

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as)
parents, guardians, and next) File No. 09cv1775
friends of Bradley J. Jensen;) (DWF/BRT)
James Brinker and Darren)
Allen, as parents, guardians,) St. Paul, Minnesota
and next friends of Thomas M.) April 16, 2019
Allbrink; Elizabeth Jacobs, as) 1:38 p.m.
parent, guardian, and next)
friend of Jason R. Jacobs; and)
others similarly situated,)

Plaintiffs,
vs.

Minnesota Department of Human
Services, an agency of the
State of Minnesota; Director,
Minnesota Extended Treatment
Options, a program of the
Minnesota Department of Human
Services, an agency of the
State of Minnesota; Clinical
Director, the Minnesota
Extended Treatment Options, a
program of the Minnesota
Department of Human Services,
an agency of the State of
Minnesota; Douglas Bratvold,
individually and as Director
of the Minnesota Extended
Treatment Options, a program
of the Minnesota Department of
Human Services, an agency of
the State of Minnesota; Scott
TenNapel, individually and as
Clinical Director of the
Minnesota Extended Treatment
Options, a program of the
Minnesota Department of Human
Services, an agency of the
State of Minnesota; and the
State of Minnesota,

Defendants.

BEFORE THE HONORABLE DONOVAN W. FRANK
UNITED STATES DISTRICT COURT JUDGE
(Biannual Status Conference)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

APPEARANCES

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P R O C E E D I N G S

IN OPEN COURT

THE COURT: Good afternoon, Counsel.

MR. O'MEARA: Good afternoon.

MR. IKEDA: Good afternoon.

THE COURT: Why don't we begin.

Just for the purpose of the record, we'll just have Counsel note their presence for the record. And then obviously we've been together on these get-togethers before, so we'll -- and we have an agenda, and we'll do it substantially the same as we have in the past.

Before we make any opening remarks, why don't we have Plaintiffs' Counsel note their presence for the record, and then we'll move over to Defense Counsel.

MR. O'MEARA: Good morning, Your Honor. Shamus O'Meara on behalf of the class.

MR. IKEDA: Good afternoon, Your Honor. Scott Ikeda, Assistant Attorney General for the Defendant Commissioner. Also with me is Assistant Attorney General Aaron Winter.

Then I've got a couple of people from DHS and Olmstead.

Would you like me to wait on those introductions?

THE COURT: You can go ahead. I do recognize a number of them, just like I recognize the consultants over

1 here, and a number of folks here, but we can go ahead.

2 MR. IKEDA: Sure.

3 Your Honor, I'll -- I'm sure there are a lot of
4 faces in the crowd that you and both Judge Thorson recognize
5 if you've spent a lot of time with folks at DHS and the
6 Olmstead group.

7 Rather than introduce everyone in the audience,
8 I'll just introduce the principle people that may be
9 speaking.

10 THE COURT: Okay.

11 MR. IKEDA: So from DHS we've got Peg Booth from
12 the Quality Insurance Disability Services Office.

13 Dan Hohmann from the Direct Care and Treatment
14 Division.

15 Jill Slaikeu, from DHS licensing.

16 And Alex Bartolic from Disability Services. I
17 know that both of you have met Alex before.

18 THE COURT: Yes.

19 MR. IKEDA: And then from the Minnesota Housing
20 and Finance Agency is Commissioner Jennifer Ho.
21 Commissioner Ho chairs the Governor's subcabinet.

22 And so those are the principle people that will be
23 speaking.

24 I should also note that DHS Deputy Commissioner
25 Chuck Johnson and Deputy Commissioner Claire Wilson are both

1 here.

2 THE COURT: I did see them both here.

3 MR. IKEDA: Thank you, Your Honor.

4 THE COURT: The Court -- and then I'll also
5 acknowledge the presence of Roberta Opheim and Colleen
6 Wieck, as well.

7 And to the extent that there's other individuals,
8 I don't mean any offense if they were saying, well, why do
9 you introduce some but not the others?

10 But two things, one, they were, some years ago
11 now, since early 2011, consultants.

12 And then one other thing, I doubt that my
13 Courtroom Deputy said, David Ferleger is on the phone.

14 He's not -- he's not here. The -- who's acted,
15 you know, as a court monitor in the case over the years.
16 Hasn't recently that -- and he has -- he's on the phone.

17 He won't be participating in the extent that --
18 speaking, but he is on the phone from his office out east,
19 just so that you're all aware of that.

20 Because I don't claim that we sent out a notice
21 for that. So he's on the phone listening. And, not unlike
22 we have on some of our national cases, whether it's -- even
23 when somebody's not a monitor, we'll often times, with rare
24 exceptions, let people listen in, but not speak.

25 One, for the benefit of the parties.

1 And two, so a court reporter can kind of get
2 everything down in case somebody wants a record.

3 Well, as most of you know, the last time we were
4 together was sometime, generically we call them status
5 conferences, was on July 12th of this last year.

6 And I'm sure some of you are disappointed that we
7 couldn't be meeting last week on, say, Thursday, so you
8 could be trapped here in the snowstorm, or the weather we
9 had, as it was.

10 And then since then, as many of you in the room
11 know, especially Counsel, and a number of your people you've
12 been directly working with, the -- pursuant to the Jensen
13 Settlement Agreement and the Comprehensive Plan of Action,
14 the Defendants have filed an Semi-Annual Compliance Report
15 and a Comprehensive Summary Report.

16 The Summary Report was filed in lieu of the Annual
17 Report and Second Semiannual Report.

18 And then with respect to the Olmstead Plan,
19 they've also filed two quarterly reports, an Annual Report,
20 and the March 19th, 2019 -- 2019 -- or March 2019 revision
21 to the Olmstead Plan report.

22 So for all of those -- those filings, the Court
23 thanks the parties and those in attendance for their role
24 that many of you played directly, indirectly, along with the
25 consultants.

1 In particular, we continue to appreciate the time
2 that people contribute to help, which I think is the goal,
3 and maybe we'll all, frankly speaking, as a group, whether
4 it's the Court, Defense, Plaintiff, agencies involved, all
5 of us, be judged, on, well, are we indeed improving the
6 lives of the people, as we have promised that we would,
7 those individuals with disabilities?

8 But I do want to thank everyone for doing their
9 role.

10 Because I think, while there might not be
11 agreement on all issues, I don't think I'm going to hear
12 anybody today say that in -- in different ways, in different
13 degrees, we've -- many of you have improved the lives of
14 individuals with disabilities in the State of Minnesota.

15 And so I don't think there's an issue about that
16 progress has been made. There may be other issues with
17 respect to making sure that our promises were kept and not
18 the -- that the Jensen lawsuit did and the settlement did
19 what it was intended to do by the parties.

20 So where does that leave us today? And it won't
21 be a surprise to anyone because of our get-togethers in the
22 past.

23 Hopefully we're here to assess, well, where are we
24 today and identify next steps.

25 And then what's probably on the minds of more this

1 year than last year, and the year before, because we've been
2 together since 2011 as well, is there a way for the parties
3 and the Court, as we each deem it just and equitable, to
4 bring the cases, the Court's jurisdiction to this matter, to
5 an end?

6 And obviously we'll have, at a minimum, one more
7 get-together. I say the words get-together. We so often
8 times we have status conferences between now and the end of
9 the year.

10 And then we'll discuss towards the end of this
11 agenda item, the issue and request of Plaintiffs' Counsel
12 for what has been termed an evidentiary hearing, so.

13 With that, we have these agenda items here.

14 And Judge Thorson, is there anything else you'd
15 like to say as we head out into the -- I guess the first
16 thing on our agenda is the subject is the Olmstead Plan
17 Implementation.

18 And you can proceed as you deem appropriate,
19 Counsel.

20 And you can tell your experience coming here,
21 because you're aware, a lot of lawyers aren't, you can move
22 that podium up and down.

23 MR. IKEDA: I've spent a lot of time in your
24 courtroom, Your Honor.

25 Well, before we get started --

1 THE COURT: Okay.

2 MR. IKEDA: I think it's worth saying a few
3 things, and I'm pretty sure Mr. O'Meara will want to have a
4 chance to respond.

5 THE COURT: Fair enough.

6 MR. IKEDA: You know, I think it goes without
7 saying, Judge, and I've said this before when we've gotten
8 together, so this has been something that's been on the
9 Defendant's mind for a while now, but the time for the Court
10 to end its oversight has long since past.

11 What you have in front of you today, Your Honor,
12 makes that abundantly clear.

13 You have an Olmstead subcabinet that has been
14 working, that is continuing to work on pursuing goals that
15 were put together in -- with Judge Thorson's assistance.

16 Judge Thorson, you know, has, in working on those
17 goals with the Defendant, talked about how these were going
18 to be reaches, stretches, things that, you know, that were
19 worth pursuing, but that may not be necessarily
20 accomplished.

21 And so you can't really judge the success or
22 failure of the Olmstead Plan based on whether goals were met
23 or not. And that was -- that is obviously a product of the
24 process in which the Olmstead goals were created.

25 And then you've got the Department of Human

1 Services that submitted a comprehensive report. I think the
2 number was over 1200 pages of source data. A 235-page
3 Summary Report to the Court that sets forth that it is in
4 compliance with all of the evaluation criteria.

5 And I know Your Honor has on the agenda at the
6 very end we're going to talk about the legal standard by
7 which the Court will use to determine its ongoing oversight,
8 and ongoing reports, and meetings like we're having today.

9 But, frankly, by any standard, the Department,
10 whether it's compliance, or substantial compliance, or the
11 Plaintiffs' burden to show substantial noncompliance,
12 they've -- they've checked those boxes.

13 And it's time for -- it's time for the federal
14 court to end its -- it's involvement with a state agency.

15 What you haven't had -- and this is not new to the
16 Plaintiffs, not new to the Court, is for years -- I think
17 back -- I remember back in 2016. I think I said in response
18 to something that the Plaintiffs raised, I said, you know,
19 if they think there's an issue, there's a process by which
20 they can address that, and that's by motion.

21 We've gone years. There's been no such motion.
22 There's no motion pending today.

23 A motion would obviously require some evidence.
24 The Plaintiffs haven't done any of that for years now.

25 And it's -- it's frankly, it's time for the Court

1 to allow the Department to get on with the work that it does
2 and the good work that it does. And allow it and its people
3 to get back to that work and to be able to focus exclusively
4 on that work, without having to spend, what I understand,
5 Your Honor, from my client is thousands of hours just
6 putting the report together.

7 A couple thousand hours putting the report
8 together. Thousands more if you count the other reports
9 that the Department has had to submit to the Court.

10 And that's time, and that's resources, and that's
11 money that the Department can't use to serve the people that
12 -- that they are charged with serving.

13 And so in light of the filings, it's abundantly
14 clear that it's -- and in the absence of evidence to the
15 contrary, it's time for this to come to an end.

16 The Department and the subcabinet look forward to
17 presenting to you today consistent with that. And -- and
18 consistent with their view that they are doing what they
19 need to do and doing what they would like to do in the work
20 that they're -- in the work that they've undertaken.

21 And so with that, I would like to bring up the
22 Commissioner of the Minnesota Housing Finance Agency who
23 chairs the Governor's subcabinet -- Olmstead subcabinet, and
24 that's Commissioner Jennifer Ho.

25 THE COURT: Before we do that, I'll hear a brief

1 response. You'll both have an opportunity at the end of the
2 agenda to kind of make sure that we understand where --
3 where that leaves us, today, but.

4 But Mr. O'Meara?

5 MR. O'MEARA: Thank you, Judge Frank, Your Honors.

6 Well, it's very telling that DHS Counsel would
7 stand up and the first thing that he does is -- is try to
8 avoid their responsibility and their noncompliance conduct
9 over now eight years.

10 I come from a very different perspective.

11 I represent a class of vulnerable people who were
12 abused by the Department of Human Services in a
13 state-operated facility.

14 They were thrown in there and committed in there
15 for touching a pizza box. And then they were handcuffed and
16 shackled with leg shackles and thrown to the ground in prone
17 restraint.

18 So many times, if you just read the plain wrong
19 report by our very courageous state Ombudsman, from Mental
20 Health and Developmental Disabilities, they would assume the
21 position on the ground because they were repeatedly abused
22 by these people.

23 The Eighth Circuit Court of Appeals has spoken on
24 it. This Court has spoken on it repeatedly. And this Court
25 granted our motion for sanctions.

1 So when Mr. Ikeda stands up here, and again says
2 we never filed a motion, that is plainly wrong. It's in the
3 record and this Court spoke on it.

4 That's the reason why the Court extended
5 jurisdiction and continues to extend jurisdiction.

6 And why after we see 617 uses of mechanical
7 restraint in the last fiscal year, with no articulation
8 which facility they are, and we're left to guess, they want
9 out.

10 It may be eight years, but to the people that are
11 being abused, it's a lifetime.

12 And if we let these departments in Minnesota and
13 elsewhere off scot-free in the wake of their continued
14 documented abuse, and after rejection of failed jurisdiction
15 positions, we're doing these people wrong.

16 These are vulnerable -- vulnerable adults that
17 have been abused and continue to be abused by the State, by
18 the Department of Human Services, who were charged with
19 their well-being. Thank you.

20 MR. IKEDA: Well, Your Honor, it's, I think
21 offensive is maybe too light of a word to suggest, I think,
22 what the Plaintiffs' Counsel is not just suggesting, is
23 saying is that there's ongoing -- I think I wrote it down,
24 continued documented abuse.

25 It, you know, if he wants to --

1 MR. O'MEARA: That's exactly what I said.

2 THE COURT: One Counsel at a time. I'll -- all
3 right. He agrees.

4 MR. IKEDA: Your Honor, if -- my point is simply
5 this. What Mr. O'Meara's talking about is, I think when
6 he's talking about a contempt, or, I'm sorry, not contempt,
7 but when he's talking about an order to show cause related
8 to the licensing, which my recollection was that was maybe
9 in 2015, maybe, 2014-2015, maybe around that timeframe, the
10 Plaintiffs have not done anything since.

11 Yet the Plaintiffs come in here at every hearing
12 and repeat the same thing over and over again.

13 They bring up licensing. They bring up -- they
14 hurl allegations of ongoing abuse and abuse by -- the
15 people -- suggesting the people in the room. I frankly
16 don't know who that -- that was a pretty nonspecific
17 allegation and suggests -- and indicate that they're
18 avoiding responsibility.

19 Well, Your Honor, they've been in front of you for
20 eight-and-a-half years.

21 They've been in front of you on putting together
22 an Olmstead Plan, which the Court -- which the Court
23 approved, which the Court has said in the past some very
24 positive things about the -- about the process, and the work
25 that the Olmstead subcabinet has done.

1 In fact, at the very beginning of this hearing,
2 the Court noted the progress that's been made.

3 And so this suggestion that, you know, four,
4 five-year-old conduct is enough for -- for the Court to, to
5 continue its jurisdiction indefinitely is nonsense.

6 It can't possibly be the case.

7 And, frankly, if the Plaintiffs believe that
8 there are things happening at DHS, as significant as they
9 believe, bring a motion. They've not brought it. Motions
10 require evidence. They've not brought it.

11 What they're asking you to do today in that
12 letter, is they're saying, well, judge, we'd like you to
13 hold the evidentiary hearing. We'd like you to engage with
14 David Ferleger. Because we -- the because are my words,
15 because we'd like you to find the evidence.

16 That's not the Court's job. This is a settlement
17 agreement. This is not a consent decree. Frankly, I don't
18 even know that it's appropriate in consent decree, but this
19 is a settlement agreement.

20 Parties bring disputes about settlement agreements
21 before the Court. The Court does not investigate to find
22 out if there's a violation of a -- of a party settlement
23 agreement.

24 What they're asking you to do is completely
25 inappropriate. It doesn't have any basis in law. And it

1 doesn't have any basis in fact.

2 The one thing that Mr. O'Meara raised, and I would
3 like to address this, is this instance of mechanical
4 restraint. And I was going to get to this later, but I'll
5 address it now since Counsel brought it up.

6 This Court approved an Olmstead Plan that using
7 baseline data, as compared to data they recently reported in
8 the Olmstead Report, shows a significant reduction in the
9 use of mechanical restraint.

10 And this notion from the Plaintiffs that this
11 agreement was somehow supposed to be -- supposed to
12 completely eliminate mechanical restraint is contradicted by
13 the Court's order approving the Olmstead Plan.

14 Because remember, the Olmstead Plan's goal was to
15 reduce the use of restraint to, I believe, it was
16 90-something instances, in 12 or 13 people.

17 If the Settlement Agreement actually required what
18 the Plaintiffs are now saying is abusive conduct, 600, I
19 think he said 600 and something instances of abuse, the
20 Court would have never approved an Olmstead Plan that
21 allowed the use of mechanical restraints. And, in fact, the
22 goal was to reduce the use of mechanical restraints.

23 And so I just want to get that out there in the
24 open. There seems to be a fundamental misunderstanding by
25 the Plaintiffs of what the Settlement Agreement actually

1 requires. Because it's a misunderstanding if you look
2 solely at the Court's order approving the Olmsted Plan.

3 You don't need to look at the Settlement
4 Agreement, you can look at the Olmsted Plan, and understand
5 that what the Plaintiffs are saying, is just as a matter of
6 law, wrong.

7 But if you look at the Settlement Agreement, it
8 doesn't say anything of the sort either. And that's what's
9 in front of the Court, those obligations.

10 So, again, I go back to this, Judge, if there's a
11 problem, you would have heard about it.

12 The Plaintiffs are not shy. They would have
13 brought something to you. They didn't. The evidence in the
14 record, the uncontroverted evidence in the record is that
15 the Department has complied with all its obligations.

16 THE COURT: And we'll take this issue up at the
17 end of the -- once we've heard everybody out.

18 And also, I'll indicate -- we'll indicate where
19 that leaves us in terms of, obviously, whether it's a ruling
20 off the bench or more likely an order to be put together in
21 the immediate future on the issues you've each raised, and
22 the issues that are about to come up, both the ones that you
23 agree on, and you don't agree on, in terms of the status of
24 the case, and where we go from here.

25 So with that -- and so, obviously I have our

1 commitment that we'll hear everybody out at the -- before we
2 adjourn the hearing this afternoon.

3 So with that, we can proceed where we were going
4 to, Counsel. If you want to have her come up to the podium,
5 please, so.

6 MR. IKEDA: Yes, Your Honor. Commissioner Ho.

7 THE COURT: Okay.

8 And those aren't the fancy entertainment mics.
9 You have to speak fairly close to them, otherwise they won't
10 -- won't pick you up, so.

11 COMMISSIONER HO: Understood. I have a big voice,
12 so.

13 Good afternoon Judge Frank and Judge Thorson. My
14 name is Jennifer Ho and I'm the new Commissioner for the
15 Minnesota Housing Finance Agency, as well as the new Chair
16 of the Olmstead Subcabinet.

17 I understand that a great number of people in this
18 room have spent years working to ensure that the State of
19 Minnesota adopted Olmstead Plan and a meaningful support
20 structure.

21 And I am very honored to be chosen to lead this
22 next phase of the Olmstead subcabinet and to build upon the
23 work that's been done.

24 I bring to this role significant history regarding
25 Olmstead. As the HUD secretary's senior advisor for housing

1 and services for four years, I helped shaped the strategy
2 for how HUD could support State compliance with Olmstead to
3 create more integrated housing options for individuals with
4 disabilities.

5 I trained HUD staff across the country on
6 Olmstead. And I partnered with the Department of Health and
7 Human Services and the Department of Justice with states on
8 the implementation of Olmstead's settlement agreements and
9 plans.

10 In fact, I advised Commissioner Tingerthal on the
11 creation of the subcabinet and the opportunities for her
12 role as chair.

13 All Minnesotans, regardless of disability or
14 disability types, should have access to inclusive
15 community-based services and have meaningful opportunities
16 to live, learn and work in integrated settings. I am
17 committed to working with people with disabilities and their
18 family, with the Walz Flanagan administration, and with
19 State agencies in order to make meaningful progress.

20 Governor Walz recently issued a new executive
21 order, which continues the work of the Olmstead subcabinet.
22 And it includes a more expansive lens towards the Olmstead
23 work.

24 THE COURT: Yeah. And yes. That's been provided
25 to me by your Counsel, so I've had a chance -- we've had a

1 chance to review that, so.

2 COMMISSIONER HO: Right. Thank you, Your Honor.

3 It includes a more expansive lens charging the
4 subcabinet with working to identify and address barriers and
5 areas of opportunity throughout the State.

6 And expands the cabinet. And was very excited to
7 see the enthusiasm that the Commissioners through the
8 Department of Public Safety, the Commissioner for the
9 Department of Veterans Affairs, and the Chair of the Met
10 Council have brought to the opportunity to expand the
11 subcabinet.

12 I intend to work with the members of the
13 subcabinet to engage people across the state to listen and
14 learn about the challenges that they face. And to ensure
15 that the State works collaboratively to translate that
16 information into meaningful action.

