

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

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

HEARING ON TEMPORARY INJUNCTION
BEFORE THE HONORABLE ANDREW S. HANEN
OCTOBER 29, 2014

APPEARANCES:

For the Plaintiff: DR. ORLY TAITZ
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1 THE COURT: All right. Be seated.

2 Okay. We're here in 14-CV-119, Taitz versus Johnson, et al.
3 Counselors, are we ready to go?

4 MR. KISOR: Good morning, Your Honor. Yes, Your Honor.

5 THE COURT: All right. Dr. Taitz, are you ready to go?

6 DR. TAITZ: Yes. Yes, Your Honor.

7 THE COURT: All right. We're here on a -- basically on
8 a temporary injunction hearing. Dr. Taitz, it's your burden as
9 the plaintiff, so why don't we start. And if you want to make a
10 little opening statement, that's fine. But if not, you can just
11 proceed to call whatever witnesses you're calling.

12 DR. TAITZ: Thank you, Your Honor.

13 You know, before -- before I go into the specifics of the
14 case, I wanted to make a very short opening statement and maybe
15 explain to Your Honor why I'm flying here two times from
16 California and why it is so crucial for me to prove this case to
17 you.

18 I was born and raised in a communist country in Moldova
19 which was part of the Soviet Union. And I saw there situations
20 where thousands of people have died where there were executive
21 orders that came from above, came from the government; and the
22 citizens did not have any meaningful right for redress of
23 grievances, were not granted standing.

24 If I may bring just two small examples. We're talking here
25 about spread of diseases. In the Soviet Union there was an

1 epidemic of lice. And somebody in the government found out that
2 radiation kills lice and issued one executive order to radiate
3 thousands of children to kill lice. Of course, ultimately those
4 people got brain cancer. Thousands have died. I had a relative
5 who died. And the problem was that people knew that those
6 executive orders were wrong, but they were not granted standing.
7 They were not allowed to do anything about it.

8 And if I may, just one other small example.

9 There was an order coming from Stalin. Stated that in the
10 whole Soviet Union, they have to plant just one crop, wheat,
11 which didn't grow in many cold areas. As a result, crops have
12 failed, and 20 million people have died. And again, the
13 citizens knew that the executive order that was coming from
14 above was wrong, but they were not granted any standing to
15 challenge it. And as a result, 20 million people died.

16 So right now this is a second hearing. Our prior hearing
17 was in August after I have filed my case July 14th. And at that
18 time, I actually predicted what happened recently. I predicted
19 that we will have Ebola cases in the United States and people
20 will get infected. And, indeed, in September, a citizen from
21 Liberia arrived here in Texas, and he passed all the checks that
22 were set by the government at the airport. They checked his
23 temperature. He did not have fever. He lied on his entrance
24 forms stating that he had no contact with Ebola.

25 As a result, he was allowed in, and he infected two nurses

1 in Dallas, Texas; infected with deadly disease, and hundreds of
2 people were sent into quarantine and observation.

3 And just last week, yet another case that I have predicted.
4 A doctor arrived in the states from Guinea where he was treating
5 Ebola patients. He was already feeling fatigued and under the
6 weather. In spite of that, he took four different subway
7 trains. He went bowling. He went to restaurant. And the next
8 morning, he was hospitalized with hundred degree fever and
9 Ebola. Meanwhile, he exposed thousands of people to deadly
10 disease, and we'll have to wait 21 days to see if any of them
11 will actually -- will actually come down with the disease.

12 All of the things that happened recently show that what I
13 have predicted and what I -- indeed has happened, and what I
14 advocated is something that needs to be instituted.

15 Further, just in the last two days, the U.S. military has
16 instituted a quarantine for soldiers returning from Ebola
17 region, 21-day quarantine to be in Italy. Governors of several
18 states have instituted similar quarantines in those states.

19 So Your Honor can see that indeed what I was asking in my
20 pleadings is reasonable. This is something that is being
21 instituted in different areas. However, there are multiple
22 loopholes, and that is why it is so important for Your Honor to
23 issue an injunctive relief which would help close those
24 loopholes and protect the citizens.

25 And with that, I would like to invite to the stand, call to

1 the stand an expert epidemiologist, Vera Dolan, if I may.

2 THE COURT: Hold on just a second before we do that.

3 Mr. Kisor, do you want to respond to any of that or --

4 MR. KISOR: No, Your Honor. I would like to only say
5 that --

6 THE COURT: Go ahead and call your first witness.

7 MR. KISOR: Thank you, Your Honor.

8 THE COURT: Dr. Taitz, go ahead and call your first
9 witness.

10 Doctor, it may be easier for you to question from the other
11 podium.

12 *(Witness sworn.)*

13 **VERA DOLAN,**

14 the witness, having been first duly cautioned and sworn to tell
15 the truth, the whole truth and nothing but the truth, testified
16 as follows:

17 **DIRECT EXAMINATION**

18 BY DR. TAITZ:

19 Q Ms. Dolan, can you please provide the Court with your first
20 and last name and spell your last name.

21 A Vera Dolan, D-O-L-A-N.

22 Q Ms. Dolan, what is your education? What is your
23 undergraduate education?

24 A I have a degree in public health, a bachelor's from Johns
25 Hopkins University and a master's of science in public health in

1 epidemiology from the University of North Carolina at Chapel
2 Hill.

3 Q And how many years have you worked in the field -- in this
4 field of public health and epidemiology?

5 A I have been a practicing epidemiologist for over 30 years.

6 Q Have you testified in court before?

7 A Yes, I have.

8 Q Were you challenged with the *Daubert* test?

9 A Yes.

10 Q Did you pass it?

11 A Yes, I passed the *Daubert* challenge.

12 Q Were you found by judges in court, were you found to be an
13 expert in the field?

14 A Yes. I've testified in both state and federal court.

15 DR. TAITZ: Your Honor, I would like to -- the Court to
16 accept Ms. Dolan as an expert in the field of epidemiology and
17 let her testify as an expert in the field.

18 THE COURT: Any objection?

19 MR. HU: Your Honor, two objections. First, we don't
20 believe that this testimony is necessary because of the
21 government's motion for standing, to dismiss based on standing,
22 which is still currently pending before the Court.

23 THE COURT: Okay. That I'm going to overrule or at
24 least postpone.

25 MR. HU: Okay. And our second point is we do not object

1 that she can testify in the field of epidemiology, but at least
2 as we understand from the report which has been provided to us,
3 she's also going to testify about medical issues and a number of
4 other issues which we do not believe she's qualified for. So I
5 could either take her on voir dire now if the Court would like
6 or raise that objection as the testimony progresses.

7 THE COURT: Why don't we just raise that objection. I'm
8 going to recognize her as an expert in epidemiology.

9 DR. TAITZ: Thank you, Your Honor.

10 THE COURT: And when I do that, I'm also taking into
11 consideration that -- her curriculum vitae which has been filed
12 with the Court.

13 DR. TAITZ: Thank you, Your Honor.

14 BY DR. TAITZ:

15 Q Ms. Dolan, have you studied an issue of hemorrhagic fevers
16 and Ebola?

17 A Yes, I have.

18 Q Do you -- can you testify to the Court how widespread Ebola
19 is in Western Africa?

20 A The Ebola epidemic has started in West Africa and is now
21 spreading to many countries. Mali is the latest one. It was in
22 Guinea, in Sierra Leon and Gabon, and we've gotten more cases
23 throughout Africa. I have not seen the very latest count
24 available.

25 Q What is the mortality of Ebola?

1 A The reported mortality for the Zaire strain of Ebola, which
2 is the one that is the one of concern in Africa now is -- it's
3 been estimated between 50 and 90 percent mortality.

4 Q Is there currently a vaccine to Ebola?

5 A Could you repeat the question, please?

6 Q Is there currently a vaccine to Ebola? Does a vaccine
7 exist? Do we have vaccination to Ebola?

8 A Vaccine, no. No vaccine exists.

9 Q Is there a known proven cure for Ebola?

10 A There is no proven cure. There have been patients treated
11 in the United States who were symptomatic and have been
12 announced as being free of virus.

13 Q What are the modes of transmission of Ebola?

14 A The modes of transmission is direct contact and also contact
15 with secretions and other bodily fluids from Ebola patients.
16 And there has also been evidence that it may be spread by
17 aerosols and fomites.

18 Q And in this court, I have submitted your --

19 THE COURT: Wait, wait, wait just a second. Aerosols
20 and what?

21 THE WITNESS: Fomites.

22 THE COURT: What is a fomite?

23 THE WITNESS: Little pieces of phlegm when you cough.

24 THE COURT: Okay. And by aerosol, does that include
25 exhaling or sneezing or something like that?

1 THE WITNESS: Yes, sneezing and coughing little droplets
2 which contain virus.

3 THE COURT: All right. Go ahead, Dr. Taitz.

4 BY DR. TAITZ:

5 Q Here's an example. If right now an individual let's say is
6 coming in this courtroom. Let's say there is somebody who is an
7 illegal alien who happens to be from one of those countries. He
8 simply wipes sweat off his forehead and touches the doorknob,
9 enters. And then somebody, one of the attorneys, the judge, one
10 of the clerks touches the same doorknob that has the sweat.
11 Will that be a mode of transmission?

12 A That will be --

13 MR. HU: Objection. Your Honor, I don't believe she's
14 qualified. She's asking for now something beyond epidemiology,
15 a medical opinion.

16 THE WITNESS: Mode of transmission --

17 THE COURT: I'm going to let her answer it.

18 Go ahead with what you were saying.

19 THE WITNESS: The mode of transmission is a critical
20 part of epidemiology and understanding the spread of illness,
21 and especially it's critical to understand how Ebola spreads.

22 THE COURT: Is that something you study in the field of
23 epidemiology?

24 THE WITNESS: Yes, the transmission of disease, how it's
25 transmitted and knowing how it's transmitted is very critical to

1 understanding how you can intervene and stop it.

2 BY DR. TAITZ:

3 Q Ms. Dolan, you have here with you an Anthology of Plague and
4 Pestilence. Can you please provide to the Court excerpts that
5 states how Ebola disease was stopped previously, specifically in
6 the country of Zaire, and what were the CDC recommendations in
7 Zaire when they had Ebola epidemic?

8 A Yes. What I have here is called the Encyclopedia of Plague
9 and Pestilence from Ancient Times to the Present. George Kohn,
10 K-O-H-N, is the editor.

11 This is a compilation of going back to antiquity various
12 incidences and plagues where the details of those plagues are
13 laid out and how they turned out historically. It's very
14 informative for epidemiologists to study history to know how
15 things happened in the past so they can apply it to new
16 situations in the future.

17 And there is an entry in here for Zaire. And I'm reading
18 from the section which talks about the Zairean Ebola epidemic of
19 1976. This is the first time that Ebola was even understood.

20 "Blood samples from a victim of the disease in Maridi in
21 southernmost Sudan near Zaire's northeastern border were then
22 sent to the U.S. Centers for Disease Control, CDC, in Atlanta,
23 Georgia. The Ebola virus was discovered. And shortly
24 afterward, a member of the CDC, part of the newly formed
25 International Medical Commission, arrived in Kinshasa to study

1 the Ebola infection, which had killed another nun and a native
2 nurse there -- the former had occupied (sic) the first stricken
3 nun to the capitol city in September.

4 "The main concern of the commission became the prevention of
5 the spread of disease in Kinshasa where hospital staff and
6 others who came into contact with the three victims there were
7 quarantined. Ebola did not spread, and no link was found
8 between the cases in Zaire and Sudan."

9 Q So in Zaire, CDC has recommended quarantine; is that
10 correct?

11 A That is correct. That was the first identification of
12 Ebola.

13 Q So the best way to stop the disease, what they found in
14 Zaire is to have quarantine?

15 A That's correct.

16 Q Can you explain to the Court what is quarantine?

17 A Quarantine is the separation from healthy people. I have a
18 definition of quarantine from the CDC, their little bluebook,
19 "Control of Communicable Disease" manual.

20 Okay. "Quarantine: The CDC defines quarantine as
21 restriction of the activities of well persons or animals who
22 have been exposed to a case of communicable disease during its
23 period of communicability, i.e., contacts; to prevent disease
24 transmission during the incubation period if infection should
25 occur."

1 Q So quarantine is different from isolation. In isolation, we
2 isolate people who are sick. In quarantine, we actually
3 sequester, quarantine individuals who are not sick but were
4 exposed to the disease; is that correct?

5 A That's correct.

6 Q Next, what is -- what is the incubation period for Ebola?

7 A Right now it's variable. There have been estimates ranging
8 from two to 21 days and possibly even more. There is no set
9 amount of days that we know is for sure the communicable period.

10 Q So you believe that people who are coming from the zone,
11 those three countries, the recent epidemic, do you believe that
12 they should be quarantined for at least 21 days to make sure
13 that we don't spread this disease? To make sure --

14 A Yes, I agree.

15 Q Next, are you familiar with false negative tests? Could a
16 person -- we had a situation where a nurse came from Sierra Leon
17 and she was running fever, but the test was negative. Could
18 there be a false negative test?

19 A Yes. What these tests do is test for antibodies to Ebola.
20 And the body, you know, has different times when it will
21 generate sufficient antibodies to turn a test from negative to
22 positive. And with that case, it is clear that people can be
23 infected with Ebola, but they may not show positivity in a test.

24 Q So it is your opinion that a person who came from one of
25 those three Western African countries and she or he has initial

1 test negative, would it be prudent to still keep this person in
2 quarantine because the subsequent test would -- might be
3 actually positive when there are more antibodies?

4 A I would --

5 MR. HU: Objection, Your Honor. Again, I think now
6 we're getting away from epidemiology and the spread of the
7 disease to specific individuals requiring a medical opinion and
8 knowledge.

9 THE COURT: Why don't you rephrase your question, Dr.
10 Taitz.

11 BY DR. TAITZ:

12 Q Okay. I'm not asking about a specific person. In general
13 in your opinion as epidemiologist, is it possible that a person
14 can come from this area in West Africa and have originally a
15 negative test; and then few days later, a positive test after
16 the body builds more antibodies?

17 MR. HU: Same objection, Your Honor.

18 THE COURT: Well, let me ask you this. I mean, I
19 understand Mr. Hu's objection. But, I mean, isn't that
20 basically why you have an incubation period or an isolation
21 period? I mean, why you say 21 days, because you could have a
22 negative test on day one; but on day 18 or 19, you could have a
23 positive test? I mean that's why you have a period, right?

24 THE WITNESS: That is correct, sir.

25 THE COURT: All right. I mean, I just think that's

1 obvious whether you have medical knowledge or not.

2 BY DR. TAITZ:

3 Q Ms. Dolan, as a matter of fact, isn't it the case with
4 Dr. Kent Brantly, the first -- the first Ebola case in this
5 country, that when he just got sick, the first test was
6 negative. And then he was still put in incubation, and few days
7 later, the test, the second test was positive?

8 A That is the report that I've heard and --

9 Q Thank you.

10 We were talking about, for example, a drop of sweat being on
11 a doorknob or lecturn or anywhere. From the reports that we
12 have, how long do you think -- how long in your opinion can
13 Ebola virus be in those droplets?

14 A From what I understand, when those droplets are in colder
15 weather, they are more infectious. I have not seen all the
16 reports, but there have been reports in other secretions that
17 have been many, many days. I do not have those in front of me.

18 Q I actually do have. If I may provide the report?

19 DR. TAITZ: May I?

20 THE COURT: Go ahead. You may approach.

21 DR. TAITZ: May I provide?

22 BY DR. TAITZ:

23 Q Now, this is a report from British Defense Labs stating 50
24 days incubation -- I'm sorry, 50 days is the time that they
25 measured that the virus stayed in the droplets on hard surfaces.

1 Would you agree with findings of British Defense Labs?

2 MR. HU: Objection, Your Honor. Before we go there,
3 this document that I've been handed, I guess it's not marked
4 with an exhibit number, is only pages 16 through 23.

5 DR. TAITZ: I apologize.

6 MR. HU: So under the rule of completeness, Your Honor,
7 I would ask that we have the complete copy since we don't know
8 where it's from, whether it's peer reviewed or anything like
9 that.

10 THE COURT: Do you have a complete copy of it,
11 Dr. Taitz?

12 DR. TAITZ: Actually it's one article. What it is, I
13 had -- all of those are articles in my documents because there
14 were many of them. It says 16, but it's one article. This is
15 one -- this is one article. These are my pages that I put, and
16 I have many articles.

17 But this is report that says -- this is the beginning, and
18 you can see this is the end. It's an article, and it says where
19 it is from here. It's actually from article in Daily Mail where
20 they're quoting the report from British Defense Labs.

21 THE COURT: Go ahead. I'm sorry.

22 DR. TAITZ: Is this accepted, Your Honor?

23 THE COURT: Well, I'm going to let you, depending on
24 what question you ask.

25 BY DR. TAITZ:

1 Q I have just one question. Would you agree with their
2 findings that -- that the Ebola virus may stay in droplets of
3 sweat or saliva for as long as 50 days on hard surfaces?

4 A I have no reason to disbelieve what the U.K.'s defense
5 science and technology laboratory finds.

6 Q Next I would like to show the report. It's just one
7 page report stating, "Army troops isolated after Africa duty
8 tour." Again, it's only one page. This is mine.

9 MR. HU: For the record, Your Honor, counsel has handed
10 me a document that says from -- apparently from the Internet
11 from the Associated Press, ABC News.go.com.

12 BY DR. TAITZ:

13 Q So this is a report from Associated Press stating that U.S.
14 Army has quarantined members of the U.S. military who are
15 returning from Ebola hot zone from West Africa.

16 In your professional opinion as epidemiologist, is this the
17 correct approach, to quarantine individuals who are coming from
18 the area?

19 A Yes. Quarantine had been practiced in all Ebola outbreaks,
20 and this is consistent with that practice.

21 Q Okay.

22 A Let me update that. Quarantine had been practiced in the
23 Ebola outbreaks in Zaire, Sudan and Gabon in previous years.
24 And for those outbreaks, quarantine was practiced and was
25 successful. And what the Army is doing is consistent with that.

1 Q I would like to draw your attention to yet another article
2 which states, "Ebola research, fever not a sure fire sign of
3 infection."

4 MR. HU: Your Honor, I've been handed a document for the
5 record that comes from www.LA Times.com/nation1012.

6 BY DR. TAITZ:

7 Q So this is a report from LA Times quoting a number of
8 researchers stating that not always individuals who have Ebola
9 or are infectious are running fever and are stating that
10 13 percent of those individuals never develop fever. So what is
11 your opinion as epidemiologist? First of all, is that a correct
12 finding that --

13 A Well, it says here that the study was sponsored by the World
14 Health Organization and published online late last month by the
15 New England Journal of Medicine, which is a peer reviewed top
16 authority in medicine and analyzed data on 3,343 confirmed and
17 666 -- 667 probable cases of Ebola.

18 The finding that 87 percent of those -- 87.1 percent of
19 those infected exhibited fever, but 12.9 percent did not
20 illustrates the challenges confronting health authorities as
21 they struggle to contain the epidemic.

22 I have absolutely no reason to disbelieve or disagree with
23 the findings of the World Health Organization published in a
24 peer reviewed journal.

25 Q So in your opinion as epidemiologist, it would not be

1 sufficient to quarantine only people who have fever. That it
2 would be prudent to quarantine ones who came from that region
3 even if they do not have fever because according to this
4 article, some 13 percent never develop fever. Would that be
5 correct?

6 A It would be very prudent to quarantine all people, not just
7 those who have fever.

8 Q I would like to provide you with an article. Actually it's
9 a transcript of a 60 Minutes interview that was given by Sidia
10 Rose, an emergency room nurse here in Dallas, Texas. And the
11 article is titled, "ER nurse: Duncan lied about exposure to
12 Ebola." And this article, it's from The Hill Healthcare
13 Division.

14 Excuse me. So we had here in Texas recently a small
15 outbreak of Ebola, three confirmed cases which started with
16 individual by name Thomas Duncan who, according to this nurse,
17 simply lied and did not disclose the fact that he had contact
18 with people with Ebola. He actually denied it. And right away
19 proper precautions were not taken; and as a result, two nurses
20 have contracted Ebola.

21 So in your opinion as epidemiologist, do you feel that it's
22 likely that other individuals coming from Ebola hot zone might
23 be just like Mr. Duncan, simply lying and not disclosing the
24 fact that they had such contact with Ebola patients?

25 MR. HU: Objection, speculation.

1 THE COURT: Why don't you rephrase your question because
2 you are asking her to speculate.

3 BY DR. TAITZ:

4 Q In -- as an epidemiologist, what is your opinion? Do you
5 think that we might have or had previously and have in the
6 future situations where people will not disclose their contact
7 with Ebola patients?

8 THE COURT: I'm --

9 MR. HU: Same objection, Your Honor.

10 THE COURT: I'm sustaining the objection. Let's go to
11 another question.

12 BY DR. TAITZ:

13 Q What would be -- do you feel as epidemiologist that it is
14 sufficient to just rely on what the person states, whether he
15 is -- that he had contact with Ebola patients or not? Can we
16 have what's called an honor system where we just honor a
17 statement by the person, or we should have mandatory quarantine?

18 A In this historical log of many plagues and outbreaks of
19 various diseases where there was quarantine instituted, I didn't
20 recall seeing anyplace where quarantine was made depending on
21 what someone said or not. The quarantine was based on where the
22 person came from and who the person was, and it was not -- none
23 of the quarantines that have been done historically relied on
24 self disclosure.

25 Q So, you know, we have today a situation where, on one hand,

1 CDC is stating to the public that it is sufficient just to
2 basically rely on checking the temperature of people who are
3 arriving and rely on what they're saying. On the other hand, we
4 have this whole history of epidemiology of prior outbreaks and
5 measures that were taken by governors and by the army where
6 they're saying regardless of whether a person is running fever,
7 regardless of what he or she is saying, if they come from this
8 particular area, they have to be quarantined.

9 So between those two approaches, which one is the correct
10 approach in your opinion as epidemiologist?

11 A As an epidemiologist, it is my duty to prevent outbreaks of
12 disease in our country. And I believe that it's the more
13 prudent and reasonable and safe precautions should be enacted
14 rather than ones that may not be as -- as viable.

15 Q I would like to draw your attention and the Court's
16 attention to an article, and that's Newsweek article stating,
17 "NBC's Nancy Snyderman breaks Ebola quarantine. Apologizes."
18 And --

19 MR. HU: Your Honor, I want to just object to this
20 document. It's not even -- I don't even know where it comes
21 from. It doesn't even say whether it comes from the Internet or
22 any sourcing whatsoever.

23 DR. TAITZ: It's a Newsweek article, and --

24 THE COURT: Well, none of these have been offered, so
25 I'm not concerned about that.

1 MR. HU: Okay.

2 BY DR. TAITZ:

3 Q So are you aware of the fact that NBC correspondent Nancy
4 Snyderman has traveled to Ebola region, and one of the members
5 of her team did indeed contract Ebola, a cameraman? The whole
6 team was told to be in quarantine. And then this doctor,
7 instead of staying at home in quarantine, was seen going to a
8 restaurant, and she later apologized for that.

9 And here is the discussion. She is a medical doctor. She
10 is medical correspondent for NBC. So knowing this case and case
11 of -- current case in New York, do you feel that we can rely on
12 doctors just self quarantining themselves, or do you believe
13 that this Court should issue an order of mandatory quarantine
14 for people who come from this region?

15 A Given the behavior by Ms. -- Dr. Snyderman and also by the
16 other doctor who had recently returned to New York, the evidence
17 is clear that we cannot rely on medical professionals self
18 quarantining. So there needs to be a much more emphatic
19 enforcement of the quarantine.

20 Q I would like to draw your attention and attention of the
21 Court to an L.A. Times article stating, "CDC recommends looser
22 Ebola monitoring than state quarantines for health workers."

23 Ms. Dolan, as it's stated in the article and you know, there
24 are several states where -- several ports of entry right now to
25 the United States where people from these West African

1 countries, Liberia, Sierra Leon and Guinea, can come into the
2 U.S. There was recently an order by Mr. Obama to limit this to
3 just five ports of entry.

4 And it's not surprising that the governors, regardless of
5 their party affiliation, Democrats and Republicans, have issued
6 quarantine orders. We have a quarantine order in New York by
7 governor Andrew Cuomo, a quarantine order in New Jersey by
8 Governor Chris Christi, another in Illinois by Governor Pat
9 Quinn. And there are kind of partial orders by Governor Nathan
10 Deal in Georgia and other governors. I believe Governor
11 Malley -- O'Malley in Connecticut. And we have now a situation.
12 We have sort of a patchwork of different orders in different
13 states.

14 MR. HU: Your Honor, I'm going to object to this
15 narrative as opposed to a question.

16 BY DR. TAITZ:

17 Q My question is, what is a better approach? Should we
18 continue having a patchwork of different quarantines in
19 different states, or whether you feel that it would be proper to
20 close all the loopholes and to have one mandatory quarantine in
21 the whole country?

22 A It would be far more effective to have a consistent,
23 coherent, overarching single policy that determines the
24 conditions of quarantine for the country as a policy. It would
25 make it much more easy for people to comply and understand what

1 needs to be done.

2 Q I would like to draw your attention to yet another article
3 which came. This is from Tea Party.org. and those reports from
4 doctors. The article is called "Doctor: Feds "disappearing"
5 suspected Ebola patients across U.S." And that's reports from
6 doctors in Kansas and Missouri where they saw patients that they
7 thought fit the description of Ebola patients, but later on
8 those patients somehow were no longer in the hospital, and
9 they're not sure what happened to them.

10 In your opinion as epidemiologist, do you feel that it will
11 be prudent for this court to order discovery and epidemiological
12 study and survey of those suspected Ebola cases to see what
13 happened to those patients if indeed they were Ebola patients
14 and where did they go, where were they transferred?

15 MR. HU: Objection, Your Honor. I think she's asking
16 for a legal question as to whether a court can order a study of
17 some sort, so I think maybe the question needs to be rephrased.

18 BY DR. TAITZ:

19 Q Do you feel that it would be prudent to just study those
20 cases and find out what happened to those suspected Ebola cases,
21 whether -- where those patients were transferred and how were
22 they treated?

23 A Reports of all Ebola cases should be reported and should be
24 a matter of public knowledge. Contact tracing and knowledge by
25 all public authorities, all medical authorities should know

1 where all the Ebola patients are. If we are going to contain
2 the epidemic that is likely to occur and is already starting to
3 occur here in our country, we need to know where all these
4 people are. We need to know who they contact, and we need to
5 have them in quarantine.

6 Q Now, I would like to draw your attention to yet another
7 article that's actually from news max.com in regards to leaked
8 reports that Mr. Obama is looking to bring foreign nationals who
9 are Ebola patients to the United States. And Chairman of the
10 House Judiciary Committee, Congressman Bob Goodlatte, is looking
11 for answers, and so far there is no definitive answer if that is
12 true, whether indeed individuals -- if there is plan to bring
13 foreign nationals who are sick with Ebola into the U.S. I just
14 wanted you to look at this article.

15 Do you feel as an epidemiologist that it would be prudent
16 not to bring to the United States foreign nationals sick with
17 Ebola while we don't have a vaccine and definitive cure?

18 A We don't have a vaccine. We don't have a definitive cure.
19 We don't know a lot of critical information about the spread of
20 Ebola. So to bring more sources of infection and contagion into
21 this country does not seem a prudent move.

22 Q I would like to draw your attention to an article showing
23 that Kenya has banned passengers from Ebola hit West African
24 nations.

25 So are you aware that currently 30 different nations have

1 banned travel from Liberia, Sierra Leon and Guinea, passengers
2 from those countries banned entrance to their nations?

3 A I did not know that it has grown as large as 30. I knew
4 that there were many countries that did, but I accept that 30
5 countries have done so now.

6 Q So as an epidemiologist, do you believe that there should be
7 a ban to foreign nationals to travel to the United States
8 until -- foreign nationals from Guinea, Sierra Leon and Liberia
9 until the end of deadly Ebola epidemic?

10 A Yes. That would be prudent, and it would be consistent with
11 prior epidemics of contagion and how other countries have acted
12 in centuries past in preventing the spread of disease to their
13 shores.

14 Q I would like to draw your attention to yet another article.
15 And it states, "Ebola spread to U.S. is inevitable says CDC
16 chief." And that comes from AFP. It's *Agence France Presse*.

17 So if Thomas Frieden, Director of CDC, believes that Ebola
18 spread to the U.S. is inevitable, do you feel that as
19 epidemiologist there should be ban to travel from those
20 countries to non-U.S. citizens and quarantine for detaining U.S.
21 citizens?

22 A Those are prudent measures that are tried and true in past
23 epidemics.

24 Q I have submitted already to this court with the pleadings a
25 letter that was sent by Bob Goodlatte, Chairman of the House

1 Judiciary Committee, and Trey Gowdy, chairman for Subcommittee
2 on Immigration, where they're stating that under 8 U.S.C. 1182F,
3 there should be a ban on travel to the U.S. for citizens from
4 Ebola affected countries.

5 Do you agree with this -- with this letter and this request
6 coming from the Chairman of the Judiciary Committee and Chairman
7 of Subcommittee on Immigration?

8 MR. HU: I'm going to object to the question, Your
9 Honor, to the extent it calls for a legal conclusion, whether
10 1182F is -- even applies in this circumstance.

11 THE COURT: Okay. Go ahead. You may answer the
12 question.

13 THE WITNESS: Could you repeat the question, please?

14 BY DR. TAITZ:

15 Q Yes. The chairman -- the Chairman of the House of
16 Representatives Judiciary Committee, Bob Goodlatte, and Chairman
17 of the Subcommittee on Immigration and Border Security have
18 submitted a letter to President Obama. In that letter they're
19 stating, "Therefore, we urge that you use -- your use of 8
20 U.S.C. 1182F cover any foreign national who has -- who has --
21 who was present in a country with widespread and intense
22 transmission of Ebola within two months prior to desired travel
23 to the U.S. Such a travel restriction can and should be
24 temporary and with moratorium lifted when the Ebola outbreak in
25 West Africa and any other countries with a subsequent outbreak

1 is controlled."

2 Do you agree with this statement coming from the Chair of
3 the House Judiciary Committee and Chair of House Subcommittee on
4 Immigration?

5 A Yes, I do.

6 MR. HU: Same objection, Your Honor.

7 THE COURT: Overruled.

8 DR. TAITZ: Your Honor, I would like to enter into
9 evidence as Plaintiff Exhibit 1 a letter which actually I
10 submitted before with the pleadings, and that's the letter from
11 the Chair of the House Judiciary Committee and Chair of the
12 Subcommittee on Immigration urging ban on travel.

13 THE COURT: Mr. Hu, any objection?

14 MR. HU: Your Honor, I think the letter is hearsay, and
15 I'm not sure if she's laid the foundation for how it's even
16 relevant to the case that the Court may have standing for here.

17 THE COURT: What is the relevance of this, Dr. Taitz?

18 DR. TAITZ: This -- this letter makes it more likely and
19 it weighs in favor of this Court granting the requested relief
20 ban for travel of foreign nationals. It specifically states
21 what I have stated in my pleadings, that there should be a ban
22 on travel from those countries.

23 THE COURT: Dr. Taitz, let me -- I don't want to cut off
24 your presentation and -- here's -- but I want you to keep in
25 mind -- and I'm telling you and Mr. Kisor and Mr. Hu this

1 jointly, I guess. Is you need to keep in mind and Mr. Kisor and
2 Mr. Hu need to keep in mind what is in the province of the Court
3 versus what is in the province of Congress or what is in the
4 province of the Executive Branch.

5 And so while I might agree with some of your positions
6 100 percent or I might disagree with them 100 percent, you know,
7 whether, I mean, a court can issue an order that creates a
8 travel ban, I mean, you may have to show me where I have the
9 power to do that, you know, because there's an old saying that
10 judges are appointed, but they're not anointed. And I don't
11 know that I have -- and I'll use the word power, but you can say
12 jurisdiction or you can say right -- I mean, you can use
13 whatever descriptive term you want to use -- to create my own
14 travel ban even if I agree with you.

15 And so that -- I'm not cutting you off, but I want you to
16 keep in mind that before we're done today, if you want me to go
17 there, which obviously you do, you're going to have to show me
18 something that says that Judge Hanen has the right to come up
19 with his own ban.

20 DR. TAITZ: Actually --

21 THE COURT: If I could, you know, I'd put a bubble over
22 South Texas and protect everybody here. And for your benefit,
23 I'd put a bubble over Southern California and protect everybody
24 there. But I don't know that I have the right and/or the power
25 to do that.

