's got to happen somewhere. And they have to be found.
5 And the issue is not anything but safe placements. And if the
6 staff is not being trained appropriately under RO1, that's not
7 a good sign. Recordkeeping, or at least provided that the
8 monitors could see, for the SSCCs is in most cases not good.

9 For instance, OCOK entered into a contract with I
10 guess DFPS to cap their caseload at 14. That was one of the
11 provisions in the contract. I remember reviewing it and asking
12 about it a year ago when we were trying to come up with a
13 range, you know, when we were talking about the caseload
14 studies for DFPS and HHSC I guess a year or so ago before. And
15 then everybody came up with an agreement that the range would
16 be 14 to 17. And I wondered why anyone would question that
17 since OCOK was already contracted to have theirs at 14. Now we
18 can't verify with the SSCCs what the caseloads are because
19 they're doing strange things like calling a task, instead of --
20 you know, when the orders are very clear for everybody, that
21 only the children can be counted. Not tasks, not those strange
22 things DFPS and HHSC were doing previous to the July 19
23 mandate.

24 So for those SSCCs that are online I guess with their
25 lawyers, Ms. Rodriguez with Family Tapestry and I see Mr.

1 Carson is here for ACH, which has as one of its facilities
2 OCOK, somebody is going to have to get the message soon.

3 Now, this is not the time to talk about the SSCCs,
4 but there are some problems that we need to address when we get
5 to that area.

6 Did you understand that, Mr. Lewis?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: And lawyer for -- sorry, Ms. Fore, have
9 you got the picture on that?

10 MS. FORE: I do, Your Honor.

11 THE COURT: And Mr. Brissenden, do you think you're
12 getting the picture on this? You're on mute.

13 MR. BRISSENDEN: Yes, Your Honor. We are getting the
14 --

15 THE COURT: I knew you would get the full picture
16 soon.

17 In spite of, I might add, the aggressive lobbying
18 that these SSCCs are doing, they are still obligated to provide
19 licensed, safe placements for these children. Some of which
20 they are not doing. And places like Family Tapestry are
21 actually not even taking children and complaining about it.

22 And while we're talking with Family Tapestry, Norton
23 Rose and Ms. Rodriguez, I saw in a recent article that Family
24 Tapestry was complaining that they had all these problems
25 because DFPS was refusing to stop placing out-of-region

1 children in their catchment -- in children's shelter catchment,
2 of which Family Tapestry is one of placement centers. When in
3 fact -- may I ask you to give me those numbers again? In fact,
4 ACH -- I'm sorry, not ACH, Children's Shelter and Family
5 Tapestry are placing more children out of the catchment,
6 including out of state, then they are getting out-of-catchment
7 children transferred in by several.

8 So, please don't let me see any more of that from
9 Family Tapestry, that you are complaining about DFPS placing
10 children in your catchment area that you don't want to accept.
11 And no more -- in fact, if Family Tapestry even survives with
12 the record they've got, which is very questionable, after
13 refusing to accept I think nine children a couple of weeks ago.
14 If you're going to take over the catchment and take over DFPS
15 cases in that catchment, you're going to have to accept the
16 children. And apparently you are not going to do that unless
17 you get more money. In fact, you're not going to provide safe
18 housing for these children or put them in licensed care unless
19 you get more money to do it.

20 And I can tell you right now, I look very unfavorably
21 on that situation. We'll address it more when we get to the
22 SSCCs. But you've been noticed I know by DFPS that you are in
23 violation of your contract as well as having heightened
24 monitoring issues. And still according to the monitors, you
25 were putting children in whatever center after the license had

1 been -- after the license was no more, which is just not
2 acceptable. This is not -- you know, and the heightened
3 monitoring that we'll talk about is totally different
4 monitoring than was every done before by DFPS. There was --
5 these people were placed directly on heightened monitoring,
6 these facilities, pursuant to the Court's order, Remedial
7 Order. I didn't pick and choose which ones. HHSC and DFPS
8 picked those places for heightened monitoring for reasonable
9 reasons. And some of these that are on -- and we'll get to the
10 point, by the way, that DFPS has not placed themselves on
11 heightened monitoring. In fact, out of five that were
12 recommended placements, only three did they put on heightened -
13 - did they close. Two they did not. And those five are on
14 heightened monitoring as to what I understand. But we'll get
15 to those issues shortly. We are still on RO3 in the meantime.

16 But the point is these remedial orders apply to these
17 private placements. And we had one I think after a hearing
18 that said we don't want to go by these rules. We don't want to
19 go by late-night supervision, so we're just not going to take
20 anymore DFPS children. And somehow the remedial orders that
21 were affirmed by the Fifth Circuit have been blamed for a
22 placement issue when in fact the issue is safe placements for
23 children. If you want a contract with DFPS or HHSC, you have
24 to provide safe placements.

25 All right, go ahead. Sorry to interrupt again.

1 BY MS. FORE:

2 Q So, Mr. Lewis, let's talk about the January blueprint.

3 What was the content of the January blueprint?

4 A Well, the January blueprint provided staff with an
5 overview of the backlog project. Told them what was going on,
6 what the focus of it was. We talked about policy on child
7 death investigations to focus on closure dates, length of time
8 the case was open, that the case didn't have to stay open until
9 a final autopsy report was received. If there was a
10 preponderance already to support the disposition in the case,
11 that autopsy report could be added later and information added
12 on at the end.

13 Q And is the Blueprint a monthly circular that goes out to
14 all staff?

15 A It is. It's a CCI-specified monthly newsletter, I guess
16 you could say. It focuses on different things. Some policy
17 stuff, some investigations things.

18 THE COURT: Just one moment.

19 Okay, go ahead. I'm sorry to interrupt.

20 BY MS. FORE:

21 A So I was saying the Blueprint is a monthly newsletter that
22 focuses on policy, procedure, investigative tasks. Just a
23 publication for our staff to enhance on-the-job learning.

24 Q What is merging persons with respect to Impact 2.0?

25 A So when we get intakes, any time a person's name is

1 entered into Impact 2.0, there is a chance that that entry
2 could be duplicated, if a person has two cases called in on
3 them. When the case is first called in, if you have a date of
4 birth wrong or you don't have a date or birth or a name spelled
5 wrong and then later on in the case you find out, hey, this is
6 the same person that's already been in Impact before, you merge
7 those two fields together so they become one.

8 Q And why is that important for investigations?

9 A It increases efficiency. It decreases the chance of
10 missing previous cases. It helps to ensure that all the
11 information on the person is being entered into one record so
12 we only have to look in one place to find it.

13 Q What's the Supervisor Investigation Reading Guide?

14 A So that's a checklist that supervisors were given. It
15 lists various investigative tasks that should be completed. It
16 helps to improve standard quality on investigations so that
17 everybody is looking for the same basic information.

18 Q And what is an extension request with respect to CCI?

19 A So in CCI we have 30 days to close a case from date of
20 intake. There are times where a case cannot be completed
21 within that 30-day timeframe and there are certain reasons that
22 extensions can be requested and granted. So the request comes
23 from the investigator because there is one of these situations
24 that has come up. The supervisor reviews it and approves it or
25 denies it.

1 Q And was there a policy change with respect to extension
2 requests in February of 2021?

3 A Yes, there was.

4 Q And what was that change?

5 A That change came about to require that those extension
6 requests be reviewed and approved or rejected within five days
7 of getting the request.

8 Q So why was that important?

9 A It promotes timeliness of the review of the request, and
10 it's aim is to shorten those investigative time caps.

11 Q And as a result of the February winter storm in Texas,
12 what action was taken by RCCI?

13 A There was a communication put out to field staff. They
14 acknowledged the issues, the weather-related issues, the unsafe
15 conditions, but also acknowledged that we still had to make
16 sure that children were safe. There were several options given
17 to making contact with these kids, ranging from finding an
18 investigator, a CCI investigator that lived closer to the
19 facility than the investigator that was assigned and having
20 them go to reduce drive time and travel time, having law
21 enforcement go out and do a welfare check on the children at
22 these facilities. And as a very last resort, a virtual contact
23 with the child.

24 Q And so it would be something like a Zoom call. Is that
25 what you mean?

1 A Yes. A Zoom call, a FaceTime call out of the presence of
2 facility staff to lessen the chance of interference or the
3 children being uncomfortable talking in front of facility
4 staff. So we tried to acknowledge the issues that the state
5 was dealing with with the ice and no power and whatnot while
6 still balancing our duty to make sure these kids were safe.

7 Q And jumping ahead --

8 THE COURT: Excuse me just one moment.

9 (Off the record conversation)

10 THE COURT: Okay. I was just getting the figures
11 from the monitors that on February 28th, 2021, Family Tapestry
12 was responsible for placing 782 PMC children. They placed 273
13 of those PMC children are 35 percent outside Region 8A. DFPS
14 maintained 263 PMC children from out-of-region into Family
15 Tapestry. So let's not hear anything more from Family Tapestry
16 or their parent company, Children's Shelter, about DFPS putting
17 too many children in their catchment and they can't keep up.
18 Thank you. Moving on.

19 BY MS. FORE:

20 Q Mr. Lewis, has RCCI done a review of the IT course
21 curriculum that new hires are required to complete?

22 A Yes.

23 Q And what did you do after that review?

24 A They worked with our training division, employee training
25 division to revise that to better enhance areas that we use,

1 focus more on the programs that we use to get a better
2 knowledge of that before they actually start their training
3 process or their training. Sorry.

4 Q No, go ahead. Is RCCI implementing a mentorship program
5 for new hires?

6 A We are.

7 Q And what will that look like?

8 A It mirrors the traditional CPI, the traditional child
9 protective investigations, mentoring/training process. It's
10 tweaked to fit our focus, our investigative focus. Because we
11 investigate different things. But it provides a standardized
12 training review and monitoring of training progress for our new
13 hires?

14 Q And going back to the quality issue again, is RCCI's QAT
15 area conducting periodic reviews of investigations on a going-
16 forward basis?

17 A Yes, they are.

18 Q and so would you describe that review?

19 A So the QAT team takes random samples of cases from
20 different divisions. Or not divisions, different work units.
21 And they review each of those cases and a set number of
22 criteria that are typically centered around were timeframes
23 met, did we do things that were mandated by statute. You know,
24 qualitative information.

25 Q And what was discovered during the March 2021 review?

1 A There were some --

2 THE COURT: How many cases do you review every month?

3 THE WITNESS: I'm not sure. In this particular one
4 that Ms. Fore is asking about, they pulled one randomly
5 selected investigation per unit to see if the -- making sure I
6 get this correct -- the investigation (indiscernible)
7 conference was conducted or not.

8 BY MS. FORE:

9 Q And so was there concern about the childcare licensing
10 automation support system that arose after that March
11 conference?

12 A Yes. We found that there were instances where this
13 conference was not documented or not documented correctly. The
14 director at that point sent an email to the program
15 administrators, so the next level of supervision down,
16 reemphasizing the policy, the intent of the policy, a copy of
17 the policy, and further guidance on implementing it correctly.

18 Q What is a multiple referral flag in Impact?

19 A The multiple referrals is a project that was undertaken to
20 increase -- I don't want to use the word monitoring, but
21 increase our view of administrators for ongoing issues. If a
22 facility has multiple cases called in on them within a
23 timeframe, it triggers a multiple referral. It somewhat
24 mirrors a system that is in traditional CPI where if a family
25 has a certain number of cases within a certain timeframe, it

1 triggers a review by child safety specialists.

2 So in our division, it triggers a review by our Complex
3 Investigations Division. So they look at history of the
4 facility, are there ongoing cases of this type, and it looks at
5 the appropriateness of naming an administrator as an alleged
6 perpetrator for neglectful supervision.

7 THE COURT: Can I -- did you review the Monitor's
8 Report that had numerous examples where key witnesses were
9 never interviewed, such as staff, or the actual children or
10 children that were identified early on as witnesses? What
11 specifically do you do to ensure that all collaterals and
12 witnesses are interviewed without the monitors coming behind
13 and telling you?

14 THE WITNESS: Yes, I did read that. It was
15 concerning.

16 THE COURT: There's nothing in the Monitor's Report
17 that you found to be factually incorrect, was there?

18 THE WITNESS: Not myself, no, ma'am.

19 THE COURT: Okay.

20 THE WITNESS: That's a broad issue.

21 THE COURT: It's not -- it's a big issue.

22 THE WITNESS: It is. And --

23 THE COURT: What about your training? What about
24 your training? Can you fix that in training?

25 THE WITNESS: I believe so. Yes, ma'am. Being here

1 for such a short time, I've not been through the training
2 process yet or overseen what their training process is. We
3 have a class starting in June, and I plan on personally sitting
4 in on several of those sessions to see what's being taught. We
5 have talked with our Special Investigations Division. They do
6 additional training for investigative tasks. That training is
7 going to be extended to the RCCI division, not just the
8 traditional CPI. We're going to focus on broad thinking, not
9 just taking people's word for things. Critical thinking.
10 We're going to have more focus on staffing of those cases to
11 make sure that things that are called in are talked about.
12 Because it is very concerning to see in the Monitor's Report
13 that things that were reported were not asked about.

14 One of the things that our data group put together
15 was a critical thinking review of employees and supervisors,
16 and we are implementing that as well to help with the -- not
17 just are we making timeframes, but are we doing quality work
18 within those timeframes.

19 THE COURT: Anything further? Thank you.

20 MS. FORE: Yes, Your Honor. A few more things.

21 BY MS. FORE:

22 Q Mr. Lewis, can you tell us what the update assessment --
23 I'm sorry, the update investigation assessment conference is?

24 A Can you repeat that again? I'm sorry.

25 Q Sure. The update investigation assignment conference.

1 And I apologize, Mr. Lewis, if I have the name wrong. It's the
2 conference that the supervisor has at the beginning of the
3 investigation, I believe.

4 A Oh, the investigation assignment conference?

5 Q Yes, yeah.

6 A I was lost there for a minute.

7 Q No, my fault. I apologize.

8 A So that conference is between the supervisor and the
9 investigator at the initiation of the case when they first did
10 it. And they talk about tasks that need to happen. Who needs
11 to be interviewed, what needs to be talked about. This is
12 where they should go over the allegations in detail so the
13 investigator knows exactly what's expected of them at the onset
14 of that investigation.

15 Q So would that be a good opportunity to talk about and
16 ensure that those interviews were happening that Judge Jack
17 just referred to?

18 A Absolutely. That's where it should start.

19 MS. FORE: Your Honor, I don't have any further
20 questions for Mr. Lewis on this particular remedial order.

21 THE COURT: Thank you. Mr. Yetter?

22 MR. YETTER: Yes, Your Honor. I have a few points.

23 CROSS-EXAMINATION OF JUSTIN LEWIS

24 BY MR. YETTER:

25 Q Mr. Lewis, good to meet you. My name is Paul Yetter and I

1 represent the Plaintiff Children in this case. Do you
2 understand that, sir?

3 A Yes, sir.

4 Q So I just want to focus on a couple of things that your
5 counsel brought out. And one of them was the request by your
6 group, RCCI, for additional staffing, 58 investigators,
7 supervisors, administrator, manager, directors, and support
8 staff. Right?

9 A Yes, sir, that's correct

10 Q And you make that request because you know it's your job
11 and your agency's job to do timely and thorough and correct
12 investigations of reports of abuse, neglect, and exploitation
13 of children in the foster care system, right?

14 A Yes, sir.

15 Q As a former peace officer, you can verify for the Court,
16 can't you, Mr. Lewis, that timing is important in good
17 investigations, isn't it?

18 A Very much so.

19 Q Because if an investigation is delayed, witness memories
20 get foggy, witnesses get lost, data gets lost. All those
21 things and more can happen, can't they, Mr. Lewis?

22 A Yes.

23 Q And one of the things that the Court asked about, how do
24 you ensure that witnesses get interviewed, is you make sure
25 that you have timely investigations while the witnesses are

1 still around. True?

2 A Yes.

3 Q And you have good procedures that you train your
4 investigators on so they know what to do and what steps and
5 when to take them.

6 A Correct.

7 Q And that you have enough staffing. That's why you need
8 the addition 58 positions that the legislature needs to give to
9 RCCI, right?

10 A Yes, sir.

11 Q And lastly, you have good follow-up, good QA, good steps
12 in place so that you verify, you confirm and verify these
13 investigations, true?

14 A Correct.

15 Q And if you don't, you have bad investigations. And when
16 it comes to children in foster care, that could mean leavening
17 children in unsafe, dangerous placements, couldn't it, Mr.
18 Lewis?

19 A Yes, sir, that's correct.

20 Q You know that's your job in terms of investigations, is to
21 make sure that reports of abuse, neglect, and exploitation are
22 accurately investigated so children aren't left in unsafe
23 placements, right?

24 A Yes.

25 Q And what we now know, while there has been improvement,

1 can you agree, Mr. Lewis, that there needs to be more
2 improvement, because even today, there are still bad
3 investigations being done, true?

4 MS. FORE: Objection, Your Honor. Mr. Yetter -- or,
5 Your Honor, could I hear that question again? I want to make
6 sure I understood it.

7 MR. YETTER: Sure. Happy to, Your Honor.

8 BY MR. YETTER:

9 Q Mr. Lewis, you can confirm today that while there has been
10 some improvement, thankfully, that there still needs to be more
11 improvement because there are bad investigations being done
12 today. You would agree with that, Mr. Lewis, wouldn't you?

13 A I would agree that, yes, there is improvement that still
14 can be done --

15 Q Because in the latest, in the second Monitor's Report,
16 they did a pretty extensive sample for six months in 2020, May
17 through October of 2020. And the monitor's team looked at all
18 of the RCCI investigations, over 700, and took a sample of
19 about 400 of them. You've read the report, haven't you, Mr.
20 Lewis?

21 A Yes, sir.

22 Q And of the 400, the monitors determined -- went back and
23 double-checked, did that QA that you've talked about that the
24 RCCI does internally, but the monitors did it independently.
25 And they determined that 18 percent of the investigations that

1 the monitors looked at were either -- resulted in a ruled-out
2 finding, were either wrong, or the investigation was so
3 deficient, the monitors couldn't tell whether it was right or
4 wrong. You read those statistics, didn't you?

5 A Yes, sir.

6 Q So that's basically one in five investigations during this
7 six-month period in 2020 that was a bad investigation, right?

8 A Yes.

9 Q Okay. That's way too many, isn't it, Mr. Lewis?

10 A I would definitely agree with that.

11 Q Okay. As a peace officer, if you had one in five of your
12 criminal investigations that was a bad investigation, you would
13 throw out the system and start again?

14 MS. FORE: Mr. Yetter, I'm going to object to the --

15 MR. YETTER: That was a little hyperbolic, Your
16 Honor. Let me -- I'll rephrase.

17 MS. FORE: Thank you.

18 BY MR. YETTER:

19 Q As a peace officer, a one-in-five rate of bad
20 investigations for criminal matters would be terrible, wouldn't
21 it, Mr. Lewis?

22 A It would.

23 MS. FORE: I'm still going to object to that and the
24 use of the word bad as unclear --

25 THE COURT: Overruled. I can figure it all out.

1 Thank you.

2 BY MR. YETTER:

3 Q In fact, you've come back and looked -- your group has
4 gone back and looked at what the monitors concluded about this
5 one in five investigations being either wrong or highly
6 deficient. And while you're not finished looking at them, so
7 you far you agree with the monitors, don't you?

8 A With a great many of them, yes.

9 Q All right. That's why you need the extra manpower,
10 because staffing is part of good investigations, isn't it?

11 A It absolutely is.

12 Q And staffing is part of timely and accurate quality
13 investigations, isn't it? Staffing that's properly trained, I
14 should say.

15 A Yeah, without a doubt. Absolutely.

16 Q Okay. Now, one last point. And this is I believe
17 relatively new information as of March.

18 MR. YETTER: And, Your Honor, I believe the monitors
19 either just got it or they haven't verified it. But I just
20 received it.

21 BY MR. YETTER:

22 Q And, Mr. Lewis, I want to see if you can confirm at least
23 -- while the monitors may not have verified this yet, you can
24 confirm some of the numbers. That as of March 2021 of all the
25 closed RCCI investigations, over 400, that most of them were

1 untimely.

2 A Yes.

3 Q In fact, I'll give you some specifics. 52 percent were
4 untimely, right?

5 A Yes. I'm sorry.

6 Q Okay. So the Court asked and you said that were the
7 monitors pointed out wrong or severely deficient
8 investigations, you went back to look at those investigations.
9 But the monitors only took a sample of part of the
10 investigations. Is RCCI going to look at the rest of the
11 investigations? Since one in five were deficient in the
12 monitor's sample, what about the rest of the investigations?
13 Are you going to take a look at those as well?

14 A We will.

15 Q Okay. Thank you, Mr. Lewis.

16 MR. YETTER: Your Honor, pass the witness.

17 THE COURT: And what are you going to do to improve
18 that percentage?

19 THE WITNESS: The percentage of cases that were
20 deficient in the monitor's view?

21 THE COURT: Yes. So that percentage goes down.

22 THE WITNESS: We're going to continue to try to get
23 more staff. The backlog being gone will help a great deal
24 because now the focus can be put on the current cases and to
25 keep those gaps from happening. We're going to continue our

1 revamping of the training, the basic investigative training for
2 our staff. We are going to bring in additional, more advanced
3 training and interviews.

4 THE COURT: Do you actually have a written plan that
5 you can provide to the monitors?

6 THE WITNESS: I can get that to them. Yes, ma'am.

7 THE COURT: How soon can you do that?

8 THE WITNESS: Within the next two weeks. Is that
9 quick enough?

10 THE COURT: Well, if you have the plan and it's
11 readily available, can't you just send it to them today?

12 THE WITNESS: Well, we haven't formalized the plan.
13 It's been --

14 THE COURT: I guess that's my question, yes. Okay.
15 So there isn't a plan at this point, a formalized plan.

16 THE WITNESS: No, ma'am.

17 THE COURT: Okay. Go ahead, Mr. Yetter.

18 MR. YETTER: Your Honor, I pass the witness.

19 THE COURT: Ms. Lowry, any questions, or are we just
20 doing one per?

21 MR. RYAN: I believe so, Your Honor.

22 THE COURT: Okay, thank you. Anything further,
23 counsel?

24 MS. FORE: Nothing further on this remedial order.

25 THE COURT: Thank you very much. Would you call your

1 next witness, please.

2 MR. RYAN: Your Honor, might I suggest our morning
3 break if the Court is okay with that?

4 THE COURT: That would be fine. Twenty minutes.

5 MR. RYAN: That would be good. Thank you, Your
6 Honor.

7 (Recess)

8 THE COURT: Are we all back? Ms. Fore, could you
9 bring back Mr. Black? I had one more question. Is he
10 available?

11 MS. FORE: Yes, Your Honor, he should be.

12 THE COURT: I think, Mr. Lewis, we may be finished
13 with your testimony but would you ask Mr. Black to come back
14 for one question?

15 MR. LEWIS: He's right here, ma'am. Your Honor.
16 Sorry.

17 THE COURT: Thank you. Ma'am is fine, anything is
18 fine, as long as it's not some nasty appellation. Mr. Black,
19 you're still under oath. I just wanted to ask -- you read the
20 monitor's report?

21 MR. BLACK: Yes, ma'am.

22 THE COURT: Were there any factual mistakes in the
23 monitor's report?

24 MR. BLACK: No, ma'am.

25 THE COURT: In your opinion, that is. Okay, thank

1 you. Thank you, Mr. Black, that's all I wanted to ask. Ms.
2 Fore? Next witness?

3 MS. FORE: Your Honor, I -- I don't have any further
4 witnesses on Remedial Order 3. Mr. Lewis did have a
5 clarification that he wanted to make with respect to his
6 testimony. So, if I could allow him a moment to --

7 THE COURT: Sure. What's the deal, Mr. Lewis?

8 MR. LEWIS: Earlier when you asked about the quality
9 of the backlog investigations, I said that the Complex
10 Investigations Team was checking quality.

11 THE COURT: And?

12 MR. LEWIS: You'll have to excuse my newness.

13 THE COURT: That's okay.

14 MR. LEWIS: I keep forgetting we have a -- we have a
15 team that is an Equality Assessment Team and the Complex
16 Investigations Team. So, when I said they were checking
17 quality, they were not checking the same things that our
18 Quality Assessment Team checks. The Complex Investigations
19 Team was checking the meat and potatoes of the investigation,
20 what was discussed in interviews, those type of things. Not
21 the actual timeframes that the QA Team traditionally looks at.

22 THE COURT: Okay.

23 MR. LEWIS: So I just wanted to clarify the use of
24 the word quality in that context.

25 THE COURT: Mr. Yetter, do you have an examination

1 based on that change -- or clarification?

2 MR. YETTER: I -- briefly, Your Honor.

3 CROSS-EXAMINATION OF JUSTIN LEWIS

4 BY MR. YETTER:

5 Q Mr. Lewis, are you telling us then -- who is looking at
6 the...? The Court's question was -- there was a huge backlog
7 of delinquent investigations cleared in March.

8 A Yes.

9 Q Far more than historically that the department's ever
10 done. And you explained that it was because you brought in
11 significant new resources from -- special investigators from
12 other parts of the agency. And the Court's question was, how
13 is the agency ensuring that the clearing of that backlog was
14 done in a quality way? In other words, there weren't seriously
15 wrong or seriously deficient investigations done on those
16 delinquent reports? And so who is doing a quality assessment
17 of the clearing of the backlog?

18 A So, there's two -- there's two parts to quality and
19 investigation. We talked about the timeliness as being part of
20 the (indiscernible) and the required tasks, and that is what
21 the QA Team -- QAT Team looks at.

22 What the Complex Investigation Division was looking
23 at doing these case reads and closers was the actual work done
24 in the investigation. Who was interviewed? Who was talked
25 about? What are the dispositions? Are the dispositions

1 appropriate? So, they were looking at the quality of the
2 content, not the quality of were timeframes met? So, that is
3 how we were ensuring quality of the work that was being done.
4 Does that make sense?

5 Q I believe it does. Yes, Mr. Lewis. I have one question
6 with that. So, in the normal course, you said the Complex
7 Investigations group is doing the sorts of things that, at
8 least to me, actually do relate to quality. Like, who was --
9 what witnesses were interviewed? What information was
10 gathered? What assessments were made of that information?
11 That was being done, you say, for this special backlog that was
12 cleared in March by the Complex Investigations Unit, right?

13 A Correct.

14 Q Well, who does that on a normal basis? The backlog in
15 March -- like, who does it on an ongoing basis? Because you
16 said the QA Team doesn't do them.

17 A So, typically, it falls on the supervisors, when they're
18 rating these cases and approving it, to do this. During the
19 backlog project, though, we put that task on the Complex
20 Investigations Team so they could focus on the backlog and the
21 supervisors could focus on the current ongoing cases. So, it
22 was a bifurcated approach to keep cases current, and keep them
23 from rolling over while we address the backlog at the same
24 time.

25 Q Okay. And then just one last question on this, Your

1 Honor, if I may. So, the six-month period that we talked about
2 in 2020, May to October, that the monitors looked at and
3 determined that one in five investigations were deficient, the
4 QA on those investigations were done by supervisors, not by
5 somebody like the Complex Investigations Unit, right?

6 A I personally don't know who did the quality checks on
7 those.

8 Q Okay. But you can agree with me, Mr. Lewis, can't you,
9 that the department probably needs to -- not probably -- should
10 look into whether the QA on normal month-to-month
11 investigations, that the monitors in that six months last year
12 determined one in five were deficient -- someone needs to look
13 at whether the QA being done on investigations is adequate.
14 Wouldn't you agree?

15 A Correct.

16 MR. YETTER: Thank you, Your Honor. Pass the
17 witness.

18 THE COURT: Ms. Fore, anything to follow up on that?

19 MS. FORE: Nothing further, Your Honor.

20 THE COURT: All right, thank you. Now, let's see,
21 we're moving on to Remedial Orders 5 and 7, which is really the
22 prompt initiation of -- and face-to-face contact with alleged
23 child victim in Priority 1 investigations. And I have that the
24 first report had only 68 percent of the Priority 1
25 investigations. These are all PMC children who were instigated

1 -- had face-to-face contact.

2 And, in fact, the second report had 69 percent of the
3 Priority 1 investigations within 24 hours of intake had face-
4 to-face contact, or at least contact consistent with the
5 existing policy. So, with that background, do you have
6 witnesses on this? And then the --

7 MS. FORE: I do, Your Honor, and it's Mr. Lewis
8 again.

9 THE COURT: Hold up.

10 MS. FORE: Oh, I apologize.

11 THE COURT: The initiation of investigations through
12 face-to-face contact with the alleged victims... That was --
13 the first one I read was the timely initiation of the
14 investigation. The second one now, I'm sorry, has to do with
15 face-to-face contact. In the monitor's report, the first one
16 said only 26 percent of those were initiated within 24 hours of
17 face-to-face contact with the alleged victim. And in the
18 second report it's 71 percent included -- from May to September
19 of 2020 -- included face-to-face contact within 24 hours. 24 -
20 - sorry, 17 percent did not have timely face-to-face contact
21 and there was not sufficient data to access for the monitors to
22 review. And 4 percent had an approved exception for the face-
23 to-face contact.

24 Is that -- is that correct, Ms. Fore, as far as you
25 know?

1 MS. FORE: So, I have some updated numbers from
2 December of 2020 through March.

3 THE COURT: Okay. Those numbers are not verified.
4 Just supply them to the monitors after the hearing and we'll
5 talk about it next time.

6 MS. FORE: Okay.

7 THE COURT: But tell me this: Do you have somebody
8 that can tell me how we can even improve on those numbers?

9 MS. FORE: Yes, Your Honor, and that would be Mr.
10 Lewis. So, with your approval, I can go ahead and talk with
11 Mr. Lewis and ask him some questions about ROs 5 and 7.

12 THE COURT: Can you tell me how those numbers can be
13 improved, Mr. Lewis?

14 MR. LEWIS: I can. Ultimately, we would like those
15 numbers to be 100 percent, but there are times where they won't
16 be through no fault of the investigator. There are times where
17 we get intakes that are called in where the victims are
18 unknown. So, we have --

19 THE COURT: Well, yeah, but we know -- those are not
20 part of the ones that we're talking about. Those are
21 exceptions that are approved, right? I'm talking about those
22 18 -- 17 percent that did not have sufficient data to access
23 why they didn't -- were not approved -- I mean, why they were
24 not made face-to-face within 24 hours.

25 MR. LEWIS: I'm -- I don't have the information --

1 THE COURT: So, that could be a data recording mess.
2 Can you improve that?

3 MR. LEWIS: Yes.

4 THE COURT: Surely, you can explain why -- find some
5 reasons for why that didn't happen. I would assume that -- I
6 would assume that those 4 percent -- if you've got that
7 monitor's report in front of you, that the 4 percent includes
8 those where they -- where the child was not identified, or the
9 child disappeared, or that you couldn't find them. So, I'm
10 worried about those 17 percent, actually, that don't have
11 sufficient data explaining why there was no face-to-face
12 contact.

13 MR. LEWIS: I don't have that information. I don't
14 know from those 2020 cases, but we can certainly find out. We
15 have put things into place in the last week that, when we have
16 cases -- our policy no longer allows for these exceptions, but
17 they are documented why we can't find the children, whether
18 they're on runaway status, they've gone out of state, they've
19 gone back to parents or adopted families and the families
20 refuse to let us speak to them. But we have clarified our
21 expectations that that information is staffed with the
22 supervisor immediately when they cannot make contact with the
23 child within those timeframes, and it is documented in the
24 report where it can be verified without those instances where
25 the monitors go back to check and are unable to find

1 information.

2 THE COURT: Okay, that's sort of circular speak. But
3 go ahead, Mr. Yetter. Oh, I'm sorry, go ahead, counsel for Mr.
4 Lewis. Do you have questions for this? Those are my concerns.

5 REDIRECT EXAMINATION OF JUSTIN LEWIS

6 BY MS. FORE:

7 Q One of the questions -- well, a couple of questions, Mr.
8 Lewis. Do you also have weekly internal reviews to go over
9 these Priority 1 investigations to ensure that the initiation
10 was as timely as possible?

11 A We do. That was implemented shortly before I took over.
12 In addition to the monthly reviews, the numbers that are sent
13 to the monitors, the program administrator level supervisors
14 get a list every week of cases that haven't had that timely
15 face-to-face contact. They reach out to the supervisors and
16 the field staff to get the reasons why it did not happen.

17 Q And does that rationale get documented somewhere?

18 A It should be documented in the case.

19 MS. FORE: I don't have any further questions, Your
20 Honor, on 5 and 7.

21 THE COURT: Thank you. Mr. Yetter?

22 MR. YETTER: No questions, Your Honor.

23 THE COURT: I just want to see that. I know it's --
24 I guess it's up to me to determine what's substantial
25 compliance, but that's too many without -- and it could be a

1 records issue, but I expect to see a substantial improvement in
2 the next report on that -- regarding that 17 percent number.

3 Okay, so then we're on Remedial Order 10, Prompt
4 completion of Priority 1 and Priority 2 investigations -- that
5 is within 60 days DFPS, in accordance with DFPS policies,
6 complete Priority 1 and 2 unless an extension has been approved
7 for good cause and documented in the records.

8 MS. FORE: And, again, Your Honor, Mr. Lewis' DFPS is
9 witness on this issue as well.

10 THE COURT: So, I have here that 42 percent of
11 investigations were not timely completed, 7 percent had
12 approved extensions and were completed within the extension
13 timeframe, and that 5 percent of RCCI investigations were still
14 open as of April 6, 2021 for more than 30 days... Sorry. I'm
15 sorry, they're supposed to be completed with 30 days of intake.

16 Is this the one, monitors, where DFPS and HHSC have
17 different timeframes for the 30 days?

18 MR. RYAN: No, Your Honor, that's Remedial Order 18.

19 THE COURT: Okay.

20 MR. RYAN: This is -- this pertains to the timeliness
21 of investigations and the backlog clearance. And we validated
22 this data up through April 6th.

23 THE COURT: Okay, thank you. And as of April 6th, I
24 think, of the total -- total of 501 investigations were overdue
25 by at least -- were beyond the 30 days by at least -- at least

1 45 days. Okay, so this is an area that is not doing well. So,
2 what can we say about this. Mr. Lewis?

3 MS. FORE: So, Your Honor --

4 THE COURT: Go ahead.

5 MS. FORE: Oh, I'm sorry. On page 13 of the
6 monitor's report, this is one where, with respect to DFPS, the
7 monitor said that DFPS had made some substantial compliance as
8 of April 6th. The state's data documented that 5 percent were
9 open for more than 30 days with an extension, and 1 percent
10 were open more than 30 days without an extension.

11 And the two oldest investigations that were overdue
12 as of April 6th --

13 THE COURT: So, just one or three days, one or three
14 days. Okay, so that's an update from the 51 percent.

15 MS. FORE: So, in March -- well, I can go over this
16 with Mr. Lewis to put it in some context perhaps.

17 THE COURT: Okay, no, I think -- I think I've got it.
18 I just -- the data -- the 51 percent has been updated to 5
19 percent, is that right?

