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4 COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,

5 joint with the

6 COMMITTEE ON HOMELAND SECURITY,

7 U.S. HOUSE OF REPRESENTATIVES,

8 WASHINGTON, D.C.

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13 INTERVIEW OF: GREGORY K. BOVINO

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Wednesday, July 12, 2023

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Washington, D.C.

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The interview in the above matter was held in H2-176, Ford Office Building,

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commencing at 9 a.m.

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2 Appearances:

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4 For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

5

6 JOHN AMERSON, STAFF ASSISTANT

7 DAN ASHWORTH, DEPUTY CHIEF COUNSEL FOR OVERSIGHT

8 BILLY GRANT, LAW CLERK

9 SLOAN MCDONAGH, COUNSEL

10 ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL

11 SARAH JACKSON, MINORITY COUNSEL

12 DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

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15 For the COMMITTEE ON HOMELAND SECURITY:

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17 CHRISTY KORTOKRAX, COUNSEL

18 ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND INVESTIGATIONS COUNSEL

19 BRANDON SCHALL, OVERSIGHT AND INVESTIGATIONS COUNSEL

20 SANG YI, DIRECTOR OF INVESTIGATIONS

21 WILLIAM TURTON, PROFESSIONAL STAFF MEMBER

22 LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

23 BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR, SUBCOMMITTEE ON BORDER

24 SECURITY AND ENFORCEMENT

25 ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

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2 For the DEPARTMENT OF HOMELAND SECURITY:

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4 STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

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7 For U.S. CUSTOMS AND BORDER PROTECTION:

8

9 SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

10 STEPHANIE MUFFETT, CBP, OFFICE OF CHIEF COUNSEL.

11

12

13 For MR. BOVINO:

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15 RACHEL MCCASLIN, ASSISTANT TO MR. BOVINO

16

17 ALSO PRESENT:

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19 KEN COLSON, CAPITOL POLICE

20 CHRIS SOUFFRANT, CAPITOL POLICE

1 Mr. Yi. Good morning, this is a transcribed interview of Gregory K. Bovino.
2 Chairman Comer and Chairman Green have requested this interview to obtain
3 information about border security from the chief patrol agent in charge of U.S. Border
4 Patrol operations in the El Centro Sector.

5 Will the witness please state your name for the record?

6 Mr. Bovino. Gregory Bovino.

7 Mr. Yi. On behalf of the Committee on Oversight and Accountability and the
8 Committee on Homeland Security, thank you for appearing today. The committee's
9 appreciate your willingness to appear voluntarily. My name is Sang Yi and I am the
10 director of investigations of Chairman Green's staff for the majority on the Committee on
11 Homeland Security.

12 I now ask that the majority and minority staff from the committee please identify
13 themselves.

14 Ms. O'Connor. Elizabeth O'Connor senior counsel, Oversight and Investigation,
15 Homeland Security, Majority.

16 Mr. Rust. James Rust, counsel for Chairman Comer on the Oversight Committee.

17 Mr. McDonagh. Sloan McDonagh, counsel for Chairman Comer on the Oversight
18 Committee.

19 Mr. Yim. Daniel Yim, House Oversight Democrats.

20 Mr. Bovino. What was your name again?

21 Mr. Yim. Daniel Yim.

22 Mr. Bovino. Yim?

23 Mr. Yim. That's right.

24 Ms. Jackson. Sarah Jackson, House Oversight, Democrats.

25 Mr. Amerson. John Amerson, legal intern for Oversight Committee, Democrats.

1 Ms. Dennett. Lydia Dennett, House Homeland, Democrats.

2 Ms. Marticoarena. Briana Marticoarena, House Homeland, Democrats.

3 Mr. Ewencyk. Arthur Ewencyk, House Oversight, Democrats.

4 Mr. Turton. William Turton, professional staff member, House Republicans,
5 Homeland Committee.

6 Ms. Kortokrax. Christie Kortokrax, counsel for Homeland Security, majority

7 Mr. Schall. Brandon Schall, counsel, House Homeland Security, majority.

8 Mr. Arthur. Zen Arthur, research assistant, homeland security, majority.

9 Mr. Grant. Billy Grant, law clerk, House Oversight Committee, majority.

10 Mr. Bovino. Good pin you have got there on.

11 Mr. Yi. I also recognize that the witness is accompanied by Department of
12 Homeland officials in addition to the agency counsels at the table. Will those additional
13 agency officials please state their names and titles for the record.

14 Ms. Klisarska. Samantha Klisarska, congressional liaison. Office of
15 Congressional Affairs, CBP.

16 Ms. McCaslin. Rachel McCaslin, adjutant to Chief Bovino.

17 Mr. Yi. Before we begin, I will outline the procedure and guidelines that we will
18 follow in this interview. Questioning will proceed in rounds. The majority members or
19 staff will ask questions first for up to 1 hour and then the minority members or staff will
20 have an opportunity to ask questions for up to 1 hour if they choose. We will go back
21 and forth for six total 1-hour rounds or until there are no more questions. We will take
22 a short break at the end of each hour. If you would like to take a break at any other
23 time, please let us know. If, however, there is a pending question, I ask that you finish
24 answering the question before we stop to take a break. We will also take a break for
25 lunch after the third hour of questions.

1 There is an official reporter taking down everything we say to make a written
2 record, so we ask that you give verbal responses to all questions. The reporter cannot
3 record nonverbal answers such as shaking your head, so it is important you answer each
4 question with an audible, verbal answer. Do you understand?

5 Mr. Bovino. Yes.

6 Mr. Yi. To ensure the court reporter can take a clear record, we will do our best
7 to limit the number of people directing questions to you during any given hour to just
8 those members of staff whose turn it is. To the extent possible, it is also important that
9 we do not talk over one another or interrupt each other. Please wait until each
10 question is finished before you begin to answer, and we will wait until you finish your
11 response before asking you the next question. That goes for everybody present in
12 today's interview.

13 Furthermore, the majority members or staff will not ask questions or otherwise
14 interrupt minority's round of questioning and vice versa. I understand that the witness
15 is accompanied with agency counsels today. Would counsels please state your names
16 for the record?

17 Mr. Jonas. Steve Jonas, DHS, Office of General Counsel.

18 Ms. Muffett. Stephanie Muffett, CBP, Office of Chief Counsel.

19 Mr. Yi. I also want to confirm that you understand that agency counsel
20 represents the agency and not you personally. Do you understand?

21 Mr. Bovino. Yes.

22 Mr. Yi. Are you choosing to have agency counsel in the room today.

23 Mr. Bovino. Yes.

24 Mr. Yi. You are encouraged to freely consult with counsel if you choose. If you
25 need to confer with counsel during the interview, please let us know and we will go off

1 the record and stop the clock until you are prepared to continue.

2 During the interview we ask that you please answer any questions in the most
3 complete and truthful manner possible. If you have any questions or if you do not
4 understand a question, please let us know. Do you understand?

5 Mr. Bovino. Yes.

6 Mr. Yi. If you do not know the answer to a question or do not remember, it is
7 best not to guess. If there are things you do not know or cannot remember, please say
8 so and inform us who, to the best of your knowledge, might be able to provide a more
9 complete answer to the question. If I ask you about conversations or events in the past
10 and you are unable to recall the exact words or details, you should testify to the
11 substance of those conversations or events to the best of your recollection. If you recall
12 only a part of conversation or event you should give us the best recollection of those
13 events or conversations that you do recall. Did you understand?

14 Mr. Bovino. Yes.

15 Mr. Yi. Although you're here voluntarily and we will not swear you in, you are
16 required by law to answer questions from Congress truthfully, including questions posed
17 by congressional Members or staff during this interview. Witnesses who knowingly
18 provide false testimony can be subject to criminal prosecution or perjury from making
19 false statements. Do you understand this obligation to tell the truth today?

20 Mr. Bovino. Yes.

21 Mr. Yi. Is there any reason you are unable to provide truthful answers to today's
22 interview?

23 Mr. Bovino. No.

24 Mr. Yi. Before we begin the interview, I would like to explain briefly why we're
25 here today. As mentioned, the House Committee on Homeland Security and House

1 Committee on Oversight and Accountability are seeking to obtain information regarding
2 border security from the chief patrol agents in charge of U.S. Border Patrol operations in
3 the southwest border sectors.

4 We are interviewing you today to learn more about matters related to border
5 enforcement and your roles, responsibilities, experience and observations. We are not
6 investigating you personally for any personal wrongdoing. This is a fact-finding
7 endeavor. Are you ready to begin?

8 Mr. Bovino. Yes.

9 EXAMINATION

10 BY MR. YI:

11 Q Thank you. The clock now reads 9:06 a.m. We will now begin the first
12 round of questions.

13 Morning, Chief. Thank you for being here. We are going to start with some
14 very basic questions related to your voluntary participation today. Have you ever
15 participated in a congressional transcribed interview in your past?

16 A No.

17 Q Have you ever been a deponent in a congressional deposition?

18 A No.

19 Q Have you ever testified in any deposition for legal cases?

20 A Yes.

21 Q Can you explain the approximate dates or when they took place and the
22 nature of the testimony related to those cases?

23 A Those cases would have -- the majority of those cases were within the last
24 5 years, I can't remember the exact dates. Many of those cases were EEO-related cases,
25 that means equal employment opportunity.

1 Q Were there any cases outside of EEO cases that you recall being deposed
2 for?

3 A Yes. There were cases with Office of Professional Responsibility in OIG as
4 well over the past 27 years.

5 Q What was the nature of the OIG interview?

6 A I can't remember exactly the one 27 years ago, it was a use of force incident
7 that took place many years ago.

8 Q Most of all of these have been personnel related?

9 A I can't remember off the top of my head if they are all personnel related.

10 Q Okay. How did you prepare for today's interview?

11 A Well, I think life's a preparation, simply living is preparation for this
12 interview. I thought about it. I had some thoughts going on in the head. Did a little
13 research on my own from some of my past research there in Border Patrol, and that type
14 of thing.

15 Q What type of documents did you review or research?

16 A Some emails, a research paper I had written several years back. That is
17 really all I remember.

18 Q When did you author that research paper?

19 A That was approximately 2012.

20 Q What was the topic of that research paper?

21 A That topic was "Illegal Aliens and Destruction of Environmental Resources in
22 the United States."

23 Q Can you expand on that a little bit more, given your expertise in that field?

24 A Back in approximately 2010, I was the patrol agent in charge of the Blythe,
25 California Border Patrol station. And a local game warden stopped by the station and

1 asked us for help with a poaching case that had to do with something called the desert
2 peninsula bighorn sheep which are endangered sheep that inhabit some of the coastal
3 ranges there in California and other places out West, so we did provide some assistance.
4 And in doing so, realized that there was a component of undocumented foreign nationals,
5 as well as documented foreign nationals that were involved in that poaching case. And
6 in researching that, that phenomenon a problem appeared to be nationwide so I did
7 research on that research paper on that particular phenomenon as it applied across the
8 United States.

9 Q Have you done other research related to illegal immigration and impacts on
10 the environment in the United States?

11 A That was the one that I did.

12 Q That was the one?

13 A Yes.

14 Q All right. You said you also reviewed emails. What were the nature of
15 those email that you were reviewing?

16 A It was -- I can't remember each individual email, but I believe I was actually
17 looking for my research paper so I could bring that up, so it was in an email.

18 Q Okay. Were there any other actions you took to prepare for today's
19 interview, perhaps at the Department?

20 A You know, that would be protected attorney-client privilege, so I won't
21 answer that one.

22 Mr. Jonas. We met, and attorneys were present.

23 Mr. Yi. Okay.

24 BY MR. YI:

25 Q Who else was involved in the preparation?

1 A Just me.

2 Q Were you told any topics that you should not be discussing during this
3 interview?

4 A Can you state that -- can you ask that again?

5 Q Were there any topics that you were not authorized to talk about --

6 A No.

7 Q -- in this interview?

8 Were there certain phrases or words that you were advised to not use in this
9 interview?

10 Mr. Jonas. You can answer that question yes or no.

11 Mr. Bovino. State that again, sorry.

12 BY MR. YI:

13 Q Were there any certain words or phrases you were advised not to use --

14 A No.

15 Q -- during this interview?

16 Have you spoken to any other chief patrol agents about this interview?

17 A No.

18 Q Have you spoken to any of your other colleagues about this interview?

19 A No.

20 Q In moving on to your background that we just talked about it a little bit, but
21 can you describe your educational history?

22 A Life's an education so are you talking about life or formal education or what,
23 because life's an education, probably the best education I've ever had.

24 Q We will start with your formal academic.

25 A Academic education, all right. The good stuff. I did my undergraduate

1 work at Western Carolina University where I received a Bachelors of Science in natural
2 resources management in forestry. That was followed by an MPA at Appalachian State
3 University, with public administration in justice. And then another master's degree from
4 National War College and National Security Strategy.

5 Q And for the record, can you please state your current position with the U.S.
6 Border Patrol?

7 A My current position is chief patrol agent at the El Centro Sector. Also
8 known as the premier sector in the Border Patrol.

9 Mr. Jonas. I knew that was going to come out at least once.

10 Mr. Bovino. Yeah, well, absolutely. You said to say the truth, right?

11 Mr. Yi. He prepared for that.

12 BY MR. YI:

13 Q When did you start with the Border Patrol?

14 A November of 1996.

15 Q Did you have any prior law enforcement experience?

16 A Yes.

17 Q What was that experience?

18 A I was a police officer in Boone, North Carolina.

19 Q For how long did you serve as a police officer?

20 A Approximately 3 years.

21 Q When did you first seek to become a Border Patrol agent?

22 A I'm sorry. Say that again.

23 Q Why did you first seek to become a Border Patrol agent?

24 A I wanted to take a greater role in national security, and a greater role in
25 things that affected ma-and-pa America. And I felt the Border Patrol back at that time

1 back in '96 as it is now was front and center with that effort more than any other agency
2 or -- or career. And I had always heard it was the most premier, primary and
3 professional law enforcement agency in existence, so that is why I joined.

4 Q And we thank you for your service.

5 A Thank you.

6 Q So before your time at chief as El Centro, were you the chief in New Orleans
7 Sector as well?

8 A Yes.

9 Q And how did your experience in New Orleans differ from the one you have
10 now from El Centro?

11 A I was -- not a lot. I was chief patrol agent there just like in El Centro. I
12 was the chief executive officer responsible for all administrative and operational functions
13 in that sector, just as El Centro.

14 Q Can you describe a little bit about the differences in migration patterns, or
15 how enforcement issues are different or similar?

16 A Sure. In the New Orleans Sector, many of the immigration cases in the
17 New Orleans Sector did originate on the southwest border, both east and west, whether
18 it was arms trafficking back to Mexico or illegal migration or narcotics going East. So
19 that I-10, I-20, I-30 and I-40 corridor in about a seven-State area we hit that pretty hard
20 using technologies such as license plate readers and other forms of technology.

21 And that was pretty similar to what we do along the southwest border. It just
22 wasn't along a land border, it was along the coastal border. So that being the Gulf Coast
23 so also had that coastal threat that we needed -- that we had to keep an eye on as well.

24 Q And prior to New Orleans, what was your position with the Border Patrol?

25 A I was the deputy chief of staff at Border Patrol headquarters.

1 Q Is that position different than the associate chief of policy?

2 A It is.

3 Q Okay. So did the position of associate chief of policy succeed -- precede
4 your time as deputy chief of staff?

5 A It preceded it.

6 Q And what were your roles and responsibilities as associate chief of policy?

7 A As the associate chief of policy, I -- it was my responsibility to keep the chief
8 patrol agents -- I am sorry, the chief of Border Patrol, and his or her staff up to date on
9 policies, upcoming policies and any issues that might relate to policy.

10 Q And what years did you serve in that position?

11 A Approximately 2016.

12 Q So for 1 year?

13 A Approximately.

14 Q During that time in that position, what was your daily interaction with senior
15 leadership to include the commissioner or the chief?

16 A Are you talking about during that 2016?

17 Q Yes.

18 A Or are you talking about as the deputy chief of staff? Which time are you
19 talking about?

20 Q That time in 2016.

21 A With senior leaders chief of the Border Patrol daily. Commissioner could
22 be anywhere from daily to weekly.

23 Q What about S-1?

24 A I can't remember specifically, but there were occasions that I briefed S-1
25 and -- I'm sorry, had contact with S-1.

1 Q Going back to your current position as the chief of El Centro, did you apply
2 for this position?

3 A No.

4 Q So were you interviewed at all?

5 A No.

6 Q How were you selected for this position?

7 A I was selected based on my completion of the D -- of the DHS, SES candidate
8 development program, so I was selected noncompetitively for the position of SES in El
9 Centro.

10 Q And can you outline your roles and responsibilities as the chief?

11 A As the chief of El Centro, I am chief executive officer responsible for all
12 administrative and operational functions in the El Centro Sector.

13 Q How many people to you supervise?

14 A Approximately 1,100.

15 Q And how many of those are agents versus support personnel?

16 A Approximately 949 Border Patrol agents and the rest support personnel.

17 Q Were you briefed when you first took over as the chief of El Centro?

18 A Briefed on -- could you be a little more specific?

19 Q Briefed on the sector by anybody?

20 A No.

21 Q So you went from New Orleans into El Centro and just took over from day 1,
22 there was no -- nothing from headquarters or from anybody already at the sector to get
23 you up to speed in what is happening in the sector?

24 A No, no. I already spent 8 years in El Centro, so I had somewhat of a
25 working knowledge of El Centro, so no.

1 Q Okay. In your working knowledge what were the particular challenges you
2 would say, what were the top challenges would you say are in El Centro Sector that are
3 unique there?

4 A I think the terrain and geography and climate in the El Centro Sector
5 presents a unique challenge to our Border Patrol agents as they seek to prevent bad
6 people and bad things from coming across the border.

7 Q How often do you communicate with -- well, how often did you
8 communicate with Chief Ortiz and now how often do you communicate with Chief
9 Owens?

10 A I can't remember the frequency with which I communicated with Chief Ortiz.
11 I communicated with him, it depends on what was happening at the time. If there was a
12 particular issue, I might communicate with him often, if there wasn't, I wouldn't. So it is
13 all over the place. I couldn't give you a frequency there.

14 Q Do you have any regular communications with Chief Owens or is this the
15 same scenario?

16 A Chief Owens just took over as the chief of the Border Patrol, so I believe it is
17 too early to document a frequency or anything like that. I think his second day was
18 yesterday.

19 Q And how about David B. Miller?

20 A Yes, I have contact with Chief B. Miller.

21 Q How often?

22 A That could -- that could range from the same as what I said about Chief Ortiz.
23 It depends on what the situation or issue at hand is. It could be daily, but it could be
24 weekly.

25 Q On the times where it would be daily, can you give us an example what types

1 of -- what the nature of those communications would be and then also what -- the types
2 of communications that occur weekly, what the nature of those conversations would be?

3 A Yeah, well, I can't detail every conversation, but just as an example, if one of
4 our agents did a fantastic job in apprehending a bad person or a bad thing, which they do
5 every often in the El Centro Sector, hence the premier sector in the Border Patrol, often I
6 would communicate that to Chief B. Miller so that he or a member of headquarter's staff
7 could personally call that agent and perhaps congratulate them, part of my employer
8 resilience/motivational strategy there in the El Centro Sector, that is one example. And
9 weekly, we have got weekly calls with headquarters, weekly video teleconferencing with
10 headquarters, I believe that is the correct term, Teams meeting.

11 Q What is usually on the agenda for those weekly video teleconferences?

12 A It could be anything. There is -- it is a smorgasbord of things.

13 Q What are some things in the smorgasbord?

14 A Operations, administrative functions, many different things.

15 Q Would something like the expiration of Title 42 have been a topic on the
16 agenda of -- in that smorgasbord of agenda?

17 A It could, it could have been.

18 Q Do you recall?

19 A I don't.

20 Q Have you ever had any communications with Secretary Mayorkas?

21 A Yes.

22 Q Approximately when was that or how many times I should ask?

23 A I don't know how many times. I believe my first communication with
24 Mayorkas was as the deputy chief of staff back in about 2017 when he was not the
25 Secretary, he was the deputy secretary.

1 Q Have you had any communication with him as Secretary?

2 A Can you define what you mean by communications? There is -- what does
3 that mean, like, call him personally at his house, or what does that mean?

4 Q Do you call him personally at his house?

5 A Not at the moment.

6 Q Have you briefed Secretary Mayorkas?

7 A No.

8 Q Have you had to send up any reports to Secretary Mayorkas?

9 A No.

10 Q Has Secretary Mayorkas ever reached out to your sector?

11 A Not to my knowledge.

12 BY MS. O'CONNOR:

13 Q Chief, you said something interesting in your college questions, you said that
14 you joined Border Patrol because you felt you could have the biggest impact on
15 Ma-and-Pa America. Why do you think that is, that Border Patrol does that?

16 A I believe the Border Patrol has an effect on all facets of the country, and that
17 is what I mean when I say Ma-and-Pa America, because what happens at the border
18 doesn't stay at the border, it never has, whether it was Nazi saboteurism in World War I,
19 or illegal aliens that kill Americans. That happens many times each year. I think that
20 what happens at the border never stays at the border and it never has.

21 So even back in '96 it was pretty evident that that was the case. It has been the
22 case since May 20, 1924 when the Border Patrol was formalized and I wanted to be part
23 of that, stopping these depredations at the border before they get further into the
24 interior to harm an American citizen or the taxpayer.

25 Q Does the current state of affairs at the southwest border then concern you

1 based on that viewpoint?

2 A In my 27 years, I have always been concerned about the state of affairs on
3 the border.

4 Q What about the sheer number of people that are now appearing at the
5 border and being released into the United States?

6 A Again, over the past 27 years the sheer numbers of illegal aliens that come
7 across the border into the United States, released or not, would concern me.

8 Q There has been a significant increase in the last 3 years in the number itself,
9 right? Would you agree with that?

10 A I think that over the past 27 years, there has been a vast increase in the
11 amount of undocumented peoples that reside in this country, not just the past 3 years
12 but the past 27 years which is my scope of experience.

13 Q Sure. But there is a difference between the number of undocumented
14 people living in the United States versus the number of people that are coming to the
15 southwest border. I am asking based on numbers over the last 3 years would you agree
16 that the number of illegal aliens crossing the southwest border has increased from prior
17 years?

18 A I don't agree.

19 Q Why not?

20 A Because I don't agree with that statement. It is not something I agree with.

21 Q Why?

22 A Because I said that over the past 27 years, as a whole, I find that those
23 migration patterns have increased the amount of undocumented peoples in this country.
24 So it's not just 3 years, it is the past 27 that I have seen.

25 Q Okay. Let's move on to the El Centro Sector generally. What makes -- you

1 mentioned before that you thought that the terrain in El Centro makes it more difficult
2 than other sectors. Can you explain what it is unique about the terrain in El Centro?