1 DR. TAITZ: Yes, Your Honor, you do. And you have a
2 right of issue a writ of mandamus. For example, the Secretary
3 of Health and Human Services -- and that's something that
4 actually was in the pleadings by the defendants. Under Section
5 361, Public Health Service Act 42 U.S.C. 264. The U.S.
6 Secretary of Health and Human Services is authorized to take
7 measures to prevent the entry and spread of certain communicable
8 diseases from foreign countries into the United States and
9 between states under Executive Order 13295 as amended July 31,
10 2014. List quarantinable communicable diseases: Cholera,
11 diphtheria, infection, tuberculosis, plague, small pox, yellow
12 fever, viral hemorrhagic fever, severe acute respiratory
13 syndromes and so forth.

14 BY DR. TAITZ:

15 Q Ms. Dolan, does Ebola qualify as viral hemorrhagic fever?

16 A Yes, it does.

17 Q So the Secretary of Health and Human Services was supposed
18 to quarantine -- this is a clearly --

19 THE COURT: It doesn't say that. I mean, I'm looking at
20 what you just read. It doesn't say "shall." It says they're
21 authorized to.

22 DR. TAITZ: What happens where the official like
23 Secretary of Health and Human Services, that is who took an oath
24 of office to protect the health of U.S. citizens who has --
25 okay. Who has specific legal authority to protect by issuing

1 quarantine, and she's not doing it. In that specific situation,
2 this Court can issue a writ of mandamus ordering the Secretary
3 of Health and Human Services to -- to issue an order of
4 quarantine, which she's not issuing. Why do we have a writ of
5 mandamus -- and this is something that existed for over 200
6 years, where the Court have used a writ of mandamus to --
7 ordering different government officials to do specific things in
8 order to prevent endangering the public or hurting public like
9 this case, infectious diseases.

10 THE COURT: Well, do I have the power to authorize
11 some -- I mean, to order somebody to do something just because I
12 don't agree with their decision? So if I -- if the secretary
13 has looked at this, studied the issue and decided that it's --
14 it's not in the best interests of the country. And I'll assume
15 for the minute that they're acting in the best interests of the
16 country, which may or may not be a good assumption. Why do I
17 have the right as a judge just to second guess them?

18 Now, I agree that I can order -- I can mandamus someone to
19 do something that the law commands them to do. But is
20 authorized to do it gives the Secretary of Homeland -- of Health
21 and Human Services the ability to do it, but it doesn't command
22 them to do it, does it?

23 DR. TAITZ: Well, according to her oath of office, she
24 took an oath of office to protect the constitution and protect
25 the health of the citizens of this country. That is her

1 position. And this is something that she is not doing, not the
2 Secretary of Health and Human Services, not Secretary of
3 Homeland Security. They're not protecting the citizens.

4 So -- and this is the situation where the courts should be
5 stepping in, stating you have an ability to issue a quarantine,
6 and you are ordered to exercise your power to quarantine against
7 communicable diseases. If the Court --

8 THE COURT: Let me go on and let you -- let's finish the
9 testimony because what we're going into now is a legal argument
10 of whether I can or whether I should do something. Let's finish
11 our witnesses and then come back to -- I want to come back to
12 this, but this started by an objection to a document.

13 I'm going to allow the document into evidence. This is not
14 a jury trial, and I can give it the weight it deserves at the
15 time I make a decision.

16 DR. TAITZ: Moreover, Your Honor --

17 THE COURT: So I'm admitting the document as Exhibit 1.
18 You'll have to give the copy to Cristi.

19 DR. TAITZ: Sorry? Excuse me?

20 THE COURT: Okay. I'm admitting 1. Go ahead,
21 Dr. Taitz.

22 DR. TAITZ: Another option, Your Honor, under 8 U.S.C.
23 1182 --

24 THE COURT: Wait, wait. Let's come back to that. Go
25 ahead and let's do -- you know, finish questioning of the

1 witness. I'm going to allow both sides to put on whatever
2 witnesses they do, and then I want to argue. I got you off
3 track by asking you that. Let's finish with the witnesses
4 first.

5 DR. TAITZ: Well, let -- if I might ask for
6 clarification. Your Honor, if you feel that there is nothing
7 you can do in this case, why are we even here?

8 THE COURT: We're here because you filed a lawsuit.

9 DR. TAITZ: No, I understand. But the case -- if you
10 felt that there is nothing you can do and you cannot issue a
11 writ of mandamus ordering the defendants to follow existing
12 laws, for example, as I stated, 8 U.S.C. 1182 that forbids
13 entrance to individuals with communicable diseases, we have --

14 THE COURT: That might be a different story, because
15 1182 uses the word "shall." That's a command. That's a
16 different statute.

17 DR. TAITZ: Okay. So does Your Honor feel that Your
18 Honor has an ability to issue a writ of mandamus under --

19 THE COURT: I'll let you question the witness,
20 Dr. Taitz, but not me.

21 DR. TAITZ: Okay. So then I'm urging Your Honor to
22 issue a writ of mandamus under --

23 THE COURT: No, I understand. But let's talk about that
24 when we're done with the witness. I want you to finish with the
25 witness or any other witnesses. I'm going to let Mr. Kisor and

1 Mr. Hu put on whatever witnesses they want to put on, and then
2 we'll argue about where we are. The witnesses may have other
3 schedules that they need to --

4 DR. TAITZ: Sure.

5 BY DR. TAITZ:

6 Q I'm bringing forward a letter that was signed by members of
7 the U.S. -- United States Senate Judiciary Committee, and it
8 requires under Section 212F of Immigration and Nationality Act
9 to suspend entry of all aliens or any class of aliens as
10 immigrants and nonimmigrants who are detrimental to the
11 interests of the United States. And specifically they're
12 seeking to ban entrance for individuals who are coming from
13 Ebola region.

14 Would you agree with this letter coming from the Senate
15 Judiciary Committee stating that there should be ban to entrance
16 to the U.S. of individuals coming from those countries?

17 MR. HU: Your Honor, object again. She's calling for a
18 legal conclusion now under, of all things, immigration laws.
19 And I think as an epidemiologist, Ms. Dolan has no qualification
20 to opine on immigration law.

21 THE COURT: All right. I'm going to let her answer this
22 question whether she personally agrees with it.

23 THE WITNESS: As an epidemiologist, do I agree with a
24 ban on entry into the United States of people from Ebola
25 countries? Yes, I do. It's the same kind of treatment like

1 quarantine. I think a ban is even better than a quarantine. If
2 we could have both, that would be sufficient. I do not know how
3 it would be administered.

4 But I feel as an epidemiologist and it is my opinion as an
5 epidemiologist that the most prudent, strict measures be put in
6 place against a disease that has no certain cure, no vaccine,
7 and is reminiscent of the kind of epidemics that we -- our
8 country experienced with small pox before small pox had a
9 vaccine or a -- and there was no known cure for it.

10 DR. TAITZ: I would like to enter as an Exhibit 2 a
11 letter from the Senate Judiciary Committee urging the president
12 to ban travel.

13 MR. HU: Objection, irrelevant.

14 THE COURT: Okay. Overruled. Again, I'm admitting it
15 for whatever weight it may have.

16 BY DR. TAITZ:

17 Q I would like to draw your attention to one more letter, and
18 this is the letter that was signed by multiple members of the
19 U.S. Congress who are also healthcare providers, doctors,
20 dentists and nurses who are urging the President of the United
21 States to ban travel and also quarantine for 21 days individuals
22 who come from Ebola hot zone. And I would like your opinion as
23 epidemiologist if you agree with that letter.

24 A Again, it's the same sentiment that I had expressed before.
25 The ban would be wonderful. A quarantine would be essential for

1 keeping people who are infected with a disease that we have no
2 vaccine for, has a very high case fatality rate, that does
3 spread through contagion, it would be very prudent to do that.
4 And I agree with that, with the statement.

5 DR. TAITZ: I would like to enter this as Exhibit 3,
6 Plaintiff's Exhibit 3.

7 MR. HU: Objection, irrelevant.

8 THE COURT: What is that one?

9 DR. TAITZ: This is the letter signed by 16 members of
10 the U.S. Congress who are not just members of Congress, but who
11 are also healthcare providers, doctors, dentists, and nurses,
12 urging the President of the United States to issue ban on travel
13 and quarantine.

14 THE COURT: All right. I'm going to overrule the
15 objection.

16 DR. TAITZ: Thank you.

17 THE COURT: It's admitted as Exhibit 3.

18 BY DR. TAITZ:

19 Q Are you aware of the fact that other nations have suspended
20 issuing visas to their countries? For example, Australia just
21 recently suspended issuing visas to individuals from Liberia,
22 Sierra Leon and Guinea to travel to their nations until the end
23 of the epidemic.

24 Do you -- as an epidemiologist, do you feel that it would be
25 a prudent measure for the Court to issue a writ of mandamus to

1 the defendants to suspend issuing such visas in order to prevent
2 endangering of the public?

3 MR. HU: Objection. I don't think this witness would
4 have a basis to answer that question as an epidemiologist. It's
5 calling for a conclusion about whether a country issues a visa
6 or not. I agree that an epidemiologist can talk about travel
7 bans, isolation, quarantine type issues, but now we're getting
8 into the legal issue of visas.

9 THE COURT: Rephrase your question, Dr. Taitz.

10 BY DR. TAITZ:

11 Q If a country stop issuing visas, individuals from the area
12 where there is a raging epidemic cannot enter the country, as an
13 epidemiologist, do you believe that it would be a prudent and a
14 necessary measure to suspend issuing visas to individuals from
15 specific countries until the end of the epidemic in order to
16 stop spread of the disease?

17 MR. HU: Same objection, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: It would be prudent, and it's also been
20 successfully practiced in the past.

21 BY DR. TAITZ:

22 Q Thank you. Excuse me one second.

23 You have written in your sworn affidavits that you have
24 submitted to this court and you have described a spread of
25 diseases such as enterovirus D68 and your opinion that this

1 epidemic of enterovirus is -- is related to transportation of
2 minor illegal aliens from the border to the rest of the country.
3 And I wanted you to elaborate on that.

4 Do you believe that indeed this outbreak of enterovirus D68,
5 in your opinion as an epidemiologist, is related to -- is
6 related to this transportation of illegal alien children from
7 the border that we've seen recently?

8 A The enterovirus D68 --

9 THE COURT: Tell me what the first word you're saying
10 is. Spell that, please.

11 THE WITNESS: Enterovirus. E-N-T-E-R-O-V-I-R-U-S.

12 THE COURT: Entero.

13 THE WITNESS: Entero.

14 THE COURT: Translate that for me into nonscientific
15 terms.

16 THE WITNESS: It's a respiratory virus.

17 THE COURT: Okay. And D68 is the strain?

18 THE WITNESS: D68 is the particular strain.

19 THE COURT: Okay. Go ahead.

20 I'm sorry, Dr. Taitz. You may have to reask your question.

21 BY DR. TAITZ:

22 Q So in your opinion, if those individuals who are crossing
23 the border are placed into a quarantine to check for infectious
24 diseases and provide them with necessary treatment while they're
25 in quarantine, in your opinion will that either stop epidemic or

1 at least lower the likelihood of such epidemics continuing?

2 A Quarantine is a standard building block in preventing
3 disease from spreading that's been traditionally used for
4 centuries, if not millennia. It absolutely has a place in
5 preventing disease crossing our border from Mexico into this
6 country. Allowing free access of people who are not screened
7 for communicable disease and allowing them into our country
8 without quarantine promotes the spread of communicable disease
9 in our country.

10 Q You have studied my case where I have been -- I have been
11 infected with upper respiratory disease several times, and you
12 did not examine me. You are not a doctor. But just as an
13 epidemiologist who studied the timing of -- of this upper
14 respiratory disease that I have contracted, considering in
15 relation to timings of epidemics that happen typically in U.S.
16 and this transportation of a number of illegal aliens, do you
17 feel that that's something that -- this transportation of minor
18 illegal alien children was the cause of the respiratory disease
19 that I have contracted?

20 MR. HU: Objection, Your Honor. This is beyond the
21 field of epidemiology. She's asking for a specific cause for a
22 specific individual for a specific symptom.

23 THE COURT: Sustained.

24 BY DR. TAITZ:

25 Q How epidemiologist find out the source of the disease? Do

1 epidemiologists working for CDC or NIH, do they actually examine
2 any of the patients?

3 A CDC has reportable diseases. Certain categories of diseases
4 are reportable by the treating provider to the CDC and to the
5 local -- the state agencies and local agencies which then
6 forward that information to the CDC. Those -- the CDC is
7 ultimately responsible for reporting and keeping track of the
8 reporting of such diseases.

9 Since these are reported diseases, then for those that are
10 serious and require contact tracing, public health authorities
11 now and in the past do the contact tracing and find out where
12 the source of these, you know, diseases are. And it is their
13 job to control them by using the information in a way that would
14 prevent more cases from developing.

15 Q So when CDC comes up with measures stating we should take
16 temperature of all the people coming from Liberia, let's say, it
17 doesn't mean that CDC doctors, they actually check each and
18 every person, but they just look at the trend; and based on that
19 trend, they come up with their recommendations and policies; is
20 that correct?

21 A Yeah. CDC doctors are not there at the airport taking
22 temperature. They're not there at the hospitals or in the
23 doctors' waiting rooms examining cases. What they do is they
24 take the case reports from these health professionals, from
25 these individuals, and then they use that information to further

1 do their work.

2 Q So if we're talking about a healthcare provider like myself
3 who is providing care to new immigrants, what is your
4 recommendation as epidemiologist? What would be the proper
5 redress of the problem of contracting infectious diseases? What
6 do you see is a measure that can be taken in order to stop the
7 threat of diseases to myself and other healthcare providers and
8 make sure that myself and other healthcare providers do not
9 contract infectious diseases from those immigrants?

10 A The most prudent action that can be taken for communicable
11 diseases from people outside our country seeking to get in is to
12 first of all screen and identify these people; figure out if
13 they are diseased or not.

14 Those that are not -- beyond that, there needs to be a
15 quarantine to make sure that the serious diseases that we are
16 concerned about like enterovirus D68, which has already had some
17 case fatalities in our country. Ebola. We already have some
18 case fatalities in our country.

19 We want to make sure that our borders are secure, that the
20 people that come through our borders are healthy and so they do
21 not advance their contagion into the general population,
22 particularly the healthcare providers who would be most at risk,
23 who are at imminent risk of getting such infections.

24 DR. TAITZ: Your Honor, if I may note, and I wanted to
25 provide you with a letter that actually was sent to me by Mr. Hu

1 in what -- I have requested specific information of individuals
2 that were transported to my area to see which of those
3 individuals that were transported to my area came to my office
4 to see if they had specific diseases, if they were specific
5 causes, sources of the infection. And the defendants refused to
6 provide any such information until Your Honor rules on their
7 12(b)(1) and 12(b)(6) motion and until we have 26(f) case
8 management conference.

9 So at this point I cannot provide Your Honor with specific
10 information, with specific names of the patients from whom I
11 contracted upper respiratory disease simply because the defense
12 refused to provide any such information.

13 But after Your Honor rules on their 12(b)(1) and 12(b)(6)
14 motion and we have 26(f) case management conference, I would be
15 able to obtain from the defendants specific names of the
16 specific immigrants who were transferred, who came to my office
17 and who were sources of the diseases. So I just wanted --

18 THE COURT: Dr. Taitz, you have the names, don't you?

19 DR. TAITZ: No, but I do not know because of their
20 privacy. First of all, they have -- I have the names of people
21 who came to my office.

22 THE COURT: That's what I'm asking.

23 DR. TAITZ: However, because there are so many of them,
24 I don't know which ones specifically were transported by the
25 government, were transported from the border, which ones were

1 infected.

2 THE COURT: All right. You can give -- assuming I order
3 it, you could give the defendants a list of names, and they
4 could provide you with the medical records for those
5 individuals.

6 DR. TAITZ: Well, what I asked is for the list of names
7 of individuals who were transported to Southern California. So
8 I would like to offer Mr. Hu's letter. Is it Who or Hu?

9 MR. HU: Hu.

10 DR. TAITZ: I apologize. Mr. Hu's letter as Exhibit 4
11 explaining that at this point, I cannot provide any specific
12 names because I was prevented from getting this information by
13 the defendants.

14 THE COURT: All right. It will be admitted as
15 Exhibit 4.

16 BY DR. TAITZ:

17 Q Now, on August 27th, we had here a -- actually Mr. Oaks who
18 testified that the healthcare releases for illegal aliens who
19 are transported from Texas border further to California and
20 other areas are signed by Border Patrol agents. In your opinion
21 as an epidemiologist, do you believe that it would be prudent
22 and necessary for those individuals to be checked by a medical
23 doctor and a healthcare release to be signed by a doctor and not
24 by the Border Patrol agent?

25 MR. HU: Objection. I think this is again beyond the

1 field of epidemiology. It goes to medical necessity.

2 DR. TAITZ: I would rephrase the question.

3 BY DR. TAITZ:

4 Q Now, certain diseases, in order to examine and diagnose
5 certain diseases, you need to have specific knowledge that you
6 get as a medical doctor. Would that be correct?

7 A Yes, I agree.

8 Q So in your opinion as epidemiologist who is seeking --
9 looking for causes of diseases and the ways to prevent spread of
10 diseases, do you feel that situations like myself of being --
11 being infected by upper respiratory disease that necessitated
12 for me to use oxygen for the rest of my life, is that something
13 that can be redressed and alleviated if those individuals who
14 are released from the custody of immigration are checked by
15 doctors who have knowledge, who can diagnose different diseases,
16 and therefore the spread of diseases would be minimized?

17 MR. HU: Objection. Again, beyond the field of
18 epidemiology. She's asking about her specific ailment that may
19 somehow be related to --

20 THE COURT: Setting aside the parts of the question that
21 pertain to Dr. Taitz, you can answer that question.

22 THE WITNESS: As an epidemiologist, I care about disease
23 transmission. And if we are supposed to halt disease
24 transmission and propagation through our population, then we
25 need to have people -- if you are going to be admitting people

1 into this country and they have to undergo medical screening,
2 you need to make sure that that medical screening is adequate.
3 And there is a likelihood that if you have screening done by lay
4 people who do not have medical or health training, it is
5 possible that people who should be identified and monitored and
6 quarantined are let loose into the population. And by having a
7 weak screen, which would be Border Patrol people as opposed to a
8 stronger, more thorough screen by a medical person, our country
9 would be much better protected having a stronger screen than a
10 weak screen.

11 BY DR. TAITZ:

12 Q So we have here an expert in tuberculosis. And if you could
13 maybe read from your CDC Manual and in relation to release of
14 individuals with tuberculosis and need for quarantining the ones
15 who were in contact with tuberculosis and the ones who have not
16 just positive, but negative, initially negative TB tests.

17 A I'm reading from the tuberculosis section under the section
18 of control of patients, contacts and immediate environment.
19 Under management of contacts, the CDC states, "In the USA,
20 preventative treatment for three months is recommended for skin
21 test negative close contacts. The skin test should then be
22 repeated to determine the need for additional preventative
23 therapy. BCG immunization of tuberculin negative household
24 contacts may be warranted under special circumstances."

25 When it goes -- discussing investigation of contacts and

1 source of infection, the CDC states that, "PPD testing of all
2 members of the household," that's the skin test, "and other
3 close contacts is recommended in the USA. If negative, a repeat
4 skin test should be performed two to three months after exposure
5 has ended. Chest radiographs should be obtained on positive
6 reactors when they are identified. Preventative treatment is
7 indicated for contacts who are positive reactors and for some
8 initially negative reactors at high risk of developing active
9 disease, especially young, five-years-old or younger, and HIV
10 infected close contacts at least until the repeat skin test is
11 shown to remain negative."

12 Q So is that your opinion as epidemiologist that individuals
13 who were in contact with ones that have tuberculosis have to be
14 quarantined? And actually it's your opinion and opinion of CDC;
15 is that correct?

16 A They didn't discuss quarantine in here, but what they did
17 say is that even if you are negative, you still need to follow
18 up contacts for at least two to three months after exposure has
19 ended.

20 What this means is that just because you test negative
21 doesn't mean that you're clear and that you can't come down and
22 display disease later.

23 Q So it is your opinion that those individuals should be
24 quarantined before they are released in general public?

25 A If the -- if you are talking about people who are coming

1 into the U.S. who have tuberculosis or have been in contact with
2 people with tuberculosis, it would be prudent to quarantine them
3 rather than allow them into this country and then invest all
4 kinds of resources monitoring them and treating them.

5 Q So also as an epidemiologist, do you believe that it would
6 be necessary for the defendants to also provide notification to
7 schools and also to healthcare -- to schools where illegal
8 children will be enrolled or to healthcare -- and also to
9 healthcare providers like myself all of the contacts of those
10 individuals? For example, the fact that those individuals were
11 exposed to tuberculosis or were in contact with individuals with
12 tuberculosis?

13 A Are you saying with or without a quarantine in effect?

14 Q Well, what is your opinion? Do you feel that -- first of
15 all, should there be notification? Should the schools be
16 notified, and should the healthcare providers be notified?

17 THE COURT: Noticed of what?

18 DR. TAITZ: Of the fact that this person was exposed to
19 tuberculosis and it needs to be tested repeatedly.

20 THE WITNESS: My understanding is for the American
21 public, in order to enroll in school, you have to be vaccinated,
22 and you have to be tuberculosis free. You have to have cards.
23 And I did that for my kids. I did that -- I had that for
24 myself.

25 In the absence of such documentation for school officials,

1 there needs to be some medical notification to school officials,
2 and there needs to be notification to health providers of the
3 status of these people that come across the border that have not
4 been subjected to the same rigorous public health measures that
5 our own school children have been subjected to.

6 DR. TAITZ: If I may?

7 BY DR. TAITZ:

8 Q There was recently an article stating -- by Todd Starnes,
9 "Immigration Crisis: Tuberculosis Spreading at Camps." And
10 there were reports that in those camps that are around -- camps
11 for minor illegal aliens, alien children that are run by HHS and
12 DHS, there was -- there was an outbreak of tuberculosis.

13 In your opinion as an epidemiologist, do you believe that in
14 situations where there was tuberculosis, those individuals
15 should be quarantined before they're being transported to other
16 areas in the country?

17 A If that tuberculosis is not being treated and not being
18 taken care of, these people should not be transported and let
19 out of government control.

20 Q Do you believe that there is a possibility of bio terrorism
21 in terms of individuals who are infected, deadly Ebola virus
22 coming from -- from Guinea, Sierra Leon, and Liberia and using
23 those pathogens in the form of bio terrorism?

24 MR. HU: Again, objection. Beyond the field of
25 epidemiology.

1 THE COURT: Sustained.

2 DR. TAITZ: Your Honor, that would be it for now. And I
3 would like to reserve the right to call Ms. Dolan as a rebuttal
4 witness in case there will be a difference in opinion with the
5 defendant's witness.

6 THE COURT: All right. Mr. Hu, how long do you think
7 you're going to be.

8 MR. HU: Difficult question, Your Honor. Probably about
9 30 minutes to an hour.

10 THE COURT: All right. Let's go ahead and -- it's
11 11:55 now. Let's go ahead and break for lunch, and let's be
12 back at 12:45 to start.

13 *(Recess taken from 11:54 to 12:50.)*

14 THE COURT: Be seated.

15 Ms. Dolan, if you would come back and assume the witness
16 chair.

17 Go ahead and be seated.

18 MR. HU: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. HU:

21 Q Ms. Dolan, I know you alluded to this during your prior
22 testimony, but I don't think it's in the record. I'd like to
23 have marked as Government Exhibit No. 12 --

24 MR. HU: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. HU:

2 Q I'm showing you what's been marked as Exhibit No. 12. This
3 is your CV, isn't it?

4 A Yes, sir.

5 DR. TAITZ: Excuse me, Your Honor. I don't have an
6 Exhibit 12.

7 BY MR. HU:

8 Q And in looking at your CV, first this was previously filed
9 with the court on September 11th. Is everything in this CV true
10 and correct?

11 A There may have been some additions since then, either
12 clients or publications.

13 Q Okay. Now, you are not a physician; is that correct?

14 A That is correct.

15 Q So you're not qualified to do a differential diagnosis based
16 on symptoms then; is that correct?

17 A I do not provide diagnoses. I rely on the diagnoses
18 provided to me by qualified medical professionals.

19 Q So then you can't go ahead and diagnose TB based on a set of
20 symptoms given to you, correct?

21 A As I said before, sir, I do not perform diagnoses. I work
22 with the diagnoses as provided to me by medical providers.

23 DR. TAITZ: Objection, Your Honor. The
24 epidemiologist --

25 THE COURT: You need to get near a microphone, Dr.

1 Taitz. I can't hear you.

2 DR. TAITZ: Objection, Your Honor. An epidemiologist
3 does know --

4 THE COURT: Wait, wait, wait. You can't object to her
5 answer.

6 DR. TAITZ: But I object to the question.

7 THE COURT: All right. I'm overruling the objection.

8 DR. TAITZ: The question is misleading.

9 BY MR. HU:

10 Q Now, Ms. Dolan, you're not qualified to decide who should be
11 prescribed a C-pap, letter C dash P-A-P, machine or not get one
12 of those machines, correct?

13 A Yes, sir. I am not qualified to do that.

14 Q Now, your specialty, based on Exhibit No. 12, appears to be
15 essentially life expectancy, right?

16 A No. Life expectancy is one of the expertises that I offer
17 as an expert.

18 Q But in looking at where you've testified, it looks to be --
19 the bulk, almost over 90 percent of your testimony has been in
20 the area of life expectancy; is that right?

21 A Yes, because I have written reports in life expectancy
22 because those are the cases that have come to me.

23 Q Okay.

24 A If I had more epidemiology cases, then I would do more of
25 those.

1 Q And as best I can tell, this is the first case -- infectious
2 disease case you've testified in; isn't that correct?

3 A This is the first -- that is correct.

4 Q Now, would you agree with me that epidemiology is a study of
5 disease trends in a population?

6 A Let's see. The definition of epidemiology, I believe I had
7 that in my second -- please bear with me. I'm looking for my
8 affidavit where I have a definition of epidemiology.

9 In my affidavit dated October 10th, 2014, I have a paragraph
10 on page 2. According to Kenneth J. Rothman, professor of
11 epidemiology at Boston University School of Public Health in his
12 introductory textbook on epidemiology, quote, often considered
13 the core science of public health, epidemiology involves study
14 and determinants of disease frequency; or put even more simply,
15 the study of the occurrence of illness, unquote.

16 Q So epidemiology is not the science of diagnosing whether
17 someone has a particular disease or does not have a particular
18 disease. It's just -- it deals with the numbers and
19 frequencies; is that correct?

20 A It takes the diagnoses and goes on from there to see what
21 they imply.

22 Q So what trend -- you look for trends and things like that?

23 A That's one of the things that we look for, yes.

24 Q So when we're talking about Ebola, you're not going to tell
25 us what the trend -- you're not able to diagnose whether someone

1 has Ebola or not. You rely on other medical data, right?

2 A I rely on other people to indicate whether they are
3 seropositive for Ebola, whether they have symptoms for Ebola,
4 where they -- who they've had contact with, who may or may not
5 have Ebola. Yes, all those factors are the things that I as an
6 epidemiologist have to take into account.

7 Q And then you take that data and predict trends and things of
8 that nature, correct?

9 A It's -- it's a matter of evaluating what the actual causal
10 relationships, what the factors are. And then once we have
11 enough information and enough data, then we can start looking at
12 trends and what they are.

13 Q So you can't tell the Court with any certainty that
14 epidemiologists would how Ebola is transmitted, correct?

15 A No, sir. That's not the case at all. There's plenty of
16 information out there in the medical literature about
17 transmission: A lot of case studies, a lot of peer reviewed
18 medical literature about that, a lot of information that is
19 reported constantly.

20 Q But you're just relying on that other data and that other
21 information. You can't make that independent judgment call, can
22 you?

23 A Sir, I have to work with the data that I have, okay? And
24 that data comes from other people. If I were put in the
25 position in the CDC where all that information was coming in to

1 me, then I would be able to do exactly the same thing as your
2 CDC epidemiologists do.

3 Q So when you're -- when you testified earlier that Ebola is
4 transmitted through aerosols, essentially you're relying solely
5 on two articles that appear in your report; is that correct?

6 A I am -- I am relying on that, but there is other information
7 in the literature that also talks about aerosols, and there are
8 also other reports in the news talking about the possibility of
9 aerosols.

10 Q But you only cited two journal articles in your report,
11 correct?

12 A That's correct.

13 Q Let's talk about those two articles. Let's look first at
14 the Weingartl, W-E-I-N-G-A-R-T-L, report, and I'll have that
15 marked as Government Exhibit No. 13. Showing you what's been
16 marked as 13.

17 A Yes, sir.

18 Q Okay. Great.

19 A I have my own copy.

20 Q You already have a copy?

21 A I have my own copy.

22 Q Now, this article is entitled, "Transmission of Ebola Virus
23 from Pigs to Non-human Primates"; is that right?

24 A That's correct.

25 Q Now, in your experience as an epidemiologist, you know that

1 Ebola is a disease that's transmitted in humans through the
2 gastrointestinal tract and blood, correct?

3 A I don't know -- where did you --

4 DR. TAITZ: Objection, Your Honor.

5 THE WITNESS: Are you saying that --

6 DR. TAITZ: Objection.

7 BY MR. HU:

8 Q No. I'm asking you in your experience --

9 THE COURT: Hold on, hold on.

10 DR. TAITZ: Objection, Your Honor. Mr. Hu misstated
11 what was stated by the witness in his question.

12 THE COURT: Well, she can correct him.

13 Go ahead, doctor.

14 BY MR. HU:

15 Q Is it your understanding that Ebola is transmitted in humans
16 through the gastrointestinal tract and blood?

17 A Ebola is transmitted through more than just that. Ebola is
18 transmitted through personal contact with secretions and with
19 contact with aerosols, and that is the information available.

20 Q And that's what you're relying on in what's been marked as
21 Exhibit 13 here, this --

22 A This is not the only one that I am relying on, sir.

23 Q Ms. Dolan, I'm asking you about this one, though.

24 A Okay.

25 Q So it's your understanding that among other things, the

1 human transmission is through the gastrointestinal tract and the
2 blood, correct?

3 A If you are quoting from some place, sir, can you indicate
4 for me --

5 Q I'm not quoting. I'm asking a general question.

6 A Okay. Because you are looking at that paper as if you are
7 reading.

8 DR. TAITZ: Your Honor, objection. Asked and answered.

9 THE COURT: Overruled.

10 THE WITNESS: Okay. Sir, are you asking me a question
11 from this article? Or are you asking me a question that is not
12 from this article?

13 BY MR. HU:

14 Q I'm not asking you a question from the article.

15 A Oh, okay. Since you were looking at the paper and asking me
16 the question, it --

17 Q My notes are on the paper.

18 A -- sounded like you were reading from it, sir.

19 Q Is it transmitted in humans from the gastrointestinal tract
20 and blood?

21 A It is more than just the, you know, blood. It's secretions,
22 it's vomit, it's sweat, it's direct skin contact, it's aerosols
23 from coughing and sneezing, fomites from coughing and sneezing.
24 It's more than just what you are indicating, sir.

25 Q Now, in pigs, which is the topic of Exhibit No. 13, Ebola is

1 transmitted in the respiratory tract; is that correct?

2 A From what they're saying is that it appears that these
3 aerosols entered into the respiratory tract. In the article
4 itself, they talked about, you know, lesions in the lungs which
5 indicate to the investigators that the entry was through the
6 respiratory tract. That is what they led to conclude, that
7 that's what happened, that there were aerosolized particles that
8 came in through the respiratory tract.

9 Q And that's different than the transmission mechanism in
10 human beings, correct?

11 DR. TAITZ: Excuse me. I didn't hear.

12 BY MR. HU:

13 Q That is different than the transmission mechanism in human
14 beings; is that correct?

15 A I do not find that, sir. There is nothing that says that
16 that is not true.

17 Q The article I'm showing you, Exhibit 13, is about pigs.

18 A The article is about non-human primates being infected with
19 Ebola from pigs housed in the same room, and there's no contact
20 between the pigs and the -- and the non-human primates except
21 aerosol transmission.