20 MS. FORE: I believe so, but I don't want to speak
21 for the monitors because I certainly don't want to get their
22 intent wrong.

23 THE COURT: I think that that's what they're saying.
24 Is that right, monitors?

25 MR. RYAN: Yes, essentially, Your Honor, the point is

1 that by eliminating the backlog, the state has positioned
2 itself to become compliant --

3 THE COURT: Be current.

4 MR. RYAN: -- with Remedial Order 10, prospectively.
5 By virtue of the fact that there was a backlog, there was a
6 significant number of cases in March that closed not compliant
7 with Remedial Order 10. But our understanding is that the
8 department's committed from the backlog going forward, which
9 would be early April, to be compliant with Remedial Order 10
10 and they're positioned to do so.

11 THE COURT: And what the monitor said where they've
12 made substantial progress, not that they were substantial -- in
13 substantial compliance, just as a correction on that.

14 So, I think we should be okay with this. What do you
15 think? Mr. Yetter?

16 MR. YETTER: If they follow through, yes, Your Honor.

17 THE COURT: I'm worried that this may fall into the
18 same category as without new help, they may be going back
19 another way, but we'll see. So far, this is really -- this is
20 good. Do you need him to testify, do you think? Anybody want
21 to cross-examine him or have him testify?

22 MR. YETTER: Not for the Plaintiffs, Your Honor.

23 THE COURT: Are you okay, Ms. Fore, with that -- with
24 that synopsis of mine?

25 MS. FORE: I am, Your Honor, thank you.

1 THE COURT: Okay, then we're on Remedial Order B5,
2 properly notifying primary caseworkers of allegations of abuse.
3 And that's DFPS shall ensure that RCCL or any successor entity
4 properly -- promptly communicates allegations of abuse to the
5 child's primary caseworker. And DFPS shall ensure it maintains
6 a system to receive, screen and assign for investigation
7 reports of maltreatment of treatment in the PMC class, taking
8 into account at all times the safety needs of the children.

9 This is one where the monitors determined that an
10 automatic notification was found in 100 percent of the cases.
11 I think -- is this where we have a problem with the caseworkers
12 finding out about it? Finding out the substance of the
13 allegation and not just that there is an allegation, Mr. Ryan,
14 Ms. Fowler?

15 MS. FOWLER: Yes. They assert in their certification
16 that they have --

17 MR. RYAN: It's not possible to hear Ms. Fowler, Your
18 Honor.

19 THE COURT: She says, yes, that there was a problem.
20 But they now assert that they've put in place a new procedure?

21 MS. FOWLER: A new process. We have just started to
22 test for that, as we discussed (indiscernible) --

23 THE COURT: Okay, is this the one where they -- where
24 DFPS is saying that they don't have an obligation to supply --

25 MS. FOWLER: No, that's --

1 THE COURT: No, another one. Okay. So, I'm going to
2 -- Mr. Yetter, I'm thinking about just leaving this for further
3 follow up, because DFPS asserts now that they're fully
4 compliant with the new policy that they've put in place that
5 has not yet been verified.

6 MR. YETTER: I understand, Your Honor. We're okay
7 with that.

8 THE COURT: Is that -- is that correct, Mr. Lewis?

9 MR. LEWIS: Yes, ma'am. We've put new processes in
10 place to make sure that the actual information that is
11 contained in the new intake is (indiscernible) --

12 (Overlapping)

13 MAN 1: This is just a bunch of boring crap so...

14 THE COURT: Okay, whoever is saying this is --
15 whoever is saying this is a bunch of boring stuff needs to be
16 quiet, please.

17 (Unmuted conversation continues...)

18 WOMAN 1: How is it set up? Is it like open up --
19 like, is there a prosecution attorney or -- that is questioning
20 people?

21 MAN 1: Yes. It's the Paul Yetter (indiscernible) --

22 MR. RYAN: Do they know that we can hear them?

23 CLERK: Thomas Molnar, you need to mute your mic.

24 MAN 1: The special investigator...

25 THE COURT: Who is Thomas Molnar? Thomas Molnar?

1 Who is Thomas Molnar, Ms. Fore?

2 MS. FORE: I don't know, Your Honor.

3 THE COURT: Does anybody know the identity of Mr.
4 Thomas Molnar? Mr. Molnar, what is your position here?

5 MR. MOLNAR: Ma'am, I'm sorry. I don't know why I'm
6 unmuted. I've never had this problem before. It's always --

7 THE COURT: All right, who are you? Who are you?

8 MR. MOLNAR: I work for CPA and I'm watching the
9 hearing.

10 THE COURT: What CPA are you working for?

11 MR. MOLNAR: Divinity Family Services.

12 THE COURT: Which one?

13 MR. MOLNAR: Divinity Family Services.

14 THE COURT: Okay. I'm sorry you find this boring.
15 You can always leave or mute, whichever is --

16 MR. MOLNAR: I certainly apologize. I was talking to
17 somebody who was interested in the hearing, and I said the
18 things that were going on right now would not be interesting to
19 that particular person. It had nothing to do with you or
20 anything else. I'm actively listening to it --

21 THE COURT: I know I'm not boring, don't worry.

22 MR. MOLNAR: I certainly apologize.

23 THE COURT: Don't worry about that. Who else is with
24 you, interested in the proceedings?

25 MR. MOLNAR: I'm sorry, ma'am?

1 THE COURT: Who else is with you that's interested in
2 the proceedings?

3 MR. MOLNAR: Just a colleague, I'm down in her office
4 and I was visiting. I certainly apologize. I don't know why
5 it wasn't muted. I've never had a problem.

6 THE COURT: That's all right.

7 MR. MOLNAR: I've always automatically been muted.

8 THE COURT: And what's your colleague's name?

9 MR. MOLNAR: Cheryl... My mind's going blank right
10 now. I'm very sorry, this is very embarrassing.

11 THE COURT: I know. I'm trying to really put you on
12 the spot and make you feel horrible.

13 MR. MOLNAR: I certainly apologize. No derogatory --
14 anything meant toward the hearing or anything else --

15 THE COURT: That's no problem.

16 MR. MOLNAR: (indiscernible) -- particular process
17 involved in.

18 THE COURT: This is the issue, Mr. Molnar. Do you
19 feel sufficiently chastised now, so we can go on?

20 MR. MOLNAR: I feel incredibly chastised and
21 incredibly embarrassed, I'm doing this --

22 THE COURT: Okay, we're moving on. We're moving on.

23 MR. MOLNAR: I am so sorry. I feel like getting off
24 completely right now.

25 THE COURT: Don't do that. Just mute.

1 MR. MOLNAR: Okay. I don't know how it became
2 unmuted. I'm certainly doing it right now.

3 THE COURT: That's all right.

4 MR. MOLNAR: I certainly apologize. Thank you so
5 much.

6 THE COURT: Thank you. You woke us all up anyway.

7 MR. MOLNAR: I really apologize, thank you very much.

8 THE COURT: So, we're all right, I think, Mr. Yetter
9 with P5?

10 MR. YETTER: I think we're just holding it until we
11 get further information from the state on the new policy.

12 THE COURT: Yes. We don't know if we're all right
13 until we get another verification. But then on Remedial Order
14 22 --

15 MS. FORE: Your Honor?

16 THE COURT: Yes, ma'am?

17 MS. FORE: May I ask, were you interested in
18 discussion Remedial Order 2?

19 THE COURT: We were going to do -- okay, you know
20 what? The monitors had a different understanding of that than
21 I did, that we were going to go in the order -- they said we
22 were going to go -- the monitors thought we were going to go in
23 the order that they presented it in the report. And Remedial
24 Order 2 was back a ways, I mean, down a ways. But that was the
25 graduated caseloads. We can do that now if you would like.

1 But I've got Remedial Order 22 as the next one to discuss.

2 MS. FORE: That's totally fine, Your Honor.

3 THE COURT: If you have witnesses ready to go, we can
4 do a different order if you would like.

5 MS. FORE: No, that's --

6 THE COURT: Because I did -- I did tell them, Ms.
7 Fowler and Mr. Ryan, that I would go in numerical order and
8 I've not done so. So, I think it's -- I've already messed up
9 with that. So, unless you've got witnesses --

10 MS. FORE: It's fine, Your Honor. We can certainly
11 start with 22.

12 THE COURT: Okay.

13 MS. FORE: I just wanted to make sure 2 was on
14 everyone's radar. And Mr. Watkins will --

15 THE COURT: I'm getting there.

16 MS. FORE: -- will present for DFPS on Remedial Order
17 22.

18 THE COURT: Okay.

19 MR. WATKINS: Good morning, Your Honor. I believe
20 the department's witness for Remedial Order 22 will be William
21 Walsh. I'll see -- they may need a moment to get him set up
22 there on camera.

23 THE COURT: Okay. Do we still have (indiscernible)
24 CSO?

25 CLERK: (indiscernible)

1 THE COURT: Okay.

2 MR. WATKINS: May I proceed, Your Honor?

3 THE COURT: Yes.

4 MR. WATKINS: Would you like to swear in the witness?

5 He has not been previously sworn.

6 THE COURT: Ms. Purifoy.

7 CLERK: Mr. Walsh, please raise your right hand. Do
8 you swear the testimony you're about to give in the case now
9 before the Court will be the truth, the whole truth and nothing
10 but the truth, so help you God?

11 MR. WALSH: I do.

12 DIRECT EXAMINATION OF WILLIAM WALSH

13 BY MR. WATKINS:

14 Q Thank you, Mr. Walsh. Would you start by just stating
15 your name for the Court, please?

16 A My name is William Walsh.

17 Q And, Mr. Walsh, what is your responsibility at DFPS?

18 A I'm the Director of Purchase Client Services, which is
19 contracting divisions within the department.

20 Q And how long have you been in that position?

21 A I began in December 2020.

22 Q Are you familiar with Remedial Order 22 and the
23 obligations it imposes on the agency?

24 A Yes, I am.

25 Q And are you familiar with the steps that the agency has

1 taken to be in compliance with Remedial Order 22?

2 A Yes, I am.

3 Q Thank you, Mr. Walsh. I kind of want to start with the
4 premise that the monitors have characterized Remedial Order 22
5 as sort of creating two distinct requirements. One is for
6 HHSC; specifically, RCCR within HHSC, to consider abuse,
7 neglect and corporal punishment referrals and findings during
8 their inspections. Is that your understanding of the first
9 element, as the monitors characterize it?

10 A Yes, it is.

11 Q And second that --

12 THE COURT: The Court -- actually, the Court has
13 fashioned the remedy to speak to that very clearly. You know,
14 these remedies were fashioned when RCCR was part of DFPS. So,
15 how you divide them is your concern, as long as they're met by
16 the appropriate agencies.

17 MR. WATKINS: Understood, Your Honor.

18 BY MR. WATKINS:

19 Q So, Mr. Walsh, specifically from the DFPS perspective
20 today, DFPS obligations kind of trigger in what the monitors
21 classify as that second requirement, which is that now HHFC
22 through RCCR notifies DFPS any time they find a failure of an
23 operation to report abuse, neglect or corporal punishment, is
24 that correct?

25 A Yes, it is correct.

1 Q Okay. So, just starting there, can you explain to the
2 Court how does DFPS receive those reports or those
3 notifications from HHFC whenever they become aware or make a
4 citation to that effect?

5 A Sure. Just for the receipt piece, there's an automated
6 email sent through the class system by HHFC and it is sent to a
7 general mailbox, which is monitored by two contract technicians
8 within my division.

9 Q Okay, and how often --

10 A Done daily.

11 Q Done daily, okay. So, that -- let me ask two parts of
12 that. Number one, HHFC, do they send that notification to DFPS
13 daily?

14 A Yes, they do.

15 Q And so you receive a notification whether HHFC has found -
16 - has made a citation or not?

17 A Yes. So, we receive one of two notices. Either one
18 notice that says no citation was found or cited for the prior
19 day. Or the other option would be that there was a citation
20 and it would provide details of the operation name,
21 investigation number and other relevant details, so it could be
22 researched further by division.

23 Q Okay. So that gets sent every day and then on your end,
24 DFPS, you mentioned, they're individuals who check that inbox.
25 Do they check it daily as well?

1 A They check it every workday.

2 Q Every workday. So, Monday through Friday it's checked?

3 A Yes, that's correct.

4 Q Okay. Once it's received, whenever one of those personnel
5 checks the inbox and they have a new notice, do they do any --
6 if they receive a notice that says, no new citations, are any
7 steps taken with something like that or is that the end of it?

8 A No. They log it into a SharePoint library. And so we
9 have historical documentation for each day that each notice was
10 received. And that would be whether it was a notation that
11 there was no citation or, as I mentioned, if there was a
12 citation indicating that there was a citation for the prior
13 day. So, we have one -- one entry for each day of the year
14 going back for several years.

15 Q So, more importantly, whenever the agency receives
16 notification, an alert that a citation has been made that there
17 is a facility that did not make the necessary required reports,
18 what do those individuals who check that inbox do with that
19 report?

20 A In instances that there is a citation -- so there are a
21 few different possibilities depending on the circumstances of
22 the citation. So, the most common one I'll speak to first and
23 that's if it's a residential contract provider. And so they
24 would, at that point, send the notice to the -- the assigned
25 contract manager and the assigned contract manager's manager,

1 supervisor, to address.

2 If there -- if it is an operation that has only a
3 community-based care contract without a residential contract --
4 contract, they would send it to the CBC units, Community-Based
5 Care unit, for the assigned manager and the supervisor to
6 address.

7 Q Okay, so let's stick with those facilities first that have
8 DFPS contracts, and if this applies to both of those
9 situations, please correct me as well. But are there time
10 limits from the individuals who check the inbox, how long do
11 they have to report it to the contract managers? What's the
12 deadline in that respect?

13 A Yeah, according to our written policy, they have one
14 business day to make the notification.

15 Q Okay. And then once it goes to the contract managers,
16 what steps do they take upon receiving that?

17 A (indiscernible) procedures.

18 Q Is there a written policy that the contract managers would
19 refer to?

20 A There is. There is a multistep, multipage procedure that
21 we've developed and has evolved over time. There are multiple
22 versions of it as we addressed and identified gaps. And so
23 there is one that was even more recently developed, I think.
24 The last one filed with the Court I believe is February 6th,
25 but we've since made updates since then.

1 Q But just in general, has -- do you know -- obviously, you
2 mentioned on February 6 that was filed with the Court. Have
3 any of those updates subsequent to February 6th been provided
4 to the monitors?

5 A I don't believe so. Not at this point.

6 Q Okay. Well, in -- in general terms, can you explain sort
7 of what those updates -- since February 6, what was the reason
8 for those updates? What kind of issues has the department been
9 trying to address?

10 A Well, a few instances to ensure that gaps are addressed in
11 the process on the two scenarios that I mentioned a moment ago:
12 whether it was a residential contract or whether it was a CBC-
13 only contract, to ensure that timelines are being more
14 accurately met, to ensure that there's some redundancy in the
15 process so multiple people are being notified.

16 And then, additionally, there are processes in place
17 now for the contract technician, who is the first line on DFPS,
18 receiving it -- for them to take steps if there are instances
19 where the contractor -- I'm sorry, whether the operation does
20 not have a contract.

21 Q Okay. Let me talk about that real quick because I think
22 that's probably a briefer conversation. If the agency now gets
23 notice of an operation, whether there's no contract -- there's
24 no current valid contract with the agency, what does it do with
25 that information once it receive notice of a violation?

1 A So, the contract technician sends it to the residential
2 contract director and the person's manager, and the staff for
3 DFPS Legal to evaluate. Then we create a file of operations to
4 -- so we will be aware of operations that have had violations.
5 And then we also, our division processes new applications. And
6 one of the people who has to sign off and approve the
7 application prior to a contract being executed is the same
8 individual, the residential contract director. And so he'll
9 have an opportunity at that point to review past lists to make
10 the determination if they've been on, if they had had any
11 recent citations, and then take that into consideration prior
12 to award.

13 Q So, essentially, in a nutshell, the department will now be
14 able to consider noncompliance of those facilities we don't
15 have a contract with when deciding future contract negotiations
16 and awards?

17 A That's correct.

18 Q All right, do you think that new process, that change is
19 going to assist DFPS in being in further compliance and
20 achieving the ends of Remedial Order 22?

21 A I -- I believe so, yes.

22 Q Now, let's talk more about those facilities that we get a
23 notice on and we already have an existing contract with.
24 There's obviously going to be a range of actions that the
25 agency can take in response to receiving such a notice. Could

1 you tell the Court, generally speaking, what that kind of range
2 of outcomes might be?

3 A Sure. So, the -- just what will lead up to that is the
4 assigned contact manager would staff with his or her
5 supervisor, and then the supervisor would make the
6 determination on whether we provide technical assistance -- a
7 technical assistance letter to the provider, which is a lower
8 level of contract intervention, or a contract -- I'm sorry, a
9 corrective action plan, which would require a response from the
10 contractor to provide information on how they're specifically
11 going to address the concern and deadlines for those to be
12 addressed.

13 And there are also options that we could exercise the
14 full range of remedies that are listed in the contract.
15 Typically, the technical assistance letter and corrective
16 action plan have been used and we've been more reliant over the
17 last several months and used -- and had the corrective action
18 plan in most or all instances of citations recently.

19 Q Okay, so let's talk about those two actions. So, first
20 off, what I hear you saying is that within the agency deciding
21 it's a sort of deliberative process where multiple individuals
22 will meet to decide what the appropriate corrective action may
23 be?

24 A That is correct.

25 Q Now, starting with those technical assistance letters, is

1 it accurate to say that that used to be, let's say, before 2021
2 -- that used to be something that was more commonly used
3 whenever the agency was disposing of these sorts of complaints?

4 A It -- yes, it was more commonly used prior to the January
5 2021, December 2020, which is around the time that I moved into
6 my position.

7 THE COURT: When did you move into your position, Mr.
8 Walsh?

9 THE WITNESS: December 2020.

10 THE COURT: And where were you before then?

11 THE WITNESS: I as the deputy director for the
12 division.

13 THE COURT: Of? Tell me your division again.

14 THE WITNESS: It's Purchase Client Services, which is
15 one of the contracting divisions in the agency.

16 THE COURT: And do you approve the expenses of these
17 -- for instance, the SSCCs, do you approve their expensive in
18 the blended rates?

19 THE WITNESS: No, Your Honor, I don't approve the
20 budgets for blended rates for the SSCCs.

21 THE COURT: Who cuts the checks for those?

22 THE WITNESS: For the blended rates -- so those are
23 paid through our Impact System. So, it would be our Finance
24 Department that would handle and oversee that process.

25 THE COURT: Finance in DFPS or finance in what --

1 what entity?

2 THE WITNESS: Finance in DFPS.

3 THE COURT: Do we have anybody here from DFPS on the
4 finance today, Ms. Fore?

5 MS. FORE: Yes, Your Honor. We have -- I'm trying to
6 get -- it's David, and I'm trying to remember his last name.

7 THE WITNESS: David Kinsey is the Director of
8 Finance.

9 MS. FORE: Thank you, yes. We have David Kinsey.

10 THE COURT: Is he going to be able to tell me whether
11 these CPAs are being paid for placements of these PMC children
12 in unlicensed facilities?

13 MS. FORE: Either he can talk to that issue or Ellen
14 -- whose last name I've also forgotten. One of them can.

15 THE COURT: Do you know if that's happening, by the
16 way? Are they being paid for these unlicensed -- for the
17 placements in unlicensed facilities?

18 MS. FORE: So --

19 THE COURT: This is a yes or a no.

20 MS. FORE: I can give it a go, but I'm afraid I would
21 mess it up, so I would prefer to have Mr. Kinsey or -- and it's
22 Ellen Letts -- or have Ellen Letts provide that information.

23 MR. KINSEY: Your Honor, this is David Kinsey. I
24 just pulled up my camera. If you'd like me to address that?

25 THE COURT: Sure. Would you put him under oath,

1 please?

2 CLERK: Mr. Kinsey, please raise your right hand. Do
3 you swear the testimony you're about to give in the case now
4 before the Court will be the truth, the whole truth and nothing
5 but the truth, so help you God?

6 MR. KINSEY: I do.

7 THE COURT: Okay, so what's the answer to that? Are
8 they -- are they being paid for these unlicensed placements?

9 MR. KINSEY: No, ma'am, they are not.

10 THE COURT: How do you know that? How do you know
11 it's not in the blended rate?

12 MR. KINSEY: Because we only play -- pay the blended
13 rate for a placement in a licensed facility.

14 THE COURT: Well, I understand that but you know that
15 Family Tapestry has put several children in unlicensed
16 facilities and, apparently, some children are going into Glen
17 Eden, also, which is unlicensed. As far as I know, it's
18 unlicensed. Are they asking reimbursement for those, and have
19 they been paid? How do you know that they haven't?

20 MR. KINSEY: They have not asked for reimbursement
21 for those and they have not been paid. We know through our
22 Impact System that we verified all the payments of the blended
23 rates are for licensed placements by BAY, by Child FPE.

24 THE COURT: Okay, do you know the names of these
25 children that were placed in the unlicensed placements?

1 MR. KINSEY: I do not have that.

2 THE COURT: So you don't know if they were paid or
3 not? I'm talking about the PMC children that were placed in
4 unlicensed placements. So, you just rely on the SSCCs to give
5 you the information without double-checking by name?

6 MR. WALSH: Your Honor, this is William Walsh again.
7 Would you mind if I addressed that?

8 THE COURT: Yes.

9 MR. WALSH: So, as David, Mr. Kinsey mentions, the
10 payments are made through Impact. Our contract states that
11 only Title 4E operations are eligible for payment.

12 THE COURT: I know what your contract states, and I
13 know what you think you're doing, but I want to know if you're
14 sure that these facilities have not been paid for the
15 unlicensed placements of these children because there were
16 several children for a period of time.

17 MR. WALSH: Yes, Your Honor, I was wanting to add
18 also that on a monthly basis, they are reconciled by our -- the
19 area where Ms. Ellen Letts works and so -- to ensure that
20 payments have not been made in those situations.

21 THE COURT: But if you don't know the names of the
22 children, you don't know that for sure.

23 MR. WALSH: I cannot speak to the names. But we can
24 get that for you --

25 THE COURT: Nobody does, apparently.

1 MR. WALSH: -- or we can get that information --

2 THE COURT: So, you just rely on the information
3 provided to you by the SSCCs as to what you're paying when and
4 for whom, is that right?

5 MR. WALSH: I'm sorry, what was the question?

6 THE COURT: You rely on the SSCCs to provide you with
7 the information of who you're paying for when without names of
8 children?

9 MR. WALSH: I don't know the process by which those
10 are covered. Ms. Ellen Letts is joining me now and can
11 hopefully speak to that as well.

12 MS. LETTS: Good afternoon. I'm Ellen Letts. I'm
13 the Director of Community-Based Care. And --

14 THE COURT: Would you -- would you administer the
15 oath to her, please?

16 CLERK: Yes, Your Honor. Ms. Letts, please raise
17 your right hand. Do you swear the testimony you're about to
18 give in the case now before the Court will be the truth, the
19 whole truth and nothing but the truth, so help you God?

20 MS. LETTS: Yes.

21 THE COURT: Okay, go ahead.

22 MS. LETTS: I'm sorry, can you repeat the question?
23 I was --

24 THE COURT: Yes. How do you know that you're not
25 paying for children that are placed in unlicensed care by these

1 SSCCs?

2 MS. LETTS: Yes, ma'am. So, every placement -- when
3 a child is placed in an unlicensed facility but placement is
4 entered into Impact as a non-DFPS paid placement, then the
5 living arrangement is called --

6 THE COURT: Okay, do you know the names of these
7 children that were placed in unlicensed placements by Family
8 Tapestry and Whataburger Center?

9 MS. LETTS: Yes. And we have checked all of them.

10 THE COURT: And do you know that they have not been
11 paid or have you been -- gotten the money back if they were
12 paid accidentally?

13 MS. LETTS: We have confirmed that they had not been
14 paid.

15 THE COURT: In the first place?

16 MS. LETTS: Correct.

17 THE COURT: Have the SSCCs asked that they be
18 reimbursed?

19 MS. LETTS: No, ma'am.

20 THE COURT: And the reason I'm asking is because the
21 Family Tapestry has disagreed somewhat with what's unlicensed
22 care. You know, they said, oh, no, they were in the children's
23 shelter that was licensed when, in fact, they were sleeping in
24 Whataburger, and they were eating in Whataburger, and they were
25 going to the bathroom in Whataburger Center. So, how do you

1 know that you're not being -- that you're not reimbursing them
2 for that? They say they were in licensed care when actually
3 they weren't. You all -- DFPS actually went over and observed
4 and found them to be in the Whataburger Center.

5 MS. LETTS: That's correct.

6 THE COURT: Which was -- which did not have a
7 license.

8 MS. LETTS: So, we have a process in place --

9 THE COURT: Pardon?

10 MS. LETTS: I'm sorry. We have a process in place
11 where every single day the SSCCs must report if they have any
12 children under their supervision that are not in a licensed
13 placement to --

14 THE COURT: But they're telling you they're in
15 licensed placements, is what I'm telling you -- what I'm
16 saying. So, how do you find out, after you do an onsite
17 investigation and found out they were not in a licensed
18 placement --

19 MS. LETTS: Correct.

20 THE COURT: Do you even know how long they were in
21 the unlicensed placement and who they were?

22 MS. LETTS: Yes, so through discussions with the
23 caseworker, the primary caseworker specifically in Region 8
24 because they're still in Stage 1 and they're still a CPS
25 caseworker, we confirm with them if they are in a licensed or

1 non-licensed setting, and we ensure that the placement is
2 entered correctly so that no payment passes through to the
3 SSCC.

4 THE COURT: Okay. Mr. Yetter, do you want to save
5 your questions for another day or do them now?

6 MR. YETTER: It seems like we're into the topic now,
7 Your Honor. I can at least touch on this issue if the Court
8 would permit --

9 THE COURT: Please.

10 DIRECT EXAMINATION OF ELLEN LETTS

11 BY MR. YETTER:

12 Q Okay, Ms. Letts, you -- did you say you're the director --
13 what was your title again, excuse me. Pardon me. My name is
14 Paul Yetter and I represent the Plaintiff children, just so you
15 understand. What is your title, ma'am?

16 A I'm the CPS Community-Based Care Director.

17 Q All right. so, under the rules for the SSCCs, they are
18 not entitled to put PMC children in unlicensed placements
19 without DFPS approval, right?

20 A Correct.

21 THE COURT: And actually, Mr. Yetter, I don't know if
22 you're aware of this but the monitors were unable to find any
23 approval requests or the waivers. And they were putting them
24 in heightened -- DFPS or HHFC, somebody was putting these
25 children in heightened monitoring places after they were put on

1 heightened monitoring with multiple deficiencies, placing PMC
2 children in there without a request for a waiver and without
3 the waivers.

4 BY MR. YETTER:

5 Q So, let's -- Ms. Letts, that's what we need to find out.
6 When did DFPS know that this was happening? And since you're
7 the director of community-based care for DFPS, I suspect you're
8 the right person to ask this. When did you first know, on
9 behalf of DFPS, that Family Tapestry was putting PMC children
10 in heightened monitoring facilities? Let's just start with
11 that.

12 A Just in heightened monitoring facilities?

13 Q Correct. Yes.

14 A So, once we became -- once, you know --

15 Q When? Date?

16 A -- agencies became -- you're asking for a date?

17 Q Correct. Like, how long ago did DFPS know that Family
18 Tapestry was putting PMC children into the Whataburger Center
19 that was under heightened monitoring?

20 A As soon as the Whataburger Center was placed on heightened
21 monitoring, we knew that -- they were submitting requests to
22 place children in Whataburger Center, which was on heightened
23 monitoring.

24 THE COURT: And how many requests did you authorize
25 of PMC children?

1 THE WITNESS: The requests -- I'm sorry.

2 THE COURT: Go ahead. How many did you authorize of
3 PMC children?

4 THE WITNESS: So, I don't authorize the heightened --
5 the requests for heightened monitoring. All the heightened
6 monitoring requests go through a -- the Placement Division and
7 then up to the associate commissioner.

8 THE COURT: And who is that?

9 THE WITNESS: Deneen Drydan.

10 THE COURT: The associate commissioner is who?

11 THE WITNESS: Deneen Drydan. She's the CPS Associate
12 Commissioner.

13 THE COURT: Are we going to hear from her today? Ms.
14 Fore?

15 MS. FORE: Ms. Drydan? I don't believe she is on our
16 list. I think what's --

17 THE COURT: Would you put her on the list? Would you
18 put her on the list? I'd like to hear about these requests and
19 the waivers.

20 MS. FORE: I think we have someone else who's going
21 to talk about heightened monitoring, and that's going to be
22 Thomas Gerlach. And, Your Honor, may I -- may I --

23 THE COURT: Deneen Drydan is on the witness list.
24 Thank you, Mr. (indiscernible)...

25 MS. FORE: Let me make a clarification. Deneen

1 Drydan was originally the person what was approving all of the
2 heightened monitoring requests. I can't tell you the date but
3 it was in the recent past that we switched that approval to the
4 regional directors in each DFPS region. So, it's now currently
5 the regional directors in each region that approves the
6 requests.

7 THE COURT: Okay, are we going to have the regional
8 directors from each region, particularly the Baer County
9 catchment?

10 MS. FORE: We have their boss, the Director of Field,
11 Erica Banuelos, here to speak on that.

12 THE COURT: Is that person going to be able to tell
13 me about those waiver and the requests for each PMC child that
14 was placed in there after heightened monitoring was instituted?

15 MS. FORE: Yes, we can get that information to you.

16 THE COURT: Is that person going to be able to
17 testify to that?

18 MS. FORE: I can ask her, Your Honor. It's Ms.
19 Banuelos, and she is going to testify today. And I can verify
20 that she will be able to.

21 THE COURT: Okay.

22 BY MR. YETTER:

23 Q So, Ms. Letts, picking up on this issue of placing these
24 children in facilities with heightened monitoring, you know
25 that that required a special permission from DFPS, approval by

1 the regional directors, right?

2 MS. FORE: And can I -- I am so sorry, Mr. Yetter, to
3 interrupt, but I think that we are conflating two issues and it
4 might cause some trouble. Ms. Letts can talk about SSCC --

5 THE COURT: Yeah, we're talking two separate issues:
6 the payment of these children, the payment for children in
7 unlicensed placements, as well as the waivers of how they got
8 in there, into these placements after heightened monitoring was
9 institute. The requests, I thought, were supposed to be
10 provided to the monitors and they tell me they've never
11 received a single request.

12 MR. YETTER: Right. Your Honor, and I'm assuming as
13 the director of community-based care for DFPS, Ms. Letts --
14 there's been some sort of investigation into the Family
15 Tapestry issue. So, I'm assuming she knows all of this.
16 Whether there were requests for waivers, whether there were
17 waivers given, who gave the waivers. They -- evidently,
18 according to Ms. Letts' prior testimony, they were tracking all
19 these children to make sure they didn't get paid once the
20 facility became unlicensed.

21 So, I think -- now, I may be wrong -- but I'm
22 assuming, as director of CPC, Ms. Letts should know all this.
23 So, she may disabuse me of that but that's why I was asking.

24 MS. FORE: And I just wanted to clarify that
25 heightened monitoring is a different topic, and I don't think

1 she's the right person for heightened monitoring. So, I just
2 wanted to give you that warning. And we will have Thomas
3 Gerlach for that topic. So, I apologize for the interruption,
4 Mr. Yetter.

5 THE COURT: Okay, but somebody needs to tell me how
6 they know that these children that were placed in unlicensed
7 facilities did not get -- the facilities didn't get reimbursed
8 for this. Like, somebody put children in Glen Eden. I think
9 it was OCOK.

10 MR. YETTER: Correct, Your Honor.

11 THE COURT: And, you know -- I don't know who put
12 those children there and whether they were reimbursed or how
13 you even found out about it. Because the monitors found out
14 about it by accident. So, how did you find out about it, Ms.
15 Letts?

16 THE WITNESS: So, you know that OCOK has been in
17 operation under -- formerly, Foster Care Redesign, now
18 Community-Based Care, since 2014. And in the first few years
19 of their startup, they did have some -- a few, it was very few
20 and far between, incidences where they used the Glen Eden home,
21 which they lease on their own, to house a child overnight when
22 they were not able to find placement. That happened fewer and
23 far between. And actually for several years, they never --
24 they never -- they did not use Glen Eden.

25 It wasn't until this past year that all of the SSCCs,

1 with probably the exception of St. Francis and of course Belong
2 because they haven't started up yet, have had an increase in
3 the number of children who are without placement and that they
4 have had to supervise under their care.

5 You know, the SSCC contract never envisioned a child
6 without placement. In fact, it has a -- has a contract
7 requirement that is no eject, no reject. And so --

8 THE COURT: Even though they're doing it.

9 THE WITNESS: Yes, ma'am. And so once it became
10 apparent in that it was trending up for each SSCC, that is when
11 we started tracking very, very closely every single child that
12 was under the SSCC supervision in tracking and in confirming
13 that their placement was entered correctly and that no payment
14 was going to the SSCC.

15 MR. YETTER: Ms. Letts, I don't think you answered --

16 THE COURT: I saw the email between Ms. Rodriguez and
17 Trevor Woodruff complaining about losing money because they
18 were on monitoring and they really wanted their money back.
19 What happened with that? And he responded, I think -- we got a
20 response that's now going to be public -- do you have a copy of
21 that you can forward to me? That email? And he responded that
22 he knew they were doing a great job and they had all these
23 wonderful things. And then the very next thing we know,
24 they're turning in their license because they violated the
25 contract with not accepting children they were obligated to

1 take, and putting children in unlicensed care, and multiple
2 other issues.

3 And now they say, however, they wouldn't turn in
4 their license if they got more money. Now, is anybody thinking
5 they're going to get more money to do this job that they're
6 doing? Can you tell me, Ms. Fore?

7 MS. FORE: Ellen -- I'm sorry. Ms. Letts would
8 probably be able to answer that.

9 THE COURT: Ms. Letts, are you all actually
10 contemplating giving them more money for these violations?

11 THE WITNESS: So, what I can tell you is that, as an
12 executive leader, (indiscernible) decision and also it would
13 have to be based on -- and David can speak to this -- the
14 legislative approval process that we would have to request
15 additional funds to give to the legislature.

16 THE COURT: Are you thinking that you're going to do
17 that and keep Family Tapestry from giving up their license?
18 Are you actually contemplating that?