3 A Well, the El Centro Sector has the lowest elevation of any sector in the
4 Border Patrol. Approximately 65 feet below sea level. And when you get below sea
5 level, that sends temperatures higher than something that is above sea level. And
6 because of that, it presents a unique challenge in terms of simply patrolling the border
7 during those hot summer months. And then most especially, with the hundreds of
8 thousands rescues we do in the El Centro Sector every year of undocumented peoples
9 that come across the border and can't handle the heat. It is a very pervasive problem
10 there in the El Centro Sector and lives are lost because of it.

11 Q Most of the rescue heat related?

12 A It runs the gamut. There is rescues in the water. We have the canals and
13 then many rescues for the heat.

14 Q How many miles of Mexican border is in El Centro?

15 A 70.

16 Q How many checkpoints does El Centro have?

17 A El Centro has two permanent traffic checkpoints, one on Highway 86, and
18 then one on Highway 111. 86 is on the west side of Salton Sea, 111 is on the east side of
19 Salton Sea and we also operate a tactical checkpoint on Highway S2 approximately
20 30 miles west of El Centro proper.

21 Q What is the Salton Sea?

22 A The Salton Sea is a body of water located between Indio and El Centro.

23 Q How many stations are there in El Centro?

24 A Three stations.

25 Q How many detention space does El Centro have?

1 A Are you asking me the number of cells or can you qualify what that means?

2 Q What is the holding capacity in El Centro?

3 A Our CPC, which is a term for centralized processing center, our optimal
4 capacity would be around 200 in that CPC.

5 Q So there is just one CPC that in which you hold -- bodies?

6 A Yes, yes.

7 Q Okay. So you arrived in El Centro in 2020. What month was it?

8 A It was approximately April.

9 Q Are you familiar with the data that Customs and Border Protection published
10 on their website regarding encounters?

11 A No.

12 Q I am going to show you what I am marking as Majority 1.

13 [Majority Exhibit No. 1

14 Was marked for identification.]

15 BY MS. O'CONNOR:

16 Q This is a printout of the public data for encounters in El Centro Sector. I can
17 draw your attention to the row labeled 2021, that is fiscal year 2021. In March of 2021
18 El Centro saw the largest number of encounters at least since 2020. Do you know what
19 caused that large jump from February '21 to March 2021?

20 A No.

21 Q Over the next couple of months, the encounters remained at a sustained
22 high. Do you know why there was that surge of encounters over the next couple of
23 months in 2021?

24 A No.

25 Q Did that surge have an impact on operations in El Centro?

1 A Yes.

2 Q In what way?

3 A Any time there is a surge of individuals processing care, feeding and care of
4 those individuals takes Border Patrol agents away from their primary job of preventing
5 bad people and bad things from coming across the border.

6 Q And is that what you experienced in 2021, that agents were taken away from
7 the border to do processing?

8 A Yes.

9 Q Does El Centro have any processing coordinators now?

10 A Yes.

11 Q How many?

12 A I can't remember the exact number.

13 Q Tens or hundreds?

14 A It is more than 20.

15 Q Has that been helpful in processing the number of encounters to your
16 agents?

17 A Yes.

18 Q Has it helped in your operations?

19 A Yes.

20 Q In 2021, based on the publicly available CBP data, the single adults and
21 unaccompanied children made up the majority of encounters. But 2022 and 2023, it is
22 now almost all family units. Do you have any idea why there was that shift?

23 A No.

24 Q In your training, knowledge, and experience, has there ever been a situation
25 where you've seen a shift in demographic like that?

1 A I have seen a shifts in demographics for 27 years.

2 Q What kinds of things cause those shifts?

3 A I -- I don't know. I don't know what would cause all those shifts. I don't
4 know.

5 Q In 25 years you wouldn't know what would cause family units maybe to cross
6 in a certain sector as opposed to single adults?

7 A No.

8 Q From fiscal year '21 to fiscal year '22, there was an over 16,000 percent
9 increase in Peruvians in the El Centro Sector, from 47 in '21 to 4,525 in '22. And then it
10 doubled in '23 to over 8,000. Do you have it any idea why there'd be more Peruvians
11 crossing over in the El Centro Sector like that?

12 A I don't know.

13 Q Do you have an intel unit in your sector?

14 A Yes.

15 Q Have they provided any sort of insight about the demographic shifts in El
16 Centro over the last 3 years?

17 A Can you repeat that?

18 Q Has intel provided you any sort of insight as to why the demographic shift
19 over the last 3 years?

20 A No.

21 Q So nobody studies demographics in El Centro?

22 A I didn't say that.

23 Q Who studies demographics in El Centro?

24 A I don't know.

25 Q You are the chief of El Centro, correct?

1 A Yes.

2 Mr. Yi. Who would study the demographics in the El Centro Sector?

3 Mr. Bovino. I believe headquarters has a unit that would look into those
4 demographics.

5 Mr. Yi. What is the name of that unit?

6 Mr. Bovino. I don't know.

7 BY MS. O'CONNOR:

8 Q You worked in headquarters, correct?

9 A Yes.

10 Q The small relative number, the number of Chinese nationals encountered in
11 El Centro has increased in fiscal year '23 to year to date over 1,000 percent since fiscal
12 '22. Are you aware of that increase?

13 A Yes.

14 Q Do you have any ideas as to why that increase might be?

15 A No.

16 Q Are the Chinese nationals largely giving themselves up, or evading arrest?

17 A Giving up.

18 Q Why would someone give up as opposed to the arrest?

19 A Give-ups in the El Centro Sector are primarily focused on -- the reason for
20 that is primarily asylum seekers or someone seeking to give up for credible fear for
21 whatever reason.

22 Q Does the large increase in Chinese nationals in El Centro cause you any
23 concern for national security?

24 A Yes.

25 Q In what way?

1 A Anyone that comes across the border, whether it is a national from Red
2 China or any other results does cause me concern, not just Chinese, but anyone that
3 comes across the border would cause me concern.

4 Q Are there any particular nationalities that cause Border Patrol more concern
5 than others as far as national --

6 A I wouldn't speak for the Border Patrol.

7 Q Is that --

8 A No, it is an all-threats approach. At El Centro, we look at all threats. And
9 we are concerned about all threats that come across the border in El Centro.

10 Q Does El Centro consider factors within countries of origin or any other sorts
11 of factors to inform their decisionmaking based on demographics?

12 A What we look at in the El Centro Sector is how to stop those incursions and
13 migrations by Peruvians or Chinese or anyone else. So that is what we are more
14 concerned about in the El Centro Sector, rather than looking at what you said,
15 demographics or whatever it was you just said.

16 Q Isn't part of the ability to stop someone understanding why they are
17 coming?

18 A I think that consequences, providing a consequence is probably the primary
19 way to stop someone from coming.

20 Q When you say consequences what do you mean?

21 A Providing a consequence to someone that illegally enters the country,
22 providing a consequence of some type has a great effect on migration routes and those
23 who seek to come across the border.

24 Q What type of consequences?

25 A It could be a myriad of consequences that would start with criminal

1 prosecutions would be our primary consequence if we can gain a criminal prosecution
2 against an undocumented person that comes across the border, that would be primary.
3 Repatriation flights, in-custody determinations by ICE, CVB, Central Violations Bureau
4 ticket writing, which just started in the El Centro Sector, a myriad of consequences that
5 we seek to provide to those folks coming across the border.

6 Q Let's break that down a little bit. Are there many criminal prosecutions of
7 illegal aliens in El Centro?

8 A Yes.

9 Q What percentage of -- let's just take fiscal year '23 here today, approximately
10 what percentage of illegal aliens encounters have been coming across --

11 A I don't have that percentage.

12 Q Do you have an estimate?

13 A No.

14 Q You don't know how many cases the U.S. has accepted for prosecutions?

15 A Yes.

16 Q Does the U.S. Attorney -- which U.S. Attorney do you guys work with?

17 A The Randy Grossman Southern District.

18 Q Southern District?

19 A As well as some in Central District as well, but mostly Southern District.

20 Q Did the U.S. Attorney's Office that you worked with accept first-time illegal
21 entrants for prosecution?

22 A That depends, it is a case-by-case basis. It just depends on the facts of the
23 case.

24 Q What types of facts do they consider?

25 A Whether the individual -- where there was an aggravating circumstance of

1 some type in relation to where that individual crossed the border, that could be one.

2 Q What would be an aggravating circumstance?

3 A Perhaps assaulted someone, assaulted another agent, trafficked in children,
4 something like that, just many different scenarios that that could happen.

5 Q And so what would be some other factors that they consider?

6 A Those are the ones that I came up with. I can't think of any more off the
7 top of my head.

8 Q You mentioned repatriation flights, is Border Patrol -- does Border Patrol
9 handle repatriation flights or is it ICE?

10 A ICE.

11 Q When you say that that is a consequence, is there -- has there been any sort
12 of shift in the ability to repatriate people?

13 A I don't know what you mean.

14 Q So are there times when you are able to repatriate people more than other
15 times? Are countries accepting flights more than others, are we sending flights at some
16 times more than others?

17 A I know that flights change, flight patterns change, the dockets change. But I
18 couldn't tell you what country is doing that and why that changes.

19 Q So would more repatriation flights than in your opinion be helpful in
20 implementing consequences?

21 A Yes.

22 Q When you mentioned the CVB, is that what you said?

23 A Yes.

24 Q What is that?

25 A CVB is something called the Central Violations Bureau. It is -- it gives

1 Federal officers the ability to write a ticket, sort of like an infraction, similar to the way
2 maybe the National Park Service and the U.S. Fish and Wildlife Service might write a ticket
3 on a national park for resource destruction or speeding some type of misdemeanor
4 criminal act. So the Border Patrol, with the exception for the Detroit sector, was not
5 involved in CVB, but we wanted to bring CVB to the El Centro Sector so that we could
6 write tickets for things like 1325 transporting and other infractions that we saw along the
7 border that might not otherwise be amenable to prosecution. So we wanted to bring
8 CVB to the border to provide that additional consequence, and then also to document,
9 perhaps, that record of smuggling or illegal activity at its base level.

10 Q Are these tickets in lieu of arrest?

11 A It could be, but it could be in conjunction with arrest also.

12 Q So then what is -- so I guess what is the -- you are using an underlying
13 criminal charge to write the tickets?

14 A Yes.

15 Q So it is not a civil penalty?

16 A No.

17 Q So you could arrest someone and write them this ticket and then you
18 wouldn't -- how do they challenge this ticket? Is there a court process associated with
19 the CVB?

20 A There is a court date set with CVB. And there is also a failure charge -- I
21 mean a failure-to-appear charge that comes if the defendant doesn't show up to court,
22 just like any ticket written by any Federal agency. And so they are required by law to
23 show up in court, unless other conditions for that ticket are met, maybe they pay the fine,
24 don't have to show up to the court. However, some tickets are mandatory court
25 appearance. If there are two immigration violations in a row on a CVB ticket,

1 oftentimes, not always, but oftentimes, that individual will have a mandatory court
2 appearance.

3 Q What court are they appearing in?

4 A Federal district, Southern District, Central District, a Federal Magistrate
5 Court.

6 Q So you don't have to work with the U.S. Attorney's Office for these?

7 A I do.

8 Q Okay. Can they accept them in the same way as they accept criminal court
9 prosecutions?

10 A I am not going to speak for how the U.S. Attorney office accepts or what
11 their particular process is. I know that we work with them on the CVB tickets, those
12 assistant U.S. attorneys have a big hand in that court docket. But how they accept it, I
13 don't know. I can't answer that.

14 Q Well, they don't always accept regular cases for prosecution, right?

15 A Uh-huh.

16 Q So do they always accept CVB tickets?

17 A By and large, yes, but they could choose not to for whatever reason.

18 Q Okay. I am going to go back to some of the encounter stuff. In fiscal year
19 2023, year to date so far, about 20 percent of the encounters are from what CBP labels as
20 other countries. Is there a particular country outside of the ones that you -- the
21 nationalities you see the most that have increased over the last 2 years?

22 A I can't identify one specific, many countries have increased.

23 Q Which ones, to your knowledge?

24 A China, Peru and some of the ones you detailed before.

25 Q So those two are included in the publicly available data. Are there other

1 countries that you can think of?

2 A I don't know what else is included in the publicly available data.

3 Q Are there other countries that you can think of?

4 A Brazil and there are some others that I can't think of off the top of my head.

5 Q Do you know what the recidivism rate is in El Centro?

6 A No.

7 Q Have you ever known the recidivism rate in El Centro?

8 A I did, yes, but I can't remember what it was right now.

9 Q Do you think that recidivism was higher when Title 42 expulsion was an
10 option?

11 A I don't know.

12 Q Did El Centro utilize Title 42 expulsion?

13 A Yes.

14 Q Do you know how often in fiscal year 2023?

15 A Often.

16 Q Would it be the majority of the cases, over 50 percent?

17 A It would depend. That was a case-by-case basis on Title 42, so I think that
18 statistics shift. I can't give you a general number on that.

19 Q Were -- in El Centro, were you expelling family units under Title 42?

20 A Is that fiscal year 2023? What was the question again?

21 Q In El Centro were you expelling family units under Title 42?

22 A To any knowledge, no.

23 Q So it would stand to reason the majority of encounters in the fiscal year 2023
24 are family units, so is it likely that the majority of encounters were not expelled under
25 Title 42 in El Centro?

1 A That number could -- that number shifted, and I couldn't give you a general
2 statistic or number on that.

3 Q Which number, the expulsion rate? When you said the number shifted,
4 were you referring to the expulsion rate?

5 A Yeah, what you just asked. That's what you asked, right?

6 Q About the family units.

7 A Can you restate the question?

8 Q Sure.

9 A It is confusing.

10 Q Would it stand to reason that if the majority of encounters in fiscal '22 and
11 '23 were family units, and you weren't expelling family units under Title 42, that the
12 majority of people encountered were not expelled under Title 42 in 20 --

13 A I don't know if stands to reason that, I don't know.

14 Q All right. When Border Patrol agents encounter an immigrant between a
15 port of entry in El Centro, what is the process for that encounter?

16 A All encounters in the El Centro Sector are looked at on a case-by-case basis,
17 on an individual basis, based on the merits of that individual that comes across the border
18 illegally. And from that, a solution or a pathway to deal with that individual is identified
19 and put into place.

20 Q I guess my question -- I should have been more clear -- is when someone is
21 physically encountered, does -- well, does El Centro see large groups of aliens, or is it
22 smaller groups that they have been encountering?

23 A Both, all -- all different sizes of groups.

24 Q When a Border Patrol agent encounters someone in the field, what
25 happens -- what is the first step that happens to transport them back to the processing

1 facility?

2 A First alienage has to be determined to determine if the person has one,
3 committed a crime, or is an alien. That is the very first thing that happens in the field.
4 Not everybody you encounter is there illegally.

5 Q Do they do that for large groups to determine alienage in the field?

6 A Yes.

7 Q Okay. And then what happens when alienage is determined?

8 A We look at each case individually. And based on the merits of what that
9 case is, we will look at what type of consequence that we can provide to that individual,
10 whether that is criminal prosecution, or some of the other things that we discussed prior.

11 Q Okay. So I want to break down what actually physically happens. So they
12 encounter these people in the field, they determine their alienage, and then those people
13 are transported to the processing center?

14 A Yes.

15 Q And do Border Patrol agents always do transporting, or do you have
16 contractors that help with that?

17 A Both.

18 Q And then once they get to the processing center, what is the first step in
19 their processing? Are they interviewed?

20 A They can, but that might not be the first step. The first step is generally
21 searching the individuals and safety and assessments of the individual to ensure that their
22 care and needs are met, like medical care and things like that.

23 Q And then what happens after that, biometrics?

24 A Typically, yes.

25 Q And who is doing the biometric screening, is it agents or processing

1 coordinators when they come?

2 A Both.

3 Q And then at that point are the aliens interviewed?

4 A At some point after biometrics, they would be interviewed, but it might not
5 be automatic, maybe they are referred to more medical or something else. So it is not
6 exact for every single person every single time because we look at every single individual
7 individually and based on the merits of their case and their needs.

8 Q Right, but you guys have a general process that you follow, right?

9 A Nothing is general, and it's a case-by-case basis with an individual.

10 Q So you don't have any policies or procedures for processing in El Centro?

11 A I didn't say that.

12 Q So you have policy and procedures for processing in El Centro?

13 A There are policies and procedures in place for how to process. However,
14 those policies and procedures are based on an individual case-by-case basis based on the
15 individual and not a generalization of a group or something like that.

16 Q Is there general workflow?

17 A A what?

18 Q A general workflow for processing?

19 A What? I don't know what a general workflow is.

20 Q For instance, do you generally have this person is supposed to be to
21 biometrics, but for other circumstances where they can't. But if they can, they go to
22 biometrics. And if they can, they go to interviewing, but for maybe there is an
23 intervening medical situation where they have to go to medics first. But is there a
24 general pathway for which these people are processed for efficiency purposes in El
25 Centro considering that there may be some intervening circumstances that throw that off

1 a little bit?

2 A Yeah, we look at those cases on the individual case-by-case basis and
3 conduct the needed interviews or workflow as per those individualized cases. So it
4 could differ so I am not going to say there is a generalized way of doing anything.
5 Perhaps someone's a criminal and up for criminal prosecution, maybe they go to a
6 different section, a different area, a different interview, that type of thing.

7 Q But you have procedures, if someone is charged as a criminal, you have a
8 procedure for what happens if a person is a criminal, right?

9 A Yes.

10 Q They go to a different place.

11 A Yes.

12 Q Does everybody get interviewed at some point?

13 A Yes.

14 Q Who is conducting those interviews?

15 A Border Patrol agents.

16 Q Do processing coordinators conduct any interviews?

17 A They can interview someone but not for legal procedures as per the I-213.

18 Q So the agents themselves are filling out the I-213?

19 A They are signing the I-213s.

20 Q Are they filling them out with the relevant information?

21 A Yes.

22 Q What kind of information is the Border Patrol looking for in an interview?

23 A First and foremost is to determine aliens with the validity of alienage and
24 then the facts of the case.

25 Q What types of facts?

1 A Establishing that a crime was committed in crossing the border, or looking at
2 an immigration history and finding out about an immigration history for potentially
3 providing consequences at a later time.

4 Q What about criminal history?

5 A What about it?

6 Q Do they check for -- do they interview for criminal history?

7 A Yes.

8 Q Do they run background checks through government systems?

9 A Yes.

10 Q Are they able to check someone's criminal history in other countries?

11 A No.

12 Q Why not?

13 A We don't have access to another country's database. To do that would be
14 more of a personal relationship between a Border Patrol agent, and perhaps a
15 relationship they have engendered in a foreign country.

16 Q Does that sometimes happen where an agent can get that information?

17 A It does.

18 Q Are there any countries that we have access to their criminal history or
19 databases?

20 A None that I know of.

21 Q During the interviews does Border Patrol ever ask the aliens why they have
22 come to the United States?

23 A I don't know what the agents ask every single time in every single interview.

24 Q Do agents ever ask aliens what the reason for coming to the United States?

25 A It is possible.

1 Q Have you ever interviewed aliens that had you encountered at the
2 southwest border?

3 A Yes.

4 Q Did you ever ask any of those people why they came to the United States?

5 A At times.

6 Q Do you review the I-213s that your agents write?

7 A No.

8 Q Have you read any of the I-213s that your agents write?

9 A Yes.

10 Q Do any of those I-213s include reasons why people came across the border?

11 A I don't recall.

12 Q When did El Centro start using processing coordinators to help them
13 process?

14 A I don't remember the date.

15 Q What year?

16 A Approximately 2022.

17 Q I am actually going to stop there, and I will pass to my colleague at this point.

18 BY MR. RUST:

19 Q You mentioned earlier that you had previously served in the El Centro Sector
20 for 8 years before becoming the chief patrol agent. Was that at the beginning of your
21 career, or when was that?

22 A The beginning.

23 Q So from 1996 until about 2004?

24 A 2003.

25 Q 2003? And then when did you first become the chief patrol agent for the El

1 Centro Sector? Do you remember the month and year?

2 A It was approximately April of 2020.

3 Q Can you briefly describe the impact of the COVID-19 pandemic on operations
4 in the El Centro Sector when you first started as chief patrol agent?

5 A When I started in the El Centro Sector, the COVID pandemic was in full
6 swing. So it did have an impact on the El Centro Sector. One of the things we did in
7 the El Centro Sector was we partnered with our Mexican counterparts on the south side
8 of the border to do what I call extending the borders outs. The city of Mexicali with
9 approximately 1.3 million people sits directly across the border from Calexico, Calexico,
10 California, a small town, one of our stations that Calexico station is located there with
11 approximately 300 agents. So we have a city of 1.3 million in Mexicali directly across the
12 border from Calexico and 350 Border Patrol agents. So in partnering with our Mexican
13 counterparts, we took a look at COVID and what it meant for them to have massive
14 amounts of foreign nationals traveling through that city of 1.3 million, and also what that
15 would mean for us and our national interests, and how we could mitigate that traffic flow
16 on the south side, utilizing our Mexican counterparts.

17 So we began a large-scale initiative to communicate and engender good relations
18 with those Mexicans, such as the mayor of Mexicali, Marina del Pilar, chief of police of
19 Mexicali, the military group, Avada (ph), and many others. And in doing so in 2020, the
20 COVID pandemic actually helped operations in the El Centro Sector because for, perhaps,
21 the first time in my career, the Mexicans were providing a lot of border security for the
22 United States doing things that I couldn't do. And what that has done is after the COVID
23 pandemic, well that cooperation still exists, even to a greater extent now because they
24 see the benefits of not having mass amounts of people coming through their city,
25 infecting their citizenry with all kinds of diseases, not only COVID, but we are talking a lot

1 of other things, a lot of things that our Border Patrol agents catch, whether that would be
2 flu or scabies or a whole host of other things.

3 So they saw the benefit in that and they see the benefit in that now, which is why
4 the El Centro Sector is one of the, if not the best-case scenario in the southwest border.
5 That is why oh, I don't know, last week we had 14 apprehensions in 1 day. Yesterday it
6 was approximately 60. Those numbers happen for a reason, and I believe it started in
7 April of 2020 with that COVID pandemic and the partnering with Mexicans -- with the
8 Mexican Government in the furtherance of national interests.

9 And those relationships under COVID, and because of COVID, have burgeoned
10 now to the fact that that mayor we talked about, Marina del Pilar is now the governor of
11 Baja, California. And our relationship is to the point we can give her a call 24/7. I can
12 pick the phone up and go Ms. del Pilar a call 24/7 for any border needs that I need on the
13 south side of border I -- mass migrations that may happen.

14 You asked about what we do with Chinese and Peruvians, folks that may come
15 from the border from different places, we have a mechanism that extends our borders
16 out in the El Centro Sector, and a fantastic relationship with the Mexicans. I never
17 thought I would say they would be a large part of our border security, but I am saying this
18 now.