17 So I'm here to talk about the results over the
18 last eight months. This is the -- this is the beginning of
19 my fourth month. But to go over the results of the last
20 eight months, which include some notable achievements, as
21 well as some areas that continue to require refinement.

22 But what I'd say is the overall trajectory is
23 absolutely positive.

24 The most important component of all of the work of
25 the Olmstead subcabinet is the impact on people with

1 disabilities in Minnesota.

2 Systemic change, as you know, is not accomplished
3 overnight.

4 But the State has made significant progress over
5 the last several years and plans to continue building upon
6 that progress to ensure people with disabilities experience
7 lives of inclusion and integration in the community.

8 So my comments today will cover three main areas.
9 The Olmstead Plan implement, including areas of success and
10 areas for targeted improvements, the Quality of Life Survey
11 and the Olmstead Plan amendment and process.

12 So turning first to implementation.

13 The work of the Olmstead subcabinet has continued
14 since the last status conference and continued without
15 missing a step through the transition of administrations.

16 I was named as chair before the first meeting of
17 the Olmstead subcabinet in January of 2019. And the
18 Governor engaged early on the Olmstead subcabinet executive
19 order.

20 The subcabinet continues to meet regularly. And
21 the Olmstead implementation office remains housed at
22 Minnesota Housing. Both the Governor's budget and pending
23 appropriations bills at the legislature include ongoing
24 funding for the Olmstead implementation office for the next
25 biennium.

1 The Olmstead implementation office staff continues
2 to engage in regular and ongoing monitoring of measurable
3 goals and progress under the work plans. And the office
4 continues to work on community engagement, including a
5 public input progress related to the plan itself, and
6 through our community engagement work group.

7 So turning to the areas of success.

8 Now while the process and the procedure are
9 important and demonstrate that we have a solid structure in
10 place to continue the work, results are the most meaningful.

11 Three areas where recent reports are reflecting
12 positive progress and systems change include progress on the
13 movement of people with disabilities from segregated
14 settings to integrated settings, more people accessing
15 waivers in a timely manner, and increasing system capacity
16 and options for immigration.

17 So, first of all, and in terms of progress and
18 movement of people with disabilities from segregated
19 settings to integrated settings, people with disabilities
20 continue to move from segregated to integrated settings.
21 And there are more people that are leaving intermediate care
22 facilities for individuals with developmental disabilities
23 to more integrated settings.

24 There are more individuals under age 65 in a
25 facility for longer than 90 days, who are leaving nursing

1 homes for more integrated settings.

2 And there are more individuals leaving other
3 segregated settings to more integrated settings.

4 Second, in terms of accessing waiver services in a
5 timely fashion, the Department of Human Services has adopted
6 reasonable pay schools, and began measuring performance in
7 2015.

8 And since then, the data shows significantly fewer
9 people waiting to access waiver services.

10 And there are fewer individuals waiting for access
11 to a DD waiver.

12 In terms of increasing system capacity and options
13 for integration, there are quite a few areas here that I'd
14 like to highlight.

15 But really top among them, more people are gaining
16 access to integrated housing. Obviously this is an area
17 that I had had, and now at Minnesota Housing, I care deeply
18 about and will keep our attention on.

19 And while the measure fell short of the 2018 goal,
20 the result was larger than the previous year. So we're on
21 the right trajectory.

22 There continue to be relatively high levels of
23 individuals who are taking competitive and integrated
24 employment.

25 I was pleased to see the increase in the number of

1 peer support specialists who are employed by mental health
2 service providers that actually exceeded the goal in 2018.

3 There was an increase in the number of students
4 with disabilities in the most integrated educational
5 settings.

6 There's been testimony of improvements to curb
7 ramps, pedestrian signals and sidewalks. I was actually
8 interested in the way that we measured that.

9 And then in terms of the people experiencing a
10 restrictive procedure, such as the emergency use of manual
11 restraint, it has declined in the last three years.

12 The number of reports of restrictive procedures of
13 people receiving services in licensed Disability Services,
14 goals have been met in each of the past four years.

15 And then the number of individuals approved for
16 emergency use of mechanical restraints met the annual goals.

17 So one of the areas that I was -- related -- I
18 think the most excited to see as I got steeped in the plan
19 and the work that's been done is, are the person-centered
20 protocols. And really, both the fact of the protocols and
21 what they say, and what they signal, and what they mean in
22 terms of the involvement of individuals and disabilities in
23 their own care plan, and in their own plans and for their
24 own hopes and dreams, but also in terms of our ability to
25 measure the effectiveness of the utilization of these

1 person-centered protocols.

2 Of the eight person-centered elements measured in
3 the protocols, performance on seven of the eight elements
4 improved over the 2017 baseline. And six of the eight
5 elements were at 90 percent or greater at the time of the
6 February report.

7 So those are areas where we seek progress. You
8 know, forward progress still may be necessary, but getting
9 to a place of progress, being so critical and also areas
10 that require additional improvement.

11 We, as a subcabinet and the State agencies, there
12 continue to focus on areas where there's some ongoing
13 challenges.

14 And, you know, as -- as Counsel noted, when
15 developing the Olmstead Plan it was understood that some of
16 the measurable goals were ambitious. That was the point to
17 stretch -- to push ourselves.

18 So even in some of the areas where progress is not
19 meeting the measurable goals, the State agencies are
20 actively looking for solutions and trying alternative means
21 of making progress.

22 So I'd like to walk you quickly through six
23 different areas.

24 Under the Positive Supports Goal 3A, to reduce the
25 number of reports of approved emergency use of mechanical

1 restraints, the overall trend is in the right direction, but
2 the numbers have not met the annual goals.

3 DHS monitors the use of mechanical restraints, and
4 reports to the subcabinet quarterly. And clinical
5 monitoring is provided by the External Program Review
6 Committee who provides written recommendations for each
7 individual. And technical assistance is provided to the
8 service provider as necessary.

9 With Lifelong Learning and Education Goal 2, which
10 is to increase the number of students with disabilities
11 enrolling in an integrated, postsecondary educational
12 setting, the goal for the number of students was not met.

13 You know, as Minnesota continues to have a strong
14 employment outlook, many students with disabilities are
15 choosing to enter the job market in entry job levels,
16 gaining and independence, or saving money for college, as
17 higher education expenses also continue to rise. So there
18 are multiple forces that may be at play here.

19 THE COURT: Well, I see that -- not to interrupt
20 you, but I see that a couple of our recently-elected US
21 Representatives, and maybe because they have children with
22 disabilities, perhaps not, are speaking out, like many
23 people have for decades, where the Federal Government
24 mandates -- like last year, they funded 8 percent of special
25 education services in our state.

1 And now I think the reason we're hearing more
2 about it is it's about to drop, that's why there's more
3 discussion, lower than that.

4 And I'm sure that the taxpaying public is
5 wondering, why aren't we all getting together, state,
6 federal, county, and doing the right thing?

7 But, yeah. So that obviously, I know, was in the
8 air, too, whenever we talk about this particular issue.

9 COMMISSIONER HO: Thank you, sir.

10 The third area I wanted to point to was a Crisis
11 Services Goal 4A, which is increase the percent of people
12 housed five months after being discharged from the
13 hospital.

14 While the goal was not met -- was not met, there
15 has been an overall increase in the numbers of individuals
16 receiving services, which indicates more people are
17 receiving a higher level of care after discharge.

18 And DHS is working to sustain and expand the
19 number of grantees utilized in the program entitled, Housing
20 With Supports For Adults with Serious Mental Illness, those
21 grants, which support permanent housing for people with a
22 serious mental illness, and residing in a segregated
23 setting, people experiencing homelessness, or people at risk
24 of homelessness.

25 The fourth area that's targeted for improvement is

1 in Transition Services Goals 2 and 3.

2 Transitional Services Goal 2 is to increase the
3 number of individuals existing the Anoka Metro Regional
4 Treatment Center in a timely fashion.

5 While there has been some progress, the goal is
6 not on track to meet the annual 2019 goal of 30 percent.

7 And Transitions Services Goal 3 is to increase the
8 number of individuals leaving the Minnesota Security
9 Hospital to a more integrated setting.

10 The monthly average of 9 individuals leaving was
11 not yet met. The average is 6.6.

12 The DHS has convened a cross-division,
13 cross-administration working group to improve the timely
14 discharge of individuals at both the Minnesota Security
15 Hospital and Anoka.

16 The fifth area is Positive Support School 4 and 5.

17 Positive Support School Goal 4 is to reduce the
18 number of students experiencing emergency use of restrictive
19 procedures.

20 As reported in the February quarterly report, the
21 Department of Education is using a new methodology to report
22 some of the data in this measure, and an updated baseline
23 was included in the 2019 plan amendment.

24 And then Positive Supports Goal 5 is to reduce the
25 number of incidents of emergency use of restricted

1 procedures in school.

2 Again, in 2018, the goal was not met, but the
3 Department of Education continues to work with the
4 Restrictive Procedures Work Group to implement the statewide
5 plan, which includes targets to reduce the use of seclusion.
6 And includes stakeholder support and goals for
7 recommendations to the Commissioner and to the legislature.

8 And, finally, the sixth area, Crisis Services
9 Goals 1 and 2, to increase the percentage of children and
10 adults who remain in the community after a crisis episode.

11 DHS has continued to work with mobile crisis teams
12 to identify training opportunities that would help increase
13 the capacity to address the complexities crisis teams are
14 seeing.

15 And they'll be providing trainings and identified
16 areas specific to crisis response.

17 This will increase the team's ability to work with
18 more complex clients in situations more effectively.

19 So that's really essentially what I wanted to say
20 in terms of plan implementation areas where we're seeing
21 progress and areas where we need improvement.

22 What I'd like to do is turn then to the Quality of
23 Life Survey.

24 THE COURT: All right. Did you have anything you
25 wanted to ask her on that?

1 MAGISTRATE THORSON: No.

2 THE COURT: All right. Please.

3 COMMISSIONER HO: Thank you.

4 So the purpose of the survey is to assess and
5 track the quality of life for people with disabilities.

6 It's been a significant undertaking that included
7 selecting a reliable survey tool, completing a pilot survey
8 to test the effectiveness, obtaining institutional review
9 board approval, and selecting an appropriate vendor to carry
10 out the survey itself.

11 The survey, of course, is targeted to people with
12 disabilities who are living and working in potentially
13 segregated settings.

14 The initial baseline survey was completed in March
15 of 2018 and represented 2005 surveys.

16 The followup survey was completed just in January
17 of 2019 and represented surveys of 511 people from that
18 original pool of Respondents.

19 And it was submitted to the Court as an exhibit to
20 the February 2019 quarterly report.

21 The key results that I'd like to highlight on --
22 well, first of all, the researchers caution that change is
23 difficult to discern in such a short period of time.

24 So when comparing the two surveys, which took
25 place in the span of one year, the results haven't

1 significantly shifted. And also the scores are all measured
2 on a 100-point scale.

3 Respondents reported an overall quality of life to
4 be good.

5 In comparison to similar studies completed in
6 other places, Minnesota ranks high in an average number of
7 close relationships and perceived quality of life, but we
8 rank relatively low in outing interactions and precision
9 control.

10 Data showed that the more that people with
11 disabilities get out and interact with the broader
12 community, the more their quality of life increases.

13 Our outing and interaction scores are low. The
14 results indicated that people surveyed are generally
15 segregated from the broader community during these daily
16 activities.

17 Finding ways to further integrate daily activities
18 will help us improve quality of life for the focused
19 population.

20 There are also differences in quality of life for
21 different regions of the State.

22 For example, while there are fewer outing
23 interactions in the metro area, the area has a higher score
24 for decision control.

25 The results suggest there are measurable

1 differences between rural and urban areas that effect the
2 overall quality of life for people with disabilities.

3 Survey Respondents perceived a moderate ability to
4 make their own choices.

5 Respondents with guardians reported less decision
6 control and a lower quality of life than respondents people
7 without a guardian.

8 And people with public guardians tended to have a
9 lower quality of life than those with private guardians.

10 So researchers recommended waiting a longer period
11 of time before the next survey. The next survey is expected
12 to be conducted in the summer of 2020.

13 And we've also asked that the next survey include
14 analysis with race and ethnicity for the quality of life and
15 measures.

16 Your Honor, as I believe that this is the point
17 where we contemplated an opportunity for comments or
18 observations, we could take that opportunity now.

19 Or if you'd like, I'll just continue with the
20 Olmstead Plan amendments and the process for adopting them.

21 THE COURT: One question, then we can -- we'll do
22 that if that works for everybody, to get reaction, both of
23 Plaintiffs' Counsel and the consultants, if they wish.

24 But in light of that next study up, say 2020,
25 what's your point of view on, well, here's what I think the

1 plan is or should be to kind of -- for this growth we're
2 hoping for to move forward?

3 Since, obviously, you've kind of probably
4 appropriately pointed out, well, those two studies came so
5 close together, it would be kind of hard.

6 So is there some type of way we can say, well,
7 here's what we hope to do between now and whenever they do
8 that study, so?

9 COMMISSIONER HO: And, Your Honor, one of the
10 things that I think has been good in even just the
11 discussion amongst the Olmstead subcabinet with the new
12 cabinet members coming and the new members now joining, is
13 really a discussion about how does this change actually
14 happen?

15 And that for individuals, many individuals who's
16 kind have of lived within a certain set of options for a
17 period of time, you know, what's the expectation for moving
18 it?

19 I've experienced this personally in my work for
20 the last 19 years for ending homelessness, that an
21 opportunity for people to have a home of their own sometimes
22 feels like a false offer to somebody who hasn't had that in
23 a meaningful, self-directed, truly 'my home' kind of way.

24 And I also think, you know, the work of just
25 really getting all the training and having these new

1 protocols, like the person-centered work fully adopted takes
2 some time.

3 So I think the commitment is to a next survey and
4 to take the advice of the researchers, in terms of, like,
5 what interval seems to make sense.

6 But I think the, you know, the commitment is to
7 continue to listen to what it is that the people who are
8 most impacted by these programs and could most benefit from
9 the changes that we're trying to implement have to say about
10 the quality of the supports that they're getting.

11 THE COURT: Well, and one other -- one other
12 comment or observation, maybe it's not directly related,
13 but, for example, we get mail, I get a lot of mail. And
14 I've had to -- I'm not saying who's misinforming whom, but
15 I'll say, wait a minute. Some people moving into the
16 community don't want to live alone. They want to live in a
17 group home, because there's some fabulous group homes,
18 whether that's three people, or less than that, or more than
19 that.

20 Because I've gotten some letters saying, well,
21 this -- the Olmstead Plan's mandating we must live -- oh,
22 no, that's not the case, but.

23 And I don't know if you've encountered that as
24 well, because sometimes -- I'm sure you know more people
25 than I do, that some people, that's what they prefer. So

1 they ought to have that and do have that option, rather than
2 for certain people stereotyping, well, all group homes are
3 -- are bad. Well, not so.

4 Or everybody wants to live, if they have any kind
5 of disability, on their own. Well, that's not necessarily
6 true either, as you probably know much better than I do.

7 COMMISSIONER HO: Yeah. It turns out that we're
8 individuals, sir.

9 THE COURT: Yes.

10 COMMISSIONER HO: We're all different.

11 Certainly in my work in homelessness and in policy
12 discussions that I was able to be a part of in D.C., this
13 question of meaningful choice -- and meaningful choice, you
14 know, real options is important.

15 And in the housing discussion, you know, we think
16 about this all the time.

17 THE COURT: Sure.

18 COMMISSIONER HO: What's a single-family home for
19 some is a -- is a crowded, multi-generational, natural
20 family for others.

21 So really paying attention to the needs of the
22 individual, the wants and desires of an individual, but also
23 appreciating.

24 You know, I have a lot of people who say to me
25 that somebody on the street chooses to be homeless and my

1 response to that is always in the absence of real options.

2 That maybe they choose to be there, as opposed to
3 being in a shelter where there's more rules or something.
4 But that's just, you know, the work that I've been involved
5 in.

6 But I think that these are important questions,
7 and the North Star is around whether it's person-centered.

8 THE COURT: Right.

9 COMMISSIONER HO: And whether there's a really
10 well-informed choice.

11 THE COURT: Any questions?

12 MAGISTRATE THORSON: I don't have any questions.
13 Thank you.

14 THE COURT: And then where, I think -- I don't
15 want to have any kind of -- kind of a break here, with any
16 other responses.

17 And then we'd move on to -- where does that take
18 you, your next steps? So I want to make sure we're all on
19 the same page here.

20 COMMISSIONER HO: I was going to move, Your Honor,
21 to the Olmstead Plan amendment and the process, which is
22 just the final, just short bit of my prepared remarks.

23 THE COURT: Well, if it's agreeable with Counsel
24 on both sides, why don't you just go ahead and finish up and
25 then we'll have a -- does that work for everybody?

1 Including the consultants? I see they're shaking
2 their heads.

3 MR. IKEDA: Yes, Your Honor.

4 THE COURT: All right. Okay. You're free to
5 proceed.

6 COMMISSIONER HO: Thank you, Your Honor. I'm not
7 used to having so many people behind me.

8 THE COURT: Well, and actually the lawyers agreed
9 to proceed, too.

10 COMMISSIONER HO: That's why I just wanted to make
11 sure. Some years, would be fantastic.

12 So the Olmstead Plan amendment process began
13 September of 2018.

14 All the agencies were asked to review the
15 measurable goals and strategies.

16 Amendments were sought for good cause, modifying
17 the plan to address obstacles that hinder progress or modify
18 the plans in new ways to increase progress.

19 Draft amendments were reviewed by the previous
20 subcabinet in December of 2018.

21 I think they did us a good favor for those of us
22 who had been named but weren't quite in the door to do that
23 work, because there's a lot to learn in the detail here.
24 And they were included in the December Annual Report, which
25 you have.

1 There were two public comment periods. The first
2 public comment period went from December 20th to January
3 31st.

4 More than 150 people participated in public
5 listening sessions or provided written comments.

6 The areas where the greatest response included
7 person-centered practices, transition services, housing
8 employment, community engagement, and communication.

9 The new subcabinet, provisionally approved the
10 revised amendments at our February meeting, 2019.

11 And then there was a second public comment period
12 that went from February 26th of 2019 to March 11th of 2019,
13 which included two video conferences, a conference call, a
14 focus group, and more opportunities to submit written
15 comments. 41 individuals provided comments in the second
16 public comment period.

17 And the areas with the greatest response included
18 housing, of note, education, and transportation.

19 The new subcabinet approved the March 2019 plan,
20 which includes amendments to 12 measurable goals. Some of
21 the modifications were fine-tuning that reflected necessary
22 change.

23 And I just want to offer, I think, four examples.

24 The Transportation Goal 1, these measures of
25 accessibility improvements to curb ramps, and accessible

1 pedestrian signals and sidewalks.

2 The plan was updated to increase the goals because
3 the previous goals had been met.

4 In Education Goal 3, which measures the number of
5 students with disabilities with active consideration of
6 assistive technology during the student's annual IEP team
7 meeting, the updated plan expands the measures for the goal
8 to better assess progress and the impact on students.

9 Community Engagement Goals 2 and 3 were included
10 to better and more consistently track community engagement.

11 Goal 2 now tracks the number of individuals with
12 disabilities who participate in public input opportunities
13 related to the Olmstead Plan.

14 And new Goal 3 tracks the number of engagement
15 activities for the Olmstead Plan's measurable.

16 Goals that were evaluated using the civic
17 engagement framework.

18 And then the fourth example on preventing abuse
19 and neglect, Goal 2. It was amended to incorporate more
20 meaningful measures of progress.

21 The goal was revised to include gathering data for
22 medical settings, other than emergency rooms and hospitals,
23 to provide a more complete picture of the reporting of the
24 abuse and neglect in health care settings.

25 And so in conclusion, Your Honor, if I may, I'd

1 like to say that stepping into my new role, I'm really
2 incredibly impressed by the structure in place.

3 As I said, Commissioner Tingerthal and I had
4 spoken about it while I was at HUD and while she was
5 embarking on this, and about the opportunity to really step
6 into a meeting and see how all these state agencies had come
7 together and were doing the really detailed work has been
8 impressive.

9 I'm also incredibly, I think, just -- just feel
10 the power of the way in which the new members of the
11 Governor's cabinet have stepped into the subcabinet.

12 Commissioner Lourey, the Department of Human
13 Services and I sat down, if it wasn't our first week, it was
14 our second, we talked about doing this work together.

15 Commissioner Ricker from the Department of
16 Education and I took a very early trip up to St. Cloud and
17 had some quality car time where we talked about the
18 importance of doing this work together.

19 Commissioner Schnell, with the Department of
20 Corrections, had a deep understanding of the institutional
21 scope and his role in this work, very committed to it.