22 Q But the transmission is between pigs and non-human primates,
23 not human beings; is that correct?

24 A That was this. And the understanding and the implication is
25 that if it can be transferred to non-human primates through

1 aerosol, one cannot rule out that it cannot be transmitted
2 through aerosol to humans, sir.

3 Q Yes/no question. This article was about pig trans --
4 transmission from pigs to non-human primates, correct?

5 A That's right. The non-human primates are a substitute for
6 human experimentation.

7 MR. HU: I'm going to object to everything after "yes,"
8 Your Honor.

9 THE COURT: Okay.

10 BY MR. HU:

11 Q Showing you what's been marked or what will be marked as
12 Exhibit No. 14.

13 MR. HU: May I approach, Your Honor?

14 BY MR. HU:

15 Q Exhibit No. 14 is an article entitled "Ebola Hemorrhagic
16 Fever, Kikwit, Democratic Republic of the Congo."

17 Is this another article which you relied upon in generating
18 your report and opinions about aerosol transmission of Ebola?

19 A Yes, I did, sir.

20 Q Now, let's -- let's talk about the terminology here. When
21 you talk about airborne transmission, we're talking about
22 particles suspended in the air like tuberculosis; is that right?

23 A That's correct. I can read to you the definition of
24 airborne from the CDC.

25 Q That's okay. You agree with me that we're talking -- it's

1 like tuberculosis, in the air; is that correct?

2 A That's right. It's micro -- aerosols that carry infectious
3 particles.

4 Q If you'll look with me at this Exhibit No. 14 and turn with
5 me to the very last page. I think at the top it's marked page 6
6 of 8, and start -- read along with me the paragraph starting
7 with, "Our investigation had several limitations." Are you with
8 me?

9 A Do you want me to read this or you to read this?

10 Q I'll read it, and tell me if you agree.

11 "The team had to frequently rely on surrogates to provide
12 answers for patients who died." So there was some inaccuracies
13 based on that, correct?

14 A That's correct.

15 Q "Second, the interviewers may have been aggressive in
16 attempting to establish contacts or risk factors." In other
17 words, it was investigator bias here; is that correct?

18 A They're raising the possibility that there might be
19 investigator bias.

20 Q "Third, the serologic confirmation of all cases would have
21 been preferable, but here there was only 11 of 44 cases provided
22 sera for confirmation." In other words, blood or some other
23 bodily fluid to confirm Ebola; is that correct?

24 A That is what they're stating, sir.

25 Q And, "Fourth, the interval between the period of interest

1 and the date these interviews was actually conducted was fairly
2 substantial"; is that right?

3 A That's what the investigators are saying, sir.

4 Q So would you agree with me then that the reliability that --
5 where the article suggests perhaps, perhaps 12 people may have
6 had some sort of airborne transmission of Ebola is pretty
7 speculative because of all of these limiting factors?

8 A As investigators, they are required to point out the -- any
9 deficiencies in the study. And that does not mean that the
10 study is worthless, and it doesn't mean that the conclusions are
11 nonexistent. It just shows that when you evaluate this
12 information, you have to take these into account. It's still
13 very possible that aerosol transmission is a reality.

14 Q But would it appear, based on all of these risk factors, to
15 you that it is -- should be given -- this study should be given
16 less weight perhaps than other data because of all the frailties
17 which I've pointed out in the study?

18 A This should be given the weight that it deserves because you
19 have the laboratory conditions where you don't have such, you
20 know, problems and such. You know, it's a laboratory
21 experiment. In fact, the transmission through aerosol between
22 pigs and non-human primates, it is very possible that even
23 though the epidemic that was in the Republic of the Congo, they
24 weren't able to do the same experimental verification that we
25 were able to do in the laboratory. That doesn't mean that it

1 weighs less. It means that, you know, there are some things in
2 the study to keep in mind, but it doesn't mean that aerosol
3 transmission doesn't exist.

4 Q But you would agree with me there are some problems with the
5 study?

6 A Whenever you do stuff in the field, yeah. It's not like a
7 laboratory.

8 Q Now, you would agree as an expert witness that reasonable
9 minds do disagree, and there may be other peer reviewed
10 literature that goes contrary to the view that you've just
11 espoused here?

12 A There's always that possibility. You know, it's always
13 whatever facts are observed.

14 MR. HU: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. HU:

17 Q I'm showing you what's been marked as Defendant's Exhibit
18 No. 15. Have you seen this article before?

19 A It's very possible that I have.

20 Q And would you agree with me that the gist of this article is
21 that -- well, there's twofold. First, would you -- this is from
22 a journal by the name of -- where is it? Journal of Infectious
23 Diseases; is that right? JID?

24 A Can you repeat the question, sir?

25 Q This is from the Journal of Infectious Diseases; is that

1 correct?

2 A Yes, that's what it says.

3 Q And that's a peer reviewed journal, right?

4 A Yes, sir.

5 Q And that's reasonably relied upon by experts in the field of
6 epidemiology in expressing their opinions, correct?

7 A Yes. This is one article out of many, yes, that people rely
8 on.

9 Q But it is one that is peer reviewed and relied on, people in
10 your field?

11 A Yes.

12 Q And would you agree with me that the conclusion of the
13 article is that Ebola is shed in a wide variety of bodily fluids
14 during the acute period of illness, but the risk of transmission
15 from fomites in an isolation ward is low when currently
16 recommended infection control guidelines are followed.

17 Is that the essential conclusion of this article?

18 A I'm reading the same sentence that you are in the abstract
19 of the article. And, yes, they're saying that these people are
20 monitored. These people have infection control. And the risk
21 from -- is low when you have infection control procedures in
22 place. They didn't say it was nonexistent, but they said it was
23 low when you actually work to prevent this kind of transmission
24 from happening.

25 Q And fomites are things like furniture, clothing, and things

1 like that?

2 A Fomites would be, you know, pieces of infectious material,
3 yes, on --

4 Q Like furniture that someone has touched or clothing, things
5 like that, right?

6 A Yes, sir.

7 Q Flip with me to -- I think it's page S-145 under discussion.
8 Do you see where I am?

9 A Under discussion, yes, I found it.

10 Q And you see the sentence, oh, about ten lines down,
11 "However, the isolation of EBOV, Ebola, from only one saliva
12 specimen in contrast to eight that were RT-PCR positive could
13 suggest the virus is rapidly inactivated by salivary enzymes or
14 other factors in the oral cavity that are unfavorable to virus
15 persistence and replication."

16 A I see that sentence. And I also see the second sentence,
17 "EBOV had been previously documented in saliva by RT-PCR, but no
18 attempt was made to culture virus or to explore the temporal
19 dynamics of viral shedding in that study."

20 Q Correct. But from this, I think one could easily conclude
21 that Ebola is not transmitted by airborne particles like
22 tuberculosis, correct?

23 A Sir, if you see the word "could suggest," that doesn't mean
24 that it's -- it's an absolute positive proof from this. "Could
25 suggest" means a whole lot of things, but it's not definitive

1 proof.

2 Q But it's also -- but this is a peer reviewed journal article
3 suggesting that aerosol transmission is not a method of
4 transmitting the Ebola virus, correct?

5 A All it says is that they could not find virus in one out of
6 seven and eight, okay? So it means in their particular study,
7 they could not isolate virus in the saliva.

8 Q Flip to the next page with me, please. Second column, first
9 full paragraph. This is the conclusion. "Taken together, our
10 results support the conventional assumptions and field
11 observations that most Ebola transmission comes from direct
12 contact with blood or bodily fluids of an infected patient
13 during the acute phase of the illness. The risk of casual
14 contacts with the skin such as shaking hands is likely to be
15 low."

16 A Well, I think that these conclusions are the same as the one
17 that I cited, that most of the transmission was definitely
18 through the conventional assumptions and field observations,
19 which was true. But there was a minority of cases where, you
20 know, that kind of conventional assumption did not hold.

21 Q But --

22 A So this is consistent with the other study.

23 Q But this is also consistent with the low risk of aerosol
24 transmission; is that correct?

25 A A low risk is not the same as a nonexistent risk.

1 Q My question is low risk.

2 A Low risk.

3 Q Yes or no?

4 A I don't know what you mean by low, but it means that there
5 is some risk.

6 MR. HU: Your Honor, the government moves admission of
7 Exhibits 12 through 15. That would be her CV and the journal
8 articles.

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

10 BY MR. HU:

11 Q Let's talk about enterovirus D68. Are you aware that
12 it's -- that enterovirus is prevalent in almost every state in
13 the United States?

14 A I am aware that -- are you talking about D68 or --

15 Q D68. Enterovirus D68 and D68-like illnesses.

16 A Has been found in all states in this country, that's -- I
17 will accept that statement.

18 Q Especially elevated in California where you live.

19 A Okay.

20 Q Is that correct?

21 A I did not look that up. I did not research that. If you
22 state that to me as fact with -- you know, with solid basis, I
23 will accept that.

24 MR. HU: We're up to 16.

25 BY MR. HU:

1 Q I'm showing you what's been marked as Exhibit No. 16. This
2 is from the Centers for Disease Control and Prevention website.
3 Would you agree with me that the CDC website is an authoritative
4 website used by epidemiologists such as you?

5 A Yes, sir.

6 Q Relied upon pretty frequently by epidemiologists, correct?

7 A It's relied on as a authoritative source, yes.

8 Q So from this authoritative source, you can see on Exhibit 15
9 California is colored with elevated four activity of enterovirus
10 D68-like illnesses, correct?

11 A I see that, sir.

12 Q So if someone has -- okay. Are you aware of the prevalence
13 of enterovirus D68 in Mexico or Central America?

14 A I did not study that. I did not prepare that information
15 for my testimony today, sir.

16 Q Would it surprise you if we present testimony later today
17 that enterovirus D68 is not found in Mexico?

18 A I would have to see proof of that, sir.

19 Q But if that were the case, would you agree with me that
20 there's no need to quarantine or isolate people along the border
21 to prevent the spread of enterovirus D68, which is already
22 throughout the United States, coming in from Mexico?

23 A Sir, there are other people besides Mexicans coming across
24 the border. Just because the Mexican people themselves may not
25 have D68 among them, there's so many other kinds of people

1 crossing the border, we don't know whether those people crossing
2 the border might have been infected by others who were not
3 Mexicans traveling with them.

4 Q Are you aware of the prevalence of enterovirus D68 in
5 Central America, specifically the countries where many families
6 came in during the surge: El Salvador, Guatemala and Honduras?

7 A Sir, I did not prepare that for my testimony today. I did
8 not investigate that.

9 Q In preparing your testimony today, did you have the
10 opportunity to review Chief Oaks' testimony from the last
11 hearing?

12 A No, I did not.

13 Q So then you're unaware of what he testified at the last
14 hearing with respect to screening that is done by his Border
15 Patrol agents?

16 A Sir, I -- all that was available to me were the reports that
17 I cited in my affidavit. I did not have access to anything
18 other than that.

19 Q So the reports that you mean are the peer review articles
20 that we just talked about?

21 A When you talk about what the Border Patrol was doing and
22 what the Border Patrol found, the only documents that I reviewed
23 for that were the ones that I cited in my first affidavit.

24 Q Right. And those were the documents provided to you by
25 Dr. Taitz?

1 A That is correct.

2 Q So you didn't go out and do any independent research. You
3 simply relied on what Dr. Taitz sent you.

4 A Sir, when it comes to statements by the Border Patrol,
5 documents provided to -- by the federal government, I do not
6 have access to those kind of documents regularly. I have access
7 to peer reviewed literature. I have access to, you know,
8 whatever I can get on the web. But actual statements from the
9 Border Patrol, those are not things that I have access to
10 normally.

11 Q So then are you aware of the Border Patrol protocols which
12 allow them at any time to call CDC for advice about someone who
13 may be exhibiting some disease symptoms?

14 A I would hope that they would consult with the CDC if any
15 symptoms appear and if they needed guidance.

16 Q In the documents that you reviewed, did you see the 1-866
17 number that Border Patrol agents can call 24/7 to get CDC
18 medical advice?

19 A I would hope that they would have some sort of access like
20 that. I am glad that they do.

21 Q But you didn't actually review that in preparing for your
22 testimony today, did you?

23 DR. TAITZ: Objection, Your Honor. I believe Mr. Hu is
24 badgering the witness. She already testified, and the issue
25 with Mr. Oaks was that he signed the releases instead of the

1 doctor. And she already stated her opinion that it's preferable
2 that the doctor signs.

3 At this point it's just -- she's just being badgered about
4 something that she already testified to. She already said it's
5 preferable that the doctor signs the release instead of a Border
6 Patrol agent. So what's the relevance of having an 800 number?

7 THE COURT: Okay. Overruled.

8 BY MR. HU:

9 Q Are you aware of a whooping cough outbreak in Southern
10 California right now?

11 A I have not investigated that, sir. I did not prepare that
12 for my testimony today.

13 Q Right. But as an epidemiologist, don't you like to keep
14 current in various disease trends in your field?

15 A Sir, whooping cough is -- has not been on my radar lately.
16 Ebola has been on my radar lately, so I've directed my attention
17 to Ebola.

18 Q In your experience as an epidemiologist, have you made
19 recommendations to healthcare professionals such as dentists
20 regarding protective gear to prevent transmission of diseases
21 such as whooping cough?

22 A Sir, I am not in a position like that. My day job involves
23 work in the life insurance industry. And as such, what I did as
24 a life insurance professional has been to advise my employers or
25 clients about dealing with infectious diseases.

1 I was in the underwriting research department in the 1980s
2 when HIV came on the scene, and I became an expert for my
3 company on HIV. I also -- when the bird flu pandemic came up, I
4 became an expert in the bird flu pandemic and made presentations
5 to the Society of Actuaries.

6 I do not make recommendations to healthcare officials. I
7 have not been in that position to do so.

8 Q So you just mentioned that you report -- so you're aware of
9 bird flu, H1N1, right?

10 A Yes. When that issue came up, I investigated that, and I
11 came up to speed, became an expert resource for the life
12 insurance industry about that, yes.

13 Q So you know H1N1 is a reportable illness; has to be reported
14 to the various state health authorities.

15 A Yes, sir.

16 Q And you're aware, of course, that TB is a similar reportable
17 incident?

18 A Yes.

19 Q So then you're also aware that upper respiratory ailments in
20 general are not reportable.

21 A I need to review the list. I -- of what is reportable to
22 the CDC. I do not have that in my mind right now.

23 Q You just -- you don't know off the top of your head is what
24 you're telling me?

25 A I do not know off the top of my head.

1 Q Let's talk about tuberculosis for a moment. On the witness
2 stand in front of you is a -- what should be a white binder.

3 A Yes, sir.

4 Q Look with me at Exhibits 4 through 9.

5 A These are --

6 Q Have you seen these documents before?

7 A No, sir. I am not in the position to see these documents in
8 the course of my normal business.

9 Q Okay. Working for life insurance companies, actuarial
10 things and all that, you don't review the various documents that
11 go between HHS and state health authorities on tuberculosis is
12 what you're telling us?

13 A That's correct, sir. Not unless they become an issue of
14 public, you know, concern.

15 Q Okay. What's the difference between active TB and TB
16 infection?

17 A I did not prepare that today.

18 Q So you don't know?

19 A I do not know off the top of my head. I can find out in
20 five minutes what the difference is.

21 Q Now, TB infection, does that mean -- if someone has a TB
22 infection, does that mean they can transmit the disease?

23 THE COURT: If you don't know, just tell him you don't
24 know.

25 THE WITNESS: I'm trying to see if I want to give a

1 blanket answer or a conditioned answer. People who transmit and
2 who are infected with tuberculosis do transmit diseases. They
3 can transmit tuberculosis to other people. The conditions under
4 which they would be infected and not transmit diseases, I
5 have --

6 Q You don't know?

7 A I do not know.

8 Q Okay. Just so I want to clear on the terminology used in
9 your earlier testimony. A cough is a symptom of something.
10 It's not a diagnosis in and of itself; is that correct?

11 A A cough, yes. A cough is a symptom, yes.

12 Q And it's a symptom --

13 A It's not a disease -- it's not a diagnosis like tuberculosis
14 is a diagnosis.

15 Q Okay. And cough would be simply a component of a
16 tuberculosis diagnosis or a whooping cough diagnosis or
17 something like that; is that correct?

18 A Yes, sir, I agree.

19 MR. HU: Your Honor, can I have a moment?

20 I have no further questions, Your Honor.

21 DR. TAITZ: Redirect, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY DR. TAITZ:

24 Q Ms. Dolan, in regards to -- we were talking about aerosol
25 infection in Ebola. The articles that you quoted, those

1 articles were not given to you by me. Those are articles that
2 you found through your own research; is that correct?

3 A That is correct.

4 Q Now, in the article, the -- in regards to transmission
5 where -- of several animals, pigs and primates, their finding
6 was that it can be trans -- I'm trying to qualify -- clarify.
7 The transmission was from different species, from -- for
8 example, from pigs to primates through aerosols because there
9 was no contact between the animals; is that correct?

10 A That's correct.

11 Q And they used primates because clearly they would not infect
12 human beings with Ebola; is that correct?

13 A That's correct.

14 Q So typically -- excuse me. I think maybe I should stay
15 here. Is that better? Sorry.

16 So typically in research, humans are being substituted by
17 primates, by monkeys, by chimpanzees to see if there can be
18 transmission to humans through several ways; is that correct?

19 A That's right. They're not doing human experimentation.

20 Q So if they found that Ebola can be transmitted to primates,
21 monkeys and chimpanzees by air through aerosols, through
22 droplets of sweat or saliva or anything that's in the air that
23 contains virus, that meant that this is the same pattern by
24 which it can be transmitted to humans; is that correct?

25 A Yes. If there had been no transmission whatsoever, that

1 would be very strong evidence that there is no aerosol
2 transmission.

3 Q Now, in Africa, there were 450 healthcare providers, doctors
4 and nurses that contracted Ebola, and 232 of them have died in
5 spite of the fact that they were wearing those hazmat suits or
6 PPE, protective equipment, personal protective equipment.

7 When you have this information that 232 doctors and nurses
8 have died even though they were wearing all this protective gear
9 head to toe, is that an indication to you that there might have
10 been aerosol transmission?

11 MR. HU: Objection, speculation.

12 THE COURT: I'm going to overrule the objection, but I
13 want to know the basis of the answer.

14 BY DR. TAITZ:

15 Q When there are doctors -- you can answer.

16 A Oh. Well, we can rule out the obvious contact between
17 patients and healthcare provider because they were protected to
18 the extent that they thought that they should, given what they
19 expected. But they became infected anyway, which means that a
20 means of transmission beyond just plain contact, you know, made
21 them sick.

22 And so aerosol transmission is a very top candidate for how
23 they became sick, even though they took all those contact
24 precautions.

25 Q So it can be aerosols or it can be just objects like

1 doorknob, like objects of clothing, anything that would have the
2 droplets of sweat or --

3 A Yeah. Something that --

4 MR. HU: Objection, speculation.

5 BY DR. TAITZ:

6 Q Well, how could they get infected? Here there are 450
7 doctors and nurses who are covered head to toe in this hazmat
8 gear. How did they -- it's not one or two. 450 got infected;
9 half of them, 232, died. How did -- in your opinion as
10 epidemiologist, what do you believe is the likely cause for
11 the -- for this infection and death?

12 MR. HU: Objection, speculation.

13 THE COURT: All right. Here's what -- that is
14 speculation. I'm going to let Ms. Dolan answer what are the
15 possible ways based on her training as an epidemiologist, but --

16 BY DR. TAITZ:

17 Q In what possible ways could they get infected? That's what
18 the judge said.

19 A Well, first of all, since they were protected against direct
20 physical contact and their protocols were very strict, that they
21 could not have then contact -- you know, contracted the disease
22 through physical contact, so it must have been other means
23 beyond physical contact that got them infected. And the most
24 likely means of them getting infected --

25 THE COURT: Hold on. That's what I said you couldn't

1 answer.

2 THE WITNESS: Oh, okay.

3 BY DR. TAITZ:

4 Q Just state possible ways they could get infected.

5 A It could be aerosol. It could be contact with materials
6 after they get out of their suits or when they're not in their
7 suits. That there's other ways that, you know, infected
8 substances got to them that was -- had nothing to do with their
9 protective gear.

10 Q So we know that Judge Clay Jenkins here in Dallas, Texas,
11 has ordered a quarantine; quarantine for individuals who had
12 contact, for example, with Thomas Duncan, or ones who had
13 contact with those nurses. Those people were ordered to be in
14 quarantine, and hazmat team has disinfected those -- their
15 apartments.

16 So my question is what if individuals are not somewhere in
17 an apartment complex in Dallas? What if they are in the
18 station, Border Patrol station when they're illegally crossing
19 the border? Let's say in people who are from Liberia, people
20 who are from Sierra Leon, they're in front of Officer Oaks.
21 They're -- just crossed the border.

22 Judge Jenkins, who is a state judge, has no jurisdiction to
23 order quarantine there on a federal property. So what would --
24 in your opinion, what should be done there? Do you think there
25 should be a quarantine, some type of a federally ordered

1 quarantine in this?

2 A Whatever court --

3 MR. HU: Objection, Your Honor. It's beyond the scope
4 of cross and is pure speculation.

5 THE COURT: I'll overrule that. But Judge Jenkins is
6 not a state judge, just for your -- he's a county judge.

7 DR. TAITZ: He's what?

8 THE COURT: He's a county judge.

9 DR. TAITZ: Oh, I apologize, Your Honor.

10 THE COURT: There's a difference in Texas.

11 DR. TAITZ: I apologize.

12 BY DR. TAITZ:

13 Q So what happens -- as an epidemiologist in your opinion,
14 what should be done if, for example, individuals are crossing
15 the border and they're located in a Border Patrol facility or
16 HHS facility or DHS facility? They cross the border. They're
17 from Liberia, from Sierra Leon, from Guinea, and they're caught
18 by Mr. Oaks and they're in his facility. In your opinion, what
19 should be done in terms of epidemiology to stop spread,
20 potential spread of diseases?

21 A Well, first of all, the movement of these people should be
22 stopped so they do not progress further into the country until
23 they are identified and assessed medically. So that's the first
24 thing that absolutely must be done.

25 And if they are found to be from Ebola infected countries,

1 it is very prudent, as we discussed before in my prior
2 testimony, that these people be put in quarantine.

3 Q I have another question in regards to D68 since Mr. Hu has
4 mentioned it. As an epidemiologist, until now, until the last
5 couple months when we had this big outbreak, are you aware of
6 any large outbreaks of D6 -- enterovirus D68 in United States of
7 America, a large -- large outbreaks that would cover the whole
8 country? Are you aware of any such large outbreaks before?

9 A Before this summer?

10 Q Before this summer.

11 A From what I have read before, D68 is not very common. It's
12 very unusual, and that this outbreak is a very surprising one.

13 Q So when you as epidemiologist receive information that
14 children who came here illegally, thousands of children were
15 transported all over the country, and in and around the same
16 time suddenly there is an outbreak of a disease like enterovirus
17 D68, as an epidemiologist who studies causation, in your
18 opinion, could that be a causation for this outbreak?

19 A It could be.

20 MR. HU: Objection, speculation.

21 THE COURT: Sustained.

22 BY DR. TAITZ:

23 Q Okay. What -- what could be the reasons and causations for
24 this outbreak in your opinion?

25 A For D68?

1 Q Yeah.

2 A Well, we know that it's a respiratory illness that arised --
3 arose during summer, so it's not like the flu which usually
4 happens in winter, and it's not -- could not be confused with
5 allergies which happens in the springtime. The timing of the
6 epidemic is coincidal -- coincident with the arrival of large
7 numbers of illegal, you know, immigrant children.

8 Q I wanted to also redirect and clarify a couple of other
9 issues that Mr. Hu touched upon, and one had to do with standard
10 and technique that was used in a study. Typically when there
11 are studies with infectious diseases like Ebola and individuals
12 are asked -- questioned about their symptoms, is it common to
13 have some discrepancies?

14 A Always.

15 Q So if this particular study states that there were some
16 discrepancies, it's not something unusual, is it?

17 A What you are describing as discrepancies, they described as
18 some of the shortcomings of the study. This is not a precise
19 study like the laboratory study done between the monkeys and the
20 pigs. These -- this is out in the field talking to people,
21 gathering as much information as possible. And these
22 investigators did have an obligation to point out if there were
23 any shortcomings of the study, which they did.

24 Q So the fact that they stated that Ebola can be transmitted
25 through aerosols, by air in some cases, and the fact that there

1 are some discrepancies or questions about the study, it's not
2 unusual. It's something that you would typically see in many
3 studies. It does not question the main premise of the article;
4 is that correct?

5 A Every honest investigator, as part of their report, always
6 points out any weaknesses in the study. That's part of the
7 peer -- you know, writing for a peer reviewed journal. You
8 don't want to just put out your facts. You want to have a
9 well-rounded view of the study and inform the reader of the
10 things that the reader has to keep in mind when deciding how
11 much to rely on that study.

12 Q Recently there was -- actually there were reports by
13 Dr. David Sanders, a virologist, his studies showing that there
14 can be lesions in pulmonary tissue from Ebola, which is a chest
15 air transmission. And I'm wondering if the study that you
16 talked about that had to do with lesions, lesions in the lungs,
17 would that be consistent with the study?

18 A That would be consistent with that study.

19 Q And the last question I had in regards to tuberculosis, can
20 you please -- the question was in regards to infection of
21 tuberculosis. What -- what needs to be done and what are the
22 actions that need to be taken if a person -- and you read
23 about -- you read from the CDC Handbook earlier before the
24 break. I just wanted to kind of reiterate that and clarify
25 that.

1 If a person was exposed to tuberculosis, what is supposed to
2 be done in this situation? Can you just put him on a bus and
3 tell him go somewhere?

4 A No. No. In the USA, preventative treatment for three
5 months is recommended for skin test negative close contacts.
6 The skin test should then be repeated to determine the need for
7 additional preventative therapy.

8 So yes, they need to be watched and --

9 Q So the reason -- the basis for transporting all of those
10 illegal alien children all over the country was this agreement,
11 *Flores v. Reno*, which states that children should not be
12 released from custody unless they are a danger for themselves --
13 to themselves and others.

14 So if a child is exposed to tuberculosis, in your opinion as
15 an epidemiologist, should this child be kept in the custody --
16 in the custody because somebody who is exposed to tuberculosis
17 might be danger to himself and others?

18 MR. HU: Objection, speculation.

19 THE COURT: Overruled.

20 THE WITNESS: If anyone has been exposed to tuberculosis
21 and, you know, health authorities know about it and do not do
22 treatment, do not do follow-up as the CD guidelines, it is
23 irresponsible to let, you know, that kind of infected person out
24 into the general population without being followed up.

25 BY DR. TAITZ:

1 Q Thank you.

2 A And I have one more thing. In the article that we were
3 talking about with the pigs and monkeys on page 3, there is a
4 sentence, "The pattern of lesions and immunostainings for EBOV,"
5 which is Ebola virus, "antigen in lungs suggests infection of
6 the lungs both via respiratory epithelium and due to viremic
7 spread of the virus."

8 Q So in terms -- so in regards to Ebola, what you're saying,
9 that would suggest aerial transmission. If a person is coming
10 from Liberia, Sierra Leon, one of those countries, and he is
11 located in custody, federal custody, be it Border Patrol custody
12 or DHS custody or HHS custody, one of those, so in terms of
13 protecting the public and protecting this person, do you believe
14 that this person should be kept in the custody, or you as an
15 epidemiologist believe that it would be beneficial to release
16 him? What is the best way to prevent the spread of disease?

17 A The way to best prevent spread of disease is to not let an
18 infected person go wandering around in the population. You want
19 that person to be monitored and checked and followed up and
20 treated.

21 Q So quarantined?

22 A Quarantine is a good, solid foundation of public health.

23 Q So as epidemiologist, you feel that if a person is in
24 federal custody and he comes from those countries where he was
25 exposed to Ebola, quarantine would be a prudent way; quarantine

1 for 21 days would be a prudent way --

2 A Yes --

3 Q -- to prevent disease?

4 A -- quarantine is a prudent way to prevent Ebola from
5 spreading within the population.

6 DR. TAITZ: Thank you, Ms. Dolan.

7 THE COURT: Recross, Mr. Hu?

8 MR. HU: Nothing, Your Honor.

9 THE COURT: Ms. Dolan, let me ask you a follow-up on
10 what Dr. Taitz just asked you.

11 I assume if you are charged with protecting the United
12 States and the citizens of the United States from Ebola, let's
13 say, the most -- the safest course of action, the course that
14 would be calculated to prevent or to be most effective in
15 preventing the spread of Ebola into the United States and among
16 the citizens of the United States would be a travel ban from
17 those countries that have it.

18 THE WITNESS: I would agree, sir.

19 THE COURT: All right. Then the next most effective, if
20 you're not going to have a travel ban, would be the quarantine
21 suggestion that Dr. Taitz just suggested.

22 THE WITNESS: That would be a good second choice.

23 THE COURT: All right. But in terms of if you were
24 trying to go from most effective to least effective, the travel
25 ban would be first, I assume.

1 THE WITNESS: It would be preferable, sir.

2 THE COURT: Because they have, for lack of a better way
3 of saying it just in the laymen's terms, there's Ebola in
4 Africa. There's not Ebola here. If you isolate it there, no
5 one in the United States is going to get it.

6 THE WITNESS: That would be the point, yes.

7 THE COURT: All right. Then if you're going to allow
8 people to come into the United States who have been exposed to
9 Ebola in Africa, the next -- the least risky or the next least
10 risky manner of dealing with it would be the quarantine to
11 isolate those people here in the United States that have
12 actually been exposed to Ebola.

13 THE WITNESS: I agree.

14 THE COURT: All right. And then the least effective or
15 the most riskiest to the citizens of the United States is to
16 leave things the way they are and not have a travel ban or a
17 quarantine.

18 THE WITNESS: I agree.

19 THE COURT: All right. Are those -- I mean, are those
20 basically the three options on the table? Are there others?

21 THE WITNESS: I would need to think and study that, sir.
22 Investigate that further.

23 THE COURT: All right. By "on the table," I did not
24 necessarily mean that I'm agreeing with Dr. Taitz that I have
25 the power to do that. I'm just asking you about what are the

1 options, okay?

2 All right. You may step down. Thank you, ma'am.

3 Dr. Taitz, I did not mean to correct you, but both for your
4 benefit and to the effect that Mr. Kisor may or may not know
5 this -- I can't remember where Mr. Kisor went to law school --
6 but the judge you referred to, he is a judge, but he's a county
7 judge. And in Texas, a county judge is not a judicial officer.
8 They're the executive officer of a county, so they're like the
9 mayor of a city. They would be the county counterpart. They
10 would be the mayor of the county. They would be the head
11 executive officer of a county. And that's what I think, unless
12 I'm mistaken, Mr. Jenkins is in Dallas.

13 Neither here nor there, but -- but he didn't take judicial
14 action. He took some kind of executive action.

15 All right. Any more witnesses, Dr. Taitz, from your side of
16 the "V"?

17 DR. TAITZ: No, Your Honor, but I might just redirect on
18 the witnesses.

19 THE COURT: Okay. All right. Mr. Kisor, you or Mr. Hu
20 wish to present any evidence?

21 MR. HU: Yes, Your Honor. Your Honor, in -- we have
22 listed as an exhibit and I assume the Court will take notice of
23 the prior testimony from the TRO hearing, so I don't want to
24 have to put those witnesses back on and rehash it all.

25 THE COURT: Okay. That's fine. I will take cognizance

1 of that.

2 MR. HU: Then, Your Honor, we would recall Chief Oaks
3 for very limited additional supplemental testimony.

4 THE COURT: All right.

5 *(Witness sworn.)*

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

7 **KEVIN OAKS,**

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

11 **DIRECT EXAMINATION**

12 BY MR. HU:

13 Q Chief Oaks, since you last testified approximately 60 days
14 ago here in this court, can you update the Court on whether the
15 surge of families and aliens from Mexico and Central America
16 continues, or what have been the trends in the last 60 days?

17 A Well, since the end of summer, the end of fiscal year is how
18 we calculate all of our apprehensions, and there were
19 approximately 260,000 apprehensions in FY14. And so far this
20 year from the beginning of the fiscal year, which was
21 October 1st to present, we're about just under 11,000
22 apprehensions, which is about 20 percent under what we were this
23 time last year. And the custody of juveniles and family units
24 is pretty much ongoing, and so those two populations are almost
25 minimal compared to what they were previously.