19 THE WITNESS: That's not my decision to make or to
20 contemplate --

21 THE COURT: Who is contemplating that? Whose
22 decision is it to make?

23 MS. FORE: Your Honor, I might suggest that
24 Commissioner Masters speak to this issue.

25 MS. MASTERS: No, Your Honor --

1 THE COURT: Commissioner Masters, whose decision --

2 MS. MASTERS: No, Your Honor, we're not contemplating

3 --

4 THE COURT: Okay. Commissioner, you weren't here
5 when we started -- I mean, it is their SSCC contract, not just
6 their license. They're giving up their contract, I guess, and
7 not necessarily the licensing. But just to give you --
8 speaking of licenses, though, to give you some historical
9 context, Ms. Masters, since you weren't here at the beginning,
10 I don't know how much you were aware.

11 But at the trial in 2014, I was -- I wondered why
12 nobody'd ever had their license revoked but one, I think,
13 several years before, for some deaths and for having the
14 children fight with each other, and the staff was taking bets,
15 and those kind of things. It was a long term finally.

16 And, as you know, between the trial and the mandate
17 issuing in July of 2019, there were only -- there were no
18 licenses revoked of any kind. And I was told at the time of
19 trial that they didn't revoke the licenses because it was such
20 a huge issue to do that. And, furthermore, that HH -- that
21 DFPS, which had the Licensing Division at that time, did not
22 have the authority to revoke the licenses.

23 So, in one of my remedial orders I gave the
24 department the authority to revoke licenses. Because,
25 historically, what my special masters were told, if anybody got

1 put on probation or got close to having some kind of licensing
2 issue, they lobbied their local rep -- I'm just going to say it
3 -- they lobbied their local legislators to give them some help
4 to make sure they stayed open. Does this sound familiar, Ms.
5 Rodriguez?

6 And so they kept their licenses that way. So, this
7 was an attempt with this -- giving DFPS, I thought, would be a
8 way to let them revoke licenses, or HHSC, for the safety needs
9 of the children, based on safe placements of the children,
10 without concern of fear or favor from legislators or anybody
11 else. And I would hate to see you all losing that ability
12 because of aggressive lobbying or for any other reason.

13 So, if DFPS or HHSC are catching flack because of
14 closing these facilities and putting these people on heightened
15 monitors -- monitoring, I'd kind of like to know about it.

16 Okay, moving right along. Mr. Yetter, I think you
17 were questioning?

18 MR. YETTER: Yes.

19 BY MR. YETTER:

20 Q So, Ms. Letts, let me kind of get to the point here. Do
21 you have a list of all the children, the PMC children, the
22 foster children that were placed -- put in overnight placements
23 at the unlicensed Whataburger Center over the past six-eight
24 months?

25 A Yes.

1 Q By Family Tapestry. You have a list of those children?
2 How many children is it?

3 A I can get you that number. I have it. In fact, I'm just
4 not remembering it right now. I just know that...yeah, so, I'd
5 have to give you that number.

6 Q Okay. So you know how many children. Do you know how
7 many nights they were placed in unlicensed facilities by Family
8 Tapestry?

9 A Correct.

10 Q And when did it start? When was the first time that DFPS
11 was aware?

12 A The first time we became aware, I believe, was in October
13 of 2020. And that was after Family -- excuse me, the
14 Whataburger Center had gone on heightened monitoring in August.
15 And then, subsequently, we placed -- DFPS placed -- placed
16 Whataburger on what we call a placement hold for 30 days. And
17 so once that happened, that's when we started seeing children
18 staying at what's called the Family Tapestry Intake Center,
19 which is basically a building that is connected to the
20 Whataburger Center.

21 Q And, just to be clear, when DFPS found out about this,
22 they told Family Tapestry do not house any children in the
23 Whataburger Center or any connected building, which you took to
24 mean the Family Tapestry Intake Center, right?

25 A Correct.

1 Q Okay. So, when did you -- when was the first time you
2 notified the monitors that you, as director of community-based
3 care, knew that Family Tapestry was putting children, EMC
4 children and other foster children in the facility that -- on
5 which DFPS had put a placement hold and they were not entitled
6 to do that? When did you first tell the monitors?

7 A I personally have never had any interaction with the
8 monitors.

9 Q When did you recommend to your superiors (indiscernible) -
10 -

11 A As soon as it happened. As soon as it happened.

12 Q Okay. So you, at least internally said, we need to tell
13 the monitors, and someone above your head decided not to?

14 A I am not certain I can answer that question.

15 Q All you know is that you never told the monitors anything
16 about this in October, and you've never even told -- even
17 sitting here today, you've never --

18 A I made my leadership aware of the situation, not only in
19 October but there were continued instances that happened in
20 December. And so I was very transparent with my leadership
21 about what was going on at that intake center. And, in fact,
22 worked with our Contracts Division to issue contract action
23 plans, or contract actions against Family Tapestry.

24 Q Okay, so in October, you learned that Family Tapestry is
25 placing children in a facility that they're not entitled to

1 place, that's on placement hold. And you learned they
2 continued to do this through December. What did you do to stop
3 them? Other than send letters or an email, what did you do to
4 stop them from putting children in unsafe placements?

5 A So, they were placed on -- like I said, and Bill might be
6 able to answer specifically, if you want to know about their
7 contract actions -- but they were placed on a few contract
8 actions. One right after in August -- excuse me, in October,
9 and then one in December.

10 And then, subsequently, after that, their census at
11 this unlicensed facility actually spiked quite a bit. And at
12 that point, Commissioner Masters told us that we needed to take
13 over the supervision of the children that Family Tapestry
14 cannot find placement for. And that is exactly what we did.

15 Q Okay, so, when was the spike, just to keep us in the
16 chronology here?

17 A It was at the beginning of this year, of this calendar
18 year, leading up into March, mid-March.

19 Q Okay. So, just so we're all clear, to your knowledge, it
20 starts in October, it continues in December, you're sending
21 letters to Family Tapestry, it actually spikes in 2021, in
22 January, February, March. And finally you're directed -- you,
23 DFPS, are directed to take over custody of these children to
24 keep them safe. Am I right?

25 A That's correct.

1 Q Okay, so that's six months that Family Tapestry --
2 evidently, despite what you're telling them, is keeping
3 children, EF foster children, PMC children, children for which
4 DFPS is responsible, in unlicensed facilities, right?

5 A That's correct.

6 Q Now, why didn't you try to stop them before six months?
7 Other than sending a letter or an email or something? Why
8 didn't you take some -- go to law enforcement or something like
9 that?

10 A Well, like I said, we try to follow our progressive
11 intervention plan that we do with all of our single source
12 continuing contractors. We ask them to submit us a plan of how
13 they're going to address this, how they're going to keep
14 children safe. They send us a response and we accept it. We
15 try to work with them along the way and provide as much
16 technical assistance as we can in order to support them and
17 help them, you know -- and partner with them to be successful.

18 You know, we did follow our progressive intervention
19 plan. There was a time -- I believe it was in early March or
20 maybe February -- that a letter was sent telling them --
21 telling Family Tapestry that we would impose liquidated damages
22 to their contract if they did not discontinue the use of the
23 intake center as an unlicensed placement for children.

24 Q So -- thank you, Ms. Letts. So, for the six months that
25 Family Tapestry was -- continued to put children into

1 unlicensed facilities, did you, on behalf of DFPS, pose any
2 financial penalties?

3 A We did not.

4 Q Did you ever tell Family Tapestry or Children's Center
5 that their contract would be terminated if they continued to
6 defy the rules and keep these children in unsafe placements?

7 A That was a part of the letter that recently was sent to
8 Family Tapestry.

9 Q Yeah, but you're talking about in March?

10 A Yes.

11 Q Okay, but for six months you didn't tell them that their
12 contract was at risk?

13 A Unless I'm mistaken, it could've been part of the contract
14 action letters that we had sent to them along the way, but I
15 would have to verify that.

16 Q And what were you doing to keep the children safe during
17 these six months, as they were being placed by this SSCC
18 provider in unlicensed facilities? What were you doing to
19 ensure that they were safe?

20 A So, in Region 8A, remember, this is an SSCC, who's in
21 stage one of Community-Based Care, so there's a CPS caseworker
22 attached to each one of the children. So, what we began to do
23 is -- and we have the director of field here and the regional
24 director -- they started having safety checks, having the
25 primary caseworkers go out and visit their children more

1 frequently in these unlicensed settings. I believe that -- I
2 know that the Contracts Division sent out contract managers to
3 do 24-hour late night supervision to make sure that the intake
4 center actually had staff that was awake and caring for the
5 children, or supervision the children at night. So, we really
6 focused in with using our caseworkers and our regional contract
7 managers to ensure the safety of the children while they were
8 in that unlicensed placement.

9 Q Well, Ms. Letts, it sounds like what you're saying is that
10 during the six months, the agency actually joined up with this
11 SSCC to keep these children in unlicensed placements. You
12 actually sent people out there while the children were in
13 unlicensed placements. Is that -- am I right? Is that what
14 you just told us?

15 A We sent them out there to ensure that the child safety --
16 the children were safe in --

17 Q In an unlicensed placement, right?

18 A Yes, sir.

19 Q Okay, you could always have taken the children into
20 licensed -- just taken -- these children are the responsibility
21 of the state. You could have taken the children and put them
22 into licensed placements, right, Ms. Letts?

23 MR. WALSH: Mr. Yetter, if I could address that, so -

24 -

25 MR. YETTER: Why don't we let Ms. Letts answer, if I

1 could?

2 BY MR. YETTER:

3 Q Ms. Letts? You could have (indiscernible) these children
4 and put them into licensed, authorized, safe placements, right?

5 A (indiscernible) I can't say yes or no to that. I can say
6 it's possible. What I can tell you is that a long -- as all
7 these children were in this unlicensed placement, we were
8 working with the SSCC very closely to look at all of the
9 placement searches that they had looked at, we were helping
10 them try to find different placements that these children
11 potentially could go to.

12 And, to be honest, you know, doing those staffings
13 almost every single week and trying to find the placements, we
14 were -- we were helping them along the way. So, I know that if
15 there was a placement to be found, we would have -- between the
16 two of us, we would've found it.

17 Q I hear what you're saying, Ms. Letts, but what you're
18 saying is that DFPS was helping this particular SSCC keep
19 children in an unlicensed facility. Perhaps you were looking
20 for other ones, but during the -- in the meantime, for six
21 months these children were in unlicensed facilities, and you
22 and DFPS knew that, right?

23 A That's correct.

24 Q And you, at least, never told the monitors, right?

25 A I did not tell the monitors personally.

1 Q But you told your superiors that the monitors should know,
2 right?

3 A I let my superiors know exactly what was going on at the
4 Family Tapestry Intake Center.

5 Q Did you tell your superiors that someone should tell the
6 monitors, because this is --

7 A I did not necessarily say those words.

8 Q Now, you recognize, don't you, as the Director of
9 Community-Based Care, that these children are the state's
10 responsibility. Even though there is this privatization
11 program with these SSCCs, the children are the responsibility
12 of the state, your agency? True?

13 A Yes.

14 Q And you know it's not safe for these children to be in
15 unlicensed facilities, right?

16 A Yes.

17 Q And these were not just unlicensed facilities. They were
18 facilities -- this Whataburger Center, that had a string of
19 reports of abuse, neglect, lots of bad things, right?

20 A So, the Whataburger Center was a licensed facility, right?
21 So that's -- and the Family Tapestry Intake Center was the
22 unlicensed facility. So, they did not using the Family
23 Tapestry Intake Center until October of 2020.

24 THE COURT: Okay, now, I've been told by Ms. Shaw,
25 that they considered the Whataburger license to be surrendered

1 the last day of December 2020. And I know that there were
2 children staying in that center after that date. Is that
3 right?

4 THE WITNESS: Yes, ma'am. They were staying in the
5 part of the center that they consider the Family Tapestry
6 Intake Center, which --

7 THE COURT: Yeah, and what do you consider it? It's
8 separated by a door. Same staff. They don't have facilities
9 there, they don't have food facilities, they don't have
10 restrooms, they don't have sleeping facilities. Some were
11 sleeping on a conference table there, however, but others were
12 sleeping in the Whataburger Center, which was unlicensed at
13 that point. Surely that's not difficult to remember.

14 THE WITNESS: Yes. Yes, ma'am.

15 THE COURT: Okay, is it time to break for lunch, Mr.
16 Yetter and Ms. --

17 MR. YETTER: Yes, Your Honor, it would be a good
18 time.

19 THE COURT: Before we break for lunch, I just want to
20 say -- reiterate one more time loudly and clearly, it's the
21 safety of these children that's at stake here. That's the most
22 important thing we have. More important than contracts, or
23 lobbyists, or all these other things. It's the safety of the
24 children that we must keep foremost in our minds. And I expect
25 Texas to live up to its duties to keep these children safe.

1 And one more thing. At the beginning of this hearing
2 I mentioned favorably the HHSC progress and DFPS progress, and
3 I didn't mention the third Defendant, who inherited this mess
4 that began at least 30 years ago and has made grace... I
5 watched his state -- the governor's state -- one of his state
6 of the union addresses where he talked about how one of his
7 projects was to find safe places for children, church-related,
8 and faith-based and other things. I really applaud that.

9 And I also am grateful, on behalf of the children, as
10 I'm sure he is, that he has instructed both these departments
11 to cooperate fully with the monitors and the Court. And I just
12 want to say thank you on behalf of these children to the
13 governor as well.

14 MAN 1: Thank you, Your Honor.

15 THE COURT: So -- though we have many problems left
16 and they must be addressed to protect these children. So,
17 we'll convene in 50 minutes, five-oh, is that all right with
18 everybody?

19 MR. WATKINS: Yes, Your Honor. Can I ask a
20 clarifying question when we return from our lunchbreak?
21 Obviously, it seems we've gotten in --

22 THE COURT: Who's speaking? Oh, okay, thank you.
23 Mr. Watkins.

24 MR. WATKINS: Sorry. It's Mr. Watkins, Your Honor.
25 It seems we've gotten into --

1 THE COURT: You were preempted there.

2 MR. WATKINS: That's okay, Your Honor, that's how it
3 goes. But I know we got into several different issues here.
4 When we return from our break, would the Court be inclined to
5 get back into Remedial Order 22 and wrap that up? Or now that
6 we've kind of got our feet into the heightened monitoring pool,
7 would you like us to dive into that?

8 THE COURT: I'm sorry. I'll probably be wandering
9 throughout these two days of hearings, but I would like to get
10 back and do -- complete 22.

11 MR. WATKINS: Okay, thank you, Your Honor.

12 THE COURT: And I need to confer with the monitors
13 because there was something else they were telling me this
14 morning about HHSC -- has said they were not including for
15 abuse and neglect claims, child on child, physical or sexual
16 abuse. They recognize that and were now going to include those
17 in their findings. Is that right, HHSC?

18 MR. BRISSENDEN: Yes, Judge. And we'll be happy to
19 address that after the lunchbreak.

20 THE COURT: Thank you. All right, thank you all very
21 much. I'll see you in 50 minutes.

22 (Recess)

23 THE COURT: Okay, make sure everybody's back.

24 CLERK: You're unmuted.

25 THE COURT: Good luck. Okay, thank you. Who are we

1 missing?

2 CLERK: Judge, it looks like everybody should be
3 back. Think we have everybody.

4 THE COURT: Is everybody back, far as everyone else
5 knows?

6 All right, one thing I forgot to say this morning, is
7 that the monitors inform me -- you know, their incredible
8 report that took so much work and effort, they left off one of
9 the contributors that spent -- apparently spent countless days
10 and nights on getting this information and putting it in the
11 report, a woman named Veronica Lockett and so I wanted to
12 recognize her formally on the record, and also to congratulate
13 her on her admission to the Texas State Bar. Mr. Yetter, did
14 we leave off on 22 with you?

15 MR. YETTER: Yes, Your Honor. I think I had focused
16 on some different issues and I don't think we were quite
17 finished with 22, so I will cede the floor to counsel for the
18 state and let her continue.

19 MR. WATKINS: Your Honor, I'll actually continue with
20 direct examination of Mr. Walsh on RO-22 if it pleases the
21 Court.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION OF WILLIAM WALSH

24 BY MR. WATKINS:

25 Q Okay, Mr. Walsh, we'll pick up near enough where we left

1 off. I believe we were discussing some of the options the
2 agency may take once it receives notice of a facility that it
3 has a contract with, an operation that it has a contract with
4 once it receives notice that they have failed to report one of
5 the criteria subject to RO-22.

6 I believe I had just recently asked you or I intended to
7 ask you about the difference between a technical letter and
8 then what the agency's been doing more recently, or at least
9 more of recently, being a corrective action plan. So just to
10 recap, could you explain to the Court essentially what a
11 technical letter is and what that required of an operation when
12 you sent that to them?

13 A Sure. A technical assistance letter is, well, it has
14 recently changed. We've made improvements to it. Would you
15 like me to talk about --

16 Q Sure. Please, please.

17 A -- and the improvements we made? It was previously
18 essentially a notification to the operation that says there's
19 been a citation for failure to report. It was just a general
20 template. It really didn't contain a lot of information
21 specific to the citation, specific to the operation, and didn't
22 really provide much guidance for the operation to follow.

23 Around January 2021, we made revisions to that, so the
24 letter now contains specific details about what the citation
25 required, why the citation was found. It also has the dates

1 and times that assistance was provided, so the contract manager
2 should call -- have a conversation with the operation
3 leadership and talk to them about it and then put questions and
4 comments in there and then specific actions that the provider
5 can do to avoid that in the future.

6 Q Do you believe that those changes to those -- to the
7 technical assistance letters and the method in which those are
8 employed will result in the end of Remedial Order 22 being
9 better achieved?

10 A I do. I think it strengthens the technical assistance
11 process, strengthens our response to Remedial Order 22 and
12 despite the fact that we're relying less on the technical
13 assistance letters, the times that we do use it, I think it is
14 much stronger process.

15 Q Now we talked about the corrective action plans. Can you
16 tell the Court a little bit about that? That would be a
17 different sort of action the agency may pursue instead of a
18 technical assistance letter. Is that right?

19 A That is, and so it's an escalated response that we require
20 from the operation, and so it depends on a few things, the
21 circumstances around the citation, the facility history, any
22 other variables that need to be taken into account. And so the
23 contract manager would require of the provider a response, a
24 corrective action plan, specifically how they're going to
25 address the issue at hand, the dates and times that it's going

1 to be done, and then required follow-up by the operation to
2 ensure that those actions were successfully taken.

3 Q So it essentially then poses the operation the requirement
4 to communicate back to the agency how they plan to ensure that
5 there are no further violations?

6 A Yes, that is correct.

7 Q At least, those types of violations RO-22 is concerned
8 with, right?

9 A That's correct.

10 Q Now you mentioned there's been that shift where you're
11 relying less on the technical assistance letters and more on
12 the corrective action plans, and I believe you said the --
13 earlier in your testimony, but I'll re-ask the question. In
14 2021, do you have the numbers of how many times you've used one
15 of those over the other?

16 A I -- over 2021, I believe -- I don't have the exact number
17 with me. I'm sorry, but I do know --

18 Q That's okay.

19 A -- most or all of them are corrective action plans.

20 Q Okay. Do you believe that corrective action plans would
21 better achieve the goals of Remedial Order 22 as opposed to a
22 technical assistance letter?

23 A Yes, I do.

24 Q But are there still some situations in which a technical
25 assistance letter would be appropriate?

1 A There could be, depending on the circumstances. We would
2 evaluate and consider whether that would be an appropriate
3 reaction, response for the provider, too, to --

4 Q When the agency is making those evaluations, what factors
5 does it consider in determining the appropriate response? It
6 is purely case by case? Do you have any kind of criteria that
7 have reduced to writing?

8 A We have a few criteria that we have in writing and it's
9 the severity of the citation that was involved, the frequency.
10 So if they have had a prior violation in the previous two
11 years, that would be something that we would rule out as a
12 technical assistance letter altogether, and so really those two
13 are the two critical factors that we would use.

14 Q Do you know if there have been any such cases where we've
15 had operations that have had subsequent violations, more than
16 one notice received, or citation issued by HHSC?

17 A There have been a few instances, yes.

18 Q And are you able to tell the Court with any particularity
19 about those instances and what actions were taken?

20 A Yes. There's one in particular that a lot of times the
21 responses that the contractor will provide training to all of
22 their staff. In this instance where a second one came up, it
23 was, we wanted to have -- address it a little stronger, and so
24 the operation actually did one-on-one training. I believe it
25 was with a CPA, and so they did one-on-one training with each

1 foster home in the operation.

2 Q As far as internally, how are you able to ensure that DFPS
3 personnel are complying with the requirements of the process,
4 as you've described it to the Court and the overall
5 requirements of Remedial Order 22?

6 A So as I mentioned previously, there's some redundancy in
7 who gets -- who receives the notification so it's not just one
8 email going to one person through the chain, so it's several
9 people are being copied and then on a regular basis, at least
10 once a week and sometimes more frequently than that, I go in.
11 I check to see if there have been any violations since the last
12 time I was checked and then if there are any, I follow up with
13 multiple staff to ensure that there's action being taken.

14 Q As far as reporting this data to the monitors, is that a
15 monthly report that you submit?

16 A It is. It was quarterly, but moved to monthly several
17 months ago. I don't have the exact date on me, but sometime
18 around January, perhaps.

19 Q Okay. I think it's mentioned in the monitors' report --
20 correct me if I'm wrong -- that the timeline the monitors were
21 looking at from June 1st, 2019 through April 2021 -- I may have
22 that end date wrong -- but there was 45 notices of failures to
23 report during that timeframe. Does that sound correct to you?

24 A And what is the course for that? The Court monitors'
25 report?

1 Q It may be, and I may be not recalling that correctly.

2 A So in my --

3 THE COURT: Did you read the report, Mr. Walsh?

4 THE WITNESS: I -- yes, Your Honor, I did.

5 THE COURT: Are there any, other than what he's just
6 -- are there any factual disputes, to your knowledge, in the
7 report?

8 THE WITNESS: No, there are not.

9 MR. WATKINS: And I think that's the gist of what I
10 was going to get to, Your Honor. Thank you.

11 THE COURT: It's just shorter this way.

12 MR. WATKINS: You got it, Your Honor. I appreciate
13 it.

14 BY MR. WATKINS:

15 Q Have there been any reports that DFPS received from HHSC,
16 any of these notice that no action has been taken on?

17 A Yes, there are, and those would be on instances where I
18 mentioned that there were previously no contracts with the
19 operation. We wouldn't have a contract to follow up on that
20 action, but -- and now in instances we, even though we don't
21 have a contract, we're still documenting and logging that for
22 historical purposes so we can review in case they apply for a
23 contract.

24 Q Understood, and just finally, Mr. Walsh, do you believe
25 that DFPS has worked deliberately and in good faith to comply

1 with RO-22?

2 A Yes, I do.

3 MR. WATKINS: I'll pass the witness with that, Your
4 Honor.

5 THE COURT: Thank you.

6 MR. YETTER: No questions, Your Honor.

7 THE COURT: Just -- I'm just reviewing this to make
8 sure that we've covered everything. Am I missing anything,
9 monitors, for all of 22? Everything stepped up from September
10 to -- and October of 2020, I think, and more recently that the
11 monitors were able to verify. Okay then, on to Remedial Order
12 37.

13 And Mr. Yetter, as we go through these, if you could
14 tell me if you're recommending sanctions so I can put them off
15 to another day or if you're -- if we're ready to say, this is
16 moving forward in the right direction and we can proceed
17 accordingly.

18 MR. YETTER: Yes, Your Honor, will do.

19 THE COURT: So this is Remedial Order 37, DFPS review
20 of the history of allegations of abuse and neglect at foster
21 homes. And that is "DFPS shall ensure that all abuse and
22 neglect referrals regarding a foster home where any PMC child
23 is placed which are not referred for child abuse and neglect
24 supervision are shared with the PMC caseworker and the
25 caseworker's supervisor within 48 hours of the DFPS receiving

1 the referral."

2 And then "Upon receipt, the PMC child's caseworker
3 will review the referral history of the home and assess if
4 there are any comments for the child's safety or wellbeing,
5 document the same in the child's electronic case record." So
6 the timeliness of the caseworker notification was -- looked
7 like, the second report, 99 percent, up significantly from the
8 first report.

9 "And that for the timeliness of the completion of the
10 home history reviews, the monitors found at least through
11 October 31st, 2020, that 69 percent were completed within two
12 days of the case referral," but the -- "In the caseworker
13 review of home histories and assessments of child safety,
14 there's a few of children's records and IMPACT to determine
15 whether the monitoring team could validate the
16 caseworker/supervisor review and staffing of the HHR showed no
17 documentation of staffing in 50 percent of the cases."

18 They were unable to find a reason for the lack of
19 staffing in 23 of 43 of the cases, that's 53 percent, and they
20 found concerns with the qualities of the caseworkers' reviews
21 of HHR's and staffing notes. So you want to address those?

22 MS. HOLSINGER: Yes, Judge. DFPS has two witnesses
23 on RO-37.

24 THE COURT: Okay.

25 MS. HOLSINGER: Hector Ortiz and (sound drops). And

1 Mr. Black has testified already this morning, but Mr. Ortiz
2 will need to be --

3 THE COURT: Would you administer the oath to these
4 two witnesses, please, Ms. Purifoy.

5 CLERK: Yes, Your Honor. Mr. Ortiz, please raise
6 your right hand. Do you swear the testimony you're about to
7 give in the case now before the Court will be the truth, the
8 whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE COURT: I'm sorry, did you ask each person, Ms.
11 Purifoy?

12 CLERK: Your Honor, I believe the other witness has
13 already been sworn.

14 THE COURT: Oh, sorry. Yes, you're right. Thank
15 you. You may proceed.

16 MS. HOLSINGER: Thank you, Judge. Thank you.

17 THE COURT: I have distance glasses and reading
18 classes. I'm still not able to see. I'm not in the right
19 distance at all to catch it, so thank you.

20 DIRECT EXAMINATION OF HECTOR ORTIZ

21 BY MS. HOLSINGER:

22 Q Mr. Ortiz, please state your full name for the record.

23 A Hector Ortiz.

24 Q And please tell us your job title and primary job duties.

25 A So I'm the director of conservatorship services for DFPS.

1 I oversee the division within CPS that up until recently
2 completed or created the home history reviews.

3 Q Have you reviewed the monitors' second report?

4 A Yes, I have.

5 Q Do you recall from that report that the monitors found
6 that in half of all cases requiring a home history review there
7 was no documentation of staffing to determine concerns for the
8 child's wellbeing?

9 A Yes.

10 Q Has DFPS -- first of all, has DFPS taken any action in
11 response to reading that in the report?

12 A Yes. It was concerning when I read the report. We
13 reached out to our field staff, asking them that they go back
14 and review the home history reviews and that they follow
15 through with assessing -- reading the home history review,
16 first of all, assessing for child safety and wellbeing and then
17 documenting in the case record.

18 Q In September of 2020, has DFPS made any changes to
19 (indiscernible) to its last class system?

20 A Yes. Since October, more than 10,000 DFPS staff have been
21 trained on class. That includes our CPI division, our CPS, and
22 APS.

23 Q And why is that important, Mr. Ortiz?

24 A It gives the workers the opportunity to go in to class and
25 look at the home history, any citations, any ongoing

1 investigations, while they get the -- once they get an alert
2 that there's abuse or neglect or while they're waiting for the
3 home history review to be sent to them.

4 Q There has been discussion already this morning, Mr. Ortiz,
5 about DFPS' policy change to limit designation of intake as
6 priority none. Are you aware of that change?

7 A Yes.

8 Q Okay. How has the change, the limitation on priority none
9 affected the number of home history reviews?

10 A It significantly has dropped the number of home history
11 reviews that have been completed. If I may, in October we had
12 five in comparison to the month before we had 17 home history
13 reviews completed.

14 Q And has that number stayed in that five or below each
15 month range since October?

16 A It's been below. For November, we had two home history
17 reviews completed. In December, we had an additional two, and
18 for January and February there have been none.

19 Q And just to make sure we're all on the same page, why is
20 it that limiting the use of priority none has resulted in a
21 decrease in home history reviews?

22 A That means -- it meant that if they did not -- if the
23 screener does not downgrade --

24 THE COURT: They found there was a problem, they
25 didn't have to review it. Is that right?

1 THE WITNESS: I'm sorry, can you repeat that, Your
2 Honor?

3 THE COURT: I said, if they found there was -- if you
4 all found there was a problem, then you didn't have to review
5 it. You were only reviewing the PNs which decreased, right?

6 THE WITNESS: Correct. Yes.

7 BY MS. HOLSINGER:

8 Q So what was the benefit to the children in care of
9 limiting situations where priority none?

10 A It would allow the allegations of abuse and neglect to be
11 investigated and allow for the investigator to go in and
12 interview the child, interview the collaterals, and conduct a
13 thorough investigation instead of depending on a home history
14 review.

15 Q Since September 2020, has DFPS made any other policy
16 changes regarding home history reviews?

17 A Yes. In January 13th, we updated our policy instructing
18 the workers that the review -- once, upon receipt of the home
19 history review, they were to review the report, assess for
20 child safety, conduct a staffing with their supervisor, and
21 document steps that were taken to ensure that the children were
22 safe in that placement. Also, if I may --

23 Q Please.

24 A -- statewide intake screeners took over the responsibility
25 for completing the home history review. This really allows

1 them to create the report at the time that they are designating
2 the intake as a priority none, so it really removes some of the
3 timeframe and really two separate divisions conducting two
4 separate actions, so it really limited the time in the whole
5 process.

6 Q Okay. Mr. Ortiz, do you recall from the monitors' report
7 or from the judge bringing it up just before your testimony
8 that the monitors found that even in cases where there was
9 staffing of the home history, that staffing was often
10 insufficient?

11 A Yes.

12 Q Do you recall that? Okay. Has DFPS taken any steps to
13 improve the quality of home history reviews?

14 A Through our --

15 Q I'm sorry. Let me be more specific in my question,
16 because I know that the home history review has more --
17 statewide intake, but on your end, the staffing of the home
18 history review, has DFPS take any actions to improve the
19 quality of the staffing in compliance with the Court's order to
20 look into the safety of the children?

21 A Yes. Our quality assurance specialists, when they are
22 conducting the random reviews, they provide technical
23 assistance to staff when they see that a staffing does not meet
24 the criteria of Remedial Order 37.

25 Q Have you done any additional training with CPS staff?

1 A No.

2 Q Okay. So you mentioned that statewide intake is now doing
3 the home history reviews. What happens once a CPS worker
4 receives that review?

5 A Upon receipt, as I mentioned previously, the worker
6 schedules a staffing with their supervisor. They review the
7 home history review together. They assess whether that child
8 is safe and that the foster parent is meeting their overall
9 needs, and if the child is not safe, they take actions to move
10 the child to another placement or request that that child be
11 moved, or they decide that the child is safe and that the
12 foster parent is meeting their overall needs.

13 Q Okay. What happens if a home history review comes in to a
14 CPS worker while they are out of the office? How do you ensure
15 that that staffing is timely completed?

16 A So in April of this year, we updated our policy to
17 clarify. In January, he had laid out within 48 hours, you
18 know, from the time the intake is downgraded to the time the
19 worker and the supervisor review it, that it happens within 48
20 hours. We just made clarification in April so that there was
21 specific instructions for on-call, so statewide intake will
22 sent that home history review to the on-call worker and
23 supervisor if it happens outside of business hours or standard
24 hours and they are responsible for reviewing the home history
25 review and taking the steps to assess child safety and

1 documenting that information in the record.

2 Q Thank you.

3 MS. HOLSINGER: And Judge, I have some questions for
4 Mr. Black specifically about the intake side. I don't know if
5 you would like to allow cross of Mr. Ortiz or should I move
6 forward with Mr. Black and complete our direct on this topic?

7 THE COURT: Why don't you just complete your direct
8 and -- whatever's --

9 MS. HOLSINGER: I don't have too much more.

10 THE COURT: Would that be more convenient for you?

11 MS. HOLSINGER: Yeah. Thank you, Judge.

12 THE COURT: Sure.

13 MS. HOLSINGER: And thank you, Mr. Ortiz. So Mr.
14 Black, you have already been before the Court this morning.

15 THE COURT: Wait a minute. I've got one question --

16 MS. HOLSINGER: Could you remind --

17 THE COURT: I forgot to ask Mr. Ortiz, did you read
18 the monitors' report, Mr. Ortiz?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Did you see any factual mistakes anywhere
21 in that report?

22 THE WITNESS: No, I did not.

23 THE COURT: Okay. Thank you. Go ahead.

24 MS. HOLSINGER: Certainly.

25 DIRECT EXAMINATION OF STEPHEN BLACK

1 BY MS. HOLSINGER:

2 Q Mr. Black, could you just remind us what your position is
3 within DFPS?

4 A I am the associate commissioner for statewide intake.

5 Q And I believe Mr. Ortiz testified that the completion of
6 home history reviews moved to statewide intake in January of
7 this year. Is that right?

8 A That is correct.

9 Q So why did statewide intake take on the role of home
10 history -- the role of completing home history reviews?

11 A Primarily for two reasons. One is we wanted to get these
12 done as quickly as possible. There's no quicker time to start
13 it than as soon as the PN decision is made, and that decision
14 is made by the screener. Also, we noticed that some of the
15 research that CPS was doing when completing these home history
16 reviews overlaps somewhat with the home history review a
17 screener's going to do in making their assessment decision, and
18 so due to the timeliness of it and the overlap of some of those
19 duties, we moved that function to the screeners in January of
20 this year.

21 Q So what does a statewide intake screener do when they
22 receive a priority none intake for a home history review?

23 A They're going to do extensive history search, both in
24 class and in IMPACT, to document any infractions or any case
25 history on the facility, as well any other IMPACT history we

1 may have on the principals involved as well as any research
2 needed for the needs of those specific children.

3 Q And how many home history reviews have statewide intake
4 actually completed since this portion moved to you in January
5 of this year?

6 A I'm going to say three. There were two completed in
7 January; although, the first one that was completed was not on
8 a licensed setting, so they realized as they were completing it
9 that it was not needed after all. But then they did get
10 another one in January that did need to be completed and since,
11 by declaration, I've found out that we had one more that came
12 in on April 3rd, so it'd be three total, and two were
13 appropriate.

14 Q What is the timeframe in which a screener is to complete
15 that home history review?

16 A They must do so within 24 hours of a PN decision, which --
17 that decision must be made within 24 hours of receipt of
18 intake, so from start to finish, the process must be completed
19 within 48 hours.

20 Q And once the home history review is complete, what does
21 the screener do?

22 A They are going to send that information a number of
23 people. That includes the caseworker and the caseworker's
24 supervisor. That could be multiplied a bit, depending on how
25 many children are in the case, because they have different

1 caseworkers for different supervisors. That's also going to go
2 to the (indiscernible) program administrator, the admin for the
3 regional director, and if this is completed after hours, it
4 would also go to the on-call worker and supervisor for CPS.

5 Q And Mr. Black, I think you were asked this question
6 earlier, but I'll ask it specific to Remedial Order 37. Do you
7 have any factual concerns with the monitors' report about
8 Remedial Order 37?