22 As well as I mentioned before, the members that
23 have been expanded to be included in it.

24 And I will note as an aside, the number of new
25 members of the cabinet have children with disabilities, and

1 they've brought that experience into the conversation of the
2 subcabinet as well.

3 The other thing that I am just really impressed
4 with, I worked at the U.S. Interagency Council on
5 Homelessness for a number of years, and with it for all
6 seven while I was in D.C. Getting an interagency
7 conversation that's around goals that are actually
8 measurable and that can be measured and reported on in a
9 public and transparent way, is in and of itself no small
10 feet.

11 THE COURT: True.

12 COMMISSIONER HO: And I just -- I think even in
13 the conversations that we had around amending the plan, this
14 kind of constant thinking about, is this the best way to
15 measure what it is we're doing, is it the best way to show
16 whether or not we're making the progress that we should be
17 making?

18 I'm just really impressed in terms of what has
19 been put in place, to have a measurable and, therefore, a
20 transparent system of talking about where we are.

21 I'll close by just saying that I'm -- it's a real
22 honor to have the opportunity to lead this work for the
23 subcabinet and to take it into -- into the next phase.

24 As we were preparing -- as I was being prepared to
25 come here, you know, I have been struck, this is a big --

1 THE COURT: Yes.

2 COMMISSIONER HO: -- big binder, sent home for a
3 number of weekends.

4 And there are lots of reports that we do file with
5 the Court, a number of reports that are due to you before
6 the end of the year.

7 I am too new, I think, to want to make the case or
8 argue that some of the reporting does hold some of our
9 thinking back.

10 But would simply look for the advice of the Court
11 in terms of whether with the new administration, and a new
12 subcabinet that's committed to carrying this work through
13 the term and beyond, if we're allowed, that that be
14 something that you consider.

15 So that -- that's the rest of my prepared remarks.
16 And happy to stand or sit as directed, because I've never
17 done this before.

18 THE COURT: Okay. One -- by the way, if you hear
19 me coughing, I don't have a cold, so if one or more of you
20 are saying, my word, the Judge is spreading germs to
21 everyone in the room -- and you can test me if you want, but
22 I don't have a cold.

23 One question before we hear -- what we'll do is
24 I'll hear any responses from Plaintiffs' Counsel, the
25 consultants.

1 And then once we're done with this, we'll take a
2 brief recess, we'll move on, and go down the rest of the
3 agenda.

4 But some people, not to -- not unique to this type
5 of issue, but whether there's a -- whether there's a lawsuit
6 or not, regardless of how many departments there are, this
7 happens to be dealing with individuals with disabilities,
8 some people will say, well, maybe there's an option,
9 separate from reporting. And.

10 I'll use the phrase that I've heard recently,
11 having a -- and I'm not talking now about mediation. I
12 mean, I'm never discouraging that, but a roundtable
13 discussion, bringing everybody to the table that has an
14 interest in this.

15 And maybe you're going to say, we've already done
16 that. And have people -- I'm not talking about doing it in
17 a courtroom or a courthouse, but a group of different agency
18 people getting together with different turf issues, and
19 other issues, and say that well, maybe if we brought the
20 players or the people into -- and, again, I'll maybe use the
21 word again, roundtable discussion.

22 Maybe if the Court or others would consider doing
23 that, then some of these other reporting responsibilities --
24 any thoughts about -- any thoughts about that?

25 I don't want to oversimplify the issues from the

1 perspectives of any of the parties.

2 But I'm just kind of curious about that.

3 And then maybe you're going to say, accepting
4 you're new -- not new, new, but new to this, saying, well,
5 look at, that's -- you're asking this? And this case has
6 been around since 2011.

7 But separate from this case, you know, the -- the
8 -- getting everybody at the table, and maybe you're saying,
9 well, that's what we've been doing, so.

10 So just thought I'd ask.

11 COMMISSIONER HO: You know, Your Honor, I'll play
12 a little bit of the new card. It's day 99 for me.

13 And one of the things that the subcabinet is
14 doing, as we are --

15 THE COURT: And maybe that's --

16 COMMISSIONER HO: -- getting to know one another,
17 is thinking about, when the Court's jurisdiction is
18 complete. And its focused so much has been on compliance
19 and reporting, doing the work, of course. But the
20 compliance and reporting side of it, that when the Court's
21 jurisdiction is complete, how -- how best we spend our time,
22 and what is the right way to think about engagement --

23 THE COURT: Uh-huh.

24 COMMISSIONER HO: -- and partnership in that
25 conversation.

1 Because, frankly, my observations in the first few
2 meetings is that as a subcabinet, the opportunities for
3 meaningful engagement and discussion get overridden by the
4 business that we need to do to keep up with the reporting,
5 the amending and these other things.

6 So I think that we foresee opportunities to think
7 about taking this work forward, for what remains of our
8 four-year term, and perhaps beyond.

9 But that part of that conversation, I think,
10 frankly is just waiting to see what your inclination is as a
11 result of today.

12 So I think there's a lot of passion, and appetite,
13 and enthusiasm, and willingness in the new subcabinet to
14 build on the work that we take over.

15 But I think we're trying to balance kind of the --
16 all of our aspirations with making sure that first we meet
17 all of our obligations.

18 THE COURT: Okay. Thank you. I'll get a response
19 here.

20 Mr. O'Meara, anything you'd like to say in
21 response to that presentation?

22 MR. O'MEARA: Just briefly, Your Honor. I like
23 what I hear.

24 I think the Commissioner has identified some key
25 areas of focus. And, you know, ultimately the Court

1 jurisdiction is going to end at some point.

2 We're going to disagree about, you know, when that
3 is, especially on the restraint issue.

4 But I like what I hear. And I'm hopeful that, you
5 know, people can work together.

6 I'm happy to get in a room with anyone.

7 This is eight years past the approval. You know,
8 there was once a position by the State that Minnesota did
9 not require an Olmstead Plan. They told us that after we
10 sued them.

11 They told us that as part of the Olmstead
12 committee process. But we have an Olmstead Plan now, and
13 it's interagency, and there's a lot of people that work on
14 it. And I think people with disabilities and their families
15 are far better off with it than without it.

16 THE COURT: Ms. Opheim or Ms. Wieck?

17 MS. OPHEIM: That's very helpful. Thank you.

18 Your Honor, I'll just briefly talk about the
19 Olmstead Plan, in that the progress that I've seen has
20 become an awakening of the disabilities issues and an
21 awakening and the awareness that we as a Government have to
22 provide services, not just for the middle of the bell curve,
23 but for individuals, who for whatever reason, have been left
24 out of some activities of life.

25 The one thing that I would hope for is, I do see

1 the enthusiasm of the new subcabinet. I just don't hope
2 that we don't take on so many new tasks that we forget to do
3 the tasks that we are already assigned to ourselves. Thank
4 you.

5 THE COURT: Dr. Wieck? Even though I know you
6 don't like being called doctor.

7 So Ms. Wieck? Or Executive Director Wieck.

8 DR. WIECK: Good afternoon.

9 THE COURT: Good afternoon.

10 DR. WIECK: Judge Frank and Judge Thorson.

11 I believe that Commissioner Ho has done an
12 excellent job in describing the Olmstead goals, the Quality
13 of Life Study, and the amendment process, so I'll keep my
14 comments brief.

15 My letter did not address any Olmstead issues, and
16 so I would like to comment.

17 Regarding the goals, our Council has retained a
18 data consultant as an external verification approach. And
19 this consultant continues to prepare graphs.

20 And I think at -- I'm going to suggest, when we
21 get to the December status conference. It might be a good
22 time to present those, you know, with your audio visual
23 capacities here, because the graphs are easy to understand
24 and you can see the progress made.

25 And so I listened quite closely. And based upon

1 our review, nine goals have achieved their targets.

2 One goal is partially met target, five goals have
3 missed performance targets.

4 And then we have these 23 goals that do not have
5 enough data points to create a trendline.

6 And so we have eight goals with zero data points,
7 seven goals with one data point, eight goals with two data
8 points.

9 And so that I think the three remaining, or if you
10 choose to have fewer reports come to the Court, that will
11 allow us to fill in some of these trend lines, and then we
12 can show you, here's what we said.

13 And I remember when Magistrate Judge Thorson asked
14 us to stretch. And she said, you know, and you're not being
15 held -- you're not going to be punished by setting higher
16 goals. And so, people have been working hard.

17 Regarding the Quality of Life Survey results.
18 I've received phone calls asking me to explain the results,
19 because the media reports were not -- they were a little
20 murky. People just didn't understand what we had found.

21 And the Court has asked repeatedly, has anyone's
22 life improved?

23 Now, if you step back and look at the longer arc
24 of the history, and we were in front of Judge Earl Larson in
25 1980.

1 THE COURT: You're talking about the *Welsch* case?

2 DR. WIECK: I'm sorry?

3 THE COURT: You're talking about the *Welsch* case?

4 DR. WIECK: Yes. I was talking about the *Welsch*
5 case.

6 We were testifying -- each expert witness talked
7 about the lack of toilet paper. We were at that level in
8 1980. Where we didn't have toilet paper in regional
9 treatment centers.

10 We also didn't have clothing. We didn't have
11 rehabilitation. We didn't have staff. We didn't have
12 therapists and we lacked individual plans.

13 In 1980 there were thousands of people under
14 guardianship, especially public guardianship, because the
15 only way you could get services was if you gave up
16 guardianship.

17 And so in 1980 we had children living in regional
18 treatment centers. And when the *Welsch* ended in 1989, we
19 still had 1100 people left.

20 A lot of people were confused by that. They
21 thought that the *Welsch* case meant everyone was out. It
22 wasn't true. It wasn't until the year 2000.

23 So the Quality of Life Survey, which we began in
24 2014, and as Commissioner Ho has told you, we had one task
25 after another.

1 And so when people call me, I try to first explain
2 where we've been and then what this shows. And if I had to
3 pick one page out of the first followup study, it would be
4 Page 38, Table 19.

5 And this is the table that we asked the
6 researchers to reorganize for us. We asked them, place in
7 order of least decision-making control, to the most
8 decisionmaking control.

9 And what came out as top is the choice of
10 personnel. The option to hire and fire your staff.

11 Next came type of transportation. Then the choice
12 of case manager, where people attended their day program, or
13 their residence. And then the choice of people you live
14 with, and the type of work or day program.

15 The good news about the executive order 1913
16 signed by Governor Walz is it specifically mentions the
17 Quality of Life Survey.

18 And the reason that's good news is because this
19 whole design was around longitudinal studies. And this will
20 allow us to continue to collect data and report data to the
21 public.

22 Regarding the amended process, I have one brief
23 anecdote. And that is in February, I spent a weekend
24 working with about 28 people with disabilities and family
25 members. And the reason I'm smiling is it's difficult to

1 explain the Olmstead Plan.

2 There's a lot of inside baseball language.

3 And so, we had each person study a goal, study the
4 amendments, study a topic.

5 And then we asked each person to prepare five
6 minutes of testimony and deliver to a public hearing.

7 Now, my sidekick, Roberta Opheim and I sat and
8 listened. And then we asked questions and then we grilled
9 people on etiquette.

10 And then after the mock hearing was over, I
11 converted that testimony into written statements, submitted
12 it to the Olmstead office.

13 The testimony was powerful.

14 I mean, people are in pretty awful situations.
15 And they will gladly tell you about what they're facing.
16 And the parents in the room, the good news is we've got this
17 new generation of parents who have automatically raised
18 expectations for their sons and daughters.

19 And they're asking questions like, according to
20 the 40th anniversary report of the Individuals with
21 Disabilities Education Act to Congress, why does Minnesota
22 rank 40th in inclusion rates for students with developmental
23 and cognitive disabilities?

24 And I can present, but they're on their
25 Smartphones. They're -- they're wired. They're searching.

1 And they went out and found the rankings of Minnesota
2 compared to other states.

3 And overall their public testimony was about
4 raising the expectations, not only for their sons and
5 daughters, and for the people in the room, but raising the
6 expectations through the State of Minnesota.

7 So we submitted the public testimony.

8 I went back and looked to see if it made any
9 difference. And I didn't see any changes in the proposed
10 amendments based upon all of the work that we had done.

11 And -- and so it's clear to me the people are
12 watching.

13 And what the people I worked with are expecting,
14 would be that State officials are reading, and learning, and
15 acting, on their stories and improving the plan.

16 Now one way to address this in the future, and I
17 know Commissioner Ho has already thought about this, is the
18 amendment process for 2020, allowing the public first to
19 give input, and then writing amendments. And I know that
20 will be beyond the scope of -- because the Court
21 jurisdiction ends, and I understand that.

22 Another repeating issue is confusion.

23 We have people confusing the Americans With
24 Disabilities Act with the Olmstead decision.

25 I'll never forget when the ADA passed. And we

1 thought, well, this is good for physical environment.

2 We never saw the impact for people with
3 developmental disabilities until the Olmstead decision.

4 Because then we knew that the Americans With
5 Disabilities Act applied to Medicaid policy.

6 And so the Olmstead decision has a specific target
7 group. People with disabilities who are institutionalized
8 or living within the segregated settings.

9 And so in this last week, or about two weeks ago,
10 I received two different messages, and I'll try to be quick.

11 The first was from an advocate who had spent time
12 with a college graduate who happens to have cerebral palsy
13 living in a four-person corporate foster care home.

14 And she said, "He keeps expressing the same
15 goals." Direct quotes. "I want a place of my own. I want
16 a social life. I want to earn money at my job. And I want
17 not to be told by staff that I need to apply my own
18 toothpaste to my own toothbrush."

19 He spends 20 minutes struggling with the cap on
20 his toothpaste. He's a college graduate. He wants out of
21 that particular setting.

22 And so the subject line read, "We don't need a
23 fancy-worded Olmstead Plan, we need to look at outcomes for
24 people."

25 The second person during that week contacted me.

1 And he also has a college degree, lives independently, is
2 employed, and has assistive technology that he needs.

3 And he wrote to me and he said, "The Olmstead Plan
4 isn't for me. It's not helping me a bit."

5 I wanted to say, Okay. Look at your life. Your
6 parents helped you. You're a self-advocate. Look at all
7 the laws that were in place that helped you achieve what you
8 achieved.

9 The target of the Olmstead Plan is the first
10 person. That's our top priority.

11 The second person is our target if his
12 circumstances change.

13 The subcabinet that has now been selected is a
14 great group of people.

15 I have called upon them for help, whether it's
16 with executive orders or with employment issues, and they
17 automatically respond. And so this is a great group of
18 people to work with.

19 In terms of reporting, I know that's up to the
20 Court, but I just want to remind you of the timeline. This
21 is the 20th anniversary of the Olmstead Decision.

22 We worked from 2012 until 2015 on eight versions
23 of the plan. We spent years trying to convincing the State
24 to have an Olmstead Plan. We spent three-and-a-half years
25 on implementation.

1 And so to the people I work with, we need public
2 reporting. And I know we can solve this issue of
3 accountability and transparency.

4 But if you ask the question, What's best for
5 people with disabilities? They're going to tell you, show
6 us progress. Identify the changes where we've improved
7 performance. Monitor how all that public money is spent.
8 Document the impact on people. Yes, we do need compliance
9 with laws and case law.

10 We do need efficiencies. And, yes, we have to
11 improve trust and communication with people with
12 disabilities and families. Thank you.

13 Any questions, Your Honor?

14 THE COURT: Any thoughts on my oversimplified term
15 of a roundtable?

16 I mean, without involving the Court. I'm not
17 saying the Court would be involved in any such thing.

18 I'm just saying --

19 DR. WIECK: Well, there are people here today
20 who'd like to talk.

21 And so you -- you do have an audience. You do
22 have people who are interested in telling you their
23 impressions.

24 But I know that people are calling you, writing
25 you. They see you in the skyway and they talk about this

1 plan, so the Court has been open.

2 And then the process is to follow up and send any
3 comments and concerns to the correct state agency -- I'm
4 sorry, to the Department of Human Services, which then sends
5 them to the correct state agency.

6 So there are people who'd like to tell you what's
7 happened in their lives.

8 I don't know what the proper forum is. I have a
9 feeling Commissioner Ho's probably -- has run effective
10 roundtables, and things like that.

11 So whatever we can do to keep open the public
12 process is a good idea.

13 THE COURT: All right. Thank you.

14 DR. WIECK: Thank you, Your Honor.

15 THE COURT: Judge Thorson, anything further?

16 MAGISTRATE THORSON: I don't have anything. Thank
17 you.

18 THE COURT: This is probably a logical place,
19 unless Commissioner Ho wants to step to the -- unless you
20 have something you want to briefly state, we will take a
21 break here.

22 COMMISSIONER HO: Nothing from me.

23 THE COURT: Does that work?

24 COMMISSIONER HO: I don't need to respond. Happy
25 to take a break.

1 THE COURT: You sure?

2 MR. IKEDA: Your Honor, before we take a break, is
3 it okay, given that we're onto the Jensen part of the
4 agenda, from Commissioner Ho and the Olmstead folks to
5 leave?

6 THE COURT: It is.

7 MR. IKEDA: Okay.

8 THE COURT: That's fine.

9 MR. IKEDA: Thank you, Your Honor.

10 THE COURT: It's fine if they stay, it's fine if
11 they leave. All right. That will be fine.

12 It won't be considered, obviously, disrespectful
13 or in any other way, so.

14 Let's take 15 minutes here, then we'll come back.
15 And you're free to stay in the courtroom, if you want,
16 that's up to you. Or free to go out there.

17 We'll see you in 15. All right.

18 (Court adjourned at 2:51 p.m.)

19 (In open court at 3:10 p.m.)

20 THE COURT: We can proceed with the next item,
21 whenever you're ready, Counsel.

22 MR. IKEDA: Thank you, Your Honor.

23 So, for the Jensen piece, you're going to hear
24 from several people at the Department of Human Services.

25 THE COURT: All right.

1 MR. IKEDA: So I think -- well, if we look at in
2 7c, if we look at the things that the Court's identified.

3 THE COURT: Okay.

4 MR. IKEDA: I can tell you as people come up,
5 maybe. Does that make the most sense, Judge?

6 THE COURT: Sure. And I think I can say this --
7 I'll touch on it at the end of our get-together today, but
8 we'll -- we'll be careful not to treat separately the
9 Olmstead issue is with the Jensen Settlement Agreement Plan
10 of Action.

11 In other words, they'll all be dealt with. But so
12 we make sure that whatever was going to happen, it will be
13 with reference to one or the other.

14 So people will say, well, what exactly is the
15 Court doing? Are they just kind of merge these together?
16 So we'll be very clear on that.

17 MR. IKEDA: So, Your Honor, with respect to
18 Item 7a, I think, you know, I think that he pretty easily
19 dispensed with, the Department filed an comprehensive
20 report, there's a 225 narrative that goes along with that
21 report.

22 The Department's conclusion is that it is in
23 compliance with, it has met all of the evaluation criteria
24 that it has been reporting on.

25 So there's really nothing to -- nothing more to

1 say about that.

2 You know, I think, just to provide some context, I
3 think what you're going to hear in light of that is, and I
4 don't want you or Judge Thorson to be surprised by this, but
5 I don't think you will be, is that the Department's position
6 is there's nothing that needs improvement.

7 I think as -- as you can imagine, there are --
8 there are things that the Department could do, there are
9 things the Department would want to do.

10 There's always, you know, there's -- I think the
11 term would be continuous improvement or continuous
12 opportunities for improvement.

13 Those exist. Those will always exist. Whether --
14 whether the Court's involved or not.

15 But I think with respect to the Court's question
16 about whether there are things that need improvement
17 relative to compliance, whatever that standard is, and we'll
18 talk about that later, I know. The Department's position is
19 that there is nothing that needs compliance, or needs
20 improvement.

21 THE COURT: Or -- I -- you know, what I interpret
22 that to mean is that, well, while there's many things,
23 additional things we may be able to do with respect to
24 improving the lives of other people, we -- that may be the
25 case, maybe it's always the case, but we are in compliance

1 with the Jensen Settlement Agreement.

2 In other words, there -- obviously there might be
3 some thing we could do, or goals, aspirational, or other
4 things, but we are -- that's a separate issue from our
5 position is, we are in compliance with the Jensen Settlement
6 Agreement and Comprehensive Plan of Action.

7 MR. IKEDA: And maybe the best ways -- well, one
8 of the better best ways to illustrate this, and I don't want
9 to jump between Olmstead and Jensen, but what you heard
10 Commissioner Ho say a few minutes ago was she talked about a
11 transportation goal that they sought amendment of. And in
12 that transportation goal, the reason for the amendment was
13 because they met the goal that they had set for Olmstead and
14 they wanted to set a different goal.

15 And so there are things that the Department has
16 done what it needs to do. The question -- I think what you
17 were getting at, Judge, is, are there other things that the
18 Department would like to do? And I -- I am certain the
19 answer is yes.

20 I mean, there are people in the room who go to
21 work every day to try to improve the system that they --
22 that they administer.