1 Q Just year to year, how far has it dropped, year-to-year
2 comparison?

3 A It's about 20 percent from last year.

4 Q Okay. And because of this drop in the volume, are most
5 people who are apprehended remained in custody, or are we having
6 the scenario like we talked about this past summer where adults
7 and certain family units were simply being released on their own
8 recognizance with notices to appear into the community?

9 A In terms of family units and unaccompanied juveniles, the
10 majority of them are all remanded into custody of either HHS-ORR
11 or ICE ERO.

12 Q And in your -- and folks that are remanded into custody get
13 detailed health screening; is that right?

14 A Yes, sir, they do.

15 Q Can you give us just a capsule of the kind of health
16 screening they get?

17 A In terms of the juveniles, we opened up a new facility very
18 near the McAllen station that was opened specifically for
19 unaccompanied juveniles. And we let a contract, a government
20 contract for medical professionals to do 100 percent screening
21 of all the children before they even get in HHS and ORR's
22 custody.

23 And similarly, all the other bodies that are apprehended
24 within that -- in the western corridor are all medically
25 screened as well, particularly the family units and any of those

1 other high risk people that are determined, you know, based on
2 what we find in the field, if there's field injuries or they're
3 showing any symptoms or sign of any sort of -- you know, all the
4 things that we catch. Most recently the other day we had a guy
5 that was bit by a rattlesnake. And so, you know, we'll pull
6 them from the field, provide them to EMS or directed towards the
7 nearest medical facility.

8 Q Now, let's talk about the medical screening that's done by
9 your agents when folks are apprehended in the field. Are your
10 agents trained to identify airborne and blood borne pathogens?

11 A Yes. For years, you know, we have an annual recertification
12 process that we do, you know, and it goes back to H1N1 and HIV
13 and all the other sort of similar issues that we've addressed
14 over the years when they crop up. So the agents are trained in
15 the academy. They're given post academy instruction. There's
16 an annual -- we do a lot of virtual learning center off the web
17 to recertify and train on many of those issues.

18 THE COURT: Are agents trained to identify people with
19 Ebola?

20 THE WITNESS: Well, so most recently from guidance from
21 CDC and DHS headquarters and working with the state and local
22 officials, we have been specifically identifying the symptoms
23 and what to look for if we encounter people from those four
24 particular countries and if they show any of those signs. So
25 yes, sir.

1 BY MR. HU:

2 Q Now you have jurisdiction --

3 THE COURT: Let me just -- excuse me, Mr. Hu.

4 Once you've encountered those people and you've identified
5 them, I assume you then have at least instructions or some kind
6 of protocol you would then follow.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right.

9 THE WITNESS: And the --

10 THE COURT: Once you've identified them -- let me ask
11 you this. Before those protocols are instituted, whatever
12 Border Patrol officer that's made the arrest and whatever -- and
13 I say arrest. It may not be an arrest. It may just be, you
14 know, taking into some kind of custody. I mean, they are then
15 thereby unprotected and exposed to whatever they're -- the risk
16 of getting Ebola, whether it's airborne or physical contact or
17 whatever.

18 THE WITNESS: Generally speaking, that holds true with
19 all the populations.

20 THE COURT: So there's -- that -- except with Ebola, the
21 chances of somebody dying are above 50 percent; whereas with
22 some other disease, they're not. So the man on the street, so
23 to speak, the officer, the Border Patrol officer that's out in
24 the field, he's -- he's basically got no defense to that, does
25 he?

1 THE WITNESS: Well, they wear -- all the agents are
2 provided protective gear. They don't necessarily wear it 24/7.
3 You know, considering the volume of traffic that -- you know,
4 that we encounter, if they do encounter people with those
5 symptoms, you know, that's a situation where they would have to
6 be isolated and directed in the field per the instructions that
7 we're providing to our agents based on policy from DHS and CDC
8 about, you know, identifying those people and isolating them in
9 the field and then following up with the managerial decisions
10 whether to transport them to many of the facilities in the
11 Valley that are set up to address that. And/or there is, you
12 know, a level of risk that agents do assume.

13 THE COURT: Okay. And then even if it's not Ebola,
14 let's say it's TB, for instance, I mean, there are instances
15 where that goes undiagnosed throughout the whole process, isn't
16 it?

17 THE WITNESS: I'm not aware of any cases, but --

18 THE COURT: Let me -- we have had people with active TB
19 in this courtroom, which I assume since they were arrested and
20 gone through various -- you know, according to what you're
21 telling me, medical screenings and been in jail for a while
22 before they ever get to us, I mean, we've had active TB people,
23 immigrants in this courtroom. In this courtroom. You know, I
24 mean, exposed Cristi and our interpreter and Barbara exposed to
25 it. I'm, of course, hiding behind these screens up here so I'm

1 okay. But, I mean, how does someone like that get in this
2 courtroom with active TB?

3 THE WITNESS: If they're remanded for a criminal
4 situation, then the marshals would have to medically accept them
5 into their custody for them to be in here, sir.

6 THE COURT: But they get arrested by you guys.

7 THE WITNESS: Yes, sir. And if we're aware of any of
8 those situations, we will -- the marshals will not accept them
9 from us if they're not medically screened. So if we have any
10 indication that there are any communicable diseases, we'll
11 address that, you know, on a case-by-case basis.

12 THE COURT: All right. And then the -- you said the
13 majority of unaccompanied juveniles or family units, which I
14 assume is juveniles with one parent or the other.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Get referred to HHS or ORR.
17 What percentage don't?

18 THE WITNESS: I have -- it's -- you know, I don't have
19 those facts and figures, but we rarely release anybody, any
20 family units as we were previously during the summer. So the
21 majority of all the family units are being detained because they
22 opened up additional bed space throughout the nation. And then
23 ICE ERO is opening up a new facility here quickly near Karnes
24 which will house about 3600 family units and other populations.

25 THE COURT: All right. And if they don't get referred

1 to one of those, what's happened -- even if you don't know the
2 percentage, what happens to those people? Do they get released
3 with a order to come back?

4 THE WITNESS: Yes, sir. Generally speaking, if they're
5 released on their own recognizance, there's a date in front of
6 the immigration judge to be determined.

7 THE COURT: Okay. And then what's considered a
8 juvenile?

9 THE WITNESS: A juvenile is 17 and under, sir.

10 THE COURT: Okay. So if -- so if you have 14,
11 15-year-olds unaccompanied, they get treated like an eight or
12 nine-year-old?

13 THE WITNESS: Yes, sir. All juveniles are treated
14 generally the same except for the ones that are of tender years
15 which, you know, require a little bit different treatment.
16 They're not fingerprinted.

17 THE COURT: Go ahead, Mr. Hu.

18 BY MR. HU:

19 Q What's a kilo unit?

20 A A kilo unit?

21 Q Yeah.

22 A A kilo unit is -- it's a very large truck with a -- with
23 a -- sort of a screened in detention module inserted in the bed
24 of the pickup. I think it's like a three-quarter ton Ford or
25 Chevy truck.

1 Q In your procedures, is that what's used if you have an alien
2 that you suspect has a contagious disease? Do you put them in a
3 kilo unit?

4 A Yes. And the reason for that is the cell, the way it was
5 designed, has a separate air system, and it's isolated from the
6 interior of the cab so you get some semblance of, you know, for
7 lack of a better word, containment of that person.

8 Q So the agents driving the vehicle -- I assume you don't put
9 other people in there in the back with them. But the agents
10 driving the vehicle are thus protected from whatever contagious
11 disease this person might have?

12 A Yes, sir.

13 Q As part of the training you provide to your agents, are they
14 given a 1-800 number at CDC to call if they have any medical
15 questions?

16 A They do. And the supervisors are all trained, and they
17 generally have discussions about these issues at all the
18 musters. And there's protocols that are set up and trained in
19 place. Currently like I was discussing, you know, this -- the
20 new protocols are addressing the guidance that we've gotten from
21 DHS and CDC on field identification of, you know, blood borne
22 pathogens and some of these other issues that we're dealing
23 with.

24 Q Now, as I understand it, the sector that you supervise is
25 312 miles of operational border and a couple of airports?

1 A Yes, sir. It's 312 miles of Rio Grande from Falcon Lake to
2 Brazos y Santiago. And then from there up to Sabine Pass. And
3 that's about 317 miles of coastline. Roughly the area of
4 operation is the size of South Carolina.

5 Q And in all of this area and operations in fiscal year '14,
6 how many aliens did you detain from the African nations of
7 Guinea, Sierra Leon, and Liberia?

8 A In FY14?

9 Q Yes, sir.

10 A There were 16 -- there was -- I think we had 16
11 apprehensions from the continent of Africa, and from those four
12 who -- I think we did have one.

13 Q One person?

14 A Yes, sir.

15 Q And when you say the continent of Africa, that would include
16 people from South Africa, Eritrea, Egypt, the whole continent?

17 A Yes, sir.

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

19 THE COURT: Cross-examination, Dr. Taitz?

20 **CROSS-EXAMINATION**

21 BY DR. TAITZ:

22 Q Good day, Chief Oaks.

23 A Good afternoon. How are you?

24 Q Good afternoon. Okay. How are you?

25 I have a question. How long do those individuals stay in

1 your custody?

2 A Which individuals? Which ones?

3 Q Individuals apprehended by you. How long do they stay in
4 your custody?

5 A It depends upon the population or demographic you're talking
6 about. If it's -- and you're aware of the Reno versus, you
7 know --

8 Q Flores?

9 A -- Flores, you know, with the juveniles and the family units
10 and then Mexican Nationals and then OTMs all have, you know,
11 sort of different requirements based on, you know, what the
12 situation is and then if they're going to be charged, you know,
13 with a criminal violation or sometimes we turn them over to
14 state, so if --

15 Q Approximately. One day, three days, ten days, a month?

16 A Generally speaking, we try to get them out, all populations,
17 within 24 hours.

18 Q Okay. So we were talking -- I have requested some
19 documents, and I did not get them yet before this hearing. So I
20 would like to know in this whole region, for example, you said
21 in the last months, there were 22,000 people. We know there is
22 tuberculosis. How many tuberculosis tests were done, if any?

23 Did you do any TB tests?

24 A On all the people?

25 Q On any, yeah.

1 A From the beginning, from October 1st to the present?

2 Q Yeah.

3 A 11,000 apprehensions?

4 Q Yeah.

5 A No, I didn't do any.

6 Q Zero?

7 A No, ma'am.

8 Q So we know that there is tuberculosis in Mexico and Central
9 America, so there were zero TB tests done, and those individuals
10 were transported further on.

11 In your opinion -- and you stated that you got some
12 training. Do you feel that it would be beneficial to do TB
13 tests first before you transport those people, release them,
14 transport them, and so forth to see if they're not carrying
15 deadly tuberculosis?

16 A Well, so TB testing is done in the custody of the people
17 that we turn them over to. So, for example, the way I
18 understand it, ICE ERO, which would encompass anybody that's not
19 released in the population, there's mandatory chest x-ray for
20 all people coming into their custody.

21 Q But, for example, at the last hearing, you testified that
22 you -- let's ask another question.

23 You already testified last time in July that you're aware of
24 individuals with scabies --

25 A Yes, sir.

1 Q -- being transported. So when you transport those people,
2 for example, when you charter a plane and people with scabies
3 get on this plane, the scabies can get on the upholstery of the
4 plane. You transport them to California, so Border Patrol
5 agents like you in California can get infected.

6 So in your opinion as somebody who is protecting our
7 borders, do you feel that it would be beneficial to do tests
8 right away, for example, a TB test? And if somebody has it,
9 quarantine him right away versus transporting him to California
10 and New York or anywhere? Do you feel it would be beneficial?

11 A Well, if we're talking about the population where they
12 were -- some of the juvenile and family units --

13 Q Anybody. Anybody who you get into Border Patrol facilities.
14 You said there is a new Border Patrol facility. You got them.
15 You apprehended them. Do you feel it will benefit you, your
16 staff and the population at large to do TB test right away and
17 see if they have tuberculosis, to quarantine them right away
18 versus transporting them all over the country?

19 A Well, I think our screening process does cover that because
20 anybody that shows any kind of symptoms of something that -- you
21 know, and then also, you know, they're -- there's self
22 declaration, because a lot of the aliens will provide a lot of
23 background and information on what they have.

24 Q But --

25 A And so this goes back to how I answered last time. We're

1 talking about a population of 260,000 apprehensions in FY14.
2 And if you're talking about doing a TB test for 260,000 people
3 in Border Patrol custody, I don't know how we would even do
4 that.

5 Q Well, maybe by court order from Judge Hanen.

6 But in terms of protecting the public, an order like this
7 would protect the public better than transporting them all over
8 the country and then school officials or doctors somewhere in
9 California or New York or anywhere else suddenly seeing symptoms
10 and sending them for tests when they already exposed God knows
11 how many people. Do you feel that would be beneficial?

12 MR. HU: Objection, argumentative.

13 THE COURT: Overruled.

14 THE WITNESS: You know, so within the purview of what I
15 do and the guidelines and policy and law, we do the best job
16 that we can --

17 BY DR. TAITZ:

18 Q No, I understand.

19 A -- with the resources that we have. We medically screen all
20 populations of everybody we have. And so for me to speculate
21 which would be better for the population is, you know, outside
22 my purview.

23 Q But, Chief Oaks, you -- okay. You said -- you said that,
24 for example, in October there were 22,000 people that you
25 apprehended and you did zero, zero TB tests. So what kind of

1 medical screening is it? Do you feel it's sufficient?

2 A It was 11,000 from October 1st to present.

3 Q Okay, 11. Okay. There were 11,000 people coming from
4 areas, Mexico, Central America where there is a lot of
5 tuberculosis which can be a deadly disease. And you did zero,
6 zero tuberculosis tests?

7 A No, I did not do any tests.

8 Q Yeah. Okay. So you feel that maybe this is not sufficient?
9 Maybe there is a need to do -- to do this testing in order to
10 protect the public?

11 A Well, how I feel is --

12 Q What is your opinion as somebody who is entrusted in
13 protecting us?

14 A Well, I'm responding on behalf of DHS and CBP and the Border
15 Patrol. And what I'm telling you is the policies and protocols
16 and everything we have in place is what we're supposed to do.

17 Q What you have.

18 Another question, there were reports that actually this
19 year, this whole year, not just October, there were over 500
20 people who crossed the U.S. border from Mexico coming from
21 Sierra Leon, Liberia and Guinea. And I'm surprised that you
22 stated that you saw only one because reports are that there were
23 over 500, and it is reported actually. I believe I already
24 submitted it to this court.

25 So when those individuals are crossing the border, have you

1 ever done any Ebola tests? Have you ever sent anybody for an
2 Ebola test?

3 A Well, I'm not sure what border you're talking about. But my
4 testimony was that within the Rio Grande Valley sector area of
5 operation in FY14, we made 1600 -- or 16 arrests from folks that
6 originated from the continent of Africa, one of which was from
7 the red zone where you're talking about, those four countries.
8 And from October 1st to present, we've arrested three people
9 from the continent of Africa and not one from any one of those
10 four countries.

11 So the 500 apprehensions, I'm not sure if you're -- you're
12 talking about between the ports of entry or at the ports of
13 entry because I don't have that information.

14 Q Chief, when you said that they came from Africa, do they
15 show you the passports? How do you know where are they from?

16 A How do we know where they're from?

17 Q Yeah.

18 A Well, so part of the process and arrest procedure is to
19 establish alienage. And so we arrest people from 142 different
20 countries, and the majority of the people that we arrest are
21 self declared that they're from, you know, those particular
22 countries.

23 Q Okay. So basically you rely on what they say. They self
24 declare, right? Whatever they tell, that's what you believe,
25 right? That's what you rely upon. That's right?

1 A Right.

2 Q Well, we have a situation where there's a gentleman, Thomas
3 Duncan, who said that he had no contact with Ebola, and then we
4 found out that he lied and infected two nurses in Dallas. Could
5 it be that people who are coming from Africa are telling you
6 that they're from Nigeria while they're from Liberia because
7 they don't want to be deported?

8 A I have no idea. We didn't arrest him, so I wouldn't have
9 any information about what he did or didn't do.

10 Q So the 16 people came from Africa. Did you do any Ebola
11 tests?

12 A I don't even know what an Ebola test is, ma'am.

13 Q Okay. But you said that you have this 800 number. And, for
14 example, you had a person from red zone. So did you call that
15 number or not?

16 A From -- that I don't know.

17 Q No. But you said that you apprehended somebody from red
18 zone. Did you -- when you apprehended this person -- and Mr. Hu
19 talked about 800 number -- did you call this 800 number?

20 A I did not call the number.

21 Q Okay. So the fact that you had the number, it doesn't help
22 us much, right?

23 A Well, I didn't arrest him, so -- the question was did I call
24 the number, and I said no, I didn't.

25 Q Okay.

1 A But whomever on my staff of the 3200 agents arrested him,
2 I'm not -- I don't know if he actually called that number or
3 not, so I can't testify about it.

4 Q What happened to this person?

5 A He was remanded into custody as far as I know, ICE ERO.

6 Q So we don't know if this person has any disease or exposed
7 to disease. We don't know that.

8 A Post arrest? What happens to them post arrest after they're
9 out of Border Patrol custody, I have no idea what happens to
10 them.

11 THE COURT: For the benefit of the record, Chief, ICE
12 ERO is?

13 THE WITNESS: Oh, it's -- I'm sorry. My apologies.
14 Immigration and Customs Service, Enforcement and Removal
15 Operations. That body within DHS is responsible for detention
16 and removal of all non-U.S. citizens within the United States.

17 BY DR. TAITZ:

18 Q Now, last time you were here when a representative from ICE
19 ERO stated they basically give the person just money for a bus
20 ticket, and they go further to different places in the U.S. You
21 were present here when he testified, right?

22 A Yes, ma'am.

23 Q So we don't get actually protection against infectious
24 diseases, because you transfer to ICE ERO, they give him money
25 for the bus ticket, and he gets on the bus and goes to

1 California, New York or wherever, right?

2 A Well, everybody that goes into ICE ERO custody, ICE ERO has
3 a complete medical staff, and they screen every single person
4 that comes into their custody. I mean, medical doctors on
5 staff. At the PIDC, which is just down the road where the ICE
6 ERO facility is, they have a complete medical staff. And so
7 anybody that goes from Border Patrol custody into ICE ERO, ICE
8 ERO has to agree to accept them, meaning that they're in a
9 condition in which they can be accepted into custody; and if
10 they're not, then it's Border Patrol's responsibility.

11 And typically if it's a medical issue, they would have been
12 screened by one of our medical staff or EMTs or paramedics, or
13 they would have come from the doctor or a hospital before we can
14 remand them into ICE ERO custody, and then ICE will do an
15 additional screening including TB tests. And the same thing
16 holds true when we prosecute people here criminally here in this
17 federal court. They have to be accepted by the U.S. Marshals,
18 medically cleared first before they will take them.

19 Q Well, but medically cleared. You're stating basically if
20 you don't see something obvious. But if the person is in
21 incubation period and he is carrying a disease, you don't do any
22 tests, any blood tests, right? Just if you personally see that
23 he's bleeding or he is coughing, then you might do something
24 about it. But if he is carrying a deadly disease like Ebola
25 coming from Liberia, you don't -- you haven't done any blood

1 tests to check if he has this disease. You just transfer him
2 further on; is that correct?

3 A Border Patrol doesn't have the authority to draw blood.

4 Q Okay. Thank you. No further questions.

5 A Yes, ma'am.

6 MR. HU: Your Honor, may I have a quick redirect?

7 THE COURT: Uh-huh.

8 **REDIRECT EXAMINATION**

9 BY MR. HU:

10 Q Chief Oaks, there should be a white binder on the witness
11 stand there, and if you could flip with me to Government
12 Exhibit No. 11, please.

13 Let me represent to you this is an official document from
14 the Centers for Disease Control about TB elimination. On the
15 second column, you see where it says, "Tests for TB infection"?

16 A Yes, sir.

17 Q So you see -- it says, "The test is read within 48 to 72
18 hours by a trained healthcare worker." Do you see that?

19 A Yes, sir.

20 Q So my question is after someone is apprehended here in the
21 Rio Grande Valley, are they typically still in Border Patrol
22 custody 48 to 72 hours after apprehension?

23 A Generally not.

24 Q So if -- you couldn't perform a TB test because they would
25 be gone by the time the results came back.

1 A That is correct. And we wouldn't.

2 Q It just wouldn't work. Is that right?

3 A Yes, sir.

4 Q Second thing is Dr. Taitz was talking to you about ICE ERO
5 and releasing folks at the bus station. Is it your
6 understanding that that's still occurring today; or now that the
7 surge is over, has that practice stopped?

8 A That practice -- I can't say absolutely that every single
9 person has been remanded into custody, but I can say with
10 certainty that the majority of everybody that we're apprehending
11 and arresting is going into the custody of ICE ERO, the United
12 States Marshal Service, Health and Human Services, ORR, or being
13 voluntarily returned back to Mexico and/or turned over to
14 another federal, state, or county person having jurisdiction if
15 there was a crime committed.

16 Q And finally, the national from Sierra Leon that we had
17 talked about earlier, that person could have been apprehended
18 much earlier in the fiscal year of '14, well before all this
19 Ebola thing came up; is that right?

20 A It's feasible, sir.

21 Q Yeah, because we just don't have that data.

22 A I don't have that information.

23 MR. HU: Nothing further, Your Honor.

24 THE COURT: Chief, let me ask you. In -- I'm looking at
25 the immigration and nationality statute, and it says that an

1 alien is inadmissible if he's failed to present documentation of
2 having received vaccination against vaccine preventable diseases
3 which include at least polio, tetanus, diphtheria, toxins,
4 pertussis, influenza B, hepatitis B and other vaccinations.

5 When -- let's say we have an 18-year-old from El Salvador
6 and he presents himself, and so he's not a family, and he's a
7 person of majority. He's not considered a minor. What happens
8 to him when he gets arrested? Let's assume for a minute he
9 doesn't have any criminal history here in the United States.

10 THE WITNESS: If he's from El Salvador and he's, you
11 know, considered an adult in this country at 18-years-old, he
12 would be processed and then turned over to ICE ERO, and then
13 they would dispose of him. He would get an immigration hearing,
14 have a right to have an attorney, et cetera.

15 THE COURT: He would be given a slip of paper that says
16 return in six months for your hearing?

17 THE WITNESS: Yes, sir. He would be remanded into
18 custody. Because if he's from El Salvador, it's not a
19 contiguous country; i.e., Canada or Mexico, so he has to be
20 remanded into custody since he's -- because he --

21 THE COURT: So all these people that came, all these
22 individuals that came from El Salvador got put into custody?

23 THE WITNESS: Generally the majority of them all did,
24 yes, sir.

25 THE COURT: I'm talking about this last year.

1 THE WITNESS: Yes, sir.

2 THE COURT: They all got put into custody?

3 THE WITNESS: Most of them did.

4 THE COURT: We heard your own people testify that they
5 got put on buses and taken out and released.

6 THE WITNESS: Some of the family units were released,
7 yes, sir.

8 THE COURT: But individuals -- all 17 and above
9 individuals from Honduras, El Salvador, Guatemala, they were all
10 taken in custody and kept in custody?

11 THE WITNESS: Not -- I can't say absolutely every single
12 one of them. No, sir, I couldn't say that.

13 THE COURT: All right. Let's talk about the family
14 units that you told me have then -- were then released. What
15 evidence did they show of having all these vaccinations?

16 THE WITNESS: None that I'm aware of, sir.

17 THE COURT: Okay. Then why is -- why are you not
18 following the law?

19 THE WITNESS: I'm not sure what statute, if you're
20 referring to T12F. I think that's in reference to presenting --
21 presenting themselves at the port of entry.

22 THE COURT: Okay. But -- so not only did they come in
23 the country illegally, they didn't present themselves at the
24 port of entry, but they don't have any of the documentation that
25 the law requires, so they're really violating two different

1 provisions, and we're just turning them loose? So we're harder
2 on people that come legally than we are on people that come
3 illegally is what you're telling me, right?

4 THE WITNESS: I don't even know how to respond to that,
5 sir.

6 THE COURT: Well, if I come and present myself at the
7 port of entry and say, "Let me in. I want to come in. I want
8 to be in the United States. I want to be a legal permanent
9 resident. You know, I want to do it the right way." And we
10 have hundreds of thousands of people that have done that, and
11 many of them live in this community who have done it the right
12 way and have waited years to be here. They have to -- one of
13 the things they have to do is present evidence of all these
14 vaccinations I just read to you, correct?

15 THE WITNESS: Yes, sir.

16 THE COURT: But if I come illegally and violate the
17 rules about entering the country and I don't have any evidence
18 of any of these vaccinations, in fact, I could have every one of
19 these diseases, not only am I not required to do this, but I get
20 a ticket that basically says come back and see us in six months,
21 and I'm turned loose on an unsuspecting American public, right?

22 THE WITNESS: In terms of what you're talking about in
23 the Rio Grande Valley, I can testify to the fact that we did
24 release some family units into the population, yes, sir.

25 THE COURT: Okay. And now is it true -- and I don't

1 know this. I'm asking you -- that recently that the government
2 has taken the position that these children, if they're going to
3 public schools, do not need any of these vaccinations?

4 THE WITNESS: I don't have that information, sir.

5 THE COURT: All right. Okay. All right. Thank you,
6 Chief.

7 THE WITNESS: Yes, sir.

8 MR. HU: Nothing further, Your Honor.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: Who's next, Mr. Hu?

12 MR. HU: United States calls Dr. Miguel Escobedo.

13 THE COURT: Dr. Escobedo, if you will assume the
14 position, please, sir.

15 *(Witness sworn.)*

16 THE COURT: Be seated, sir.

17 **DR. MIGUEL ESCOBEDO,**

18 the witness, having been first duly cautioned and sworn to tell
19 the truth, the whole truth and nothing but the truth, testified
20 as follows:

21 **DIRECT EXAMINATION**

22 BY MR. HU:

23 Q Please state your name.

24 A I am Dr. Miguel Escobedo.

25 Q How are you employed, sir?

1 A I am the quarantine medical officer for the Centers for
2 Disease Control and Prevention Field Office out of El Paso,
3 Texas.

4 Q How many quarantine medical officers are there at the field
5 office in El Paso, Texas?

6 A Just one. Myself.

7 Q What's your jurisdiction? In other words, what territory do
8 you cover as being the medical officer in that office?

9 A We cover all international ports of entry, land, air, and
10 seaports of entry in South Texas, West Texas, and Southern New
11 Mexico.

12 Q So you -- essentially from the mouth of the Rio Grande all
13 the way up to what, around Las Cruces?

14 A Yes, sir, Dona Ana County, Santa Teresa port of entry. But
15 we work in concert with our sister quarantine station in San
16 Diego so that we share jurisdictional duties.

17 Q Turn with me to Government Exhibit No. 2 in that white
18 binder in front of you, please.

19 A Yes, sir.

20 Q Okay. What is that document?

21 A This is my curriculum vitae.

22 Q Okay. Just very briefly, go over your education and
23 experience leading up to today as a quarantine medical officer.

24 A Yes, sir. I'm a graduate of New Mexico State University. I
25 attended Stanford Medical School where I got my medical degree

1 and a concurrent master's in public health from the University
2 of California at Berkeley. Subsequent to that, I completed a
3 family medicine residency and worked in community health centers
4 and -- for about a year. And then after that I became the
5 Communicable Disease Director, TB Control Officer for the
6 City/County of El Paso. I did that for ten years. And then
7 after that I became the Regional Public Health Medical Director,
8 Health Authority for Regions 9/10 for the Texas Department of
9 Health. I did that for ten years. And then I came into CDC as
10 Quarantine Medical Officer almost ten years ago. So I have a
11 30-year collective experience of border public health.

12 Q So you're responsible for helping develop screening
13 protocols for people entering at both land and airports?

14 A That is correct. The CDC considers me a subject matter
15 expert in those areas, and I do help with developing some of
16 those procedures.

17 Q What was your role in the unaccompanied minor surge this
18 past summer? What role did you play in that?

19 A Our role was basically to work together with our experts at
20 CDC to provide guidance to our federal agencies, to our
21 communities, to our local health departments and also to enhance
22 our illness response guidance for field agents for Customs and
23 Border Protection officers at the ports of entry so that we can
24 provide guidance regarding some of the children that were coming
25 in with possible diseases.

1 Q And what has been your role recently in CDC's response to
2 the Ebola outbreak?

3 A I was the -- one of three Quarantine Medical Officers that
4 was deployed to JFK Airport in New York where I helped establish
5 the entry screening from travelers that were coming in from West
6 Africa.

7 Q Okay. In addition to these roles, I understand you have a
8 research interest specialty in tuberculosis?

9 A Yes. Yes, I do.

10 Q And as that, you are -- not only are you a medical expert,
11 you are subject matter expert within CDC on tuberculosis?

12 A That is correct. In fact, I served on the advisory council
13 for TB elimination, which is a national body that advises the
14 Secretary of Health on tuberculosis control and recommendations.

15 MR. HU: So, Your Honor, Dr. Escobedo is being offered
16 as an expert -- oh, wait a minute.

17 BY MR. HU:

18 Q Let me ask you one more qualification question. You have a
19 master's degree in epidemiology also?

20 A That's correct.

21 Q Tell us what sort of epidemiologic work you do with the CDC.

22 A We basically conduct studies to document disease trends. We
23 develop surveillance systems along with Mexico to study some of
24 the disease trends as they affect travelers that are coming into
25 the United States. And based on this, we provide

1 recommendations to both the U.S. and Mexico on disease
2 prevention.

3 MR. HU: Your Honor, the government is offering
4 Dr. Escobedo not only as a medical witness, but also as a
5 witness in the field of epidemiology.

6 DR. TAITZ: I object, Your Honor, with all due respect.
7 The doctor does not have any degree in epidemiology, so I would
8 object to that. His only degree is in medicine, not
9 epidemiology.

10 THE COURT: What's your master's in?

11 THE WITNESS: Master's is in master's of public health,
12 University of California at Berkeley.

13 THE COURT: We'll take it on a question by question. If
14 he gets -- if you think he gets outside his expertise,
15 Dr. Taitz, object. But right now I'm recognizing him as at
16 least an expert in public health and as an M.D.

17 BY MR. HU:

18 Q Before we turn to the -- some of the issues brought up by
19 Ms. Dolan, let me just ask you some questions about Dr. Taitz's
20 personal complaints. Now, you've reviewed the amended
21 complaint, right?

22 A Yes, sir, I did, uh-huh.

23 Q Okay. As a medical doctor based on what you -- what's been
24 presented to you, can you figure out what the source of her
25 cough is?

1 A I'm afraid I can't. I don't think I have enough
2 information.

3 Q Okay. Do you see any causal link between her cough and
4 treatment of illegal aliens?

5 DR. TAITZ: Objection, Your Honor. Dr. Escobedo has no
6 degree in epidemiology. He cannot testify to this question.

7 THE COURT: Overruled.

8 THE WITNESS: Well, I see a report that reveals that she
9 has cough at the same time that she was treating undocumented
10 children. And as a medical person who's treated many
11 respiratory illnesses, over a thousand TB cases, I can tell you
12 that I can derive no conclusion as to what her diagnosis might
13 be other than she has the symptom of cough.

14 THE COURT: And, doctor --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- to the -- the standpoint is, I mean as
17 you sit here today, she could have caught her cough and upper
18 respiratory problem from one of the children she was treating or
19 not. You just can't tell.

20 THE WITNESS: Well, it -- it's likely that -- I'm sure
21 Dr. Taitz treats other children. We know there's an outbreak of
22 whooping cough. We know that, you know, children, when they
23 come back to school, they come in with all sorts of bugs. So
24 it's conceivable she could have caught a flu or a cold or
25 something from other children. So the fact that it occurred at

1 the same time is not necessarily cause and effect.

2 And I think the other problem, Your Honor, if I --

3 THE COURT: What I'm asking you is from the information
4 you have, you can't tell one way or the other?

5 THE WITNESS: I can't. I honestly can't tell.

6 THE COURT: That's what I was asking.

7 THE WITNESS: Thank you. Thank you, Your Honor.

8 THE COURT: Go ahead, Mr. Hu.

9 BY MR. HU:

10 Q And, Dr. Escobedo, do you also treat patients in addition to
11 serving in your role as a quarantine medical officer?

12 A Yes, sir. I volunteer at a homeless clinic where I treat
13 patients.

14 Q And it's my understanding you used to be a family medicine
15 physician for a while as well?

16 A That is correct.

17 Q Okay. Why do -- why do people get the C-pap machines? What
18 are they used for? What's the medical indication for a C-pap
19 machine?