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

10 MS. HOLSINGER: Okay. Pass these witnesses, Judge.

11 THE COURT: Mr. Yetter?

12 MR. YETTER: Briefly, Your Honor.

13 CROSS-EXAMINATION OF HECTOR ORTIZ

14 BY MR. YETTER:

15 Q Mr. Ortiz, if could go back to you. I've introduced
16 myself before. You may have heard. I'm Paul Yetter. I
17 represent the plaintiff children. And you read the monitors'
18 report that concluded that 50 percent of the home history
19 reviews had no documentation regarding staffing?

20 A Yes.

21 Q And you explained new procedures that -- and that was an
22 unhappy surprise for you, Mr. Ortiz?

23 A Yes, it was. And concerning surprise as well.

24 Q Yeah, because that is -- that is concerning because it
25 goes to the heart of whether those were done appropriately and

1 whether they can be relied upon.

2 A Yes.

3 Q And I think you said that the -- your group or the agency
4 has decided to put some new policies in place. We're talking
5 about within the last week or two?

6 A In January, we updated our policy.

7 Q Okay. When did you learn that -- then you learned that 50
8 percent had no documentation regarding staffing in January? I
9 misunderstood.

10 A No, no. We updated our policy in January to -- you know,
11 to position ourselves to be compliant with Remedial Order 37.
12 From the statewide intake PN, home history review completed,
13 sent out to the field, that'd be completed within 48 hours.

14 Q All right. Now after you learned the monitors -- in the
15 monitors' report this finding that 50 percent had no documented
16 staffing, which concerns you. What have -- what steps have you
17 taken?

18 A So we reached out to -- we gathered from the home history
19 review log all those -- all the home history reviews that were
20 completed under the period of review that the monitors
21 reviewed, and we looked at all of those that did not have a
22 staffing. So we reached out to field and asked that the, one,
23 conduct a home history review and follow our policy regarding
24 what actions to take and that they document that in the record.

25 Q And this is something you've done just within the last

1 couple of weeks?

2 A Couple of days.

3 Q Couple of days. Okay. One last point. You, in response
4 to one of the Court's questions about having -- because of the
5 new policy with regard to priority none designations, that
6 generated fewer home history reviews. You recall the
7 questioning that we're talking about?

8 A Yes.

9 Q And would you agree, Mr. Ortiz, that an incorrect priority
10 none, a deficient determination of priority none can put
11 children at risk of harm?

12 A Yes.

13 Q Because a valid report of abuse, neglect, or exploitation
14 could go uninvestigated, right?

15 A Yes.

16 Q And your point was that the reduced number of priority
17 none is actually, in your view, as a child welfare
18 professional, a very positive thing for these children in terms
19 of safety, right?

20 A Yes.

21 Q So this remarkable trend that commissioner -- I believe
22 attributable to Commissioner Masters' decisions last fall have
23 led to significantly less priority none determinations which,
24 at least in your opinion, is a very positive thing for these
25 children in terms of their safety?

1 A Yes, that's correct.

2 THE COURT: Yeah, I should say, Mr. Yetter, interrupt
3 and say Commissioner Masters -- I've said this before, but
4 please don't quit. You're too good --

5 MS. MASTERS: Yes, Your Honor.

6 THE COURT: You're too good for that A do is
7 Commissioner Young. I mean, it seems we always get to a point
8 in this case when somebody quits or gets replaced or something
9 and I hope we have continuity here. It means so much,
10 Commissioner Young and Commissioner Masters. Thank you. Go
11 ahead, Mr. Yetter.

12 MR. YETTER: Your Honor, I have no other questions.
13 Pass the witness. For both -- either witness.

14 MS. FORE: Nothing further from DFPS, Judge.

15 THE COURT: So Mr. Yetter, what is your
16 recommendation on this and the preceding ones, while we're at
17 it? That we just continue this forward to the next hearing and
18 see if those -- see if these improvements continue or --

19 MR. YETTER: Yes, Your Honor. I think -- excuse me,
20 Your Honor. I believe that what we're hearing -- we're seeing
21 substantial progress. We're seeing some deficiencies that are
22 important that need to be verified, that need to be corrected.
23 But we're also hearing from the State a determination to fix
24 them and we're hearing concretely, although the monitors need
25 to verify it, that there are new policies and steps being put

1 in place. When I say so far, I would exclude the SSCC issues
2 that we got into --

3 THE COURT: Yes.

4 MR. YETTER: -- briefly because I don't know where
5 those are going and I think we need to hear more about that
6 later in the hearing.

7 THE COURT: And I appreciate that, and again, you
8 know, this is going in the right direction and -- so then we're
9 -- here, Remedial Orders 25, 26, 27, 29, and 31, and this is
10 notifying caregivers about sexual abuse and sexual aggression,
11 two for DFPS on sexual abuse, two for sexual aggression. And
12 then to make sure that these matters are all in the child's
13 subsequent placement. Here's where I think the monitors have a
14 disagreement with DFPS and in the -- correct me here if I'm
15 wrong.

16 The way I understand it from the monitors is that
17 DFPS says that the record a history of sexual abuse and sexual
18 victimization and sexual aggression in the Common App for the
19 children and -- but they don't understand this to mean that
20 they have to provide the Common App to the caregivers. Now, I
21 don't know what you call it, but let me tell you that that
22 interpretation may not be consistent or is not consistent with
23 the cumulative orders -- remedial orders of the Court.

24 You need to get this information to the caregivers,
25 whether it's in the Common App or the placement summaries and

1 the monitoring was unable to determine whether the Common App
2 corresponded to the placements under review. So you need to
3 get that information to the caregivers. If there's something
4 in particular about the Common App you don't want the
5 caregivers to see that applies to something else, but they've
6 got to have this information in the -- when these children are
7 placed, all history of sexual aggression and sexual
8 victimization.

9 So that is my concern about this, these remedial
10 orders. And I understand that for compliance that DFPS and
11 HHSC are relying on their own case reads of the Common Apps,
12 but there's no way to verify that because they're not -- they
13 don't believe they have to provide this to the caregivers. Am
14 I misunderstanding this?

15 MS. FORE: Judge Jack, we have Carol Self here from
16 DFPS to speak on these remedial orders and I've got some
17 questions for her that I hope will help answer the Court's
18 questions and clear this up or if you'd just like Ms. Self to
19 dive right in now on --

20 THE COURT: Just dive in. Let me give her --

21 MS. FORE: I think there --

22 THE COURT: Let me give her an oath.

23 MS. FORE: Okay.

24 THE COURT: Ms. Purifoy?

25 CLERK: Yes, Your Honor.

1 THE COURT: Ms. Self. We've seen each other before,
2 Ms. Self.

3 CLERK: Ms. Self, please raise your right hand. Do
4 you swear the testimony you're about to give in the case now
5 before the Court will be the truth, the whole truth, and
6 nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 MR. YETTER: Your Honor -- don't mean to interrupt,
9 but I had one thing that I wanted to clear up in terms of the
10 last things the Court asked to the counsel for the children,
11 and that is, I don't think we've -- we have not heard yet from
12 HHSC on Remedial Order 22, which I think is very important.

13 THE COURT: Sorry.

14 MR. YETTER: And so I'm holding on that and I don't
15 think we have to go to it now, but when the time comes, we
16 would expect --

17 THE COURT: Let's circle back and get it after this -
18 - after this group, okay? Thank you, Mr. Yetter.

19 MR. YETTER: Yes, Your Honor.

20 THE COURT: Okay, now Ms. Self. Did you administer
21 the oath?

22 CLERK: Yes, Your Honor.

23 THE COURT: Okay. Now Ms. Self, just tell me what I
24 am asking here.

25 DIRECT EXAMINATION OF CAROL SELF

1 BY MS. FORE:

2 Q So Ms. Self, did -- you heard the Court's question about --
3 -- well, I think there were many questions there, but take
4 first, you know, is the Common Application being provided to
5 caregivers and if not, why not?

6 THE COURT: Thank you.

7 BY MS. FORE:

8 A The department provides the Common Application to
9 providers at the time that we're securing and/or brokering the
10 placement with the provider.

11 THE COURT: But not the caregivers?

12 THE WITNESS: Not necessarily. And --

13 THE COURT: Why not?

14 THE WITNESS: The providers may subsequently share
15 the Common Application with the --

16 THE COURT: Well, they may not. They may not and
17 there's no correction on that, so tell me why you're not giving
18 it directly to the caregivers.

19 THE WITNESS: The --

20 BY MS. FORE:

21 Q Go ahead, Ms. Self.

22 A The practice of providing the Common App is -- it has
23 always been the practice of the department that the Common App
24 is provided to the providers.

25 THE COURT: Okay --

1 THE WITNESS: That's part of the --

2 THE COURT: Let me tell you this. The order is
3 really clear that this information has to go to the caregivers.
4 How are you getting this information to the caregivers and how
5 are the monitors able to verify that that's happening?

6 THE WITNESS: The information pertaining to a child's
7 sexual victimization and/or sexual aggression history is
8 provided to the caregivers through the provision of the
9 Placement Summary Form as well as the Attachment A, which
10 contains the exact same information that is contained in the
11 Common Application.

12 THE COURT: So you can tell me under oath that that
13 is exactly the same information in the Common App that each
14 caregiver gets in the placement summary?

15 THE WITNESS: Yes, ma'am. When we made the changes
16 to our IMPACT system in December of 2019, what we did is we
17 created the pages in IMPACT, the sexual victimization history
18 page as well as the previously implemented sexual aggression
19 page, and the information documented on those pages pre-fills
20 into the Common Application as well as the Attachment A.

21 THE COURT: What's in Attachment A?

22 THE WITNESS: -- same information that's coming into
23 those pages.

24 THE COURT: Tell me about Attachment A.

25 THE WITNESS: Attachment A is what we implemented in

1 December of 2019 in an attempt to come in compliance with these
2 orders, which provides all sexual victimization history as well
3 as sex trafficking history and also the child sexual aggression
4 history.

5 MS. FORE: And is it all right if I question the
6 witness, Judge?

7 THE COURT: Keep going. Thank you.

8 BY MS. FORE:

9 Q Okay. So in that Attachment A, Ms. Self, that is what is
10 provided to the caregivers, correct?

11 A That is correct.

12 THE COURT: What? Say that again? I'm sorry. It's
13 A that's given to them, not the placement summary?

14 BY MS. FORE:

15 Q So the -- okay. So Ms. Self, Attachment A is an
16 attachment to the Placement Summary, right?

17 A Yes, ma'am.

18 Q Okay. So it's Attachment A to the Placement Summary that
19 provides the sexual victimization and sexual aggression
20 information to the caregiver, right?

21 A Yes.

22 THE COURT: And that information in Attachment A is
23 the same thing in the Common App, everything in the Common App
24 related to sexual -- the sexual history of victimization or
25 aggression -- and/or aggression is in Attachment A? That's

1 what I'm hearing under oath.

2 THE WITNESS: Yes. Our computer system is set up so
3 that the information contained on the sexual victimization page
4 as well as the sexual aggression page pre-fills into the Common
5 Application as well as the Attachment A.

6 THE COURT: So what's the difference between the
7 Common App on this and Attachment A?

8 THE WITNESS: The Common Application has additional
9 information related to the child that --

10 THE COURT: Such as?

11 THE WITNESS: Such as demographics of the child. It
12 has -- it's a more comprehensive summary of the child that's
13 provided to the provider so that they may review the child's
14 information so that they can make a determination if they have
15 the ability to meet the child's needs and accept the child into
16 their network.

17 BY MS. FORE:

18 Q So is it fair to say that the Common Application is geared
19 more towards the facility or the CSA, the GRO, as opposed to
20 being geared towards the provider -- towards the caregiver?

21 A Yes. I mean, there's information in the Common
22 Application that's additionally shared with the caregiver and
23 other forms such as the child's Plan of Service, but at the
24 time that we are looking for a placement for a child, the
25 Common Application is basically the child's story which is

1 provided to the -- feel like I'm saying provided a lot -- is
2 provided to the provider so that they can review the child's
3 information and then they can determine if they have a foster
4 home that can meet the child's needs or in a general
5 residential operation, if they have the service milieu to be
6 able to meet the child's needs.

7 THE COURT: Did you read the monitors' first report?

8 MS. FORE: I'm sorry, Judge. I think you broke up a
9 bit there.

10 THE COURT: I'm not surprised. Have you read the
11 monitors' first report?

12 THE WITNESS: First report? Yes, ma'am.

13 THE COURT: Okay. In there, the monitors were very
14 specific about they could not find the placement records for a
15 huge portion of the children on site when they were doing their
16 on-site visits, Attachment A or otherwise. How do you explain
17 that?

18 THE WITNESS: I can't speak to --

19 THE COURT: And you have -- according to the
20 monitors, you don't have any place in your case reads that show
21 that this information is actually physically with the
22 caregivers.

23 THE WITNESS: No, we do not currently in our case
24 reads read for whether or not the Common Application was
25 provided to --

1 THE COURT: I'm talking about A -- Attachment A that
2 goes to the caregivers. Okay, you --

3 THE WITNESS: We read --

4 THE COURT: -- see the part down here -- Ms. Fore, do
5 you see what the problem is? Ms. Fore?

6 MS. FORE: Sorry, I was unmuting myself. I think Ms.
7 Holsinger is probably the best person to speak on this issue.

8 THE COURT: Okay. Somebody needs to tell me how we
9 know, because in the first monitors' report -- and now they say
10 they can't verify anything about this -- first monitors' report
11 when they did on-site visits, a huge proportion of the
12 caregivers had no history whatsoever of sexual aggression or
13 sexual victimization of these children. And had --

14 MR. WALSH: Your Honor --

15 THE COURT: In fact, they never received a placement
16 summary of any kind. Is that right, Ms. Fowler, Mr. Ryan?

17 MS. FOWLER: We often could not find those records in
18 the child's files on site.

19 THE COURT: They could not find those records many
20 times in the child's records actually on site. We're not even
21 yet -- this is for another time, but I'm still concerned about
22 education records and medical records that are -- educational
23 records that are allegedly hand carried from placement to
24 placement. They keep children in the second grade for ten
25 years or something, but that's for the next report. It's

1 supposed to be this report, but I think the monitors ran out of
2 time and it's -- well, first of all, with COVID, they could not
3 personally visit many of these sites and they're going to be
4 starting back in June, so I'll have that information again in
5 June.

6 But I need some explanation of why those placement
7 summaries with Attachment A could not be found in the
8 children's records in on-site visits. Who can do that?

9 MR. WALSH: Your Honor, this is William Walsh. I can
10 speak to changes that we've made in regards to that concern, if
11 you'd like.

12 THE COURT: Yesterday? When were they made, Mr.
13 Walsh?

14 MR. WALSH: January 14th, 2021, we began.

15 THE COURT: Okay. And what is that going to show us?

16 MR. WALSH: So we made two changes. We notified the
17 operations that they were required to have a policy in place
18 about the distribution of the Attachment A for the GROs. The
19 CPAs, my understanding that they -- the CPA foster homes are
20 getting those on site. Also as a requirement is they needed to
21 have included in their policy process by which if a child went
22 into a temporary placement, that those caregivers were
23 notified.

24 THE COURT: Yeah, that was supposed to go --

25 MR. WALSH: So we --

1 THE COURT: Supposed to go into psychiatric
2 facilities and all those places that were not getting those
3 notices. Is that taken care of now?

4 MR. WALSH: Yes. So we have had -- we received 270
5 approved policies. We are still working with a few psychiatric
6 hospitals just to work out some of the unique issues that they
7 have in their organization.

8 THE COURT: What unique issues? What unique issues,
9 Mr. Walsh? Get the psychiatric placements, the facilities, as
10 to whether these children are sexual victims or sexual
11 aggressors? How on earth can they treat the children without
12 knowing this and properly staff them and segregate them from
13 other children? This is not safe. Okay. Don't just speak in
14 circles. You need to tell me, have you verified that all the
15 caregivers in all these CPAs and every place else have
16 Attachment A? Yes or no.

17 MR. WALSH: So the --

18 THE COURT: Yes or no.

19 MR. WALSH: Yes. That -- we have done that process.

20 THE COURT: Okay, what do you mean by done that
21 process?

22 MR. WALSH: It's a two --

23 THE COURT: You just told me that you told your giant
24 CPAs to make sure it filters down. Have you verified that it
25 filters down?

1 MR. WALSH: Yes, Your Honor, so it's a two-part --

2 THE COURT: How did you do that?

3 MR. WALSH: -- process.

4 THE COURT: How did you do that?

5 MR. WALSH: Okay. So the first piece was requiring
6 the policies. The second piece was we required certifications
7 to be signed by all caregivers in the operation that they have
8 read --

9 THE COURT: Where are those kept? Where are those
10 kept and how soon did you start getting those, certification
11 from the caregivers?

12 MR. WALSH: They were sent on February -- I'm sorry,
13 a few days into March 2021, and so it was --

14 THE COURT: Well, you've already been held in
15 contempt of that in December, in my December order. You were --
16 -- you all were held in contempt for failing to do that. You
17 filed a compliance that you were doing it and that turns out to
18 be under oath a non -- an untruth. You see why this is -- it's
19 like whack-a-mole with you all. Oh, yeah, now we're doing it
20 in March of 2021. That's just not good enough. It's just not.

21 For one thing, the monitors can't verify it because
22 they have very unfortunate in their reads of verifying this
23 that any of these places are -- the vast -- any of them have
24 any Attachment A's. You call cannot just wait months after
25 you're held in contempt to try to make some effort to do this.

1 It just doesn't work that way. And --

2 MR. WALSH: Your Honor --

3 THE COURT: You know, it may be that I start putting
4 some of you all actually, not just fines but hold you
5 personally liable for this, and I hope you understand what that
6 means. Ask your lawyers.

7 MR. WALSH: Your Honor, would you allow me to explain
8 the process a bit more?

9 THE COURT: Well, you just told me you didn't do it
10 until March.

11 MR. WALSH: We sent notification, as I mentioned, on
12 January 14th saying that they had to have a policy. At the
13 same time, we told them --

14 THE COURT: Okay, I'm not impressed with that.

15 MR. WALSH: -- that they --

16 THE COURT: When did you verify that they were in the
17 caregivers' records?

18 MR. WALSH: The first week of March.

19 THE COURT: Okay.

20 MR. WALSH: And we asked for documentation
21 certifications going back --

22 THE COURT: Then how could you possibly have filed an
23 affidavit that you had complied with this remedial order when
24 you hadn't? Okay, Mr. Yetter? Are you finished, Ms. Rowe,
25 with this?

1 MS. FORE: Judge Jack, I have a few more questions
2 for the witness that might help clarify some of these points,
3 but --

4 THE COURT: I don't --

5 MS. FORE: -- for Ms. Self.

6 THE COURT: I don't think so, but go ahead.

7 MS. FORE: Okay.

8 BY MS. FORE:

9 Q Ms. Self, going back to after the September 2020 hearing,
10 DFPS changed its definition of caregiver to encompass --

11 THE COURT: A caregiver.

12 BY MS. FORE:

13 Q -- any --

14 THE COURT: I asked you to --

15 MS. FORE: Excuse me, Judge?

16 THE COURT: -- at least comply with the family code
17 to all those who personally take care of child as a caregiver.
18 You all were calling executive CEOs of CPAs the caregivers and
19 nobody else. And I understand. We've been down this road
20 before. I'm not interested in the fact that you never got it
21 until March of 2021. So those questions, I'm sorry, I am
22 getting a little peeved.

23 MS. FORE: Well, there is something I want to make
24 sure that we get out about this, about DFPS' compliance with
25 these remedial orders, Judge.

1 THE COURT: Let's do it quickly.

2 BY MS. FORE:

3 Q So Ms. Self --

4 MS. FORE: I'm sorry, Judge?

5 THE COURT: Let's do it rather quickly.

6 BY MS. FORE:

7 Q Okay. Ms. Self, once DFPS updated its definition of
8 caregiver, back towards the end of 2020, did DFPS take any
9 action to ensure that caregivers who had foster children placed
10 with them at that time received the Attachment A for those
11 children?

12 A Yes.

13 THE COURT: Well, what was --

14 BY MS. FORE:

15 Q Tell me about that --

16 THE COURT: -- what were they calling caregivers at
17 that time, though? That's the issue, isn't it?

18 MS. FORE: This is -- so my question, Judge, is
19 specifically after DFPS updated its definition of caregiver to
20 be the expansive definition that's in place now. What did DFPS
21 do to ensure that all those caregivers had the Attachment A?

22 THE COURT: When did it happen, too?

23 MS. FORE: My question is going specifically to
24 November 2020.

25 THE COURT: Okay.

1 BY MS. FORE:

2 Q Ms. Self?

3 A So we pulled all children -- all PMC children who had a
4 history of sexual victimization and sexual aggression who were
5 in placements on November 30th of 2020 and we went and looked
6 in the child's case file to determine if we had a signed
7 Attachment A by all caregivers for that child. And in any
8 situation where we did not have all caregiver signatures,
9 meaning that if it was a two-parent foster home, both foster
10 parents sign the Attachment A and in the circumstances of a
11 general residential operation, it was the signature of the
12 three required signers, then we went and provided a new
13 Attachment A and ensured that we had the appropriate signatures
14 and then uploaded those Attachment A's into the child's IMPACT
15 case record into one case.

16 Q Have you taken any other steps to make sure that the
17 children's full sexual victimization or sexual aggression
18 history is found in IMPACT so that it can be pulled into the
19 Attachment A?

20 A Yes. We subsequently pulled all child care investigations
21 as well as child protective investigations involving children
22 and conservatorship who were either an alleged victim and/or
23 perpetrator or aggressor of sexual abuse and pulled all
24 investigations from August of 2019 until current and did a
25 massive case read of those cases to ensure that any of those

1 investigations were -- or that all those investigations were
2 documented in the child's records, that any information
3 pertaining to a child's confirmed sexual victimization or
4 sexual aggression was documented and in any instances where
5 there was new information that wasn't previously contained in
6 the case file or previously provided to the caregiver, that a
7 new Attachment A was launched and then subsequently provided to
8 the caregiver and signed by all caregivers.

9 THE COURT: Monitors, do you have access to those
10 signed acknowledgements of Attachment A?

11 MS. FOWLER: They're putting them in one case, Judge,
12 so we have -- we do case reads to find them.

13 THE COURT: So you have to do case reads on each
14 particular -- on every single individual case to see that it's
15 in there?

16 MS. FOWLER: Yes.

17 THE COURT: And so that's what they're telling me,
18 yes, they have to. So, and then the other thing is -- and
19 they're not finding them in there, a hundred percent of the
20 children that have already been identified as sexual victims.
21 When was your last case read, Ms. Fowler, on this?

22 MS. FOWLER: The last case read was through the end
23 of November 2020.

24 THE COURT: Through the end of November 2020.

25 MS. FOWLER: I'm sorry, no. The end of October of

1 2020.

2 THE COURT: End of October 2020. And the
3 attachments. The children were not identified properly and
4 also a lot of them didn't have the attachments, but you haven't
5 been able to do on-site examinations since the first report,
6 when the first report said it's not there?

7 MS. FOWLER: That's true. The only place that we've
8 been able to go on side is Devereux and we --

9 THE COURT: And Devereux is the only on-site which I
10 begged you all to go to after the horrible mess with Devereux.
11 And what'd you find in Devereux?

12 MS. FOWLER: I would have to look back at our
13 Devereux report to refresh my memory, Judge. I can do that
14 right now.

15 THE COURT: Okay, thank you. She's going to look
16 back at that report. I think that Devereux report has been
17 filed.

18 MS. FORE: So -- I'm sorry, Judge. Is -- we can't
19 quite hear what's going on on that end.

20 THE COURT: Sorry. I was asking Ms. Fowler who was -
21 - that was part of her part of the monitors' report. They were
22 able to do the case reads and -- through the end of October
23 2020 and found many of them missing. Another concern from the
24 first monitors' report is that the children identified as being
25 sexually victimized and sexual aggressors, almost every one of

1 them had been identified prior to -- as falling into that
2 category prior to them being admitted into the care of DFPS.

3 And of course, it's come to my attention that there
4 are hundreds of children that have been sexually abused or were
5 sexually aggressive with other children, subsequent to coming
6 into DFPS conservatorship and they're unable to verify those
7 because they haven't done on-site visits. But those remain a
8 concern still, years down the road here or two years down the
9 road from the mandate issuing.

10 So I'm just saying that continue on, but I'm not
11 impressed so far.

12 BY MS. FORE:

13 Q So Ms. Self, hearing the judge's concern that she raised
14 just now, has DFPS taken steps to ensure that children's sexual
15 victimization or sexual aggression history after their time
16 coming into DFPS custody is being documented in their
17 Attachment A?

18 A Yes. So as I mentioned, we're doing a thorough case -- we
19 just did a thorough case read of all past investigations
20 involving children who were in the conservatorship of the
21 department. We also have redistributed -- created some
22 additional positions that we are currently in the process of
23 hiring for that would be two compliance specialists as well as
24 five additional QA specialists who will be able to do more
25 real-time evaluations and reads of -- for the Attachment A

1 being provided to caregivers at the time of a placement change
2 as well as additional compliance with other remedial orders.

3 THE COURT: Can you possibly --

4 THE WITNESS: We also --

5 THE COURT: Can you possibly segregate those reports
6 out into one thing to give the monitor so it saves the state
7 quite a bit of money so they don't have to go through every
8 case read to verify? Can you just make a list of the ones that
9 have provided the signed attachments and the children that have
10 been identified as sexual victims or aggressors and/or both?

11 THE WITNESS: Well -- and I was just getting ready to
12 mention, we made some additional changes to our IMPACT system,
13 so where in December of 2019 we added a place for staff to be
14 able to document that they provided the Attachment A, but it
15 was an optional. I mean, basically the system -- you didn't
16 have to put a date in it. And so in April, we changed that so
17 that it is now required in order for them to save the
18 placement. They have to enter the date that they provided the
19 Attachment A.

20 So that's one change that we did make to make it
21 easier to show that an Attachment A was provided to the
22 caregiver.

23 THE COURT: Okay, that --

24 BY MS. FORE:

25 Q And have you done --

1 THE COURT: I can tell you that when they -- what was
2 the date that you all went to Devereux?

3 MS. FOWLER: It was in October.

4 THE COURT: In October of '20 when the monitors and
5 staff went to -- their staff went to Devereux, they found that
6 often the -- did not include a Common Application or a
7 Placement Summary or Attachment A which are the forms that DFPS
8 relies upon to inform caregivers of a child's history of abuse
9 or neglect. Three files only, 18 percent, included Attachment
10 A. The program administrator indicated that the SSCCs required
11 them to sign Attachment A, but she questions whether the
12 information included is accurate and she said she didn't
13 believe anything they gave her because she's seen so many
14 errors in the children's documentation.

15 So this is all very helpful, a process in place
16 without any verifiable result except for what's on site, and so
17 you can see my concern, Ms. Self, with that kind of information
18 coming from your placements and I know the Devereux House that
19 you -- Devereux has been -- all the children have been removed
20 from Devereux that are in foster care. Is that right?

21 THE WITNESS: I believe so. I can't really speak to
22 that.

23 THE COURT: Okay, but I think that that's the case
24 because so -- do you understand my concern, this continued back
25 and forth with the documents that never seem to be where

1 they're supposed to be and the children's records are not where
2 they're supposed to be. do did you think, in the changes to
3 IMPACT, can the monitors draw -- pull up these documents with
4 one button and get all the list of children that fall in the
5 category of sexual victimization and are abuse -- aggressors as
6 well as the attachment -- signed Attachment A's from the
7 caregivers?

8 THE WITNESS: I believe that we provide those reports
9 to the monitors. There's not a place in IMPACT that you can
10 push a button and automatically find it, but I believe that we
11 pull the data and provide it to the monitors.

12 THE COURT: So they have copies of the signed
13 Attachment A's? They're shaking their heads no, they do not
14 have copies of the signed Attachment A's.

15 MS. FOWLER: We have to look for them --

16 THE WITNESS: No. I was referring to the names of
17 the children who have --

18 THE COURT: Okay.

19 THE WITNESS: -- confirmed --

20 THE COURT: But then they have to take those names
21 and look up each child in the case reads to find a Placement
22 Summary and an attachment -- and a signed Attachment A. Is
23 this the best way to spend Texas' money, by the way? Can you
24 not provide this information quickly without them having to do
25 that or do you want to continue this -- these expenditures?

1 That's a rhetorical question, so deal with it, please. So you
2 think that can be rectified somehow, Ms. Rowe?

3 MS. FORE: I know that we are still exploring some
4 additional IT or some additional ways that we potentially would
5 be able to do what you're referring to through a placement
6 portal, if you will, that would allow us to be able to have a
7 place that we could store the Attachment A that's easily
8 accessible to everybody.

9 THE COURT: Okay. I mean, there ought to be some
10 simple solution to this without Texas paying all this money to
11 the monitors for them to laboriously go through this, checking,
12 cross checking, and pulling up documents. It just seems so
13 inefficient and I don't want to get into the computer issue,
14 because I understand that the Fifth Circuit has issued a
15 mandate on that, but somehow, there ought to be a way to do
16 this. If you can input them, you ought to be able to output
17 them, in my simplified understanding of technology. I
18 apologize for that.

19 BY MS. FORE:

20 Q And Ms. Self, has DFPS made an appropriations request for
21 this caregiver portal that you just referenced that might make
22 accessing these document easier?

23 THE COURT: Okay, you --

24 BY MS. FORE:

25 A Yes, ma'am.

1 THE COURT: When I had Special Masters Francis
2 McGovern and Kevin Ryan then in 2016, they were told that you
3 all were exploring a portal then and this is 2021. Just
4 saying. That portal is a moving target. Okay, are you
5 finished?

6 BY MS. FORE:

7 Q But you have made the --

8 THE COURT: Go ahead.

9 MS. FORE: Yes, Your Honor. Pass the witness.

10 THE COURT: Mr. Yetter?

11 MR. YETTER: Your Honor, I'll make -- I'll try to
12 make it very brief.

13 CROSS-EXAMINATION OF WILLIAM WALSH

14 BY MR. YETTER:

15 Q But I just want to get -- Mr. Walsh, I'm going to focus on
16 you. Again, I represent the children. Paul Yetter. You gave
17 the Court at the beginning of your testimony, I believe you
18 started out by saying we, the agency, have made some changes to
19 deal with this issue of providing each caregiver the history of
20 a child as to sexual aggression or victimization, right?

21 A I don't know if I specifically said that. I did talk
22 about the policy changes --

23 Q Right.

24 A -- required for the providers to in turn relay that
25 information to the caregivers.

1 Q So what we just heard from Ms. Self is that --

2 THE COURT: I want to apologize to Ms. Fore by
3 keeping calling her the wrong name. I have no idea why I'm
4 doing that. So accept my apologies. Go ahead, Mr. Yetter.

5 MS. FORE: Totally understand, Your Honor. Thank
6 you.

7 THE COURT: I feel like it's "Hollywood Squares," you
8 know, and I'm getting all the names wrong. Go ahead, Mr.
9 Yetter.

10 MS. FORE: I was going to say, there are a lot of
11 people here today.

12 THE COURT: Thank you. Mr. Yetter, go ahead, I'm
13 sorry.

14 BY MR. YETTER:

15 Q All right, Mr. Walsh, let's just get the timeline kind of
16 set here, so according to Ms. Self, and you can verify this if
17 you have knowledge of it, first, the agency changed -- I put
18 that in quotes -- the definition of caregiver to be what it is
19 under the Family Code which is any person that gives any sort
20 of care to the child, right? That was in November, end of
21 November 2020. True?

22 A I don't know if that is true. I -- from my understanding,
23 I thought it was -- our agency was in discussion with the court
24 monitors to establish the definition and I thought that was one
25 of the proposals.

1 Q Well, let's just make it clear right now. It there --
2 there's no question that caregiver means any person that comes
3 in contact with a child that -- as part of its care in the
4 Texas foster care system, right? Any -- it's not just the CPA
5 or the top executives. It is every person that -- caseworker
6 (indiscernible)?

7 A Yes, sir. That is now the definition of caregiver,
8 effective December 2020.

9 Q December 2020. And then -- and we know, and I believe it
10 was -- I may be wrong, but I believe it was your affidavit that
11 verified compliance in December of 2020, compliance with these
12 remedial orders, right?

13 MS. SELF: That's actually -- it was Ms. Self.

14 MR. YETTER: Ms. Self. Okay. All right, one of the
15 two of you.

16 BY MR. YETTER:

17 Q But Mr. Walsh, you said it wasn't until January 14th, 2021
18 which was after Ms. Self's declaration of compliance that the
19 department had any policy requiring distribution of Attachment
20 A to all caregivers, right?

21 MS. FORE: Objection. I think that misstates the
22 testimony of these two witnesses.

23 BY MR. YETTER:

24 Q Okay. Mr. Walsh, I believe what you said at the outset
25 was on January 14th, 2021, the agency required a policy for

1 distribution of Attachment A to all caregivers.

2 A Yes, that is correct.

3 Q Okay, so that was after Mrs. Self's declaration of
4 compliance, the department actually gets a policy requiring
5 compliance, right?

6 MS. HOLSINGER: I'm sorry, Mr. Yetter. Objection.

7 Ms. Self's --

8 THE COURT: I'm sorry, who's this?

9 MS. HOLSINGER: -- signed her declaration on January
10 15th --

11 THE COURT: I'm sorry, who's this?

12 MS. HOLSINGER: I'm sorry. It's Ms. Holsinger.

13 THE COURT: Okay.

14 MS. HOLSINGER: Ms. Self signed her January
15 declaration --

16 THE COURT: Okay --

17 MS. HOLSINGER: -- on the 15th of January.

18 THE COURT: Okay, I think only --

19 MS. HOLSINGER: -- just want to be straight on the
20 time.

21 THE COURT: -- I think --

22 MR. YETTER: Counsel, thank you.

23 THE COURT: -- only Ms. Fore can do the objections on
24 this witness. It was her witness.

25 MR. YETTER: I believe Ms. Holsinger -- her witness.

1 This is Ms. Holsinger --

2 THE COURT: I beg your pardon, Ms. Holsinger. Go
3 right ahead. Object all you want.

4 MS. HOLSINGER: Okay, thanks, Judge.

5 THE COURT: So she's -- he's got the dates incorrect?
6 The dates --

7 MR. YETTER: I'm going to -- I'll fix the dates.

8 By MR. YETTER:

9 Q So just to get it clear for the Court, Mr. Walsh,
10 according to counsel, which I'll accept those dates as being
11 correct, the day before Ms. Self filed a affidavit of
12 compliance with these remedial orders, the department issued
13 the first policy requiring that Attachment A be distributed to
14 all caregivers, right? The day before.