23 So with that said, I think, you know, the way that
24 -- the way that the Department envisioned this was we would
25 have several people come up.

1 THE COURT: All right.

2 MR. IKEDA: You see the row behind me suddenly is
3 full of DHS employees, so you're going to hear from several
4 people.

5 THE COURT: All right.

6 MR. IKEDA: The first person that you'll hear from
7 is Peg Booth, who as you know is leading up the Quality
8 Insurance and Disability Compliance Services.

9 THE COURT: She has the privilege of coming to the
10 podium before, so.

11 DR. BOOTH: Good morning, Judge Frank.

12 THE COURT: Did you orient Commissioner Ho?

13 DR. BOOTH: No, I didn't have that opportunity.

14 Good afternoon, Judge Frank and Judge Thorson.

15 Again, my name is Dr. Peg Booth, and I've have the
16 pleasure of being the Director of the Quality Insurance and
17 Disabilities Compliance Services, previously the
18 Jensen/Olmstead Quality Insurance and Compliance Office.

19 To eliminate some possible confusion regarding the
20 name changes of the Jensen office, I will refer to QADC
21 Services in my comments.

22 THE COURT: Okay.

23 DR. BOOTH: Dr. Baker and I will be addressing
24 notable areas of success. There have been many successes,
25 both large and small.

1 To be respectful of the full agenda, we have
2 limited our examples to five.

3 The first area of notable success is the
4 collaboration and information sharing between QADC Services
5 and DHS business areas, both within direct care and
6 treatment, and DHS central office, that has resulted from
7 QADC Services functioning as a leader in compliance within
8 the Department.

9 DHS business areas now proactively include QADC
10 Services in discussions concerning policy, problem solving,
11 and general information sharing, as well as to provide
12 technical assistance.

13 This proactive involvement of QADC Services, and
14 business area policy development and problem solving has
15 resulted in a deeper understanding of how the JSA and CPA
16 requirements apply to the various business processes.

17 The second area of notable success is the
18 development of the single point of entry process for crisis
19 resolution.

20 Launched February 2015, the single point of entry
21 process was initiated upon the recommendation of QADC
22 Services to address the inefficiencies resulting from
23 duplication of efforts that was taking place with multiple
24 staff responding for -- to the requests for crisis services.

25 Using the single point of entry process, DHS

1 coordinates crisis resolution responses for persons with
2 disabilities who are at risk of losing their housing.

3 Starting in April 2018, DHS launched full
4 implementation of Universal Referral Form, which allows the
5 lead agency staff to complete and submit one referral form
6 electronically to initiate a referral for one or more
7 community-based services programs.

8 Representatives from disabilities services,
9 chemical and mental health, and direct care and treatment,
10 as well as the successful life project staff the
11 department's single point of entry triage team.

12 The single point of entry team, reviews each
13 referral for crisis services received to direct and
14 coordinate the person and their team to the best resource.

15 The single point of entry team also uses a similar
16 record management software across community-based services,
17 Minnesota Life Bridge, and the successful life project to
18 ensure coordination and data sharing.

19 The single point of entry process has improved
20 quality and efficiency of service delivered by DHS for
21 persons with developmental disabilities by reducing data and
22 technology silos.

23 The third area of notable success is QADC Services
24 data verification processes.

25 First reported to the Court in 2016, QADC Services

1 developed a multi-approach process to continuously monitor
2 compliance with the JSA and CPA, to address identified areas
3 for improvement, and to verify information submitted by
4 business areas to the Jensen office.

5 QADC Services began implementing these activities
6 in preparation for the August 2016 Semi-Annual report. And
7 continues to use this process in preparation for all
8 subsequent reports.

9 Under this process, program areas conducted their
10 own monitoring activities and verification compliance with
11 the JSA and CPA.

12 QADC Services adds then an additional layer of
13 compliance oversight by receiving regular compliance updates
14 from program areas, which includes an explanation of the
15 compliance verification and monitoring efforts, reviewing
16 the updates for compliance concerns and issues that require
17 followup, and conducting independent compliance and
18 verification reviews.

19 QADC Services independent compliance and
20 verification reviews includes the following activities:

21 Interviews with people receiving services,
22 observations, and physical plant reviews.

23 Document reviews, including activity sheets,
24 person-centered plans and transition plans.

25 Interviews with staff and external parties, as

1 well as does -- including case managers, families, or
2 guardians.

3 And review of key documents, including case notes,
4 training records, policy, databases and notification from
5 program areas.

6 Through QADC Services, independent oversights and
7 verification system, the Department is identifying and
8 addressing issues before they become compliance concerns.

9 Before I turn this over to my colleagues, are
10 there any questions?

11 MAGISTRATE THORSON: I don't have any.

12 THE COURT: Nope. I don't have any. Thank you.

13 DR. BOOTH: Thank you. Dr. Baker will speak on
14 the next two successes.

15 THE COURT: Good afternoon.

16 DR. BAKER: Good afternoon.

17 It is an honor to return to the podium and speak
18 with all of you.

19 My name is Dr. Dan Baker and I am the Jensen
20 internal reviewer. And I am a part of the Quality Insurance
21 and Quality Disabilities Services.

22 First, I will like to discuss consultation model
23 outcomes for the Successful Life Project.

24 The Successful Life Project became a part of QADC
25 Services in April 2016.

1 The Successful Life Project staff currently
2 includes the Successful Life Project supervisor, board
3 certified behavior analysts, a registered nurse, and a
4 licensed social worker.

5 We have added considerable clinical strengths to
6 the Successful Life Project by bringing in new skill areas
7 to address the complex needs of people receiving therapeutic
8 followup.

9 A part of my responsibilities includes providing
10 clinical oversight of the Successful Life Project, and
11 identification of relevant, evidence-based clinical
12 practices.

13 The skills within SLP, the Successful Life
14 Project, including sexual victimization informed care, are
15 applicable to a wide variety of populations of people with
16 disabilities.

17 The services that the Successful Life Project
18 provides to help prevent reinstitutionalization, and to
19 maintain the most integrated setting, which include helping
20 a person's care providers, to use person-centered positive
21 behavior supports, and to address health or medication
22 needs, are services that can include -- that can improve the
23 overall quality of life with people with disabilities.

24 As a recent example, one SLP clinician is
25 currently developing a Functional Behavioral Assessment to

1 distinguish challenging behavior potentially resulting from
2 seizure activities, from that of challenging behavior with a
3 social or environmental cause.

4 This is critically important, as the effective
5 intervention for those two potential causes vastly differs.

6 And the Functional Behavioral Assessment will
7 provide a roadmap for how to best support this individual.

8 Teaching skills related to stress management and
9 distress tolerance are also an integral component of
10 successful life project supports which we use in supporting
11 a number of people.

12 The Successful Life Project targets are mentoring
13 and coaching to increase community capacity to support
14 therapeutic followup group members in their homes and
15 communities.

16 The Successful Life Project uses predictive and
17 responsive clinical indicators to address the population
18 health of the therapeutic followup group, and to initiate
19 supports.

20 In the course of providing these positive support
21 resources, SLP has developed and maintained relationships
22 with key team members and county workers.

23 SLP also engages in outreach by presenting at
24 relevant professional events, such as the person-centered
25 gathering, the Odyssey Conference, and the Hennepin County

1 Case Manager Conference.

2 These build awareness of best practices and our
3 availability for technical support.

4 The consultation model developed by Successful
5 Life Project and implemented in 2017, includes both
6 proactive support tools that begin by addressing general
7 supports, and then move to individualized supports as
8 needed and always reflect professionally accepted best
9 practices.

10 Since the implementation of this consultation
11 model for persons included in the therapeutic followup
12 group, there has been a steady decrease in Behavior Incident
13 Report Forms, BIRFs, which cover events including, but not
14 limited to, 911 calls, emergency use of manual restraint,
15 and use of PRN behavioral medication.

16 And then, secondly, an increase in the number of
17 people who no longer require individualized consultation
18 from the Successful Life Project.

19 No longer needing individualized consultation is
20 an indicator of an improved quality of life, and note to the
21 team has the tools needed to independently support the
22 person.

23 If there are no questions about that, I can go
24 onto the next area.

25 THE COURT: All right.

1 DR. BAKER: Which is innovative location options
2 at MLB.

3 As previously reported, the Department initiated
4 the procedure for an independent subject matter expert
5 review in December of 2016, in order to develop
6 recommendations to guide Minnesota Life Bridge, and provide
7 an integrative vocational option to residents in a more
8 coordinated and systematic manner.

9 With guidance from the Quality Insurance
10 Disability and Compliance Services and me, Minnesota Life
11 Bridge has implemented the independent subject matter
12 expert's recommendations.

13 Currently, all Minnesota Life Bridge residence are
14 receiving integrated vocational support or are participating
15 in customized employment, an evidence-based practice, to
16 address innovative vocation.

17 He have Minnesota Life Bridge meets with each
18 resident support team as a preliminary step towards
19 employment.

20 Minnesota Life Bridge skills development
21 specialist. A full-time position dedicated to promotion of
22 integrated vocational options explains expectations and the
23 process of customized employment during the first meeting
24 and at each monthly meeting thereafter.

25 The skills development specialist meets with each

1 person on an ongoing basis. And the current residents are
2 at different stages of the customized employment process.
3 But the majority are working with a skills development
4 specialist in the following areas:

5 Home community observations, informational
6 interviews and participation in established work activities.

7 The skills development specialist also provides
8 one-to-one support towards resume building, instruction on
9 how to job search, and navigate the internet for employment,
10 support for creating an e-mail account for employment
11 purposes, and preparation for job interviews.

12 Minnesota Life Bridge also leverages vocational
13 rehabilitation services, which help people with disabilities
14 to find integrated employment.

15 Currently each Minnesota Life Bridge resident
16 referred for vocational rehabilitation services has been
17 approved, although one recent admission is still in process.

18 The person-centered plans and the annual planning
19 document for each Minnesota Life Bridge resident include a
20 focus on integrated vocational activity.

21 Recent integrated vocational options explored at
22 MLB include a variety of different excellent learning
23 strategies, such as learning advanced job skills through
24 post-secondary career preparation.

25 The individualized vocational supports provided at

1 MLB helped the person focus on their unique interest and
2 gifts, and critically avoid the default stereotypical jobs
3 for people with intellectual or developmental disabilities.
4 Thank you.

5 THE COURT: Do we -- and I know it's in some of
6 the documents, if we looked at the number of people in
7 Minnesota Life Bridge today compared to say, a year ago or
8 six months ago, what kind of -- what's most important for me
9 to understand about that?

10 DR. BAKER: What's most important to understand is
11 that the people at Minnesota Life Bridge do transition in
12 and transition out.

13 THE COURT: Right.

14 DR. BAKER: So the number of people who are in
15 integrated vocational activities or career preparation does
16 come and go.

17 But it is a -- I'm trying to find the right
18 dramatic word for it.

19 It is a C change in the last two years since the
20 skills development specialist has come on.

21 It's important to know that every single Minnesota
22 Life Bridge resident receives important and critical career
23 awareness and career preparation activities.

24 I believe this is necessary as a component of
25 mental wellness, in addition to simply addressing integrated

1 vocational options.

2 THE COURT: Anything? All right. Thank you.

3 DR. BAKER: Thank you, very much.

4 MR. IKEDA: Your Honor, Dr. Baker's going to talk
5 about the -- one of the points I think in 7c was the
6 external verification --

7 THE COURT: All right.

8 MR. IKEDA: -- compliance.

9 THE COURT: All right. One of the things I will
10 say to you, in light of your prior comments, the really --
11 frankly speaking, I was about to use the phrase, apart from
12 our case, but maybe one or more of you will say, what do you
13 mean apart from our case?

14 When we invite, whether it's youth groups with
15 developmental disabilities into the courthouse here or
16 adults, and I ask them the question, well, what's -- what's
17 most important to you? One of the common things that
18 relates to something you just said is, I want a job where I
19 can use my brain.

20 You know, I want -- and so, obviously, that's some
21 of the issues you're addressing. And some of those often
22 times unfair stereotypes of people, I -- they say many other
23 meaningful things, too, but that is in terms of the
24 employment. That's a very common thing that I hear when
25 people come in.

1 DR. BAKER: Uh-huh.

2 THE COURT: And I'm sure you all hear probably
3 more than I do, so.

4 DR. BACKER: I'm gratified to hear that.

5 The Substance Abuse Mental Health Services
6 Administration has identified supported employment as one of
7 their seven evidence-based practices for mental wellness and
8 for recovery. That's wonderful.

9 And Minnesota Life Bridge is doing excellent work
10 with that, as I said.

11 Well, I'm also happy to continue on to speak about
12 verification of compliance.

13 DHS currently has a robust system of internal
14 compliance. And there are many existing means for
15 externally and internally verifying relevant forms of
16 compliance.

17 Entities involved in internal compliance for DHS
18 include the DHS compliance offices, QADC Services, and the
19 general council's office.

20 Additionally, DHS licensing, the Office of the
21 Inspector General, and dedicated groups within DHS
22 administration and divisions that address compliance.

23 For example, as Dr. Booth previously noted in her
24 discussion of the successes, QADC Services has a robust
25 verification process that ensures program area compliance.

1 Furthermore, I would like to highlight my own role
2 as internal reviewer, which includes a wide variety of
3 clinical and compliance-related activities, consistent with
4 evaluation criteria 39 through 41, which establishes
5 position.

6 A system for external compliance verification,
7 currently exists, as well.

8 External entities charged with compliance
9 verification, or advocacy, includes the Ombudsman's office,
10 the Governor's Council on Developmental Disabilities, both
11 of which are represented here today.

12 The Legislative Auditor and the Minnesota
13 Disability Law Center, a protection and advocacy
14 organization.

15 The Olmstead Plan and goals also provide for
16 transparency and accountability for statewide integration
17 initiatives. Thank you.

18 THE COURT: Thank you. Any questions?

19 MAGISTRATE THORSON: No.

20 THE COURT: All right.

21 DR. BAKER: Thank you, very much.

22 MR. IKEDA: Your Honor, the next item on your
23 agenda is 7c is documentation of use of data to inform
24 policy decisions and documentation of any such policy
25 decisions. And then you have A through C there.

1 Dan Hohmann, who is with the director and
2 treatment area at DHS is going to come up and speak for that
3 hone.

4 THE COURT: All right.

5 MR. HOHMANN: Good afternoon, Judge Frank and
6 Judge Thorson.

7 THE COURT: Good afternoon.

8 MR. HOHMANN: I am Dan Hohmann, I work with CBS,
9 the portion of director care and treatment that operates all
10 our vocational, residential, MLB, and CSS programs.

11 Today I'm going to be discussing three areas. One
12 of which is our waitlist for MLB programs.

13 Second of which is our -- our -- some of the
14 reasons why people get stuck or aren't transitioned quickly
15 out of MLB programs, as well as the need for a needs
16 assessment for additional MLB programs.

17 So first thing that I'd like to mention is some of
18 the background to our waitlist issues.

19 It's a very fluid problem. As you can imagine,
20 the individuals on our waitlist have very complex problems.
21 And there's multiple different areas that are working to
22 address those problems.

23 As Peg mentioned, we do have the single point of
24 entry, or universal referral process, which helps us manage
25 those referrals, and get people referred to the right area

1 of our organization.

2 What we've gathered from that process is that
3 there's a lot of triage necessary to understand what people
4 need.

5 There's a lot of things that happen in the process
6 of getting connected with one of our programs that changes
7 their situation.

8 In some cases, our waitlists are expanded because
9 case managers want to keep people on them just in case
10 something goes wrong. They could be stable right now, but
11 in the future it may not be that way. So they keep people
12 on our waitlist for that reason.

13 There are other factors like pending admissions to
14 other providers or other CBS programs that also keep people
15 on our waitlist longer than maybe we would have intend to
16 have them there.

17 So a lot of what we have done is focusing on
18 triaging those cases.

19 And what we've learned through that process is
20 there are specific areas where we need to focus our
21 services.

22 What we've seen in the -- the cases that we've
23 triaged is that most of the people that are requesting our
24 services are requesting CSS services or expert consultation.

25 That's about half of our -- our referrals for CBS.

1 25 percent of our referrals are specifically to
2 the MSOC's long-term programs.

3 The next largest portion is 21 percent. And
4 that's referrals to our crisis programs.

5 For that reason -- excuse me, about 4 percent are
6 referred to or qualified for MLB services.

7 So for that reason, we've really focused on trying
8 to expand our preventative services and looking at CSS. And
9 with CSS support, transitioning to some of our long-term
10 programs, so they have the capacity to support the people on
11 our waitlist, or the people in some of our secure hospital
12 or institutional settings.

13 So a lot of effort has been put forward focusing
14 on our long-term residential programs, and getting them to
15 the point that they can support more challenging people in
16 an integrated long-term setting.

17 We also have legislative edict that requires us to
18 prioritize long-term residential services for individuals
19 that other providers can't or won't. So that's where a lot
20 of our resources have been focused.

21 And we do overall believe that transitioning
22 people to long-term services, with the support of CSS is a
23 much better option than having to do additional transitions
24 to MLB or crisis services.

25 Second area that we wanted to address was the wait

1 times for getting into community settings out of MLB.

2 The folks that are in MLB, a lot of the planning
3 is driven by their person-centered plans, which focuses on a
4 lot of different areas, including where the person wants to
5 live, where their natural supports are and so forth.

6 When you're looking at state-wide capacity, this
7 is a really difficult thing to manage.

8 There's a lot of different areas that impact
9 housing and services, and different parts of the state.

10 For instance, if an individual needs IM injections
11 and they want to live in the Rochester area, we're competing
12 for a lot of positions that could be filled by people who
13 work at Mayo.

14 THE COURT: Uh-huh.

15 MR. HOHMANN: Like LPNs and so forth.

16 So there's a lot of competition for staffing
17 resources.

18 THE COURT: Not that the state prison system
19 has -- we get doctors for a long time at Waseca or
20 Rochester. Well, but there's a shortage of doctors
21 generally, but when they do come, they go to Mayo.

22 MR. HOHMANN: Yeah.

23 THE COURT: Whether they're residents, or whatever
24 they may be, so.

25 MR. HOHMANN: Yeah. I mean, staffing resources,

1 especially for this population is probably the primary issue
2 that prevents people from a quick transition into a
3 community setting.

4 Some of the other areas that impact transition are
5 the risks associated with past behavior.

6 There's very few providers, private providers, who
7 are willing or able to support somebody with a history of
8 serious aggression or aggressive behavior.

9 There's a lot of risks associated with that that
10 apply, comp costs, staff costs, staff retention rates, and
11 so on and so forth.

12 The other area for this population and transition
13 is finding the right fit for a provider. Finding a willing
14 provider who's willing to invest in a long-term community
15 placement is not an easy task to do.

16 And I've mentioned this before, but finding staff
17 and finding the right staff is really important.

18 We do a lot of work to make sure that the
19 individuals that are transitioning like their staff.

20 In some cases that they're included or able to sit
21 in the interview process and choose their own staff.

22 Lastly, there's -- there's quite a few people at
23 MLB programs that really can't or shouldn't live with other
24 people. It could be risky for the roommates. So there's
25 division or separate living spaces that's required.

1 Or they might need a one-person setting. For a
2 lot of providers, a one-person setting can be really risky
3 and really expensive for the housing and so forth.

4 Lastly, the housing market right now is really,
5 really expensive. Really difficult to find housing that's
6 affordable in a lot of different areas of the state, even
7 areas you wouldn't necessarily expect, like in rural
8 settings.

9 Lastly we -- we'd like to address the needs
10 assessment for MLB homes.

11 As I mentioned earlier, our waitlists, as far as
12 looking at systemic needs, we've tried to focus more on
13 preventative services, so people wouldn't need to need MLB
14 services.

15 So we've looked at expanding, or further
16 supporting CSS mobile supports, as well as other upstream
17 prevent -- upstream preventative measures so people don't
18 have to leave their homes.

19 Any other questions regarding that?

20 THE COURT: Well, I suppose -- and what the -- I
21 suppose ideally it would be nice to have more treatment
22 homes, additional.

23 And there's probably a lot of reasons why that's
24 probably, or maybe that's not a -- kind of a primary issue,
25 or?

1 MR. HOHMANN: I think ideally we would like people
2 to help people live in their current settings, and there are
3 waitlists for CSS, so we'd like to address those waitlists
4 and put our capacity towards that.

5 There are a few things that we've done there like
6 increasing the classification for CSS staff, which also
7 increases retention rates for our staff, and experienced
8 levels for our staff.

9 So an experienced clinician can support more
10 people.

11 I'd say a new clinician could probably support
12 around six to seven people. A more experienced clinician
13 could probably support up to ten people on their caseload?