19 Twenty-seven years ago, I would have said you are crazy, you are absolutely crazy.
20 Well, I am not saying that now. I am pretty glad that they take it serious. I can give her
21 a call 24/7. I can't give my governor a call 24/7, but I can give her a call 24/7.

1

2 [9:59 a.m.]

3 BY MR. RUST:

4 Q Shifting gears just a bit, do transnational criminal organizations control
5 smuggling routes in the El Centro Sector?

6 A I believe, yes.

7 Q Do you know which transnational criminal organizations are operating south
8 of the border?

9 A Yes.

10 Q Which ones?

11 A Primarily, the Tamayo transnational criminal organization. You may have
12 heard of the 13 deaths that we had a couple of years ago in El Centro. That was the
13 Tamayo that tried to push that group through that -- where they ended up having all the
14 fatalities. So Tamayo, and then there's several others, I can't remember the names off
15 the top of my head but several, probably at least six there in the El Centro Sector.

16 Q Do you ever get individuals who cross on their own without the assistance of
17 a transnational criminal organization, or is that uncommon?

18 A It's uncommon.

19 Q And would there be consequences by the transnational criminal organization
20 for someone that tried to cross on their own without paying the money?

21 A In my experience, there would be consequences.

22 Q Do you have any idea how much individuals pay these organizations to
23 smuggle them into the United States?

24 A That's very individualized based on where people come from, based on how
25 they're getting smuggled, where they're getting smuggled, and that type of thing. So a

1 Chinese national could pay \$20- or \$30,000 to be smuggled across the border, whereas
2 maybe a Mexican national or a Central American \$6- to 7,000.

3 But that depends on so many different factors, it would be hard for me to explain
4 all those factors now.

5 Q Does the cost vary based on whether someone intends to turn themselves
6 into Border Patrol versus evade apprehension?

7 A In my experience, the transnational criminal organizations charge everyone,
8 whether or not they're going to give up or whether they're going to evade apprehension.

9 And again, those smuggling fees are highly individualized. I hear a lot of different
10 smuggling fees from a lot of different illegal aliens that come across, so there's not a
11 one-size-fits-all there either.

12 But everyone gets charged. Whether they give up to the Border Patrol and then
13 are released into the country, they're still charged smuggling fees by those TCOs.

14 Q What do known got-away trends look like in the El Centro Sector currently?

15 A There are got-aways in the El Centro Sector.

16 Q And your agents measure those got-aways based on signals and other
17 intelligence?

18 A Many different methods to measure got-aways. That could be one.
19 Many different ways.

20 Q Do they track got-aways based on seeing individuals or group on a camera or
21 tracking footprints or other methods --

22 A Yes.

23 Q -- like that?

24 So a known got-away is not an estimation. It is based on actual intelligence and
25 information that the agents have compiled?

1 A Yes.

2 Q So, do you believe that any statistics about known got-aways in your sector
3 would be fairly accurate?

4 A Can you say that again?

5 Q Based on the fact that your agents are tracking known got-aways based on
6 information known to them at the time, would you believe that statistics on got-aways in
7 your sector are fairly accurate?

8 A Yes.

9 Q Do you know what the known got-aways this fiscal year in the El Centro
10 Sector are?

11 A I can't remember off the top of my head.

12 Q Do you know if it's hundreds or thousands of people?

13 A No. I'm not going to give you an exact number there.

14 Q Okay.

15 Mr. Yi. Can you approximate?

16 Mr. Bovino. No.

17 Mr. Yi. Do you have an estimate at all?

18 Mr. Bovino. No.

19 BY MR. RUST:

20 Q Do got-aways concern you from a national security standpoint?

21 A Yes.

22 Q And why is that?

23 A Any got-away or any illegal alien for that matter presents a threat to national
24 security or a threat to the taxpayer of the United States. We see that time and again,
25 whether it's planes crashing into buildings, or whether it's, you know, the vast amount of

1 American citizens that die each year at the hands of illegal aliens.

2 I mean, we could look at a few right off the top of my head that I can remember.

3 Oh, I don't know, Mollie Tibbetts. She was left to rot in a cornfield for a couple of weeks
4 there in Iowa, killed by an illegal alien that shouldn't have been here.

5 I know Kate Steinle, killed on that pier in San Francisco, right, and her father,
6 about an illegal alien that took a gun from a law enforcement officer that shouldn't have
7 been here.

8 Officer Singh there in California, killed by an illegal alien. Left a bunch of kids
9 behind. The list goes on and on.

10 As a matter of fact, we have one of our contracted workers there in the El Centro
11 Sector just, oh, about 2 weeks ago, his son was in my sector area of responsibility driving
12 along interstate 10 in Indio, and an illegal alien rear-ended him and killed their son.

13 And what was interesting about that is that alien was apprehended by local law
14 enforcement and let loose under HB54, which is the statute in California that prevents
15 local law enforcement from working with Border Patrol. And that was a felony. I
16 believe it was domestic violence or battery or something like that.

17 And so when you ask me if it concerns me, it concerns me not about a got-away,
18 but about anyone coming into the United States illegally and being -- and remaining here
19 illegally in the United States, because, you know, when you -- when you look at a parent
20 and they're worried about a closed casket for their kid, it takes on a different -- a different
21 perspective, so, yes.

22 Q Do you believe that laws that inhibit law enforcement's ability to cooperate
23 with Department of Homeland Security officials, including Border Patrol or ICE, harm
24 national security?

25 A Yes.

1 Q Do your agents routinely encounter individuals who are later found to have
2 criminal histories?

3 A Can you say that again?

4 Q Do your agents routinely encounter individuals who have illegally crossed
5 the border in the El Centro Sector who are found to have prior criminal histories?

6 A Yes. Including criminal histories in foreign countries.

7 Mr. Rust. Time is up. So we'll go off the record.

8 Mr. Yi. That concludes our first round. We'll go off the record at 10:06 a.m.

9 [Recess.]

10 Mr. Yim. We'll go on the record. The time is 10:20 a.m.

11 BY MR. YIM:

12 Q Chief, thanks for being here today. I'd like to circle back and discuss your
13 background with Border Patrol. You joined Border Patrol in 1996. Is that correct?

14 A Yes.

15 Q Have you served continuously with Border Patrol since 1996?

16 A Yes.

17 Q Since 1996, to the present day, in total, you've served with Border Patrol
18 under five different Presidential administrations. Is that correct?

19 A I don't know.

20 Q Sure.

21 A I haven't counted it up.

22 Q Not a problem. We can walk through it.

23 So when you began your career with Border Patrol in 1996, that was during the
24 Clinton administration, correct?

25 A I believe so.

1 Q And after the Clinton administration, you continued to serve with
2 Border Patrol. That was during the Bush administration. Is that correct?

3 A I believe so.

4 Q And following the Bush administration, again, you continued to serve with
5 Border Patrol, and that was during the Obama administration, correct?

6 A I believe so.

7 Q Following the Obama administration, you continued to serve with
8 Border Patrol, and that was during the Trump administration, correct?

9 A I believe so.

10 Q You've continued to serve with Border Patrol since the beginning of 2021,
11 and that has been under President Biden. Is that correct?

12 A Yes.

13 Q Just to review, that equals five different Presidential administrations that
14 you've worked with, correct?

15 A You sound like you counted them up. I still didn't count them up. You tell
16 me, is it five?

17 Q I'll represent to you that was five different Presidential administrations.

18 A All right. Yeah.

19 Q Would you agree with me that during your 27-year career with
20 Border Patrol, under each one of these Presidential administrations, you have
21 experienced a shift in immigration policy from one administration to the next?

22 A I don't agree with you.

23 Q Okay. Why wouldn't you agree with that?

24 A Because I don't.

25 Q Can you expand on that? Why? What part of that is --

1 A You asked if I agreed with you, and I don't.

2 Q Sure. Okay. Have you witnessed a shift in border security policy under
3 each administration?

4 A Can you define what you mean by "border security policy"?

5 Q Sure. So let's walk through it. So, for example, after the attacks on
6 September 11th, the Bush administration implemented a program called the National
7 Security Entry-Exit Registration System, and I'll represent to you that required individuals
8 from certain countries to undergo additional screenings when traveling to the
9 United States.

10 The implementation of that system was a policy decision by the Bush
11 administration. Is that correct?

12 A I don't know. I'm unfamiliar with it.

13 Q Okay. We'll move on.

14 Chief, can you remind me when you became chief patrol agent of the El Centro
15 Sector?

16 A I became the chief patrol agent in the El Centro Sector in approximately April
17 of 2020.

18 Q Who is your direct supervisor currently?

19 A Currently or 2020?

20 Q Currently.

21 A That would be David B. Miller.

22 Q Okay. You mentioned, during your time with my Republican colleagues,
23 that you attend weekly telephone -- teleconference calls -- excuse me -- with
24 Border Patrol headquarters. Is that correct?

25 A At times, yes.

- 1 Q Is that on a weekly basis?
- 2 A Not always.
- 3 Q How often do these teleconference calls take place?
- 4 A Weekly.
- 5 Q Understood.
- 6 Does someone attend in your stead when you are unable to attend?
- 7 A Yes.
- 8 Q Who attends?
- 9 A It could be someone in my chain of command.
- 10 Q Okay. Is David B. Miller on these weekly telephone calls?
- 11 A At times.
- 12 Q And you mentioned that you discuss operations within your sector on these
- 13 calls. Is that correct?
- 14 A At times.
- 15 Q Does the Chief of Border Patrol, whether it be Chief Ortiz or Chief Owens,
- 16 attend these telephone calls?
- 17 A On occasion.
- 18 Q Okay. Who else is present on these calls from Border Patrol headquarters?
- 19 A Other staff members from Border Patrol headquarters.
- 20 Q Would you say senior leadership of Border Patrol attends these weekly
- 21 teleconferences?
- 22 A I wouldn't say that.
- 23 Q Okay. But you did mention that the Chief of Border Patrol occasionally
- 24 attends these calls?
- 25 A Yes.

1 Q And David Miller occasionally attends these calls?

2 A Yes.

3 Q Would you agree with me that these calls are an opportunity for you to
4 detail to Border Patrol headquarters the ongoings of your sector on a weekly basis?

5 A No.

6 Q Okay. How would you describe the conversations that happen on these
7 calls?

8 A A myriad of conversations happen on those calls. It could be on a myriad of
9 subjects. Could be on a case-by-case basis, week-by-week basis, so no particular topic
10 that I could describe to you in a generalization.

11 Q If you -- strike that.

12 Were there security concerns occurring in the El Centro district in the past week,
13 would you raise that on one of these calls?

14 A What's a security concern? Are you talking about breaking in a building
15 or -- what does that --

16 Q Either. Yeah, of course. Let's say -- in fact, you tell me. What do you
17 relay on these calls?

18 A It can be a myriad of subjects. It's a week-by-week basis what's happening
19 in my sector that I would feel would need to be purveyed (sic) to headquarters.

20 Q Do you relay to headquarters encounters?

21 A At times.

22 Q Okay. Speaking about your experience working at Border Patrol
23 headquarters, you served as both associate chief of policy and deputy chief of staff,
24 correct?

25 A Yes.

1 Q During your time in either one of those positions, how often did the Chief of
2 Border Patrol have interaction with the Secretary of the Department of Homeland
3 Security?

4 A I don't know.

5 Q Did you witness -- strike that.

6 In either of those roles, did you provide -- did you advise the Chief of Border
7 Patrol?

8 A Yes.

9 Q Did you staff the Chief of Border Patrol during meetings with other
10 department heads or other agency heads?

11 A Let me -- what do you mean by "staff," did I staff the chief? Are you saying,
12 did I attend with the chief? I don't understand what that means, staffing the chief.

13 Q Did you attend with the chief?

14 A At times.

15 Q Did you ever attend a meeting with the Chief of Border Patrol and the
16 Secretary of the Department of Homeland Security?

17 A Yes.

18 Q In your recollection of those meetings, did the Chief of Border Patrol relay to
19 the Department -- excuse me.

20 In your recollection of those meetings, did the Chief of Border Patrol delineate
21 operations occurring at the Southern Border with the Department -- with the Secretary of
22 the Department of Homeland Security?

23 A What do you mean by "delineate"? Delineate from what? I mean,
24 separate from something, what's the delineation? I don't understand what you're
25 saying.

1 Q Did he explain operations at the Southern Border? Did the Chief of Border
2 Patrol explain operations at the Southern Border with the Secretary of Homeland Security
3 when you attended these meetings?

4 A I can't remember.

5 Q Okay. We'll move on.

6 Chief, you mentioned that you could not opine on the frequency at which you
7 spoke to former Border Patrol Chief Raul Ortiz, correct?

8 A That's not correct.

9 Q Okay. How often did you speak with Border Patrol Chief Raul Ortiz?

10 A I don't -- I don't have a number. It wasn't my opinion, though. I didn't
11 opine. I just didn't recollect.

12 Q Okay. Did Chief Ortiz, during his tenure as Chief of Border Patrol, visit the
13 El Centro Sector while you have been chief patrol agent in the sector?

14 A Yes.

15 Q On how many occasions did he visit the sector?

16 A I believe once.

17 Q When was that?

18 A I can't remember, because I wasn't there.

19 Q But you were chief at the time, correct?

20 A Yes.

21 Q Was this in the past year?

22 A No.

23 Q Okay. Was this before COVID?

24 A I don't recollect. COVID's still going on. People still get COVID.

25 Q Okay. Fair enough.

1 Was this while Title 42 was enacted?

2 A I believe so.

3 Q Okay. And to be clear, you were not present during this visit?

4 A No.

5 Q What was your understanding of why he was visiting the sector?

6 A I didn't know.

7 Q Okay. Now, we spoke briefly about the new Chief of Border Patrol, Jason
8 Owens, and you mentioned that yesterday was his second day on the job. Is that
9 correct?

10 A Yes.

11 Q Have you had the opportunity to speak with Chief Owens, first of all, since
12 his appointment, since yesterday?

13 A Yes.

14 Q What did you discuss with Chief Owens?

15 A I congratulated him.

16 Q Okay. Did you discuss anything going on in the El Centro Sector?

17 A No.

18 Q Okay. Had you spoken to Chief Owens since the announcement of his
19 appointment, which was in June?

20 A Yes.

21 Q During that conversation, did you discuss operations in the El Centro Sector?

22 A Not to my recollection.

23 Q Okay. Regarding your call since yesterday with Chief Owens, where you
24 relayed that you congratulated him, did he detail any future plans for Border Patrol to
25 you?

1 A No.

2 Q Chief, we spoke about your former position as associate chief of policy at
3 Border Patrol headquarters. My Republican colleagues asked you about your current
4 roles and responsibilities as chief patrol agent of the El Sector -- El Centro Sector, excuse
5 me. Can you remind me what those roles and responsibilities are?

6 A Are you asking me as the chief of the El Centro Sector?

7 Q That's correct.

8 A I'm responsible for administrative and operational functions in the El Centro
9 Sector.

10 Q Okay. Are you responsible for drafting any policy as chief patrol agent of
11 the El Centro Sector?

12 A I have a hand in policies that are drafted Border Patrol wide.

13 Q What do you mean by you have a hand in it?

14 A Any action I might take as the chief patrol agent could have a policy impact,
15 and could impact policy formulation, so I believe yes.

16 Q To be clear, your actions could influence policy? Is that fair to say?

17 A Yes.

18 Q Okay. Are you asked to opine on the policies that are developed at
19 Border Patrol headquarters?

20 A At times.

21 Q Okay. And is that based on -- strike that.

22 When you're asked to opine on these policies, would you agree that's based on
23 your 27 years as a Border Patrol agent with Border Patrol?

24 A I don't agree.

25 Q Okay. Would you agree that is because Border Patrol headquarters wants

1 input from the leaders in the El Centro Sector?

2 A I don't agree.

3 Q Okay. Why would Border Patrol then in that case ask you to pine on
4 policies?

5 A I don't know.

6 Q Okay. Chief, in your 27 years of Border Patrol, you explained that you had
7 not participated in any transcribed interviews prior to today, correct?

8 A Can you repeat that?

9 Q Sure. Prior to today, how many congressional transcribed interviews have
10 you participated in?

11 A To my knowledge, none.

12 Q Okay. Would you agree that congressional transcribed interviews are not a
13 typical part of your duties as chief patrol agent of the El Centro Sector?

14 A I don't agree with you.

15 Q Okay. Beyond congressional transcribed interviews that have occurred this
16 year, with other chief patrol agents, are you aware a chief patrol agent ever participating
17 in a congressional transcribed interview during your 27-year career with Border Patrol?

18 A Are you saying prior till when? Prior to today?

19 Q Prior to the beginning of this year.

20 A I understand that Border Patrol personnel have participated in interviews
21 with Congress. I don't know if they were transcribed or what.

22 Q Do you recall when those interviews occurred?

23 A No.

24 Q Do you recall who participated in those interviews?

25 A No.

1 Q Do you recall with whom those interviews were conducted?

2 A No.

3 Mr. Jonas. Are you talking about interviews or hearings?

4 Mr. Bovino. I would put that in the same thing. Isn't that -- isn't that
5 transcribed and recorded?

6 Mr. Jonas. So he may be talking about hearings. I just don't know.

7 Mr. Yim. Fair enough.

8 BY MR. YIM:

9 Q Chief, you discussed some of the actions you took to prepare for today's
10 transcribed interview. How long do you spend preparing for this interview?

11 A I don't recall the exact amount of time.

12 Q Can you estimate for me?

13 A Fifty-three years.

14 Q Okay. Since the time that you received notice of this transcribed interview
15 and today, how long had you been preparing for this transcribed interview?

16 A Since I received notice.

17 Q When did you first receive notice?

18 A I don't remember.

19 Q Was it over a week ago?

20 A I believe so.

21 Q Chief, were you not here -- strike that.

22 Chief, had you not been attending the transcribed interview today, what would
23 you be doing in the El Centro Sector?

24 A I don't know what I would be doing today if I wasn't here. I would be the
25 chief in the sector conducting operational administrative functions.

1 Mr. Yim. Okay. I'll pass to my colleague.

2 Ms. Marticoarena. Thank you.

3 BY MS. MARTICORENA:

4 Q Chief, I'd like to talk about the resources you use and the resources you need
5 in the El Centro Sector. During the last hour, you talked a little bit about processing
6 coordinators, and you mentioned that you started to receive them in 2022. Is that
7 correct?

8 A No. I said approximately --

9 Q Okay.

10 A -- 2022.

11 Q So you began to receive them approximately in 2022. Is that correct?

12 A Yes.

13 Q And in your opinion, have these processing coordinators helped allow some
14 of your agents to go back into the field?

15 A The processing coordinators haven't been there long enough for me to make
16 a full assessment of capabilities and whether agents can go back to the field.

17 Q Okay. Thank you.

18 Chief, are you aware of the volunteer force implemented by the Department of
19 Homeland Security in 2021?

20 A Yes.

21 Q Do you have any members of the volunteer force in the El Centro Sector?

22 A Yes.

23 Q And do you find these volunteers helping in doing -- in conducting border
24 security in the El Centro Sector?

25 A No.

1 Q What role do these volunteers play in the sector?

2 A The volunteers that I've seen play a role in the Centralized Processing
3 Center, primarily care and feeding of illegal aliens.

4 Q Okay. And is that a role that would otherwise need to be done by
5 Border Patrol agents?

6 A It could be.

7 Q Do you -- would you say that, or would you agree that if that role needed to
8 be done by Border Patrol agents, having someone else do them helps those agents focus
9 on other parts of their duties?

10 A I wouldn't say and I wouldn't agree.

11 Q Okay. Thank you.

12 Are you aware of the Southwest Border Coordination Center?

13 A Yes.

14 Q And is the role of the center, to your knowledge, to help coordinate
15 resources and improve coordination?

16 A Yes.

17 Q So I'd like to discuss some of the technology and assets in the El Centro
18 Sector. Does your sector utilize towers?

19 A Just a tower? What kind of a tower?

20 Q Autonomous surveillance towers.

21 A A what?

22 Q Autonomous surveillance towers.

23 A I'm not sure if we use the same terminology there, but can you -- can you
24 repeat that and be a little more specific there what an automated surveillance tower is?
25 What is that?

1 Q Sure. Are there automated -- autonomous surveillance towers in your
2 sector that you can use to detect migrants, see where they are in the sector?

3 A Yes.

4 Q And during your time in the El Centro Sector, do you know if you've received
5 additional towers during that period?

6 A Yes.

7 Q Okay. And are you aware of any plans to expand towers in your sector?

8 A Yes.

9 Q Does your sector employ the Linear Ground Detection System?

10 A The Linear Ground Detection -- the Linear Ground Detection System is in
11 place, but in not all areas of the sector.

12 Q Understood.

13 And are you aware of any plans to expand the Linear Ground Detection System in
14 your sector?

15 A Yes.

16 Q And can you clarify what the Linear Ground Detection System does, for the
17 record?

18 A LGDRS is a detection system that helps -- assists, aids, and abets -- in the
19 detection and classification of potential threats that may cross or be in the vicinity of the
20 border.

21 Q Okay. And does your sector utilize unmanned aircraft systems?

22 A Yes.

23 Q And can you clarify for the record how your sector uses them? What's the
24 purpose of them?

25 A The UAS systems in El Centro Sector are used in a myriad of different

1 missions. It depends on what's taking place on the ground and what particular need for
2 a particular asset is called for.

3 It could be to take a look at a certain area of the border, or a suspect, or casework
4 surveillance, that type of thing.

5 Q Are you aware of any plans to increase the number of unmanned aircraft
6 systems in your sector?

7 A Yes.

8 Q Chief, are you expecting the El Centro Sector to receive and deploy any other
9 technology system, like communication system, in the coming months or years?

10 A No.

11 Q And do you believe that additional resources, additional technology like the
12 ones we discussed, would be helpful for your sector?

13 A I believe that the addition of resources in the correct technology assists with
14 control of the border.

15 Q Thank you.

16 Ms. Jackson. Thanks.

17 BY MS. JACKSON:

18 Q I want to talk a little bit about consequences because you said earlier that
19 criminal consequences help deter people from crossing the border unlawfully. Is that
20 correct?

21 A Can you -- can you state that again?

22 Q Sure. I believe you said in the previous hour that criminal consequences or
23 penalties help deter people from crossing the border unlawfully?

24 A I said that consequences, whether they be criminal or otherwise, help deter,
25 not just criminal consequences, so, no, I didn't say that.

1 Q Fair enough. But consequences in general help deter people from crossing
2 illegally?

3 A Yes.

4 Q Now that Title 42 is lifted, you are using Title 8 to process migrants, is that
5 correct, who cross unlawfully?

6 A Yes.

7 Q And under Title 8, people who cross unlawfully may face criminal
8 consequences for that crossing. Is that correct?

9 A Yes.

10 Q Can you describe some of those criminal consequences?

11 A In the El Centro Sector, we see many individuals that cross the border that
12 would face criminal consequences such as known gang members, MS-13s, Paisanos, many
13 other gang members, folks with significant immigration history.