15 A I would have to verify the dates myself, but I can confirm
16 that the January 14th is when we did sent it out and --

17 Q Okay.

18 A Beyond that, I would have to research it.

19 Q Sure. Fair enough. But if counsel's statement that Ms.
20 Self's declaration was on January 15th, that's the day before?

21 A January 15th is the -- yes, the day after January 14th.

22 Q Okay. And then you said to the Court that it wasn't until
23 March of 2021 that you required CPAs to provide or -- or
24 facilities to notify all caregivers in temporary placements.

25 A If I could clarify that process. So we notified --

1 Q What was the date of the policy for temporary placements?

2 A It was all inclusive.

3 Q Okay, I -- maybe I misheard your testimony, but I thought
4 you said March of 2021 you included temporary placements.

5 A Okay. And so Carol has shown me -- if I can read this.

6 MS. SELF: The first declaration.

7 BY MR. WATKINS:

8 A The first declaration. Ms. Self has shown me the first
9 declaration that has December 1st, 2020 that DFPS sent a notice
10 to residential providers reminding them of the Court orders
11 requiring DFPS to provide all caregivers with information.

12 Q Okay, and -- but I think you've just told us, maybe
13 (indiscernible) you're mistaken that on January the 14th, 2021,
14 was the first policy requiring CPAs to provide Attachment A to
15 all caregivers. Is that right?

16 A I -- yes. We did send out a notice at that time.

17 Q Okay. And so what happened in March of 2021? Anything or
18 were you -- did I just mishear you?

19 A No, so if I can clarify on what happened between January
20 14th and that first week in March. So we required policies.
21 They submitted. We approved. Secondly, we told them that
22 effective that January 14th day, they were to have signed
23 certifications for all caregivers and that we would be
24 collecting those at the end -- after the quarter was over. The
25 quarter ended the first week of March and then we asked for all

1 of the certifications since our notification.

2 Q Okay. That was very helpful --

3 THE COURT: So you didn't have those certifications
4 in hand when she -- when Ms. Shaw filed her compliance. That's
5 what you're trying to get at, Mr. Yetter and that's what I'm --

6 MR. YETTER: I --

7 THE COURT: -- understanding to be the case.

8 BY MR. YETTER:

9 Q Is that correct, Mr. Walsh? So you --

10 A I (indiscernible) that happened.

11 Q The agency didn't get these signed certifications until
12 March after the quarter ended, two months after Ms. Self
13 submitted after her compliance affidavit. Right?

14 A I can confirm the first part for you. I have knowledge of
15 that. I can't speak to the second piece without doing research
16 on it.

17 Q Okay, got it. Now one -- a couple other things. I believe
18 Ms. Self said something about a change in the IMPACT system --

19 MR. WATKINS: And Ms. Self, I can ask you about this.
20 With Your Honor's permission, I'd like to ask Ms. Self a couple
21 questions.

22 DIRECT EXAMINATION OF CAROL SELF

23 BY MR. WATKINS:

24 Q You said there was a change in the system to require the
25 entry of a date for when all caregivers are given Attachment A

1 for a particular child. You recall that testimony?

2 A Yes, sir.

3 Q And you said April and I just want to understand, is that
4 April 2021 or April 2020?

5 A We out the date field in IMPACT in December of 2019. It
6 became a required field initially in February, and I can look
7 at my declaration, but it became a required field in February,
8 but there were some glitches in it and those glitches got
9 fixed.

10 THE COURT: So look at your declaration and say --
11 did you or did you not say in there, under oath, that you all
12 had complied with the remedial orders in question?

13 THE WITNESS: Yes. When we did the case review of
14 every child in PMC and reviewed their Attachment A in December
15 for all the children who were in placement on November 30th, we
16 obtained, I believe it was 1,197 signed Attachment A's for --

17 THE COURT: He just said you didn't have them until
18 March.

19 THE WITNESS: Mr. Walsh is referring to the
20 providers' policies and the providers' certifications that they
21 had subsequently given the information on the Attachment A to
22 all the direct caregivers in the general residential operation.

23 THE COURT: Well, how did you get back signed
24 affirmations before you filed that -- I think I've got it,
25 before you filed the compliance in January, if you didn't send

1 out notices until January for the providers -- I'm sorry, to
2 the CPAs to provide this information to their caregivers? Have
3 you got that figured out, Mr. Yetter?

4 MR. YETTER: No, Your Honor.

5 BY MR. YETTER:

6 Q So Ms. Self, just let me make sure that -- this last piece
7 is important and we still haven't gotten a year. You're saying
8 that the system had an option -- IMPACT system had an option
9 place for a date as far back as November 2020, right?

10 A Yes. The optional date was in there as of December 2019.

11 Q Okay, excuse me. December 2019. So it's optional. You
12 didn't have to fill it in if you didn't want to. Obviously,
13 you realize if you don't make people fill it in, you're not
14 going to get complete compliance, and so it didn't become
15 mandatory until February 2021, right?

16 A Mm hmm.

17 Q True?

18 THE COURT: I'm sorry, you have to answer with words

19 --

20 BY MR. YETTER:

21 A True.

22 THE COURT: -- Ms. Shaw. That was a yes? Sorry, Ms.
23 Shaw, that was a yes?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

1 BY MR. YETTER:

2 Q Okay. But there's a glitch and so it actually didn't
3 become functionally required until April 2021, last month.
4 True?

5 A Yes. It originally deployed on February 12th, but we --
6 there was a defect that we identified and so that was
7 subsequently fixed and deployed on April 8th.

8 Q Okay, change -- I'm going to change -- so I think I
9 understand the timeline, and so a lot's happened since your
10 declaration was file. Fair to say, Ms. Self?

11 A Yes.

12 Q All right. Now you did testify about some extra staff two
13 compliance specialists and five quality assurance specialists,
14 that will help the agency ensure that all caregivers of these
15 children that have a history of victimization -- sexual
16 victimization or aggression actually know about it, that they
17 get Attachment A? You talked about that extra staff, right?

18 A Yes.

19 Q And you talked about the placement -- excuse me, caregiver
20 portal that -- in the IMPACT system, I suspect or your computer
21 system that you're looking to put in, right?

22 A Yes.

23 Q Is there any doubt in your mind that you -- these are --
24 are both of these covered by the appropriations that the agency
25 has sent to the legislature to fund in this current legislative

1 session?

2 A Yes, sir.

3 Q You think these will help ensure safety for these
4 children?

5 A Yes.

6 MR. YETTER: All right, no other questions, Your
7 Honor.

8 THE COURT: Thank you. Anything further?

9 MS. HOLSINGER: Your Honor, if I may, there seems to
10 be a little bit of confusion about what Ms. Self was relying on
11 when she made her January declaration. I'd like to ask a
12 couple questions about that.

13 THE COURT: Sure.

14 MS. HOLSINGER: Okay.

15 DIRECT EXAMINATION OF CAROL SELF

16 BY MS. HOLSINGER:

17 Q So Ms. Self, in the fall of 2020, after the Court's
18 September hearing, DFPS expanded its definition of caregiver.
19 Is that correct?

20 A Correct.

21 Q Okay. And once it had that expanded definition, in
22 November 2020, I believe you testified that DFPS looked at
23 every file for children in the PMC class to ensure that they
24 had an Attachment A if needed. Is that right?

25 A Yes.

1 Q And then what steps in November 2020 did DFPS take to
2 ensure that that Attachment A was communicated to those
3 children's caregivers.

4 A So in addition to what our casework staff were doing to
5 ensure that the Attachment A was provided to caregiver, we were
6 making subsequent changes to the contract to ensure that
7 residential providers were putting policies in place that
8 supported the work that the caseworkers were doing.

9 So caseworkers were required at the time that the make a
10 placement to provide the Attachment A to the caregivers and
11 then subsequent to that, the providers are then ensuring that
12 the information that the caregiver -- that the caseworker is
13 providing them is shared with all the caregivers by the
14 definition that was laid out in the contract and provided to
15 contractors in December to ensure that all the individuals who
16 had responsibility for the day-to-day care of a child were
17 given that information before they were providing care for the
18 child.

19 Q Okay, so let's break that up. So for foster families in
20 November 2020, DFPS ensured that every caregiver received an
21 Attachment A for a child that needed an Attachment A. Is that
22 correct?

23 A Yes.

24 Q Okay. So that's families. So then for residential
25 operation, before you submitted your January declaration, so in

1 December 2020, DFPS took steps with the residential operations
2 to ensure that caregivers in those operations also had the
3 Attachment A. Is that your testimony?

4 A Yes.

5 MS. HOLSINGER: Okay. No further questions, Judge.

6 THE COURT: I think I've got it. Anything else, Mr.
7 Yetter?

8 MR. YETTER: Just one -- or actually, a couple
9 questions just real quick.

10 CROSS-EXAMINATION OF CAROL SELF

11 BY MR. YETTER:

12 Q Ms. Self, you have -- you don't find -- there's nothing in
13 the -- you've read the current monitors' report, the second
14 monitors' report, correct?

15 A Yes, sir.

16 Q And you have not found any inaccuracies in what they
17 wrote, have you?

18 A No, sir.

19 Q And so you don't have any doubt that when they try to do
20 case reads, they can't tell whether the common -- excuse me,
21 whether the Attachment A has been given to caregivers -- all
22 caregivers? You're not challenging that, are you?

23 A No.

24 Q and based on the records that the monitors have been given
25 by the agency, by the State, they can't verify anything like

1 what you apparently verified in January in your compliance
2 affidavit. True?

3 A I'm not sure I totally understand your question.

4 Q Sure.

5 THE COURT: He's saying --

6 BY MR. YETTER:

7 Q Based on what they have been given --

8 THE COURT: -- you have any idea if they complied by
9 the time you filed your certificate of compliance.

10 THE WITNESS: Right. I think there's --

11 THE COURT: Okay.

12 THE WITNESS: Yeah.

13 THE COURT: Anything else, Mr. Yetter?

14 MR. YETTER: Your Honor, pass the witness.

15 MS. HOLSINGER: Nothing further, Judge.

16 THE COURT: All right, thank you. Then on to
17 Remedial Order 2, which is the last one, I think, on our list.
18 Oh, let's circle back to Remedial Order 22 and HHSC with
19 Remedial Order 22. Thank you.

20 MR. BRISSENDEN: Thank you, Judge. Reynolds
21 Brissenden on behalf of HHSC. Since we're switching parties
22 and back to the RO, would now be an appropriate time to take a
23 short break for the afternoon or should we proceed?

24 THE COURT: Fifteen minutes. Would that be enough?

25 MR. BRISSENDEN: Whatever the Court's preference.

1 THE COURT: Okay, let's see if we can do this in 15
2 minutes, then. Thank you.

3 MR. BRISSENDEN: Okay, thank you.

4 (Recess)

5 THE COURT: Okay. Are we ready?

6 MR. BRISSENDEN: Yes, Judge, I believe so. HHSC is
7 ready.

8 THE COURT: Okay. HHSC was going to address Remedial
9 Order 22 as it applies to HHSC.

10 MR. BRISSENDEN: Thank you, Your Honor. And with us
11 today from HHSC is Lana Estevilla. Ms. Estevilla is the Deputy
12 Associate Commissioner for Regional Operations and Childcare
13 Regulation and she's here today. And Paul Moore, a colleague
14 of mine, will be presenting her as a witness to address the
15 Court's questions about RO-22.

16 THE COURT: Would you administer the oath, please?

17 CLERK: Yes, Your Honor. Ms. Estevilla, please raise
18 your right hand. Do you swear the testimony you're about to
19 give in the case now before the Court will be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: Yes.

22 MR. MOORE: Your Honor, this is Paul Moore for HHSC.
23 May I proceed with our examination?

24 THE COURT: Yes, sir.

25 MR. MOORE: Thank you, Judge.

1 DIRECT EXAMINATION OF LANA ESTEVILLA

2 BY MR. MOORE:

3 Q Good afternoon, ma'am. Could you please introduce
4 yourself to the Court?

5 A My name is Lana Estevilla.

6 Q And where are you from?

7 A I'm, well, I'm a transplant to Texas for the last 17
8 years.

9 Q Okay. And where are you currently employed?

10 A At HHSC.

11 Q And what is your current position at HHSC?

12 A I'm the Deputy Associate Commissioner for Regional
13 Operations for Childcare Regulation.

14 Q And could you very briefly summarize some of your duties
15 and responsibilities as the Deputy Associate Commissioner for
16 Childcare Regulations?

17 A I oversee all the regional operations including our
18 daycare regulation program, the residential childcare
19 regulation and the heightened monitoring program.

20 Q And how long have you worked for HHSC?

21 A Since September 1, 2017.

22 Q And how many years of experience do you have working in
23 childcare licensing, childcare regulation and operation?

24 A About 14 years.

25 Q And do you understand at childcare regulation at HHSC that

1 the top priority is to ensure the safety of the children in the
2 foster care system?

3 A Absolutely.

4 Q And are you familiar with the Court's Remedial Order 22 in
5 this case?

6 A I am.

7 Q And are you familiar with the steps that HHSC has taken to
8 implement the changes required by Remedial Order 22?

9 A Yes.

10 MR. MOORE: Your Honor, at this point, I would like
11 to ask the witness a pointed question based upon some
12 conclusions in the monitors' second report.

13 THE COURT: Lead away.

14 MR. MOORE: We can show that --

15 THE COURT: Lead away.

16 MR. MOORE: Okay.

17 BY MR. MOORE:

18 Q So, Ms. Estevilla, on page 266 of the second monitors'
19 report, the monitors conclude while HHSC has made improvement
20 ensuring ECHRs are reviewed prior to or on the day of the
21 inspection and has created a consistent method for staff to
22 document the ECHRs in CLASS, improvement remains necessary in
23 the documentation of trends and patterns as well as in the
24 quality of how the information was considered during the
25 inspection. The monitors' first case review revealed that only

1 44 percent of cases reviewed, has an ECHR containing all of the
2 required components." Are you familiar with that conclusion
3 from the monitors' second report, ma'am?

4 A I am.

5 Q And would you agree that Remedial Order 22 has two
6 components: a timing requirement and a quality requirement?

7 A Yes, that's true.

8 Q And as to the timing aspect of the requirement, do the
9 monitors appear to agree with HHSC that there has been
10 substantial improvement in meeting the timing requirements by
11 HHSC as it relates to Remedial Order 22?

12 A Yes.

13 Q So let's talk about the second component, the quality
14 component of the entry. Do the monitors and HHSC agree that
15 although the timing requirement appears to have shown great
16 improvement, that improvement needs to be made on the quality
17 of the entry?

18 A Yes, HHSC agrees with that.

19 Q And in general --

20 THE COURT: You agreed with that? I'm sorry. You
21 said that, HHSC agreed with that?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: In fact, how much of the monitors report
24 have you read?

25 THE WITNESS: Your Honor, I've read the portions

1 relevant to HHSC.

2 THE COURT: Do you have any factual disputes with the
3 monitors' reports in the area of which you're familiar?

4 THE WITNESS: I do not have any factual disputes with
5 regards to the RO-22, no, Your Honor.

6 THE COURT: Thank you. Go ahead.

7 BY MR. MOORE:

8 Q And so, in general, Ms. Estevilla, is HHSC satisfied with
9 its performance requiring the quality requirements to Remedial
10 Order 22 at this time?

11 A No, we're not.

12 Q Does HHSC need to improve those results associated with
13 quality for the children that we're entrusted to care for?

14 A Yes, we do.

15 Q And so has HHSC taken steps to determine if quality has
16 improved between November of 2020 and March 31, 2021.

17 A Yes, we have.

18 Q And does -- do the quality requirements of Remedial Order
19 22 have two parts, both a data entry component as well as a
20 narrative component?

21 A Yes.

22 Q And how has HHSC's quality progressed since November 2020
23 in the data entry component of quality?

24 A HHSC has found that the accuracy of the data entry for the
25 abuse-neglect intake findings and the number of corporal

1 punishment deficiencies has increased since the fall.

2 Q Okay. So that's the data entries. What about the
3 narrative? What has HHSC's ongoing monitoring of its own
4 performance standards revealed about how HHSC has done in the
5 quality of the narrative from November 2020 through March 31,
6 2021?

7 A HHSC has found that we are still needing to improve the
8 quality of the assessment narrative to meet the intent of this
9 Remedial Order and to meet HHSC's expectations.

10 Q Does HHSC need to do better in this regard?

11 A Yes.

12 Q Can HHSC do better in this regard?

13 A We will, yes.

14 Q How did HHSC determine that these equality results on the
15 narrative had not improved during this time period?

16 A We had our Performance Management Unit, which is a
17 division within Childcare Regulation, conduct a case read of
18 extended compliance history reviews conducted between January
19 1st and March 31st, 2021.

20 Q And when was that, I'm sorry, did that assessment have a
21 name? Is that a quality assessment report?

22 A That sounds right.

23 Q And when was that report completed?

24 A I think it was finalized on April 27th, 2021.

25 Q And was a copy provided to the monitors after it was

1 completed?

2 A It was.

3 Q Then, again, why does HHSC conduct PMU quality assessment
4 reports?

5 A We conduct those case reads to keep ourselves accountable
6 to evaluate our progress and to ensure that are staff are
7 meeting policies and procedures and also to hold ourself to
8 high standard of quality.

9 Q Ms. Estevilla, the result of this report are not what
10 anyone wanted to see at this time. Did HHSC -- well, let me
11 rephrase. Did you, specifically, take any immediate action,
12 after getting the results of this report, as it related to your
13 direct report to the regional director?

14 A I did. On April 21st, which is around the time that I
15 received a preliminary draft of the PMU report, I sent
16 instructions to the regional directors in residential childcare
17 regulation that all supervisors needed to meet with inspectors,
18 each inspector, to review our ECHR guides that we have
19 available.

20 We also provided a list of questions that inspectors
21 should consider when evaluating or assessing risk and
22 instructed them to complete those meetings with inspectors by
23 the end of April.

24 Q And it is now May 5th. Have you been able to determine
25 whether those meetings took place?

1 A I was. And they have been completed except for staff on
2 extended leave and for those staff, we received plans to
3 address it with the staff when they return to work.

4 Q So does that mean that other than the staff who are on
5 extended leave, every inspector has met with their regional
6 director to receive the message about how important it is to
7 meet these quality standards?

8 A Yes.

9 Q Okay. What other actions has HHSC taken to improve the
10 quality of the ECHR narratives since April 2021?

11 A We are working on a template that our staff can use when
12 assessing risk prior to an inspection that will include,
13 similar to what I provided in the email to the regional
14 directors, a list of questions they should consider when
15 assessing the risk of the operation.

16 We're also working on kind of a template so that staff can
17 use when writing the narrative to help them make sure to
18 address each point that they need to address in the written
19 narrative.

20 Q So, Ms. Estevilla, besides improving the quality of the
21 writing that goes into these reports, is the combination of
22 this template and the questions asked designed to ensure the
23 inspectors are forced to think about the risk factors they're
24 supposed to be thinking about in evaluating any threats to
25 children before going onto a facility inspection?

1 A That's correct.

2 Q When do you expect this new template to be in effect?

3 A We plan to deliver it to our staff by May 17th.

4 Q Okay. In addition to the template and the instructions
5 for the regional directors to meet with the inspectors, has
6 HHSC taken any action regarding training to improve the quality
7 of ECHR narratives since April?

8 A Yes. We have reached out to the Professional Development
9 Division within Childcare Regulations to develop a curriculum
10 that is focused on the quality of the assessment and the
11 assessment narratives in the ECHR.

12 Q Will all current staff be required to complete that
13 training?

14 A Yes.

15 Q And was the Professional Development Division involved in
16 assisting with curriculum for prior trainings that were
17 provided on the completion of the ECHR narratives?

18 A No. We completed previous trainings within the program.

19 Q But this is -- is this bringing in some additional
20 expertise to help ensure that that training is effective?

21 A Yes.

22 Q When do you expect this new supplemental training to go
23 into effect?

24 A We expect the training curriculums to be completed by
25 early summer and then to conduct the training between June and

1 August.

2 Q As HHSC taken additional steps to improve quality in that
3 area of accountability that you mentioned before when you were
4 describing the PMU?

5 A Yes, we have.

6 Q Can you describe that action in greater detail?

7 A Well, the PMU has thus far conducted two case reads on the
8 accuracy and quality of the ECHRs and we intend for the PMU to
9 continue those case reads on at least a quarterly basis moving
10 forward.

11 Q How long do you anticipate that those will continue?

12 A It will continue until we can demonstrate improved --
13 sustained improvement I should say.

14 Q And when do you expect that process to begin, those
15 additional case reads to begin?

16 A The next time -- they completed this last one in April. I
17 believe the next one will be due in July.

18 Q And have you asked the PMU to take any other steps to help
19 the CCR group to hold itself accountable to meet the
20 requirements of Remedial Order 22 concerning the quality of the
21 ECHR narrative?

22 A Yes, the PMU maintains our case reading forms that our
23 supervisors use to case read their inspector's work and they
24 are incorporating some of the same questions that they've been
25 using in their own reviews into the case readings that our

1 supervisors conduct on their own staff so that the supervisors
2 will also, in real-time, be able to address quality issues when
3 they case read.

4 Q So does this provide a specific employee-supervisor
5 accountability beyond -- I guess is part of the review
6 specifically on this issue?

7 A Yes.

8 Q When do you expect that project to be ready for the
9 supervisors to use?

10 A I believe the date is June.

11 Q June of 2021?

12 A 2021, yes.

13 Q Ms. Estevilla, in another portion of the monitors second
14 report also, I believe on page 266, the monitors also conclude
15 that the case review also revealed a gap found in applying the
16 ECHR to foster homes. Often the data and the narrative were
17 reflective of the CPA and not the foster home where an
18 investigation was occurring.

19 Are you familiar with that conclusion as well?

20 A Yes, I am.

21 Q And is HHSC taking any actions to close this gap so that
22 the incident data for the foster home will also be considered
23 in the ECHR?

24 A Yes. That will be addressed specifically in the template
25 that we're providing to staff in May and will be further

1 addressed in the training that will roll out in June.

2 Q So let's talk about the earlier time period, for a minute,
3 before April, specifically between September 2020 and March
4 31st.

5 Now, when it comes to quality, we know that whatever steps
6 we're taking were not enough at this point, but did HHSC take
7 steps to try to improve quality in the ECHR narratives during
8 that time?

9 A We did.

10 Q What were some of the things that you did in September
11 2020 through March 31st?

12 A We have an ECHR guide that is available to our staff that
13 gives a step-by-step walkthrough of how to conduct an ECHR.
14 And we did add additional information and further explanation
15 about what an assessment of the risk is and what's not, and
16 provided some written examples that staff could use and
17 distributed that to staff. We also --

18 Q Okay.

19 A I'm sorry.

20 Q No, please continue.

21 A We've also had regional meetings with our staff to review
22 not just RO-22, but all the remedial orders just to remind our
23 staff of what the remedial orders, how they can comply with
24 those orders, the importance of compliance, and in our
25 discussion of RO-22, we discussed the importance of not just,

1 you know, doing it timely, but we addressed and talked about
2 the importance of a high-quality assessment and high-quality
3 narratives to describe that assessments.

4 Q Ms. Estevilla, in those virtual meetings, were those
5 meetings a mandatory requirement for staff?

6 A Yes.

7 Q And when, I guess, did they initially occur?

8 A We did one round of these meetings in October.

9 Q Was there a second round as well?

10 A Yes. We did a second round in March and April.

11 Q In addition, Ms. Estevilla, back in September 2020, maybe
12 the middle of the month or so, did HHSC take any action to
13 improve quality in this area perhaps as it related to reporting
14 that was brought back to your team?

15 A Yes. So we provide reports to our staff that include
16 five-years' worth of -- includes numbers, the number of
17 intakes, abuse-neglect intakes, the number of abuse-neglect
18 findings and the number of corporal punishment deficiencies in
19 the past five years.

20 We were providing those on a monthly basis, instructing
21 staff to through CLASS and look up any additional that have
22 occurred since the first of the month, but to make things
23 easier for our staff, we started running those reports daily so
24 they had just a rolling five-year history every single day.

25 Q Thank you.

1 MR. MOORE: Your Honor, we have, I have a series of
2 questions related to the timeliness requirement. Our
3 understanding is the monitors agree with us that there's been a
4 great deal of improvement in that area. I have questions about
5 the steps we've taken to achieve that improvement. However,
6 because the monitors are in agreement and HHSC is in agreement,
7 if the Court would prefer that we move onto the child-on-child
8 abuse issue that you raised before the lunchbreak, we can do
9 that, however the Court prefers.

10 THE COURT: Well, I don't think there's anything to
11 move onto. They've already agreed that they have not been
12 reporting it and they're going to report it under abuse and
13 neglect. That's my understanding from Ms. Shaw.

14 MR. MOORE: Yes, Your Honor. I was going to ask the
15 witness to confirm that under oath, but that's exactly right.

16 THE COURT: Yeah. Ms. Shaw confirmed it and I'm
17 satisfied with that.

18 MR. MOORE: Okay. Would Your Honor like to hear
19 additional testimony regarding the steps we've taken to improve
20 our performance on the timeliness requirements, which, again,
21 the monitors agree we've improved upon?

22 THE COURT: No. I think you just need to tell the
23 monitors what steps you're doing and let them verify the
24 results.

25 MR. MOORE: Yes, Your Honor. We will continue to

1 keep them informed of those steps and any data we have about
2 the results.

3 BY MR. MOORE:

4 Q Ms. Estevilla, the last area I would like to cover, are
5 you aware that in the past, some operations were effectively
6 evading the five-year ECHR process by voluntarily surrendering
7 their license and then opening up a new operation?

8 A Yes.

9 Q And when that happens, does it thwart the purpose of
10 Remedial Order 22 five-year ECHR requirement, which gives HHSC
11 an additional tool to protect foster children through a more
12 comprehensive enforcement of a minimum standard?

13 A Yes.

14 Q When and how did you become aware of that situation?

15 A We became aware through the Court's order in December and
16 in subsequent email communication that we received from the
17 court monitors.

18 THE COURT: Well, you found out about it because I've
19 looked it up on Google, and found out that Prairie Harbor's
20 owners were opening one, had opened one up in Corpus Christi
21 with the same CEO, of all things, and I asked you to double --
22 to start checking on that a little bit more carefully.

23 And now I understand there are several of these. Ms.
24 Meg Fowler?

25 MR. MOORE: Judge, so --

1 THE COURT: Meg, would you print it out again,
2 Charlie?

3 MR. MOORE: Your Honor, would you like me to proceed?

4 THE COURT: Yes.

5 BY MR. MOORE:

6 Q Ms. Estevilla, what actions did HHSC take in response to
7 learning about that loophole?

8 A We worked quickly in December to publish or to make
9 (indiscernible) an emergency rule to address that issue.

10 Q And what does the emergency rule do?

11 A The emergency rule does a couple of things, but it allows
12 us, HHSC, when we receive an application to consider the five-
13 year history of any operation that is associated to this
14 applicant either because --

15 THE COURT: I'm going to just interrupt you and just
16 read this into the record that I have, based on what the
17 monitors have provided me, that Care Cottage, the Care Cottage,
18 which was a GRO closed on -- obviously because of major
19 problems -- on January 2, 2020. They opened up on the same day
20 in the same location with the same controlling people and the
21 same children under the new name Heart Bridges.

22 Carter's Kids residential treatment center closed
23 because of action or about to have their license revoked or
24 contract revoked. It was an RTC. It closed on June 5th, 2020,
25 and reopened shortly thereafter as Life Purpose. When the

1 monitors inquired, you-all told them it was sold to the owner's
2 brother and it opened on the same location.

3 Five Oaks Achievement Center, resident treatment
4 center on June 5th, 2020, license relinquished and then it
5 opened as North Fork Educational Center, which is now closed.
6 Landing in Corpus Christi, denied of the final license. It was
7 Prairie Harbor's owners, another for-profit, closed on
8 September 16th, 2020 shortly after the contempt hearing in
9 September when I brought it your attention. North Fork
10 Educational Center, GRO, was sent an intent to revoke on
11 February 27, 2020, and reopened as -- that's the same one we
12 already talked about. I think that's a different one.

13 Is that a different one, Ms. Fowler, Monitor Fowler?

14 MS. FOWLER: North Fork actually took -- it says here
15 Five Oaks and North Fork were related.

16 MR. RYAN: Yeah, the bottom ones are related.

17 MS. FOWLER: Yes.

18 THE COURT: Okay. So those are, those are related
19 then?

20 MS. FOWLER: So, what happened was --

21 THE COURT: So that was a double connection. But
22 those are the ones that caused all of us great concern and how
23 that happened without you-all knowing about it is another
24 concern.

25 So who was responsible for that in your organization

1 and how can that be presented in the future?

2 MR. MOORE: Your Honor, if I may, that's what our
3 testimony -- each of those incidents were before we began these
4 changes, which is why we're describing the changes we made in
5 response to those incidents that you brought to our attention
6 in the past.

7 THE COURT: Okay. So how are we going to keep that
8 from happening in the future?

9 MR. MOORE: Yes, Your Honor. The first step is
10 through the emergency rule that Ms. Estevilla was describing
11 just a moment ago.

12 THE COURT: Go ahead, Ms. Estevilla.

13 MR. MOORE: And that would effect --

14 BY MR. MOORE:

15 Q Ms. Estevilla, when, when did that emergency rule go into
16 effect?

17 A It went into effect on December 30th, 2020.

18 Q And again, does that allow HHSC to identify these
19 connections between new license applicants and prior operations
20 who have had license action taken against them?

21 A It does.

22 Q Does it allow their compliance history over the previous
23 five years to be considered when HHSC is considering whether or
24 not to issue a new license?

25 A Yes, it does.

1 Q Does it allow HHSC to place conditions upon --

2 THE COURT: How come you didn't google them before
3 you issued new licenses? I mean especially when the owners
4 were the same and the executive officers were the same. How
5 could you have missed that before, before I called it to your
6 attention?

7 THE WITNESS: Your Honor, I think the answer is we
8 just didn't have the processes in place to --

9 THE COURT: I googled it and found it out. What do
10 you mean you didn't have the processes in place?

11 THE WITNESS: Your Honor --

12 THE COURT: It makes me thing that you-all could have
13 been complicit in this. That's my concern and I want to
14 prevent it in the future. I mean that's something, I don't
15 know how you could overlook it actually.

16 But now you're saying you have some emergency
17 provision where somebody can open a computer and google it, I
18 hope. Anything else? Have you done this on all the existing
19 heightened monitorings and all new applications from September
20 forward?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And these are all the ones that have --
23 could possibly have been identified as people on heightened
24 monitoring or had lost their license or given up their license
25 or had their license suspended, that have applied for new

1 licenses or temporary licenses, these are all the ones you know
2 about from your efforts that I just read off?

3 THE WITNESS: Your Honor, we provide -- Your Honor,
4 no, I believe there are some additional ones. We provided a
5 list to the monitors. I believe it was February 5th or
6 thereabout we went and did a manual review of all operations
7 that were licensed prior to the emergency rules going into
8 effect and made that list and provided it to the monitors.

9 THE COURT: How many, how many of them are there, new
10 opens opening that have past very bad performance records for
11 five years previous? How many more?

12 THE WITNESS: Your Honor, I don't have that number in
13 front of me, I'm sorry, but we can certainly provide that to
14 you.

15 THE COURT: Well, who can, who can provide that? Why
16 don't you just, why don't you just go right now and email
17 somebody and get that information?

18 THE WITNESS: Okay, well --

19 THE COURT: And are those closed -- are those now
20 closed facilities or what's going with them?

21 THE WITNESS: Your Honor, we found in many situations
22 it was operation who had closed with an initial license because
23 they hadn't provided care long enough to receive a full license
24 and because we have to either issue or deny a full license
25 within 12 months, they would close and reapply. That accounted

1 for a lot of them.

2 But here are a smaller handful where there was an
3 association to another operation that had poor performance that
4 we did connect and link those histories together.

5 THE COURT: Okay. Are the ones who connected that
6 had the bad history, are they closed or are they still
7 operating?

8 THE WITNESS: They're closed that we linked to open
9 operations and are now considering that closed history when
10 we're looking at the open operations.

11 THE COURT: Okay.

12 BY MR. MOORE:

13 Q So, Ms. Estevilla, has this been successful in identifying
14 those operations that had been attempting to evade enforcement
15 by relinquishing their license?

16 A It has.

17 Q Is one of the steps that HHSC took -- or let me back up.
18 Did HHSC take any action regarding the application that a
19 licensed applicant has to fill out that would also have an
20 impact in this area?

21 A Yes, we did and then the application for a resident
22 childcare operation license to include questions that asked the
23 applicant if they've had another license that's been
24 relinquished, if they're moving locations, or if they have
25 associations with another -- or they intend to use the same

1 controlling person of another residential childcare operation
2 so that we can more effectively make those links at the
3 application phase.

4 THE COURT: Well, in the meantime, are you googling
5 them to look up and see how connected they are?

6 THE WITNESS: Your Honor, we do expect for our staff
7 conduct due diligence when they're reviewing the application to
8 verify the information on it.

9 THE COURT: Okay. I mean you can't just rely on
10 self-reporting on these things.

11 THE WITNESS: I understand, Your Honor.

12 THE COURT: So you're double checking their
13 information is what you're telling me?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Okay. Go ahead.

16 BY MR. MOORE:

17 Q Ms. Estevilla, you described a temporary emergency rule
18 before, but has HHSC taken any action to make that rule in
19 order to, again, strengthen this enforcement in this area more
20 permanent?

21 A Yes, we have.

22 Q And when is that permanent formal rule expected to be in
23 effect?

24 A I believe it's June 21st.

25 Q And has --

1 THE COURT: I'm sorry, what is that? I'm sorry,
2 counsel, what rule is that that is going to take effect in
3 June?

4 MR. MOORE: This is again, this rule, Your Honor, is
5 essentially the same as the emergency rule. Rather than just
6 on an emergency rule, we've gone through formal rule-making to
7 become fully effective and permanent by, again, ensuring that
8 HHSC can consider a provider's five-year compliance history
9 after surrendering their license if they try to open up as a
10 new facility if there's a link between owners, control persons,
11 operating persons, address, et cetera, the agency has the
12 ability to pull that compliance history in, tie it, and link it
13 to the new applicant so that new applicant cannot evade the
14 five-year history review in the ECHR requirement and the rest
15 of Remedial Order 22.

16 THE COURT: I mean it's just stunning to me that
17 these rules are ever necessary because for something to close
18 one day and open the next day with the same children, the same
19 owners, and the same operators, and the same staff and nobody
20 pick it up is just bizarre. Okay. Any other questions on
21 this?

22 MR. MOORE: Your Honor, the only other question we
23 have is to confirm with Ms. Estevilla that CCR remains
24 committed to working with the Court and the monitors to fully
25 comply with Remedial Order 22.