14 THE COURT: Your Honor?

15 MAGISTRATE THORSON: I don't have any questions.

16 THE COURT: All right. Thank you.

17 MR. HOHMANN: Thank you.

18 MR. IKEDA: Your Honor, next on your agenda is
19 continued use of restraint, and seclusion and documentation
20 supporting compliance with EC-104.

21 And Jill Slaikeu, who's with the licensing
22 division at DHS, is here to talk about that.

23 THE COURT: Okay.

24 MR. IKEDA: Ms. Slaikeu is the manager of the HCBS
25 Unit, the Home and Community Based Services Unit at DHS.

1 And I think when she comes up, she can tell you a
2 little bit more about her role as a licenser. And I believe
3 they also do some maltreatment investigating, as well.

4 THE COURT: All right.

5 MR. IKEDA: And then, you know, with respect to --
6 on this topic, you're actually going to hear from more
7 people after that.

8 So rather than take another -- have me interrupt,
9 I'll just tell you.

10 Alex Bartolic, who you're familiar with.

11 THE COURT: Uh-huh.

12 MR. IKEDA: Will come up and talk, as well as Erin
13 Sullivan Sutton, who is the housing support services
14 director at DHS.

15 THE COURT: All right. Okay.

16 MS. SLAIKEU: Good afternoon Judge Frank and Judge
17 Thorson.

18 My name is Jill Slaikeu. And I'm the HCBS Unit
19 Manager in the licensing division. And the licensing
20 division is located under the Office of Inspector General at
21 DHS.

22 Broadly speaking, the licensing division is
23 divided into two broad activities.

24 We do licensing activities. And then we also do
25 maltreatment investigations related to any alleged or

1 reported maltreatment that occurs in any DHS-licensed
2 program.

3 We have three units that do licensing activity
4 that we call directly licensed, meaning we do the licensing
5 activity.

6 That's our HCBS Unit so that's the Chapter 245D
7 program, and adult day, that's the unit that I manage.

8 We also have a child care center unit and a mental
9 health and substance use disorder unit.

10 We also have staff and licensers who work with our
11 counties who do delegated licensing activity.

12 That delegated licensing activity includes
13 Community Residential Settings, or our corporate foster
14 homes, family foster homes, and family child care. And
15 there's much interaction between DHS licensing and county
16 licensers in those activities.

17 So I was here to talk to you about how the use of
18 seclusions, and restraint, and the implementation of both
19 245D and prohibited procedures in the positive support rule.

20 And I want to tell you that we license for and
21 monitor for the planned persons -- person-centered planning
22 under Chapter 245D for all those licensed programs. We have
23 over 1600 license holders providing 245D services.

24 Unlike other license programs, we have over 20
25 services that can be provided under that license. And we

1 have thousands of facilities associated with those 1600
2 license holders.

3 We look for person-centered plans for each -- each
4 time we go out and do a licensing review.

5 And we will issue a correction order if there's
6 not a person-centered plan, service planning and delivery
7 that's in a person's plan.

8 We also look for the -- that prohibited procedures
9 have not occurred, including the use of restraint or
10 seclusion outside of anything that is allowed within the
11 scope of the statute or rule.

12 When the positive support rule was implemented in
13 August of 2015, we then began monitoring for the positive
14 support rule and that our license holders were correctly
15 implementing the positive support rule.

16 During that early phase, we worked with the
17 disability services divisions to do webinars, doing
18 in-person training to some of our service specific license
19 holders.

20 We responded to any invitation to attend trainings
21 or conferences regarding positive support rule. And we also
22 issued a number of frequently asked question e-mail blast to
23 our license holders to help them understand this new rule
24 that they would be held to.

25 The other part of our licensing division is the

1 maltreatment side of the licensing division. And they also
2 uphold our statutes and rules, including compliance with
3 person-centered planning, and compliance with prohibited and
4 restricted procedures.

5 Anything else?

6 MS. SLAIKEU: I don't have anything else.

7 THE COURT: All right. Thank you.

8 And as sometimes I'll tell the clients, that
9 wouldn't apply here, when people are sitting in the
10 audience, I said, well, you probably -- they probably
11 haven't read all the very detailed reports that have been
12 submitted. So it's not like the information that we're
13 getting. Well, is that what you have? No. It's a focus or
14 summary on what's been submitted before today's
15 get-together.

16 So, whenever you're ready.

17 MS. BARTOLIC: Judge Frank and Judge Thorson, I'm
18 Alex Bartolic with the Department of Human Services, and I'm
19 here to touch briefly on some points about the very positive
20 effect we are seeing with the positive support rule, and
21 245D.

22 And the significant reduction we've observed and
23 the use of restrictive procedures. And also the improvement
24 and use of positive supports.

25 We have a process to triage technical assistance

1 and training based on the Behavioral Intervention Forms that
2 we receive.

3 So there's a number of reports that are made. And
4 we go through that in order to understand where there are
5 issues and where we need to provide training.

6 We provide training in the rule itself in how to
7 develop transition plans, and how to do good reporting.

8 A number of other topics, one area that we have done
9 extensive training, has been around the use of
10 person-centered practices, because that's the foundation for
11 the positive supports.

12 Trainings to start, but the real application comes
13 with technical assistance. It's providing real-life
14 application and support to providers and counties.

15 For example, repeated reports say manual
16 restraints will trigger individualized technical assistance.

17 This might mean onsite meetings with the person in
18 their team to troubleshoot, provide resources, and coach
19 team members on how to reduce the use of manual restraints.

20 We've engaged with counties and providers who are
21 working with local law enforcement around 911 calls.

22 We meet with teams to review their behavioral --
23 Functional Behavioral Assessments, and use data effectively
24 in order to plan for their interventions and evaluate their
25 effectiveness.

1 And additionally, we provide extensive technical
2 assistance during forums, such as regional meetings,
3 communities of practice, where we have an opportunity to
4 work with large numbers of people on how they can
5 proactively anticipate and respond to situations.

6 We do provide more intense review and technical
7 assistance for those who have requested or have approved use
8 of emergency manual restraints.

9 We have a 13-member external program review
10 committee.

11 And that committee and its subcommittees review
12 the Behavioral Intervention Reporting Forms that raise red
13 flags for the emergency use of manual restraints.

14 They evaluate the provider responses after the
15 emergency use of manual restraints, and provide technical
16 assistance to those teams.

17 This committee also makes recommendations to the
18 Commissioner's delegate about requesting to use prohibited
19 procedures, and any requested renewals.

20 There are 12 currently-approved uses of emergency
21 mechanical restraints. Seven of the 12 are related to the
22 use of seatbelt restraints.

23 This has been a very controversial topic. It was
24 very difficult during the promulgation of the rule. Because
25 this is something that it's the law that people use

1 seatbelts.

2 And there was the concern that if we weren't able
3 to safely transport people when they might otherwise release
4 a seatbelt, that we would be causing an unsafe driving
5 situation. That the drivers would be violating the law.
6 And that the reaction would be to not have people
7 participate in activities that they normally would if they
8 needed to ride.

9 So we're down to 7. And 7 out of 12 related to
10 the seatbelt restraints.

11 We are looking at other practices. We're doing a
12 research review across the country to see what other ways
13 there are to deal with this, but this has been an important
14 topic. And I think it's interesting that that has been the
15 majority of those cases of approved use of mechanical
16 restraints.

17 The review committee, the program review
18 committee. Approves the use of manual restraints for
19 varying time periods.

20 It can be up to 11 months, but they do not
21 automatically assume that they should have an 11-month
22 plan. They will do shorter periods of time to evaluate it
23 over time.

24 Extensions after 11 months are only approved after
25 extensive consideration and technical assistance.

1 This team is assuming that all use can be
2 transitioned. That there does not need to be ongoing
3 permanent use of mechanical restraint.

4 The EPRC uses their clinical expertise. They're
5 looking at evidence-based practices.

6 They're looking at the best practices from across
7 the country, as well as what they can find in order to look
8 at options when people are considering an extension.

9 They provide technical assistance in person to
10 these teams to try to find solutions and to help them move
11 through this.

12 They tap into other resources. For example, we
13 know that communication and the ability to control one's
14 environment contribute to really successful outcomes and are
15 often are causes for restraint.

16 Every person with a transition plan, or when
17 there's a request for a transition plan, is offered
18 assistance through a multi-disciplinary team that are
19 experts in the use of technology, communication, and so that
20 they can help look at alternatives to be able to use
21 technology and other means of addressing those
22 communication.

23 We also have a pharmacist who's available to offer
24 assistance, and medication advice, and to review it.

25 So these are some examples of activities that we

1 are taking to both monitor and also assure that people are
2 given the best information and technical assistance to be
3 able to use positive supports for everyone in Minnesota.

4 THE COURT: Thank you.

5 MAGISTRATE THORSON: Thank you.

6 THE COURT: Thank you.

7 MS. SULLIVAN SUTTON: Good afternoon.

8 THE COURT: Good afternoon.

9 MS. SULLIVAN SUTTON: Your Honor, my name is Erin
10 Sullivan Sutton. As noted, I'm the Director of the Housing
11 and Support Services area of the Department.

12 In addition to that role, I also served as the
13 agency lead for Olmstead, which means, basically, that I'm
14 the point person for the Olmstead implementation office, and
15 work across DHS to help try coordinate the reporting and
16 presentation of materials to the Olmsted subcabinet.

17 And I've been asked to speak to a couple of areas
18 regarding positive supports in the Olmstead Plan. I won't
19 be repeating what you heard from Alex Bartolic, but there's
20 a couple of things that I do want to mention.

21 As you aware, the Olmstead Plan measures progress
22 in the area of positive supports in two -- three goal areas.

23 The first two are -- progress is measured in terms
24 of the number of people who are subjected to emergency use
25 of manual restraints and the number of episodes of the use

1 of emergency manual restraint.

2 And reports are required, as noted, for each use
3 of emergency manual restraint.

4 I just want to mention that when the baseline was
5 first established in -- from July of 2013 to June of 2014,
6 there were 8,602 Behavioral Intervention Reporting Forms of
7 restrictive procedures involving 1,076 unique individuals.

8 For the most recent report for fiscal year 2018,
9 there were 3,739 reports for 644 individuals.

10 We continue to see the reductions being made that
11 were intended as a part of the Olmstead Plan.

12 We also measure progress on the emergency use of
13 mechanical restraints in the positive supports goal in two
14 ways.

15 We looked at the number of reporting forms
16 submitted involving restraints. Based on -- and it's unique
17 individuals, as well as the number of reports overall.

18 When that baseline was first established in July
19 of 2013 to June of 2014, there were 2,038 Behavioral
20 Intervention Reports of mechanical restraints involving 85
21 unique individuals.

22 In 2015, the year that you first approved the
23 revised Olmstead Plan, there were 912 reports involving 21
24 individuals that were approved for the use of mechanical
25 restraint.

1 In the most recent report for 2018, there were 671
2 reports of -- involving 13 individuals.

3 And while the 2018 goal was not met, we continued
4 to see movement downward, as we had hoped to do.

5 The number of reports has been reduced by
6 approximately 60 percent. And as Alex Bartolic noted with
7 the work of the external review committee and many others,
8 work will continue to reduce the use of restraints and the
9 number of people for whom they are used.

10 I think one of the very positive things to report,
11 as Alex mentioned to the last court in February, there were
12 12 people who experienced mechanical restraints.

13 And each quarter the external review panel reviews
14 each and every BIRFs report and provides an explanation that
15 is used in the quarterly reports.

16 So, for example, we look at of the total number of
17 reports that quarter, how many were -- involved the
18 individuals who were approved by the Commissioner? How many
19 may have occurred in this security hospital as well as if
20 there were reports that were -- did not fit, and were not
21 done in accordance with 245D or positive supports rule?

22 And I'm pleased to report that most quarters that
23 number is very small, sometimes there are none.

24 But in any case, if there are reports that were
25 not done in accordance with 245D, there's technical

1 assistance provided to the provider, as well as reports made
2 to licensing. And so we're continuing to see movement in
3 the right direction.

4 THE COURT: Thank you.

5 MS. SULLIVAN SUTTON: Thank you.

6 MR. IKEDA: Well, Your Honor, next on your list is
7 the use of person-centered planning.

8 Well, so, Your Honor, with respect to
9 person-centered planning, I guess if you could give the
10 Department a little bit of guidance, and maybe we could get
11 the right person up here.

12 Alex is standing behind me. And, you know -- so
13 we've got either -- there are a few people that could talk.

14 So Dan Hohmann, who's with the director and
15 treatment area deals with, you know, mainly so Minnesota
16 Life Bridge, Dan Baker, who's also here, who's the internal
17 reviewer.

18 We also have the licensing folks here that can
19 talk. That's Jill Slaikeu about the positive supports rule.

20 Is -- what is it that -- that is specifically
21 concerning?

22 THE COURT: Well, I'll first ask Judge Thorson if
23 she has a preference of any of those individuals and the
24 context?

25 MAGISTRATE THORSON: I don't have any preference,

1 although I know that Alex has a bit of an overview.

2 THE COURT: Yeah. I was going to say the same
3 thing.

4 She probably has -- that would probably be most
5 helpful.

6 MR. IKEDA: Okay. Thank you.

7 THE COURT: And then, of course, part of that may,
8 depending on any responses we get from the consultants, and
9 so forth, there will be a chance to respond if you wish. So
10 that will probably be the most helpful.

11 MS. BARTOLIC: All right.

12 I'm Alex Bartolic, back about person-centered
13 planning.

14 This is the foundation. This is the foundation
15 for positive supports. It's the foundation for
16 understanding what's important to people, and how to balance
17 a plan that really looks at the -- at what's important for
18 them, as well.

19 And we have implemented many strategies. You've
20 seen a number of reports that have come back.

21 We have not only looked at training and have
22 trained many thousands of people throughout this system, and
23 techniques and strategies on how to think about
24 person-centered planning, and person-centered practices.
25 How to utilize tools when you run into trouble on how to

1 really be able to implement it in a more meaningful way.

2 We've also looked at how to change our policies,
3 and how to adapt our forums and processes. So we are
4 building it into the process.

5 So where we are finding that it's harder for
6 people to do it, or there's bumps in the road, we can change
7 a form so that it guides them right through the right set of
8 questions in order to be able to do that.

9 We've modified our assessment process. We've
10 modified how we share information from assessment into the
11 support plan so that you clearly have to identify in the
12 support plan goals to identify those areas of needs, as well
13 as the goals.

14 We have check-in points throughout the way where
15 we're gathering information to understand how well plans are
16 working to meet people's needs and the kind of barriers that
17 we extend through that.

18 We've also modified services in how we pay for
19 them in order to develop services that can more
20 appropriately respond to what it is that people say they
21 want to use.

22 We have built in a number of provisions in our
23 licensing standards, but also how we monitor that.

24 To assure that the things that the Federal
25 Government's expecting and as a State that we're expecting

1 to really show that that's working is actually happening in
2 people's lives.

3 And we know we have a ways to go, but we also are
4 able to identify on an individual level where there's things
5 that a case manager can follow up on, and what are some of
6 the barriers that get in the way.

7 We are working at three levels.

8 We're working at what can we do to help
9 individuals throughout the system, ourselves, but also case
10 managers, special ed teachers, providers, understand what it
11 is they can do differently, how they interact with people
12 differently, how they plan and deliver services differently.

13 But we have also learned, as a country, about
14 practices that will not be effective unless the environment
15 that everyone working also supports that.

16 So we've done quite a bit on how do we help
17 organizations consider what they're doing as an organization
18 to support their workers, their staff in order to actually
19 be able to deliver the outcomes that they want.

20 And then we've done extensive work with providers,
21 with counties, with people who use services, with family
22 members, to understand what in this system is getting in the
23 way.

24 And it really is helpful when you have people that
25 have done all the best practices they know how, who can then

1 help us understand what steps we can take as a system.

2 And we have used that information to modify our
3 system, develop materials, make things available through the
4 web so people don't have to rely on professionals to tell
5 them everything.

6 They, too, can have access to materials and
7 planning documents to be able to really think and plan for
8 themselves.

9 And we've put a lot of it around, how can we help
10 people live their best life their way? And some of the
11 tenants of that, of how can people control? How can people
12 dream? How can people have choices? And how can they
13 participate as we've gone through this?

14 And we know that we have continued to make a lot
15 of progress and build this into our system. Again, our goal
16 is to align our policies, and our funding, and our
17 processes, to really support this going out.

18 We know the that training's not enough. We need
19 to do a lot of technical assistance and support around it.
20 And we've have extensive activities that have been reported
21 through our Olmstead Plan. But also through much of the
22 work that we have been doing with the legislature in looking
23 at how to modify some of the funding and some of the
24 statutes to better support these activities.

25 I could talk about any number one of these areas

1 in more detail, but that's just a high level overview of
2 some of what we've been doing.

3 THE COURT: Thank you.

4 MR. IKEDA: Your Honor, if it's okay. Can we
5 go -- move on then?

6 THE COURT: Yes.

7 MR. IKEDA: And then the last area is electric
8 data management system to track all information relevant to
9 abuse/neglect investigations.

10 And that's appropriate for the Inspector General
11 area. And so that will be Jill Slaikeu.

12 THE COURT: All righty.

13 MS. SLAIKEU: Hello. Again, I'm Jill Slaikeu from
14 the licensing division. And I'm going to speak on our
15 electronic data management service systems that we have at
16 the Department of Human Services in the licensing division.

17 We do track all abuse and neglect investigations
18 through electronic data.

19 All those management systems, whether they speak
20 directly to one another, or we have staff who look into the
21 systems to make sure that they can see what's occurring with
22 each report.

23 When we look at these reports, we're looking at
24 when it occurred, the incident that occurred, the details
25 surrounding that, including injuries that may have been

1 sustained. Who the person is. Who would be the vulnerable
2 person. The alleged perpetrator. Who the license holder
3 is. And where this incident occurred. Whether it was in
4 the community or was it in a licensed facility.

5 When this information comes in through the
6 Minnesota Adult Abuse Reporting Center, then that comes to
7 our central intake unit in the licensing division.

8 We get updates from MAARC several times throughout
9 the day.

10 So the new Minnesota Adult Abuse Reporting Center,
11 or MAARC, has really expedited reports that come to us very
12 quickly. And it's very easy for us to determine who the
13 lead agency is.

14 Sometimes when these reports come in, there's
15 jurisdiction that crosses over again maybe from DHS to the
16 County, or for DHS and law enforcement, or Child
17 Protection.

18 What I -- what we also look for, though, along
19 with who the person is, both the victim and the perpetrator,
20 and the license holder, is we're also looking for patterns.
21 And we look for patterns in a variety of ways.

22 We're looking for, do we have reports about this
23 person? And are these several reports -- you know, do we
24 have multiple reports of maltreatment that have come in?

25 Do we have multi-reports about the alleged

1 perpetrator? Maybe they've moved from one facility to
2 another. So we're going to look at whether they've been
3 named in others.

4 We look at the license holder in the facility, and
5 are the services they're providing showing a pattern?

6 So maybe it's not the same staff, and it's not the
7 same person, but it's the same license holder. It's the
8 same type of incident or it's the same type of services.

9 So I guess what I'm saying is we try to look at
10 both the forest and the trees for these patterns. And we
11 will pull those together to determine when we need to
12 investigate further.

13 But those -- but those, we do have a robust data
14 management system.

15 And we're currently working on improvements to it.
16 And I imagine systems modernization will continue for a long
17 time.

18 But everything now is electronic. We can pull
19 that information. We can respond relatively quickly to data
20 requests, also.

21 THE COURT: All right. Thank you.

22 MR. IKEDA: Your Honor, one last thing before -- I
23 think the next thing is you're probably going to want to
24 hear from Dr. Wieck and the others.

25 THE COURT: Right.

1 MR. IKEDA: Before we do that, one thing that I
2 did want to bring to your attention and let you and Judge
3 Thorson know is that there is a bill in the Senate that
4 would require DHS to close down its -- its MSOCs Coon Rapids
5 home. And I think you're familiar with this, it involves
6 the W.O.

7 THE COURT: Yes.

8 MR. IKEDA: So I did want you to know that there
9 was a bill that was heard in the Senate, I think it's Human
10 Services Reform Finance and Policy, but that the Department
11 just wanted to bring that to your attention.

12 THE COURT: Thank you.

13 MR. O'MEARA: Your Honor, on that point, can I --
14 can we have on the record whether DHS supports that bill?

15 MR. IKEDA: DHS testified in opposition.

16 THE COURT: Okay. Mr. -- you want to proceed, Mr.
17 O'Meara?

18 MR. O'MEARA: Your Honor, if I could, could I go
19 after the consultants, please?

20 THE COURT: Any objection to that?

21 MR. IKEDA: No.

22 THE COURT: All right.

23 Who would like to step first? I see that Ms.
24 Opheim has stepped up, so.

25 You may want to crank down that. It's up to you.

1 MS. OPHEIM: Thank you, Your Honor.

2 I always like to go before Dr. Wieck because she's
3 so compelling, that she's tough to follow.

4 I'm not going to make a lot of comments on this
5 major report. And I'm going to allow the letter that I
6 sent --

7 THE COURT: Right.

8 MS. OPHEIM: -- and comment to stand for the
9 record.

10 But there are a couple of things that I wanted to
11 mention.

12 I don't want to diminish the good works the
13 systems -- some of the positive programs that DHS has put in
14 place.

15 But the one thing I absolutely know is, while each
16 of these functions that has been reported on does exist, and
17 they do the things they say they're going to do, they do not
18 do them for enough people in a timely enough manner.