14 We see a lot of smugglers that traffic in humans. That would be something along
15 the lines of a criminal -- a criminal case or something that we would deal criminally with,
16 and a host of other individuals that we would typically see, narcotics, weapons trafficking,
17 things like that.

18 Q And, say, taking narcotics trafficking, do you think that those criminal
19 consequences deter other people from trafficking or are good deterrents?

20 A Yes.

21 Q So do you think that the steeper consequences imposed by Title 8, as
22 opposed to Title 42, have resulted in fewer encounters at the border in recent weeks?

23 A I don't think that.

24 Q But you have seen fewer encounters in the last few days in your own sector?

25 A Yeah, but that's not what I -- you asked me if I think that. I don't. I don't

1 think that. That's not what I think.

2 Q Fair enough. I'm going to move on.

3 Within your sector, do Border Patrol agents ever work with local law enforcement
4 to apprehend criminals?

5 A Yes.

6 Q Can you give an example of when they might collaborate with local law
7 enforcement?

8 A In the -- in California, one manner that we would collaborate with local law
9 enforcement to apprehend criminals would be when members of -- when Border Patrol
10 agents become members of local task forces. We do collaborate with local law
11 enforcement in that type of a scenario.

12 However, in California, there's something called HB54 that prevents local law
13 enforcement from communicating or collaborating with the Border Patrol on
14 immigration-type cases, which actually inhibits what you're talking about, some of that
15 collaboration.

16 I know the city of Brawley, California, in my area of responsibility, saw a vast
17 increase in shootings. Small town of Brawley, approximately 17
18 shootings -- approximately 17 shootings over the past year.

19 And many of those shootings, according to Police Chief Duran, were
20 immigration-related, and he was at a loss as to what to do because he couldn't
21 collaborate with the U.S. Border Patrol, the primary law enforcement agency responsible
22 for immigration matters. But his community was being devastated and absolutely shot
23 up by criminal gangs due to immigration. So -- I'm not done yet. I'm not done yet.

24 So he reached out to myself there at the Border Patrol sector, actually came to my
25 sector, very, very concerned that he needed to do something, but was very concerned

1 because he couldn't collaborate with the U.S. Border Patrol.

2 So he goes, What can you do? Can you please help me out? So we did take a
3 look at what was happening in Brawley and put more people on the task force to go after
4 criminal gangs, and I dedicated Border Patrol resources to go after those
5 immigration-related gang events, including weapons trafficking, and a whole host of other
6 things, and those shootings have declined over the past year quite substantially.

7 Q You mentioned task forces. Do any of those task forces have to do with
8 narcotics trafficking, and, you know, attempting to get illicit drugs off the streets?

9 A Yes.

10 Q So for example, Border Patrol might work with local law enforcement to try
11 to apprehend people smuggling fentanyl or another narcotic?

12 A At times.

13 Q And when that happens, are any of the people that Border Patrol helps
14 apprehend U.S. citizens or lawful permanent residents?

15 A It's -- in my experience, it runs the gamut from illegal aliens to Green Card
16 holders. I see a lot of Green Card holders that use that immigration benefit to smuggle
17 both people and narcotics -- I have for 27 years -- widespread. So, yes, lappers, Green
18 Card holders, some U.S. citizens, and as well as illegal aliens. It runs the gamut.

19 Q Thank you.

20 Ms. Jackson. Further questions?

21 BY MR. EWENCZYK:

22 Q Good morning, Chief.

23 A Good morning, sir. How are you?

24 Q Well. How are you?

25 A Better than I deserve, I guess. We're still upright and breathing, right?

1 Q That we are.

2 I wanted to kind of talk -- you know, you've had a long career with U.S. Border
3 Patrol. Over the course of that career, you've seen the creation of the Department of
4 Homeland Security in the early 2000s, right?

5 A Yeah, I did witness that.

6 Q And Border Patrol is part of the Department of Homeland Security?

7 A Yes.

8 Q Department of Homeland Security, you'll agree with me, is a large
9 Department that has a lot of various law enforcement agencies and bureaus and offices
10 within it. Is that right?

11 A I won't agree with you, no.

12 Q You won't?

13 A I won't agree with you, no.

14 Q Why is that?

15 A Because I don't agree with you.

16 Q You don't agree that there are a lot of law enforcement agencies under --

17 A I think the Department of Homeland Security has a myriad of law
18 enforcement agencies under it, but I didn't say I agreed with you.

19 Q I understand.

20 A Okay.

21 Q I'm just trying to get at whether you believe that there are a lot of law
22 enforcement agencies within Department of Homeland Security?

23 A I do believe that.

24 Q U.S. Customs and Border Protection is the one Border Patrol is part of, right?

25 A Yes.

1 Q And there are others like ICE, U.S. Secret Service, CISA, et cetera. Is that
2 fair?

3 A There are other agencies within the Department of Homeland Security and
4 Customs and Border Protection. But you said Customs and Border Protection. ICE is
5 not under CBP.

6 Q Sorry. I meant ICE is within the Department of Homeland Security.

7 A Oh, okay. But then you went to CBP. So then you went back to DHS. So
8 you mixed me up there, but, yes, Border Patrol, Air Marines, some of that, but not -- not
9 ICE.

10 Q I'm sorry. I'm sorry if I was confusing it.

11 Let me be very clear. I just wanted to say that ICE, Customs and Border Patrol,
12 U.S. Secret Service, CISA, TSA, U.S. Coast Guard, these are all various entities that are
13 within the Department of Homeland Security?

14 A It's Customs and Border Protection and U.S. Border Patrol, not Customs and
15 Border Patrol. It's always a misnomer that everybody makes a mistake on. It's the U.S.
16 Border Patrol, not Customs and Border Patrol. It's U.S. Border Patrol.

17 Q I appreciate the correction. So U.S. Customs and Border Protection.

18 A There you go. Got it.

19 Q But those other agencies are all within the Department of Homeland
20 Security?

21 A Yeah, I can't remember the ones you just rattled off, but for the sake of this,
22 then probably so.

23 Q And kind of over the course of your career, since the creation of the
24 Department of Homeland Security, have you been able to understand or get an
25 understanding of how the Secretary of the Department of Homeland Security gets

1 updates on what's going on in the various agencies under the Department?

2 A Since the creation of DHS, I'm aware that various secretaries receive
3 information from their components in many different fashions.

4 Q And that includes receiving information from U.S. Border Patrol?

5 A I can't speak to whether they receive it straight from the U.S. Border Patrol
6 or it goes through a chain of command. Like I said, there's been many Secretaries, and
7 how they choose to receive that information, I believe, would be germane to that
8 particular secretary. And I don't know exactly what that secretary wants, he or she, to
9 receive or how they receive it. So I can't really answer that question.

10 Q Okay. So am I understanding you correctly in saying that you don't really
11 have an insight into how secretaries of Homeland Security receive updates from
12 U.S. Border Patrol and the other components within --

13 A I didn't say that. I said that each secretary, in my experience, receives
14 information, but how they receive that, whether it's straight from the Border Patrol,
15 which you intimated, or in a different manner, I wouldn't know that.

16 Q But each secretary, since you've been with Border Patrol, has received that
17 kind of information?

18 A I don't know what they've received. I'm not privy to what they receive.
19 I'm not at the Department of Homeland Security, I'm in the Border Patrol, so I don't
20 know.

21 Q And I wanted to come back to -- in response to my colleagues' questions,
22 you mentioned recent apprehension figures for your district that sounded very
23 impressive. Do you recall that?

24 A I don't recall that. I don't recall my apprehension figures. I don't recall
25 that, no. What did I say?

1 Q You don't recall talking about the number of apprehensions in the past few
2 weeks? I thought I heard -- sorry, I was at the other end of the table.

3 A Yeah, I didn't give any figures out, to my knowledge, to this body here today.
4 I don't believe I gave any figures out.

5 Q Okay.

6 A Unless I'm mistaken.

7 Q Is it fair to say that you were talking about the low apprehension figures in
8 recent weeks in your district?

9 A It's not fair to say that because I don't know exactly what you're talking
10 about.

11 Q Well --

12 A It's not fair, so I don't -- because I don't know. You have to tell me what
13 you're wanting here.

14 Q Have there been low apprehension figures in your district in recent weeks?

15 A There have been relatively low figures in my sector -- it's a sector -- since I've
16 been there, comparatively.

17 Q And these low apprehension figures in your sector since you've been there,
18 what would you say has caused those low apprehension figures?

19 A The lower apprehension rates, I'll give you a figure from a couple of weeks
20 ago. We apprehended 14 individuals approximately last week in 1 day, and that was 14.
21 The sectors to the east and west of us were in the several hundred category.

22 So over the past 3 years, those low apprehension figures have followed that trend
23 in the El Centro Sector, not only because we're the premier sector in the
24 Border Patrol -- and I hope you remember that more than anything, but because we
25 provide something called a consequence to these individuals that come across the

1 border.

2 Whether that consequence is in Mexico or the criminal prosecutions that you
3 asked about, or the CVB ticket-writing, or the fact that we have ferreted out fake family
4 groups trafficking in kids and things like that.

5 Those consequences have been ongoing and continuous. TCOs and illegal aliens
6 understand what a consequence is, so therefore, they don't want to come to the
7 El Centro Sector. So therefore, I believe that those low apprehension numbers are a
8 direct result of consequences, not a result of anything else, but the consequences,
9 whether it's folks from Red China trying to come across the border, they're not coming
10 across right now in El Centro.

11 The Peruvians, well, those Peruvians aren't coming across in El Centro because we
12 had a very bright bulb of a Border Patrol agent that figured out that those Peruvians were
13 using fake police reports to come across the border and figured that out and actually led
14 an effort nationwide to look at those Peruvian fake police documents that they were
15 using to claim asylum fraudulently with and completely obliterated the Peruvians coming
16 through the El Centro Sector.

17 Brazilians, another prime example. That same agent, a real bright bulb, smart
18 individual, actually figured out that individuals from Brazil were, at some point, in that
19 smuggling route, whether it was Brazil or maybe on the way up to this country, were
20 attaching themselves to families, especially kids, and figured out that something wasn't
21 quite right with someone that's attached to kids that's not really their father. Probably
22 some bad intentions going on there.

23 So approximately 60 of those fake family groups from Brazil were ferreted out by
24 this one agent. The Brazilians didn't seem to want to come to El Centro Sector because
25 that's a consequence.

1 That's what I'm talking about with a consequence, something among many
2 consequences there.

3 So when we talk about low numbers, like the 14 last week. I think we had 18 in 1
4 day a couple weeks ago. We had 26 yesterday. About 40 -- approximately 60 last
5 night -- or yesterday, again, in relation to several hundred.

6 Or during that big surge, thousands in the other sectors, we had a very low
7 number there in that 70-mile stretch in El Centro.

8 And again, I'll draw your attention to the fact that we've got a megatropolis, just
9 south that's called Mexicali. That's 1.3 million individuals. Just like Ciudad Juarez in
10 the El Paso Sector or maybe Tijuana there in the San Diego Sector, same megatropolis but
11 there's a big difference.

12 There's a lot of consequences that go on there in the El Centro Sector. The
13 consequences to the point that the TCOs knows it, the folks that cross know it, and they
14 don't want to cross in the El Centro Sector. I think that and our agent motivation and
15 the way we do business there in the El Centro Sector, by and large, keeps those numbers
16 low more than any other thing that I can think of in the El Centro Sector because it's been
17 ongoing and continuous since I got there in April of 2003 when we started that COVID
18 operation with the Mexicans.

19 Q You mean 2020?

20 A I'm sorry. 2020.

21 And started that with the Mexicans and then some of these consequence delivery
22 methods that we engineer and pioneer there in the El Centro Sector that keep those
23 numbers low.

24 Q So it sounds like your efforts and the efforts of your agents in your sector in
25 enforcing the law in El Centro have been the key to your successful operations in the

1 El Centro district. Is that fair?

2 A No.

3 Q No?

4 A It's consequences. And it wasn't my efforts. It was consequences is what
5 I was getting at there. This whole thing is consequences. They received a
6 consequence, and that deters people from coming across the border. It's a
7 consequence. It's not my effort. It ain't me. I didn't do it. I didn't arrest 45,000
8 people thus far this year. I didn't do that.

9 Q You mean your agents did?

10 A Absolutely. But I didn't do it. It wasn't my efforts. It was --

11 Q That's why I said you and your agents.

12 A And providing consequences. Consequences.

13 Q Right. And so it sounds -- I'm just trying to make sure I understand what
14 you're saying, but the efforts of you and your agents in applying consequences under U.S.
15 law have been the key to your successful operations in the El Centro district?

16 A They have contributed to that, yes.

17 Mr. Yim. Chief, would providing additional Border Patrol agents to the El Centro
18 Sector assist in your operations there?

19 Mr. Bovino. Yes.

20 Mr. Yim. We'll go off the record.

21 [Recess.]

22 Mr. Rust. We'll go on the record. The time is 11:14 a.m. We're back on the
23 record.

24 BY MR. RUST:

25 Q Chief, does El Centro have border barrier system in the sector?

1 A The El Centro Sector has border wall in the El Centro Sector.

2 Q Do you know approximately how many miles of border wall you have in
3 sector?

4 A The El Centro Sector has approximately 60 miles of border wall.

5 Q So there's some areas where there is no border wall?

6 A Yes.

7 Q Are there areas where you think it would be beneficial to install border wall
8 where there is not currently border wall?

9 A Yes.

10 Q What benefits does the border wall give to agents in the field?

11 A When I started in the El Centro Sector in 1996, there was no border wall. In
12 many of those areas now, where there is border wall, we see very little vehicular
13 incursions across the desert between the ports of entry, and a decrease in pedestrian
14 crossings at the border, especially where the 33-foot wall exists.

15 So because of my experience in seeing both that area in El Centro without and
16 now with the border wall, I believe that the border wall gives the agents a tool -- a
17 tool -- and an advantage when working with the border in El Centro Sector.

18 Q You mentioned before that you see large groups cross occasionally? Do
19 you know why the smuggling organizations would cross large groups as opposed to
20 crossing people individually or in smaller groups?

21 A I don't have any insight into their conversations or their mindset, so I
22 can't -- I can't speak for what they're thinking.

23 Q Has the trend of seeing large groups existed throughout your career in
24 Border Patrol, or is that a more recent phenomenon?

25 A I've seen large groups throughout my career. However, over the past

1 couple of years, I've seen more larger groups.

2 Q And I believe you mentioned earlier that the Central Processing Center has
3 an approximate capacity of 200 individuals in custody at any given time. Is that correct?

4 A Yes -- no, no, that's not correct. It doesn't -- we don't have 200 individuals
5 in custody at all times. That's not correct. I believe the question was, what is the
6 capacity of your CPC, and I gave that approximately 200 figure for that. I didn't say that
7 we hold 200 people at all times in the CPC.

8 Q So the number of actual people being held in the facility could be above or
9 below 200 people, but the ideal capacity is 200 people?

10 A Well, the ideal capacity would be zero, but that maximal ideal capacity
11 would be approximately 200.

12 Q Are there times when you're over capacity?

13 A Yes.

14 Q What do you do when you are over capacity to try and reduce the number of
15 individuals in custody? Is there anything different that happens when that occurs?

16 A We take a look at all processing pathways and a look at what our ability is to
17 provide consequences via those pathways given to us, and attempt to apply
18 consequences and as we process those individuals.

19 Q Does your sector ever take lateral decompressions from other sectors for
20 processing?

21 A Yes.

22 Q Do you know which sectors send illegal aliens to your sector for processing?

23 A Yes.

24 Q Which sectors are those?

25 A Those sectors are the San Diego Sector, the Yuma Sector, and now the

1 Tucson Sector.

2 Q Do you know if you currently have individuals in custody who were
3 apprehended in those sectors who were sent to your sector for processing currently?

4 A I believe we have individuals from the Tucson Sector at the El Centro Sector.

5 Q Do your agents encounter narcotics in the field as well as at checkpoints?

6 A Yes.

7 Q Do you know whether they encounter more narcotics in the field or more at
8 the interior checkpoints?

9 A I believe that the narcotics are found from the border all the way north
10 through the checkpoints. I believe some of the larger loads of narcotics are, in fact,
11 found at or near the checkpoints.

12 Q Do you have a lot of vehicular incursions in your sector?

13 A No.

14 Q No?

15 Do you have some vehicular incursions in your sector?

16 A I have very few -- I mean, there are very few vehicular incursions in our
17 sector.

18 Q Do you know why that is? Is that a function of terrain and border wall, or
19 are there other factors that are contributing?

20 A Yes, sir. It was, like I explained a bit earlier, when I started in El Centro
21 Sector in 1996, there was a line in the sand basically, if even that, and vehicles and
22 conveyances could cross that border almost at will anytime, anyplace.

23 But with the erection of the border wall, especially the 33-foot border wall, I've
24 seen approximately five or less vehicle incursions. That's approximate.

25 Q This 33-foot border wall, does that make up the majority of the border wall

1 that you have in your sector?

2 A No.

3 Q What is the height of the other wall or fencing that you have in your sector?

4 A The other heights of the legacy fencing in the sector could range from 15 to
5 18 feet, approximately.

6 Q Do you know what types of narcotics your agents encounter either in the
7 field or in the interior checkpoints? Currently, this past fiscal year, do you know what
8 types of narcotics have been apprehended?

9 A Yes.

10 Q And what types of narcotics are those?

11 A Those narcotics that I know of would be marijuana, cocaine, heroin, fentanyl,
12 methamphetamine.

13 Q And you find the larger loads at the checkpoints?

14 A Generally.

15 Q Do the surges have an impact on your ability to keep those checkpoints
16 operational?

17 A Yes.

18 Q Is that impact a staffing impact, or what is the impact of the surges on the
19 checkpoints?

20 A Yes, it's a staffing impact.

21 Q Is the staffing impact because agents that would be manning the checkpoint
22 are needed for other duties, such as care processing of illegal aliens, or what is the impact
23 of the surges?

24 A Yes, that is the impact.

25 Q Since you've been in the El Centro Sector since April of 2020, has there ever

1 been a time when you've had to shut down one of your permanent checkpoints?

2 A Yes.

3 Q Do you know approximately when that was and how long that occurred?

4 A I can't remember the date that that checkpoint was shut down. It was shut
5 down due to those manpower -- that manpower draw for approximately 24 hours was
6 the first time in almost 3 years our points had been down ever, due to that.

7 And then also, that checkpoint station is -- I had to draw manpower off of key
8 circumvention routes at the Indio station as well.

9 Q But currently, those checkpoints are fully staffed as well as your
10 Border Patrol stations?

11 A Yes.

12 Q You mentioned that your agents routinely engage in rescues of migrants.
13 Do you know approximately how many rescues your agents are performing every year?

14 A Approximately into the hundreds, but a rescue is not necessarily one event.
15 One event could be several people in that event that are rescued. So we have hundreds
16 of events, but that doesn't mean one person was rescued in an event. It could be a
17 group of 30 individuals that were -- that were rescued.

18 Q What types of rescues are your agents conducting?

19 A Many different types. Medical rescues, folks that have some type of a
20 medical situation, dehydration, water rescues. We've had some dynamic water rescues
21 there in the El Centro Sector.

22 Q Do rescues ever put your agents at risk of harm themselves?

23 A Yes.

24 Q Do you know if the TCOs ever put migrants in peril intentionally as a tactic?

25 A I think that they put migrants in peril all the time when they smuggle them

- 1 across the border. And they're in peril by virtue of the fact they're being smuggled
- 2 across the border by a TCO.

1

2 [11:27 a.m.]

3 BY MR. RUST:

4 Q Do your agents encounter individuals who are deceased as a result of the
5 smuggling operations?

6 A Yes.

7 Q Do you know approximately how many deceased individuals there were in El
8 Centro Sector last year?

9 A That was approximately 19, and approximately.

10 Q Do you know how those people died?

11 A I believe those people died from dehydration and drowning. Those are the
12 primary causes.

13 Q Are your agents ever assaulted in the field?

14 A Yes.

15 Q Do you know approximately how many agent assaults have occurred during
16 the last year?

17 A I don't have that number off the top of my head.

18 Q Do you know what types of assaults have occurred against agents?

19 A Yes.

20 Q What types are those?

21 A Primarily physical assaults: throwing rocks, fighting, striking agents, vehicular
22 assaults.

23 Q Are there any risks to Border Patrol agents that are unique to the El Centro
24 Sector?

25 A Yes.

1 Q And what are those?

2 A In the El Centro Sector, we have a body of water. It's known as the New
3 River. The New River flows from Mexicali that city of 1.3 million people north into the
4 United States. It's been characterized as the most polluted body of water in the United
5 States. Smugglers and TCOs will often utilize that polluted waterway to further their
6 smuggling activities to include assaulting agents with the river water itself, which is highly
7 polluted, to encouraging the illegal aliens to assault agents, as well, knowing it's very
8 difficult for us to enforce in that body of water.

9 Q You talked a lot about the importance of being able to deliver a consequence
10 to illegal aliens in the El Centro Sector and that being a factor in reducing illegal
11 immigration in your sector.

12 Has there ever been a time when you've been unable to deliver an adequate
13 consequence to individuals in your sector because of migrant surges?

14 A Yes.

15 Q And what does that look like? Is that a release on recognizance, just with a
16 notice to appear, or what are those inadequate consequences?

17 A Not what you're talking about so much. But an inadequate consequence,
18 I'll give you example. I'll go back to the Indio Border Patrol station. As we pulled
19 agents off the line off and off checkpoints and off these key circumvention routes, it was
20 like turning a light switch on and off, black and white, dark and light. Interstate 10, for
21 example, is one of those key circumvention routes, not only for the El Centro Sector, but
22 for Tucson and Yuma Sector as well.

23 And I noted that we had approximately between 7 and 10 narcotics and alien
24 smuggling loads a week. But when we took our highway interdiction agents off of
25 Interstate 10, it was that light switch that was turned off. It went to zero and stayed

1 zero obviously because there was no Border Patrol agents on that key circumvention
2 route until we could put agents back on that circumvention route, back on the
3 checkpoints. And it was like turning the light switch back on. Within a matter of
4 hours, oftentimes barely even a shift, the apprehensions start again, whether it's
5 narcotics or bulk cash seizures, weapons, or the smuggling of humans.

6 Q Do you get a lot of bulk cash seizures and weapons?

7 A We do.

8 Q Are those being smuggled back into Mexico?

9 A It's -- in my experience, it's a myriad. Some weapons are bound for
10 Mexico. Some we don't know where they're bound for. Bulk cash is typically -- it can
11 go either way.

12 Q Is the bulk cash that you're seizing -- or do you have any awareness of what
13 the bulk cash is proceeds of that you're seizing?

14 A Yes.

15 Q Is it proceeds of a criminal activity?

16 A Yes.

17 Q Related to narcotics or what?

18 A It can be related to narcotics. A lot of alien smuggling proceeds. We
19 apprehended one on I40 in Barstow yesterday -- actually, I believe it was two, bulk cash
20 smuggling events. Both were related to alien smuggling.