1 THE WITNESS: Absolutely.

2 THE COURT: Thank you. Thank you. And I appreciate
3 that.

4 MR. YETTER: Your Honor, may it please the Court --

5 THE COURT: Yes.

6 MR. YETTER: Ms. Estevilla, I have a few questions.

7 I represent the plaintiff children. My name is Paul Yetter.

8 THE COURT: Oh, I forgot to ask you. I'm sorry.

9 MR. YETTER: I'll see if I can boil this down --

10 THE COURT: One question. Do you have any -- from
11 what you've read of the monitors reports, witness, do you have
12 any dispute as to the factual basis of the report?

13 THE WITNESS: Not with regard to RO-22, Your Honor,
14 no.

15 THE COURT: Thank you.

16 CROSS-EXAMINATION OF LANA ESTEVILLA

17 BY MR. YETTER:

18 Q Picking up where the Court just left off, Ms. Estevilla,
19 based on your testimony, I assume that as the Deputy Associate
20 Commissioner, you speak on behalf of HHSC in confirming that
21 the conclusions and concerns that the monitors memorialized in
22 their second report are shared by HHSC?

23 A Absolutely, they are.

24 Q And the concerns that the monitors have expressed in the
25 second monitors report are valid in your mind on behalf of

1 HHSC?

2 MR. MOORE: Objection, as to valid. Concerns as to
3 which particular, or conclusions under which particular point,
4 Your Honor? Is this regarding Remedial Order 22 or some
5 portion of the report?

6 THE COURT: I think we're talking about Remedial
7 Order 22. Is that right?

8 BY MR. YETTER:

9 Q We're talking about Remedial Order 22, Ms. Estevilla,
10 right?

11 A Yes.

12 Q Okay. And frankly, to your knowledge, you're not going to
13 dispute anything in the monitors report outside of Remedial
14 Order 22 are you?

15 MR. MOORE: Objection, Your Honor, assumes facts not
16 in evidence. That's beyond the scope of this witness's --

17 THE COURT: Overruled. Overruled. It doesn't mean
18 she agrees with everything, but to her knowledge, she doesn't
19 disagree with anything. That's the question.

20 BY MR. YETTER:

21 Q Ms. Estevilla, to your knowledge, you don't dispute
22 anything else in the monitors report, do you?

23 A No.

24 MR. MOORE: Your Honor, if I may, just for
25 clarification as an officer of the Court, Ms. Estevilla did

1 participate in the comments we provided to the monitor
2 regarding Remedial Order 18, which there is a dispute -- well,
3 not a dispute, but a misunderstanding regarding the compliance
4 numbers for Remedial Order 18 based upon which data elements
5 and dates were used to ascertain and measure that compliance.
6 It's not a -- I don't know if it's a big issue. I think it's a
7 misunderstanding and we're committed to work with the monitors
8 to work it out, but I just want to make clear for the record
9 that is one ongoing thing we've had communication with the
10 monitors about as they requested in their request for comments
11 last Friday.

12 BY MR. YETTER:

13 Q Ms. Estevilla, you also --

14 THE COURT: I don't think that that's part of the
15 compliance hearing. There wasn't any contempt order on
16 Remedial Order 18 was there or am I mistaken?

17 MS. FOWLER: No, there wasn't.

18 MR. MOORE: No, you're not mistaken.

19 THE COURT: So that has nothing -- we're talking
20 about the remedial orders and you're right by tying it into the
21 monitors report, that's okay. That is not one of the remedial
22 orders for the compliance. It's part of the monitors report
23 and we can get to that later or I'd be glad to talk about it
24 now. Go ahead, Mr. Yetter.

25 BY MR. YETTER:

1 Q Ms. Estevilla, you would agree that compliance with
2 Remedial Order 22 is important for the safety of these
3 children, the PMC children and other foster care children?

4 A I do agree that it's an important element of safety for
5 the children and the licensing and things that we regulate,
6 yeah.

7 Q And frankly, I suspect that based on your testimony that
8 you believe these extended compliance history reviews will
9 actually be a positive step for your agency, HHSC, to acquire
10 and to get under control?

11 A Yes, I do.

12 Q Now, I think what you've expressed to your counsel is you
13 feel good about the timing improvements but you recognize there
14 are significant deficiencies on the narrative, true?

15 A Yes, that's true.

16 Q In your opinion, Ms. Estevilla, as of now, HHSC still has
17 a ways to go before it is in compliance with Remedial Order 22?

18 MR. MOORE: Objection. Calls for legal conclusion.

19 THE COURT: Overruled. You can answer the question.

20 BY MR. YETTER:

21 Q Do you need me to restate that, Ms. Estevilla?

22 A Yes, please.

23 Q Okay. In your opinion, given the deficiencies in the
24 narrative part of the ECHRs, you would agree that is still a
25 ways to go before HHSC is in compliance with Remedial Order 22,

1 right?

2 MR. MOORE: Same objection, Your Honor.

3 THE COURT: Please don't do that. I mean this is not
4 a jury. I going to listen to this information. And I don't
5 want you to not be able to object, but these are all
6 conclusions that are really important. Go ahead. And who else
7 can testify about this information but the people you've
8 proffered and have knowledge of this? Go ahead, please answer
9 the question.

10 BY MR. YETTER:

11 A I believe that the quality of the assessment and the
12 narrative describing that assessment are an important component
13 to be full compliance with Remedial Order 22.

14 Q Okay. And you're not there yet, right?

15 A We're not there.

16 Q And the reason why the narrative is important is because
17 it reflects where the inspectors, your employees, your staff,
18 your professionals, are actually analyzing the information in
19 the extended compliance history reports, right?

20 A That's correct.

21 Q It's not enough just to get the information in their
22 hands. They have to use it. They have to analyze it to keep
23 children safe, right?

24 A Right.

25 Q And that's why you're -- now, you've told us, you've

1 instituted a number of steps this year in 2021, in fact, some
2 of them in the last month to ensure that the information in the
3 ECHR is actually used, analyzed by the professionals that need
4 to do that right?

5 A Yes.

6 Q And at this point, because this is all fair new, you still
7 have a ways to go to see if it's going to work?

8 A Yes.

9 Q None of this has been verified yet by the monitors as
10 actually having been effective, right?

11 A Right.

12 Q The last area, the last topic that you talked about with
13 your counsel is these providers that actually gamed the system
14 by de-licensing or un-licensing and then getting re-licensed so
15 that their past bad history wouldn't be considered, right? You
16 recall that testimony?

17 A Yes.

18 Q And this is, this is an issue that HHSC learned from the
19 monitors and from this Court last year?

20 A Yes.

21 Q It's a serious issue that could endanger children's lives,
22 isn't it?

23 A Yes, it is a serious issue.

24 Q And so now, HHSC is taking steps to close that loophole,
25 true?

1 A That's correct.

2 Q Okay. And to sum it all up, you know, Ms. Estevilla that
3 the remedial order that we're talking about, 22, went into
4 effect in July of 2019, true?

5 A Yes.

6 Q And so some of the, some of the steps that you're talking
7 about with regarding to the narrative improvements and things
8 like that, you're not even thinking like in addition to another
9 case read, that's not even happening until the summer of 2021.
10 Right?

11 A The next case read will read between April and June.

12 Q And then the training is going to be June through August
13 2021.

14 A Correct.

15 Q So these steps that HHSC is going, which may be very
16 laudable, are like two years after the order went into effect,
17 right?

18 A These efforts are.

19 Q And these are efforts that are necessary to come into
20 compliance, aren't they?

21 A Yes, they are necessary measures.

22 MR. YETTER: Thank you, Your Honor. Pass the
23 witness.

24 THE COURT: Let me ask a question, I know we're not
25 there yet, but we're going to talk about heightened monitoring,

1 and particularly RO-20. When you reviewed closed operations
2 and found that there were nine open operations that should have
3 been added to heightened monitoring because they were related
4 to closed operations, are they still on heightened monitoring
5 or do they -- or did you not grant -- did you take away their
6 license?

7 THE WITNESS: Your Honor, we have another witness
8 that's more prepared to speak about heightened monitoring than
9 I am.

10 THE COURT: Okay.

11 MR. MOORE: May I ask a clarifying question?

12 THE COURT: Sure.

13 MR. MOORE: Your Honor, may I just ask a clarifying
14 question.

15 REDIRECT EXAMINATION OF LANA ESTEVILLA

16 BY MR. MOORE:

17 Q Ms. Estevilla, in instances, if the ECHR five-year review
18 since the December emergency rule went into place, identified a
19 facility on heightened monitoring, was it able to make the new
20 facility that wanted to open, was it able to condition their
21 license upon them being in heightened monitoring status were
22 they to accept the license that they gave?

23 A I'm sorry. I got a little loss in that.

24 Q Yeah. I can repeat that question. Let me try again. Now
25 that the emergency rule and the other changes have been

1 implemented, is it your understanding that if a facility is on
2 heightened monitoring and surrenders its license and tries to
3 open up a new facility, does the new facility when they apply,
4 if they are offered a license, that one of the conditions for
5 that license will be that it would be on immediate heightened
6 monitoring status?

7 A Yes.

8 MR. MOORE: Pass the witness, Your Honor.

9 THE COURT: Okay. Well, why would you even give them
10 if a license if they've already closed down because of abuse
11 and neglect in the past? Why would you give them a new license
12 even under heightened monitoring? I mean it's like a shell
13 game.

14 THE WITNESS: Your Honor --

15 THE COURT: It's like the ultimate shell game with
16 using children. Why would you give them another license?

17 THE WITNESS: Your Honor, the emergency rules, right,
18 don't require us to give another license. I can provide one
19 example, if you'd like, where this has happened since the
20 emergency rules went into effect.

21 THE COURT: Apparently, you've got, you've got nine
22 placements that have opened up under different names with a bad
23 history under, under one name. And they're immediately allowed
24 placements of PMC children under heightened monitoring. Is
25 that, what's what I understand from the monitors. Is that true

1 or not true?

2 THE WITNESS: Yes, that's true.

3 THE COURT: Then why on earth are they allowed to do
4 that? Okay. I guess a question for another day.

5 THE WITNESS: These nine --

6 THE COURT: Pardon?

7 THE WITNESS: Yeah, Your Honor, I was just going to
8 say that I know these nine operations that you're referring to
9 were licensed prior to the emergency rule. We do have other
10 witnesses more prepared to speak about heightened monitoring.

11 THE COURT: Okay. Thank you. It seems like you-all
12 ought to interconnect somewhere.

13 Anything else, Mr. Yetter?

14 MR. YETTER: I'm sorry. I have one more question, if
15 I could, Your Honor.

16 THE COURT: Sure.

17 RE-CROSS-EXAMINATION OF LANA ESTEVILLA

18 BY MR. YETTER:

19 Q All right. Ms. Estevilla, one of these nine operations is
20 an operation who apparently now is on heightened monitoring
21 within the system called Children's Hope in Levelland.

22 THE COURT: Oh, it's not back, is it? Are you
23 serious?

24 MR. YETTER: It's one of the nine, Judge. But, no --

25 THE COURT: Monitors, is that correct? This facility

1 is back, Children's Hope?

2 MR. YETTER: Footnote 611 in the second monitors
3 reports, footnote 611, Your Honor.

4 BY MR. YETTER:

5 Q Ms. Estevilla, do you know the history of Children's Hope
6 residential services in Levelland?

7 A I am not familiar with it, no.

8 MR. YETTER: All right. Pass the witness, Your
9 Honor.

10 THE COURT: I don't, I can't believe that. And yes,
11 I remember footnote 611. I just thought they were gone even
12 after the footnote.

13 MR. YETTER: Page 282 of the report, Your Honor.

14 THE COURT: Does this, does this happen via lobbying
15 or how does this happen? I guess we'll have to address it --
16 is this a good time to go into heightened monitoring if we're
17 finished with the compliance?

18 MR. YETTER: It makes sense, Your Honor.

19 MS. FORE: Your Honor, we do still have RO-2, if you
20 wanted to talk about that --

21 THE COURT: Yes.

22 MS. FORE: -- if you wanted to talk about that.

23 THE COURT: Yes. I'm so sorry.

24 MS. FORE: Okay.

25 THE COURT: I think, I think we're not in good shape

1 on many things in the caseworker workload because of the
2 private placements, the SSCCs, because they're not doing as
3 well as DFPS.

4 MS. FORE: And, Your Honor, I have Erica Banuelos who
5 will speak to that issue, so if I could call Erica Banuelos?

6 THE COURT: Yes, please.

7 CLERK: Ms. Banuelos, please raise your right hand.
8 Do you swear the testimony you're about to give in the case now
9 before the Court will be the truth, the whole truth and nothing
10 but the truth, so help you God?

11 THE WITNESS: I do.

12 THE COURT: Well, let me, let me ask you a question.
13 Have you read the monitors' second report?

14 THE WITNESS: I have, Your Honor.

15 THE COURT: Do you disagree factually with any part
16 of the report?

17 THE WITNESS: I do not.

18 THE COURT: Okay, go ahead.

19 DIRECT EXAMINATION OF ERICA BANUELOS

20 BY MS. FORE:

21 Q Ms. Banuelos, would you state and spell your name for the
22 record, please?

23 A My name is Erica Banuelos. B-A-N-U-E-L-O-S.

24 Q What is your current position with DFPS?

25 A I'm the CPS Director of Field.

1 Q And as CPS Director of Field, what are your job
2 responsibilities?

3 A So I'm am responsible for the daily operations of the
4 field for CPS and I directly supervise all ten regional
5 directors across the state of Texas.

6 Q And how long have you been DFPS?

7 A I've been employed with DFPS for 23 years.

8 Q So I want to talk about the caseload tracking tool, which
9 I understand has three iterations. Let's start by talking
10 about the caseload tracking tool that existed prior to January
11 13th, 2021. Would you describe that tool to the Court, please?

12 A So we didn't have, per se, an automated -- the automation
13 tool that we had, which is a little bit similar, but very
14 different, was the Insight tool, which we still have. And a
15 lot of our daily case tracking was either done through Insight
16 or a lot of people, or a lot of supervisors, workers,
17 management would do their daily caseload tracking manually.

18 Q And so was previous tool referred to as the Black Bell?

19 A No, that was per Remedial Order No. -- that has to do with
20 the allegations that come in and notifications to caseworkers.

21 Q Got you. So would you tell us about the daily caseload
22 tracking tool that was deployed on January 13th, 2021?

23 A Yes. So the daily caseload tracker tool was something
24 that was developed. Kevin had recommended that we kind of see
25 the system that Oklahoma had. And so in terms of how they got

1 their caseloads to compliance. So we met with them. As a
2 result, we created a more automated system. And so this daily
3 caseload gives you a -- gives me and any manager across the
4 state a visual of what workloads look like across the state for
5 children assignments.

6 Q And a moment ago, you referenced Kevin. Were you
7 referring to Kevin Ryan, one of the monitors in this case?

8 A I'm, sorry, yes, I am.

9 Q And how did you inform staff about this new caseload
10 tracking tool?

11 A So we sent out a very extensive communication to staff
12 regarding this tool because we wanted to make sure that they
13 understood what the functions were and how they could use it to
14 not only monitor the number of children that workers were being
15 assigned across the state, but we wanted them to understand
16 that this was a tool that had various functions, everywhere
17 from assisting supervisors in terms of how they're assigning
18 cases, managers on how to allocate their positions across the
19 state where positions needed to moved up to work up workload
20 assignments. And we also have a master CVS caseworker. So
21 this tool also helps us deploy our master CVS caseworkers to
22 where they are needed. So it has a lot of different functions
23 for the field.

24 Q So describe for us please, what is a graduated caseload?

25 A So a graduated caseload, when our employees graduate from

1 the academy, starting once their training date is completed,
2 for the first 30 days, we can only assign them six kids and no
3 more. At the sixty-day mark, they can get assigned -- they
4 can't get assigned more than twelve children. They can only
5 get assigned twelve children by the 60th day. And so this
6 caseload tracker tool actually also picks up graduated
7 caseloads now.

8 Q So the caseload tracking tool allows you to track and
9 confirm whether or not the graduated caseload requirement is
10 being met. Is that correct?

11 A As of March 1st, absolutely.

12 Q And are there some caseworkers who are exempted from the
13 graduated caseload requirements?

14 A Yes. We created an exception form and only the regional
15 director can approve that to happen.

16 Q And so how is that documented if someone has an exemption?

17 A So we have an actual exemption form and the worker, the
18 supervisor, and the program director and everybody in the chain
19 of command to include the regional director will look at why
20 we're wanting to give a particular employee an exemption after
21 they complete the training. And there's only three reasons
22 really why that exemption form would ever be approved. One
23 would be because we do have employees that transfer within our
24 own CPS program, so they have the experience.

25 And then the second reason would be because an employee

1 has left and has decided to come back before their one year is
2 up.

3 And then, third, is other. And the only thing that we
4 really use for other is usually it has to do with maybe a
5 sibling group that we don't want to separate into multiple
6 caseworkers and/or sometimes we do get workers that come work
7 for us that come with a lot of experience from another state.
8 And so the regional director will review the skills that the
9 worker has and then make a determination whether or not they
10 can be exempt.

11 Q And, so, I'm going to turn to DFPS's level of compliance
12 in calendar year 2021. But before I do that, tell the Court
13 how do you measure compliance with RO-2?

14 A So the way we measure compliance is we do provide, we do a
15 caseload monthly report that has all of our data in there of
16 exactly when a caseworker became case-assignable, how many
17 cases they have by the 15th day, by the 45th day, and then it
18 will show us whether or not they were in compliance and, if
19 not, for how many days were they not in compliance.

20 Q And so for January of 2021, stated in terms of a
21 percentage, what was DFPS's level of compliance?

22 A We were at 94 percent.

23 Q And if you took into account approved exemptions, does
24 that percentage change?

25 A Yes, it does.

1 Q And what is the percentage of compliance if you take into
2 account approved exemption?

3 A I don't have the exact number that it would take us into,
4 but I do know that in the month of January, we had about, I
5 believe it was four exemptions that were, that were approved.

6 Q So it would be higher than 94 percent, correct?

7 A Yes, ma'am.

8 Q What about a percentage of compliance with RO-2 for DFPS
9 in February of 2021?

10 A That one was at 79 percent.

11 Q And what about the percentage of compliance for DFPS in
12 March of 2021?

13 A We were be at 83 percent. And I do want to give some
14 clarification on those percentages because those are our
15 compliance rate for Month 1, which is the first 30 days. And
16 then our compliance rate for Month 2, would be for DFPS the
17 month of January, we would be at 100 percent all the way,
18 January, February, and March.

19 Q And when you were talking about the 79 percent with
20 respect to February and the 83 percent with respect to March,
21 is that including exemptions?

22 A I'm sorry. Can you repeat that?

23 Q Sure. When you were -- you just cited for February the
24 compliance rate was 79 percent and for March, it was 83
25 percent. Was that including exemptions?

1 A No, that's without our exemptions. And I would just like
2 to correct one data point that I gave for the second month for
3 DFPS.

4 So for the second month in January, we were at 100
5 percent, in February, we were at 98 percent, and then in March,
6 we were at 92 percent. So I just wanted to correct that. So
7 we did have exemption forms for the month of February and
8 March.

9 Q So then taking into account the approved exemptions, that
10 79 percent number and the 83 percent number would go up,
11 correct?

12 A That's correct.

13 THE COURT: Assuming that the monitors can verify
14 that information at some point in the near future.

15 THE WITNESS: Yes, ma'am. May I answer that?

16 THE COURT: Yes.

17 THE WITNESS: We do provide a copy of all the
18 exemption forms, Your Honor, to the monitors.

19 THE COURT: And when was that?

20 THE WITNESS: They get them, I believe, monthly.

21 THE COURT: Okay. But do you know when they started
22 doing this report, they have to have a cutoff date. And I
23 think they supplied you with that information.

24 THE WITNESS: Yes, you're correct, Your Honor.

25 THE COURT: So a lot, a lot of what you're talking

1 about was after that cutoff date that would go into the report.
2 So the monitors have not been able to write the report and
3 verify all information up to the minute that you provided them.
4 Do you understand that?

5 THE WITNESS: Yes, correct.

6 THE COURT: Okay.

7 MS. FORE: That's right, Your Honor.

8 BY MS. FORE:

9 Q So let's turn to the SSCC's compliance with Remedial Order
10 2. I know that that's something that Judge Jack had a concern
11 about. So what is DFPS doing to track the SSCC's caseloads?

12 A So we are providing the data to the SSCC's monthly. We
13 also have a debriefing with them monthly to go over what the
14 data, not only what the data looks like, but we have a
15 conversation about what the numbers look like.

16 THE COURT: Look, okay. I'm not interested in
17 conversations and asking them advise, what are you verifying,
18 physically verifying about their caseloads? Are you sending
19 people in to look at their caseloads and the case reads?

20 THE WITNESS: We have quality assurance that they do
21 read, but as far --

22 THE COURT: Who goes in -- tell me who's going in
23 exactly to verify the caseloads for these that did not provide
24 sufficient data to the monitors to verify their caseloads from
25 OCOK to I think it was 2INgage? I think 2INgage did provide,

1 didn't they Ms. Fowler? Kevin Ryan? Mr. Ryan?

2 KEVIN: Yes, Your Honor. 2INGage's data is in the
3 analysis.

4 THE COURT: But OCOK did not --

5 MS. FOWLER: I believe OCOK is as well.

6 THE COURT: OCOK did not provide reliable data to
7 you, Mr. Ryan?

8 MR. RYAN: That's correct, Your Honor.

9 THE COURT: Anybody else?

10 MS. FORE: I may have misunderstood, but I thought
11 that OCOK did provide data for January, February, March of
12 2021. Is that incorrect, Mr. Ryan?

13 THE COURT: Well, we don't know that.

14 MR. RYAN: The date that we evaluate -- sorry.

15 THE COURT: Go ahead. Go ahead, Mr. Ryan.

16 MR. RYAN: The data that we validated, it's on page
17 147 of the second monitors report is through December 31, 2020.

18 THE COURT: So that's not verifiable and one more
19 time we need to make sure that this is provided and that, you
20 know, any information that you provide the monitors it's
21 outside the scope of their ability to rely and do the report is
22 not going to work.

23 BY MS. FORE:

24 Q Ms. Banuelos, do you know if the data relating to 2021 for
25 OCOK and for 2INGage was provided to the monitors, although I

1 appreciate it was provided to the monitors perhaps too late to
2 be included in this report?

3 A It is now being provided, my understanding is monthly to
4 the monitors, but this report that the monitors wrote is prior
5 to that. I believe there was -- when I read the monitors
6 report, it specifically talks about their concern of getting
7 the data for the SSCCs to be able to verify that. So I do
8 agree with that.

9 But it's my understanding that they will be receiving or
10 they have been receiving the monthly, the monthly data since
11 January.

12 MR. RYAN: If I could, if I could just bring the
13 Court's attention to footnote 299 on page 146 where DFPS
14 confirmed to us on behalf of OCOK on March, in March of 2021,
15 that the data was still estimated data and wasn't data that we
16 could use as late as March of 2021 for OCOK's caseworker
17 validation purposes.

18 THE COURT: Okay. Do you remember that, DFPS?

19 THE WITNESS: Yes.

20 THE COURT: Oh. So that's something you couldn't
21 verify and the monitors really can't verify if you couldn't
22 vouch for the information. Okay, move on. Thank you, Mr.
23 Ryan.

24 BY MS. FORE:

25 Q And for 2INGage in January of 2021, for the first month

1 and the second month, what were their percentages of
2 compliance?

3 A For January, the percentage that we have is the first
4 month they were at 50 percent and then the second month, they
5 were at 100 percent for January.

6 THE COURT: 100 percent of what?

7 THE WITNESS: That they were within the graduated
8 caseloads, the six and the twelve.

9 THE COURT: Did you verify that?

10 THE WITNESS: So, Your Honor, that is a, that is a
11 gap that we've identified. So they do not -- we haven't --

12 THE COURT: Are you talking about the gap? The gap
13 is in your verification? What gap are you talking about?

14 THE WITNESS: The verification piece of it.

15 THE COURT: Okay. So you haven't verified this
16 information. You don't know if they're 100 percent or not?

17 THE WITNESS: We -- they have provided that
18 information to us.

19 THE COURT: Okay. So that's self-reporting that you
20 have not verified. When are you-all going to start verifying
21 this information from the SSCCs? I mean they have a third of
22 the placements of PMC children. And you have -- you're under
23 court order to provide, to make sure these, these case
24 management, graduated caseworker cases are in compliance with
25 the remedial order too.

1 THE WITNESS: I understand.

2 THE COURT: And you can't do that by just letting
3 people self-report or somebody call up and say I verify, I'm
4 fine. It's done. It's just not working that way.

5 THE WITNESS: I understand. We will start working on
6 it immediately.

7 BY MS. FORE:

8 Q Does DFPS currently do --

9 THE COURT: You were held in contempt for this. You
10 were held in contempt in September for not doing this. And now
11 you're going to start working on this immediately? Okay.
12 Anything else?

13 MS. FORE: Your Honor, if I could ask, ask one more
14 question just to clarify that last answer.

15 THE COURT: Oh, I'm sure.

16 BY MS. FORE:

17 Q Does DFPS do any quality assurance with respect to the
18 numbers that are provided by the SSCCs?

19 THE COURT: If they're not verified, what are you
20 talking about quality assurance? Is that another kind of
21 bureau-speak, bureaucratic speak?

22 MS. FORE: I think quality assurance is a type of
23 verification, Your Honor.

24 THE COURT: Well, she just told me they were not
25 verified. So bureaucracy speak is --

1 MS. FORE: I just want to be clear --

2 THE COURT: I think we're clear.

3 MS. FORE: -- that she was also considering, that she
4 was also considering that quality assurance aspect.

5 THE COURT: Well, who does the quality assurance?

6 THE WITNESS: So the quality assurance --

7 THE COURT: Isn't is the CPA that does their own
8 quality assurance, like their own license reviews? Okay.
9 Any other questions, Mr. Yetter?

10 MR. YETTER: Just very briefly, Your Honor.

11 CROSS-EXAMINATION OF ERICA BANUELOS

12 BY MR. YETTER:

13 Q Ms. Banuelos, I represent the Plaintiff Children. My name
14 is Paul Yetter. And just to be clear about the caseload
15 statistics that you're getting from the SSCCs, One Oak -- I'm
16 sorry, OCOK and INgage, they're not using the same caseload
17 computation approach that DFPS is using. Am I right about
18 that, ma'am?

19 A So we, we use ours through -- we have an L, what we call
20 an LMS system, but we are working to integrate their system
21 with ours so that we can capture their graduated caseloads.

22 THE COURT: Okay. You're not supposed to be working
23 to do that. That's supposed to be done. You know, they're
24 using things like Tasks and this and that, the orders are very
25 clear and the mandate is clear. You only count children.

1 THE WITNESS: Yes.

2 THE COURT: Now this is, I mean here we are in May of
3 2021, almost two years after the mandate has issued and you-all
4 still are not doing this. And the SSCCs are still not
5 complying and you're the ones that's going to be -- you're the
6 ones that are going to be held in contempt as you have been for
7 this very thing and fined if you're not -- in the future, not
8 today -- for failure to comply. This is not hard. Somebody
9 just walk over there and get their figures and go through their
10 cases.

11 BY MR. YETTER:

12 Q Ms. Banuelos, you understand how important this caseload
13 standard is, don't you?

14 A Absolutely.

15 Q It is what will keep these vital caseworkers with a load
16 that's manageable so that they can keep children safe, right?

17 A Absolutely.

18 Q And if your SSCCs do not have caseloads that keep the load
19 manageable, those caseworkers can't keep those children safe,
20 right?

21 A Yes.

22 Q So, you also understand, in your position as head of,
23 Director of Field for all of DFPS, that the agency is
24 responsible, the State is responsible for these children. You
25 haven't just turned it over to these private providers, right?

1 A Absolutely, we're responsible.

2 Q The State can make the providers follow safe procedures in
3 counting caseloads, child caseloads, can't you?

4 A Correct.

5 Q And so far, these private providers are using their own
6 ways of counting caseloads and not even using children
7 necessarily as the only basis for the caseloads. True?

8 A I can't answer that question if they're using things other
9 than kids to count their workload.

10 Q Okay. Is it fair to say, Ms. Banuelos, as the Director of
11 Field, you're not exactly sure how the SSCCs, OCOK, and INgage
12 are counting their child caseloads? You're not exactly sure
13 how they're doing it?

14 A I know that we've had meetings with them where we've
15 talked about making sure that it's a child count. How they're
16 capturing their data, that is something that I don't know.

17 Q Okay. So just to be clear, you don't know how they count
18 their child caseloads, do you?

19 A I personally do not, no.

20 Q What you know is that the monitors have told you that this
21 information that they're getting from the SSCCs are estimates
22 of child caseloads, right?

23 A Um-hum.

24 THE COURT: You have to answer with words.

25 BY MR. YETTER:

1 Q True?

2 A Yes, yes.

3 Q And that's not what Remedial Order 2 requires. It doesn't
4 require you to get an estimate of child caseloads. It requires
5 you give an exact figure per caseworker, right?

6 A Correct.

7 Q A true and accurate figure, right?

8 A That is correct.

9 Q to do that, you have to use good process to count the
10 child caseloads for these caseworkers, don't you, right?

11 A Yes.

12 Q Okay. And so far, the DFPS has not required these SSCCs
13 to use good and reliable child caseload process, right?

14 A To my, to my knowledge, they are expected to follow their
15 remedial orders.

16 THE COURT: Well, they're not, so.

17 BY MR. YETTER:

18 Q Well, you don't even know how they're counting their child
19 caseloads. You've told us that, right?

20 MS. FORE: Objection, Your Honor. Misstates prior
21 testimony.

22 BY MR. YETTER:

23 Q It's not up to these SSCCs just to figure it out on their
24 own. They work for DFPS, don't they, Ms. Banuelos?

25 A Correct.

1 Q Okay. Now if these caseloads for the SS -- and the Court
2 is correct, a third of the PMC children in the state of Texas
3 are being handled by SSCC providers, right?

4 A Yes.

5 Q So this is a critical issue that those SSCC caseworkers
6 have child caseloads that are within standard, 14 to 17.

7 A Correct.

8 Q And their numbers are nowhere near or are far less, far
9 worse than the DFPS child caseload numbers based on what you've
10 learned, true?

11 A Correct.

12 Q That's a bad thing, isn't it?

13 A Yes.

14 Q And we are almost two years after the Remedial Order 2 was
15 put into place, right?

16 A Correct.

17 Q And more SSCCs are coming online as we speak, aren't they?

18 MS. FORE: Objection. Assumes facts not in evidence.

19 THE COURT: I thought, I thought it was in the
20 monitors report that there are two of them coming on line
21 shortly and I think the proposed CEOs are here.

22 MR. YETTER:

23 Q I think, I think one was just signed up last month, Ms.
24 Banuelos. Saint Judge's Ranch for children had the contract
25 awarded on April 1st, 2021, right?

1 A Yes. That's correct, for Stage 1.

2 Q For Phase 1, yeah, Stage 1, excuse me.

3 A So it's really critical that the SSCCs abide by Remedial
4 Order No. 2 and it is DFPS's responsibility to ensure that,
5 isn't it?

6 Q That is correct.

7 A And at this moment, you cannot tell the Court that SSCCs
8 are -- have complied with Remedial Order 2, can you?

9 Q I cannot say that, no.

10 MR. YETTER: All right. That's all the questions I
11 have, Your Honor. Pass the witness.

12 THE COURT: Thank you.

13 REDIRECT EXAMINATION OF ERICA BANUELOS

14 BY MS. FORE:

15 Q Mr. Yetter just said that you can't state whether or not
16 the SSCCs are complying with the Remedial Order 2, didn't he?

17 A Yes.

18 Q But you do know the percentage they are reporting to you,
19 correct?

20 A That's correct.

21 Q Do you know if there is any other person within DFPS who
22 goes to verify what they are telling you or are you unsure of
23 that?

24 A I am not --

25 THE COURT: Well, let me, go ahead, sorry.

1 BY MS. FORE:

2 A I, I am not, myself, I'm not verifying that. I'm unsure
3 if there's somebody else who is verifying it, but it is not me.

4 THE COURT: Okay. What I understand from the
5 monitors' report, which no one has doubted the factual basis,
6 is that the information supplied by you from the SSCCs is
7 inadequate to determine whether they're abiding by Remedial
8 Order 2. Just so we're clear. Okay. Anything else?

9 MS. FORE: Nothing further, Your Honor.

10 THE COURT: All right, then that's -- Mr. Yetter, do
11 you have anything further?

12 MR. YETTER: No, Your Honor.

13 THE COURT: Okay. Then we'll go on to -- where do
14 you-all want to go next? Heightened monitoring, SSCCs, where?

15 MR. YETTER: Your Honor, if we have -- and I mention
16 this to, I'm not going to be able to attend tomorrow. My
17 apologies, Your Honor. I have another court hearing.

18 THE COURT: It was set -- Mr. Yetter, I'm sorry, but
19 this has been set actually for three days. So, you're not
20 excused, and I appreciate it.

21 MR. YETTER: It is my fault, Your Honor. I did not
22 realize that (indiscernible). But as a result, I wonder if we
23 could do the SSCCs next because I'm very interested in that
24 topic. I think it's a very significant issue. And it blends
25 with the heightened monitoring issues as well.

1 THE COURT: Okay. And State, is that all right with
2 you, the State Defendants?

3 MS. FORE: That's fine with DFPS, Your Honor.

4 THE COURT: Okay, we have, do we have the CEOs of the
5 heightened monitoring -- sorry, of the SSCCs here?

6 MR. DEWALD: Your Honor, Annette Rodriguez, the CEO
7 of Family Tapestry is here.

8 THE COURT: And, I'm sorry, you're her, are you her
9 attorney?

10 MR. DEWALD: Yes, ma'am, I'm sorry, yes, Your Honor.
11 My name is Jay Dewald with Norton Rose Fulbright. I represent
12 Family Tapestry Children's Shelter and CEO Annette Rodriguez is
13 here, pro bono.

14 MR. CARSON: Your Honor, my name is Wayne Carson and
15 I'm CEO of ACH Child and Family Services and Our Community Our
16 Kids is a division of ACH.

17 THE COURT: And who else?

18 MR. GARCIA: Your Honor, it's Cristian Garcia, Vice
19 President for Saint Francis Ministries.

20 MS. DWYER: Your Honor, I'm Shirley Dwyer with
21 2INGage, CEO.

22 MS. ROUSSETT: Your Honor, I'm Tara Roussett. I'm
23 CEO of SJRC Texas and a Division of Belong.

24 THE COURT: All right. Could you all raise your
25 right hand and Ms. Purifoy will put you under oath and ask you

1 then individually your response.

2 CLERK: Do you swear the testimony you're about to
3 give in the case now before the Court will be the truth, the
4 whole truth, and nothing but the truth so help you God?