20 A Well, they're usually indicated in someone that is having
21 inadequate oxygen due to obstruction problems or airway disease,
22 usually in the setting of lifestyle diseases. For example,
23 someone that smokes a lot and develops chronic obstructive
24 pulmonary disease, emphysema, asthma, it can be used to help
25 those individuals to supplement their oxygen levels.

1 Q Sleep apnea?

2 A Sleep apnea could be an obstructive disease, yes.

3 Q All right. Now I want to turn to your role as a CDC
4 physician in assessing crossing -- helping assess the health of
5 people crossing our southwest border. Tell us about what role
6 you play, the partnership between CDC and Border Patrol in terms
7 of establishing guidelines for folks crossing the border.

8 A Right. We basically establish the guidance, the training
9 manuals that Border Patrol agents, Customs and Border Protection
10 officers use. And we also established a consultation service to
11 reinforce what I consider to be a very robust illness
12 surveillance detection system.

13 And by that, what I mean is every officer is given our CDC
14 card, which is called a RING card: Recognizing illness, isolate
15 and notify. And based on that 24/7 consultation, I can get on
16 my Blackberry 24/7 hours a day and consult with either the agent
17 or the nurse practitioner and provide specific guidance on what
18 to do if they encounter an illness that could be of public
19 health significance, including infectious diseases.

20 Q So like during the surge this past summer, did you get any
21 calls?

22 A Oh, yes, I was very busy. I got a lot of calls, yes, sir.

23 Q Well, just give us sort of a general snapshot of the type of
24 calls you would get from Border Patrol agents.

25 A Well, I would get calls about people with rash. And then

1 the question would become: I've got some children. They have
2 scattered rash. You know, this could be possibly chicken pox.
3 It could be varicella, or it could be other diseases.

4 So following the training, the officer would immediately
5 isolate the child. And then what I would do is I would question
6 the mother, if she was available, or the child to try and get a
7 complete medical history. I would have the agent send us
8 pictures so that we can try to determine whether this was
9 chicken pox or whether it was insect, mosquito bites, which are
10 also very common.

11 And then based on that assessment, we made a decision
12 whether the child needs to be transported to an emergency room
13 to be isolated and fully diagnosed and treated.

14 Q So did you get any calls for TB?

15 A We get a lot of calls from TB, yes, sir.

16 Q Anyone positive this summer?

17 A We didn't get any positives from children, although we had a
18 mother of a child that was hospitalized in El Paso that had a
19 very, very early, early case of TB, but this was after she had
20 been appropriately evaluated and referred to the hospital.

21 Q Now, when you get these calls, you're bilingual in Spanish
22 and English, right?

23 A Yes, sir, I am.

24 Q So you'll typically speak to the family in Spanish?

25 A I can speak to the family in Spanish. And if I might add,

1 Judge, with my experience with TB, I feel very, very comfortable
2 asking a few critical questions that will help us determine if
3 someone is likely to be infectious.

4 Q So there's like four critical questions, right?

5 A There's four critical questions: Chronic cough, weight
6 loss, night sweats, chest pain. A few others, but with those
7 critical questions, we can pretty much tell with great
8 certaintitude if someone is likely to be infectious and therefore
9 needs isolation and referral.

10 Q Now, what's a communicable disease?

11 A A communicable disease is an infectious disease that can be
12 transmitted between individuals and therefore could be a problem
13 in the community.

14 Q Okay. So scabies, for example, is a communicable disease?

15 A Well, it's communicable because, yes, it can be transmitted
16 between individuals.

17 Q I'm showing you -- oh, before I forget.

18 MR. HU: Your Honor, I move admission of Government
19 Exhibit No. 2, his CV.

20 THE COURT: It's admitted.

21 BY MR. HU:

22 Q Okay. I'm showing you what's been marked as Government
23 Exhibit 3, if you could turn to that. Do you recognize this
24 document?

25 A Yes, I do.

1 Q What is it?

2 A This is basically a letter that was sent to Health
3 Department, TB controllers, advising them about the screening
4 guidance that was in place for screening the children that were
5 coming in.

6 Q Hold on. I think you're at the wrong exhibit. I'm looking
7 at 3. That's 4 you're looking at. We're talking about scabies.

8 A Oh, yes, sir. Yes, sir. Okay. I have it.

9 Q You recognize this document?

10 A Yes, I do.

11 Q Did you help draft it?

12 A Yes. We provided guidance to the Office of Health Affairs.

13 Q So scabies is a communicable disease that we have here in
14 the United States?

15 A It's basically all over the world, you know, and not just in
16 the U.S. All over the world.

17 Q So do you think it's appropriate to quarantine or isolate
18 aliens crossing the southwest border because they may have
19 scabies?

20 A Well, scabies is not on our list of quarantinable diseases,
21 and it's not reportable to the Health Department. I do think
22 that it's important to identify if someone has rash and get it
23 treated. You know, treatment is very effective, and clean their
24 clothing. And by doing that, you render the person's situation
25 not a infectious threat.

1 MR. HU: I move admission of Government Exhibit No. 3.

2 THE COURT: It's admitted.

3 BY MR. HU:

4 Q Okay. Let's talk about tuberculosis. Would you flip with
5 me, please, to Government Exhibits 4, 5, 6, 7, 9 and 11? Do you
6 recognize this series of documents?

7 A Yes, sir, I do.

8 Q What are they?

9 A This is basically guidance documents that are designed to
10 tell providers, TB controllers, and people who are working with
11 unaccompanied minors on the guidelines that exist to screen
12 children that are coming in into ORR custody on ways to screen
13 them and prevent tuberculosis to other children and healthcare
14 workers.

15 Q So if I get this correct, Government Exhibit 4 is an
16 overview of the control efforts, correct?

17 A That is correct.

18 Q Government Exhibit 5 is a letter that's sent out to, I
19 assume, state officials?

20 A Yes, sir. Yes, sir.

21 Q Okay. Government Exhibit 6 is the protocol that ORR is
22 supposed to follow?

23 A Uh-huh, yes.

24 Q Government Exhibit 7 is a flowchart?

25 A Right, that summarizes, uh-huh.

1 Q Right. Government Exhibit 8 is the State of Texas
2 instructions for reporting tuberculosis. And the second page is
3 the ten questions that you ask people?

4 A Right, exactly.

5 Q Government Exhibit 9 is the guidelines for preventing
6 transmission of tuberculosis in healthcare settings, you know,
7 things like dentist's office, things like that?

8 A Yes, sir.

9 Q And Government Exhibit 11 is a -- just an overview of the TB
10 program?

11 A Right, diagnosis and tuberculosis.

12 Q Can you just summarize for the Court, rather than go through
13 all these documents in detail, the protocol that's used by ORR
14 for screening children for tuberculosis after they're taken into
15 ORR custody?

16 A Yes, sir. It's a three-level screening process. The first
17 process is that all children are carefully screened by asking
18 the critical questions, you know, about the cough, the weight
19 loss.

20 The second level of screening is doing testing for TB
21 infection, not active disease, TB infection in children that are
22 two to 14 years of age.

23 And the last level of screening is doing an x-ray on
24 children that are 14 to 17 years of age and doing a complete
25 chest x-ray and workup on anyone, any of the children that said

1 they had any symptoms.

2 Q Are similar protocols done for adults in custody and family
3 units in custody?

4 A The only difference is that in adults, you do an automatic
5 chest x-ray without even doing symptoms or even doing a skin
6 test.

7 Q Where do they get the x-ray?

8 A The x-ray can be done on site, or usually they send them to
9 a facility that is nearby.

10 Q Is there like an x-ray machine at the Port Isabel Detention
11 Center?

12 A There is a very sophisticated machine at the Port Isabel
13 Center, yes.

14 Q So they can do it out at Port Isabel, for example?

15 A Yes, sir.

16 THE COURT: And everybody gets that?

17 THE WITNESS: Every adult gets it within 48 hours, yes,
18 sir. Every --

19 THE COURT: Every adult that comes in the United States
20 illegally?

21 THE WITNESS: Well, Your Honor, if they're retained in
22 custody, yes, they get screened with an x-ray.

23 THE COURT: But if they're released, they don't get it.

24 THE WITNESS: Well, if -- by the time they get to the
25 ICE detention facility, they do get the screening before they're

1 released. In other words, they don't come in and then they're
2 released promptly. They are generally x-rayed because it's a
3 very effective way to screen for active disease.

4 THE COURT: And every adult that comes, comes and gets a
5 chest x-ray, who reads that? Is there a radiologist out there
6 who reads that?

7 THE WITNESS: Yes, sir. This is all digital. They
8 basically do the x-ray, send it off to a radiologist and get a
9 report back within a day.

10 THE COURT: Really.

11 BY MR. HU:

12 Q Now, to just rephrase the Court's question a little. If
13 someone is caught and then released with the notice to appear,
14 they never get into ORR, ICE or other custody, Marshal Service,
15 then they wouldn't get the chest x-ray, as I understand it?

16 A They wouldn't get a chest x-ray, but it -- they would get a
17 screening questionnaire, a symptoms questionnaire which, if done
18 properly, can identify potentially infectious persons. And once
19 you do that, if someone gives you a positive on any of those
20 questions, you can then take them to a hospital emergency room
21 and then do the x-ray. So if they're symptomatic, you can get
22 an xray, even if they don't end up in ICE custody.

23 Q Now, during the surge, things were a little bit busier. Was
24 everyone getting screened during the surge as well this past
25 summer, or did we have a few that just didn't --

1 A Well, I think, you know, quite realistically, the surge was
2 taxing on everybody. But my understanding is that everybody was
3 being screened or attempts were being made either before or
4 right after they were transported to another processing center.

5 Q So what if some -- an alien has the symptoms of TB before
6 they get into ICE or ORR custody where there's an x-ray or other
7 screening taken? You know, they look like they're emaciated,
8 they're coughing a lot, maybe they're complaining of night
9 sweats. What's the protocol then?

10 A The protocol in following the RING card is that the agent or
11 the processing officer immediately isolates the patient in a
12 separate room, then calls CDC, calls us via the 24/7 EOC number.
13 We then respond. We do an assessment and interview the
14 detainee, if needed, and then make a decision if the person
15 needs to be sent immediately to the hospital for -- for further
16 diagnostic testing and isolation. Or as it sometimes happens,
17 you know, we feel comfortable that this is not about TB and they
18 can be released.

19 MR. HU: The government moves admission in evidence of
20 Exhibits 4, 5, 6, 7, 8, 9 and 11, all the tuberculosis
21 documents.

22 DR. TAITZ: No objection.

23 THE COURT: They're admitted.

24 BY MR. HU:

25 Q Doctor, during Ms. Dolan's testimony, she spoke about this

1 enterovirus D68. Do you recall that? It is prevalent
2 throughout the U.S. Is that your understanding?

3 A Yes, sir.

4 Q Okay. What about in Mexico or Central America?

5 A To be honest with you, I don't have the most recent
6 information on Central America. But for Mexico I personally
7 checked with the state epidemiologist of Chihuahua. I looked at
8 their web link for reportable diseases, (Speaking Spanish), and
9 I know they've had an alert since August the 27th, but there
10 have been no cases reported in Mexico or diagnosed.

11 Q What's the name of the gentleman you spoke with in Mexico?

12 A His name is Eduardo Suarez, Dr. Eduardo Suarez. He's the
13 epidemiologist.

14 Q And so he tells me there's -- he has told you, and as an
15 epidemiologist, you typically rely on this sort of data, that
16 there is no D68 reported in Mexico?

17 A That is correct.

18 Q What about Ebola? Is there Ebola in Mexico?

19 A No, sir, there is no Ebola in Mexico.

20 Q Why is that?

21 A Well, because the -- the outbreak of the epidemic originated
22 in West Africa, and travel is -- and again, this is when I
23 talked to the epidemiologist and Dr. Elisa Aguilar of the
24 U.S.-Mexican Border Health Commission, travel from West Africa
25 to Mexico is very minimal.

1 Q And why is that?

2 A Because for starters, Mexico, it is my understanding,
3 doesn't have consulates or embassies in these countries. There
4 are no trade relations, so traditionally there has been no
5 migration into Mexico. It's really to the U.S., not Mexico.

6 Q So there's been this argument at least posed in this case
7 that people should be screened for Ebola crossing the land
8 border here in South Texas because people come from Liberia,
9 Sierra Leon or Guinea by air to Mexico, make their way to the
10 border and then cross. As an epidemiologist, is that a likely
11 event?

12 DR. TAITZ: Objection, argumentative.

13 THE COURT: Overruled.

14 THE WITNESS: No. I can tell you that, you know, I've
15 been quarantine officer for over ten years. I've never gotten
16 calls about people from West Africa. And I know that Mexico has
17 very strict travel visa requirements. We do get calls about
18 migrants from West Africa that have come in, not directly to
19 Mexico, but they usually travel through Brazil or Ecuador and
20 then make their way by land to Mexico, through Mexico, and then
21 show up requesting asylum or refugee status usually after a
22 month of travel.

23 BY MR. HU:

24 Q So those people couldn't bring Ebola into the United States?

25 A No, because they're not from Ebola affected countries. And

1 by the time they get to the port of entry, the 21-day incubation
2 period has elapsed.

3 THE COURT: So it's much more likely for Americans to be
4 exposed to Ebola for someone to fly in directly to the United
5 States?

6 THE WITNESS: Yes, Your Honor, thank you. That is very
7 well stated.

8 BY MR. HU:

9 Q And along those lines, it's my understanding that people
10 flying directly to the United States are being funneled to
11 certain ports of entry?

12 A That is correct. We have five airports of entry.

13 Q What are the five ports?

14 A It is JFK, where I served. It is Dulles in Washington, D.C.
15 It is Atlanta, Georgia. It's Newark Liberty. And Chicago,
16 Chicago, Illinois.

17 Q And you personally have handled the inbound traveler
18 screening for people from Liberia, Guinea and Sierra Leon at
19 JFK?

20 A Yes. As a quarantine medical officer, I was present during
21 the assessment, evaluation, and follow-up recommendations.

22 Q When's the last time you screened a passenger at JFK?

23 A A week ago as we speak.

24 Q One week ago today?

25 A Yes, sir.

1 Q Can you brief the Court just a capsule about the kind of
2 procedures you followed to screen inbound travelers at JFK from
3 those three African countries?

4 A Right. There's a multi-level tier system. First of all,
5 operators of the airlines, the pilot and flight attendants, are
6 advised that they should notify CDC if they detect an illness
7 amongst passengers that are -- that carry passengers that are
8 originated in this country.

9 Secondly, once the passengers deplane, CBP, Customs and
10 Border Protection carefully screens them. And they have TSA
11 information, and they know ahead of time, you know, when someone
12 originated travel in that country. Then they're taken to a
13 separate isolated area where a CBP officer goes through a very
14 careful questionnaire that assesses their risk for exposure
15 either by taking care of a relative, participating in a funeral
16 rite, and also if they have any symptoms such as fever,
17 vomiting, diarrhea, and persistent headaches, and then a
18 temperature is taken.

19 If any of those variables are positive, then they are sent
20 to tertiary screening, and that's where CDC, where we come in.
21 We then take the person into a second unit. I don my protective
22 equipment, and together with another public health officer, we
23 go through an extensive questionnaire of the patient to
24 ascertain the nature of the exposure and whether or not the
25 person had personal protective equipment. And then we take the

1 temperature twice.

2 And again, if any of those risk assessment variables are
3 positive, we either release the individual with instructions to
4 self monitor, with instructions to call their health department,
5 and we also notify the health department that this person came
6 in.

7 And then the person gets what we call a CDC care kit, which
8 is a list of information about Ebola, encouraging them to go to
9 their local health department, call their local health
10 department or medical provider and provide information about
11 their travel and their symptoms. And then they also get a
12 thermometer so that they can self monitor their temperature.

13 If someone has a high risk, we have the authority to issue a
14 conditional release, which means that they would have to be
15 monitored very, very closely. And potentially if the risk is
16 high and they have symptoms, we could even issue an isolation
17 order.

18 Q Where would you isolate them?

19 A I'm sorry?

20 Q Where would they go if they're under an isolation order?

21 A If there's a need to -- well, if someone has symptoms and/or
22 risk factors, we immediately activate EMS. We notify the New
23 York City Department of Health. We notify the receiving
24 hospitals, and there's two in New York City, and we also notify
25 the ambulance so that they -- operators so that they can take

1 precautions when transporting the patients.

2 And most of the time, in fact, all of the time that I was
3 there, there was no need to issue an isolation order because
4 most people would go voluntarily. It's only if individuals
5 refuse to comply with our health recommendations.

6 THE COURT: How many did you have that you had to refer?

7 THE WITNESS: I had -- Your Honor, I had three
8 individuals. There were two NIH scientists, and there was a
9 nurse that had taken care of Ebola patients. All of them
10 fortunately were afebrile, asymptomatic. They wore full
11 protective equipment.

12 In the case of the NIH scientists, all of their work was
13 done in an enclosed bio safety hood, so there was no contact
14 between the samples and themselves. And so all of those
15 individuals were released with instructions.

16 I notified the receiving health department. They visited
17 them the following day to make sure that they were self
18 monitoring and avoiding travel and mingling with the community.

19 BY MR. HU:

20 Q In your experience at JFK, were most of the people that you
21 looked at, not you, but just generally the CDC personnel there,
22 U.S. citizens or resident aliens returning, or were they
23 immigrants from the three countries in question?

24 A It was a mix of all of the above. There were healthcare
25 workers returning. There were tourists, usually business

1 owners, operators of mines. And then very interestingly there
2 were also U.S. citizens that had family over there or legal
3 permanent residents that were coming back. Or in one case,
4 there was a child, a nine-year-old little girl that was a U.S.
5 citizen that had spent time with her -- with her parents, and
6 she was coming back to be with her grandparents in the U.S.

7 Q Why is CDC not establishing a full quarantine for everyone
8 coming in from those three countries?

9 A Well, in essence -- and again, we're revamping the system.
10 But in essence, we are, because we are providing the care kits.
11 We are notifying the receiving health departments. The
12 receiving health departments are taking action by visiting and
13 monitoring and making sure that all of these individuals limit
14 their travel, that they take their temperatures daily.

15 So in a sense, that fits very nicely the definition of
16 quarantine. It may not be mandated quarantine, but it is
17 quarantine.

18 THE COURT: Dr. Escobedo, in the meantime, though,
19 aren't they walking around and talking to people, being with
20 their families, going to the store, going to the mall? Aren't
21 they doing all those things?

22 THE WITNESS: Yes, sir, that is correct. But again,
23 keep in mind that these individuals are not symptomatic. They
24 are not infectious. And I would say that 99.9 percent of them,
25 assuming that they told the truth on their entry survey, had no

1 exposure to Ebola.

2 THE COURT: That's one, assuming they told the truth.

3 THE WITNESS: I beg your pardon?

4 THE COURT: You're assuming they told you the truth.

5 THE WITNESS: Yes, sir. I fully appreciate the quantum
6 there, yes. We're basing it on an honor system. That is
7 correct, Your Honor.

8 BY MR. HU:

9 Q Now --

10 THE COURT: Mr. Hu, are you at a stopping point?

11 MR. HU: Sure. This would be a good place.

12 THE COURT: All right. Let's take ten minutes.

13 THE WITNESS: And, Your Honor, if I may. They're also
14 screened before they depart the countries, okay? So it's exit
15 and entry screening.

16 THE COURT: Who screens them in all the African
17 countries?

18 THE WITNESS: In those countries we have deployed CDC
19 experts to train and to implement protocols so that their own
20 healthcare workers are doing similar surveys to what we're doing
21 and then doing the temperature check before they board the
22 flight.

23 THE COURT: Okay. Let's take ten minutes.

24 *(Recess taken from 2:54 to 3:12.)*

25 THE COURT: Be seated. Doctor, if you will.

1 Sorry that took so long, but I'm trying to iron out this
2 month's trial schedule.

3 Go ahead, Mr. Hu.

4 BY MR. HU:

5 Q Doctor, when we last left off, we were talking about --
6 about the JFK Airport. Why is there no CDC imposed travel ban
7 for people coming from Liberia, Sierra Leon and Guinea?

8 A Well, when you talk about a travel ban, it is something that
9 is really restrictive in the sense that it would be difficult.
10 And as we said before, there are U.S. citizens, legal permanent
11 residents, healthcare workers who are fighting the Ebola
12 epidemic. Those would need to come in.

13 And I believe that with the quarantine restrictions that we
14 have in place and that have been improved, it should be
15 sufficient to address the problem of detection and follow-up.

16 THE COURT: Would a travel ban be safer?

17 THE WITNESS: I beg your pardon?

18 THE COURT: If you had a travel ban, there wouldn't be
19 anybody you would have to worry about.

20 THE WITNESS: That is correct, Your Honor. If we had a
21 travel ban, it would be like a bubble. So you would be right in
22 that sense.

23 BY MR. HU:

24 Q But I guess in terms -- speaking of travel bans, you've
25 seen -- I guess there's really essentially a ban on travel for

1 all these unaccompanied minors coming up from Honduras and
2 Guatemala and El Salvador and -- but they show up here on the
3 southwest border anyway, right?

4 A Well, that is correct, yes, sir.

5 Q Now, Ebola is characterized as a highly pathogenic disease;
6 is that right?

7 A Yes, it is high path --

8 Q And define that for us. What does highly pathogenic mean?

9 A It means that it has the potential to cause extensive damage
10 to the human body, to spread and cause death, yeah. High degree
11 of mortality.

12 Q But there is an effective test for the Ebola virus; is that
13 right?

14 A That is correct, yes.

15 Q Tell us briefly, how does that test work? Is it based on an
16 antigen, or is it actually looking for the virus itself?

17 A You can have both. You can have rapid test antibody, PCR
18 detection method, and you can actually look for viral particles.

19 Q What's the turn time on a test?

20 A It can be in as little as 24 hours under emergency
21 situations.

22 Q Does it have to go to a specialized lab, or can it be done
23 in a number of different lab settings?

24 A No, it's a specialized lab, usually in large state health
25 department health labs or at the CDC reference lab.

1 Q So like if you have to take samples at JFK Airport, where do
2 you send them?

3 A Well, those samples are actually collected once the person
4 gets to the hospital. They are collected and sent through the
5 New York City laboratory, and from there repackaged and sent to
6 CDC overnight with all the precautions that are needed.

7 Q Okay. Now, what about if you need to take a sample here in
8 the Rio Grande Valley? Where does the sample go?

9 A Well, theoretically it could go to the Department of State
10 Health Services Lab in Austin. But I think the more important
11 question is why would you want to take a sample and under what
12 circumstances?

13 Q Just assume with me hypothetically there was a need to take
14 a sample here in the Valley for whatever reason.

15 A Okay. Well, in that situation, if we have a person that,
16 you know, we're concerned that might have Ebola, they would, of
17 course, be isolated, take extreme precautions to protect our
18 agents, to protect the healthcare workers, notify the hospital.
19 And then the hospital would, in turn, notify probably CDC and
20 Texas Department of State Health Services to make arrangements
21 for collection and submittal of the laboratory sample.

22 Q Now, during Dr. Dolan's testimony, Mrs. Dolan's testimony,
23 we talked about double false negative. Do you recall that
24 testimony?

25 A Yes, I do.

1 Q Do you see false negatives in these tests for Ebola?

2 A Well, I don't know specifically what she was talking about,
3 the false negatives, but I do know that early on during the
4 incubation period, the tests may initially be negative. I
5 wouldn't characterize it as a false negative. It's a true
6 negative in the sense that the body is building up the
7 appropriate antibodies so that eventually it will become
8 positive.

9 But once it's positive and the person's body has been
10 ravaged by the virus, then it stays positive. In other words,
11 it doesn't go negative, positive and then negative again.

12 Q Okay. So in other words, a test may be initially negative
13 because the antibodies simply aren't present in the bloodstream?

14 A They're not detectable.

15 Q But then you wouldn't -- it wouldn't go back and forth.
16 Once it's positive, it's always going to be positive?

17 A Right, assuming that the laboratory technique is
18 appropriate, yeah.

19 Q Does everyone get a fever at some point?

20 A Ebola is such a virulent pathogenic disease, that yes, just
21 about everybody who is breathing and alive and has a reasonable
22 immune system, and that's 99.9 percent of us, will get a fever,
23 high fever.

24 Q How high is high?

25 A I'm talking about 103 plus.

1 THE COURT: Why not do a blood test on everybody that
2 travels in from one of the countries that's affected?

3 THE WITNESS: Well, Your Honor, that could be possible.
4 I suppose it would be a logistical issue and, you know, some
5 policy considerations, but you could. In public health we're
6 trained to think about risk; and if someone has never been in
7 any of these countries, has no risk factors --

8 THE COURT: No, I'm talking about people that have been
9 in there.

10 THE WITNESS: Oh, people that have been in there?

11 THE COURT: I mean, wouldn't that -- wouldn't that be
12 the safest thing for everybody? You just take a little bit of
13 blood, test it; 24 hours later we would know. Everybody would
14 be happy.

15 THE WITNESS: Well, it would, Your Honor, but then we
16 get into the issue that we're talking about that it's going to
17 take a little bit of time to build up the antibodies. So you
18 could get a blood test, and maybe the antibodies haven't gotten
19 to that critical period of detection.

20 But, yeah, you're right in that sense, that, you know, you
21 would capture most people.

22 BY MR. HU:

23 Q What's incubation period?

24 A 21 days maximum; two to 21 days. Eight to ten days is -- is
25 the usual period between exposure and manifestation of disease.

1 Q So I guess the Court's question was if everyone gets a blood
2 test and someone was exposed the day before and you're taking a
3 blood sample at day one and a half, the test would come out
4 negative because there simply wouldn't be enough antibodies in
5 the blood stream.

6 A That's correct. In fact, we had travelers that, you know,
7 may have been exposed like the day before and they come in.
8 They would be initially negative.

9 Q I want to return for a moment to ask a couple questions I
10 kind of forgot to ask you about TB. First off, is TB testing
11 required for kids to go to school in Texas?

12 A No, it is not.

13 Q Okay.

14 A It is required in some situations if kids come from certain
15 high risk countries. And Mexico, by the way, is not considered
16 a high risk country by the World Health Organization.

17 Q Is Moldavia a high risk country?

18 A Yes, it is.

19 Q Okay. Now, what is the difference between active TB and TB
20 infection? I know I had asked Dr. Dolan -- Ms. Dolan that, and
21 I didn't get an answer, so can you tell us what that --

22 A TB infection basically means that you have been exposed to
23 TB and you have the TB germs inside of your body but they're
24 dormant. They're not doing anything. You don't have symptoms.
25 You're not infectious. You cannot give the TB to anyone, so

1 it's not infectious. It's just a dormant infection.

2 Q So if I am TB -- if I have a TB infection, I'm here in this
3 courtroom, there's no -- since I don't have any of the
4 manifested symptoms, you're saying that I can't give it to
5 anybody else?

6 A Absolutely not. You cannot give it to anyone. But you do
7 have the risk of getting progression at any point throughout
8 your life. It could be two weeks, a year, ten years, 20 years.
9 Most likely as you get older or if your system is -- immune
10 system diminishes.

11 Q So if I have a TB infection, you still want to treat it
12 generally?

13 A Generally you do because by treating it, you kill the
14 dormant germs and you prevent them from potentially waking up
15 and giving you the active form of the disease which is the
16 disease we worry about for communication purposes.

17 Q Active -- okay. And that's what the difference is. So
18 active TB is active, and --

19 A Active TB, you're coughing, you've got lung lesions, you've
20 got cavities, you're losing weight. That is the type of TB that
21 is infectious, not the dormant latent TB or the TB infection.

22 Q So that's the kind of TB you really have to watch out for
23 when you're apprehending folks, aliens, for example, here in the
24 Rio Grande Valley. You're looking for active TB. It's good to
25 know about TB infection, but active TB is critical?

1 A Right, right. In fact, some authorities would recommend
2 against doing the TB test because there you're testing for
3 infection which is not infectious. Rather you should be testing
4 for active disease. That's where you're going to prevent the TB
5 cases.

6 Q So how do you test for active disease?

7 A The most rapid screening method would be a simple chest
8 x-ray, taking an x-ray and see if there are findings that are
9 consistent with active TB, and then followed up by a careful
10 exam. And ultimately the ultimate proof would be to obtain
11 respiratory secretions and look for the germ, for the bug that
12 causes TB.

13 Q What's the quickest and easiest way, though?

14 A Chest x-ray.

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

16 DR. TAITZ: Redirect, Your Honor.

17 THE COURT: That's our microphone, or was.

18 DR. TAITZ: Sorry.

19 THE COURT: Why don't you use the other -- go that way.

20 There you go.

21 That looked like a good idea when they installed it, but
22 everybody does that. They immediately set their file on top of
23 it.

24 Go ahead, doctor.

25

CROSS-EXAMINATION

1 BY DR. TAITZ:

2 Q Good day, Dr. Escobedo.

3 A Good day.

4 Q First of all, I wanted to ask you about the process of
5 quarantine. You are the quarantine officer.

6 A Yes, ma'am.

7 Q Let's say you decide to quarantine somebody. Can you please
8 walk us through the process? How do you do it?

9 A Okay. Well, the first thing is we evaluate the case
10 situation, and we have to make sure that the individual, first
11 of all, has a condition that is quarantinable under the list of
12 executive quarantinable diseases.

13 And if that's the case, we try to gather information as to
14 why the -- and we say quarantine, but really a more proper term
15 might be isolation, wide isolation, legal isolation would be
16 needed, okay?

17 Q No, I understood all that. You testified to that. My
18 question is who -- is there an order? Let's say you decide this
19 person needs to be quarantined. Is there paper that is being
20 signed? How does that work?

21 A My apologies. Yes, ma'am. What we would do is our division
22 director, our leadership in Atlanta, he is the -- the authority
23 to quarantine someone is delegated to him. It is really the
24 Health and Human Services secretary, but it is delegated to our
25 division director. He would review the legal document and then

1 would sign off on it.

2 Q But you said that actually it's under the name of Secretary
3 of Health and Human Services; is that correct?

4 A The authority. The authority to isolate.

5 Q Does it state a specific law or statute under which this
6 person is being quarantined?

7 A You mean the states as in U.S. states or --

8 Q Well, I mean, yeah, in United States, of course.

9 A Well, there are two levels. You have a federal quarantine
10 isolation order.

11 Q Yes. That's what I'm talking about, federal --

12 A You have the state's --

13 Q Of course.

14 A The states can issue their own orders.

15 Q No, no. I meant if under the authority of Sylvia Burwell,
16 who is a defendant here in this case, Secretary of Health and
17 Human Services, the order, the quarantine order comes from
18 the -- by the authority of Secretary of Health and Human
19 Services. It is signed on her behalf by a director of a
20 division. But do they state a specific law or statute under
21 which -- under which law they -- this quarantine is done?

22 A Yes, ma'am. All that is spelled out because the individual
23 has to -- you know, when --

24 Q What law is that?

25 A I can't -- you know, I'm not a lawyer, and I can't cite to

1 you the exact FFCR, but it's in there. I'm not a lawyer.

2 Q Can it be provided for the Court, for the judge to see this
3 order, the quarantine order or a form at least?

4 A It -- well, again, the legal statute is there, you know, for
5 your review. You can get it on the Internet. The actual forms
6 are -- you know, there's no form per se. I mean, we -- they are
7 developed on a case-by-case basis as needed.

8 Q Did you -- did you ever quarantine anybody?

9 A I haven't quarantined anyone. We have issued orders of
10 isolation on a couple of our cases, yes.

11 Q So the way it was done, you contacted the chair of the
12 division, and he signed the order and where the person went from
13 there?

14 A Depending on the case situation. We had one situation in
15 which we actually picked up the gentleman at a port of entry and
16 then we took him to a local hospital. We have agreements with
17 local hospitals.

18 Q And what was wrong with this person, TB?

19 A He had TB. And if I may, ma'am, in the other situation, it
20 was someone that was already in a hospital facility, and then we
21 went to the hospital and issued the order.

22 Q And what happens if a person refuses to be isolated or
23 quarantined? What do you do then?

24 A Well, part of the provision for issuing an isolation order
25 is to ensure law enforcement, you know. You have law

1 enforcement officer surveillance to ensure that the order is
2 carried out.

3 Q Have you ever had situations where a person was quarantined
4 by your order or somebody in your department, and the person
5 challenged this order in court?