21 Q During your tenure in the El Centro Sector, have your agents encountered
22 individuals who were found to have derogatory information related to terrorism?

23 A Yes.

24 Q Does that concern you from a national security perspective that illegal aliens
25 with terrorism concerns are attempting to enter the United States?

1 A It concerns me that any illegal alien attempts to enter the United States or
2 becomes successful in entering the United States, terrorist or otherwise, given what I'd
3 already talked about and the reasons why.

4 Q When your agents encounter an individual who has derogatory information
5 related to terrorism, what actions do they take?

6 A Typically, we partner with the Federal Bureau of investigation and their JTTF,
7 Joint Terrorism Task Force, and they adjudicate that however they may. And I'm not
8 going to get too much more into the hows and whys there.

9 Q But you partner with the Joint Terrorism Task Force to adjudicate that
10 derogatory information and collect facts to make an appropriate processing decision at
11 that point?

12 A Yes.

13 Q In your role as the chief patrol agent, do you assist with efforts to recruit law
14 enforcement agents into the Border Patrol to serve in the El Centro Sector?

15 A Are you asking if I do that?

16 Q Yes, sir.

17 A Yes.

18 Q In what ways do you participate in recruitment efforts?

19 A Both personally -- you want to join the Border Patrol? Just like that. If
20 you want to, books are open. We'll sign you up right now. As a matter a fact, all of
21 you here. You want to come into the U.S. Border Patrol? Make sure you come into
22 the El Centro Sector where we provide consequences, and it's the premier sector in the
23 U.S. Border Patrol. I think the world must resolve around El Centro somehow. I don't
24 know how God made that happen, but apparently it revolves around El Centro. So both
25 personally, and then we have recruitment teams as well that we send out from the El

1 Centro Sector to recruit individuals, including law enforcement officers to serve as that
2 most premier primary professional of law enforcement professions, the U.S. Border
3 Patrol.

4 Q Thank you.

5 Mr. Rust. I'll pass to my colleague. Thank you.

6 BY MR. MCDONAGH:

7 Q Do you live in the El Centro Sector, sir?

8 A I don't live in the sector, itself. That's the buildings where the Border Patrol
9 agents work. I live within El Centro Sector, yes.

10 Q Do you engage with people in the community often?

11 A Yes.

12 Q What are some of the primary concerns of individuals within the El Centro
13 Sector as it relates to illegal immigration?

14 A I outlined one scenario already. A lot of the local towns, Calexico, El
15 Centro, Imperial, Brawley, Holtville, and many other towns are concerned about violence
16 in those communities, whether it's gang violence or violence inspired by some type of
17 immigration situation. And those individuals do seek out the Border Patrol's help to
18 mitigate many of those situations. That also includes narcotics and any other crime, as
19 well, but specifically things that we have the jurisdiction or authority to mitigate and they
20 don't.

21 Q Are there concerns from members of the community regarding property
22 damage?

23 A Are you talking about property damage resulting from what?

24 Q From illegal crossings.

25 A Typically, not. Most of our illegal crossings are in more of the remote

1 areas, with the exception of Calexico. There's isolated incidents in Calexico where some
2 folks are concerned about that but not really on a large scale in the El Centro Sector.

3 Q What are your environmental concerns as it relates to illegal border
4 crossings?

5 A Sure. My environmental concerns as they relate to illegal border crossings
6 are both at the border, and then in the interior of the United States as well. We'll take a
7 look at the border there. As the Border Patrol enforces immigration laws there on the
8 border, oftentimes we do so in protected lands, Federal lands, wilderness areas, and
9 many other lands that have a public benefit, are part of our national interests.

10 As we know, the environment is now part of our national interests, very important
11 to Americans. The conservation efforts that we spent, oh, a hundred years developing,
12 very important to Americans. So, as we enforce laws in some of those Federal lands or
13 protected sites, sites such as we have there in the El Centro Sector, Native American
14 heritage sites and things like that, I do see personally damage, litter, erosion. There are
15 vehicle incursions back when they had vehicle incursions, and then vehicle incursions
16 from the north that come down to pick those individuals up that do destroy a lot of our
17 environmental resources.

18 And, because I'm a Border Patroller security professional, I did take a look at that
19 nationwide. I did already detailed that with Peninsular Desert Bighorn Sheep and then
20 took a look at that. Flora, fauna nationwide and there is a -- it does seem that
21 it's -- what happens at the border affects ma-and-pa American. That also includes the
22 environment.

23 Q What are the effects on the American taxpayer of illegal border crossings
24 and illegal aliens in general?

25 A Did you ask me what the effects on the taxpayer?

1 Q On the American taxpayer.

2 A I think a lot of them die at the hands of illegal aliens each year as we see
3 rather constantly in the news and in my profession I see it. One of my workers in my
4 sector's son was killed by one just a couple of weeks ago, and I can only imagine the
5 heartbreak nationwide. My hometown there in North Carolina saw the same thing
6 happen as do many hometowns for whatever reason, whether it's a criminal or a drunk
7 driver or whatever, people that shouldn't be here. Big effect on the taxpayer in my
8 opinion.

9 Q Do illegal aliens effect community resources in El Centro and across the
10 country? Hospitals? Schools?

11 A Yes.

12 Q In what ways?

13 A When we talk about hospitals, I believe that a lot of the individuals that cross
14 the border illegally and end up having to go to the hospital, those hospitals oftentimes
15 bear the burden of some of -- of those costs. In talking with hospital administrators in
16 the Imperial Valley, specifically the El Centro Regional Medical Center they are concerned
17 about what happens and the costs associated with illegal immigration, and what can be
18 done to stop it.

19 Q You mentioned as the premier sector on the southwest border that you
20 provide consequences, and that's why your numbers are low. What differentiates your
21 sector from other sectors along the southwest border as it relates to consequences?

22 A I'm not going to detail what other sector chiefs and those other sectors do
23 because I'm not expert in their sectors. I can really only speak to what's happening
24 there in the El Centro Sector. So, again, it's those consequences before they get there,
25 when they're there, and any other time we can provide a consequence to them. But, as

1 far as what's happening in the other sectors, I'm not the subject matter expert in any of
2 those other sectors, so I'm hesitant to talk on that.

3 Q You started in El Centro in the '90s. We've covered that. What were the
4 demographics of illegal border crossers in the '90s?

5 A Primarily, Mexican single adults.

6 Q Were they economic migrants?

7 A I don't know.

8 Q Why were they coming to the United States?

9 A I believe a myriad of reasons.

10 Q Can you provide some examples?

11 A From what I remember 27 years ago, some came to commit crimes. Some
12 came to work, and some came because they said they had family, a pull factor there in
13 the United States.

14 Q What was the primary or the majority -- excuse me.

15 What was the primary disposition, the ultimate consequence, for those illegal
16 border crossers in the 1990s?

17 A Well, the ultimate consequence was a criminal prosecution if we could gain
18 that.

19 Q Were most voluntarily returned?

20 A Yes.

21 Q Did most seek to evade apprehension?

22 A Yes.

23 Q Why did they not give themselves up?

24 A Well, I can't speak to each individual's proclivity as to why they would or
25 wouldn't give up. In my experience, they wanted to effect an entry into the country for

1 whatever reason they had to come into the United States.

2 Q You started in El Centro in 2020. Were the migrant protection protocols in
3 place during that time?

4 A I believe so.

5 Q Under that program, a migrant encountered between the ports of entry who
6 claimed a fear of returning to their home country would be returned to Mexico during the
7 pendency of their proceedings, correct?

8 A That's not correct. It's possible that could have happened.

9 Q Was that part of the program? Is that a potential disposition under that
10 program?

11 A That was a potential disposition.

12 Q They were not released into the United States under that sub-disposition of
13 that program?

14 A I can't speak to all the individuals that we apprehended, whether they were
15 or weren't released and everyone was under MPP. I don't have those statistics. I can't
16 remember.

17 Q But some were?

18 A Yes.

19 Q Did you consider that a consequence?

20 A Are you saying the MPP?

21 Q Yes.

22 A Yes.

23 Q Do you consider release into the interior of the United States, whether that
24 is under title 8 or via parole, a consequence?

25 A Could you say that again?

1 Q Do you consider release into the interior of the United States, whether that
2 be under title 8, parole, NTAs, a consequence?

3 A It depends on how it's done.

4 Q Could you explain?

5 A I can't make a generalization on that because there's different pathways as
6 to how that may happen.

7 Q Which pathways do you not consider an adequate consequence?

8 A I can't really say on each individual pathway because there may be a
9 consequence associated with that pathway. So I'm not going to give a blanket
10 statement on that. You know, it may -- they may be in custody for a period of time
11 before they make that entry into the United States. So, therefore, there would be some
12 consequence there.

13 Q But as it relates to the release into the interior of the country?

14 A I can speak to the El Centro Sector and none of the other sectors. We
15 sought to keep our numbers low so that we could take a look at each individual case and
16 apply that maximal consequence to that individual. And, in doing so, we were able
17 to -- we are able to apply a maximal consequence to that individual. So, whether that
18 individual eventually made entry into the United States or not, we sought to provide a
19 consequence to that individual. And having low numbers allowed us to do that.

20 Q Were there situations where the maximum consequence was release into
21 the interior?

22 A Yes.

23 Q DHS OIG recently released a report entitled "Intensifying Conditions at The
24 Southwest Border are Negatively Impacting CBP and ICE Employees' Health And Morale."

25 Mr. McDonagh. I'd like to submit this to the record as majority exhibit 2.

1 [Bonivo Minority Exhibit No. 2
2 Was marked for identification.]

3 Mr. Bonivo. Chief, could you please turn to page 20-22? So we're going to look
4 at under the heading "Unpredictable Immigration Policies have Impacted Morale,"
5 starting at the second sentence.

6 Mr. Jonas. What page?

7 Mr. McDonagh. 20-22, Steve.

8 Mr. Bovino. I don't think there's such a thing there.

9 Mr. Rust. 22.

10 Mr. Jonas. 22.

11 Mr. Bovino. Okay.

12 BY MR. MCDONAGH:

13 Q Again, starting at the second sentence, the report reads: Since fiscal year
14 2019, immigration policies have shifted significantly as the United States experienced the
15 COVID-19 pandemic and transitioned from one administration to another. Our
16 interviews and survey comments show staff frustration and lower morale related to
17 changing policies, especially when the respondents felt that the changes were
18 inconsistent with their law enforcement duties. In the view of some law enforcement
19 personnel, these policies have made it difficult for them to enforce the laws and carry out
20 their mission. One said they feel as if they were doing their job with one hand tied
21 behind their back.

22 Have you ever heard complaints such as this from agents in El Centro?

23 A I can't comment on that. I'm not familiar with this report. Never read the
24 report. Never seen the report until now. So I'm not going to comment on what's in
25 this report here. Don't know anything about it.

1 Q That's fine.

2 Mr. McDonagh. That's all I have for this hour.

3 BY MS. O'CONNOR:

4 Q Chief, I have a couple of followup questions from my colleagues questions.
5 I want to talk about drug seizures in El Centro. The statistics for fiscal '23 show a big
6 increase in methamphetamine seizures for this fiscal year. What do you think is the
7 cause of that? Do you have more checkpoints open, or do you think there's more drugs
8 coming across?

9 A Well, neither. I believe fiscal year 2023, that increase in meth seizures in
10 the El Centro Sector -- I'm not talking nationwide or any other sector -- in the El Centro
11 Sector was due to that Operation Four Horseman, which was a 60-day operation looking
12 for hard narcotics, especially fentanyl, and we did open up an additional tactical
13 checkpoint on I8. So we had two tactical checkpoints, two permanent checkpoints, and
14 then help from other sectors. I believe that additional focus on drugs, not only
15 methamphetamine but any drug and any threats, allow us to see an increase in
16 apprehensions of methamphetamine.

17 Q Is there a reason that a certain drug would be more predominant in one
18 sector than the another? For example, in some of the other sectors, the numbers for
19 marijuana seizures are astronomical, and they're relatively low comparatively in El
20 Centro. Would there be a reason that that would happen?

21 A I can't speak to specific reasons on why the other sectors might see more of
22 a narcotic because I haven't talked to those sector chiefs on that specific topic. I do
23 know that marijuana seizures in El Centro have plummeted.

24 Q In your experience, has there ever been reasons that like certain drugs have
25 come up through a certain sector?

1 A In my experience, I believe some of those cartels wanted that drug, that
2 particular drug, going on a particular route, but I don't know why.

3 Q In fiscal '22, El Centro had a large amount of fentanyl comparatively to '23
4 and '21. Do you know if that was due to one large seizure, or a couple large seizures, or
5 an increase in fentanyl just coming through that year?

6 A I know that the Highway 86 checkpoint in El Centro is often the highest hard
7 narc-producing checkpoint in the nation. I believe it is -- I'm fairly certain it is right now
8 this fiscal year for combined hard narcotics. So I believe that our agents' expertise at
9 that checkpoint leads them to quality seizures of fentanyl.

10 Q Do you think there was any reason that it was increased in 2022?

11 A I don't know.

12 Q Do you know if you had any really large seizures in 2022?

13 A I can't remember the pound value or kilogram value of those individual
14 seizures in 2022. I know we had them. But I can't remember what the poundage was.

15 Q How is fentanyl typically packaged when your agents encounter it in El
16 Centro?

17 A In my experience, there's a couple of different types of packaging. One, it's
18 packaged with pills, with fentanyl pills. And then, also, the powder crystallized form of
19 fentanyl. So it can be either the pills in bulk or bricks of powder.

20 Q Do you typically in your seizures in El Centro see smuggling amounts that
21 would indicate trafficking or personal use amounts?

22 A In the El Centro Sector, trafficking.

23 Q I have a quick followup on community impact. My colleague had asked you
24 about obviously the impacts on the local community of illegal immigration in El Centro.
25 Do you have the opportunity, or is there is a chain by which you can report some of these

1 local concerns up to Border Patrol headquarters?

2 A Yes.

3 Q Do you do that? Do you report that up?

4 A Yes.

5 Q And then one more followup. My colleague had asked you about the MPP,
6 and you had said that it was a consequence. Do you believe that the MPP was an
7 effective consequence --

8 A Yes.

9 Q -- of illegal immigration? I want to turn your attention back to processing in
10 El Centro. Is capacity a factor in considering a processing pathway in El Centro?

11 A Thus far, no.

12 Q Are foreign -- are agreements with foreign governments a factor in
13 processing pathway in El Centro? For instance, if Mexico is willing to take certain people
14 back, do you consider that?

15 A I don't have any agreements with a foreign government.

16 Q Okay. What about surges? Do those impact processing pathways?

17 A It impacts processing.

18 Q Does it impact the types of pathways utilized during those surges?

19 A In the El Centro Sector, that was kept to a minimum. We looked at
20 consequence delivery via any of those pathways. So we stuck to consequence delivery,
21 and we utilized many pathways to do that.

22 Q Are Border Patrol policies considered as a factor in determining what
23 pathway to utilize?

24 A Can you say that again?

25 Q Are Border Patrol policies a factor in determining what pathways to utilize?

1 A As the chief of El Centro Sector, I determine what processing pathways are
2 used and to what extent they're used.

3 Q Do you ever get guidance from Chief Ortiz or Border Patrol headquarters
4 about different processing pathway policies?

5 A Yes.

6 Q And does that guidance impact which processing pathways are utilized?

7 A It can.

8 Q What is the chain when it comes to policies that are coming down from
9 Border Patrol headquarters? How does it get to you?

10 A That can get to me in a variety of methods. It could be a direct
11 conversation. It could be a phone call. It could be a Teams meeting. It could be an
12 official memorandum. It could be an email. It could be all of the above for one policy.

13 Q Who does it start with, and then how does it trickle down? Does it go
14 headquarters to Ortiz to you, or is there a different pathway?

15 A I don't know. I don't know.

16 Q Do you typically get the headquarters policies from Chief Ortiz?

17 A Sometimes. It could depend. He could put a policy out if he wanted to.

18 Q And then who else would you get them from?

19 A The chain of command at headquarters.

20 Q So who's your chain of command at headquarters?

21 A Typically, that's the chief of the Law Enforcement Operations Division, the
22 deputy chief of the Border Patrol, and the chief of the Border Patrol.

23 Q Okay. So it would come from some level there, and then come down to
24 you?

25 A Typically, but not every single time. Not every single time. There could

1 be a policy in human resources that might come from a human resources officer.

2 Q That wouldn't have gone through headquarters?

3 A It would have gone through headquarters, but it wouldn't have been one of
4 those individuals that I just detailed to you. It's possible that another individual could
5 put that out, and it not be Ortiz, B. Miller, or --

6 Q What about processes -- strike that.

7 What about policies related to processing illegal immigrants at the border? Who
8 would those be coming from?

9 A That chain of command that I detailed to you.

10 Q Okay. Are you familiar with notices to report?

11 A Somewhat.

12 Q Did El Centro ever use them?

13 A I believe the El Centro Sector did not use them, or if we did, it was very little.
14 I believe that operation was shutdown within a few days after it started.

15 Q Are you familiar with Parole + ATD?

16 A Somewhat.

17 Q Did El Centro ever use Parole + ATD?

18 A Yes.

19 Q Do you know what factors in El Centro agents used to determine whether
20 someone was amenable to Parole + ATD?

21 A The agents in the El Centro Sector first and foremost look at what
22 consequences that we can provide to those individuals that come into our custody. So
23 that's what they look at first and foremost before looking at that individual pathway.
24 Criminal prosecution, CVB tickets, repatriation flights, and many other pathways. So
25 there's a myriad of factors they would look at on a case-by-case individual basis.

1 Q Sure. But I'm asking specifically about Parole + ATD? so how would they
2 determine someone was amenable to Parole + ATD? Do they consider their
3 demographics? Do they consider their health? Do they consider their criminal
4 history? What kind of factors specifically are considered for Parole + ATD? What
5 would make someone amenable to Parole + ATD?

6 A Yeah. I can't speak on that specifically.

7 Q Do you know if, when El Centro was using it, there was guidance that helped
8 Border Patrol agents make that determination?

9 A Yes.

10 Q Do you know where that guidance came from?

11 A I can't remember.

12 Q Do you know what factors agents -- when they could expel under title
13 42 -- what factors agents considered that would make someone amenable to expulse
14 them under title 42?

15 A The agents looked at a variety of factors for expulsion under title 42.
16 Typically, Mexican males or other populations. But typically Mexican males in the El
17 Centro Sector, and as far as the factors for the expulsion, you know, there were factors
18 for the expulsion itself that had to be met before they could be expelled under the title
19 42.

20 Q What type of factors?

21 A Like the Mexican Consulate had to be notified before we could expel
22 someone through that expulsion gate.

23 Q Was there somebody in your sector that communicated directly with the
24 consulate or was it the agents themselves?

25 A All of the above.

1 Q So anyone could have that communication?

2 A No. But there were agents that did communicate with the consulate, and
3 then there were specific people as well. But I don't know who they were.

4 Q Before the expiration of title 42, was El Centro utilizing voluntary returns?

5 A Can you repeat that, please?

6 Q Before the expiration of title 42, so when it was still an option for a pathway,
7 was El Centro utilizing voluntary returns?

8 A Very few.

9 Q What about after the expiration of title 42, are you currently utilizing
10 voluntary returns?

11 A I believe it's very few.

12 Q Do you know who would be considered for a voluntary return?

13 A We look at providing the most consequences that we can. And, if that
14 voluntary return was the consequence that we thought was the best consequence, we
15 would use voluntary return.

16 Q Right. But what kind of factors make someone --

17 A I don't know.

18 Q Well, does their nationality impact whether they're going to be voluntarily
19 returned to Mexico?

20 A It can.

21 Q Does their age impact whether they're going to be voluntarily returned to
22 Mexico?

23 A It can.

24 Q Does their criminal history impact whether they're going to be voluntarily
25 returned to Mexico?

1 A It can.

2 Q What about before the expiration of title 42, was El Centro utilizing
3 expedited removal?

4 A I believe on a very limited basis.

5 Q What about now?

6 A Yes.

7 Q Have you been effectuating many of the removals under expedited removal,
8 or is it largely people who are --

9 A I believe it's both now, but I don't know what the statistics are now.

10 Q Is El Centro one of the sectors that has asylum officers and immigration
11 judges that are participating in credible fear reviews, either remotely or in person at the
12 processing centers?

13 A None that I know of.

14 Q Are there any processing ICE ERO officers at the central processing center in
15 El Centro?

16 A There can be at times.

17 Q When -- is there -- are there particular times that there would be?

18 A I can't speak to which particular time that was. We have ongoing and
19 continuous and close relations with ERO. I have seen them in the central processing
20 center, but to give you a breakdown of exactly when they're there, I don't know.

21 Q I don't need a breakdown of when they're there. I guess more just the
22 circumstances. Would it be when there's surge that you bring in ICE ERO, or are there
23 no particular circumstances?

24 A Yeah. It's possible under a surge. It also depends on, I believe, what ICE
25 ERO's -- what their operational profile looks like at the time, whether they can come or

1 not, where we would want them to go. We had ICE ERO officer in Indio, for instance
2 because a lot of our NGOs were up in Indio so we did have ICE ERO folks stationed on site
3 with us in Indio, but not all the time. They're not there now.

4 Q Where is the closest ICE ERO office to the central processing center?

5 A I can't remember the address of where it's at. There are ICE ERO officers in
6 El Centro in a facility there, but their main office is San Diego.

7 Q But there's some in El Centro?

8 A Yes.

9 Q Before the expiration of title 42, were agents in El Centro issuing notices to
10 appear?

11 A I believe so, yes.

12 Q Are they currently issuing notices to appear?

13 A I believe, yes.

14 Q Currently, after a Border Patrol agent issues a notice to appear, is that
15 person then transferred to ERO to make a custody determination, or does Border Patrol
16 make a custody determination?

17 A In the El Centro Sector, a majority of those individuals are transferred to ERO
18 for that custody determination.

19 Q But sometimes Border Patrol's making that determination?

20 A I believe they're in -- most of them go to ICE, ICE ERO from El Centro.

21 Q Does Border Patrol transfer them to ICE, or does ICE come get them?

22 A I believe Border Patrol transports them.

23 Q Do you know if it's agents or a contractor?

24 A I believe it's both.

25 Q Prior to the expiration of title 42, was El Centro using humanitarian parole

1 outside of the Parole+ ATD context?

2 A I don't know.

3 Q What about now?

4 A I don't know.

5 Q Do you have to approve any as the chief, any humanitarian parole releases?

6 A Yes.

7 Q Can you remember any this fiscal year that you -- or I'm sorry. Can you
8 remember any after the expiration of title 42 that you approved?

9 A After title 42, I can't remember any.

10 You know what, I'm going to back up on that one. I believe there were -- there
11 may have been some for medical purposes, but I can't remember how many or where.