5 Ms. Rodriguez?

6 MS. RODRIGUEZ: Yes.

7 CLERK: Mr. Carson?

8 MR. CARSON: Yes.

9 CLERK: Mr. Garcia? Mr. Garcia?

10 MR. GARCIA: I do.

11 CLERK: Ms. Dwyer?

12 MS DWYER: Yes.

13 CLERK: Ms. Roussett?

14 MS. ROUSSETT: I do.

15 THE COURT: All right. Who wants to begin? I'd like
16 to ask about the waivers. Who's granting the waivers on
17 heightened monitoring and where are the requests for those
18 waivers? Who does that and what department?

19 MR. CARSON: I can address that. In Region 3B, the
20 waivers are approved by our regional director, DFPS's regional
21 director. And we keep those on file after they're approved.

22 THE COURT: Okay then. The monitors, have you
23 provided those to the monitors? We're talking about placement
24 requests and heightened monitors, I'm sorry, heightened
25 monitoring for the SSCCs. A placement request.

1 MR. CARSON: Right. I'm not aware if we've been
2 requested to provide those or not.

3 MS. DWYER: For Region 2, it goes to Sherry Beth, the
4 regional director.

5 THE COURT: Well, the monitors report they have no
6 placement approvals for 65 percent of placements for PMC
7 children in heightened monitoring. So we have the numbers for
8 Family Tapestry, that I've said earlier. We placed 273 PMC
9 children out of the area and received 263 from DFPS from out of
10 the area. Do you agree with that, or disagree with that, Ms.
11 Rodriguez?

12 MS. RODRIGUEZ: Your Honor, I'll need to check on
13 those numbers. I don't have those in front of me.

14 THE COURT: Well, can you send somebody to check on
15 them, please?

16 MS. RODRIGUEZ: Yes, I can.

17 THE COURT: Because I understand you were complaining
18 because you were hard-pressed for space for children because
19 DFPS was making demands on you to place children there out of
20 your catchment area. Were you at least making those
21 complaints?

22 MS. RODRIGUEZ: We are sharing about 20 percent of
23 our capacity with the Legacy System. That is about 10 percent
24 more than the other SSCCs currently share and certainly has
25 been sort of a hardship for us. We've lost roughly about 500

1 residential beds within our network in the last year and so
2 we've had some challenges.

3 THE COURT: And are any of those, by the way, are any
4 of those because they were safe -- were any of those losses
5 because those were safe placements? And you're under oath.

6 MS. RODRIGUEZ: It's a combination --

7 THE COURT: Were any of those --

8 MS. RODRIGUEZ: It's a combination of both voluntary
9 and involuntary closures.

10 THE COURT: Okay. I'm asking you were any of those
11 losses, losses of a safe placement for these children?

12 MS. RODRIGUEZ: Yes, they were, Your Honor.

13 THE COURT: What were they? What were the safe
14 placements? Identify your facility first.

15 MS. RODRIGUEZ: Unsafe or safe?

16 THE COURT: Safe. Tell me the losses of the safe
17 placements.

18 MS. RODRIGUEZ: Oh, I sorry. I thought you had said
19 unsafe.

20 THE COURT: Okay.

21 MS. RODRIGUEZ: So the closures were due to unsafe
22 placements.

23 THE COURT: Okay. So you really can't -- you know,
24 if those were something you were in charge of and they were
25 unsafe placements and they closed, that is really your

1 responsibility and DFPS's, and HHSC.

2 Oh, Mr. Carson, I wanted to ask you a question. I
3 was reading Mr. Robert Garrett's column, which is so far as I
4 know having been a participant here in this court proceeding
5 since 2011, to be, his reporting is reliable and accurate.

6 And you mentioned that some of the citations were
7 silly and quoted in this column. Which citations are, did you
8 receive that you thought were silly?

9 MR. CARSON: They were not citations we received.
10 It's feedback that we were getting from providers.

11 THE COURT: Well, I want to know of your personal
12 knowledge. Well, when you go quote like that to the media --

13 MR. CARSON: Not from the providers who have been
14 closed, but --

15 THE COURT: Let me tell, Mr. Carson --

16 MR. CARSON -- but from providers that are still open.

17 THE COURT: Mr. Carson, when you quote those kinds of
18 comments to the media about foster children that are in danger
19 in the system and you call the citation silly, do you have
20 personal knowledge of citations issues in your facilities?

21 MR. CARSON: I have -- in my facilities?

22 THE COURT: Yeah.

23 MR. CARSON: I have personal knowledge of citations
24 issued in facilities that we contract with, yes.

25 THE COURT: Okay. And have any of the citations in

1 ACH been silly, in your opinion? If so, I need them identified
2 right now.

3 MR. CARSON: One citation was -- involved a foster
4 parent who was feeding an infant.

5 THE COURT: Okay, was feeding an infant.

6 MR. CARSON: And the infant started choking on food.
7 The foster parent took precautions to dislodge the food from
8 the infant's throat, called 911. 911 responded. The infant
9 was safe. And the foster parent was issued a reasonable
10 finding for child abuse --

11 THE COURT: How old, how old --

12 MR. CARSON: -- because the investigator didn't like
13 the way he had freed the food from the infant's esophagus.

14 THE COURT: How old, how old was that infant?

15 MR. CARSON: It was -- I don't know the age. I can
16 get that.

17 THE COURT: Get that right now and I'll hold.

18 MR. CARSON: You're holding?

19 THE COURT: Yeah. Is that the only silly one you've
20 had?

21 MR. CARSON: I have another child in the hospital
22 right now who had a family that was able to care for her, who
23 has a disease called pica where she eats things.

24 THE COURT: Right. Dirt, mostly dirt?

25 MR. CARSON: She's been in numerous psychiatric

1 facilities -- pardon me?

2 THE COURT: It's mostly dirt?

3 MR. CARSON: Magnets, earrings, batteries.

4 THE COURT: Okay.

5 MR. CARSON: She's been in multiple psychiatric
6 facilities and residential treatment facilities. Never been
7 anywhere more than five months. She's been in a family setting
8 for 13 months. Has had an incident of pica approximately every
9 two months. Recently had a serious one where she swallowed a
10 battery, went to the hospital. That foster family was willing
11 to take her back. They took her out of school so they could
12 home-school her and monitor her more closely. The family was
13 told that if another incident were to happen in their home,
14 they would be issued charges of child abuse for lack of
15 supervision, so.

16 THE COURT: Yeah, but do you think that might be lack
17 of supervision if they take a child that's got a serious
18 medical condition and cannot prevent it because of lack of
19 supervision. Is that silly in your opinion?

20 MR. CARSON: She has been stable in that home longer
21 than she had ever been anywhere and she was showing
22 improvement.

23 THE COURT: Well, not if she's in the hospital right
24 now.

25 MR. CARSON: So, I'm not sure.

1 THE COURT: Why don't you give me --

2 MR. CARSON: Pardon me?

3 THE COURT: Why don't you give me a whole list of the
4 citations you think are silly by the end of the day. And have
5 you sent somebody to find the age of the infant?

6 MR. CARSON: I will do that.

7 THE COURT: Have you got somebody there with you that
8 can do that right now?

9 MR. CARSON: No, I have to make a phone call.

10 THE COURT: Okay. Do that.

11 While we're doing that, let's go onto INgage,
12 2INGage. You have an unlicensed facility, Harrison House
13 that's subsequently closed. Is that right?

14 MS. DWYER: Yes, Your Honor.

15 THE COURT: So what were you doing placing children
16 in Harrison House in an unlicensed house, placement?

17 MS. DWYER: Your Honor, we were having difficulties
18 finding appropriate placements for youth. And --

19 THE COURT: For me? For youth? What are you talking
20 about? For youth? Okay. I thought you were trying to place
21 me. I thought you said you. You. Go ahead.

22 MS. DWYER: No, Your Honor.

23 THE COURT: That's good. My husband might appreciate
24 it.

25 MS. DWYER: So we were -- in our desire to make sure

1 that kids were safe, we did have them stay in Harrison House
2 with our staff, and we had awake staff who were providing
3 supervision in four-hour shifts, trying to ensure the safety
4 while we continued to look for placement.

5 THE COURT: But you understand there's no such thing
6 as a safe placement in an unlicensed facility?

7 MS. DWYER: Yes, Your Honor.

8 THE COURT: And how many deficiencies and right to
9 believes has Harrison House had?

10 MS. DWYER: I -- they've not had any, Your Honor.

11 THE COURT: And when did you notify DFPS that you
12 were placing children in unlicensed -- in Harrison House that
13 was unlicensed, which I assume is --

14 MS. DWYER: We were required --

15 THE COURT: Go ahead.

16 MS. DWYER: We were required to notify DFPS every --
17 the next morning, every day.

18 THE COURT: And were you paid for those placements?

19 MS. DWYER: No, we were not.

20 THE COURT: Well, were you paid at any time and then
21 reimbursed for those placements?

22 MS. DWYER: No, Your Honor.

23 THE COURT: And do you know if the monitors were ever
24 informed?

25 MS. DWYER: I do not know, Your Honor. I do know

1 that the monitors did go by Harrison House and they did go by
2 the church that we used also.

3 THE COURT: And that church was also an unlicensed
4 facility?

5 MS. DWYER: Yes, Your Honor.

6 THE COURT: So you have a contractual obligation to
7 place children in licensed facilities only. Is that correct?

8 MS. DWYER: Yes, Your Honor.

9 THE COURT: And were you issued citations for placing
10 the children in Harrison House and in the church?

11 MS. DWYER: No. No, Your Honor.

12 THE COURT: And I want to ask you also about your
13 Capital Dynamics training that you're obligated under Remedial
14 Order 1 to use the DFPS devised Capital Dynamics training and I
15 understand you couldn't be doing that because theirs is a
16 seven-week course and you're finishing yours when -- without
17 any documentation of when it begins and when it ends? Am I
18 misunderstanding that?

19 MS. DWYER: Your Honor, we were -- our training plan
20 was approved in --

21 THE COURT: Who approved it?

22 MS. DWYER: DFPS approved our training plan in April
23 of '20 and --

24 THE COURT: How short is it?

25 MS. DWYER: -- then in February -- excuse me?

1 THE COURT: How short is that? It's in 43 days
2 instead of seven weeks?

3 MS. DWYER: Yes, Your Honor.

4 THE COURT: And ten of the new hires completed the
5 two engaged training program in 28 days, far short of the time
6 requested by the -- required by the Court ordered CPD training
7 model. Were you aware of the CPD training model of DFPS?

8 MS. DWYER: Yes, Your Honor. We were told that we
9 could do our shortened version of training and then in --

10 THE COURT: Well, you can't. Do you understand that?

11 MS. DWYER: Yes, Your Honor. In February -- February
12 3rd of 2021 --

13 THE COURT: Sorry, it's 13 weeks.

14 MS. DWYER: -- we were told we needed to use --

15 THE COURT: CPD is 13 weeks. Go ahead. So --

16 MS. DWYER: Yes, Your Honor.

17 THE COURT: It's 91 days or so. So are you changing
18 now to do the proper CPD as required under Remedial Order 1?

19 MS. DWYER: Yes, Your Honor, we are.

20 THE COURT: When? Starting when?

21 MS. DWYER: We started after we were told on February
22 3rd we had no other staff that completed our training. We
23 started March 1st completing the training as DFPS --

24 THE COURT: And your --

25 MS. DWYER: -- has the CPD --

1 THE COURT: Your caseworkers, they're serving -- that
2 are serving PMC children have caseloads higher than the
3 standard 14 to 17. Can you explain why that is?

4 MS. DWYER: Yes, Your Honor. We've had difficulty
5 hiring and as we are -- have tried to address that, we are --
6 have campaigns for hiring. We are searching out additional
7 workers and we are trying to over-hire ahead of time, trying to
8 get enough staff in that they -- that we can meet that caseload
9 standard.

10 THE COURT: When you take over a casement which you
11 all have -- or a catchment, sorry, you hire sometimes the DFPS
12 workers that already trained in that catchment. Is that right?

13 MS. DWYER: Yes, Your Honor.

14 THE COURT: And are you paying them the same wage
15 they were making with DFPS?

16 MS. DWYER: Yes. We did try to match all of their
17 salaries. There were a few staff that their salaries were way
18 above our range for workers.

19 THE COURT: Okay, so you didn't match the -- you
20 didn't match them.

21 MS. DWYER: Not 100 percent.

22 THE COURT: How much -- what is the percentage?

23 MS. DWYER: I don't know.

24 THE COURT: And so if they came to work for you, of
25 course, they didn't -- don't have much choice, but their wages

1 go down and they lose their pension plan? Is that right?

2 MS. DWYER: No, Your Honor. Most of the staff that
3 we hired, we hired at their same salary. I don't know what the
4 exact percentages of the staff that we did not hire --

5 THE COURT: Okay.

6 MS. DWYER: -- at their same salary.

7 THE COURT: And I understand from the reports your
8 Child Placement Summary, Common Applications for Remedial Order
9 26 and 29 require the sexual aggression and victimization to be
10 included and that you didn't perform as well as DFPS, their own
11 placements in that category. You know why that was?

12 MS. DWYER: What -- during that timeframe, we were
13 working to have our processes match and get in compliance and
14 we continue to work on that and we continue to improve.

15 THE COURT: I want to know when you're going to be
16 able to do it. I know to know that these children have been
17 identified as sexual victims and/or sexual aggressors and how
18 you're treating them and what your care plan is for them and
19 why you haven't identified them. So when are you going to be
20 in compliance with these orders?

21 MS. DWYER: Your Honor, our goal is to be in
22 compliance by June 1st.

23 THE COURT: DFPS has been held in contempt for
24 failing to do this, along with requiring the SSCCs to do it, so
25 DFPS -- this is not good. June the 1st is not good. Don't you

1 make this part of your contracts? Does anybody know? Ms.
2 Fore? That they have to comply with these remedial orders?

3 MS. FORE: It's part of the contract.

4 MR. WALSH: Judge, are you -- this is William Walsh.
5 Are you asking if the SSCCs --

6 THE COURT: Yes.

7 MR. WALSH: -- contract with DFPS requires -- yes, it
8 does.

9 THE COURT: It does? Well then how come you're not
10 enforcing it?

11 MR. WALSH: Well, they're on a corrective action plan
12 right now. We're working with them on it.

13 THE COURT: Well, they just told me they didn't even
14 get citations for putting children in unlicensed care.

15 MS. LETTS: Your Honor, this is Ellen Letts. I think
16 there might be just a terminology mishap here. So they have
17 received a contract action based on their use of the unlicensed
18 placement. They have not received a licensing citation,
19 however.

20 THE COURT: What are the barriers to you to complying
21 with this immediately, these orders? I mean, how hard is it to
22 get the placements applications? DFPS has told me that you
23 have them automatically with the Attachment A's. What's the --

24 MS. DWYER: Your Honor, we are continuing to monitor
25 and to make improvements in that area so that we can be in full

1 compliance.

2 THE COURT: What's the barrier to doing it today?

3 MS. DWYER: The barrier to doing that today is just
4 making sure that we can document the work that we've done and
5 be able to prove that we are in compliance.

6 THE COURT: That's just gobbledygook. I'm not
7 understanding why you don't have Attachment A on every
8 caregivers' report now. DFPS has told me that you've given
9 them, that you've been -- received those, and I'm not
10 understanding why you're not compliant. Going back to Mr.
11 Carson, what did you find out about the age of the infant?

12 MR. CARSON: Infant was 18 months old, Your Honor.
13 And if I can -- my staff are telling me that it sounded like
14 I'm opposed to the monitoring process and I want to make clear
15 I am not. I think this Court has done an amazing job focusing
16 the State on improving the quality of care for children, so --

17 THE COURT: You were supposed to be the model --

18 MR. CARSON: -- I hope I don't come across --

19 THE COURT: -- Mr. Carson. You were the model --

20 MR. CARSON: Pardon me?

21 THE COURT: -- we all looked to. You were the model
22 we all looked to for providing safe placements for children,
23 and so it just disturbs me when I see you saying that your
24 citations are silly and complaining about these kind of things,
25 which you're certainly entitled to do any time you want to. I

1 just want to know --

2 MR. CARSON: I'm not saying --

3 THE COURT: Can you --

4 MR. CARSON: I'm not saying all citations are silly,
5 Your Honor. Not by any means.

6 THE COURT: Do you think by the end of the day today
7 you could provide the monitors with a list of the ones you
8 think are incorrectly cited and they'll look into them?

9 MR. CARSON: Yes, I'd be glad to.

10 THE COURT: Now tell me about the Glen Eden
11 placement. What's the problem here? Why -- that's unlicensed?

12 MR. CARSON: It is an unlicensed facility, Your
13 Honor.

14 THE COURT: Okay, well, you know you can't put
15 children in unlicensed facilities.

16 MR. CARSON: I do, yes.

17 THE COURT: So are there children there now?

18 MR. CARSON: There is no one there tonight, no.

19 THE COURT: What does that mean?

20 MR. CARSON: There was not anyone there last night,
21 either.

22 THE COURT: Are you planning to use them in the
23 future?

24 MR. CARSON: Your Honor, the only time we use this
25 program is if we have a child that we cannot find a licensed

1 placement for that can meet their needs.

2 THE COURT: Well, isn't that DFPS' problem to take
3 those children and put them someplace if you don't have a
4 licensed placement?

5 MR. CARSON: We work very closely with them to find
6 placement, so I'm not aware that they have licensed placements,
7 either.

8 THE COURT: Okay. Do you understand I'm hearing
9 reports that SSCCs are complaining about the decrease in beds
10 because of these placements being closed? These are
11 placements, as you know, that are unsafe. They've been unsafe
12 for many, many, many years, like a Dickensian placement, some
13 of these, with restraints and I saw one -- a picture of one
14 with a plywood toilet in the corner of a room and beatings and
15 deaths and sexual abuse and physical abuse and these -- just
16 ongoing history, year after year after year.

17 These are places that were closed because they were
18 unsafe. And I think HHSC has admitted to that also. They've
19 not lost a single bed from a safe placement. And so we're all
20 looking to your facility, Mr. Carson, as the standard bearer of
21 safe placements.

22 So with that in mind, you all had a contract that
23 said 14 -- you were going to cap, which I thought was wonderful
24 -- cap your case workers at 14 children per caseworker. What
25 has been the problem with that?

1 MR. CARSON: Primarily hiring and some turnover, so -
2 -

3 THE COURT: You know, I --

4 MR. CARSON: We are going to get there.

5 THE COURT: You know, my order in 2015 wasn't 100
6 percent behind family -- foster care redesign at that time
7 because your predecessor, you know, just went belly up and
8 disappeared. You all took over and went, I don't know, \$6, \$9
9 million in the hole after the first year. It's just money.
10 This is all about money to take care of these -- to give safe
11 placements to these children and we were all worried at the
12 time I wrote my order that you would not be able to consider at
13 that -- continue at that level of loss, being really kind of a
14 non-profit charitable deal. So how have you been able to
15 survive and how are you going to be able to survive in the
16 future without more funding?

17 MR. CARSON: That's a great question, Your Honor. So
18 we knew that the funding was going to be challenging when we
19 started the contract, but we wanted to prove that this could
20 work and once we started getting results that showed that --
21 and our results were exactly aligned, I think, with what you
22 want. You want kids to be safe. You want kids to be in
23 families. You want caseworkers to have caseload sizes that
24 they can manage and once we started to show that this model
25 could, indeed, do that, we've had a placement capacity crisis

1 in the past.

2 In 2015 and 2016 we had very similar issues. We
3 solved that problem by building more capacity. It's been
4 nearly 40 years since we've had this problem. Once we showed
5 that it could work, we started to get -- we get great support
6 from the governor's office. We've got great support from the
7 legislature and the funding has improved significantly to allow
8 us to engage communities and implement this model.

9 THE COURT: My original order in 2015 after the 2014
10 trial was that the legislature has always been cooperative in
11 funding. They've never lacked for funding. But somehow, it
12 disappears in this giant bureaucracy and you were supposed to
13 be the ray of hope, so if I'm criticizing you too much, it's
14 because it scared me, to use unlicensed facilities and also
15 your CPD training program is supposed to be under my Remedial
16 Order No. 1 and you may not even know this -- I don't even know
17 if you received notice of this. You should have, from one of
18 these departments, HHSC or DFPS, but that is the model you're
19 supposed to be using, not your own model or somebody else's
20 model, but that very -- 13-week, 91-day training program.

21 And so the monitors were unable to validate the data
22 provided by the State from you, and so are you making efforts
23 to change that?

24 MR. CARSON: Yes. We had an excellent meeting with
25 the monitors related to (indiscernible) caseload sizes in

1 November. They indicated to us some needs that they had in
2 order to verify we're doing what we said we were going to do.
3 We thought we were providing that data that was needed, and so
4 it was -- we were unaware of the fact that it was not meeting
5 the standards that the monitors had set, and we will -- I think
6 it's fixed, but we welcome them coming and seeing how we're
7 doing it and we're fully committed to fixing it. That needs to
8 be able to be monitored.

9 THE COURT: Does OCOK make any kind of a payment to
10 ACH or Glen Eden when a child stays at Glen Eden?

11 MR. CARSON: No, Your Honor, that is completely
12 unpaid.

13 THE COURT: So it's not in your blended rate
14 anywhere?

15 MR. CARSON: It is not. Those children do not count
16 as -- the blended rate is based on FTE, so children that are in
17 a placement and those children do not count in that calculation
18 because they're not in a placement according to IMPACT and the
19 funding model.

20 THE COURT: Okay. The reliable data that the
21 monitors need is to know that you're using that CPD model from
22 DFPS and if it's not a good one, you all need to get together
23 and we can see -- I don't know if I can revise anything, but we
24 need to talk about it. And of all things, I would think it
25 would be a good model because it's the longest one of any of

1 you for training and I don't want to sacrifice any of the
2 safety needs of these children for shortened or an abbreviated
3 program.

4 They -- so they need the beginning and the end dates
5 of your -- of whatever your training program is and then they -
6 - we need to know somehow, how to evaluate your caseworkers'
7 caseload so it becomes into compliance with the remedial order
8 for the range of 14 to 17 and your contract is even better than
9 what I ordered, but I just want --

10 MR. CARSON: We can do that.

11 THE COURT: Is it possible?

12 MR. CARSON: We have been able to get daily downloads
13 of information from IMPACT since we've met with the monitors
14 and so we can -- we have daily updates on caseload sizes. We
15 count children per worker. We don't do anything tricky with
16 that. It was very important for us to be able to know how many
17 children is each worker responsible for.

18 THE COURT: Yeah, and I appreciate that because --

19 MR. CARSON: So we -- we're ready.

20 THE COURT: Originally, DFPS used some staging thing
21 which was really peculiar so the Fifth Circuit went ahead and
22 granted the remedial order that it's children only. So who
23 owns Glen Eden? Is that part of your ACH?

24 MR. CARSON: Glen Eden is just a house we rented
25 knowing that on occasion, we might have a child that comes in

1 late at night, we don't have a placement for them in the
2 morning. We did not want them sleeping on a cot in an office,
3 so it's -- we just wanted to have a bed and a living room and a
4 kitchen to care to them until a placement occurred, so it's --
5 there's nothing -- it's a rental house that we have set up to
6 provide a place for children until we can find a placement for
7 them.

8 THE COURT: What's the --

9 MR. CARSON: It's not meant to be --

10 THE COURT: What's the impediment for getting it
11 licensed?

12 MR. CARSON: The only impediment was I don't want to
13 license it because I don't want to use it, but that -- when the
14 monitors came out to visit the home, that question was asked
15 and that is something I think we do need to consider is to get
16 it licensed. We're hoping to build other capacity for
17 (indiscernible). We've had some success recently of doing
18 that, but that is something we need to consider.

19 THE COURT: Okay, Remedial Orders 26 and 29 require
20 that Child Placement Summaries and Common Application be
21 updated with the known history of sexual aggression or
22 victimization and that's only happening in 50 percent of your
23 placements for aggression. Victimization is 38 percent. What
24 can be done to remedy that?

25 MR. CARSON: I didn't know it was that low. We had a

1 previous report that I thought we were better than that. We
2 need to -- that's the Attachment A and the --

3 THE COURT: Yeah.

4 MR. CARSON: -- placement form. We just need to
5 verify that people are getting them. I was not aware it was
6 that low, so we need to get those done.

7 THE COURT: And they've also told me that as of
8 December, 47 percent of your caseworkers have caseloads above
9 the standard of 17. Do you know what it is today?

10 MR. CARSON: I have 31 workers that have caseloads
11 over 17, which is 63 percent of our workers are below that, so
12 it'd be 37 percent are above today.

13 THE COURT: And are you -- the monitors can have
14 access to your graduated caseload program as well?

15 MR. CARSON: Yes. That's completely available for
16 them to see. I think one other -- just a little bit more
17 information of something where the monitors were helpful in
18 this is, we were tracking average caseload sizes so when we
19 started in March, we inherited a lot of workers that had 20 or
20 more children, sometimes the method that you are describing led
21 to more children than, it seemed. The average was 20. We have
22 gradually been decreasing the average caseload.

23 The monitors made it very clear that you don't care
24 about averages. You care about every single worker having 17
25 or less children on their caseload and so that was helpful

1 information for us and we have been very focused on making that
2 happen. Our average is coming down, but we still have too many
3 workers that have more than 17.

4 THE COURT: And the same question for -- about hiring
5 the DFPS workers in your catchment. Some -- I understood that
6 some of the older workers didn't want to come over because you
7 couldn't match their pension and their salary. So that brings
8 up concerns about training for the new people and the graduated
9 caseload. So I expect you all to be on that shortly.

10 MR. CARSON: We've been on it. I think that when the
11 monitors are able to come back out and see what we're doing,
12 they'll be pleased with how we're tracking that. We started
13 out with a very similar training to the CPD training. We had
14 some differences in the timing of the field experience but the
15 actual classroom work was very similar to what DFPS was using
16 and is using, and so it was a very minor adjustment for us to
17 make other than some timing and how the field work was done, so
18 we welcome, you know, continued monitoring on that. I think
19 we're making excellent progress.

20 THE COURT: And you have about 1,300, I think, just
21 1,300 kids which is about 8 percent of the system.

22 MR. CARSON: We have about 1,300 kids in foster care.
23 We have another -- we have a total of right at 2,000 children
24 including kinship hearings, Your Honor.

25 THE COURT: Okay. And by the way, we had experts at

1 trial in 2014 -- I think she was from Tennessee -- who
2 testified that private placements are not a bad thing, private
3 CPAs, that I think 80 percent of Tennessee, once she took over
4 the system, became private CPAs, so there's no -- I have never
5 heard evidence of anything bad, per se, about private
6 placements but I do have concerns about some of these that are
7 for profit and some of the nonprofit ones that are running a
8 very poor organization.

9 And I think you told the legislature that yours would
10 be a cost neutral and you're asking for more money, which is --
11 they'll give it to you fine. Do you have any questions --

12 MR. CARSON: Just a brief comment, Your Honor.

13 THE COURT: Yes.

14 MR. CARSON: About the Tennessee comment. I really
15 appreciate you saying that. Listening to what you hear, you
16 know, a worker leaving kids alone to go to the bathroom at a
17 gas station or agencies reopening in the same facility,
18 basically doing the same thing. You're hearing a lot of
19 terrible stories. I do know personally many of the people
20 doing this work around the state and most people are in this
21 for the right reason. They care about kids. They want to help
22 heal trauma, so I'm sorry that you're hearing such terrible
23 stories, but I appreciate you saying that there really are some
24 excellent private providers doing this work and those are the
25 programs we need to grow.

1 THE COURT: And I -- you know, I'm not saying I'm for
2 or against. I'm just saying I don't have any opinion one way
3 or the other. I just want safe --

4 MR. CARSON: Okay.

5 THE COURT: -- placements. I said I want safe
6 placements for the children and I said you were supposed to be
7 beacon of hope, so every time I see that something happened at
8 your place, it causes me concern and if you can get a handle on
9 it, you could be the shining example that you were supposed to
10 be and probably still are.

11 So again, those are my concerns. Do you have any
12 questions at all, Mr. Carson?

13 MR. CARSON: Do have one clarification, if I may, on
14 Page 20 of the monitors' report. There's -- they state that 31
15 of 36 of our staff complied with Remedial Order 2 and if Kevin
16 or Deborah could let me know, somebody could let me know, we're
17 not quite clear who that 36 staff are, so we can get some
18 clarification on that, I want to get that fixed as soon as
19 possible.

20 THE COURT: Mr. Ryan, is that your area?

21 MR. RYAN: That is, Your Honor, and we've supplied
22 all those data to DFPS and HHSC and with respect to this, we
23 met with DFPS and asked if this data was also their data and
24 they confirmed that it was. I've been assuming that DFPS and
25 HHSC are communicating this information back to the SSCCs, but

1 we'll confirm that directly.

2 THE COURT: I guess when you --

3 MR. CARSON: Thank you.

4 THE COURT: -- maybe Mr. Ryan and Ms. Fowler, when
5 you communicate information about the SSCCs, it wouldn't be bad
6 to copy SSCCs, if you think it's warranted.

7 MR. RYAN: Yes, Your Honor.

8 THE COURT: All right, which leans us, I guess, to
9 Family Tapestry and you were turning away children in your
10 catchment. Is that right, Ms. Rodriguez? Nine children a
11 couple weeks ago?

12 MS. RODRIGUEZ: Yes, Your Honor, that's correct.

13 THE COURT: And that was, of course, a violation. If
14 you're going to take over the catchment, you have to accept the
15 children. That's a violation of your contract, I'm assuming.
16 Is that right?

17 MS. RODRIGUEZ: We find ourselves in a very difficult
18 and challenging position right now, Your Honor. Because of the
19 Family Tapestry, CPA has been placed on probation due to the
20 intake center. Part of the probation conditions was that we
21 could not have children or youth in an unlicensed placement,
22 and so as we actively seek out licensed placements for youth,
23 there have been some youth that we have not been able to find
24 placements for and so we've had to render physical possession
25 back to the department.

1 THE COURT: Okay, so you're not interested in keeping
2 your license then or -- because you're not providing -- you're
3 not providing placements to children in need in your catchment,
4 so I assume you're not interested, unless you get more money.
5 Is that the idea?

6 MS. RODRIGUEZ: That is not the idea, Your Honor.

7 THE COURT: Did you send a letter --

8 MS. RODRIGUEZ: We were required to --

9 THE COURT: -- send a letter that you were going to
10 turn in your license unless you got more money?

11 MS. RODRIGUEZ: We sent -- we did submit a
12 termination letter asking to discuss certain terms of the
13 contract that is making it difficult for us to continue and be
14 successful moving forward.

15 THE COURT: So you want --

16 MS. RODRIGUEZ: If I could --

17 THE COURT: You want to be able to reject children
18 and keep you contract. Is that right?

19 MS. RODRIGUEZ: No, Your Honor. We are diligent
20 working with providers to try to open up more capacity as we
21 have done all along.

22 THE COURT: What terms are you renegotiating --

23 MS. RODRIGUEZ: We ticked off --

24 THE COURT: -- terms you want to renegotiate. Do you
25 want to renegotiate the fact that you've got all the children

1 sent to you by DFPS?

2 MS. RODRIGUEZ: I do not want to renegotiate that.
3 What we want is an understanding and acknowledgement of the
4 current situation that we are currently in.

5 THE COURT: Well, then you --

6 MS. RODRIGUEZ: -- and the difficulty --

7 THE COURT: Looks like you placed --

8 MS. RODRIGUEZ: -- that we have finding placement for
9 some youth.

10 THE COURT: You owned Whataburger Center. Is that
11 right? You own that family -- the children's shelter?

12 MS. RODRIGUEZ: Correct, yes.

13 THE COURT: Which is the holding company for Family
14 Tapestry?

15 MS. RODRIGUEZ: That is correct, Your Honor.

16 THE COURT: And you all own Whataburger Center,
17 right?

18 MS. RODRIGUEZ: That is correct.

19 THE COURT: Do you want to review the problems with
20 Whataburger Center? They terminated their license December
21 31st of last year because they were on heightened monitoring
22 and yet -- by the way, the DFPS on December 28th of last year
23 found four children sleeping on the floor of Family Tapestry
24 Intake. Is that correct?

25 MS. RODRIGUEZ: That is correct. We were -- they

1 were on cots.

2 THE COURT: It says sleeping on the floor.

3 MS. RODRIGUEZ: (indiscernible).

4 THE COURT: Did you know they were sleeping on the
5 floor?

6 MS. RODRIGUEZ: We had them on -- to my knowledge, we
7 had cots for them, Your Honor.

8 THE COURT: Family -- DFPS said very clearly, they
9 were sleeping on the floor at Family Tapestry Intake, that you
10 didn't have beds there for them and that they -- and on
11 December 30th, RCCR, which is part of HHSC, arrived to
12 investigate allegations of an illegal operation and find two
13 children sleeping in a conference room which you -- which they
14 were told was considered a Family Tapestry office, and that the
15 administrator -- and told by the administrator that food was
16 brought in from Whataburger Center.

17 Children showered in Whataburger Center and you were
18 told that you must immediately stop use of Family Tapestry
19 Intake Center or any other non-4(e) eligible placement as a
20 placement for youth to stay overnight. So you got cited then
21 for running an illegal operation. Is that correct?

22 MS. RODRIGUEZ: That is correct. If I could provide
23 some context, Your Honor?

24 THE COURT: Is there context for this?

25 MS. RODRIGUEZ: When we opened -- well, just to

1 provide some context on the Whataburger Center and the intake
2 center to be clear on the distinction between the two. When we
3 opened up the SSCC we had one building and the model that we
4 wanted to create was we wanted to have a residential center, a
5 GRO, that we could use as a placement of last resort.

6 Historically, my catchment area had had -- frequently
7 had had youth in the office and so we knew that we had to have
8 a response for that, so we opened up the Whataburger Center and
9 designated a section of the Whataburger Center or that facility
10 to be the Family Tapestry Intake Center. And the intake center
11 was meant to be a very short-term, couple hour stay for
12 children and youth that were being removed from their homes so
13 they could come to the intake center while Family Tapestry
14 found their next placement, meant to really only be for a few
15 hours.

16 THE COURT: Well, that didn't happen.

17 MS. RODRIGUEZ: As we opened up the what -- after a
18 year, no. With the Whataburger Center, we had projected that
19 we would have anywhere between eight to ten kids at the
20 Whataburger Center at any given time, and when we went live, we
21 were inundated and overwhelmed. We actually ended up with
22 close to 20 youths that first weekend and they were youth all
23 with very high level needs and it took us a while to try to
24 staff up and get retrained and recalibrate that program, so we
25 did run into challenges.

1 We struggled with that program and the model that we
2 created as a no eject/no reject kind of placement of last
3 resort --

4 THE COURT: That's not a model --

5 MS. RODRIGUEZ: -- for the SSCC for Family --

6 THE COURT: You have to -- that's part of your
7 contract.

8 MS. RODRIGUEZ: Just proved to be problem-some for us
9 because we were getting youth with all sorts of characteristics
10 and all sorts of behaviors that proved to be problematic for us
11 with the residential program.