6 A No, ma'am. We haven't had situations.

7 Q It never happened. But you do -- now, you stated that a
8 person would be quarantined if he is a danger, right, to himself
9 and others, right? In that situation under the authority of
10 Secretary of Health and Human Services, the person is
11 quarantined, right?

12 A They can be, yes, ma'am.

13 Q So, for example, if this court finds that people coming from
14 Ebola hot zone represent a danger to themselves and others, then
15 they could issue a writ of mandamus or an order to Sylvia
16 Burwell, Secretary of Health and Human Services, to issue those
17 isolation or quarantine orders that are typically issued, right?

18 A No, ma'am.

19 MR. HU: Objection, Your Honor. I think we're getting
20 into legal conclusions here.

21 THE COURT: If he knows the answer, I'm going to let him
22 answer, and he's answered.

23 THE WITNESS: No, ma'am, because a person, by the mere
24 fact of coming from that country, you know, doesn't necessarily
25 have a condition that meets the quarantinable list. They could

1 have never been in contact. So there's no -- we wouldn't be
2 able to.

3 BY DR. TAITZ:

4 Q But if the person, let's say, wasn't -- we have -- I mean,
5 you stated that you do proper exam of individuals coming through
6 our borders. You were talking about JFK. But isn't it true,
7 doctor, that you have missed Dr. Craig Spencer who passed
8 through your enhanced screening and passed it through flying
9 colors, had no fever; and then few days later, he was traveling
10 on four different subways, he went bowling, he went to
11 restaurants, and then he was hospitalized with Ebola. So how
12 did that happen? Can you explain this?

13 A Well, he was --

14 MR. HU: I'm going to object to the form of the question
15 just because it contains a lot of facts not in evidence and --

16 DR. TAITZ: Let me rephrase it.

17 BY DR. TAITZ:

18 Q Are you aware of Dr. Craig Spencer, a doctor in New York,
19 who is now hospitalized with Ebola?

20 A Yes, ma'am.

21 Q So how did you miss him?

22 A No, we did not miss him. He came through our entry
23 screening. He was assessed, identified, and advised on self
24 monitoring. The New York Health Department was advised. He had
25 been under orders from Medicines and Frontiers, the Doctors

1 Without Borders, to self monitor, and he was essentially picked
2 up and detected in that manner. So he doesn't fit my definition
3 of being missed.

4 THE COURT: Well, if he's not missed, though, doctor,
5 didn't he walk around exposing thousands of people to Ebola
6 while y'all were tracking him then?

7 THE WITNESS: No, that's correct. The question is if we
8 missed him. We hadn't missed him. But you're right. I mean,
9 he did travel in the subway and went bowling. You're right
10 about that, absolutely.

11 BY DR. TAITZ:

12 Q So wouldn't you agree, doctor, that it would be --

13 THE COURT: That's why you always bring your own bowling
14 shoes.

15 BY DR. TAITZ:

16 Q Wouldn't you agree, doctor, that it would be prudent and
17 beneficial to have one order of isolation and -- for anybody who
18 is coming from those countries so they don't expose thousands of
19 people?

20 A Well, that could be an effective strategy. But as I said, I
21 feel that the system that we have in place -- this is after this
22 doctor came through -- where we actually notify the states.
23 They send healthcare workers on a daily basis. They monitor.
24 They track, can be effective. And if at any point they refuse
25 or even before we end up there, if we say you're going to be

1 closely monitored and they refuse to do that, then the state
2 themselves could mandate their isolation order.

3 Q Well, let me ask you in regards to Thomas Duncan. Don't you
4 feel that this case was missed? He went through airport
5 screening and then later on developed Ebola and infected two
6 nurses right here in Dallas, Texas.

7 So do you feel that if this person would have been given,
8 right as he gets off the plane, one of those isolation orders
9 that you -- you stated that your chief of the department gives
10 on behalf of Sylvia Burwell, we could have prevented infection
11 of those two nurses?

12 A Well, as I said earlier, when he came in, he was -- he
13 didn't have any fever. He denied any symptoms, so he didn't
14 meet our criteria for being able to issue an isolation order.

15 Q So wouldn't you agree with me, doctor, that knowing that we
16 had this case with Dr. Craig Spencer and this case with Thomas
17 Duncan, maybe there is a need to change the requirements and
18 indeed put people -- give each person who arrives, give such
19 orders that you have. Or maybe you stated that you don't have
20 with you the form, but you have specific forms, order from
21 Department of Health and Human Services for person to be in
22 isolation for three weeks. Do you feel that it would help to
23 protect the public?

24 A It would be a strategy, one of several strategies that I
25 think would help.

1 And if I may, with the information, ma'am, on Mr. Duncan's
2 case, I think if he had come in through our screening at JFK, he
3 would have gotten the care package so that he would have been
4 educated, monitored. And when he presented to the hospital, he
5 would have presented the information that I think would have
6 triggered earlier detection at the hospital level.

7 Q Well, I understand he went through New Jersey, which is one
8 of those five airports where they have enhanced screening, and
9 it did not help. So you agree with me that giving everyone an
10 order of isolation, orders that you routinely give that you have
11 in Department of Health and Human Services would help to protect
12 the public better than today?

13 A Well, it would help, but I think those are policy
14 considerations that exceed my level of authority and expertise.

15 Q Doctor, I mean, you give people orders to be quarantined.
16 And I wanted to check -- and that's something that the judge
17 just touched upon. There are specific laws, for example 8
18 U.S.C. 1182 and INA 212F that state that people who have
19 infectious diseases should not be admitted. Have you ever used
20 any of those laws to deport people or not allow them in?

21 A My understanding, ma'am, is that those laws are designed to
22 ensure that legal permanent residents that are -- and refugees
23 that are being screened for admission into the U.S. don't have
24 any of the communicable diseases; that they're not necessarily,
25 my understanding, designed to screen undocumented migrants in

1 border settings. It's a very different situation.

2 Q Well, the judge just read from those orders. And those
3 orders state that if a person has those diseases of public
4 importance like Ebola, tuberculosis, they shouldn't be even
5 allowed in. So what -- and you are the -- you are the
6 quarantine officer.

7 A Uh-huh.

8 Q And you never used this law to prevent people with
9 communicable diseases from entering; is that correct?

10 A No, that is not correct, ma'am. If I may, with all due
11 respect, the way it works is that we oversee panel physicians,
12 for example, in Mexico who screen for all these conditions who
13 make sure that people have vaccines. And if those people don't
14 meet the criteria -- and by the way, one of the criteria is that
15 they must be free of TB, you're absolutely right on that one,
16 that they're not allowed to come in; that they are prevented.

17 Q Well, yeah, I understand. Those people who are coming
18 legally.

19 A Right.

20 Q But what about -- you testified just now that there was a
21 surge of people coming illegally, and you were called, and
22 sometimes cases where they had tuberculosis. Tuberculosis is a
23 disease of public significance; communicable disease of public
24 significance. They were supposed to be not even allowed in.

25 So from your experience, this is not being done. Those

1 people, in spite of the fact that by law, they shouldn't have
2 been allowed in, they're in, right?

3 MR. HU: Objection, Your Honor. I think she's misstated
4 some of the facts that are already in evidence.

5 THE COURT: I'm sorry. I didn't hear you, Mr. Hu.

6 MR. HU: I think Dr. Taitz has misstated some of the
7 facts in evidence. He's talking about some apprehensions during
8 the surge and not being allowed in, and I believe she's
9 misstated them.

10 THE COURT: Well, I think they're two different
11 situations. The people that came in the surge obviously were
12 allowed in, so...

13 BY DR. TAITZ:

14 Q So -- but you said that during the surge, there were
15 people -- people with tuberculosis, that you personally know
16 about those cases. So by law, they shouldn't have been allowed
17 in. They should have been right away turned away. But that
18 didn't happen; is that correct? They were sent to hospitals in
19 the states.

20 A Well, first of all, just to -- and please forgive me for not
21 saying this apparently. Those two cases were not connected with
22 the surge. Those were adult cases. And the way we dealt with
23 them as one was a legal permanent resident. The other one was
24 an undocumented migrant. And, you know, I guess part of the
25 problem is when they come in, they don't ask for permission. I

1 mean, if they -- and we do, in fact, have restrictions where
2 you're citing where let's say a tourist or a laser visa card
3 holder wants to come in and we feel they might have TB,
4 absolutely we say no. You know, we can't -- you know, you're
5 not eligible to come in because you have tuberculosis. So we do
6 exercise that authority more frequently than people realize.

7 But it's just that people are detected after they get in,
8 what are you going to do? Well, what we do is we, as I said
9 before, isolate them, treat them. And the other thing is if
10 they're going to be going to a specific jurisdiction, let's say
11 they go to your community, we notify your local health
12 department, you know, this is the situation that we inherited,
13 and we want you to follow-up and make sure that this individual
14 gets treatment and follow-up and therefore is subject to
15 whatever state requirements for ensuring that he doesn't -- he
16 or she doesn't spread the disease.

17 THE COURT: Well, doctor, you say you notify the
18 local -- I mean, I can recall more than one, at least several
19 where mayors and other local officials said no one notified us
20 about anything, and all of a sudden we had bus or planeloads of
21 illegal immigrants dumped on our doorstep. So they weren't --
22 not only were they not notified about any medical conditions,
23 they weren't even notified about the immigrants.

24 THE WITNESS: Thank you, Your Honor, for offering that.
25 I was referring to specific individual cases that have an

1 infectious condition that relocate to a community. We
2 personally let the health authority of that community know that
3 this person is in the community so they can take proper follow
4 up and precautions to protect their citizens.

5 THE COURT: So you're relocating people that you know
6 have infections?

7 THE WITNESS: Your Honor, we -- we don't relocate.
8 We -- they're relocated by proper law enforcement authorities.
9 All we do is we notify health departments and public health so
10 they can take adequate precautions.

11 THE COURT: I mean, the problem, Dr. Escobedo, and I
12 think it's one of the problems Dr. Taitz has is -- and I have it
13 too is -- and it's not just your testimony. It was the chief's
14 testimony. You know, you say: Well, did you do that?

15 "Well, no, I didn't do it. Somebody else did it." But it's
16 still the government. It's still the federal government that's
17 doing it.

18 So when you say, "No, I didn't do it," some other law
19 enforcement, I mean, it's all the federal government. I mean,
20 you know, and that's -- that's the problem here. I mean, you
21 can't just keep -- and I don't mean you.

22 THE WITNESS: No, I understand, Your Honor.

23 THE COURT: But, I mean, somebody has to take
24 responsibility for something somewhere. I mean, right now with
25 the government the way it is, the buck never stops anywhere.

1 Go ahead, Dr. Taitz.

2 BY DR. TAITZ:

3 Q Doctor, I wanted to point to a document that actually was
4 submitted to this court on August the 7th, and that's actually a
5 report from Office of Intelligence and Investigative Liaison of
6 the Border Patrol that showed that there were over 500
7 individuals from Ebola hot zone that illegally crossed our
8 borders. You mentioned that it's not happening. Could it be
9 that you just don't have all the information?

10 A Well, again, I don't know the source of your report.
11 Personally from my field experience, I find it very hard to
12 believe.

13 Q But you don't get documents --

14 A All I can tell you is that we work very closely with Customs
15 and Border Protection, with Border Patrol, and I've never had
16 reports with such high numbers come to me. Now, granted, I'm
17 just a medical officer. And please forgive me, Judge, you know,
18 but I don't -- you know, I'm not involved in tracking the number
19 of crossings.

20 Q So it's simply you don't get reports of how many people
21 cross the border. You only get, you know, questions when --
22 when there is a medical question, somebody wants to hear
23 something else. But you don't actually get those reports?

24 A No, let me -- forgive me. Let me rephrase it. I get
25 reports. I can tell you that there's 27 million border

1 crossings across the El Paso sector, and I can tell you that we
2 admit 100,000 legal immigrants from Mexico. What I'm telling
3 you is I've never ran into reports such as the one you cite that
4 states that there's an alarming number of immigrants from those
5 countries. It seems exaggerated to me, with all due respect.

6 Q Well, in terms of the reports, the defense actually did not
7 provide me with any reports because the case just started. But
8 what I looked at -- excuse me -- are documents that you have
9 entered into evidence. And I looked at the dates. I have filed
10 this case on July the 14th. So document which is Exhibit No. 4,
11 Defense No. 4 was issued only on August 7, 2014, after all -- I
12 already filed this lawsuit, you guys created this document with
13 directions in regards to tuberculosis.

14 Other documents either have no dates. For example, Document
15 No. 5, it has no date. Typically, you know, when -- this is a
16 Department of Health and Human Services. When you have
17 important documents, you would have a date when was it created.
18 And from all we know, it could have been created two days ago
19 right before this hearing. So there is no date at all on
20 Document No. 5.

21 Now I'm looking Document No. 6. One second. There is no
22 date.

23 Document No. 7, the only thing that there is, it's on the
24 bottom date, October 24, 2014. So with all due respect, this is
25 something that was created just couple days ago to prepare for

1 this hearing in this court and so forth.

2 So my concern is you stated that those are guidelines, but
3 we don't know if any of those guidelines ever being followed
4 because the documents were just prepared now in preparation for
5 this hearing. Isn't that correct, doctor?

6 A Well, Dr. Taitz, you know, those documents were developed
7 during the summer, I can assure you. And I can -- if the Court
8 will allow me, I can give you specific evidence that they were
9 created to help with the surge.

10 Q Well, I understand that the one document was created
11 August 7th after I already filed the lawsuit. But then there
12 are others that were created now in October. So until we get
13 actual documents showing how many people, you know, crossed the
14 border with TB, how many with Ebola, what was done, we don't
15 really know if there is any value in those documents in terms of
16 whether -- if anybody ever follows them, anybody even looks at
17 them, do we?

18 A Well, the reason why -- and again, I can't speak for Mr. Hu,
19 but I was retained as an expert witness, you know, after the
20 August 7th hearing or whatever, you know, so I'm a latecomer.
21 And so all I can do is that I provided those documents, and that
22 they were, in fact, developed and they are official documents
23 that have been in existence, many of them, you know, during or
24 before the summer.

25 Q We were talking about the temperature, and I have actually

1 provided a document, a study that was done in England showing
2 that 13 to 14 percent of individuals who have Ebola do not have
3 high fever. So have you ever read this study? Are you familiar
4 with this?

5 A I haven't read the study. I'm familiar with what you're
6 saying. My question to you is it would depend on your case
7 definition for Ebola or what this document is saying what Ebola
8 consists of.

9 What I can tell you is that during the development of the
10 disease, you are, in fact, going to have periods of time where
11 you go from afebrile to low fever to high fever, and I believe
12 that that could explain the discrepancies. But I can assure you
13 that if someone is being invaded by the virus and they have
14 healthy immune systems, reasonably healthy, they will have high
15 fever at some point.

16 Q I have here a report that was given me by another doctor,
17 Dr. Heinrich, and this doctor is a surgeon also in California.
18 And he's stating that he, an anesthesiologist, and the whole
19 staff of nurses have -- were infected with virulent tuberculosis
20 from a person who was illegal alien from Mexico.

21 So as a doctor, one question that I have, how did that
22 happen?

23 And, two, wouldn't you agree that if we were to quarantine
24 people who are crossing illegally, we could have caught this so
25 that this doctor and nurses would not get infected?

1 MR. HU: Objection, Your Honor. It's speculation.

2 THE COURT: Hold on just a second. I'm reading it.

3 All right. I don't think it's speculation to say if they
4 never saw the patient, they wouldn't have caught a disease from
5 them, but --

6 BY DR. TAITZ:

7 Q But in your opinion as a medical doctor who works with
8 tuberculosis, wouldn't you feel that quarantine of people who
9 cross the border illegally for a period of let's say three weeks
10 would help identify individuals with those diseases and give
11 them treatment so that we don't have doctors like myself or this
12 doctor, Dr. Heinrich, getting infected?

13 A Well, I -- again, I really -- to tell you from the bottom of
14 my heart, I can't really honestly can't give you a blanket
15 answer. I mean, it would have to depend on specific diseases or
16 conditions. If it's TB infection, for example, you're referring
17 to, why would you want to quarantine someone that has dormant
18 germs that is not going to pose a risk to anyone? I mean, what
19 you do is you take measures to refer them and get them checked,
20 but they don't pose a threat.

21 Q Well, this person had active TB, and the doctor --

22 A On this situation right here?

23 Q Yeah.

24 A Well, first of all, let me, again, with all due respect,
25 tell you that the situation that you're -- that this declaration

1 is citing is very hypothetical. It doesn't fit the natural
2 course of infection. And I would dare say that based on the
3 limited information, I find it hard to believe that a whole team
4 of health professionals, you know, would come down from TB from
5 an individual who is under anesthesia. He's not coughing.
6 Everybody is wearing masks. And the natural course of disease
7 is that even in a household setting, one in four individuals is
8 going to get a dormant TB infection reactivate sometime during
9 their life. And I'm being presented here with a situation in
10 which dozens of people get immediately infected in situations in
11 which infection control measures should have been in place.
12 There's a lot of discrepancy here.

13 Q Well, here's another question, doctor. We have this case of
14 Thomas Duncan, and we have two nurses at the Texas Health
15 Presbyterian Hospital where they were wearing full protective
16 gear, and they both caught Ebola. So you can't -- you can't
17 question that. This was on the news.

18 A Well, we're comparing apples and oranges here, okay? Ebola
19 is a very unforgiving disease. If you get exposed, it's very
20 virulent. You're going to get it, and you stand a high chance
21 of dying. Excuse me.

22 TB is a very forgiving disease from a transmission
23 standpoint because it's not as contagious as Ebola. And then
24 secondly, you have a long window to do something about it. In
25 other words, if -- forgive me, Judge. The judge just coughed.

1 I'm here. I get exposed. Okay. Assuming that he had TB, you
2 know, it's going to take me six weeks to detect my positive TB
3 skin test. I have a few more weeks, even a year so that I can
4 take the preventive therapy.

5 So there's plenty, plenty of opportunities to prevent
6 someone. I mean, if this situation is real, as it states, you
7 know, I'm wondering where's the health department? Why wasn't
8 this reported to the health department? You know, why weren't
9 appropriate infection control measures? This is -- this is very
10 serious if it really did happen. There's a lot of violations in
11 infection control measures.

12 Q Well, it did happen. I talked to the doctor. He submitted
13 the sworn declaration. It did happen.

14 And my question is what can be done to prevent this from
15 happening? And that's what I'm asking the judge, is to issue
16 some orders which would prevent this from happening.

17 Here's another --

18 A Well, that's --

19 Q If I may, doctor. Here's another question that I have.

20 Right now it was reported that there are 10,000 cases of
21 Ebola in Western Africa. We have 10,000 cases, and four people
22 in United States already got infected. We have Thomas Duncan,
23 we have Craig Spencer, and two nurses here in Dallas, Amber
24 Vinson and Nina Pham, out of 10,000. WHO predicts that by
25 January, they will have one and a half million cases.

1 So I made a small calculation. If 10,000 there are four,
2 one and a half million, we're going to have 600 people with
3 Ebola in United States of America by January unless we do
4 something. Wouldn't you agree with me that considering the fact
5 that Ebola is raging and exploding in Africa, we would have many
6 more cases. That one. Would you agree with me on that?

7 A Well, I think it's -- as I first started testifying, yeah,
8 we are likely to continue to see cases.

9 Q No, that's not what I asked. Wouldn't you agree that if
10 there is an explosion of Ebola in Western Africa where instead
11 of 10,000 cases they have now, they will have one and a half
12 million cases. Wouldn't you agree that it is likely that we
13 will have many more cases coming to United States of America?
14 Is that correct?

15 A Yes, ma'am. That is more cases, yes.

16 Q So as a quarantine officer who has those documents and has
17 powers on behalf of Secretary of Health and Human Services to
18 quarantine people, wouldn't -- don't you feel that it will be
19 imperative to take action to prevent this from happening, like
20 ban for travel or having -- having quarantine of everybody who
21 comes in; or at the very minimum, as the judge, Judge Hanen
22 suggested, doing blood tests, maybe two tests, because one can
23 be false negative. Would that be correct?

24 A Well, logistical challenges aside, I think those could be
25 actions. I don't think it should be the only actions that are

1 taken because, you know, we've been talking a lot about
2 quarantine, about isolation. But there's education. There's
3 contact tracing. There's a whole host of public actions which,
4 taken together, by the way, because quarantine is not going to
5 solve it all, everything. And I might add, the problem is not
6 so much, as I view it, having or not having quarantine. The
7 problem is in West Africa, that we should be doing more to
8 control the outbreak.

9 Q Well, I --

10 A Yeah, I know you agree.

11 Q I agree with you, but I just wanted -- here's another
12 question. It was reported --

13 A Before, let me --

14 Q Yes.

15 A Thank you. You're very kind.

16 What I was going to say is that it's not like we don't have
17 a quarantine. We have a quarantine in place, as I explained to
18 you. This is a voluntary quarantine where patients, people that
19 arrive are referred. They're monitored. They are asked to stay
20 home. So we do. It's not involuntary, but there is a degree of
21 quarantine that can be scaled up if needed.

22 Q Now, it was reported that just the case of Thomas Duncan
23 cost American taxpayers about half a million dollars, his case.
24 He infected two nurses. Each other case, because of all this
25 equipment, gear and so forth, it's expensive treatment. It's

1 another half a million. So we have one and a half million just
2 on one Thomas Duncan.

3 Plus we have, you know, those investigators from CDC.
4 They're paid salaries. They go to investigate. They
5 investigate hundreds of people. Go, take their temperature.
6 We're taking millions of dollars of taxpayers. As a quarantine
7 officer, don't you feel that it would make more sense to have
8 quarantine or ban of travel or have those people do the tests?
9 Each test costs between 60 to \$200.

10 So if we tell them to take two tests in the span of 21 days
11 to make sure that false negative doesn't work, that would help
12 us and would protect us better and would cost much less than
13 spending half a million dollars on each case that slipped
14 through. Would that be correct?

15 MR. HU: Again, Your Honor, I need to object. Dr. Taitz
16 put a number of facts not in evidence into this rather long
17 question.

18 DR. TAITZ: Let me --

19 THE COURT: Assuming hypothetically those facts are
20 correct, doctor, you can answer the question.

21 THE WITNESS: Well, I think it could be one of several
22 tools that would help. But again, the logistics and the policy
23 considerations are beyond my level of expertise and authority.

24 BY DR. TAITZ:

25 Q Now, in terms of people who are hospitalized with Ebola, can

1 you state the court what level of risk are those units?

2 A For the healthcare workers?

3 Q Yes.

4 A Well, assuming that the hospitals and the infection control
5 measures that are being followed by our expert hospitals, NIH
6 and so forth, that the risk is -- is low, but --

7 Q No, no, no. That's not what I said. You just said Ebola is
8 an unforgiving disease. The doctors who treat Ebola patients --

9 A You're talking in West Africa?

10 Q In the unit. No, no, here or West Africa.

11 A No, in the U.S. or --

12 THE COURT: She's talking about what level of care do
13 they get here in terms --

14 THE WITNESS: Oh, okay, okay.

15 BY DR. TAITZ:

16 Q Level of risk.

17 A Level of risk for transmission?

18 Q Yes.

19 A It's low because they wear personal protective equipment.
20 Very low.

21 Q Doctor, with all due respect, all the literature states that
22 Ebola is the highest level of risk. It's level four. And,
23 therefore, the doctors are covered head to toe; and also, often
24 they have separate air -- oxygen supply; is that correct?

25 A I don't know about the oxygen supply, but they're covered

1 head to toe. But -- and forgive me, doctor. I may have
2 misunderstood your question. What I meant is that if you have a
3 person in the hospital and you're wearing full protection, that
4 the risk in that scenario is low. The risk if someone shows up
5 unannounced without that protection, then you're right, the
6 scenario --

7 Q Doctor, then how do you expect -- if you are saying now that
8 this risk is low, how come 450 doctors and nurses who were
9 covered head to toe got infected with Ebola and 233 died? How
10 do you explain this?

11 A Well, I think you have to take that in the context of the
12 number of health professionals that served, what they were
13 doing, the encounters. So taking that into consideration, as I
14 said, you know, it's not zero. It is low. But if you multiple
15 it times the times of encounter, yeah, it's going to build up,
16 so I think we're saying the same thing.

17 Q So it is high when the doctors are --

18 A Well, the risk is low, but it accumulates, and then you are
19 going to get, you know, a few more cases.

20 Q Well, isn't there a reason why those people are sent to CDC
21 headquarters in Atlanta, Georgia, or NIH headquarters in
22 Bethesda, Maryland? Isn't it because there are special units?

23 A There are special units. And I think, for example, in our
24 State of Texas, there are units that have been scaled up to meet
25 those -- those same infection control criteria.

1 Q Doctor, do you know how many beds do we have in special
2 level -- risk four units altogether in the whole country?

3 A I know they're limited.

4 Q Limited. Would you be surprised to find out that there are
5 only 22 beds?

6 A No, I'm not surprised.

7 Q So you feel this is a reasonable number. So right now --

8 A No, I didn't say that was reasonable. I'm saying that --

9 Q You're not surprised?

10 A -- they're limited, but that states and other people are
11 gearing up to create more beds.

12 Q But now we have only four Ebola patients, when the epidemic,
13 according to WHO, is going to reach one and a half million in
14 Africa, we might have several hundred cases. So that means we
15 wouldn't have enough beds in specialized units to treat those
16 people, would we?

17 A Well, you're assuming that we're going to have X number of
18 cases. I, you know, am not a statistician per se. I can
19 predict some modeling. I think we are going to get additional
20 cases. My own assessment is that with the readiness and the
21 attention that our country has given this disease, that the
22 medical community will be able to meet that demand.

23 Q Now, I'm a doctor of dental surgery. I work with patients,
24 and routinely I deal with blood, saliva and so forth. If a
25 person comes with Ebola, do you feel it would be a high -- I

1 would be in a high risk category to catch a disease from a
2 patient?

3 A Well, that's a big "if," but, yeah, I suppose. My question
4 would be -- and I'm thinking out loud -- hey, why would someone
5 from West Africa show up in your clinic?

6 Q Because they get free medical and dental care through the
7 Medicaid, and I'm a provider with Medicaid. I work with a lot
8 of immigrants, and they come from everywhere: Central America,
9 Africa, Mexico, anywhere.

10 So my question is if somebody -- if an immigrant like this
11 shows up and he happens to have Ebola, I would be in a high risk
12 category, right?

13 A Well, no, because I can assure you, doctor, that person
14 would have no business showing up unannounced in your clinic.
15 That person would have been screened, would have been under
16 close monitoring. Even our land border ports of entries have
17 been screened, so that person would be miles away from your
18 practice.

19 THE COURT: What if he's an illegal alien and he's not
20 getting screened for that stuff?

21 BY DR. TAITZ:

22 Q Is that correct?

23 A My understanding is that Border Patrol agents -- I mean,
24 theoretically someone could cross through without detection.
25 And if they could get to your clinic, it's a remote possibility,

1 I suppose. But Border Patrol agents, Customs and Border
2 Protection are 100 percent screened, and I know for a fact,
3 because they call us, and we take them through the risk
4 assessment questionnaire.

5 THE COURT: Screening for Ebola?

6 THE WITNESS: If needed, Your Honor, yes. If needed.

7 BY DR. TAITZ:

8 Q Doctor, Mr. Oaks just testified that they did zero tests.
9 They don't do any tests, not for Ebola and not for tuberculosis.
10 So -- and he stated that they don't do any tests. So how are
11 they screened?

12 A Well, the zero Ebola tests wasn't done because it was not
13 indicated. The TB test was not done because why would you want
14 to test for a dormant infection that poses no risk? And as
15 Mr. Hu pointed out, it takes 48 to 72 hours to read a skin test,
16 so it's impossible.

17 Q Doctor, I mean --

18 THE COURT: Well, in theory, if they're illegal aliens,
19 shouldn't they be in custody for 48 to 72 hours anyway so you
20 would have plenty of time to get the results and read the test
21 results? They would be right there in your cell, wouldn't they?

22 THE WITNESS: If they are, I suppose so. Most of them
23 are deported faster than that.

24 THE COURT: None of these people were deported. They're
25 all still here in the United States.

1 DR. TAITZ: Nobody --

2 THE WITNESS: Okay. But --

3 THE COURT: Hundreds of thousands of them.

4 THE WITNESS: Thank you. Thank you for correcting me,
5 Your Honor. But to the point of indication, like I said, if
6 you're going to do skin tests, you're looking for infection.
7 This is not a public health threat. This is not reportable. It
8 makes no sense from a public health, from a medical perspective
9 to screen for a dormant infection that doesn't pose a threat.
10 It makes no sense.

11 BY DR. TAITZ:

12 Q Really? Would you like to tell it to Nina Pham and Amber
13 Vinson?

14 A No, no --

15 Q Two nurses in Dallas --

16 THE COURT: That's an inappropriate question.

17 THE WITNESS: I'm talking about TB. I'm not talking
18 about Ebola.

19 THE COURT: Wait, wait. Doctor?

20 THE WITNESS: Forgive me.

21 THE COURT: That's -- Dr. Taitz, go on to your next
22 question. That's -- that's -- let's not attack the witness.
23 He's not on trial.

24 BY DR. TAITZ:

25 Q Doctor, you stated that people are properly screened.

1 However, when you screen those people, you just check the
2 temperature. And we know that if people are in incubation
3 period, the temperature would not be high. You don't do any
4 tests, so they all pass through the screening, right? So the
5 screening doesn't help at all; isn't that true?

6 A Well, we do more than take the temperature, as I explained
7 in great detail. We perform three levels of risk assessment.
8 We educate, we provide thermometers, and we notify local and
9 state health departments so that they can go the following day,
10 check up on them, make sure that they are adhering to all the
11 recommendations, making sure that they are taking their
12 temperatures twice a day. So from a public health perspective,
13 that's pretty comprehensive.

14 Q But wouldn't you agree with me, doctor, that people -- that
15 the screening does not catch Ebola cases because we have Thomas
16 Duncan who passed through screening and later died of Ebola,
17 infected two nurses, and we have Craig Spencer who went through
18 screening, went bowling and so forth, and then next day had
19 hundred and three fever. So this screening is not sufficient;
20 is that correct?

21 MR. HU: Objection. Again, misstating some of the facts
22 in evidence.

23 THE COURT: Well --

24 THE WITNESS: Well, I -- I think all of us do agree that
25 there's a period of latency where the disease manifests itself.

1 And I think the judge was pointing out, you know, sometimes we
2 rely on people to be truthful.

3 So you're right. I mean, there -- there's a level of
4 unpredictability that exceeds our ability to detect. But as I
5 said before, the fact that we're continuing to monitor through
6 the incubation period together with the local health department
7 and the public outreach workers, that I feel comfortable that
8 with the reinforced recommendations, that we would be able to
9 catch someone like Mr. Duncan.

10 And as I said before, with the travel kit that we're giving,
11 he would have been able to notify the hospital as soon as he got
12 there that he was a high risk person.

13 Q Are you -- isn't it true that antibiotic resistant
14 tuberculosis, it costs about quarter of a million dollars to
15 treat this disease?

16 A Yes, or more.

17 Q Or more. And with Ebola, it's about half a million dollars;
18 is that correct?

19 A I don't know for a fact, but it is expensive, yes, with ICU
20 care, yeah.

21 Q So wouldn't you agree with me, doctor, that it will make
22 sense in terms of protecting the public to do the TB tests as
23 people cross the border and to do those Ebola tests at a very
24 minimum in order to better protect the public and for the
25 taxpayers not to spend millions of dollars on those treatments?

1 Would you agree with me?

2 A Well, let me separate. With TB, I said earlier, testing for
3 dormant disease makes no sense, so I would say no on that one.

4 For Ebola, I think we need to have very active, careful
5 surveillance, and it would be up to policymakers to decide on
6 the issue of testing. Medically I could tell you that it's not
7 indicated, you know, unless person had specific high risk
8 exposure or is manifesting symptoms. But just because a person
9 comes from one of these countries, let's say a businessman who
10 worked on mines as a U.S. citizen coming back and careful
11 screening is negative, he'll be followed up, monitored
12 carefully, I don't think testing is indicated in that scenario.

13 Q Now, have you heard that just couple days ago, U.S. military
14 ordered quarantine of all members of the U.S. military who are
15 coming from Ebola zone? They're being monitored and quarantined
16 for 21 days in Vicenza, Italy. Have you heard this?