19 And so, while many people get crisis management
20 services, many people do not. The waiting list is very
21 long.

22 One of the things that I realized as I was looking
23 through the report and structuring my response was the fact
24 that I guess I've come to the realization that there is
25 definitely a big disparity between what I believed was

1 required in the Jensen Settlement Agreement and what the
2 Department believed.

3 And that is for the Court to determine what was
4 required. It's not for me to determine.

5 But one example to that would be that, you know,
6 the letters criteria required the creation of a replacement
7 for Rule 40. Well, that, in fact, was done.

8 But part of what we were hoping for was a much
9 broader expectation.

10 Now I know they've done training, but we still see
11 an awful lot of people who don't understand the rule, or if
12 they do, they ignore the rule.

13 And so we were hoping for looking at the data
14 analysis for not just policies, but for positive outcomes.

15 So there are people getting positive outcomes.
16 And I acknowledge that.

17 I just would like to see it available to more
18 people.

19 The BIRFs that we've talked about, the Behavior
20 Incident Reporting Form. The numbers have gone down. But
21 the experience of the staff in the Ombudsman's office is, is
22 that there's underreporting going on.

23 And we've come across situations in our work where
24 the form should have been filled out and was not filled out.

25 Life Bridge. They provide a very needed and vital

1 service. They truly were envisioned to be the replacement
2 for METO. But there are not enough beds.

3 And while understand that the Department has put
4 its emphasize on preventing people from losing their current
5 housing rather than building more homes, and I know there's
6 lots of conditions that make that difficult, we absolutely
7 have more people that need the Life Bridge level of service
8 than what we are providing.

9 And I have not seen a robust analysis that says,
10 you know, we could use five more, or ten more beds. Or that
11 there's zero need for anymore beds. That's the kind of
12 analysis that I was hoping to see.

13 I do think that we need more of them so that we
14 can serve the number of individuals -- again, not that the
15 private sector can serve, but that those are left to the
16 public sector because no one else will provide services for
17 them.

18 What I'm concerned about, and as I've expressed
19 before, and consistent with the Court's wishes, I want to
20 see not only how many times did someone move or how many
21 arrests they had. While that is important information,
22 we've not had that before. I want to know, is their quality
23 of life better? Are they living the life that they wanted
24 to live?

25 I want to see the data, but I want to -- I'd like

1 to see an analysis of the data. What does that data mean
2 for the quality of life?

3 Again, I'm not sure that that's truly expected in
4 the Jensen Settlement Agreement, but it's one of the things
5 I had hoped for.

6 Many of these numbers, it's hard for me to tell
7 where they came from. I don't doubt that they have many
8 divisions and -- but they're all internal numbers.

9 And with the exception of the external review for
10 mechanical restraint, these are all internal numbers
11 provided by the Department.

12 And certainly we don't have the -- the wherewithal
13 to go out and produce evidence that it is or is not working,
14 or the numbers are or are not accurate.

15 So, yes. We are sort of an ad hoc review or where
16 we catch it we can share it with DHS. But I still really
17 had hoped to see it wider and broader than it is.

18 So I'm pleased with much of the programs that have
19 been developed. I'm not particularly excited because they
20 don't stretch.

21 Everyone in Minnesota who has a developmental
22 disability, or every class member doesn't always get these
23 services.

24 So they're there, but they don't flow as smoothly
25 as I'd like to see.

1 THE COURT: Okay.

2 MS. OPHEIM: But I do appreciate the progress, I
3 do appreciate the Court's time and attention.

4 And I think the last thing, however, that I remain
5 concerned about is restraints and the use of mechanical
6 restraints in facilities that are not following the positive
7 support rule or if their policies say they are -- should
8 follow the positive support rule. The people don't
9 understand and go ahead and execute a restraint because they
10 believe it's the policy of the facility.

11 And this is one of the things I've recognized in
12 the beginning was, if you applied the no restraint to just
13 people with developmental disabilities when you had a
14 facility that had a mixed population, it would be very
15 difficult for the staff to know which individuals this
16 applies to and which individuals it does not.

17 So, with that, I would remain concerned, although
18 I'm glad we are making the progress that we have.

19 Thank you.

20 THE COURT: All right. Dr. Wieck?

21 DR. WIECK: Judge Frank and Judge Thorson, my name
22 is Colleen Wieck and I'm a consultant to the Court.

23 In my letter to the Court, I extended deep
24 appreciation for the impact analysis.

25 And I've now read through each of these individual

1 profiles of the class members three times.

2 So I haven't spend the thousands of hours that the
3 Department staff spent, but I certainly have spent hundreds
4 of hours.

5 One request I have is that because of the Impact
6 Analysis Reports are sealed, could we have a summary report
7 prepared?

8 And I'm not asking for anyone to update any
9 individual profile, I'm just asking for a data summary.

10 Now the reason is simple. When the *Welsch* case
11 ended, we didn't have this type of summation.

12 And so it's a request I'd like to make, and it's
13 also in my letter which is docketed as 726.

14 The Department prepared and submitted, I think
15 it's closer to 1500 pages, Scott, and I printed it. So if
16 there's a hardship fund available, I'd like money for
17 paper.

18 Prior to December, I asked -- prior to
19 December 2019, I asked that we only update a few of the ECs
20 that might require analysis.

21 So I've tried to do this analysis and I read the
22 agenda differently.

23 I thought we were going to discuss an analysis of
24 persons under plans as it applied to that sealed document.

25 So, that's what I'm going to talk about.

1 THE COURT: Okay.

2 DR. WIECK: And, of course, my numbers need to be
3 verified because it was just me.

4 And Scott already corrected one thing I got wrong,
5 and it's because of the proofreader, and that was me, got it
6 wrong, so I'm watching closely as he might jump up here.

7 And in analyzing the person-centered plan, I
8 looked at 250 person-centered plans. And they were scored
9 against 25 -- 24 criteria. The lowest score was 7. And the
10 highest score was 24, which was a perfect score.

11 Now when I calculated the averages across all of
12 the person-centered plan, it was 20 out of 24.

13 And I think what's interesting, and Roberta and I
14 will take the time to compare these results with the
15 Olmstead office, is that when you scored the person-centered
16 plans for class members using a different set of criteria
17 though, they come out actually higher in some areas than the
18 Olmstead Plan results.

19 And so we want to look at -- at that. And, yes,
20 we know that the criteria differ.

21 But were there some individuals in the most
22 restrictive settings with perfect scores.

23 And so -- a perfect score was 24. We want to look
24 at that finding.

25 And I concur with Dr. Baker. When you looked at

1 the individual profiles, and you looked at the
2 person-centered plans, and then you looked at the comments
3 at the very end of each impact analysis, it often was people
4 pointing to the employment issue, not the residential
5 issue.

6 That people would have behavior problems if they
7 couldn't go to their job. And so employment is absolutely
8 central to this -- to reading all of these analyses.

9 Then I went through and reread the profiles,
10 looking at the investigation memos, or the abuse and neglect
11 issues.

12 And if we were to do a summary report, because we
13 -- I know some of them have been redacted, and I know some
14 of them have information we can't release, but in terms of
15 summary, there were 73 allegations of abuse and 26 were
16 substantiated. 24 were inconclusive, 19 were false, and 3
17 were errors.

18 And so then I listed out what was substantiated,
19 and often it was people being yelled at, or pushed, or hit,
20 or use of -- overdosing on Lithium for three times the
21 dose.

22 So there -- there's plenty there to analyze. And
23 also just to summarize about what has happened to the class
24 members.

25 Then I went back and looked at all the BIRF

1 reports.

2 And so there were 183 class members that had no
3 Behavior Intervention Reporting Forms filed.

4 Of the remaining class members, then I looked at
5 what were the prohibited and restrictive procedures used?

6 And in the individual impact statement, they'll
7 tell you that a Behavioral Intervention Reporting Form
8 allows a provider to select multiple restrictive procedures
9 so that the number of restrictive procedures may exceed the
10 total number of reports.

11 So here's what I found, and these numbers are
12 across the years, not in the most recent time period that
13 others have discussed.

14 Manual restraint totalled 1,222 times involving 81
15 class members.

16 The range was 1 to 97.

17 PRMs, 762 involving 54 class members. The range
18 was 1 to 100.

19 911 calls. 509 calls involving 79 class members.
20 The range was 1 to 47.

21 Mechanical restraint. 187 mechanical restraint
22 incidents involving 7 class members.

23 Now the first thing they have to do is take out
24 one class member who has made the newspaper. And that
25 person has died. And that person was using a restraint

1 chair on a daily basis.

2 Of the remaining 6, who I think are alive.

3 There's one example of Mace. And so the staff person used
4 personal Mace on what they call the vulnerable adult or
5 class member.

6 There was a mechanical restraint with no
7 description attached.

8 Blocks and padding used twice.

9 Velcro-weighted blanket used once.

10 Law enforcement used handcuffs twice on one class
11 member.

12 And then the shield and restraint chair used at
13 MSH St. Peter.

14 Time out, twice involving two class members.

15 Seclusion, 80 times, involving five class members.
16 The range was 1 to 53.

17 Emergency hospitalizations, 89 times involving 30
18 class members.

19 Crisis respite, 37 times, involving eight class
20 members.

21 Mobile crisis, 9 times, involving nine different
22 class members, I think.

23 And penalty consequences, 118 times involving nine
24 class members. The range was 1 to 46.

25 Then I listed out the page numbers, because I

1 certainly would not use names here.

2 And so if somebody would like to follow up, I can
3 gladly show them, rather than everyone trying to read
4 through all these pages.

5 My letters submitted to the Court was also
6 incorrect because when I first read through the individual
7 impact analysis, I thought there was only one person placed
8 at Anoka during this time period. There were actually four.

9 And so I want to make that correction. I don't
10 know if the Court would like me to submit an amended letter
11 to fix these errors. But now that I've read the report more
12 thoroughly, I just didn't have time.

13 Then there were 11 class members with behavior
14 problems and criminal charges, but their profile show no
15 BIRF reports were submitted and no investigation memos
16 attached.

17 And then I went back to double check the number of
18 people who were in prison or in jail the number of people at
19 the sex offender program and the number of people at St.
20 Peter. And then number of people with pending warrants.

21 And so I just want to comment on one other thing.

22 I did do graphs of length of stay at Minnesota
23 Life Bridge.

24 And I did do graphs of the type of procedures used
25 at Minnesota Life Bridge, but that's not important to the

1 Court right now.

2 In terms of the last item, I think -- I know the
3 issue is raised we don't need improvement.

4 Analysis is sometimes missing. Let's go to EC-88.
5 The question that was answered is exactly what we hope for,
6 upstream prevention methods.

7 But EC-88 specifically states that any need for
8 additional community treatment homes beyond four will be
9 determined based on a specific assessment of need. Based on
10 client needs with regard to such criteria as risks for
11 institutionalization, or reinstitutionalization, behavior or
12 other challenges, multiple hospitalizations, transfers
13 within the system, serious reported injuries, repeated
14 failed placements, are other challenges.

15 And I have a feeling the data's available. And
16 I'm all in favor of upstream prevention techniques.

17 What might be missing and what might be needed
18 before December, would be those ECs that require analysis.
19 And often -- sometimes we would get anecdotes. And
20 anecdotes, you know, can be made into analysis, I understand
21 that. But that would be the one thing I'd ask for. And I'd
22 recognize the thousands of hours. But I think that the
23 impact analysis that we have is -- is a gold mine.

24 It really does answer the question for the Court,
25 is anyone's life better?

1 And if you read those individual impact analyses,
2 you can see, you still have a group of people involved with
3 the criminal justice system. You still have people who are
4 sex offenders.

5 And then you have a large group of people who are
6 thriving in the community. And then you have some people
7 who are, you know, at risk of hospitalizations, mobile
8 crisis, and so forth.

9 So I think it's all there. Thank you, Your
10 Honors.

11 THE COURT: Thank you.

12 MAGISTRATE THORSON: Thank you.

13 THE COURT: Mr. O'Meara?

14 MR. O'MEARA: Thank you, Your Honor. I echo the
15 comments from Dr. Wieck and from Roberta Opheim.

16 The issue of the use of restraints on class
17 members and people with developmental disabilities, is
18 obviously a fundamental issue of concern. There's a reason
19 why this lawsuit was begun.

20 We have been consistent, I believe, throughout the
21 entire pendency of this litigation that it is our position
22 that they shouldn't be doing this stuff.

23 You can't restrain and you seclude. There isn't
24 a, you know, a waiver or a variance that should apply to
25 this situation.

1 In the Settlement Agreement, the State and
2 Department of Human Services agreed to stop the use of
3 mechanical restraints, handcuffs, flexi cuffs, body cuffs,
4 there's a whole list in there. And they just stopped it
5 cold. And that's very telling.

6 These were individuals, according to the
7 Department of Human Services, that were self-injurious or
8 had the potential to injure others and -- in that setting.
9 And this stipulated class action settlement that was
10 approved by the Court, they stopped the use of mechanical
11 restraint.

12 And I don't understand, nor does our Ombudsman,
13 and I think Dr. Wieck would agree with me, can't understand
14 why in 2019 this is still going on.

15 Why there are variances being created out there
16 that suggest that security is part of an exception to allow
17 for the use of mechanical restraint in a positive support
18 rule environment.

19 And maybe this flows into the next section about
20 an evidentiary hearing, but I would like to ask some of
21 these people that promulgated these rules, and are
22 interpreting the rules, what this all means to them?

23 Does this mean that if the positive behavior
24 supports rule doesn't state something, then it's okay to use
25 mechanical restraints on a class member or a person with a

1 developmental disability? Is that what this means? Despite
2 what the Department of Human Services has said in its
3 statement of needs and reasonableness that they submitted in
4 support of the positive support rule?

5 These are critical, critical issues that need to
6 be sorted out.

7 And the statements of Counsel today are in direct
8 contrast to some of the statements that are on the record by
9 his client about these issues, including the broad agreement
10 that DHS admits to under the Comprehensive Plan of Action,
11 which this Court has stated in its order, is part of this
12 settlement as a result of their noncompliance. It exists
13 because they're noncompliance. Just as the Court monitor's
14 role existed long before I even filed a motion for
15 substantial noncompliance.

16 So these are critical, critical issues. And
17 hundreds of mechanical restraint, Behavioral Intervention
18 Reports are on the record.

19 If I'm reading this right, and I don't have, you
20 know, the fourth level logic to go into this, but if there's
21 617 reports, and the goal is 185, they missed that by a heck
22 of a lot.

23 And it's really disconcerting that DHS and their
24 lawyers say they're done. This is the best we're going to
25 ever do.

1 I think a lot more can be done. And I'll reserve
2 the rest of my comments along these lines for the next
3 section.

4 THE COURT: Well, it seems before I hear from
5 opposing Counsel, are there at least -- well, there are two
6 issues here. We might as well roll all these all together
7 on the agenda.

8 The, you know, one is, you know, let's assume that
9 you -- and this won't be the first time this has come up,
10 let's say you file a -- you've got a request in, and let's
11 say there's a -- and I'll be addressing this in the order
12 that's issued in the immediate future about, well, what --
13 one, should be there a "evidentiary hearing?" Is it going
14 to be testimonial, nontestimonial?

15 The burden of proof, which is an issue, I'll --
16 you know, that was, obviously, it's not -- that's not a
17 complicated issue, it's, as far as the Court's concerned, is
18 there compliance with the Settlement Agreement?

19 And then is the issue raised within the scope of
20 the Settlement Agreement, even if there's not compliance?

21 And then, of course, so I guess there's an issue,
22 well, what would be the issues put before the Court, if I
23 were to grant, with objection, to an evidentiary hearing?
24 And then, what would be within the scope of the Jensen
25 Settlement Agreement? What's outside of it? So it's --

1 because I would think that it might benefit everyone for the
2 Court to address all of those issues, in one order, so
3 everybody knows right where they stand, whether it's a
4 burden of proof issue.

5 Whether it's, well, what actually are we going to
6 litigate? And I suspect that Counsel will probably tell us
7 what he agrees on, what he doesn't agree on, that's
8 necessary.

9 MR. O'MEARA: Well, I'm -- there's a lot of moving
10 parts in that --

11 THE COURT: There are a lot of moving parts.

12 MR. O'MEARA: -- in that observation, Your Honor.

13 I guess my -- my response to your comments are,
14 this Court needs to be satisfied that the State and
15 Department of Human Services have complied with the
16 settlement, which includes the Comprehensive Plan of Action
17 and all related orders.

18 THE COURT: And I'll -- go ahead. I'm sorry.

19 MR. O'MEARA: No, please, Your Honor. Go ahead.

20 THE COURT: No, you go ahead.

21 MR. O'MEARA: You know, and to suggest that the
22 burden's on me, really on my clients, the people that were
23 abused, to come here now in 2019 after they've noncomplied
24 for years and are still in noncompliance, according to the
25 Court's repeated orders, and according to what the Court

1 monitor has said over the years, on the evaluation criteria,
2 which are a part of this settlement, and they've admitted
3 that.

4 To suggest that we have that burden, I mean, is
5 flat outright wrong. It's not supported by anything.

6 The Settlement Agreement, the Settlement Agreement
7 itself says that they have to show that they are in
8 substantial compliance, through the external review process.

9 They never could find one or didn't move forward
10 with one, so they wanted the Court monitor to become
11 involved.

12 And the Court involve the Court monitor.

13 Docket 159 is its order. And that order in viewed
14 authority of the Court on the court monitor to move forward,
15 and the court monitor's various reports.

16 And the Court's orders in regard to the court
17 monitor's reports all talk about DHS's responsibility to
18 show substantial compliance with the Settlement Agreement.

19 They've waived any position. They're trying to
20 assert now in 2019 that the standard is somehow different
21 than what the original Settlement Agreement said, what the
22 Court monitor said when the Court-appointed the court
23 monitor to be the external reviewer to take on that role.

24 And when the Court issued numerous orders about
25 compliance to DHS, to the State, to the State Defendants, on

1 and on it goes over the course of eight years, substantial
2 compliance with the settlement. That's the standard.

3 If they had a problem with that, they never should
4 have agreed to that originally in the settlement.

5 They should have asked the Court to address it
6 long ago, and they've waived it. Completely waived it.
7 It's the law of the case.

8 THE COURT: So what -- what is your reaction to
9 their position?

10 Because rather than going over all of the history
11 of the -- the history of the case, where it was by
12 stipulation, actually, their request, that we involve David
13 Ferleger. But rather than go there, that was at a time when
14 they conceded, no, let's -- we agree we're not in compliance
15 with certain things. We don't have an external reviewer.
16 We didn't do this, this, this and this.

17 That's not what they're saying today. They're
18 saying, we're here to tell you we are in compliance with the
19 -- with the Jensen Settlement Agreement.

20 And to the extent there are some issues that
21 they're claiming we aren't -- those aren't part of the
22 Settlement Agreement, and -- and actually, some of those
23 things there's been agreements on over the years, some not,
24 with, well, these were aspirational goals, the setting of
25 this.

1 So I think, obviously, I'm quite certain,
2 Counsel's going to get up and say, look at, whether they
3 want to file a motion, if the Court is with the objections,
4 going to set an evidentiary hearing, we say we are in
5 compliance. And so until somebody shows us -- the Plaintiff
6 says that we're not, and we're in violation of the
7 agreement, that's what I anticipate.

8 Not to oversimplify your position or theirs, but I
9 do anticipate that's what I'm about to hear.

10 MR. O'MEARA: You know, with all due respect,
11 neither Mr. Ikeda are wearing the robes, Your Honor, you and
12 Judge Thorson are, and they're the ones that abused my
13 clients.

14 They're the ones that didn't move forward with the
15 external reviewer. They're the ones that wanted the court
16 monitor involved. They're the ones that continuously
17 noncomplied three years.

18 I mean, I don't have to cite to the Court's
19 orders, it's out there. It says they're in noncompliance.

20 Mr. Ikeda stood up here this morning and said I
21 never filed a motion. Well, I did. I did. And it's far
22 beyond what he suggests.

23 Yeah, they lied about their licensing to us.
24 Leadership in party meetings. Lied to us about their
25 licensing at Cambridge. That was one aspect of that -- on

1 that motion. All he has to do is read it, as opposed to
2 trying to guess what it said.

3 We talked about compliance. The Court's order
4 following our motion for their substantial noncompliance,
5 which granted our motion, said in sentence after sentence
6 that they didn't comply.