12 Q Okay. Do agents in El Centro encounter many aliens with prior order
13 removals and reinstate those removal orders?

14 A Yes.

15 Q To your knowledge -- and let's just say post the expiration of title 42 -- do
16 most of those with reinstated removal orders assert a fear of return, or are the orders
17 effectuated?

18 A I don't know.

19 Q Are those people transferred to ICE ERO for that determination, either for
20 the removal or the fear?

21 A I don't know.

22 Q What about an expedited removal proceeding -- or an expedited removal, if
23 somebody exerts a fear, are they kept in Border Patrol custody for their credible fear
24 review, or are they going to ICE ERO?

25 A I believe ICE ERO.

1 Q Are you familiar with the parole plus conditions guidance that Chief Ortiz
2 sent out right before the expiration of title 42?

3 A No.

4 Q Do agents in El Centro release anybody on the street directly from Border
5 Patrol custody currently?

6 A Currently, no.

7 Q Have they ever?

8 A Yes.

9 Q In what circumstances would there be street releases?

10 A There was one circumstance that I remember where there were street
11 releases. The NGOs were closed. I believe it was the day after Christmas, 2022. And
12 we had nowhere to place those individuals so they were released on the street.

13 Q You mentioned before I think briefly about one particular pull factor. So
14 you're familiar with the term "pull factor," right?

15 A Yes.

16 Q And are you familiar with the term "push factor"?

17 A No.

18 Q Would you consider economic opportunities within the United States a pull
19 factor?

20 A Yes.

21 Q Would you consider educational opportunities within the United States a
22 pull factor?

23 A Yes.

24 Q Would you consider family reunification a pull factor?

25 A Yes.

1 Q Would you consider illegal alien -- or I guess just foreign perception a
2 favorable U.S. immigration policy as a pull factor?

3 A I don't know.

4 Q What is the ultimate goal of an immigrant that comes to the U.S. border?

5 A I don't know. I don't know what their goal is.

6 Q Well, someone who comes to the U.S. wants to be released into the United
7 States, right?

8 A I can't -- I don't know what they want. I can't make that assumption nor
9 opine about that. I don't know.

10 Q In your experience, would you know of a reason someone would come to
11 the U.S. border to not be let in?

12 A Can you repeat that, please?

13 Q In your experience, would you -- in your experience, do you know of a
14 reason that someone would come to the U.S. border to not get in?

15 A I don't know.

16 Q You were talking earlier or you mentioned earlier about fake families and
17 how your agents were able to break up a -- was it the Brazilian immigrants that were
18 creating fake families? Why would immigrants do that?

19 A An immigrant would or an individual would typically attach themselves to a
20 family group because it makes it easier to claim asylum and/or credible fear if it's a family
21 group.

22 Q What's easier about the claim?

23 A I believe it's easier for them to claim asylum. They believe it furthers their
24 asylum claim if they're with a family. And we don't break families up under a lot of
25 circumstances. So that whole family could potentially make entry into the United

1 States.

2 Q Being in a family doesn't impact to ability to claim asylum; anyone can say
3 "I'm afraid to go back," but being in a family does increase the odds of being released into
4 the United States, right?

5 A It could.

6 Q How are your agents able to figure out whether families are not legitimate?

7 A They use a -- several different techniques and tactics. There's agent
8 observations are key in that initial detection of fake family groups. Agents interact and
9 deal with thousands and thousands and thousands of illegal -- of individuals crossing the
10 border illegally. So they're attuned to something that might be off, something that
11 might be different. And, with the Brazilians, that's exactly what happened. I believe
12 the initial case, some of the children were acting very strangely around the male who
13 was -- who ended up not being their father.

14 So they started looking at that, and then uncovering it through those agent
15 observations. And then, after that, you would have interviews of the children, of all
16 individuals present in the group, whether it was the fake father or mother, and then
17 perhaps other interview techniques of other individuals that may have made the journey
18 with them.

19 Also, take a look at crossing histories. You know, did the individual -- you know,
20 was he -- he or she, were they expelled under title 42, and if they were, were they
21 expelled with anyone else, or were they expelled individually, and then they came back
22 with a family; how did that happen? So a lot of agent observations that are born of the
23 experience of a Border Patrol security professional.

24 Q Do surges which create -- which impact processing time, does that also
25 impact an agent's ability to make those observations or delve into those observations?

1 A Yes, I believe so.

2 Q You also mentioned that the same agent was able to pick up on fake
3 documents being used by Peruvians. What kind of resources do agents have to help
4 them identify fake documents, if any?

5 A Agents are trained in the detection of fraudulent documents. But, again, a
6 lot of that going back to agent experience. This agent had a lot of experience and then
7 was also able, through his observations, to realize that something wasn't adding up with
8 that fake police document. And also it's often this personal relationship those agents
9 develop with some of the foreign countries, with some of the police officials or officials in
10 foreign countries as we look to identify people coming into the country.

11 So, you know, a lot of different methods there for the fake documents. And
12 oftentimes it's not the document itself, although it could be, not mutually exclusive the
13 document. But it's how that individual acts, what he or she does, the circumstances of
14 the apprehension, and that type of thing.

15 Q Other than that fake doc ring, or consistency, do agents in El Paso often find
16 fake documents?

17 A In El Centro?

18 Q Oh, I'm sorry. In El Centro?

19 A Yes.

20 Q Okay.

21 Ms. O'Connor. That's our time for now. We can go off the record. It's one
22 12:14 p.m.

23 [Recess.]

1

2 [1:14 p.m.]

3 Ms. O'Connor. Okay. It's 1:14. We'll go back on the record.

4 BY MR. MCDONAGH:

5 Q Chief, we talked about the smuggling and trafficking of migrants. What is
6 the difference between smuggling and trafficking?

7 A Oftentimes there's not -- well, the difference between smuggling and
8 trafficking would be, when we're talking about trafficking, oftentimes but not exclusively
9 there's some element of servitude bonded to your debt payment whereas in smuggling
10 not to the extent that there would be in trafficking typically.

11 Q Just to clarify, trafficking is the servitude bondage depth of those two?

12 A Yes.

13 Q -- one element?

14 A Yes.

15 Q Are the majority of illegal border crossers that go through the cartels
16 crossers at the southwest border, are they smuggled or trafficked?

17 A I can't say what happens to them south of the border, whether trafficking is
18 occurring south of the border with those cartels or not. So I can't make that assessment
19 a hundred percent.

20 Q Do you have any insight into what circumstances they're trafficked into
21 within the United States?

22 A Can you explain that a little better? I mean, they're trafficked across the
23 border.

24 Q Right. They're trafficked across the board but into servitude bondage debt.
25 What does that look like within the United States? Are they being trafficked into any

1 forms of modern day slavery?

2 A It could be. I think there's a lot of different areas that they could be
3 trafficked into, whether it's sex workers, slavery. You know, I think there's a lot of
4 different things that it's possible they could be trafficked into.

5 Q Are these individuals who are trafficked into these situations predominantly
6 women and children?

7 A I don't know. I don't have the statistics nor the demographics there.

8 Q What evidence of this trafficking do you see, other than coming across the
9 border itself, do you see -- or do your agents see when they encounter migrants?

10 A Can you please repeat that?

11 Q What evidence -- when your agents encounter migrants in your sector, what
12 evidence -- how does that -- let me rephrase.

13 Do you determine that they're being trafficked into these situations based off of
14 interviews with migrants?

15 A It's possible. It's possible an interview or agent observations, that type of
16 thing.

17 Q What are some of the clues other than verbal cues?

18 A We had a case there in the New Orleans Sector once where we had a child, I
19 believe, approximately 10 years of age, working for a roofing company, and had no ID,
20 and appeared to be under control of one of the other workers that was roofing. And it
21 looked like it might be some type of a trafficking -- child -- forcing children to work type of
22 thing.

23 Q We talked about the family unit scheme that some illegal border crossers
24 use by using a child that is of no relation to the individual attempting to cross. Are those
25 children, for lack of a better word, recycled in that system? Do they go back to Mexico

1 and then are used by the cartels again?

2 A It's possible. It's possible that could happen.

3 Q Have you seen any evidence of that?

4 A Yes.

5 Q On cartels, we spoke about how cartel violence or how violence in El Centro
6 Sector that you -- that the communities experience. Are these individuals committing
7 these crimes associated with cartels south of the border?

8 A I don't know their specific associations with the cartel. I just know that on
9 the north side of the border in the United States, they're involved in criminal activity,
10 oftentimes related to immigration.

11 Q Related to immigration in what regard?

12 A As it's been relayed to me by specifically the police chief of Raleigh,
13 California, in relation to immigration, it was different crews or segments trying to rip.
14 They call it rip crews. And what a rip crew is, is they try to hijack say a load of illegal
15 aliens so they can take the profits, because it's very profitable to smuggle an illegal alien,
16 from a different smuggling organization. So repeating smuggle organizations is what I'm
17 getting at there.

18 Q The migrants are the commodity in that circumstance?

19 A Yes.

20 Q Are there stash houses in United States in the El Centro Sector that cartels
21 use as staging points?

22 A There are stash houses in the El Centro Sector.

23 Q Just back on the -- I know we touched on Border Patrol morale, the report
24 that you hadn't read. What is the current state of morale in your sector among agents?

25 A The current state of morale in the El Centro Sector, the premier sector in the

1 U.S. Border Patrol, is one of what I would term optimal morale given current conditions
2 because our agents are focused on providing consequences. And a majority of our
3 agents are focused on patrolling that border, doing the things that they signed up to do,
4 such as catch bad people and bad things. That portends a positive morale amongst the
5 agents.

6 I talk to the agents quite often in the field. I get out and arrest illegal aliens with
7 them whenever possible. And, in talking with the agents, it's certainly much different
8 than when I talk to agents, say, at another sector.

9 Q Okay. When you said "current conditions," what are you referring to?

10 A Migrant surge.

11 Q What is the -- what are some examples when agents come to you, what do
12 they say they need to better do their mission what they signed up to do?

13 A A myriad of things. I know one of the last times I was in the field, recently
14 one of the agents had expressed concern over the new pursuant policy. So policies that
15 inhibit their ability to arrest bad people and bad things are always a concern to Border
16 Patrol agents. Even when morale's high, that's always a concern. So, you know, high
17 morale, I've always found that idle hands do the devil's work, but when they're doing
18 meaningful work, prudently and thoughtfully, along that border, morale's always higher.
19 When they're providing a consequence to someone, they see the fruits of their labor,
20 morale is higher.

21 Q Have your agents expressed to you in the past few years that they feel they
22 have not been able to effectuate wait a consequence?

23 A Yes.

24 Q Do you have any examples of that?

25 A I address a lot of musters. A muster is when agents come together at the

1 beginning of a shift. It's called a muster, and they receive directions or intelligence
2 reports and things like that. So I use those opportunities oftentimes to talk with agents.
3 And they do express concern to me about the throughput and decompression efforts that
4 are underway across the southwest border and at times in the El Centro Sector.

5 Q Thank you, sir.

6 Mr. McDonagh. I'm going to pass to my colleague.

7 BY MR. YI:

8 Q Chief, you mentioned when my colleague just asked you about stash houses,
9 that there was some discovered in the El Centro Sector; is that correct?

10 A Yes.

11 Q Have there been any discoveries since you've been chief?

12 A Yes.

13 Q Have you visited any of these stash houses yourself?

14 A I recall visiting stash houses, but I can't remember when or where.

15 Q So, when these discoveries are made, is there a report that's created?

16 A Yes.

17 Q What's the name of that report?

18 A Well, it can be on -- in different reports, but typically the report that I look at
19 for stash houses or anything like that, that's called an ESR, an Evolving Situation Report.
20 And oftentimes it will detail "stash house" in the title. So I'll look for "stash house." As
21 a matter a fact, I think there was one yesterday. So, yes.

22 Q What type of information is included in an ESR?

23 A Anything pertinent to whatever the situation is that may be evolving, such as
24 a stash house or failure to yield or something like that, something that I need to know as
25 executive of that sector.

1 Q Are there photographs included in these ESRs?

2 A There can be.

3 Q Who does the ESRs submit it to?

4 A Through the chain of command to me.

5 Q So they're written by agents and then provided up the chain to you as chief?

6 A It can be -- it can be agents. It can be supervisors as well.

7 Q And then, after the report goes to the chief, you, what happens to the
8 report?

9 A I'll take a look at the report, as will the staff at the El Centro Sector. And
10 we'll look at it for content, see if we have any questions on the report, see if the report
11 rises to the level of something more significant that might need to be reported higher up
12 in the chain of command. So we look at the report for content to see what's going on,
13 why it's going on, where it's going on, and if it's important enough for higher level
14 distribution.

15 Q And, at that higher level distribution, would that entail those weekly
16 teleconference meetings you discussed earlier today?

17 A It could, but it's possible that it could be talked about on one of those if it
18 was timely.

19 Q And I understand that stash houses may be rare of a find, but how often do
20 you receive an ESR as the chief?

21 A At least weekly, daily to weekly.

22 Q Are ESRs unclassified?

23 A Law enforcement sensitive.

24 Q Are they ever classified?

25 A I don't know.

1 Q You have not seen any that have been classified?

2 A If I did, I would not have had a need to know. So perhaps something has
3 been classified, but I can't tell you it has been because I haven't seen it. But I'm not
4 saying it hasn't been classified for some situation.

5 Q Understood. How lengthy are ESRs usually?

6 A It varies depending on the situation and the facts associated with that
7 situation.

8 Q For example, the stash house ESR you received recently?

9 A From what I remember, it was about a page with another page of
10 photographs approximately.

11 Q So they can be very brief?

12 A Yes.

13 Q And they can be much lengthier?

14 A Yes.

15 Mr. Yi. Thank you. I'll pass to my colleague.

16 BY MR. SCHALL:

17 Q Chief, thank you so much. I want to circle back to some earlier questions.
18 I believe you mentioned that you had 1,100 personnel under your supervision
19 approximately?

20 A Yes, sir.

21 Q And can you remind me how many approximately were agents?

22 A Approximately, 949.

23 Q And, in your opinion, how many agents do you need to effectively protect
24 the border in your region?

25 A In the El Centro Sector?

1 Q In sector, excuse me.

2 A Approximately, 1,300.

3 Q And that's 1,300 agents?

4 A Yes.

5 Q And what is your assessment based on?

6 A The assessment of the 1,300 agents?

7 Q Yes.

8 A To attain effective control of the border as well as all functions there in the EI
9 Centro Sector. That assessment that I conducted came up with that number being
10 1,300.

11 Q Can you expand on that assessment and what went into that?

12 A I can't remember everything that went into this. That's been at least
13 3 years ago, and I can't remember what was in the report. I know that one thing was
14 the IER -- Interdiction Effectiveness Rate. But, beyond that, I'm not going to try to guess
15 at what was in that report from 3 years ago.

16 Q And how often does this assessment come up or would you make this
17 assessment?

18 A It doesn't come up that I know of in any regular interval, but I can make that
19 assessment any time I want to.

20 Q Thank you. At this point, since fiscal year '21, have you had to send agents
21 to other sectors?

22 A Yes.

23 Q Do you remember what sector?

24 A Yes.

25 Q Can you elaborate on what sectors they went to?

1 A San Diego Sector, Yuma Sector, and Tucson Sector are the ones that I
2 remember. There may have been some to Rio Grand Valley as well, but I can't
3 remember numbers, dates, or times on that.

1

2 [1:28 p.m.]

3 BY MR. SCHALL:

4 Q And do you remember how many agents were sent at any time?

5 A I remember approximately a dozen agents to the Yuma Sector. I don't
6 remember the number for the other ones.

7 Q Did agents from other sectors get detailed to your sector?

8 A No.

9 Q Did personnel from other agencies get detailed to the El Centro Sector?

10 A Yes.

11 Q When?

12 A Approximately in 2022.

13 Q And how many were there?

14 A I can't remember the exact number, approximately 10 Homeland Security
15 investigation agents and some Federal Air Marshals, approximately two.

16 Q And were there any other agencies other than what you just mentioned?

17 A I can't recall.

18 Q What kind of risk comes with the being a Border Patrol agent?

19 A I think there is a risk in anything you do as a Border Patrol agent. So there
20 is risk associated with being a Border Patrol agent in nearly all facets of duty.

21 Q And I think you mentioned earlier that, you know, one of the risks comes
22 when you are trying to rescue illegal aliens that have crossed. Is that correct?

23 A Yes.

24 Q And does the risk increase with the number of illegal immigrants -- or excuse
25 me, illegal aliens that come over the border?

1 A It could.

2 Q In what ways?

3 A It could if more individuals came across the border and needed rescuing or
4 assaulted agents, the potential there is for that to happen.

5 Q And --

6 A I am sorry; the possibility there exists that that could happen.

7 Q And, with the possibility of increase of risk, does that hurt morale among the
8 agents?

9 A I don't think that it hurts the morale the increase in risk -- no, I don't. I
10 don't think that hurts -- in the El Centro, I don't.

11 Q You mentioned that there were incidents where an -- excuse me, an illegal
12 alien crossed and in your sector, and to evade arrest, there was assault on the agent. Is
13 that correct?

14 A Yeah, I don't remember refer -- I don't remember what particular incident
15 you are talking about. Could you be more specific there?

16 Q Sure.

17 A If somebody came across assaulting an agent? I don't remember exactly
18 saying that.

19 Q I thought you said that they threw rocks --

20 A Oh, okay.

21 Q -- agents sometimes, which has resulted in assaults or trying to get away --

22 A Yes, I said there have been assaults on agents. And the question was, what
23 types of assaults? And I mentioned rocks as being one of them.

24 Q And so, with the increase of illegal aliens coming across, could that also
25 increase assaults on agents with the increased number of crossings?

1 A It's possible.

2 Q Do you have a recollection of how many assaults on agents so far in this
3 year?

4 A No.

5 Q Do you have any knowledge of the number of assaults that
6 have -- has -- excuse me. Has the number of assaults increased in the last 3 or 4 years?

7 A I believe I read the number that they had increased over the last 3 or
8 4 years, but I can't remember the number.

9 Q Have you heard from your agents that that number has become more often,
10 has come up more often?

11 A No.

12 Q Do these incidents often lead to agents to use force?

13 A Assault behavior by subjects can lead to the use of force.

14 Q Can you give me an example of when that would lead to force?

15 A I can't remember a specific example off the top of my head that I can
16 accurately expound upon at this time. Although I'll say it does happen, and use of
17 force -- the use of force by agents when agents are assaulted does happen.

18 Q Are there many vehicle pursuits in your sector? I believe you had
19 mentioned that there weren't too many crossings with vehicles?

20 A I said there were not that many crossing by vehicles, but I didn't say there
21 weren't failure to yields and vehicle pursuits.

22 Q Okay. Are there many vehicle pursuits in your sector?

23 A Yes.

24 Q Has vehicle pursuit policy impacted ability to protect the border and
25 enforcement of immigration laws?

1 A That pursuit policy came into effect approximately June the 1st. So I can't
2 make an assessments on the impacts on that policy on what you just described. I need
3 more time.

4 Q Do you have an opinion of which way you think it will go, that policy?

5 A I am not going to pontificate really on which way because I really don't
6 know.

7 Q I think you had mentioned earlier -- switching to morale, you mentioned
8 that, when you speak to your supervisor, David B. Miller, and you sometimes talk about
9 what agents have done well in order to and I want to make sure I say this right, as part of,
10 like, an employee resilience to keep up morale; can you kind of tell me a little bit about
11 that?

12 A Sure. Employee resilience, having resilient employees in my opinion is very
13 important. It is part of our strategies there in the El Centro Sector to effectively do what
14 we need do in the El Centro Sector a motivated employee is one that is ready to
15 accomplish the mission whatever that mission might be, whether it is rescuing someone
16 when it is 120 degrees or taking on the risk that you had mentioned earlier in doing so
17 with fervor and passion as opposed to the opposite of fervor and passion: dread and
18 depression, so creating a sense of resiliency in our employees is very important. And
19 what I had mentioned there with having headquarters, such as the chief of the Border
20 Patrol, perhaps the deputy chief of the Border Patrol, call an agent as part of our
21 resiliency program, I find that at times to be effective if it's timely in certain situations. I
22 believe one of your counterparts here mentioned some of the large fentanyl and meth
23 seizures there at one of our checkpoints. I think one of the seizures was about 1,000
24 pounds of meth there a come of months ago. In fact, I think five tractor trailers were
25 apprehended here within the past 3 months, approximately five, it could have been four.

1 But, when something like that happens and it is noteworthy, as in I want our agents to be
2 recognized to know that that is important. Why? Well, one, because it is important;
3 but, two, for that resiliency and so that they know that us as senior leaders value that,
4 value that consequence. Why? Why do we want them to value that consequence?
5 So they do it more. So we can effect those national interests through our most precious
6 of resources, which are our agents. In my opinion, there is no more precious of a
7 resource than our Border Patrol agents, and I and most chiefs do shepherd those
8 resources very prudently and with a lot of thought. And that is just one example of
9 some of the thought put in there would be that example, but employee resiliency can
10 come in many forms and fashions.

11 Q Can you tell me what other forms and fashions that you implemented or
12 work on to ensure that?

13 A Recognizing employees in a variety of different ways is important. We have
14 a got horse patrol unit there in the El Centro Sector. The premier horse patrol unit in
15 the entire Nation. We run the Spanish ponies that are caught off Bureau of Land
16 Management land, perhaps the most hearty horses of any of the horse patrol units in the
17 Nation. They actually won the competition here in D.C. at police week. So it is pretty
18 special for our agents to join those full-time horse patrol agents on horses. So
19 oftentimes we will put agents on horseback if they have done a good job. I will ride with
20 them, if I can.

21 I think that there is a lot of morale building there. I think leadership by example
22 from senior leadership in the El Centro Sector is also something that builds resiliency that
23 we do on a widespread basis. Oftentimes we will empty the El Centro Sector out of us
24 staff members and ensure that those staff members are in the field arresting illegal aliens
25 and contributing to that border security mission in front of the agents, with the agents,

1 and, as the saying goes, bleed alongside them, if you can. So a lot -- there is another
2 example.

3 Q And --

4 BY MR. YI:

5 Q Chief, you mentioned a horse patrol unit, are you familiar with horse patrol
6 units in other sectors as well or the existence of them?

7 A I know that they exist. I am not familiar because I don't run those units so I
8 really can't seek to anything specific about those other units except they are not as good
9 as ours. I'll say that. Put that on the -- they are not as good as ours.

10 Q You have made it abundantly clear that El Centro is the premier sector for --

11 A Absolutely.

12 Q -- today.

13 So I wanted to ask you about something that made national news. This is the Del
14 Rio Sector, but there was an incident regarding mounted Border Patrol agents. Are you
15 familiar with that news story?