17 A I spoke to the command officer that was involved in that
18 decision, so I'm familiar.

19 Q So do you feel he made a correct decision?

20 A Well, I think he made an appropriate decision for his
21 population. We're talking about military troops that are under
22 a different set of orders, controlled. So to apply the same
23 rules and regulations to civilians I think would be very
24 difficult. You're comparing apples and oranges in that sense.

25 Q But if the federal government can order 4,000 members of the

1 U.S. military to spend three weeks in -- in quarantine, the same
2 federal government can order other people who are coming from
3 this area to spend three weeks in quarantine too. Would that be
4 correct?

5 A Well, in theory, yes. But if you consider that we're
6 getting 70 to a hundred passengers a day, multiply that times
7 365, you know, from these countries, are you suggesting -- I
8 mean, it would be a logistical challenge. And so I think the
9 way to do this is to escalate it based on proper risk.

10 I do agree with you that some people who are misbehaving
11 and, you know, have high risk, absolutely they should be under
12 mandated quarantine, but -- but that's very different than
13 people who have very, very low risk.

14 Q May I ask, who's the chief, division chief that signs those
15 quarantine orders?

16 A His name?

17 Q Yes.

18 A He's our -- Marty Cetron, who is our division director for
19 Global Migration and Quarantine.

20 Q I'm sorry. What is the spelling?

21 A Cetron, C-E-T-R-O-N. Dr. Martin Cetron.

22 Q So hypothetically speaking, if this case continues, this is
23 a person that could appear here, or this is a person that could
24 give this order, prepared order to any person coming from the
25 region. Or if the court orders him, that's --

1 A I -- you know, I don't -- I mean, I think that would be up
2 to our CDC Director, Dr. Tom Frieden, to decide on who can or
3 cannot. I cannot answer that for you.

4 Q But you stated that at the top of the chain, it's the
5 Secretary of Health and Human Services, Sylvia Burwell. From
6 there those papers are given, and they're given and signed by
7 Marty Cetron, right?

8 A The authority is delegated to CDC and ultimate authority to
9 our division director.

10 Q Thank you, doctor.

11 A Thank you.

12 THE COURT: Mr. Hu, any redirect?

13 MR. HU: No redirect, Your Honor.

14 THE COURT: All right. Doctor, you're done. Thank you.

15 THE WITNESS: Thank you, Your Honor. Thank you, Dr.
16 Taitz.

17 MR. HU: Your Honor, may the witness be excused? He has
18 a flight to catch actually.

19 THE COURT: He may be.

20 THE WITNESS: Thank you, Your Honor. It's an honor to
21 have been with you.

22 THE COURT: Glad to have you.

23 THE WITNESS: Thank you for all you do.

24 THE COURT: All right. Mr. Kisor, anyone else from the
25 government's standpoint?

1 MR. KISOR: Your Honor, I don't believe we have any
2 further witnesses.

3 THE COURT: I have a couple questions that I need to ask
4 the chief, and he can answer them just right here from the
5 podium is fine.

6 THE WITNESS: Yes, sir.

7 THE COURT: Chief, when you first -- the very first part
8 of your testimony -- I know that was hours ago, so you may or
9 may not remember it -- you basically were recounting the numbers
10 from 2014, year end 2014. And by my notes, you put it at like
11 260,000 apprehensions.

12 THE WITNESS: Yes, sir, for the Rio Grande Valley.

13 THE COURT: Right. And then you gave us a snapshot of
14 October 1st through today of about 11,000.

15 THE WITNESS: Yes, sir, that's correct.

16 THE COURT: And it was your estimate, as I understand
17 it, that the numbers are down about 20 percent, or at least as
18 far as you could tell.

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Now, has -- has the Border Patrol,
21 Department of Homeland Security, whichever title you want to
22 use, have they made any plans for any further surges?

23 THE WITNESS: We have, Your Honor. And doing our
24 predictive analysis based on what we're training right now,
25 we're looking at about 220,000 arrests for next year, but also

1 planning in the event that honestly taking into consideration
2 midterm elections, any statements that are made after midterm
3 elections, any things that are uncalculated and, you know, world
4 crisis and all those other things, based on the lessons that we
5 learned last year in terms of what we learned about logistics
6 and what we learned about bed space and interaction with HHS and
7 ERO and building operation centers and looking at all of our
8 failures -- well, not necessarily failures, but gaps in our
9 capability, we've made adjustments for those and requested the
10 required material and people and everything that we need we
11 think to be able to address any future surges.

12 THE COURT: Well, and I -- let me preface this by saying
13 I don't know if this is true or not. It has been reported in
14 the Washington Post, so for whatever, you know, veracity you
15 want to give that or not give it. It's been reported that the
16 administration is soliciting bids for ID cards.

17 THE WITNESS: Yes, sir.

18 THE COURT: And that the vendors from whom they're
19 soliciting to have to be able to handle a surge of requests for
20 those ID cards. So somebody in the administration thinks
21 there's going to be a surge of immigration. And I guess I'm
22 asking you, are you planning for that same surge?

23 THE WITNESS: Absolutely, sir. We look at all the
24 threats and risks; and, you know, Ebola is a risk that we
25 address. Any kind of contagious disease is a risk. We look at,

1 you know, guns going south into Mexico as a risk. We look at
2 all those factors, because from an enforcement standpoint within
3 the Rio Grande Valley, you know, we're looking at the highest
4 possible risk and threat, and then we design and plan around all
5 the other federal, state and local agencies.

6 THE COURT: And I'm not just talking about dangerous
7 things like guns and --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- diseases. But if --

10 THE WITNESS: There's non -- there's nonmaterial threats
11 too.

12 THE COURT: I'm just talking about numbers.

13 THE WITNESS: Yes, sir. And numbers, you know,
14 potentially could surge --

15 THE COURT: Well --

16 THE WITNESS: -- actually more than what they were last
17 year.

18 THE COURT: For instance, it's been stated in this
19 court, not necessarily in this hearing, that the clear
20 implication that one of the causes of this surge was the fact
21 that these illegal immigrants were counting on the fact that if
22 they got here, they got to stay here. I mean, that's -- has
23 that been your experience?

24 THE WITNESS: Yes, sir. I mean, when you take a look at
25 police science and when you take a look at immigration and how

1 you control these factors, of consequence is, you know,
2 recidivism rates. All those kind of things are taken into
3 account. And if you look at the history over the last three or
4 four administrations -- I came in during the Reagan
5 administration. You know, when there are gaps in capabilities
6 within immigration law and they're taken advantage of, then
7 people will exploit those, much like they do with gaps in terms
8 of, you know, exploiting, you know, any other law that you'll
9 find.

10 THE COURT: Well, if the administration was to -- and I
11 use the -- if the government. I'm not playing politics here.
12 But if the government was to allow or make some kind of ruling,
13 whether it be amnesty or some other effect, don't you think,
14 chief, that that will have the effect of encouraging a lot more
15 people to try to get here?

16 THE WITNESS: Based on what I've seen since coming in
17 the Reagan administration with various -- you know, there was AM
18 Act 90 and there were other various sort of similar amnesty
19 things that transpired within the United States Government. And
20 then there was previous surges. There were changes in
21 immigration policy and immigration law that had an effect on
22 enforcement operations.

23 THE COURT: Okay. So the answer to my question is yes.

24 THE WITNESS: Generally, yes, sir.

25 THE COURT: Okay. Because I'm just reading -- I'm

1 holding what I think is the -- it's a document from the United
2 States Citizenship and Immigration Services, which I know is not
3 necessarily you.

4 THE WITNESS: No, sir.

5 THE COURT: But when it talks about the cards and what
6 the contractor -- the solicitation has to deliver, it says, "In
7 addition, the contractor should demonstrate the capability to
8 support potential surge." That's the word the actual bid uses.
9 And so I guess my question to you is, is that something you're
10 anticipating?

11 THE WITNESS: Well, we have looked at that, and we're
12 anticipating all future surges, including children or family
13 units or whatever else the case may be. And I don't have any
14 specific insider information on the cards that they're referring
15 to, but those are open bids and solicitations, much like some of
16 the information that you read by the number -- the quantity of
17 ammunition that DHS bought previously.

18 You know, and as I explained to several people before in
19 terms of that, it was the government leveraging its buying
20 power, because there are a lot of gun toters within DHS and the
21 federal government. Most of us qualify four times a year, which
22 is about 72 rounds each. You multiply that, and that equates
23 for the, you know, several million rounds that you have to
24 purchase to be able to maintain the quality and standard of
25 training that you're looking for.

1 THE COURT: Yeah. And I'm not suggesting -- as I said,
2 you know, I don't -- my source for this was the Washington Post.

3 THE WITNESS: Yes, sir.

4 THE COURT: Although Katie just did hand me the U.S.
5 Citizenship and Immigration Services document. But your
6 testimony about the numbers, about the 260 and the fact that
7 it's 20 percent down, I guess what I'm asking you is the fact
8 that it's 20 percent down say from October 1 to October 31, that
9 could change overnight if some immigration announcement was
10 made.

11 THE WITNESS: It could absolutely change. And, you
12 know, our parallel planning efforts, we're planning for what
13 predictive analysis shows without any external factors. And
14 then we're also planning for those external factors. If there's
15 a political statement that changes dynamics of what we're all
16 talking about here right now, then we're planning for that, and
17 we know what we need to do to address that.

18 THE COURT: Because regardless of what the politics are,
19 I mean, you guys, just like the Court system, whatever they are,
20 we have to deal with them.

21 THE WITNESS: Yes, sir.

22 THE COURT: That's all I have.

23 THE WITNESS: Thank you.

24 THE COURT: Okay. Let's talk law for a while.

25 Mr. Kisor has been chomping at the bit to talk law.

1 MR. KISOR: One of my favorite subjects, Your Honor.

2 THE COURT: It's actually one of mine when I get to do
3 it.

4 All right. Let's -- we're here on the temporary injunction,
5 so I'm going to let Dr. Taitz start. And, Dr. Taitz, if you
6 will, tell me why you think the Court should enter a temporary
7 injunction both legally and factually. But you need to include
8 in there -- obviously the government has a motion to dismiss it
9 filed about three weeks ago, and a lot of it is addressed to
10 jurisdiction. It's addressed to legal points, not just factual
11 points, although some of them are factual.

12 So I don't care if you address those now in your
13 presentation, because I'm then going to let Mr. Kisor respond,
14 but you'll need to be prepared to announce or talk about those
15 after Mr. Kisor. One way or the other, I'm not letting you out
16 of here without you addressing those, okay?

17 DR. TAITZ: Well, first of all, I would like to
18 incorporate by reference everything that I included in my
19 pleadings in opposition to motion to dismiss and complaint
20 because all of the points are already there.

21 In order to issue a temporary injunction, one needs to show
22 that the person is likely to prevail on the merits, that there
23 is irreparable harm or threat of irreparable harm which
24 outweighs the harm to the non-moving party and that it is in
25 public interest.

1 And there are a number of issues where I'm seeking
2 injunctive relief. And I would like to know, Your Honor, if
3 today, are you -- are you preparing to render a decision today,
4 or are you prepared to render decision on, for example, just
5 injunction on the issue of Ebola, or only on *Flores v Reno*?

6 THE COURT: Well, I probably won't render any decision
7 today, although I do plan to get it out as quickly as possible.
8 So I don't know if that is an answer to you or not.

9 DR. TAITZ: So in terms of factually --

10 THE COURT: But let -- if you want to talk -- here's --
11 let me give you -- let me share with you a little of my thinking
12 on this, if this helps you shape your argument.

13 I am interested in the safety of the United States and the
14 citizens of the United States, just as anyone in my position
15 would be generally. In deciding lawsuits, I've got to decide
16 what's before me. And so you may want to address this, because
17 if you want me to go where you -- I think you want me to go on
18 Ebola, you're going to have to show me why that's before me.

19 DR. TAITZ: Well --

20 THE COURT: I mean -- hold on. Let me finish. I mean,
21 I could think, as I do quite frequently, and it's not just about
22 the current administration. I think sometimes about the other
23 side. And I don't know that anybody sometimes has the right
24 answer or at least -- and a lot of times maybe I'm wrong, and
25 what I think is the right answer isn't the right answer.

1 But what you need to convince me is that I have a judicable
2 interest in that issue. I mean, I don't want Ebola here in the
3 United States. I don't want Ebola in Africa. I mean, I wish we
4 would find a cure and be able to, you know, vaccinate everyone
5 on all seven continents. But do I have an Ebola case in front
6 of me?

7 Now, I let you put on the testimony because I want you to
8 have your day in court on that. And, quite frankly, it's -- you
9 know, it's interesting. It's front page news regardless of
10 where you are. But is it something a judge can decide? So go
11 ahead.

12 DR. TAITZ: Well, first of all, in terms of likelihood
13 of prevailing on the merits and standing, that's something that
14 Mr. Kisor has addressed. And there are a number of bases for
15 finding standing.

16 One of them is via APA, and Mr. Kisor has in his pleadings
17 stated that I would not have standing because I did not exhaust
18 all of -- all of the remedies through APA. And specifically I
19 did not exhaust 180 day that typically the government is given.

20 However, I brought the case of *Darby v Cisneros*. And this
21 is the case that went up to the Supreme Court of the United
22 States. And, as a matter of fact, should Your Honor find
23 standing and grant a stay, one of the justices who actually
24 penned the decision in *Darby v Cisneros*, Antonin Scalia, would
25 be the judge deciding the stay, as stays -- typical when it goes

1 through the courts and reaches the Supreme Court, applications
2 for stays are ruled upon by one justice; not nine, but just one.
3 So the justice that already found standing in *Darby v Cisneros*,
4 that -- that's Justice Antonin Scalia, who will be deciding this
5 particular case. And what --

6 THE COURT: Wait, wait. Let me make sure you and I are
7 on the same -- I mean, you're right that a -- there are various
8 justices assigned to the various circuits, and Judge Scalia is
9 our justice, and he does decide stays. But that's not the same
10 thing as an injunction.

11 DR. TAITZ: I filed an --

12 THE COURT: What he would decide is whether something is
13 stayed before the Supreme Court actually addressed it. I mean,
14 if he was for it or against it, one way or the other, it kind of
15 doesn't matter. I mean, he might stay the effect of an order,
16 but eventually the entire Supreme Court decides a case.

17 DR. TAITZ: Well, however, there are a number of stays
18 that are before this court. One is stay of allowing into this
19 country individuals from Ebola hot zone: Liberia, Sierra Leon
20 and Guinea.

21 THE COURT: Why is that -- help me there. Why is that
22 in front of me? I mean, I don't have a -- we don't have a
23 reported case. And while we may suspect -- the chief testified
24 that there was only one individual in the last year that was
25 captured from one of those countries or maybe from the whole

1 continent -- I can't remember. I'll look at the testimony
2 before I decide the case. But that individual -- there's no
3 testimony that that individual had Ebola.

4 DR. TAITZ: As a matter of fact, this -- this testimony
5 is not correct. And I have provided this court, as I said, with
6 information from the Border Patrol Intelligence Unit stating
7 that there were over 500 individuals who crossed the border from
8 Ebola affected areas, Ebola affected nations.

9 THE COURT: Okay. But -- and that was they crossed
10 illegally, right?

11 DR. TAITZ: They did cross illegally, and they were
12 apprehended.

13 THE COURT: Okay.

14 DR. TAITZ: And while those people were apprehended,
15 they were not quarantined. They were not tested. They were
16 just released. So if those people are carrying a deadly
17 disease, they would carry it, and it would be transferred to the
18 population in general.

19 THE COURT: Okay. But they're already breaking the law
20 by coming in illegally.

21 DR. TAITZ: What --

22 THE COURT: I mean, I don't need an order to say you
23 can't come in the country illegally. We have a statute that
24 says that.

25 DR. TAITZ: However, we -- some of those people are

1 coming illegally. Other people are coming legally. And until
2 and unless there is an order addressing this, an order staying
3 the travel stay or ban of travel as it is done in 30 other
4 nations around the world in order to stop influx of people with
5 a deadly disease and not endangering the healthcare providers
6 like myself and other population, that's reasonable. This is in
7 public interest.

8 THE COURT: Let me -- let me refer you back to a
9 question that I actually think Mr. Hu objected to, but I let the
10 doctor answer it, Dr. Escobedo answer it. And it was a question
11 where you addressed him as to the cost of curing it. And you
12 basically were saying: Look, every Ebola patient costs this
13 great amount. Wouldn't it be better for us to do it this way?
14 Remember that question? I mean, I'm paraphrasing it. And you
15 suggested to him -- and while I don't think he agreed with you,
16 I mean, he -- he basically said that would be one way of doing
17 it.

18 And here's the reason I'm bringing this up. I mean, just
19 the tenor of that question and answer, doesn't that really say,
20 hey, this is a political issue to be decided by the legislature,
21 not by a judge? I mean, because -- because decisions like that
22 are not -- I mean, are not necessarily supposed to be made by
23 judges, are they?

24 DR. TAITZ: Well, Your Honor, I would like to bring an
25 example which I actually brought in the original complaint. One

1 judge in California issued an order staying implementation of
2 don't ask, don't tell in the military. And all the members of
3 the U.S. military were affected by an order coming from one
4 judge in California. And in that case, you know, how badly were
5 those members of the military affected? Maybe psychologically,
6 but here --

7 THE COURT: But wasn't somebody -- in that case wasn't
8 there somebody, a litigated issue there, whose rights were maybe
9 being violated?

10 DR. TAITZ: But what rights, Your Honor? The right for
11 what?

12 THE COURT: The right to serve in the military.

13 DR. TAITZ: Well, the -- from what I understand,
14 people --

15 THE COURT: The right to tell or the right to ask. I
16 don't know.

17 DR. TAITZ: But what is here -- let's compare those two
18 cases. Here is a don't ask, don't tell case. And a person can
19 say: Well, I'm emotionally affected because I cannot tell that
20 I'm gay.

21 On the other hand, here is a situation where people like
22 myself who are healthcare providers, who are doctors, I am
23 indeed affected because we're in constant threat of being
24 infected with deadly diseases.

25 THE COURT: Okay. But here's -- and here's my problem

1 with what you're saying, at least with respect to Ebola. One,
2 you don't have Ebola. Two, you don't know any doctor other than
3 the ones that we're reading about in the New York Times or Post
4 or whatever, the guy that rode around the subway and went
5 bowling, we don't know any other doctor that has it, and we
6 don't know any other doctor that's got it -- ever got it in the
7 way you're suggesting they could. And I'm not arguing with you
8 about whether it could happen because I think it probably could
9 happen the way you suggest it.

10 DR. TAITZ: Your Honor, if I may. It actually happened
11 right here in Texas in Dallas where two healthcare providers,
12 two nurses were indeed infected with Ebola, and they wore full
13 protective gear. As a doctor of dental surgery --

14 THE COURT: I know, but they don't have anything to
15 do -- I mean, the defendants in this case, the Department of
16 Homeland Security, the Border Patrol, the people involved in
17 this didn't have anything to do with that. That wasn't their --

18 DR. TAITZ: However, Your Honor, this is a case where,
19 as Dr. Escobedo has stated, the defendant herein, Secretary of
20 Health and Human Services, has powers. One of those powers is
21 to issue a quarantine. And in her name it is being used and it
22 is being signed by one of her employees, Mr. Marty Cetron.

23 THE COURT: And I don't -- I'm going to concede with you
24 that's right. I mean, I haven't researched it, but Dr. Escobedo
25 did say that, and he's probably right about it. I mean, we

1 could research it. But let me -- here's my problem, and it was
2 my problem six weeks ago when we met the first time.

3 You may be 100 percent right. But do you, Dr. Taitz, do you
4 have the right to bring this action?

5 DR. TAITZ: Absolutely.

6 THE COURT: Why? You need to help me there, because I
7 got hung up on that early on, and I'm still hung. I mean,
8 that's why I'm telling you this so you have time to respond to
9 me.

10 DR. TAITZ: Your Honor, because I am in a special
11 category, a category of healthcare providers who are on the
12 first line, and particularly healthcare providers who routinely
13 work with new immigrants. I see new immigrants on daily basis.
14 And therefore, I am on the first line of defense against those
15 diseases; and therefore, I am under imminent threat of being
16 infected, either Ebola or tuberculosis or enterovirus or
17 actually being reinfected because I still don't know what caused
18 persistent cough that happened in the past several months. I
19 suspect that it was --

20 THE COURT: Well, the cough I'm putting in a different
21 issue for right now because that's something you actually got,
22 and so you are a person that can seek -- I'm not -- not
23 necessarily in this case. We'll have to work our way through
24 that, but that obviously directly affected you. If you catch a
25 disease, it directly affects you.

1 DR. TAITZ: But it's not only the fact that I was
2 already infected. Standing constitutes not only injury that was
3 already sustained, but also a threat of injury. And I am under
4 an imminent threat of reinfection on a daily basis. Every day
5 that I'm working with patients, I am under an imminent threat
6 which gives me double standing, additional standing to bring an
7 action and seek a redress.

8 THE COURT: This action, at least originally, concerned
9 the children contained in the surge or part of the surge that
10 the Border Patrol was just shipping across the nation. And part
11 of the worry was they were shipping ill children across the
12 nation, and they were causing people like you to catch a
13 disease. Ebola doesn't have anything to do with that, does it?

14 DR. TAITZ: Well, actually this is -- even though people
15 were not infected with Ebola through somebody crossing the
16 border, it is only the matter of time. This is an imminent
17 threat of injury.

18 And as I stated back in August, Your Honor, as I predicted,
19 that we will have Ebola cases. We will have people infected. I
20 am predicting that we will have more infections, and I will be
21 one of them, because some 500 people crossed the U.S. border
22 illegally. And as Ebola -- Ebola is surging in Africa. And as
23 Dr. Dolan stated in her affidavit, as it is happening, as this
24 disease is exploding, more and more people will be running away
25 from Ebola, and they will be coming to this country, either

1 legally, or if they cannot come legally, they will be coming
2 illegally right here crossing the border.

3 THE COURT: Okay. And I'm not -- I'm not disagreeing
4 with any assertion you just made. And while the government may
5 not agree with it, they may -- they may, for hypothetical
6 purposes, agree with it. But if you look at the case law, is
7 there -- most cases say an individual citizen of the United
8 States has no right to bring that action.

9 DR. TAITZ: Well, actually the cases that I quoted in
10 all of my pleadings, as I said, one of them was *Darby v*
11 *Cisneros*. And that's the case that states that the individual
12 does not have to wait for a final determination with the APA,
13 does not need to wait the 180 days, can bring a case.

14 I also brought the case of *Flast v Cohen*. And this case was
15 indirectly or improperly classified as only establishment clause
16 case, which is not the case. This is a case where the Supreme
17 Court have found that as long as the government is acting within
18 its taxing and spending powers and those -- and the actions by
19 the government are illegal, in those cases the taxpayers have
20 standing.

21 I have here the actual decision of the Supreme Court in --

22 THE COURT: And I'm not -- I'm not -- I don't doubt
23 that's the case. But what has the government in this case done
24 that was illegal?

25 DR. TAITZ: Well, when we're talking about the surge,

1 this surge was done under *Flores v Reno*. There is a clear
2 violation of *Flores v Reno* which states that individuals who are
3 a threat to themselves, who are a threat to others and who are
4 not likely to return for their deportation hearing are not to be
5 released. And the government has flagrantly violated all three.
6 They are releasing individuals who have medical problems, who
7 have infectious diseases; and therefore, they're a threat to
8 themselves and others. And we know that some 90 percent of them
9 don't show up for their deportation hearings, so they know that
10 those individuals are not likely to come back.

11 Further on, the government is flagrantly violating 8 USC
12 1182 which states that individuals that were not vaccinated
13 should not be admitted. Those people -- those people should
14 have been turned around right away. Yet the government is
15 flagrantly violating that and is admitting hundreds of thousands
16 of individuals who did not have vaccinations, and they represent
17 a threat to myself as a doctor who is working with them on a
18 daily basis in close proximity dealing with blood and saliva and
19 other doctors who are similarly situated. Clear violation.

20 Further on, with actually *Flores v Reno*, there was -- this
21 case, according to an agreement there, they -- that agreement
22 actually was supposed to expire within five years, and there was
23 supposed to be a publication of the -- of the agreement and
24 measures taken which was supposed to be done over ten years ago,
25 and that -- and that was supposed to expire. The government

1 violated this agreement. They never done this publication. And
2 what they're doing, they're using *Flores v Reno* to transport, to
3 traffic hundreds of thousands of individuals. So they're
4 violating the letter and -- and the intent of *Flores v Reno*.

5 Intent in that case was simply to allow better conditions
6 for illegal alien minors while they're incarcerating --
7 incarcerated and allow other relatives but parents to post bail
8 and have them released on bail until they're awaiting their
9 deportation hearing.

10 Instead the government completely violating -- violated the
11 intent and the letter of *Flores v Reno*. As Ms. Teresa Brooks
12 stated, they're not collecting any bail. As a matter of fact,
13 they told the employees that they're forbidden from collecting
14 bail. And they're trafficking those individuals with orders to
15 appear sometimes four years from now, three years from now, four
16 years from now.

17 So basically it's -- this agreement is being violated and
18 abused and used for -- for transporting hundreds of thousands of
19 individuals. It provides cheap labor, but this is something
20 that also provides exposure to dangerous diseases.

21 Further on, in terms of DACA, DACA represents a clear
22 violation, and I have quoted the statutes for Your Honor.

23 THE COURT: DACA doesn't apply to this at all, does it?

24 DR. TAITZ: Well, DACA does apply, because as you were
25 telling just a few minutes ago, any amnesty is a magnet for more

1 violations and more illegal border crossings. What DACA is,
2 it's an illegal amnesty. And if -- and I provided information
3 that DACA -- through DACA, individuals are told that they are to
4 receive -- illegal aliens are given work permits which they are
5 not allowed to receive. And I have provided statutes.

6 THE COURT: Okay. But again, we're talking about the
7 surge that happened last year.

8 DR. TAITZ: Your Honor, I believe --

9 THE COURT: Not this year, depending on whether you're
10 on a government calendar or a calendar calendar, but none of
11 those people qualified under DACA because you got to be here
12 five years.

13 DR. TAITZ: Actually what they're doing with DACA, not
14 only they're giving amnesty and giving illegal work permits and
15 health insurance to illegal aliens if --

16 THE COURT: I don't have any evidence of that, do I?

17 DR. TAITZ: I have provided -- I have provided Your
18 Honor with statutes and with excerpts of -- from Medicaid
19 showing that illegal aliens are getting health insurance,
20 getting Medicaid, which is supposed to be given only to the U.S.
21 citizens.

22 THE COURT: Okay. But that's -- back up. They're
23 getting that because of DACA?

24 DR. TAITZ: Well, through DACA they're giving all of the
25 benefits that they --

1 THE COURT: Okay. Wait, wait, wait. How do you know
2 it's through DACA? That's what I want to know. Why are you
3 saying that?

4 DR. TAITZ: For example, when you go -- and I believe I
5 quoted it in my pleadings. When you go on the website for DACA,
6 it states there that those people are eligible to receive work
7 permits. Clear violation of the existing statutes. They're
8 not.

9 THE COURT: It may be. But do I -- but I don't have --
10 why do you get to complain about that?

11 DR. TAITZ: Because --

12 THE COURT: As opposed to any other of the 300 million
13 people that live here in the United States?

14 DR. TAITZ: Because as you stated, Your Honor, each and
15 every amnesty is a magnet. And the surge that we have happened
16 because of DACA. There was DACA decision 2012. We see surge in
17 2013 and 2014. As a matter of fact, in 2014, DACA was re-signed
18 second time by Mr. Jeh Johnson. First one was signed by Janet
19 Napolitano. And I suspect --

20 THE COURT: There's already been a court that's probably
21 said that that's illegal.

22 DR. TAITZ: And what is --

23 THE COURT: But -- but what does that have to do with
24 this case?

25 DR. TAITZ: What it does, DACA, as I stated, provides --

1 creates a surge of illegal immigration. And with this
2 illegal -- with this surge of illegal immigration, there is a
3 surge of infectious diseases.

4 THE COURT: So let me --

5 DR. TAITZ: As a matter of fact --

6 THE COURT: If they're getting Medicaid and all the
7 federal benefits, aren't they getting medical treatment?

8 DR. TAITZ: Yes, and they are sent to offices. They are
9 sent to offices who work with Medicaid, and mine is one of those
10 offices. They're legally receiving healthcare on taxpayers'
11 expense.

12 THE COURT: Okay. But aren't you getting paid then?

13 DR. TAITZ: I'm getting paid. That's not the issue.
14 The issue is that I am being exposed to infectious diseases.

15 THE COURT: Well, the DACA eligible people have been
16 here five years.

17 DR. TAITZ: Actually, Your Honor, you -- maybe you
18 haven't read yet my first amended complaint and opposition to
19 motion to dismiss. What's happening with DACA, not only it is
20 given to ones who are here illegally, they -- actually the U.S.
21 Government is advertising on Spanish language TV, advertising
22 in -- advertising south of the border and telling people who are
23 currently now in Mexico that if they're stating that they were
24 here at some point few years ago before 2012, if they claim that
25 they were brought here as children before 2012 and they self

1 deported, went back to Mexico, then they can come back and
2 qualify under DACA.

3 So keep in mind that not only people who are already here
4 are receiving free --

5 THE COURT: I don't have any evidence of that.

6 DR. TAITZ: Your Honor, there is a lawsuit. I quoted
7 actually a lawsuit.

8 THE COURT: I know. But evidence is something I get
9 from the witness stand or it's an exhibit admitted at a hearing.
10 I don't have anything on that.

11 DR. TAITZ: Your Honor, I quoted a legal action. As a
12 matter of fact, this action was brought by ACLU against the
13 Department of -- I believe it was Department of --

14 THE COURT: I know the one you're talking about.

15 DR. TAITZ: And according to that lawsuit, the
16 government is now obligated to advertise in Mexico. So they're
17 currently advertising in Mexico and telling people who -- that
18 if they state that they've been here before, were brought here
19 as children and they self deported, they can come back.

20 THE COURT: But again, doctor, that doesn't have
21 anything to do with this. I mean, look. Here's my point. And
22 maybe you and I will disagree on it, and perhaps there are
23 things I agree with you privately on. And maybe Mr. Kisor or
24 Mr. Hu might agree with you privately with a lot of what you're
25 saying.

1 But just because you don't like -- and by -- and I don't
2 mean you, Dr. Taitz. I mean any public citizen. You don't like
3 a law that's passed or you don't like immigration policy or you
4 don't like the way that the Department of Justice settled a
5 lawsuit, that doesn't give you the right to sue the federal
6 government because you don't like it. I mean, if that were
7 true, everybody in the United States could be having a lawsuit
8 suing somebody over something.

9 DR. TAITZ: Well, Your Honor, it's not a matter of me
10 liking or not liking. What I am stating is that I have incurred
11 injury being infected while treating those individuals.

12 THE COURT: And I'm okay with that. That I'll listen to
13 because then you have been injured. And that's my point. You
14 haven't been injured by the fact that the U.S. Government is
15 advertising DACA in Mexico or El Salvador or wherever they're
16 doing it. I mean, do I think they should do it? Doesn't matter
17 what I think.

18 But if you're -- if you're suing over some way that you've
19 been injured, then you might have standing. And that's -- now,
20 Mr. Kisor may disagree that you've been injured or that you have
21 standing, that you have enough or that you've exhausted all your
22 remedies or whatever, but an individual does have a right to
23 bring a lawsuit if they're being hurt.

24 And so let's -- I guess what I'm trying to get you to focus
25 on is that, because I -- and I -- if you can convince me that

1 you somehow have standing to contest the Ebola thing, I'll look
2 at it. But I'm doubtful because I've looked at the case law on
3 this. And you and I may agree. I mean, we had the witness'
4 testimony saying wouldn't the United States be better off if we
5 had a travel ban. I mean, Dr. Escobedo said yes. It would be
6 safer.

7 DR. TAITZ: But, Your Honor, the injury. You're going
8 back to injury that occurred, which is true. But also for some
9 reason, you're refusing to consider the fact that threat of
10 injury is standing.

11 THE COURT: No, and I -- if you can show me some case
12 law that says that, I want to see it. That's what I want to
13 see. Because that's -- that's what's important to me.

14 Now, because, I mean, I can make your argument for you.
15 Because, I mean, I could sit there and say: Well, Judge, are
16 you saying that I have to get Ebola before I can sue?

17 That doesn't seem right. So I get a deadly disease now
18 instead of preventing it or you could have prevented it? I
19 mean, there's a lot of equity in that argument, but does the
20 case law support that?