7 And what did the Court do? In lieu of sanctions,
8 it extended jurisdiction and it -- it was -- it said he's
9 going to wait for the reports that were then due. I'm
10 paraphrasing.

11 The reports in the court monitor. The reports
12 that DHS was required to submit. And that is the process
13 that we had been living with this whole time.

14 Long before I filed that motion, well over a year,
15 it was seven months into implementation when we ran into an
16 issue of noncompliance. And the Court identified it, and
17 the Court sua sponte moved forward with it, suggested the
18 involvement of a court monitor, either just before or just
19 after the Department of Human Services suggested Mr.
20 Ferleger's role as the -- as the external reviewer. And we
21 moved forward from that point.

22 I never had to file that motion because the Court
23 had a process toward settlement implementation under its
24 jurisdiction. And that's how we move forward.

25 And that's why I believe the court monitor should

1 come back in now and assess what's going on.

2 If it's as rosy as the Department of Human
3 Services says, they have nothing to worry about.

4 But if the court monitor has been comprehensively
5 involved in this situation for a long time. He's the one
6 that found out about the use of restraint chairs at St.
7 Peter. They never told us.

8 Last summer a class member was restrained in a
9 restraint chair. That's public record. That's in our
10 filing.

11 I read the appeal to Commissioner Lourey from the
12 State Ombudsman, and she couldn't believe that in 2019 we're
13 talking about this.

14 There is a big, huge disconnect between what we
15 agreed to as part of this settlement. What the Court has
16 ordered. What their statement of needs and reasonableness
17 says about the positive -- supports rule.

18 How they're supposed to be conducting themselves
19 with regard to the use of aversives.

20 And if I can find it here, I'll quote the
21 Department.

22 And this is from its statement of needs and
23 reasonableness.

24 "Incorporating the statutory prohibitions on use
25 of restrictive interventions is also consistent with the

1 Department's agreement to preclude the use of restraints and
2 seclusion both in the Jensen Settlement Agreement and in the
3 Comprehensive Plan of Action.

4 As noted, the Department also agreed more broadly
5 in the Comprehensive Plan of Action to prohibit restraint
6 and seclusion in all licensed facilities and settings
7 consistent with the above-noted legislative directive in
8 Minnesota Statute Section 245.8251.

9 This is consistent with fulfilling a major focus
10 of the Jensen Settlement Agreement. Consistent with current
11 best practices.

12 Aversive or deprivation procedures are now
13 generally considered to be a form of abuse. It is necessary
14 and reasonable that the rule recognize the broad objective
15 of eliminating aversive and deprivation procedures to
16 Minnesota licensed social services."

17 And then we get the variance for St. Peter. And
18 then we get the positions from Commissioner Johnson that,
19 you know, security is really what it's all about and we
20 don't have to do what we said we would do.

21 If I were to highlight one issue of importance to
22 the settlement class, it is the prohibition between
23 restraint and seclusion. And in 2019, if the Defendants,
24 number one, are aren't doing that, and number two, are
25 continuing to support variances, and waivers, and exceptions

1 that allow for the use of those types of procedures, we have
2 a big problem, and jurisdiction should continue.

3 The court monitor should come in, because he has
4 said that Anoka and St. Peter are a part of this settlement.
5 Part of the prohibition against restraint and seclusion. He
6 has said it on his report on restraint at Anoka and St.
7 Peter. That was on the Phase 1 report. I can get the
8 docket number, you know, for the record in a bit.

9 But he never completed Phase 2, he should. He
10 should take a look what -- on the effect of these people
11 that get restrained and secluded program. And it is not
12 positive. It has nothing to do with positive behavioral
13 supports.

14 To suggest that -- for the professionals to
15 suggest somehow or imply somehow that -- that that
16 mechanical restraint is somehow positive, is -- is
17 absolutely wrong. And it's not best practice and it's not
18 this settlement.

19 THE COURT: All right. Bear with me just a
20 moment.

21 MR. O'MEARA: Okay.

22 (Off-the-record discussion.)

23 THE COURT: Do you have a ballpark idea of how
24 much time you'd like here, Counsel? I have to decide if I'm
25 going to give a short break here to everyone, including my

1 court reporter?

2 MR. IKEDA: I suspect I'll talk for 10 to 15
3 minutes and I'm guessing with what I have to say Mr.
4 O'Meara's going to want to respond to that.

5 THE COURT: Let's take 5, 8 minutes here so she
6 can make a short phone call and then we'll proceed.

7 (Court recessed at 4:46 p.m. and reconvened at
8 4:55 p.m.)

9 THE COURT: Whenever you're ready, Counsel.

10 MR. IKEDA: Thank you, Your Honor.

11 So I think that the way I'll respond is two-fold.

12 The first is, I'll spend a couple of minutes just
13 talking about the Department's response to Dr. Wieck and Ms.
14 Opheim's remarks.

15 THE COURT: Okay.

16 MR. IKEDA: Then I'll turn to Mr. O'Meara's --
17 responding to Mr. O'Meara's comments.

18 So with respect to the Court consultants, you
19 know, I don't want to oversimplify it, but I hear two
20 things.

21 From Ms. Opheim I hear, I like what you're doing,
22 I wish you could do it more for more people.

23 And from Dr. Wieck primarily I hear that she would
24 like more reports and more data that's -- that's publicly
25 usable.

1 DR. WIECK: More analysis.

2 MR. IKEDA: More analysis. I hear her behind me
3 saying more analysis.

4 So with respect to Ms. Opheim, you know, I don't
5 think the Department would disagree with the statement that
6 there are more things they could do. There are more things
7 they may want to do. There are more ideas that they have.
8 There are more ideas they wish they could do.

9 The Department is -- has a legislature that
10 appropriates money to them. The Department has a
11 legislature that passes laws that govern the work that they
12 do.

13 The Department has a budget that it's got to
14 follow. And priorities that, you know, there are -- this
15 isn't the only program that the Department of Human Services
16 operates.

17 And so, it -- you know, the Department certainly
18 appreciates Ms. Opheim's remarks about, you know,
19 celebrating the -- the successes that they've had.

20 And, you know, the -- but the question is not
21 really one of, is there more -- is it enough, I guess,
22 Judge -- I'll put it this way. Is it enough that Ms. Opheim
23 says, boy, I wish you would do more. For federal court to
24 continue doing what it's been doing for the last eight and a
25 half years.

1 And as a legal matter, the answer is absolutely
2 not. It's actually obviously not, that's not enough.

3 And then the question is, well, the Department
4 spent a couple thousand dollars preparing a report to the
5 Court, I can't remember when your order came out, but this
6 was, you know, a lot of time, in a pretty short amount of
7 time.

8 They met with the consultants. They went over
9 data collection and verification procedures. The
10 consultants conquered with the methodology and the data
11 collection the DHS was doing, which was helpful.

12 And so during that time period, the Department and
13 its staff spent a significant amount of time preparing this
14 report to the Court and frankly asking for another report is
15 just not a good use of State resources and DHS's time.

16 With respect to Mr. O'Meara's comments, you know,
17 Your Honor, it feels like we're watching the same show
18 again. It's a rerun. It's the same thing that Mr. O'Meara
19 says almost every time we get to court.

20 He talks about the licensing issue from years
21 ago.

22 He talks about the external reviewer issue from
23 years ago, which the Court addressed in an order from years
24 ago.

25 And he continues to bring up these issues as if

1 somehow conduct that happened years ago justifies the Court
2 continuing its jurisdiction for years ahead.

3 The law doesn't support that.

4 Mr. O'Meara would like this Court to live in 2015
5 or 2014. It's now 2019.

6 The question before the Court today is, where do
7 things stand with respect to the settlement?

8 And what you haven't heard is -- is a mention of
9 any evidence. That there's somehow something wrong about
10 DHS's report.

11 The only thing that I really hear from Mr.
12 O'Meara, and maybe this sort of bleeds into this question of
13 the need for an evidentiary hearing, and I know he addressed
14 that, so I'll do that, too, in my remarks, now.

15 But the only thing he talks about is this idea
16 that the Department is continuing to use mechanical
17 restraints and he think that's a bad idea.

18 Here's the problem. The Settlement Agreement
19 doesn't ban the use of mechanical restraints. In fact, the
20 Olmstead Plan doesn't set as its goal the elimination of
21 mechanical restraints.

22 The Olmstead Plan sets the very ambitious goal of
23 reducing the instances of mechanical restraint to under 100.
24 And I think it's seven people.

25 And what the Department and what the State's

1 accomplished is, the dramatic reduction in the use of
2 mechanical restraints, from its baseline in 2013 to 2014 to
3 today. And I'll give you those numbers. I wrote them down.

4 The baseline number was 2,038 reports of
5 mechanical restraints involving 85 individuals.

6 The last full year, 2018 report, reported 137
7 reports of mechanical restrains in 12 people.

8 And what you've heard from Ms. Bartolic was that
9 over half of those 12 people involved seatbelt clips.

10 But even if that weren't the case, Judge, we're
11 talking about 12 people in a system that serves as many
12 people as DHS serves, 12 people.

13 And so then the question for -- the legal question
14 for you is, what's the significance of that? What does that
15 mean with respect to this Court's authority to order a
16 State agency to remain under its -- its supervision and
17 oversight?

18 Well, the Eighth Circuit and the Supreme Court
19 have answered that question for the Court. In *Elizabeth M.*,
20 the Eighth Circuit reversed a Nebraska District Court judge
21 who tried to oversee Nebraska's state hospital system
22 because the Court said, you've got a couple of instances in,
23 I think it was one or two locations. That's not enough.

24 And then you've got, I think it's *Lewis versus*
25 *Casey*, at the Supreme Court dealing with prison law

1 libraries, and the Court said, you can't exceed -- you can't
2 make the injunction or look at things more broadly than the
3 proof that came before you. So that's the legal context
4 that we're operating in.

5 THE COURT: Well, isn't the -- isn't the legal
6 issue, maybe put it a different way, is like it is in all --
7 in most cases, not all cases, and it was a footnote of the
8 Eighth Circuit's opinion in this case, that, well, are they
9 in compliance with the Settlement Agreement?

10 And so that's what I had raised earlier, well,
11 either they're in compliance or they're not.

12 And then, secondly, if there are areas, because
13 this is a little different case, which we've litigated
14 before, well, there's some areas both parties agree weren't
15 part of the Settlement Agreement. And so it really isn't
16 relevant, whether they're in compliance or not.

17 So then we come back to, well, what's specific
18 provisions?

19 Now we'll see what O'Meara says, because he's used
20 the issue of waiver as well, in terms of, well -- because it
21 is your position today, you were in compliance with the
22 Settlement Agreement.

23 MR. IKEDA: It -- frankly it doesn't matter what
24 the -- whatever the legal standard is, DHS has met under any
25 sort of, you know, if -- if you want to use compliance,

1 they've met it. If you want to use substantial compliance,
2 they've met it.

3 If you want to, you know, to be true to the
4 Settlement Agreement and looked at the words that the party
5 -- parties actually agreed-upon, which is that the
6 Plaintiffs must show us, I think it says pattern and
7 practice, but even remove that language, that the Plaintiffs
8 have show substantial noncompliance, well, they've obviously
9 not met that one.

10 THE COURT: Or the Eighth Circuit focused on
11 the -- in terms of extending jurisdiction, that or just and
12 equitable in terms of extending jurisdiction.

13 MR. IKEDA: Although, Your Honor, respectfully I
14 think the just and equitable really goes to -- what the
15 question before the Eighth Circuit was whether you had
16 jurisdiction going forward.

17 THE COURT: True.

18 MR. IKEDA: And the Court agreed with your reading
19 of the -- of what is a contract, which is to say that you
20 could keep the case as long as you -- as long as it was just
21 -- in your mind, just and equitable.

22 But I don't know that that has to do with whether
23 there's compliance with the agreement. Because there are --
24 there is more specific language in the parties' negotiated
25 document.

1 And it talks about substantial noncompliance.

2 So I'm not even sure that the Eighth Circuit can
3 really would have spoken on the issue of what -- of what
4 would constitute, for example, a breach of the settlement
5 agreement.

6 THE COURT: So when they put in footnote, Judge
7 Kelly does, "And we note -- and the DHS's interpretation
8 would mean be the Jensen class entered a Settlement
9 Agreement that dismissed their claims with prejudice, yet
10 placed no obligation on them to comply with the terms of the
11 agreement beyond the initial two-year term or result that
12 the Jensen class might find absurd."

13 MR. IKEDA: Yep. No one -- no one was saying that
14 DHS needed to comply with the Settlement Agreement.

15 THE COURT: Well, that's what --

16 MR. IKEDA: That's what it's getting at.

17 THE COURT: Right.

18 MR. IKEDA: Right.

19 THE COURT: In other words, I'm saying that -- and
20 frankly speaking, if we look really apart from this case,
21 whether -- unless there's expressed terms, that you've
22 suggested that maybe in the agreement, whether we used the
23 word compliance, substantial compliance, or breach of
24 contract of the agreement, I mean, the issue really is the
25 same in that in terms of the -- separate from Mr. O'Meara's

1 argument saying that, well, wait a minute, there's a waiver
2 here of some kind.

3 And also, there's the -- the issue of, well, was
4 there some agreement or modification between the -- the
5 parties back when Mr. Ferleger got involved?

6 MR. IKEDA: Yeah. You know, I don't want to
7 engage with the Plaintiffs on this issue of waiver, except I
8 will say this, it's an odd argument coming from, you know,
9 coming from the Plaintiffs when -- when the positive
10 supports rule came out in August of 2015, to now be
11 complaining about the positive supports rule.

12 And when this purported noncompliance that, you
13 know, they brought a motion -- or, I'm sorry, this order to
14 show cause on the licensing issue, is, I think even older
15 than that.

16 THE COURT: It is. It is.

17 MR. IKEDA: So it's hard to take that argument
18 seriously when they've sat on their hands as long as they
19 have about the things that they're now today complaining to
20 you about.

21 I don't think it's a serious argument, because it
22 would work against them as much as it would work for -- and
23 probably more work against them than it would work for them.

24 If it's okay with you, Judge, I'll -- I'll now
25 respond to the evidentiary hearing issue.

1 THE COURT: All right.

2 MR. IKEDA: The Court should -- the Department's
3 position is the Court should deny the request.

4 That request is so far out of bounds. If the
5 Plaintiffs think that there's a violation of the Settlement
6 Agreement, they can bring a motion.

7 What they -- what they want instead is to push
8 that work onto to you and to push that work onto David
9 Ferleger because it doesn't cost them any -- presumably
10 because it doesn't cost them anything.

11 You know, it doesn't make sense, frankly, to have
12 a court monitor who's a lawyer who lives in Philadelphia,
13 who has to fly in and stay at the St. Paul Hotel to -- to do
14 the Plaintiffs' work for them.

15 You know the Department has already spent over
16 \$1 million. Mr. Ferleger received \$1 million in his role as
17 a court monitor. That's \$1 million that came from DHS. And
18 that -- that was taken away from the people who they
19 otherwise could have served. I mean, this is \$1 million
20 from DHS's budget.

21 And it just doesn't make sense to reopen that
22 again and to make the taxpayers of Minnesota pay who knows
23 how much more. \$1 million? Millions? I mean, what are we
24 talking about when you've got -- you've got someone from out
25 of state coming in and staying at the hotel that he stays

1 at. And having to pay for all of his expenses in that
2 regard.

3 It is not the Court's job to find evidence for a
4 party. It is not. It is not the Court's job. It's not the
5 court monitor's job. It's the Plaintiffs' job.

6 And the only thing really that the Plaintiff,
7 aside from these old stories that the Plaintiff relies upon,
8 the only thing that the Plaintiffs want to talk about is the
9 use of mechanical restraints.

10 But Judge, respectfully, you've ruled on this.

11 You've -- you've even this Court doesn't believe
12 the argument takes seriously the argument that the
13 Plaintiffs are making today.

14 This Court approved the Olmstead Plan. And that
15 Olmstead Plan talked about reducing mechanical restraints to
16 93 uses and 7 people.

17 If there was a prohibition on the use of
18 mechanical restraints, surely this Court would not have
19 approved the Olmstead Plan.

20 You know, and with respect to whether the --
21 whether it's this Court's job to go find evidence for the
22 Plaintiff, you know, what you have in front of you is
23 un rebutted evidence that the Department's in actual
24 compliance with all of the ECs.

25 So even in -- even if a compliance were the legal

1 standard, they've met it, and the Plaintiffs have no
2 evidence to suggest otherwise.

3 You know, the other -- the other point that I'll
4 make about an evidentiary hearing is this.

5 It is the Court's role to adjudicate disputes
6 between the parties.

7 As I'm sure the Court has had before it many times
8 before, parties come in after reaching a settlement and one
9 party doesn't perform to the other parties' satisfaction.
10 And they come back -- I guess federal court might be a
11 little bit different. Because you've got to retain
12 jurisdiction.

13 THE COURT: Limited jurisdiction.

14 MR. IKEDA: Right.

15 THE COURT: Right.

16 MR. IKEDA: But if the Court did retain
17 jurisdiction, the parties will come back and one party will
18 say, Judge, the other party didn't hold up their end of the
19 bargain.

20 THE COURT: Right.

21 MR. IKEDA: Here's my affidavit. Here's my
22 evidence. Here's what I have to show why that's the
23 case.

24 Plaintiffs came to you today with nothing. What
25 they came to you with was a request for you to hold a

1 hearing to try to find that for them.

2 Because if we're talking about mechanical
3 restraints, if that's what we're talking about -- and
4 frankly, what's not clear to me is whether the Plaintiffs
5 are talking about all mechanical restraints, including at
6 the security hospital in Anoka. But if that's all we're
7 talking about, there's no need for an evidentiary hearing,
8 you can decide that as a matter of law.

9 Because there's no dispute that there are
10 mechanical restraints that are used. No dispute.

11 What -- what I think the Department would tell you
12 is they've been doing their best to reduce the amount of --
13 the number of mechanical restraints used and the number of
14 people to whom they are used.

15 And I think they'll tell you they're doing a
16 pretty good job of that and the number bear that out.

17 THE COURT: Well --

18 MR. IKEDA: So --

19 THE COURT: -- separate, sorry to interrupt you,
20 but separate, and without implying, he'll soon tell us, if,
21 well, no, that's not one of my issues, from the Plaintiffs'
22 point of view.

23 Is there -- separate from the issue of the
24 existence of restraints and what the agreement itself says,
25 is there an issue about, well, there's some use of

1 restraints in some facilities that are beyond the reach of
2 this agreement and didn't cover it then, don't cover it
3 now?

4 MR. IKEDA: So the Department promulgated the
5 positive supports rule it governs.

6 And to the Plaintiffs' question about, well, if a
7 restraint is not prohibited by the positive supports rule,
8 well then the positives supports rule doesn't prohibit
9 something.

10 That's, you know, you can read the positive
11 supports rule like you'd read a law.

12 And the Court has adjudicated many legal statutory
13 disputes in contract interpretation disputes.

14 There's no need for an evidentiary hearing on that
15 point.

16 You know, the -- what I think I'll give the
17 Plaintiffs this. You know, they -- they pointed to one part
18 of the agreement, where they said, aha. Here's where you
19 said substantial compliance. And you said it with respect
20 to the external reviewer. Right?

21 Totally ignoring the actual provision of the
22 contracts -- the contract that deals with compliance, and
23 enforcement, and things like that.

24 They focused on the words -- the two words
25 together substantial compliance and the external reviewer

1 section.

2 But they've got no answer to the enforcement
3 language, which is the language that actually governs
4 enforcement of the agreement, none.

5 They can't tell you what -- what it means for them
6 to have to show substantial noncompliance and why that's not
7 more appropriate for a question of -- of enforcement than
8 two words that happen to be next to each other, you know, 15
9 or whatever pages before in the agreement. Because there's
10 no answer to that.

11 You know, the -- if the Court embarks on an
12 evidentiary hearing, you know, it -- it would seem to me
13 akin to a legislative hearing where, you know, aside from a
14 documented dispute between the parties that require an
15 evidentiary hearing, the Court is going to do its own
16 investigation. And that's just not appropriate.

17 That's -- that's not, you know, this Court
18 adjudicates cases and in controversies, it does not find
19 evidence for a party. And it should not require the
20 Defendant to have to pay a court monitor to find evidence
21 for the Plaintiff that the Plaintiff can't marshal
22 themselves.

23 Because, you know, if the Plaintiffs had evidence
24 of noncompliance with the agreement, surely they would have
25 brought a motion by now. This is not the first time that --

1 you know, I sort of hesitate, half hesitated making this
2 argument years ago, because you're sort of inviting your
3 adversary to make a motion, but he's just not done it.

4 He's had years to do this. And he's just not --
5 they've just not done it.

6 So I think that let -- I'll wait for Mr. O'Meara
7 to respond, but I think the next thing on your agenda was
8 next steps. So I'll hold off on that for now.