16 A I read the news story, but I am not familiar with all aspects of that story.

17 Q Right. So a lot of the media coverage included how the leadership at the
18 Department of Homeland Security viewed the issue and how they handled the issue.
19 And there was some subsequent media reports and publicly available reports that
20 indicated that the way that the Secretary and some of the people in leadership handled
21 the issue or viewed the Border Patrol agents were not fully accurate. I think there was a
22 lot of blame placed on the Border Patrol agents that we agree are some of our most
23 precious resources. Did you have any feelings about that and how that may have
24 affected any of the morale of the Border Patrol agents in your area?

25 A As far as my feelings, I am not going to really pontificate on it because they

1 are not important here. But what is important is the agent morale, and I did receive
2 questions from my Border Patrol agents on that incident, and they seemed concerned
3 about that.

4 Q Kind of concerns did they express to you?

5 A They wanted to know if those agents were getting a fair shake type of thing.
6 Wanted to know what happened, why it takes so long for an investigation to take place,
7 and the ultimate outcome of that investigation. I still get questions on that, whatever
8 happened.

9 Q You still get questions from your agents --

10 A Yes.

11 Q -- about what happened in that case?

12 A Yes.

13 Q Did you feel like have you any clarity on what happened in that case?

14 A I don't know what -- what the outcome was or anything like that. I don't
15 have clarity, no.

16 Q So how do you respond to your agents when they ask you these things?

17 A I tell them I don't know. I am truthful with them and transparent.

18 Q And so you believe that the concern remains though with your agents on
19 whether or not other agents are getting a fair shake as you said?

20 A Not if other agents are getting a fair shake. In relation to that incident, you
21 know. I am not generalizing on if an agent anywhere gets a fair shake. I am talking on
22 that, yes.

23 Q I suppose the agents who are bringing this concern up to you are not only
24 concerned for their fellow agents in that incident, I guess maybe there is a sense of
25 loyalty and duty to each other as fellow agents. But, also, I guess there is a concern to

1 how the overall morale for Border Patrol agent force may be impacted by people who are
2 not getting a fair shake. Right?

3 Mr. Jonas. Can you --

4 Mr. Yi. I knew Steve was going to stop me. That was a really long question.

5 Mr. Jonas. I am not sure it was actually a question. Okay.

6 BY MR. YI:

7 Q So the question to you is, if it remains a concern in Border Patrol agents'
8 minds whether agents such as the ones involved in the Del Rio horse incident are getting
9 a fair shake or not, does that also adversely impact the morale of agents in El Centro
10 Sector?

11 A I don't know. I can't -- I don't know what they are thinking as far as that. I
12 am not going to extrapolate what they might or might not think, because I don't know. I
13 can't make an accurate assessment there.

14 Q So why would they ask you about that incident still today, even though it is
15 over a year old?

16 A Because I think they were concerned about it, but I can't say what they are
17 thinking in terms of what they are talking to other agents about or anything like that. I
18 know they were concerned about it.

19 Q They were concerned that whether or not those agents were receiving a fair
20 shake?

21 A Yes.

22 Mr. Schall. I appreciate, just circling back to --

23 Mr. Yi. I am sorry. Are you concerned about whether or not those agents are
24 receiving a fair shake?

25 Mr. Bovino. Yes.

1 Mr. Yi. Okay?

2 BY MR. SCHALL:

3 Q Circling back to kind of -- I want to make sure I say this right, the recognition
4 of your agents that you were talking about before about talking to your supervisor, David
5 B. Miller, when did you start implementing this -- these policies or this way to talk to your
6 supervisor about the great things that some of your agents had done. Was this when
7 you took over? Was this to help morale? Kind of walk me through that.

8 A No, that was something that I did many years ago, primarily starting when I
9 was a patrol agent in charge of the Blythe Border Patrol Station and then Federal agent in
10 charge of the Imperial Beach Border Patrol Station and then chief patrol agent in New
11 Orleans. I always made sure to do that within whatever chain of command existed at
12 the time, whether it was headquarters or if my chain of command was to a sector chief.

13 Q And so this is done by you, not necessarily all the other sectors?

14 A It is possible that some of them did that, but I can't -- I can't really speak to if
15 they all did or didn't do it or what they did or that kind of thing. I just couldn't tell what
16 I -- it that was one approach that I used.

17 Q Sure, I appreciate it.

18 There have been reports of tragic increase in agent suicides over the last couple of
19 years. Do you know how many agents have been lost to suicide in El Centro over the
20 last few years?

21 A What is few years?

22 Q How about since you took over?

23 A I believe it is one.

24 Q And do you know kind of what happened in that situation and what could
25 have been done to help prevent this agent's suicide?

1 A You know, I don't know exactly why the agent committed suicide. I think
2 that still remains a mystery today. So I can't -- I can't tell you why the agent decided to
3 do that, no.

4 Q I just have maybe one more question. You had mentioned I believe that
5 you pass along your community's concerns up the ladder. There is a process for that.
6 Do you also pass along the concerns of leadership from your agents? And can you tell
7 me about that process and how that would work, if so?

8 A There is many different processes. I am sorry; there is not really a process,
9 a formal process. I am a senior leader. There are senior leaders at Border Patrol. So
10 it is whatever opportunity or mechanism that exists that I choose to do that, whether it is
11 a phone call to headquarters or a Teams meeting to headquarters or a personal Teams
12 meeting with the chief of the Border Patrol or something along this -- whatever I choose,
13 but it is mainly being able to recognize that agent or incident that occurred and recognize
14 it in a timely fashion so that I can send that to headquarters. So same thing when things
15 happen in the community or agent issues or things like that. I think I detailed already
16 the situation in Indio where we pulled back our Highway Interdiction Team to process,
17 Indio was processing about 60 a day. And we had to pull that entire Highway
18 Interdiction Team off the freeway, and they were pretty concerned about that because
19 they wanted to catch those 7 to 10 alien drug loads a week, and when they are not doing
20 that, they are concerned. So there is an example of something that I passed on to
21 headquarters.

22 Mr. Schall. Thank you very much. I am going to pass it along to my colleagues.

23 Ms. Kortokrax. Thank you, chief.

24 First, are you familiar with the Secure Fence Act of 2006?

25 Mr. Bovino. No.

1 Ms. Kortokrax. I would like to enter into the record as majority exhibit 3 the
2 Secure Fence Act of 2006?

3 [Bovino Majority Exhibit No. 3
4 Was marked for identification.]

5 BY MS. KORTOKRAX:

6 Q Given your unfamiliarity, I would like to direct your attention to section 2,
7 little b, and I will read definition of "operational control": In this section, the term
8 "operational control" means the prevention of all unlawful entries into the United States,
9 including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics,
10 and other contraband.

11 Sir, based on that legal language in the act in El Centro as sector chief, is there
12 operational control?

13 A I am not going to base anything on this act or this document because I am
14 unfamiliar with it. I have not read it. So I am not going to base any definition of
15 operational control in the El Centro Sector based on this document.

16 Q So, based on this document, this section of operational control definition
17 that I just read out loud you don't have an opinion on whether or not there is operational
18 control?

19 A Based on this document, I have no opinion on what this document purveys
20 because I am not familiar with this document.

21 Q Okay. So what documents or other instruments do you use to define
22 "operational control"?

23 A When we talk about operational control of the border, I look at it in the
24 ends, ways and means: What ends or what ways and means contributes to that end of
25 control of our Nation's borders? And what that means to me is I think it is a

1 multifaceted, whole-of-government approach that uses all facets of the state instruments
2 power to control that border. I will give you an example of what I am talking about
3 here. Operational control of the border, when we think of that, a lot of people think of
4 that border as a line in the sand, like one little line that is the border, that fence, or maybe
5 there is not a fence; we've got some barbed wire in the El Centro Sector. That is the
6 border. But that border -- as far as controlling that border doesn't start north end at the
7 border.

8 We talked earlier about extending our borders like we do in El Centro with our
9 Mexican counterparts. So, when I think of operational, when I think of controlling our
10 border, I think that starts well away from the border, perhaps in foreign countries as we
11 influence folks that may want to cross into the United States illegally. So I call that an
12 extension of the borders. We extend those borders out as far as we possibly can, away
13 from that actual physical presence of a border; it starts there. Is it going to end there?
14 Absolutely not. Guess what comes after that? Well, that is away from the border.
15 Then we have got the border itself, that fence or that line in the sand or whatever has
16 happened there in the demarcation between Canada and the United States, Mexico and
17 the United States, whatever that is, that demarcation. But that demarcation is not just
18 the wall. It is the wall and the agents and the accoutrements and the technology, the
19 manpower and the resources, how we deploy those resources. It is that agent resiliency
20 that that gentleman just talked about. A lot of those factors right there on the border
21 that contribute to that control of the border that I didn't read all of that in here, because I
22 didn't read it. But that is taking a look at the border. So we have got extension of the
23 borders then we have got that border itself with all the things that go along. I think
24 there is some of the smart people, Steve Jobs or someone says system of systems; there
25 is your system of systems right there on the border. It is the only integrating system

1 checkpoint. Hey, this checkpoint should be 100 miles north of the border. The ones in
2 Indio were about 70. It is not on the border. It is still part of that border system,
3 system of systems. But control of our Nation's borders, does it stop there? Does it
4 stop there at an extension of borders and then that demarcation there where the physical
5 line is with all the things that come with, and does it stop there? No, I don't think it
6 stops there either. It encompasses many of those other things that everyone in this
7 body politic has described today. What happens in the interior of the United States. I
8 think somebody sawed pull factor or push factor. I don't know what push factor is, but
9 pull factor I believe you said a pull factor. What are those pull factors? Well, do those
10 pull factors have an effect on extension of the borders and everything right on the
11 borders? Absolutely that does. So there is a pull factor there. There is part of your
12 control. I don't really read that -- I didn't really hear you read that in that definition.
13 So does it stop there? Absolutely not. It still doesn't stop there. Because it is a
14 system of systems, a wholly integrated approach that is utilizing the state instruments of
15 hard power. I think the military calls that dying the diplomatic, the informational state
16 instruments of hard power and the economic, all of that wound up into one big thing,
17 that looks at that control of the border.

18 So I think we have had control of the border for many, many, many years, just not
19 now. I think we can look back in history and maybe take a look at when we had control
20 of that border and see that system of systems that is interfaced throughout our Nation,
21 you know, State and locals contributing to that as well.

22 Take a look at Eisenhower. You know, he beat back the Nazis and imperialist
23 Japan, pretty smart fellow. Well, he got that pretty well, when he came up with that
24 operation that deported millions of illegal aliens from the interior of the United States
25 because he knew, as did most of those folks back then, it didn't just stop at the border.

1 So -- I'm not done yet. It didn't just stop at the border. There is a lot more to it than
2 throwing an agent and a tower on the border and saying -- and a 33-foot wall: Yeah, I
3 guess we've got operational control the border now, don't we?

4 According to this, whatever this thing is, I don't know. Maybe it does, but I
5 haven't read this. But, for your definition, you aren't even close, not each scratching the
6 surface. Where is the interior enforcement that --

7 BY MS. O'CONNOR:

8 Q So I am going to jump in real quick. So what my colleague has shown you is
9 the law, and as a Border Patrol agent, you are required to abide by U.S. law. Correct?

10 A Yes.

11 Q So this is the law that she has shown you, and she is just asking you whether
12 you are familiar with the law. Are you familiar with this piece of law?

13 A No.

14 Q Have you in El Centro been able to prevent entries of terrorist -- unlawful
15 entries of terrorists into El Centro Sector?

16 A Yes.

17 Q All entries of terrorists in the El Centro Sector, you have prevented them?

18 A I didn't say that I have prevented entries of terrorists -- you didn't say all
19 terrorists; you said if I prevented entries of terrorists. So, yes, I have done that.

20 Q Have you prevented all unlawful entries of terrorists into the United States
21 in the El Centro Sector?

22 A I don't know.

23 Q Have you prevented all unlawful entries of unlawful aliens into the El Centro
24 Sector?

25 A No.

- 1 Q Have you prevented all unlawful entries of narcotics into the El Centro
2 Sector?
- 3 A I don't know.
- 4 Q Have you heard the term "operational control" before this interview?
- 5 A Yes.
- 6 Q In what context?
- 7 A I don't remember.
- 8 BY MR. YI:
- 9 Q Are you Border Patrol agents trained in aspects of the law?
- 10 A Yes.
- 11 Q What particular laws are you trained in?
- 12 A Many different facets of -- of the law, immigration law.
- 13 Q Have you ever heard the Secure Fence Act?
- 14 A I heard it.
- 15 Q Before today's interview?
- 16 A I have heard of it. I have heard of term.
- 17 Q You didn't know what it was in it though, however?
- 18 A No.
- 19 Q That is not part of your training? The legal definition of "operational
20 control" is not part of the Border Patrol agents' legal training at all?
- 21 A I don't know.
- 22 Q You would have received such training -- you said you received legal training.
23 Right?
- 24 A I have received legal training.
- 25 Q But you don't know if you have received any training regarding the definition

1 "of operational control" --

2 A I don't recall.

3 Q -- for the law?

4 A I don't recall that.

5 Q When did you take this training?

6 A Which training?

7 Q This legal training that we are discussing right now.

8 A 27 years ago.

9 Q So you have only been trained once?

10 A I --

11 Q That would make sense why you wouldn't have --

12 A I have been trained once. I didn't know that. I have been trained once.

13 Mr. Jonas. He is just asking you how many times.

14 Mr. Bovino. Oh, that is a question. Have I been trained once? No, I have had
15 other trainings.

16 BY MR. YI:

17 Q How often have you had these trainings?

18 A I can't -- I don't know what the frequency is.

19 Q Did you have training this year?

20 A I can't remember.

21 Q When you have trainings do you have to fill out -- did you receive a
22 certificate?

23 A You can.

24 Q Do you receive certificates for your trainings?

25 Mr. Jonas. Has he received certificates? Have you received certificates?

1 Mr. Bovino. I have received some certificates for training.

2 BY MR. YI:

3 Q For these legal trainings, have you received certificates?

4 A I don't recall.

5 Q Are there trainings where you do not receive certificates?

6 A Yes.

7 Q How is completion of your trainings documented?

8 A I believe it's documented electronically.

9 Q Via your personnel file?

10 A I don't know. I think there is an electronic record of training once it is
11 completed.

12 Q So any training you have taken as a Border Patrol agent has been
13 documented electronically. Is that correct? Is that part of your testimony?

14 A Did you say any training?

15 Q Any or all training.

16 A I don't know. I think there is training that I have had that has not been
17 documented electronically.

18 Q I suppose the committee can find out by requesting those documents from
19 the Department.

20 Mr. McDonagh. I have one quick question.

21 I think you very eloquently laid out that controlling the border comes with a
22 myriad the different necessities in obtaining operational control from interior
23 enforcement to pushing the border out. I think what you are getting at is that every,
24 you know, border, every town is a border town essentially when -- because illegal
25 crossings effect every community in the country.

1 Mr. Jonas. Is that a question?

2 Mr. McDonagh. Yes, that is a question.

3 Mr. Jonas. Can you repeat the question so I can understand what it is?

4 Mr. McDonagh. Yes, yes.

5 BY MR. MCDONAGH:

6 Q When you were laying out what operational control means to you, were you
7 indicating that the effects and the response to a border crisis or to a surge is felt across
8 the country and the response is needed across the country?

9 A What I was saying is the control of the border is a whole-of-government
10 approach.

11 Q Thank you?

12 BY MS. KORTOKRAX:

13 Q Chief, back to operational control. Secretary Mayorkas has been on record
14 saying that we do have operational control. Based on the definition and based on my
15 colleague's questions and your testimony, we do not have operational control. So who
16 controls our southern border?

17 A I don't understand what the question is. I am -- well, first off, I am not
18 familiar with Mr. Mayorkas' testimony. And, because of that, I -- I don't know. I am
19 not familiar with that.

20 Q You don't recall him testifying in front of the Judiciary Committee?

21 A No.

22 Q Okay. So the cartels have a lot of power, a lot of influence along the
23 southern border. Is that correct?

24 A They can in certain areas.

25 Q Do you have national security concerns with their influence and power along

1 the southern border?

2 A Yes.

3 Q What are those concerns?

4 A The concerns is there are criminal enterprises operating at or near the
5 border that could potentially degrade border security.

6 Q So I want to go to nongovernmental organizations and how you interact with
7 them. Does El Centro work with nongovernmental organizations once aliens are
8 processed?

9 A Yes.

10 Q Which ones?

11 A Primarily it is Jewish Family Services and Catholic Charities.

12 Q And how involved are they with you? Do you meet with them weekly,
13 monthly? How often?

14 A Weekly to monthly.

15 Q Okay. And how involved are they in the assistance with these aliens?

16 A They appear to be involved.

17 Q How so?

18 A Providing assistance to those aliens in whatever form that they do.

19 Q Can you specify the assistance they provide?

20 A I can't -- no, I can't. You will have to ask them. I don't -- they provide it, I
21 don't.

22 Q You meet with them weekly and monthly you said. Correct?

23 A Yes.

24 Q And they don't give you any information on how they assist with these
25 aliens?

1 A No.

2 Q So, understanding the pull factors that were mentioned earlier by my
3 colleagues, are NGOs and the assistance that they provide aliens pull factors?

4 A I don't know.

5 Q Knowing the definition of a "pull factor," you have spoken about it
6 previously, you don't know if NGOs assisting aliens as much as they do is a pull factor?

7 A That is true; I don't know.

8 Q So I want to follow up on what my colleague was talking about for human
9 trafficking. Is human trafficking a humanitarian issue?

10 A It can be.

11 Q And, in your experience, can policies encourage or discourage continued
12 trafficking of individuals?

13 A I don't know.

14 Q You don't know if policies whether which way they go can encourage or
15 discourage --

16 A No, I don't have any information on that. No.

17 Q Okay. So would any consequences for those involved in human trafficking,
18 facilitating the human trafficking, deter that trafficking?

19 A I believe that consequences would deter criminal activity.

20 Q So what consequences would deter that criminal activity your opinion?

21 A I believe criminal prosecutions would assist in that.

22 Q And do you believe that both States and the Federal Government could do
23 more to deter with -- particularly with implementing more consequences?

24 A Are you talking about human trafficking or smuggling?

25 Q Yes, same topic.

1 A Yes.

2 Q And then I just have a quick follow up on the stash house reports that you
3 were talking about earlier. What information would trigger the need for those reports
4 to be sent further up the chain from you?

5 A I would look at the scope of what was happening in that report if there were
6 injuries involved or some type of intelligence that might need to be communicated to
7 other sectors, whether violence was involved, something like that.

8 Q Any particular gangs, gang affiliate or gang involvement, would that trigger
9 something to go further up?

10 A It very well could.

11 Q Beyond you, above you, who would receive those reports?

12 A It could be -- it could be a number of individuals at headquarters.

13 Q Is the commissioner one of them?

14 A Well, he's not a headquarters, Border Patrol.

15 Q Okay. But does the Commissioner, is he on the list of that could potentially
16 receive those reports?

17 A I don't know if he's on the list or not.

18 Q Do you know if S-1 is on the list?

19 A I don't know.

20 Q I will pass to my colleague.

21 BY MS. O'CONNOR:

22 Q I just have a couple more questions.

23 How did El Centro prepare for the expiration of title 42?

24 A The El Centro Sector looked at the expiration of title 42 in a couple of
25 different ways. One of the ways we prepared for the expiration of title 42 was to

1 communicate to our agents exactly when that was going to expire and, because of our
2 already low numbers, the importance of, prior to the expiration of title 42, providing as
3 many consequences to those individuals crossing the border in the El Centro Sector. In
4 doing so in preparing for title 42 going away and providing those consequences, it was
5 our strategy to continue to part those waters so that those individuals would not feel
6 comfortable coming across the border into El Centro Sector due to consequences.

7 Some of the other things we did to prepare for title 42 was communication with
8 our local communities and our Federal and State partners, as well as plans with our
9 neighboring and fellow Border Patrol sectors.

10 Q What were you communicating to the local community?

11 A The local community, we talked with law enforcement leaders and
12 community leaders and, first of all, communicated that title 42 was ending, and there was
13 a potential for a surge. And we communicated to them exactly what our strategy was,
14 which it was a continuation of what it had been since 2020. And we also asked that, if
15 there was a surge, that they be on standby to give us a hand if we needed people to move
16 off the border in the event that there was a mass migration.

17 Q Did you receive any guidance from Border Patrol headquarters on -- I'm
18 sorry. Did you receive any guidance from headquarters about preparation for the
19 expiration of title 42?

20 A Yes.

21 Q What kind of guidance did you receive?

22 A Guidance from headquarters included drawing plans up, sector plans, as well
23 as plans with neighboring sectors and then consolidating those plans and then -- I am
24 sorry, then sending those plans to headquarters for consolidation into one overall plan.
25 That was one thing. And then also the need to communicate with our State, local, and

1 Federal partners and NGOs and all involved parties.

2 Q Did the plan with the contingent sectors include plans for decompressing or
3 helping out detailing agents?

4 A Yes.

5 Q Has El Centro ever experienced staging of migrants on the Mexican side of
6 the border before a surge comes on into the El Centro Sector?

7 A El Centro has experienced the -- has experienced that during surges and at
8 any other time. The staging is quite common. It is a quite common smuggling tactic.
9 They generally always stage on the south side of the border, whether it is a surge or a
10 regular smuggling event when there is not a surge.

11 Q Do you typically have intelligence that that's happening -- for the surges that
12 that is happening before it does so you can prepare?

13 A Yes.

14 Q And what kind of things do you do to prepare for a surge?

15 A Primary amongst our preparations are letting those agents know when and
16 where that surge may or may not take place and then also bolstering our CPC with the
17 appropriate manpower that it may need in case there is a surge.

18 Q Switching gears a little bit, you have a social media presence on Twitter. Is
19 that correct?

20 A Yes.

21 Q Do you control that Twitter account?

22 A Yes.

23 Q Do you personally post the posts that go on Twitter?

24 A I have. I have a STRATCOM team that posts. I review every post before it
25 goes out.

1 Q On June 14th, your Twitter account posted a tweet that said: Border safety
2 isn't just controlled protection. An innocent life taken by a drunk driver who was found
3 to be in the U.S. illegally -- I think alluding or in reference to the situation you talked
4 about earlier. That tweet no longer appears on your Twitter thread. Did you take that
5 tweet down?

6 A Yes.

7 Q Why?

8 A I was ordered to take that down.

9 Q By who?

10 A That was by Chief David B. Miller.

11 Q Why?

12 A He said that they wanted that tweet taken down because it was too political,
13 and there were some folks at the higher levels that had a had some problem with that.

14 Q What does the higher levels mean to you?

15 A I don't know.

16 Q What does it mean to you?

17 A I don't know. Where are the higher levels? I don't know what that would
18 be. It was above him.

19 Q Did you read anything political in this tweet?

20 A No.

21 Q Do you typically receive feedback on your outward-facing public statements
22 from headquarters?

23 A Can you say that again? I didn't -- I don't -- I didn't understand what you
24 said.

25 Q Do you typically receive feedback from headquarters on any your public

1 statements as chief?