12 THE COURT: Well, what did you think was going to
13 happen --

14 MS. RODRIGUEZ: And so --

15 THE COURT: -- when you took in foster care --
16 children that had been severely damaged already and not cause
17 them more damage? You had -- Whataburger Center alone as of
18 January 5th, 2021, had 15 right to believes and their
19 deficiencies were 248. And you want to talk about those, what
20 those were for?

21 MS. RODRIGUEZ: So the 15 RTBs are over the span of
22 five years, Your Honor. During the time that we ran the
23 Whataburger Center, which was from February 2019 to December or
24 -- yes, 2019 to December of 2020, we had 12 RTBs. Some of
25 those incidents -- one of those incident -- it was one incident

1 that resulted in five RTBs. Many of those were related back to
2 child supervision, staff losing sight of youth or the youth
3 running away off our premises. Some of those dealt with
4 altercations, peer on peer fights that our youth had. I
5 believe that's what I recall.

6 THE COURT: You were placed on -- Whataburger Center
7 was placed on heightened monitoring on June the 11th, 2020. It
8 had 43 citations after it was placed on heightened monitoring.
9 Two were cited in June of 2020 after a staff person -- a staff
10 person -- instigated a fight between two residents, made
11 inappropriate comments toward a resident, that is children, and
12 threatened to harm them if they were to hit the staff. The
13 staff also used profane language.

14 Deficiency was cited on June the 18th, 2020 related
15 to caregiver responsibility because the staff admitted a child
16 in care who was on one-to-one supervision and were allowed to
17 talk to another resident who showed signs of aggression leading
18 to a physical altercation. Both residents were on one-to-one,
19 however being friends, staff allowed them to interact even
20 after witnessing one child provoke another.

21 Deficiency on July 6th, 2020 related to caregiver
22 responsibility when a 15-year-old male boy -- male broke a
23 window in the boys' hallway of the facility and he and two
24 other female residents escaped through the window and ran away.
25 Staff assigned to the children reported not being aware they

1 were assigned to them and said they didn't witness the
2 incident.

3 A deficiency in August 14, 2020 when a child who
4 previously self-harmed by cutting himself with a soda can was
5 able obtain another soda can and self-harmed again. The
6 child's safety plan required that he be kept within eyesight or
7 hearing range of staff. The child's roommate left the can in
8 their room and the child retrieved it to go to the restroom,
9 repeatedly bent the can until it broke in half, cut his arm.

10 Three deficiencies cited during a monitoring
11 inspection in August of 2020 related to administration of
12 medication when the inspection revealed that medication logs
13 did not include the time or dosage administered, inaccurate
14 medication counts and dosage provided to the children.

15 And I think I have several others. Do you -- thank
16 you. Two deficiencies in September of 2020 related to the
17 children's records. Service plan was not updated after the
18 child left the facility and then returned. Child's emergency
19 admission stated the child had chronic health conditions.
20 Another citation was issued because of the cleanliness. Re-
21 cited for this during a follow-up.

22 August -- October of 2020, a child had been in the
23 facility for five months and didn't have a completed service
24 plan. Four deficiencies were related to the children's medical
25 care identified on monitoring inspection in October of 2020.

1 Medication records show that the staff did not ensure that a
2 child took medications as prescribed, missed dosages, and that
3 the children was -- child was asleep.

4 Medication room was left unlocked. A child's record
5 showed that the medication log for the child's prescription
6 medications was pre-filled and two children's records showed
7 staff failed to document all instances of medication errors.

8 A deficiency in October 26, follow-up inspection
9 because of a child's medication log documenting the reason for
10 a misused dose. November of 2020, again failed to document
11 medication administered. December 16th, 2020, having reviewed
12 medication -- another citation for six children with medication
13 logs, finding errors in all of them. Contain conflicting
14 dispensing instructions for an over-the-counter medication.

15 Supervisor's keys were observed -- and this is
16 December citation -- we observed in the doorknob to the
17 medication room during a walk-through. In addition, several
18 other abuse and neglect investigations opened after the
19 facility was placed on heightened monitoring.

20 Alleged a child -- this is August of 2020 -- had not
21 received psychotropic medications. The medical director just
22 said they couldn't find them. Intake indicated the child
23 reported feeling anxious and depressed, pushed -- punched a
24 window try to escape. They found eventually the medications at
25 the top -- on the top of a fridge. The victim was interviewed.

1 He said he hadn't received his medications until he complained
2 to his caseworker on August the 10th, 2020, after being in
3 there since July of 2020, and then the RCCI investigator
4 substantiated that by review of the medication logs.

5 Then another investigation, a victim of a lot of
6 medical issues and requires a lot of medication according to
7 the quote, but refused medications. Intake said the staff
8 didn't do anything about the victim refusing his life-
9 sustaining medications. A child was then sent to the hospital
10 because his blood sugars were very high. The hospital
11 determined the child was about to go into adrenal failure and
12 diabetic ketoacidosis because the child had not been receiving
13 the medication at Whataburger Center.

14 During this interview, the child said he was -- had
15 refused his medication because he was sad and refused to eat.
16 Several of your staff, including the medical care director,
17 acknowledged the child refused his medication, but according to
18 that, the caseworker was not notified because the child missed
19 medications, and the medical professors were only --
20 professionals were only notified where there's a pattern of
21 refusing medication. Showed -- the medical records, however,
22 showed that the child had refused his medication 49 times
23 before being taken to the hospital.

24 And this goes on and on and on. Another one in
25 September of 2020, a female child had been sexually abused by a

1 17-year-old male child at the Whataburger Center. Twelve-year-
2 old child made a outcry with -- as to what the child did with
3 specificity.

4 And then there are others about using the unlicensed
5 Whataburger Center after the license was terminated. A letter
6 was sent to you on March the 8th which included an attachment,
7 Commissioner Masters' March 22nd 2021 email to the monitors
8 responding to their questions regarding the use of unlicensed
9 facilities.

10 Three specific sections were identified, Whataburger
11 Center, and to say that the intake center was not part of the
12 Whataburger Center is a semantic argument that is not
13 acceptable to the Court. It's separated by one door, same
14 staff, and those children that you placed there slept in
15 Whataburger Center after they were unlicensed.

16 I mean, you are running a dangerous, unsafe operation
17 and now you want more money to continue doing it, is what I
18 understand from your letter to the -- Commissioner Masters.
19 Now, tell me what you have to say about that other than you're
20 in a difficult place, which is clear.

21 MS. RODRIGUEZ: Your Honor, we share your concerns
22 and that is the reason why my organization then decided to
23 close the Whataburger Center. When we created it, we didn't
24 expect --

25 THE COURT: You didn't really have a choice.

1 MS. RODRIGUEZ: -- that we were going to be serving
2 20-plus high acuity youth and we were overwhelmed and
3 challenged with the challenges of those youth and we didn't
4 have the right model. We didn't get the right model in place
5 and we --

6 THE COURT: That --

7 MS. RODRIGUEZ: -- decided to close --

8 THE COURT: That child population --

9 MS. RODRIGUEZ: -- the program.

10 THE COURT: That child population is not going to
11 change. So you must've known before you entered into the
12 contract what the population was. It has not changed over the
13 years and you were unprepared to take care of those children
14 and you're still unprepared to take care of those children, and
15 now you want more money to do it. You still want to keep your
16 contract with DFPS?

17 MS. RODRIGUEZ: Your Honor, we're still having active
18 conversations both with the community and also with DFPS --

19 THE COURT: And with your legislators --

20 MS. RODRIGUEZ: -- and we're scheduling --

21 THE COURT: And with your legislators?

22 MS. RODRIGUEZ: I'm sorry?

23 THE COURT: You're still having active conversations
24 with community besides your legislators?

25 MS. RODRIGUEZ: Other community members as well, Your

1 Honor.

2 THE COURT: What other community members are you
3 talking about?

4 MS. RODRIGUEZ: Our local judges and also some of our
5 philanthropists who have invested in the community-based care
6 model.

7 THE COURT: Do they know what you've done with that
8 center? Do they know the deficiencies that have been cited?

9 MS. RODRIGUEZ: We have shared the challenges that we
10 have had at the Whataburger Center.

11 THE COURT: Have you shared the citations you have
12 received and the reasons therefor with your board members,
13 because they could be liable, you know, if they might get sued
14 -- if you're going to get sued for some of these actions.

15 MS. RODRIGUEZ: My board members are fully aware.
16 Yes, Your Honor.

17 THE COURT: Can I ask your attorney, is that correct?

18 MR. DEWALD: Your Honor, I've been involved in this
19 case since Friday evening when we received the subpoena, so I
20 can't confirm whether that's been passed along to all the board
21 of directors. I have had one conversation with a very active
22 board member along with other team members, Your Honor.

23 THE COURT: Have you seen these citations before
24 today, by the way? I'm talking to the attorney.

25 MR. DEWALD: Oh, I'm sorry. I thought you were

1 talking to Ms. Rodriguez. I have not seen any of the
2 citations, Your Honor. I've read the shorter, 58-page
3 monitors' report and wasn't able to fully digest the 358-page
4 monitors' report, so --

5 THE COURT: That's okay. That's hard to digest. But
6 the citations of Whataburger and Family Tapestry are serious
7 and an incredible safety issue, and to me it's absolutely
8 astounding that now Ms. Rodriguez has written to DFPS and
9 raised all kinds of issues with legislators and lobbyists and
10 what have you that they're somehow being discriminated against
11 with these citations and they could just function better if
12 they had more money.

13 And I hope that that doesn't occur, for the safety of
14 these children, because that -- I realize that your board
15 members are outstanding people but I cannot believe that they
16 had an actual handle on these citations. And the same thing,
17 by the way, with the community CPD, the training module was
18 never there properly. Caseworker caseloads were not properly
19 authenticated. Records were poorly kept. And it's astonishing
20 to me that they have received as few citations as they have.

21 Putting children in unlicensed facilities and trying
22 to pass them off as not really being there, and instead being
23 on conference room tables in somebody's office, this is just --
24 it's really not good. So -- and I understand, sir, that you're
25 a wonderful lawyer with an excellent reputation, but -- and

1 certainly I don't want to in any way get into conversations
2 between you and your client, but I urge you to look at these
3 citations and make sure they are conveyed completely to the
4 board of directors.

5 MR. DEWALD: Yes, Your Honor.

6 THE COURT: And same question, Ms. Rodriguez --

7 MR. DEWALD: Yes, Your Honor.

8 THE COURT: Were you reimbursed for any of these
9 placements in unlicensed facilities?

10 MS. RODRIGUEZ: No, Your Honor.

11 THE COURT: Did you ask for reimbursement? I saw
12 your email to Trevor Woodward asking -- saying what a financial
13 hardship --

14 MS. RODRIGUEZ: Not --

15 THE COURT: -- hardship this was, having a hold on
16 the placements.

17 MS. RODRIGUEZ: We have not asked for reimbursement
18 for unlicensed placements, Your Honor.

19 THE COURT: Have you received any reimbursements for
20 unlicensed placements?

21 MS. RODRIGUEZ: No, Your Honor.

22 THE COURT: All right, Mr. Yetter.

23 MR. YETTER: Your Honor, I will try to make this
24 brief, if I could. I just have a few questions for some of
25 these witnesses.

1 DIRECT EXAMINATION OF WAYNE CARSON

2 BY MR. YETTER:

3 Q Mr. Carson, I'd like to start with you.

4 A Sure.

5 Q My name is Paul Yetter. I represent the children. Can I
6 -- can we agree that the remedial orders that the Court has put
7 in place are a significant, important issue for you and your
8 facility, your operation to abide by?9 A The department has made it very clear to us that we are
10 expected to comply with the orders. Our contracts have been
11 adjusted to make sure we're doing so and so we're very aware
12 that the activities directed in the remedial order are part of
13 our responsibility to carry out in our region.14 Q It's a contract duty that you have with DFPS. Am I right
15 about that, Mr. Carson?

16 A Correct.

17 Q And as a result, I'm sure you've read the Court's entire
18 remedial order that was upheld in July of 2019?19 A The first time we were presented with the remedial orders
20 was in December of 2020. We received them December 4th and
21 then December 11th, we met with the monitors over a period of
22 two months, basically, to review the orders that applied to our
23 contract. Not all of the orders applied to our contract, but
24 there are some that -- they directly applied to our contracts.

25 Q All right, just to be clear, then, you did not get a copy

1 of the order from the State until December of 2020?

2 A Right.

3 Q But you've only seen it for the last months?

4 A Yes, sir.

5 Q What you read in the order, you agree with, that these are
6 changes that would be positive for the system. True?

7 A We think the order highlights some (indiscernible)
8 challenges that the Texas Child Welfare System has experienced,
9 and I think it's a very strong approach towards improving the
10 quality of care for kids and getting kids back into families
11 and making sure kids are safe and giving workers caseloads that
12 they can manage. So yes, we are not just complying because of
13 our contract, but we believe in them.

14 Q And in fact, after the remedial order came out in July of
15 2019, you were -- by the way, your first contract was in 2018
16 for OCOK?

17 A No, 2014.

18 Q Twenty -- I think OCOK was December of 2018.

19 A No, we started September of 2014.

20 Q 2014. So by the time of the remedial order in July of
21 2019, you'd been in place for a number of years. Right?

22 A We -- yes, we went live September of 2014.

23 Q And you were quoted in an article by a magazine called
24 "Imprint News." You were quoted on the foster care system and
25 the changes that were going on at the time in October of 2019.

1 Do you remember that?

2 A I did not remember that.

3 Q In fact, you were quoted by saying that you "couldn't
4 deliver quality services if it's just cost neutral." You need
5 more funds to do that from the State, right?

6 A I'm not sure what that references.

7 THE COURT: Could you tell him the name of the
8 publication?

9 MR. YETTER: Sure.

10 BY MR. YETTER:

11 Q "Imprint News," October 31st, 2019 and this attributes
12 this quote to you, Mr. Carson. See if this reminds you. "This
13 was sold" -- we're talking about community-based care -- "to
14 the legislature (indiscernible) cost neutral, and we said we
15 cannot deliver quality services if it's cost neutral," said
16 Wayne Carson, the executive director of ACH. "The state's case
17 management system has not been a good process. We don't feel
18 the families get a lot of support to reunify with their kids.
19 We hear about caseworkers that rarely meet with their kids.
20 The turnover was high. In my opinion, their caseload sizes
21 were just too high."

22 You remember giving that quote to "Imprint News"?

23 A I don't remember the exact quote, but I do remember the
24 context. In 2012 and 2013 when community based care was being
25 considered, it was being considered as a cost neutral approach

1 with the expectation that it delivered better outcomes and when
2 we originally looked at what the staffing level would take to
3 deliver stage one services, our org chart had about 53 people
4 on it in order to manage the requirements needed to perform
5 stage one services and the original contacts had 9.3 FTEs, so
6 we had a big difference in what we understood the manpower that
7 was needed to manage stage one being, and so that was a cost
8 neutral concern I had.

9 It was that to deliver better outcomes, there would be
10 some additional expenses, but we were confident that we could
11 deliver better outcomes with this model.

12 Q The bottom line is, to keep these children in safe
13 placements, you need the staff to do it, right, Mr. Carson?

14 A You need the staff and the -- you need providers that can
15 -- will contract with you and can contract with you to meet the
16 various needs of the children and services. You need to be
17 able to pay for the services the kids need. You need to have
18 the good data to know if you're performing well or not. So
19 there are a lot of things that are needed to perform well on
20 this contract.

21 Q And one of the things that you've talked about and you
22 were quoted about in this article was that you demanded that
23 the State give you a caseload cap of 14 children per
24 caseworker. Right?

25 A It was not a cap. It's an average, so we wanted to have

1 an average caseload size of 14 and the reason that's important
2 is because if you just cap it, you run into problems with
3 keeping sibling groups together under the same caseworker,
4 transitioning kids. Our goal is an average of 14, so we
5 wouldn't have a hard cap at 14, but we feel if we have an
6 average of 14, then our workers will be able to do their jobs
7 well with good supervision. The other part of this that's
8 important for us is that we have a supervisor/caseworker ratio
9 that can allow supervisors to provide good supervision of
10 workers.

11 Q So bottom line is that the caseload standard in the
12 remedial order of 14 to 17 is something that you support, is it
13 no?

14 A We do, yes.

15 Q You think that's a change in the system that will keep
16 children safe. True?

17 A We think it's part of a change that will keep children
18 safe, yes. It's a complicated system and so having caseworkers
19 that know their kids and are actively working towards their
20 children achieving permanency is certainly one part of what is
21 needed to improve the system.

22 Q Okay, one last question for you, Mr. Carson. Putting
23 children in unlicensed placements is not a system that you
24 prefer to follow, is it?

25 A It is completely a last resort if we are unable to find a

1 licensed placement for a child and so no, we do not use it
2 casually. We don't use it willingly, but if it's a choice
3 between a child sleeping in a conference room and a child
4 sleeping in a bed and -- with the same staff that would be
5 caring for them essentially, we believed that the -- having
6 that rental house available is a better alternative, given the
7 choices.

8 THE COURT: Is there some --

9 BY MR. YETTER:

10 Q Your contract requires you --

11 THE COURT: Is -- I just --

12 MR. YETTER: Excuse me, Your Honor.

13 THE COURT: Is there some kind of a cost involving
14 getting a placement license?

15 MR. CARSON: Yes, it's costly.

16 THE COURT: Okay. Well, that explains some of it.

17 MR. CARSON: Well, part of the reason -- again, the
18 other challenge is, again, we went four years hardly using this
19 at all, so if you have a licensed program, it has to be active
20 to keep the license active, so we had a very similar
21 circumstance in 2015 and 2016. We had a very high-level use of
22 unlicensed placements because we just did not have a provider
23 network that could care for all the needs of our children. We
24 solved that problem and we built capacity that was able to meet
25 the needs of our children.

1 We learned very quickly that just knowing how many
2 beds you have is not enough information, that you have to know
3 how many people can take teenagers, how many people can take
4 children with severe medical needs, how many people can take
5 children with certain types of behavioral challenges. And so
6 we worked hard to build the capacity we needed. That's where
7 we had a four -- and I've got this data. I'm glad to share it.
8 We had four years where we hardly used it at all. We used it
9 periodically, but then the usage of it has increased
10 significantly since the last quarter of 2020.

11 MR. YETTER: Thank you, Mr. Carson.

12 DIRECT EXAMINATION OF SHIRLEY DWYER

13 BY MR. YETTER:

14 Q Ms. Dwyer, I just have a couple questions for you. Am I
15 correct that you also agree that the changes to the system that
16 are reflected in the remedial order of this Court are things
17 that you support and you believe that should be implemented
18 ASAP?

19 A We do want to make sure that kids are safe and we are in
20 agreement with the remedial orders.

21 Q Likewise, there's no -- it is not the way you should be
22 doing business to have -- to putting children in unlicensed
23 placements. You'd agree, that's not what you prefer to do?

24 A We never prefer to put children in unlicensed placements
25 and we have not had children in unlicensed placements until

1 April and we had 24 days -- am I right, 24 days? Twenty-four
2 days of having children in unlicensed placements and we have
3 not had children in unlicensed placements for the last week.
4 And it is our desire to not have children in unlicensed
5 placements.

6 Q And are you committing to the Court that you're no longer
7 going to be following that practice of putting children in
8 unlicensed placements?

9 A We would never say that that was a practice that we have.
10 We used an unlicensed placement because we had no other
11 alternative. We were unable to find appropriate placement to
12 meet the children's needs at that point in time. We have put
13 in place a lot of -- we've been working very diligently trying
14 to increase our capacity and trying to avoid having any other
15 child being in an unlicensed placement.

16 MR. YETTER: Thank you, Ms. Dwyer. Now, Ms.
17 Rodriguez, I'd like to ask a few questions of you and then I'm
18 finished, Your Honor.

19 THE COURT: Let me ask the one thing that I forgot to
20 ask before. The monitors had informed me, Ms. Rodriguez, that
21 you were paying -- I'm trying to remember now, the children's
22 shelter, the holding company, were paying -- you were paying
23 yourselves \$500 a day while kids were at Whataburger Center in
24 an unlicensed -- after they'd given up their license, either in
25 the adjacent intake center or in Whataburger Center. Is that

1 correct?

2 MS. RODRIGUEZ: That is not correct, Your Honor. We
3 paid while we had a license, so when Whataburger Center was a
4 licensed facility for youth that went into that facility, we
5 did pay \$500 a day. That's the same rate that we paid other
6 providers for the same level of acuity if they took the same
7 type of child in the community.

8 THE COURT: I misread the information from the
9 monitors. I misspoke. Thank you. Go ahead, Mr. Yetter.

10 MR. YETTER: Okay, Your Honor.

11 DIRECT EXAMINATION OF ANNETTE RODRIGUEZ

12 BY MR. YETTER:

13 Q MS. Rodriguez, let me just -- I want to make a few points.
14 One is that the problems at the Whataburger Center are not new,
15 are they?

16 A We had a -- we were running a RTC called KCI for the first
17 -- when you do the five-year lookback, the first three years
18 were -- was an RTC. We -- when we received the contract for
19 the SSCC, we closed that program. We didn't close the license.
20 We just closed the program so that we could then create the
21 Whataburger Center specific to the SSCC's needs which was to
22 create a no eject/no reject kind of catch-all program, and so
23 we do -- the Whataburger Center did carry over three years of
24 history from a previous program that we were running in that
25 facility.

1 Q Then my question, Ms. Rodriguez, is the problems at the
2 Whataburger Center are not new, are they?

3 A We've been dealing with high acuity youth for some time,
4 and so we've had some challenges and we have tried to address
5 those as they arise.

6 Q And even setting aside the prior facility, KCI, when you
7 opened Whataburger Center in 2019, within just about a year, it
8 was put on heightened monitoring, wasn't it?

9 A That's correct, yes.

10 Q -- of 2020, and that was because there was a series of
11 problems, medication and other problems, right?

12 A Right. As I mentioned earlier, we were overwhelmed with
13 the number of staff and we tried to overcome that by hiring and
14 retraining and bringing in additional trainings and staff and
15 so we did have challenges.

16 Q Okay. And you said to the Court that you were overwhelmed
17 from day one of opening the Whataburger Center. That'd be
18 February 2019, right?

19 A That's correct, and we did after we were placed on
20 heightened monitoring, we did turn the corner. There were
21 several months where we went with virtually no deficiencies and
22 we felt like we had gotten a handle on the program. We had
23 lower census. We had staff. Unfortunately, then we got hit
24 with the pandemic and we felt a shortage of placements again
25 during those summer months after March of 2020 and our census

1 spiked back up and we saw some of the same challenges that we
2 saw early on.

3 Q Okay. So you start in February 2019. You have a lot of
4 problems at the start. You have a little window where it seems
5 to stabilize, but then by a year later, March of 2020, you're
6 spiking again and you're having lots of problems. True?

7 A Correct, yes.

8 Q Then by June of 2020, you get put on heightened monitoring
9 because of all these problems, right?

10 A Correct.

11 Q And it doesn't get better.

12 A Correct. We had staffing issues with the pandemic and
13 also just continued challenges of placing a certain population
14 of our networks.

15 Q But you -- this was a residential treatment center. This
16 is designed to provide care to children at the highest service
17 levels, right?

18 A This was a GRO, an emergency shelter.

19 Q By September 2021, DFPS puts the center on a placement
20 hold, an admissions hold because of all the problems that are
21 ongoing, right?

22 A That's correct.

23 Q You -- and it cost money to your facility and to your
24 organization and you complain about that, don't you?

25 A We had put a plan in place for the department when they

1 placed us on placement hold. We came back with some
2 modifications that we thought we could make it successful and
3 so we had hired some additional staff. We brought in some
4 different training and so we were maintaining a fully staffed
5 facility for several months and as a nonprofit, we did have
6 difficulty with the financials of that program without being
7 able to take in additional youth.

8 Q Okay, and so by -- within a month, DFPS sends you a letter
9 saying you cannot -- Family Tapestry cannot use Whataburger
10 Center or any connecting buildings to house these children,
11 right?

12 A That's correct.

13 Q And the Family Tapestry Intake Center is not even a
14 connecting building. It was part of the Whataburger Center
15 originally -- designated it as the Family Tapestry, Limited,
16 right?

17 A That's correct.

18 Q Okay. So it's all the same big building and they tell you
19 you cannot use it. You cannot put any more children there and
20 you continued to put children there.

21 A When they placed the Whataburger Center on placement hold,
22 we did have to use it once in September for three youth and
23 again in October for another three youth, but we were working
24 with our partners, our network partners, to add additional
25 beds, so we were able to add additional capacity to our

1 network, and so we did not use it after that last stint in
2 October. But then in December, in late December, we did find
3 ourselves not having placement for particular youth and we did
4 end up having to use the intake center again.

5 Q Okay. In the midst of -- you knew that it was illegal to
6 use the intake center or the Whataburger Center to put children
7 in, because they had told you not to do that, right?

8 A They had instructed us not to use it. We were cited for
9 running an illegal operation. We just didn't have anywhere
10 else to place those youth.

11 Q And even though you knew you were running an illegal
12 operation and they -- and DFPS told you not to do it, you sent
13 the letter to DFPS saying it's really unfair that we're on this
14 placement hold and you're costing us lots of money. Right?

15 A I'm sharing information with the department, asking about
16 the placement hold. They hadn't given us a timeframe of when
17 they might lift it, and so part of the letter was requesting a
18 timeframe or continued discussions about what we might be able
19 to do to lift that placement hold.

20 Q Then just a few days later you said, we're going to give
21 up our license for the Whataburger Center, right?

22 A In December of -- I think December 8th of 16th, I'm not
23 sure exactly on the date -- yes, the organization made the
24 decision to relinquish our license after having conversations
25 with the board, realizing that this was not our area of

1 expertise and we just really didn't get the model right with
2 these youth and we needed to step out of this particular space.

3 Q None of this was going well, right, Ms. Rodriguez?

4 A In terms of the Whataburger Center?

5 Q Right. It was chaos.

6 A We were having difficulty with older youth and finding
7 placement for them. It was a service gap in our network and we
8 thought that we could step into the space and provide the
9 services and the care that these youth need and we obviously
10 did not.

11 Q And you kept putting children there, even after you
12 voluntarily gave up the license, didn't you, Ms. Rodriguez?

13 A We had them at the intake center, again, because we had no
14 other option at that time.

15 Q And then, Family Tapestry in January sent the letter to
16 the Whataburger Center canceling its contract. What was the
17 point of that? You were still using it.

18 A We were canceling with the Whataburger Center contract, so
19 it's part of our process so we -- Family Tapestry still has to
20 follow its processes and practices, so if a program closes
21 whether it's under the umbrella of the children's shelter or
22 another organization, we provide notification through Family
23 Tapestry to document the actions being taken.

24 Q And then, you keep doing the same thing and by early
25 February -- February the 2nd -- a state investigation finds

1 that you're -- that 12 children are sleeping in the Whataburger
2 Center, right?

3 A Correct.

4 Q And you get --

5 A We have continued to -- we have, throughout this period,
6 have been diligently working and trying to build capacity. We
7 ran a foster care campaign to try to recruit more foster
8 families and have had active conversations with providers and
9 trying to bring in new providers into the area to open up new
10 facilities for -- particularly for these older youth. And
11 again, we only used the intake center because we had no other
12 option.

13 Q And it is not until March 24th of 2021, after the monitors
14 complained to DFPS, when they find out from a whistleblower and
15 they complain, that DFPS tells you to move all the children out
16 of Whataburger Center, right?

17 A That's correct, out of the intake center, yes.

18 Q You'd agree that that's not the way to run a safe child
19 welfare facility, is it?

20 A You would want them in a licensed facility making sure
21 that they're receiving the treatment model that they need and
22 getting all -- getting the care that they certainly deserve.

23 MR. YETTER: Ms. Rodriguez, that's all the questions
24 I have. Your Honor, pass the witness.

25 THE COURT: One of the monitors just texted me a

1 while ago that Ms. Masters had a family incident and wanted
2 time to speak to -- on the record about having to leave the
3 hearing, so I just wanted to tell you that she was gone and I
4 didn't see the text in time to give her that courtesy.

5 Anybody from the state --

6 MS. FORE: I'm happy to pass that along to her, Your
7 Honor.

8 THE COURT: Pardon?

9 MS. FORE: I said I'll -- I'm happy to pass that
10 along to her, Your Honor.

11 THE COURT: Thank you very much. I appreciate it.
12 Any questions from the defense?

13 MS. FORE: No questions from DFPS, Your Honor.

14 THE COURT: HHSC?

15 MR. BRISSENDEN: No, Your Honor.

16 THE COURT: The governor's office?

17 MR. SWEETEN: None from the governor's office, Your
18 Honor.

19 THE COURT: Just out of curiosity, mister -- who's
20 here from the governor's office? Mr. Sweeten?

21 MR. SWEETEN: Patrick Sweeten and Eric Hudson for the
22 Office of the governor, yes.

23 THE COURT: Had you all -- did you all know about
24 this? I know you were informed of the history of Family
25 Tapestry because I think somebody told me in the last hearing

1 that you knew, at least when HHSC did, which I knew was at
2 least as early as October of last year, so is this new
3 information for you all?

4 MR. SWEETEN: No, (indiscernible), Your Honor. We
5 saw it in the monitors' report as far as -- and I think Ms.
6 Farley indicated that we were notified sometime in October, is
7 what I recall. Believe that's correct. If by "this," you mean
8 the Whataburger Center.

9 THE COURT: Well, the general outline of all the
10 citations and the concerns, which are --

11 MR. SWEETEN: Yeah. Your Honor, I would have to
12 consult with my client about this. I also think that it may
13 involve some privilege issues between the governor's office and
14 DFPS, but I'll have to --

15 THE COURT: You know, you're right about that.

16 MR. SWEETEN: -- I would have to consult --

17 THE COURT: I should -- I just wanted to know if this
18 was a new disclosure about all of these violations, but I guess
19 it's all in the report, so you would know at least by the time
20 of the report. I guess I wanted to know if it shocked the
21 conscience of the defendants.

22 MR. SWEETEN: Well, Your Honor, obviously we -- the
23 governor's office has been in contact with DFPS and with HHSC.
24 We are in touch with them on a regular basis. We are, you
25 know, engaged in this issue. The Court has seen, I know, the -

1 - there was a letter in December to absolute -- to both to
2 absolutely adhere to this Court's order. We have been
3 consistent with that message. The governor has been -- has
4 very plainly said both in the State of the State --

5 THE COURT: Yes.

6 MR. SWEETEN: -- address as well as in public
7 statements that he wants full adherence to this, to this
8 Court's order. Certainly, I think I can say from my
9 perspective that the information that is needing discussed, it
10 has been discussed over the last hour-and-a-half is certainly,
11 you know, of great concern, but as far as -- we are engaged in
12 this issue and certainly the operational arms of these
13 agencies, we certainly are encouraging them to absolutely
14 comply with this Court.

15 THE COURT: I have no reason to doubt any of the
16 sincerity of that, so I guess -- it's just so disappointing to
17 hear about this. You know, again, my concern is safe
18 placements for these children. Anything else before we close
19 for the day? Do you want to meet earlier tomorrow at 8:30 or
20 is 9:00 preference? I think we want to be over as soon as
21 possible tomorrow, if we can plan on that. We have left to
22 cover the monitors' report and I'm not sure we have a lot to
23 do. I mean, it is what it is, and I think anything further
24 would probably be by way of motions for contempt or nothing at
25 all, just encouraging on the road to progress.

1 Mr. Yetter, what is your thought on this? I mean the
2 monitors --

3 MR. YETTER: They --

4 THE COURT: The monitors' report is again, once
5 again, unbelievable.

6 MR. YETTER: It is as thoroughly well documented as
7 it could possibly be. Your Honor, I made a list of the issues
8 and I'm trying to find the list that I made that you gave at
9 the outset, but I think one that comes to mind is fatalities,
10 but -- which is obviously a very significant issue.

11 THE COURT: I want to cover that tomorrow and then
12 some miscellaneous things like the Devereux and The Tree House
13 which The Tree House showed up suddenly because the district
14 attorney had a warrant to search and seize all computers,
15 cameras, records of the children in The Tree House and
16 subsequent to that DFPS went in and placed 24-hour supervision
17 until the children were out of The Tree House, but that's
18 concerning.

19 You know, all those kind of things that keep popping
20 up, and then I wanted to kind of review the deficiencies,
21 citations, and closures of the GROs and we pretty much --

22 MR. YETTER: Your Honor? I think one thing that we
23 might consider --

24 THE COURT: We can talk some more about high-end
25 monitoring tomorrow.

1 MR. YETTER: (indiscernible) placements might be
2 something, Your Honor, that we should do tomorrow.

3 THE COURT: Pardon?

4 MR. YETTER: Children without placements, just the
5 growing --

6 THE COURT: Yes, that incredible --

7 MR. YETTER: -- number --

8 THE COURT: -- Children Without Placements report.
9 We've got to go -- we've got to review that. I just don't know
10 how much time to allocate tomorrow for you all. We could go
11 straight through from 9:00 until 1:30 with a short break and
12 see if we can conclude those areas of heightened monitoring,
13 fatalities, closures, and the CWOP report. Again, I'm not sure
14 that we need to go through the monitors' report piece by piece
15 because it speaks for itself and everybody here has read it,
16 apparently.

17 Anything else before we close for the day? So we'll
18 plan on trying to do this from nine to 1:30 tomorrow.

19 Mr. Yetter, what is your conflict and can you get out
20 of it?

21 MR. YETTER: Wish I could, Your Honor, but it is a
22 big hearing in Sherman, in the Eastern District of Texas before
23 Judge Jordan and I just didn't realize that this -- and he said
24 it some time ago and there's a lot of lawyers involved in it --

25 THE COURT: Yeah, well, so is this and it's been set

1 since December and it was set for three days.

2 MR. YETTER: I didn't realize it was set for three
3 days, Your Honor, and that's my fault.

4 THE COURT: And you are lead counsel in this case and
5 I don't know what to tell you except I expect you here. Do you
6 want me to call the judge?

7 MR. YETTER: It is -- this hearing has been -- I'm
8 sorry to say, Your Honor, it is -- it would be a real problem
9 for lots of lawyers that are coming in from various parts of
10 the country. We -- it's a big case, Your Honor, that -- not
11 that this one isn't. This is probably my most important case,
12 but it's a significant case that has -- a lot of people's
13 schedules have already been set on this and --

14 THE COURT: And that's an in person---

15 MR. YETTER: It's my fault, Your Honor.

16 THE COURT: Are you saying that's an in-person
17 hearing?

18 MR. YETTER: It is, Your Honor. I'm going to -- it's
19 in the Plano Courthouse in the Sherman Division, so I'm flying
20 up first thing in the morning.

21 THE COURT: I'm just telling you what my ruling is.
22 So I will see you all at nine o'clock in the morning. Thank
23 you very much.

24

* * * * *

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: May 12, 2021