9 THE COURT: I'll hear your next steps now.

10 MR. IKEDA: Sure.

11 THE COURT: I was going to ask that question
12 anyway with respect to, whether, apart from some of the
13 issues he's raised, if you're saying, well, given where
14 we're at with our reports the -- the Court should end this
15 jurisdiction now, as opposed to extending it to the end of
16 the year.

17 MR. IKEDA: Your Honor, it will come as no
18 surprise to you, Judge Thorson, and your law clerks who have
19 been around for a while, the Department's position is the
20 Court's jurisdiction should have ended years ago.

21 But what is apparent as we sit here today, in
22 2019, is that there's absolutely no reason for the Court to
23 continue its jurisdiction, frankly, even through December.

24 It should end.

25 The evidence in the record is compliance with the

1 Settlement Agreement.

2 So even under the most favorable standard -- legal
3 standard for the Plaintiffs, they can't meet any showing of
4 why the Court should continue its jurisdiction.

5 In the absence of evidence, there's a violation of
6 the terms of the Settlement Agreement, and the years and
7 years that have gone by without a motion from the Plaintiffs
8 that -- brought by the Plaintiffs with actual evidence, by
9 the way.

10 The Court should stop. I mean, we are -- as I've
11 said before, Judge, and maybe this was in other cases, but I
12 represent a State agency in a Federal Court. The
13 Constitution has a lot to say about the balance that has to
14 take place between a Federal Court and a State agency.

15 And when there's no evidence that there's -- that
16 there's a violation of a Settlement Agreement, okay.
17 Because that's -- okay. Because that's what we're talking
18 about. We're not talking about consent decree, we're
19 talking about a Settlement Agreement where a party comes
20 forward and says, I think this person's not holding up their
21 end of the bargain. The State should not insert it, or the
22 Federal Court should not insert itself into the State's
23 administration of its programs.

24 And as I mentioned before, there's a lot of
25 Supreme Court and Eighth Circuit precedent in that respect.

1 Even if the Court had jurisdiction, *Elizabeth M., Milliken*.

2 Even if as the Plaintiffs say I suspect they'll
3 want to argue, hey, this was a Settlement Agreement. Well
4 the Supreme Court addressed that, too, in *Horne versus*
5 *Flores*. Said you can't -- you can't just contract your way
6 around these principles.

7 There is literally nothing to this idea that
8 because something happened years ago that could have
9 constituted compliance -- noncompliance with the Settlement
10 Agreement that it somehow means the District Court keeps
11 jurisdiction and can expand the requirements of the
12 Settlement Agreement indefinitely and without limit.
13 There's no authority for that proposition.

14 This has turned into an inquiry and what the
15 Plaintiffs are asking you to do is to further that
16 legislative inquiry to what the State should be doing, how
17 it should be doing it. And that's not the role of the
18 Federal Court.

19 That's not the role of a Court, frankly in -- even
20 if we were in state court, that's not the role of the Court
21 when revolving a dispute about a Settlement Agreement.

22 That's all I have, Your Honor. Thank you.

23 THE COURT: All right. Mr. O'Meara?

24 MR. O'MEARA: Well, I remember a Case Management
25 Order in 2017 to go before Judge Thorson, and the

1 Defendant's taken the position that there's no jurisdiction,
2 there's no steps left, there's nothing left for us to do.
3 And they actually sent a letter in that regard. And I cited
4 that in one of my letters to the Court.

5 So they lost on jurisdiction and now it's let's
6 blame Shamus for our failures over multiple years, including
7 the last summer abusing a class member.

8 The Eighth Circuit says, "If the Minnesota
9 Department of Human Services believed that the District
10 Court has exercised an authority in excess of what the
11 agreement grants, it remains free to raise such challenges
12 during the ongoing litigation below.

13 However, such concerns have no bearing on our
14 interpretation of the provision articulating the duration
15 for which the District Court retains jurisdiction. And that
16 is as this Court deems, just and equitable."

17 Just like the parties agreed in the settlement.

18 So if this Court believes that the settlement
19 implementation is inequitable, or unjust, jurisdiction can
20 continue in this Court's discretion. That's what the Eighth
21 Circuit said.

22 Mr. Ikeda may not like it, but that's what the
23 Eighth Circuit -- that's the law about this case, about this
24 process in this Federal District Court.

25 THE COURT: So is it relevant on the statements

1 you've made in quoting the Eighth Circuit on whether the --
2 they -- they are or are not in compliance with the
3 Settlement Agreement as they have stated?

4 MR. O'MEARA: So I -- Your Honor, I believe that
5 the Court in determining whether it's jurisdiction, you
6 know, should end in December or should continue, it needs to
7 weigh, you know, the just and equitable arguments.

8 And I believe that the process the Court has
9 articulated for the parties over the years, is a pretty
10 solid one.

11 Comprehensive Plan of Action, evaluation criteria,
12 and a standard under which the Department and the State have
13 to show substantial compliance.

14 Now I -- I almost have to laugh every time Mr.
15 Ikeda says I never filed a motion. I did.

16 I want to read part of Docket 232 because I'd like
17 to put it to bed, you know, what's going on here.

18 I mean, the suggestion is I didn't file a motion.
19 I did.

20 I filed a Memorandum of Law in support of that
21 motion. And I filed a reply memorandum. And they filed in
22 opposition. I'm not even sure that Mr. Ikeda was around in
23 2013 when that motion was filed, maybe he wasn't in this
24 case.

25 But we filed it, and the Court ruled on it, and

1 the Court granted our motion.

2 In my memorandum, Docket 232, I say -- I start
3 out, "This motion seeks to hold the State Defendants
4 accountable for their bad faith conduct and lack of candor
5 to the Court, court monitor consultants and settlement
6 class." It's at Page 1.

7 I can't believe I have to do this, but I -- I'd
8 like to put on the record the fact that I made these
9 arguments.

10 Docket 232, at Page 3. "The State Defendants'
11 failure to timely implement the Settlement Agreement and
12 lack of compliance has caused the Court to issue several
13 orders expressing concern with the status of State
14 Defendants' implementation of the Settlement Agreement and
15 ongoing noncompliance therewith, redefining the role of the
16 court monitor and directing the involvement of the
17 Department of Justice." And I cite to the Court's prior
18 orders.

19 "In addition" and now I'm on Page 4, going on
20 Page 5. "In addition to its intentional and willful
21 operation of *Cambridge* in direct violation of the law and
22 Court Order approving the settlement, the State Defendants
23 fraudulently and intentionally, misrepresented the status of
24 their compliance with the Settlement Agreement in contempt
25 of Court.

1 This bad-faith, contemptuous conduct warrants that
2 sanctions be imposed upon the State Defendants, which the
3 settlement class respectfully suggests should include
4 payment of \$150,000 into the *cy pres* fund established by the
5 Court in this matter for the benefit of people with
6 developmental disabilities and their families."

7 And I think I put in parentheses, I just lost
8 it. In parentheses, "\$15,000 per month for the ten-month
9 nonlicensure period; or alternatively, an amount the Court
10 deems to be fair and equitable for the time period of
11 nondisclosure by the State Defendants."

12 And then the second part was to request \$50,000
13 for attorney's time for having to deal with continued
14 monitoring this -- the motion, investigation, under the
15 State's noncompliance, and representations concerning the
16 status of the provisions of the settlement. And to help
17 ensure that class members and people with developmental
18 disabilities affected by the Settlement Agreement -- it goes
19 on, and on, and on.

20 I made the motion. It was not just about
21 licensure. It was about their -- their ongoing
22 noncompliance. I referenced the prior Court's orders.

23 The Court in its order articulated the
24 noncompliance and all the stuff about they're lying about
25 the licensure. And the Court, in lieu of sanctions,

1 extended jurisdiction.

2 And also continued the court monitor's process,
3 and the reporting process, and on, and on, and on we go.

4 As I said before, and as I'll say now, I never had
5 to file that motion in order for the Court to sua sponte,
6 you know, order compliance and have the court monitor
7 involved, as it did. The Court did that long before I filed
8 the motion.

9 And it's up to the Court in its discretion in
10 determining whether it's just and equitable, you know, to
11 look at the involvement of the court monitor, and to see
12 whether after sort of backing that role off for the Court,
13 whether it's -- it's important, as I've suggested, to have
14 the court monitor come back in with his wealth of knowledge
15 about, you know, the evaluation criteria, his evaluation of
16 restraints, and seclusion, and provide guidance to the
17 Court, and wrap this up from his perspective, so that the
18 Court, in determining whether jurisdiction should continue,
19 and whether -- whether the Defendants have met their burden
20 of showing substantial compliance with the settlement, you
21 know, have done it. I think that's all I have.

22 THE COURT: Your request then today is, is a
23 couple of things.

24 It's one, to -- I'll just characterize it, maybe
25 reinvolvement is the wrong word, but to bring in -- or the

1 court monitor.

2 And then, secondly, and maybe not separately from
3 that, is you are alleging -- it's kind of a two-part
4 statement and question, alleging a violation of the
5 agreement, but then you did when you were up before when you
6 talk about waiver.

7 So you're requesting an evidentiary hearing. But
8 prior thereto, presumably, the involvement of Mr. Ferleger,
9 and then, and then where does the waiver aspect fit into
10 this?

11 MR. O'MEARA: So, well, I objected to the agenda
12 item on the standard of care.

13 THE COURT: You did.

14 MR. O'MEARA: Okay.

15 THE COURT: You did.

16 MR. O'MEARA: One the reasons I've objected to it,
17 is because I believe that standard has been out there from
18 day one.

19 THE COURT: Okay.

20 MR. O'MEARA: You know, I didn't conveniently
21 find, you know, two words and put it together. That's part
22 of the settlement, substantial compliance. That's part of
23 your orders. That's part of the court monitor's orders.

24 And one of my position's is going to be, if they
25 ever -- if they ever filed a motion, look, you've been

1 living with this for a long time, this is the law of the
2 case, you -- this is the standard. I'm sorry you don't like
3 it, but that's what the Court has said.

4 And, you know, when you decided not to comply with
5 the Settlement Agreement, the Court ordered you to do
6 things. And just because they don't like something doesn't
7 mean that it's, you know, that that's the case.

8 I mean, it's an argument, that, you know, that
9 we'll consider making. I think it's vastly different than,
10 you know, some promulgated rule on positive supports. It's
11 -- one has nothing to do with the other.

12 And I -- I really find it ironic that, you know,
13 that -- that, you know, that the Department of Human
14 Services, you know, takes the position about jurisdiction,
15 again, before this Court, after the Eighth Circuit has ruled
16 that this Court has ongoing jurisdiction as it deems just
17 and equitable.

18 So to suggest that somehow -- and maybe I heard
19 Mr. Ikeda wrong, but to suggest that somehow the Court no
20 longer has jurisdiction is just not the case.

21 The Eighth Circuit says you do and you do until --
22 until jurisdiction is done by your order.

23 THE COURT: All right.

24 MR. O'MEARA: Thank you.

25 THE COURT: All right. I'll give the -- you'd

1 like to respond?

2 MR. IKEDA: Well, Your Honor, a couple of -- a
3 couple of things.

4 My point in responding to the -- the jurisdiction
5 question was that the Court was -- the Eighth Circuit was
6 really getting to when the Court's jurisdiction ended, not
7 when -- not what constituted a breach of the Settlement
8 Agreement.

9 So I'll -- I'll make two points.

10 The first is, I guess -- and I said that the
11 Plaintiffs were wanting to live in 2015, but I guess it was
12 2013 because I guess that's when they brought that motion,
13 about the nonlicensure.

14 And so it is odd to hear the Plaintiffs talking
15 today about some issue that came up in October -- or that
16 they moved on in October of 2013 as somehow justifying the
17 Court's continued actions in April of 2019.

18 Just, it's, you know, I thought they were relying
19 on 2015 conduct, it sounds like they're relying on 2013
20 conduct.

21 And then the second point that I'll make is, what
22 the Plaintiff -- what I don't think the Court got a clear
23 answer to when Mr. O'Meara was up here, is -- is the
24 ultimate question that the Court put on the agenda at our
25 request is, what is the legal standard?

1 And I thought I heard at the beginning, and I
2 wrote it down, because I -- I wanted to make sure I got it
3 right.

4 And what I thought I heard was Mr. O'Meara saying
5 that the legal standard really is just and equitable.

6 And then at the very end of his remarks, you sort
7 of heard him come back to substantial compliance again.

8 And I think that the Court, you know, has not
9 gotten a clear answer from the Plaintiffs about whether it's
10 substantial compliance or just and equitable in their -- in
11 their view.

12 What I will say is, you know, if the Plaintiffs
13 want to argue that the legal standard is just and equitable,
14 well, the Defendants doesn't agree, but they really
15 articulated no evidence to suggest that somehow it would be
16 unjust or inequitable to stop what the Court's doing.

17 You know, they've got -- again, you know, I've
18 said this before, and I -- I expect the Plaintiffs to come
19 in with more than just allegations and about conduct that's,
20 you know, five-plus years old.

21 I'd expect them to come in with evidence to say,
22 Hey, what you said in your report to the Court about
23 complying with the Settlement Agreement is wrong. They
24 don't say that.

25 What they -- what they keep coming back to you is,

1 well, Judge, in 2013, the Department didn't tell you that
2 they didn't have a license.

3 That's the argument. In 2013, the Department
4 didn't tell you they didn't have a license.

5 You know, they're going to make that argument in
6 2020, they're going to make the argument in 2021.

7 I mean, I don't know what the expiration date is
8 on an argument like that. And they've not told you.

9 So regardless, I mean, whatever it is, if it's
10 just and equitable, if it's substantial compliance, which
11 the Defendants think would be wrong. The Department's met
12 it. There's no evidence. There's no need to send David
13 Ferleger searching for the evidence. And there's no,
14 there's no -- and make the Department pay. And there's no
15 reason for the Court to hold an evidentiary hearing in the
16 absence of some evidence that says the Department isn't
17 doing what it's supposed to be doing.

18 Thank you, Judge.

19 THE COURT: Would you like the last word Mr.
20 O'Meara?

21 MR. O'MEARA: Why not.

22 THE COURT: Most lawyers don't turn it down. They
23 have a hard time doing that.

24 MR. O'MEARA: The reason I just read my motion is
25 because Mr. Ikeda said I never made one.

1 That's why I had to stand up here in 2019 and
2 quote from the memorandum in support of the motion that I
3 made.

4 So maybe now Counsel will, you know, will clarify
5 on the record that we did file a motion.

6 THE COURT: Well, I think the -- without
7 suggesting it's determinative of anything I do, I think you
8 you're each focusing on -- don't characterize it the same
9 way.

10 He was focusing on the motion for sanctions on the
11 licensure that was the focus of it.

12 And you were saying, well, yeah, that was one part
13 of it, but here's some of the language in my memorandum. I
14 was talking about the history of the noncompliance.

15 So I -- I think that's what he meant by no motion
16 filed.

17 MR. O'MEARA: Okay. I mean, I guess I can accept
18 that that was his position.

19 But even more important, far more important than
20 my motion was the fact that the Court has an order with
21 regard to my motion. And we only need to read that order to
22 know the breath of that.

23 That goes far. I mean, that mentions the
24 nonlicensure. But it goes far beyond that and talks about
25 noncompliance and sets the predicate for the Court at the

1 end of its order extending jurisdiction by two years, in
2 lieu of additional sanctions.

3 And there's a whole litany of noncompliance that
4 the Court goes through in its order. And I apologize I
5 don't have the docket number before me.

6 But this is, you know, this just missed in, you
7 know, Mr. Ikeda's statements. That the Court looked at the
8 motion for sanctions. And looked at the situation,
9 including the involvement of the court monitor from seven
10 months of after settlement up through that motion hearing
11 and decided to do something, which was to grant our motion
12 and in lieu of, you know, the \$150,000 of the Cy-pres fund,
13 you extended jurisdiction, and you told these guys what they
14 needed to do.

15 In terms of reporting, I can't remember what the
16 -- what the specific steps were for the court monitor, but
17 they were additional steps and we move forward.

18 To suggest that I now need to file another motion
19 is just silly. The motion existed. The Court's process
20 existed before my motion. The Court used my motion, as an
21 additional predicate to extend jurisdiction and -- and
22 outlined what it wanted to do going forward.

23 The Comprehensive Plan of Action after a bunch of
24 pits and starts was -- was approved and agreed-upon by the
25 parties. After being introduced originally by the court

1 monitor and approved by the Court.

2 And we have gone through this process. I don't
3 have to show anything. They are the ones that have to show
4 there's substantial compliance to the Court's satisfaction.

5 So that the -- so that the Court can determine
6 whether its jurisdiction needs to be extended as it deems
7 just and equitable. Thank you.

8 THE COURT: Anything else, Counsel?

9 MR. IKEDA: No, Your Honor. Thank you.

10 THE COURT: All right.

11 The -- what the Court will do is this, and I think
12 it might be the fairest and most expeditious way, rather
13 than a partial or complete ruling off the bench.

14 Given the legal issues raised, the factual --
15 well, and total complete disagreement on the procedural
16 status of the case, and what the next steps should be, if
17 any.

18 In other words, what are the legal and factual
19 issues? What are the -- what's the status of the case?
20 Should there be any type of hearing? Should there be any
21 involvement by the court monitor? Should there be a motion
22 filed?

23 What -- what I'll do in the next two weeks or
24 less, is file an order on the status of what the issues are.

25 I reserve the right -- I won't be calling you back

1 on this order. I'll reserve the right -- in other words, if
2 I feel I've raised an issue that either I haven't asked
3 about, or in fairness, one or both of you haven't address,
4 it would be unfair, the next step may well be either a short
5 letter brief of some type, one of you, if depending on where
6 I go, but I promise you, within the next two weeks or less,
7 the -- I'll define next steps and where we're at addressing
8 each of the issues you have raised.

9 And so that -- maybe it's frustrating as it is to
10 some of your clients to say, well, gee whiz, we got to wait
11 a couple weeks to find out where we're headed, if anywhere,
12 and what the next steps are. That's where we'll be at.

13 Because I think that would be also the fairest way
14 to go to say, well, there's a number of issues here with
15 respect to what the standard is, what's relevant to
16 evaluating that.

17 So I'll put together, in the context of the
18 history of the case and where we are currently, I'll put
19 together a -- an order that -- probably easier, easy for me
20 to say -- not quite as easy for me to do, that hopefully
21 will make it less complicated and in a direct -- because I
22 think you both were at that stage since there are some legal
23 issues that I'll say, yes, here's where we're at. And
24 here's my decision.

25 And then if I feel I'm straying into an area that

1 in fairness would dictate a short memo, not a motion, from
2 one of you on, well, before the Judge decides this issue, he
3 wants this from us, anyway. Because I think I'm at the
4 stage where I have an obligation to minimize delay, let's
5 move this along. And so that's where we'll be.

6 I would hope, in the meantime, that people
7 continue doing what they're doing with respect to --
8 because there was a lot of very positive things said today,
9 as well.

10 There wasn't a lot of negative waves, there was a
11 lot of positive waves, so I appreciate that. And I would
12 hope that that would all continue.

13 So I will -- so we can get next steps, so you
14 don't have to wait a long time, to say, well, where we're
15 headed from here? What's the Judge's thought on this? I
16 will do that very shortly in the next couple weeks.

17 So in that context, is there anything further by
18 Plaintiffs' Counsel?

19 MR. O'MEARA: No, Your Honor. Other than to say
20 thank you to the Court.

21 MR. IKEDA: No, Your Honor. Thank you.

22 THE COURT: All right. So and if it's -- I'm
23 trying to think, they don't need a pass card so get out?

24 The alarms don't start going off until 6:00, I
25 think.

1 But, no, there will be security down there. So we
2 can -- and so, unless some of you want to spend the night
3 here or something, but I doubt that you want to do that.

4 So thanks everybody for coming and for all the
5 reports.

6 If you came back to my chambers, I'm an older
7 chap, so I copy everything, too. So we've got stacks back
8 there.

9 And, in fact, I've got a separate room for the
10 Jensen file, which may not be all bad. But the -- they have
11 everything, you've each taken the time.

12 So thank you all for your presentations, and both
13 lawyers, nonlawyers alike. And you will hear from me
14 shortly.

15 All right. We are adjourned. Thank you.

16 MR. IKEDA: Thank you, Your Honor.

17 MR. O'MEARA: Thank you.

18 (Court adjourned at 5:43 p.m.)

19 REPORTER'S CERTIFICATE

20 I, Lynne M. Krenz, do certify the foregoing
21 pages of typewritten material constitute a full, true and
22 correct transcript of my original stenograph notes, as they
purport to contain, of the proceedings reported by me at the
time and place hereinbefore mentioned.

23 /s/Lynne M. Krenz
24 Lynne M. Krenz, RMR, CRR, CRC

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