21 DR. TAITZ: I have provided you with a case of forest
22 workers, and it's an immigration case. And I provided you with
23 citation. That in that case, the Supreme Court has found
24 standing for an organization that represented forest workers.
25 You have it in the pleadings stating that just because the

1 government is granting additional permits for work -- work
2 permits for people in the industry of -- forest workers
3 industry, that actually -- that organization has standing
4 because there is an imminent injury. The injury is economic.
5 The injury is demographic. The injury is ecologic. So this is
6 a case that shows that there is a potential injury, and a
7 standing was found when --

8 THE COURT: And how are you like that organization?

9 DR. TAITZ: So if you compare those two cases, one case
10 in forest workers, a potential injury that maybe their salaries
11 are going to go down. There will be a flood of cheap labor, and
12 their salaries will go down. That's their potential injury.

13 On the other hand, the fact that the government is
14 bringing -- bringing thousands of people who carry a deadly
15 disease like Ebola, the injury is much stronger here, much
16 stronger than --

17 THE COURT: What is the likelihood that it would happen?
18 Don't I have to -- don't I have to -- I mean, in the forestry
19 workers' case, didn't the Court -- and I don't remember the
20 phraseology exactly, but didn't they say that the injury had to
21 be imminent or certainly imminent? Or there was some standard
22 they used to say if a group is about to get run over by a truck
23 and it's a certainty it's going to happen, then the Court has
24 standing.

25 But there's no certainty with Ebola, No. 1, having the

1 effect you're suggesting, although I may or may not agree with
2 you. And there's certainly no suggestion that you would be
3 affected by it.

4 DR. TAITZ: The question is, is there a threat? If
5 there is -- if there is a reasonable threat of injury, if there
6 is a legally cognizable threat of injury. And in this case,
7 yes, because I live in a border state. I live in California.
8 And with Ebola raging in Africa, we know that as the number of
9 cases there goes up from 10,000 to one and a half million, we
10 will have more cases, people who are coming legally through the
11 ports of entry and people who are coming illegally through the
12 Mexican border.

13 And healthcare providers like myself, doctors who are
14 participating in programs working with immigrants, there is a
15 very high threat of injury. And as you stated, I should not
16 have to contract a deadly disease, Ebola, for the Court to grant
17 me standing. Just as I started this case by saying that in the
18 Soviet Union, they issued an order where the kids had to have
19 radiation for lice. Well, you know, children and parents should
20 have been able to go to court and say this order can affect us.
21 My child might not get lice -- might not have lice today, but
22 it's very likely, and my child should not get radiation
23 treatment.

24 THE COURT: Well, I think, for instance, a school
25 district or a -- an individual school that was suing the

1 government over the fact that -- and I don't know if this is
2 true or not. This is again something I read in the lay press,
3 that the children that came in on the surge do not have to have
4 the same inoculations that every other school children does,
5 child does, they might have standing because they would be
6 immediately -- here's what -- here's what -- let me quote you a
7 Fifth Circuit case.

8 "An injury, in fact, is an invasion of a legally protected
9 interest which is, "A," concrete and particularized." And
10 that's A. And B, "Actual or imminent, not conjectural or
11 hypothetical." And aren't you talking to me about hypothetical
12 injuries?

13 DR. TAITZ: Well --

14 THE COURT: Other than -- other than your respiratory
15 problem.

16 DR. TAITZ: Well, Your Honor, when you talk, for
17 example, with forest workers, in that particular case, each
18 worker did not have an imminent injury stating that tomorrow his
19 salary will go down. He did not have an imminent injury where
20 he knew that tomorrow he is going to be fired because there is a
21 surge of temporary visas and temporary workers.

22 However, the Court, looking at all of the factors, has found
23 and has granted standing to this organization saying that when
24 you have a flood of those temporary workers getting visas from
25 the government, yes, it is a threat to individuals who are

1 working in this industry.

2 This is very similar, Your Honor, and threat is much, much
3 more severe. This is much more dangerous because this is not a
4 threat that I might lose a job or my income is going to go down.

5 THE COURT: You don't have to convince me on that. I
6 mean, I'm convinced about how serious the threat -- how serious
7 the injury or the possible consequences are. I'm there. You've
8 got me there.

9 But what I -- what you don't have me or where I want you to
10 get me if you want me to rule in your favor is you're going to
11 have to show me how it's not a hypothetical injury. How it's --
12 that you are in danger of impending injury.

13 DR. TAITZ: Well, as I stated, Your Honor, all of those
14 individuals are currently getting healthcare through Medicaid.
15 I am a provider. Many of those people who come from Africa,
16 they immediately get their healthcare through the federal
17 government. They're being transported all over.

18 We're seeing now reduction in the surge only because of the
19 election, and I believe there was an understanding with the
20 government of Mexico to kind of lay down, be quiet for a while
21 until after the election. But we will see a surge again after
22 the election is over. That's one.

23 There are reports that actually there are 35 million green
24 cards and permanent visas that are being prepared which, as you
25 rightfully stated, will be a magnet for a big surge because

1 they're saying, well, 34 million are getting their green cards.
2 We'll be the next in line.

3 So with such as surge, just as it was with those workers in
4 Oregon in forest workers case, when the Court saw that there is
5 a surge of individuals, they felt that even though each forest
6 worker could not say with a hundred percent certainty tomorrow
7 my salary will go down, tomorrow I'm going to lose my job, they
8 couldn't. But when they took the totality of circumstances,
9 they -- the Court decided that when there is a flood of those
10 temporary workers, it is likely that there will be an injury.
11 There is a threat of injury; and therefore, standing was
12 granted.

13 Very similar here. There is a flood, on one hand, people
14 coming from Mexico. And it's not just Ebola, but it's also
15 tuberculosis, it's enterovirus and other infectious diseases.

16 THE COURT: Wait a minute. We don't know that. We have
17 no testimony that there's ever been an Ebola case come through
18 Mexico, have we?

19 DR. TAITZ: We did not have an Ebola case coming through
20 Mexico yet. However, according to their -- this intelligence
21 status of the Border Patrol, over 500 people from West Africa
22 have crossed the border, so it is only the matter of time.

23 Moreover, when we look in the long run that World Health
24 Organization is stating that by January, we have one and a half
25 million Ebola cases in West Africa, I just looked at the same

1 proportion. If now with 10,000 cases in Africa, we already have
2 four cases in America.

3 THE COURT: No, I understand your math, and I'm not --

4 DR. TAITZ: Yeah.

5 THE COURT: Again, you might have me convinced on that
6 fact, that sooner or later, one is bound to happen. But that
7 doesn't make it impending.

8 DR. TAITZ: Moreover --

9 THE COURT: Mr. Kisor -- let me let Mr. Kisor talk.
10 He's been patiently standing.

11 Go ahead, Mr. Kisor. What's the government's position?

12 MR. KISOR: Thank you, Your Honor.

13 Your Honor is correct. Ebola is not before you. This case
14 has nothing to do with Ebola. What Dr. Taitz is asking you to
15 do is to substitute your judgment for that of the executive
16 branch and to govern the border yourself.

17 The government has not done anything illegal here that she's
18 attempting to enjoin. Her arguments related to the don't ask,
19 don't tell are misplaced because that federal judge concluded
20 that the government was acting unconstitutionally, violating the
21 equal protection clause with respect to a specific statute or
22 policy.

23 But what I'd really like to talk for a few minutes about is
24 Dr. Taitz's standing or lack of standing to bring a personal
25 injury case here for her cough, because in order to demonstrate

1 standing, she would have to demonstrate the three basic prongs
2 of the standing test from *the Lujan versus Defenders of Wildlife*
3 in the Supreme Court case and the 5th Circuit progeny, which is
4 the injury that has to be actual and concrete causation and
5 redressability for those three things. And she can't
6 demonstrate any of them. Her own -- her own epidemiologist
7 expert testified that she had a symptom. Didn't have a disease.
8 She had a symptom.

9 Dr. Taitz just said a few minutes ago, and I wrote it down,
10 "I still don't know what caused it." She can't prove it was
11 caused by the government, by any of the defendants here today,
12 by an illegal alien. And even if she could show that it was
13 caused by an illegal alien, she hasn't shown that that illegal
14 alien didn't get it while in the United States; that it came
15 from a particular illegal alien; that she didn't get it from
16 some other place; that she didn't get it at a baseball game or
17 walking around or from --

18 THE COURT: Well, let me ask you this, Mr. Kisor. One
19 of the complaints Dr. Taitz has made is that you haven't given
20 her the information that would allow her to do that. Now, if
21 she gave you the names, "Here are the immigrant children that I
22 treated during this two-week period when I got sick," and you
23 gave her the medical records, that might give her the means to
24 prove just that.

25 MR. KISOR: It might give her some guess as to where she

1 got a cough.

2 THE COURT: It might give a doctor reasonable medical
3 probability.

4 MR. KISOR: Your Honor, the government disagrees with
5 that in the sense that even if she were to submit a list of her
6 patients to us from a two-week period and we were to say, okay,
7 and we were to identify one of those that perhaps came through
8 the southern border and ended up in her dental practice, there
9 wouldn't be any proof that the government -- that the government
10 caused the injury, for one. And there wouldn't be any proof at
11 all that that particular patient gave her the cough, although it
12 might be -- even if it were likely, what could the Court do
13 about it? She's asked for damages, but she hasn't filed a
14 federal tort claim with anybody. So the Court has to dismiss it
15 based on that.

16 But -- so she -- but you'd have to conclude that a cough was
17 a legally protected interest or freedom from cough was a legally
18 protected interest.

19 THE COURT: Isn't it?

20 MR. KISOR: No, Your Honor.

21 THE COURT: It's not free to be safe in your person?

22 MR. KISOR: It is -- the government is responsible for
23 safety but can't guarantee 100 percent of everybody's safety.
24 For example, not all 300 million people in the United States can
25 go sue the government when they get a cough because they think

1 they got it from someone who was here illegally, because that's
2 not the government's --

3 THE COURT: Okay. But the government knew somebody had
4 a disease. For instance, tuberculosis. And I'm not suggesting
5 this is the facts, but this is hypothetical. And I've got Joe
6 Blow in my facility with -- and I say, okay. Here's an easy way
7 to get rid of Joe Blow. I'll put him on a bus and send him to
8 Southern California. And then Mr. Blow shows up at Dr. Taitz's
9 office and exhales; and all of a sudden, she comes down with
10 tuberculosis. Isn't the government liable for that?

11 MR. KISOR: Well, that -- what I think you're describing
12 would be the tort of negligence, right? And if that's the case,
13 there is a statute, the Federal Tort Claims Act, that lays out
14 procedures by which someone who believes that the government has
15 committed a tortious act against them, be it negligence or false
16 imprisonment or any --

17 THE COURT: Couldn't she enjoin -- file suit enjoining
18 the government from sending sick people all around the nation
19 and possibly injuring other people like she was injured?

20 MR. KISOR: No, Your Honor, because that would be --

21 THE COURT: Why?

22 MR. KISOR: That would be standing for injunctive
23 relief, and you would have to go back to *Lyons versus City of*
24 *Los Angeles*. And the Supreme Court in that case ruled that
25 Mr. Lyons didn't have standing because he had been -- even when

1 he was -- proven that he had been choked by a Los Angeles police
2 officer, because he couldn't prove that he was going to be
3 choked again by a Los Angeles police officer. And it's exactly
4 the same here. Because even if Dr. Taitz could prove to a
5 medical certainty that she got a -- a cough from an illegal
6 alien, she'd also have to prove that she was likely to get
7 another cough from either the same or a different alien.

8 THE COURT: Wouldn't the fact that the government was
9 sending sick people around the nation be proof enough of that
10 instance?

11 MR. KISOR: It might not be, and I don't think that
12 there would be --

13 THE COURT: If the government had a practice -- and I'm
14 not suggesting it does at the moment. But if they had a
15 practice of, hey -- and it could be an innocent practice. I
16 mean, we just got too many kids. We don't know what to do with
17 them. We got to put them somewhere. Let's send them to
18 Southern California. And half of them are sick, half of them
19 are well, but we're not going to tell anybody about it. I'd
20 have a hard time with that.

21 MR. KISOR: Yes, Your Honor. And that certainly wasn't
22 what was happening. But the government, with respect to the
23 southern border surge, was enforcing the immigration law
24 consistent with the INA and the TVPRA and the Flores versus
25 settlement -- *Flores versus Reno* settlement.

1 THE COURT: Well, let me ask you about *Flores*. Is
2 *Flores* alive?

3 MR. KISOR: Yes, Your Honor, *Flores* is alive and --

4 THE COURT: Why?

5 MR. KISOR: -- has class counsel.

6 THE COURT: Why?

7 MR. KISOR: Because there was a --

8 THE COURT: I mean, I've read what you've given me on
9 *Flores*, and it's expired as far as I can tell.

10 MR. KISOR: It was -- it was renewed, and I believe we
11 filed that with the Court, the renewal of the settlement
12 agreement which was going to remain in force until the INS
13 implemented some regulations. The INS doesn't exist anymore,
14 and DHS hasn't implemented any regulations consistent with that,
15 so --

16 THE COURT: All right. Would you send me that? Because
17 if you have filed it, I've missed it.

18 MR. KISOR: Yes, Your Honor.

19 THE COURT: All right. So do you have to then abide by
20 *Flores*?

21 MR. KISOR: The position of the government is that we do
22 and that --

23 THE COURT: Okay. What about --

24 MR. KISOR: *Flores* currently has class counsel, Your
25 Honor, and we're in negotiations with the *Flores* class counsel.

1 But that's a case that's in the Central District of California
2 and not here, and their counsel --

3 THE COURT: No, I understand that. But if you're
4 abiding by all the aliens that you cut loose, you complied with
5 all the -- all the requirements of *Flores*? Because *Flores* has a
6 lot of things that you have to comply with. You have to go
7 interview the people they're going to be staying with. They've
8 got to assure they're going to show up for their hearings.

9 MR. KISOR: Yes. Yes, Your Honor. The *Flores*
10 settlement also says that it doesn't apply during a surge of
11 more than -- some low number of people, for example. I think it
12 was eight or 20 or something like that. And I believe that we
13 filed that as a attachment to our original --

14 THE COURT: Well, then, *Flores* never applies.

15 MR. KISOR: Well, when it was --

16 THE COURT: I mean, we have eight people crossing
17 Cameron County every hour probably.

18 MR. KISOR: It might not be eight or 20. It might be a
19 hundred, but it's not more than a couple hundred. But that
20 was -- that settlement was done in the '90s before there was --
21 while there was an INS before there was any of this.

22 THE COURT: I know, but you're just telling me you
23 renewed it. I mean, you can't have your cake and eat it too.
24 You're either bound by it or you're not bound by it.

25 MR. KISOR: The government remains bound by it, and it's

1 enforced by the Central District of California.

2 THE COURT: Well, but I'm not accepting -- I mean, you
3 can't have your cake and eat it too. Are you telling me I can't
4 look at *Flores* even though you agree you're bound by it?
5 Wouldn't that be a factor of likelihood of success if you're
6 violating *Flores*?

7 MR. KISOR: No. Now I'm dissecting your question in my
8 mind. So you'd have to set aside the ruling of a Central
9 District of California judge.

10 THE COURT: No. I'm saying you have -- I'm not setting
11 aside anything. I'm saying you have to follow it.

12 MR. KISOR: Right, and I think --

13 THE COURT: And you're not.

14 MR. KISOR: I think that enforcement of it is vested in
15 the Central District of California.

16 THE COURT: I know. But one of the factors Dr. Taitz
17 has to show is likelihood of success. And if you're violating a
18 federal court order, you don't think that enhances her
19 likelihood of success?

20 MR. KISOR: If we were violating a court order, that
21 would enhance --

22 THE COURT: A court order you just reupped.

23 MR. KISOR: Right, Your Honor. Fair point. However,
24 that still doesn't give Dr. Taitz standing. Because the remedy
25 that she's seeking here or one of the remedies, at least two of

1 her requests for relief are for damages. And in order for this
2 Court to award her money, she would have to exhaust the proper
3 administrative remedies and file a claim. And we've attached a
4 declaration saying she hasn't filed one, and she hasn't asserted
5 today that she has filed one.

6 THE COURT: For money damages.

7 MR. KISOR: For money damages.

8 So with respect for injunctive relief, she also fails on
9 prudential standing because she is asserting that there is a --
10 prospectively she and everybody else who's a healthcare provider
11 or comes into contact with an illegal alien may catch a disease
12 from an illegal alien or one that we've admitted into the
13 country. And that very well may be true. But that's a
14 political question vested in the policymaking branches of the
15 government of how the INA is to be enforced and how it's to be
16 interpreted and how it's in accordance with the regulations.
17 And there's abundant testimony about what -- the various checks
18 and screenings.

19 So what she's asking you to do is to quarantine all of the
20 illegal aliens or the legal aliens or anyone who presents
21 themselves at any border, any airport, and basically run the
22 immigration practices in this country yourself, Your Honor.

23 THE COURT: Doesn't *Flores* suggest you have to do that?

24 MR. KISOR: Does *Flores* suggest that we have to
25 screen --

1 THE COURT: If some minor is sick, that you have to give
2 them appropriate medical care?

3 MR. KISOR: Absolutely, Your Honor. And that's what
4 Dr. Escobedo testified to and the HHS witness that we had
5 last -- this past August testified to all of the screenings and
6 care and medical treatment.

7 Bear in mind that Dr. Taitz hasn't identified any disease or
8 diagnosis that she has. She has identified a symptom. She
9 doesn't know what caused it, and she doesn't know what it is.
10 She knows she has to use a C-pap machine at intervals, I
11 suppose, but she hasn't identified what the diagnosis is that
12 she thinks that she caught from somebody. And the government --
13 discovery against the government isn't going to shed any light
14 on that.

15 THE COURT: How can you say that?

16 MR. KISOR: Well, unless she's going to come for a --
17 some sort of a governmental medical examination to determine
18 what it is that she has. I mean, it's not tuberculosis. We
19 know that because she's been tested for that.

20 THE COURT: Well, let me ask you this. Let's assume
21 she's got --

22 DR. TAITZ: Enterovirus.

23 THE COURT: You know, pick a disease. Pleurisy.

24 DR. TAITZ: Well, I suspect that it's actually one of
25 the cases of enterovirus D68 because it, you know, was at the

1 beginning, and my doctor did not check on that.

2 THE COURT: Well, in that case, do not exhale for the
3 rest of this hearing.

4 But, no. If she's got pleurisy and she got it during a
5 period where she was treating illegal immigrant children sent to
6 her by the United States government and her pulmonologist says,
7 "Ooh, that kid has the same thing you got," why wouldn't that be
8 proof?

9 MR. KISOR: Well, first she would have to identify in a
10 complaint what it was that she had before she could trace it
11 back to somebody, to one of her patients or somebody else. So
12 the first step is on Dr. Taitz to identify what is her injury.
13 And she's identified a symptom and has apparently taken some
14 steps to consult with a doctor to rule out tuberculosis and
15 other things, but hasn't been diagnosed. Or the complaint
16 doesn't say that she was diagnosed with anything particular that
17 we could meaningfully try to trace back to anyone.

18 And now she can hire an epidemiologist to do that, and
19 apparently she has, and Dr. -- or Ms. Dolan testified that she
20 thought it came from an illegal alien, but she doesn't know what
21 it is, nor does she know anybody's immigration status, I would
22 assume, but she didn't testify one way or the other as to that.

23 DR. TAITZ: Might I interject, Your Honor? I have
24 provided the Court with a statement by the Inspector General of
25 Department of Homeland Security, his statement and his report.

1 And that was a report from July the 30th. It stated that upon
2 their inspection, they found multiple illegal alien children
3 that have upper respiratory tract diseases.

4 We know that those children were transported to California.
5 There were planeloads of them that were sent to California. I
6 work with those immigrant children; and in and around the same
7 time, I got upper -- repeated upper respiratory tract
8 infections.

9 THE COURT: That may all be true. But unless you have
10 qualified medical testimony that suggests that, then it's all
11 coincidental as far as the law is concerned. I mean, one of
12 us -- I'm not agreeing with everything Mr. Kisor is saying, but
13 one of the things he's saying is you got to -- one, you got to
14 plead the dots. And two, you then have to connect them with
15 proof.

16 MR. KISOR: Dr. Taitz also had the opportunity to
17 testify here today and could have submitted evidence in the form
18 of her own testimony and opted not to do that. I have several
19 pages of questions I would have asked her that would have sort
20 of clarified what she knows and what she doesn't know about
21 causation and damages and redressability, but -- so she fails on
22 the preliminary injunction test, partly for likelihood of
23 success on the merits, but partly for public interest prong of
24 the test. Because Dr. Taitz has a cough, she's asking Your
25 Honor to close the borders essentially.

1 DR. TAITZ: May I respond, Your Honor? I'm not asking
2 Your Honor to close the borders. What I'm asking is to prevent
3 reinfection, prevent the threat of injury and exposure to deadly
4 infectious diseases. I'm not asking to close the border, but I
5 do -- I am asking for the Court just to ask -- I mean, it is
6 shocking. In *Flores v Reno*, here there were illegal aliens that
7 shouldn't have been here. They were asking for -- for the Court
8 to provide some kind of resolution to help with their condition.
9 They were incarcerated, and they wanted better conditions. They
10 wanted other relatives to bail them out. They wanted books and
11 so forth.

12 Here I am a U.S. citizen. I'm a healthcare provider who is
13 working with those immigrants, and I already was infected with
14 upper respiratory disease during the surge. I am in imminent
15 threat of being infected again, be it enterovirus, be it
16 tuberculosis, be it Ebola. And I'm asking the Court to provide
17 some type of relief in order to lessen the threat of
18 reinfection.

19 And there are multiple things that could be done. One is
20 testing those individuals. As Chief Oaks stated, none of them
21 is getting any tests. Not for tuberculosis, not for Ebola.
22 They're not getting any blood tests. They just look. They look
23 healthy, go. That's not sufficient. That puts me at risk, and
24 it puts other health providers at risk.

25 Another thing is a quarantine. I'm not saying close the

1 borders. But if there are people who are coming from a region
2 like West Africa where there is a deadly disease, and I'm a
3 healthcare provider and I'm at the front line and I can catch
4 this deadly disease, then it is not unreasonable to ask
5 Mr. Cetron, right? Marty Cetron, who is signing those orders,
6 to provide this Court with -- with relief. Ms. Burwell,
7 Mr. Cetron, some type of relief. If the Court does not want to
8 issue a ban, then provide each and every individual who are
9 entering this country with the same order stating you have to be
10 let's say in voluntary quarantine for three weeks and not infect
11 Dr. Taitz and not infect Dr. Heinrich and not infect other
12 doctors.

13 This is not unreasonable. This is something that will give
14 relief to me, and it is in the best of the public, and it is in
15 the interest of public policy to provide such relief,
16 absolutely.

17 Imminent threat. Another thing that I have asked Your Honor
18 was allow me standing, allow class action, allow this case to
19 proceed as a class action because I provided you with
20 information from Dr. Heinrich, myself. There are multiple
21 individuals in my position, healthcare providers who are on the
22 front line, and --

23 THE COURT: Dr. Taitz, for this to be a class action,
24 you would have to be the class plaintiff, the lead plaintiff.
25 And in order for you to be a lead plaintiff, you have to have

1 standing.

2 DR. TAITZ: Well, I believe I do have standing, not only
3 in terms of injury that was already sustained, but also the
4 threat of injury.

5 I wanted to bring Your Honor another case for your
6 attention. And this was *Akins* case which I quoted in my
7 pleadings.

8 This is a case where an organization was granted standing to
9 question providing -- providing class exempt status to AIPAC.
10 And what is the impending injury there? They were granting --
11 they were granted standing, and the injury was is that they
12 wouldn't know what is the spending of AIPAC. It seems to be a
13 very minor injury in comparison to injury that -- impending
14 injury for myself.

15 I also quoted last time *Hawaii Orchid Growers Association*
16 *versus U.S. Department of Agriculture* where -- and that's -- the
17 case is from year 2000 436F.

18 This is a case where those orchid growers were stating that
19 the orchids that were brought from aboard, most of those orchids
20 contained some kind of a pest that might affect their plants.

21 Now, when you compare this with my case, what is the threat
22 to them? That they might lose some plants. They might lose
23 some orchids. And U.S. District Court Judge Royce C. Lamberth
24 has granted them standing, even though in comparison to me
25 catching a deadly disease Ebola, their injury, their potential

1 injury, a threat of injury that a few of their orchids are going
2 to die from some pest is minor.

3 So if standing was granted in a case like this where a
4 person can lose a couple of orchids, surely standing should be
5 granted in a case like mine, where I'm a healthcare provider
6 working with those immigrants, and I have a threat of catching a
7 deadly disease.

8 THE COURT: Mr. Kisor, you want to finish?

9 MR. KISOR: Yes, Your Honor. So I have here the *Flores*
10 *v Reno* extension agreement. May I pass it up? And I'll pass a
11 copy to Dr. Taitz.

12 THE COURT: And you may have already done that, and I
13 just haven't focused on it.

14 MR. KISOR: And, Your Honor, I would like to say for the
15 Court that the Justice Department is in discussions with class
16 counsel regarding either updating or modifying this. So
17 although this remains in force today, you know, I don't know
18 that it will be enforced a month from now if it was supplanted
19 by something else.

20 DR. TAITZ: In regards to -- if I might respond. In
21 regards to *Flores v Reno*, and I quoted this in my first amended
22 complaint and my opposition to a motion to dismiss. They have
23 specific -- specific agreements and qualifications where those
24 minor illegal alien children should not be released from federal
25 custody if they are a threat to themselves, if they're a threat

1 to others, and if they are not likely to return for their
2 deportation hearing.

3 And the government has violated all three. They are
4 releasing those minor children, even though we have here -- and
5 I provided Your Honor this report from Inspector General stating
6 that many of them have upper respiratory tract diseases, they
7 have tuberculosis, they have infectious diseases. They are
8 being released even though they are threat to themselves because
9 they have all those diseases. They are threat to individuals
10 like myself because we get infected. And also by changing the
11 rules, by releasing them without collecting any bail, they
12 de facto assured that they will not show up for deportation
13 hearings. And, in fact, 90 percent of them don't show up.

14 So the government is clearly violating this agreement, which
15 gives me standing. It gives me standing as a taxpayer under
16 *Flast v Cohen* because they're using their taxing and spending
17 power, and they're engaging in illegal activity because they're
18 violating an express agreement.

19 But moreover, in order -- if Your Honor wants to limit the
20 surge of illegal aliens and a surge of infectious diseases, all
21 Your Honor has to do is seek from the government to do the
22 publication that they were supposed to do ten years ago. They
23 was -- all they had to do ten years ago was publish the
24 agreement and publish what is the implementation. If that would
25 have been published, the case would have expired.

1 So if Your Honor does just that, and the judge who was --
2 who presided over that case passed away. He was 93-years-old.
3 He passed away, and a new judge was not assigned. So if Your
4 Honor just does only one thing, one injunctive relief in
5 ordering Mr. Kisor to do the publication. Takes five minutes to
6 do the publication. Just put it online. That would be the end
7 of it.

8 THE COURT: Do I have standing to order that?

9 DR. TAITZ: I believe you do, Your Honor, because this
10 agreement right now, it has no home. It has no judge. The
11 individuals who were incarcerated when this case was filed in
12 1990s, they're no longer minors. They're no longer
13 incarcerated, so you have no plaintiffs. You have no judge.
14 You have nothing. You have just an agreement that should have
15 expired and -- but -- and -- but the fact that the government
16 just didn't take five minutes to put online those provisions, it
17 is still active, and it is being used to traffic hundreds of
18 thousands of children all over the country.

19 If Your Honor does just that one thing, telling Mr. Kisor he
20 was supposed to do the publication, take five minutes, put it
21 online, that would help thousands of people.

22 THE COURT: All right. Mr. Kisor, were you done with
23 your argument?

24 MR. KISOR: Yes, Your Honor.

25 THE COURT: Let me ask you this. What happens if

1 President Obama grants amnesty?

2 MR. KISOR: Can you ask me a more narrow question?

3 THE COURT: Well, let's say he grants amnesty. That
4 makes -- doesn't that bring in -- doesn't that make these
5 individuals subject to Title 8, United States Code, Section 1182
6 which mandates all these health things?

7 MR. KISOR: So I'm not aware of any amnesty, so I'll
8 just say that I only know what I read in the newspapers which
9 is --

10 THE COURT: That's all I know too.

11 MR. KISOR: -- the same thing you've read, that they've
12 purchased a contract for various green cards. So I can't really
13 comment on the contours or qualifications of whatever the
14 amnesty should be.

15 But to respond to your hypothetical as best as I can about
16 would it make people that were inadmissible before admissible,
17 and then would they be subject to 1182? Without -- without
18 knowing, I would imagine so, unless there was a waiver under
19 Section B. But I think that once people are identified and
20 brought into the system, it would seem to me that then the
21 normal laws would govern unless there was some reason why they
22 didn't.

23 THE COURT: The normal laws would make sure they had the
24 proper medical care in order not to infect not only healthcare
25 providers, but other individuals.

1 MR. KISOR: Well, to the extent that an amnesty would
2 bring people out of the woodwork to get the vaccinations that
3 they needed, I mean, I suppose that would be a good thing.

4 DR. TAITZ: Your Honor, if I might suggest one other
5 thing. In *Flores v Reno*, there was an agreement. There was, I
6 believe, a mediated agreement.

7 Another way to resolve this issue and help the public to
8 avoid those diseases is maybe Your Honor to order mediation.
9 For example, there are a number of steps the defendants can take
10 in order to alleviate. For example, Ms. Burwell can issue an
11 order requiring all individuals coming here from West Africa to
12 do two Ebola tests in the span of 21 days. If they would be
13 willing to enter mediation and bring this provision, that would
14 help me, and that would help others.

15 They could hand each and every individual who are coming
16 from this Ebola region where there's quarantine order that
17 Mr. Escobedo was talking about. Would you be willing to do
18 that?

19 THE COURT: Here's what I'm going to do. I'm going to
20 decide what's in front of the Court, which is the temporary
21 injunction hearing, and I'm going to issue a written order on
22 this. The temporary restraining order I denied from the bench,
23 but I'm not going to deny or grant this from the bench. I'm
24 going to actually write an order.

25 And in doing so, I'm going to address the government's

1 standing arguments, because obviously if Dr. Taitz has no
2 standing at all, that would end the case. If she has standing
3 as to some or standing as -- not standing as to other claims,
4 that might change, but it would at least narrow the case. But
5 I'm going to do those together in one order.

6 MR. KISOR: Did you say you were going to deny the
7 preliminary injunction?

8 THE COURT: No, I didn't -- I said I was going to rule
9 on it. I haven't ruled on it.

10 MR. KISOR: Oh, I'm sorry. I misheard.

11 THE COURT: No. I said I'm not going to rule from the
12 bench.

13 MR. KISOR: Okay.

14 THE COURT: I denied the temporary restraining order six
15 weeks ago.

16 MR. KISOR: Yes, Your Honor. I understand.

17 THE COURT: But if -- if there's anything either side
18 wants me to look at, you need to get it to me ASAP because I'm
19 not -- I'm going to try to do this. I have something personally
20 going on right now that is going to divide my attention a little
21 bit, but I'm going to try to do this as fast as I can.

22 MR. KISOR: Yes, Your Honor.

23 DR. TAITZ: Your Honor, ASAP means one day, two days?
24 What exactly does ASAP mean? I'm sorry.

25 THE COURT: I would say in the next week.

1 MR. KISOR: The government -- the government doesn't
2 have anything else that it would like to file. Perhaps if
3 Dr. Taitz could have a week to file whatever she would like and
4 we could have a week to respond to it. As I stand here right
5 now, I don't think that I've missed any arguments.

6 We didn't address RICO or any of those kinds of things, but
7 I think those are adequately covered in the pleadings.

8 THE COURT: All right. Dr. Taitz, you can have until --
9 today is the 29th? You can have until the 7th to file anything
10 you want to file that you need me to look at. And, counsel, you
11 have until the 14th --

12 MR. KISOR: Yes, Your Honor.

13 THE COURT: -- to respond to it.

14 All right. Thank y'all.

15 DR. TAITZ: Thank you.

16 *(Court adjourned.)*

17 * * *

18 (End of requested transcript)

19 -oOo-

20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above matter.

22 Date: December 24, 2014

23

24

25

/s/_____
Signature of Court Reporter
Barbara Barnard