2 A I can. Not every one of them, but I have received feedback.

3 Q Are there other situations where you were told to either walk back
4 something you had said you or remove some sort of post from social media?

5 A Yes.

6 Q Can you describe those incidents?

7 A I am trying to think of some specific other ones. There were some other
8 ones, but before I continue to answer this, I would like to say that this is a very sensitive
9 topic, and I do have a chain of command, and I don't like the threat of a reprisal. And I
10 want that in the Congressional Record here right now. So, yes, there was other posts
11 that I was forced to take down. I think there was one with two Yemenis, terrorists. I
12 was ordered to take that down. I was ordered to remove my picture from social media.
13 And there is another one; I will think of it here in a second. That was -- there was
14 another one I was ordered to take -- I can't remember off the top of my head.

15 Q Did the Yemeni post include pictures? Is that why it was asked to be taken
16 down?

17 A I didn't get a reason on that one. I was told to take it down.

18 Q Did it include a picture?

19 A I believe so. That has been a couple of years ago so I can't remember for
20 sure.

21 Mr. McDonagh. Chief, on behalf of Chairman Comer I would like to thank for
22 your time today and your testimony, we appreciate it.

23 Mr. Bovino. Thank you.

24 Mr. Yi. And Chairman Green thanks you for your voluntary appearance today
25 and your testimony as well.

1 Mr. Bovino. Thank you.

2 Ms. O'Connor. Colleagues have one more.

3 [Recess.]

4 BY MR. YIM:

5 Q We are back on the record. The time is 2:29 p.m.

6 Chief, we are going to be jumping around a little bit, and I apologize in advance.

7 But we just have a few followup questions for you. Now, in the past hour, you discussed

8 stash houses with my colleagues. During your career, had you encountered stash

9 houses prior to becoming chief patrol agent at El Paso.

10 Mr. Jonas. El Centro.

11 Mr. Yim. El Centro. Excuse me.

12 BY MR. YIM:

13 Q Let me -- during your career, had you encountered, stash houses prior to

14 becoming chief patrol agent of El Centro?

15 A Yes.

16 Q And, Chief, regarding apprehensions in your sector, you quoted to my
17 colleague the number of apprehension in the El Centro Sector experienced in recent days.

18 Could you please tell me the number of apprehensions that El Paso has experienced in
19 recent days?

20 A Again, that is El Centro.

21 Q I apologize.

22 A El Centro is in recent days. So, yeah, in recent days I believe that number
23 was approximately 60 over the past 24 hours. And I forget. Off the top of my head,
24 the 24 hours preceding that was approximately 46. And then we had one day within the
25 past where we had 14. Those are approximate numbers.

1 Q Understood. Chief, you just discussed how there was a suicide in the El
2 sector -- in El Centro Sector during your time as chief patrol agent there. And that is
3 very sad to hear. Are programs aimed at suicide prevention important for agent
4 wellbeing?

5 A Yes.

6 Q I am going to turn back to majority exhibit 3, which was the Secure Fence
7 Act. And you offered your views on operational control. To be clear, your view of
8 operational control is different from the Secure Fence Act as is listed here. Correct?

9 A I don't know, I haven't read it.

10 Q Okay. Would you agree that different people have different definitions of
11 "operational control"?

12 A You know, I don't agree with you on that.

13 Q Okay.

14 A Although it is possible that differing individuals have, you know, differing
15 opinions.

16 Q Have you met any other agents or chief patrol agents in U.S. Border Patrol
17 that hold a different definition of "operational control" than you do?

18 A I have not discussed it a specific academic definition with another chief
19 patrol agent. It's typically not a conversation I would really have with them.

20 Q Okay. Maybe not academically, but how about colloquially?

21 A I have discussed control over Nation's borders with other chiefs.

22 Q And, during these discussions, do their views on securing the southern
23 border and the means to obtain that different from yours?

24 A I can't remember the specific discussions. I -- I don't know.

25 Q Okay. Chief, you discussed pull factors. Do you recall that?

1 A Yes.

2 Q And, for clarity, you were unfamiliar with "push factors"?

3 A That is true.

4 Q Have you heard that term before?

5 A Yes.

6 Q But you are unsure as to what the definition of "push factors" is?

7 A I couldn't give you the proper definition of "push factors."

8 Q What is your understanding of "push factors"?

9 A I don't know.

10 Mr. Yim. All right, I will turn to my colleague.

11 BY MS. JACKSON:

12 Q I want to return to the topic of cartels and human smuggling very briefly.

13 Are you familiar with any tactics that cartels use to encourage migrants to cross?

14 A Can you say that one more time?

15 Q Sure. Are you familiar -- so we discussed how cartels are often responsible
16 for human smuggling within your sector. Are you familiar with any specific tactics that
17 these cartels use to encourage migrants to cross illegally?

18 A Cartels and TCOs do use tactics to cross -- to illegally cross individuals into
19 the United States. In talking with my agents at the El Centro Sector, there is a term that
20 they have coined in the El Centro Sector. It is called the gotaways, the give-ups. I'll say
21 that again: the gotaways, the give-ups. So what in fact happens, there is a large group
22 comes across or a group comes across, gives up to Border Patrol agents, and, as Border
23 Patrol agents are busy dealing with that group that had a given up, the gotaways come
24 around the periphery. That is what my agents tell me.

25 Q And do you know if cartels are deliberately spread any misinformation to

1 migrants to entice them to cross?

2 A I don't know specifically what a cartel might tell a migrant. I don't have any
3 specific misinformation they might give them.

4 Q Do you -- you mentioned working closely with Mexico during the pandemic.
5 Do you work any other countries to discourage people from crossing illegally or to combat
6 cartel activity?

7 A Yes.

8 Q Can you elaborate on how?

9 A Our border safety initiative, in which we seek to reduce deaths by individuals
10 coming across the border, we often include consulates from other countries. Other
11 than Mexico, especially some of those countries from farther south, even South America,
12 but especially Central America, if we could include them in some of our border safety
13 events so they can spread the word back to their home countries. The El Centro Sector
14 takes special emphasis on doing that.

15 Q So it sounds like those collaborations are effective in combating some of that
16 illicit activity?

17 A I think in the El Centro Sector, you know, our approach to doing that seems
18 to be -- seems to aid in reducing deaths.

19 Ms. Jackson. No further questions.

20 Mr. Ewencyk. None for me.

21 Mr. Yim. All right. Chief, thank you for your time today. We will go off the
22 record.

23 Mr. Bovino. Thank you.

24 [Whereupon, at 2:36 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

1 ALDERSON COURT REPORTING

2 CATHERINE B. CRUMP

3 HGO271550

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7 COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

8 joint with the

9 COMMITTEE ON HOMELAND SECURITY,

10 U.S. HOUSING OF REPRESENTATIVES,

11 WASHINGTON, D.C.

12

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16 INTERVIEW OF: DEPUTY CHIEF DUSTIN CAUDLE

17

18 Thursday, September 28, 2023

19

20 Washington, D.C.

21

22

23

24 The interview in the above matter was held in Room H2-176,

25 Ford House Office Building, commencing at 8:58 a.m.

1 APPEARANCES:

2

3

4 For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

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6 BRANDON SCHALL, COUNSEL

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8 SLOAN McDONAGH, COUNSEL

9 MEAGAN DEVLIN, SENIOR PROFESSIONAL STAFF

10 SARAH JACKSON, MINORITY COUNSEL

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3 STEPHANIE MUFFETT, OFFICE OF CHIEF COUNSEL

4 SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

5

6 For the U.S. DEPARTMENT OF HOMALAND SECURITY:

7

8 STEPHEN JONAS, SENIOR ADVISOR TO GENERAL COUNSEL

9

P R O C E E D I N G S

MS. O'CONNOR: We can go on the record. It's 8:58.

Good morning. This is the transcribed interview of Dustin Caudle. Chairman Comer and Chairman Green have requested this interview to obtain information regarding border security from the deputy chief patrol agent of the U.S. Border Patrol operations in the Yuma Sector.

Will the witness state your name for the record.

THE WITNESS: Dustin Wade Caudle.

MS. O'CONNOR: On behalf of the Committee on Oversight and Accountability and the Committee on Homeland Security, thank you for appearing today. The committee appreciates your willingness to appear voluntarily.

My name is Elizabeth O'Connor and I am deputy staff director for the Subcommittee on Oversight and Investigations for Chairman Green's staff and the Majority on the Committee on Homeland Security.

I'll now ask the Majority and Minority colleagues from the committee to please identify themselves as well.

MR. SCHALL: Brandon Schall, counsel for the Majority.

MR. YI: Sang Yi, Director of Investigations for the Majority.

MR. RUST: James Rust, Counsel for Chairman Comer on the Committee on Oversight and Accountability.

MR. McDONAGH: Sloan McDonagh, counsel for Chairman

1 Comer on Oversight and Accountability.

2 MS. TORRES: Blanca Torres, House Oversight,
3 Democratic staff.

4 MS. MARTICORENA: Brienana Marticorena, Committee on
5 Homeland Security, Democratic staff.

6 MS. JACKSON: Sarah Jackson, Oversight Committee,
7 Democratic staff.

8 MR. YIM: Daniel Yim, House Oversight, Democratic
9 staff.

10 MR. ARTHUR: Finn Arthur, research assistant, Homeland
11 Security, Majority.

12 MS. DEVLIN: Meagan Devlin, senior professional staff,
13 Chairman Green, Majority.

14 MS. O'CONNOR: I also recognize that the witness is
15 accompanied by Department of Homeland officials in addition to
16 agency counsel at the table. Will those additional agency
17 officials please state their names and titles for the record.

18 MS. KLISARSKA: Samantha Klisarska, congressional
19 liaison, Office of Congressional Affairs.

20 MS. O'CONNOR: Before we begin, I will outline the
21 procedures and guidelines that we'll follow in this interview.

22 Questioning will proceed in rounds. The Majority
23 members or staff will ask questions first for one hour and the
24 Minority members or staff will have an opportunity to ask
25 questions for up to one hour if they choose. We'll go back and

1 forth for six total one-hour rounds or until there are no more
2 questions.

3 We'll take a short break at the end of each hour. If
4 you'd like to take a break at any other time, please let us
5 know. If, however, there's a pending question, I ask that you
6 finish answering the question before we stop to take a break.
7 We will also take a break for lunch after the third hour of
8 questions.

9 There is an official reporter taking down everything
10 we say to make a written record. So we ask that you give verbal
11 responses to all questions. The reporter cannot record
12 nonverbal answers such as shaking your head. So it's important
13 you answer each question with an audible verbal answer.

14 Do you understand?

15 THE WITNESS: Yes.

16 MS. O'CONNOR: To ensure the court reporter can take a
17 clear record, we'll do our best to limit the number of people
18 directing questions to you during any given hour to just those
19 staff whose turn it is. To the extent possible, it is also
20 important that we do not talk over one another or interrupt each
21 other. Please wait until each question is finished before you
22 give your answer and we will wait until you finish your response
23 before asking you the next question. That goes for everybody
24 present at today's interview.

25 Furthermore, the Majority members or staff will not

1 ask questions or otherwise interrupt the Minority round of
2 questioning and vice versa.

3 I understand the witness is accompanied by agency
4 counsel today. Would counsel please state your name for the
5 record.

6 MR. JONAS: Steve Jonas, DHS Office of General
7 Counsel.

8 MS. MUFFETT: Stephanie Muffett, CPB, Office of Chief
9 Counsel.

10 MS. O'CONNOR: I also want to confirm that you
11 understand that the agency counsel represents the agency and not
12 you, personally. Do you understand?

13 THE WITNESS: Yes, I understand.

14 MS. O'CONNOR: Are you choosing to have agency counsel
15 in the room today?

16 THE WITNESS: Yes.

17 MS. O'CONNOR: You are encouraged to freely consult
18 with counsel if you choose. If you need to confer with counsel
19 during the interview, please let us know and we'll go off the
20 record and stop the clock until you're prepared to continue.

21 During the interview, we ask that you please answer
22 any questions in the most complete and truthful manner possible.
23 If you have any questions or if you do not understand a
24 question, please let us know.

25 Do you understand?

1 THE WITNESS: Yes, I understand.

2 MS. O'CONNOR: If you do not know the answer to a
3 question or do not remember, it is best not to guess. If there
4 are things you do not know or cannot remember, please say so and
5 inform us who, to the best of your knowledge, might be able to
6 provide a more complete answer to the question.

7 If I ask about conversations or events in the past and
8 you are unable to recall the exact words or details, you should
9 testify to the substance of those conversations or events to the
10 best of your recollection. If you recall only a part of a
11 conversation or event, you should give us the best recollection
12 of events or conversations that you do recall.

13 Do you understand?

14 THE WITNESS: Yes, I understand.

15 MS. O'CONNOR: Although you are here voluntarily and
16 we will not swear you in, you're required by law to answer
17 questions from Congress truthfully, including questions posed by
18 congressional members or staff during this interview. Witnesses
19 who knowingly provide false testimony could be subject to
20 criminal prosecution for perjury or for making false statements.

21 Do you understand this obligation to tell the truth
22 today?

23 THE WITNESS: Yes, I understand.

24 MS. O'CONNOR: Is there any reason you are unable to
25 provide truthful answers to today's interview?

1 THE WITNESS: No.

2 MS. O'CONNOR: Before beginning the interview, I would
3 like to explain briefly why we are here today. As mentioned,
4 the House Committee on Oversight and Accountability and House
5 Committee on Homeland Security are seeking to obtain information
6 regarding the border security from the chief patrol agent in
7 charge of the U.S. Border Patrol operations in the Southwest
8 Border Sectors. We're interviewing you today to learn about
9 matters related to border enforcement and your roles,
10 responsibilities, experience, and observations in the Yuma
11 Sector. We are not investigating you personally for any
12 personal wrongdoing. This is a fact-finding endeavor.

13 Are you ready to begin?

14 THE WITNESS: Yes, ma'am.

15 MS. O'CONNOR: Thank you.

16 The clock now reads 9:04. We'll start questioning.

17

18 EXAMINATION BY THE MAJORITY

19 BY MS. O'CONNOR:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. So I want to start with some general background. When
23 did you start with the Border Patrol?

24 A. May 21st of 2000.

25 Q. And where did you start?

1 A. In Yuma, Arizona, Yuma Station.

2 Q. How long were you there?

3 A. Seven years.

4 Q. And where did you go after that?

5 A. El Paso to the Special Operations Group.

6 Q. What did you in the Special Operations Group?

7 A. So I was part of the Border Patrol Tactical Unit.

8 Q. What does the Tactical Unit do?

9 A. We served high-risk warrants and conducted high-risk
10 operations throughout the continental United States as well as a
11 variety of mission training teams in foreign countries as well.

12 Q. How long were you with them?

13 A. All the way up to 2018, specifically at SOG, up until
14 2013 when I transferred to the Del Rio Sector.

15 Q. But you were still doing the same --

16 A. Yes. It was just a different division.

17 Q. Is that full time or do you also do regular Border
18 Patrol duties?

19 A. No. It's full time.

20 Q. In 2018, where did you go?

21 A. So in 2018, I transferred up to Headquarters here in
22 Washington, D.C. as an assistant chief.

23 Q. So for what? Assistant chief to what?

24 A. For interim planning and operations.

25 Q. What did you do there?

1 A. So planned and executed operations throughout the
2 United States based on needs at the southwest border for all 20
3 sectors, also reviewed, cleared, and submitted operations orders
4 that were submitted from 20 sectors into our BPET System,
5 ensuring that the afteraction reports were completed, all the
6 proper approvals at the Headquarters level were done for each
7 and every operation.

8 Q. What years did you do this?

9 A. So I was in Headquarters from 2018 until I was
10 promoted in 2019 to an associate chief, and then I left
11 Headquarters in February of 2021 and transferred to the El
12 Centro Sector at the patrol agent in charge for the El Centro
13 Station.

14 Q. Were the associate chief for planning operations?

15 A. Yes.

16 Q. What kind of operations did you review?

17 A. Every kind. We categorized them. There was a Cat 1.
18 There was a Cat 2. There was a Cat 3. All of them had
19 different levels of approval, including Office of Chief Counsel
20 review, other agency coordination. Some of them required a
21 Memorandum of Agreement, Memorandum of Understanding.

22 So I was able to synchronize any of those agencies
23 that had multiple stakes in those operations and then, of
24 course, you know, I was responsible for briefing some of them
25 all the way up to commissioner level if they were considered

1 extremely high profile or possibly very high risk in some of
2 those aspects.

3 Q. What kind of high-profile operations did you deal
4 with?

5 A. So, occasionally, when we were involved in manhunt
6 operations, again, that's an operation that's put on the paper
7 as part of our operations order process, and so that's,
8 obviously, anything that had national news attention to it.
9 Also, some of the humanitarian operations, we responded to, such
10 as hurricane responses. CBP is highly involved in all of those.

11 So I would help coordinate not only on the Border
12 Patrol side, but if there's OFO, Office of Field Operations,
13 involvement, even air marine involvement, any CBP component that
14 was involved, I would help coordinate those things.

15 Q. I'm sorry. You may have mentioned this, but were you
16 just overseeing planning operations in the southwest border or
17 was it nationwide?

18 A. So it was nationwide.

19 Q. Okay.

20 A. Yes. It included northern and coastal sectors.

21 Q. And where did you go in February 2021?

22 A. To El Centro Station in El Centro Sector as patrol
23 agent in charge.

24 Q. What were your roles and responsibilities as patrol
25 agent in charge in El Centro?

1 A. So I had full oversight of all operations as well as
2 administrative functions for the El Centro Station, owned 36
3 miles of border, had almost 400 employees, to include agents and
4 professional staff and, again, patrol agent in charge is
5 responsible for all of the operational, all of the
6 administrative, all the fleet management, all the budget for the
7 station, ensuring all the proper training and negotiations with
8 the union, all of those different aspects.

9 Q. How many stations were in El Centro?

10 A. There was a total of three.

11 Q. What was the migrant flow like in February 2021 when
12 you went to El Centro?

13 A. It was pretty low. Our average encounters for El
14 Centro Station during that time was around 50 to 60 a day.

15 Q. When did you leave El Centro?

16 A. So I was brought over to perform as the acting deputy
17 chief role in Yuma Sector in August of '22, August 2022, and I
18 remained in the acting deputy chief position until I was
19 formally promoted into that position on May 7th of 2023.

20 Q. Between February of 2021 and August of 2022 in El
21 Centro, did you notice a difference in the migrant flow as time
22 when on?

23 A. Yes.

24 Q. What kind of difference?

25 A. We started to see a lot more of what we refer to as

1 "Other than Mexicans". That's OTM, is what it's commonly
2 referred to in the Border Patrol.

3 So, again, throughout most of our career, those of us
4 that have been in 20-plus years, particularly, you would
5 encounter people from Mexico making illegal entry. That
6 demographic shifted dramatically, especially in my time there in
7 El Centro when we were starting to see a lot of migrants arrive
8 from western Africa, India, Bangladesh, you know, very far away
9 countries that were not common for that area, and so we
10 definitely saw demographics shift upon my arrival and throughout
11 my time in El Centro Sector.

12 Q. What about the numbers like as time went on?

13 A. So El Centro Sector stayed pretty consistent. It's
14 always been one of the lower-flow sectors. There's a lot
15 different reasons for that. A lot of people attribute it, you
16 know, to the fact that El Centro Sector, out of the 78 miles of
17 border that they own, 76 have infrastructure on it, most of it
18 30-foot wall. The Linear Ground Detection system is also fully
19 operational, install in there.

20 The only areas that are open that do not have
21 infrastructure on them are extremely rugged and mountainous,
22 very dangerous, extreme temperature changes. You go from sea
23 level up to 4,000 feet. So there's snow sometimes in the high
24 areas and then it's 120, you know, at the sea level areas.

25 So it's a very difficult area to traverse. We do have

1 flow through there, but the majority of those are attempting to
2 evade apprehension, and so it's not commonplace that you see
3 what we refer to as give-up groups. It's fairly uncommon. That
4 would typically shift over the San Diego Sector or over to Yuma
5 Sector.

6 Q. Were the demographics largely single adults?

7 A. Mostly, yes, ma'am.

8 Q. I want to just jump back real quick and ask you a
9 couple of questions about your preparation for today.

10 Have you ever participated in a congressional
11 transcribed interview before?

12 A. No, ma'am.

13 Q. Have you ever been a deponent in a congressional
14 deposition?

15 A. Not in a congressional, no.

16 Q. Have you ever testified in any deposition?

17 A. Yes.

18 Q. For what?

19 A. For criminal cases. Again, early years as a Border
20 Patrol agent, I made several felony arrests, alien smuggling
21 interdictions, narcotics interdictions, assault cases sometimes,
22 you know, where I was a victim of an assault, you know, during
23 an arrest, and so, again, just giving that deposition on what
24 events took place, what was the reasonable suspicion or probable
25 cause for the vehicle stop, or when I was working at checkpoint

1 operations, what was the reason for the secondary, those type of
2 things.

3 Q. So that was largely courtroom testimony?

4 A. Yes.

5 Q. Do you know if you've ever done a deposition before
6 where it was a situation more like this, in a room and not in a
7 courtroom?

8 A. No.

9 Q. How did you prepare for today's interview? Did you
10 review any documents?

11 A. Yes. You know, we have a large amount of data and,
12 you know, so, again, I reviewed and brought a lot of obvious
13 questions, you know, as far as numbers and percentages, you
14 know, to the best of my knowledge that I could. I also reached
15 out to some colleagues, you know, and asked them, knowing that
16 other chiefs had had recent and relevant experience doing the
17 transcribed interviews.

18 So yes. I spoke to several people, again, working
19 with the Office of Congressional Affairs, also in consultation
20 with OGC and OCC. So yes. I talked to a variety of people.

21 Q. Which chiefs did you talk to?

22 A. Chief McGoffin. Of course, he has recently been
23 appointed as chief patrol agent in Yuma Sector. So knowing that
24 he was the chief in Big Ben at the time that he did a
25 transcribed interview and, obviously, he's my direct boss. So I

1 talked to him. I know he's had recent relevant experience.

2 Again, I was in El Centro Sector for a long time. I
3 know Chief Bovino real well. So I did talk to him as well, and
4 then, oddly enough, just yesterday morning, I ran into Chief
5 Chavez in the lobby of the Reagan Building. So we had a few
6 minutes to speak, you know, and obviously knowing that she did
7 hers recently as well.

8 So I talked to a few chiefs.

9 BY MR. YI:

10 Q. Who provided you the documents to review?

11 A. What documents to review?

12 Q. You mentioned that you reviewed some documents in
13 preparation for today.

14 A. I compiled it.

15 Q. You compiled all of the documents?

16 A. Um-hum.

17 Q. Is that a yes? Sorry.

18 A. A yes to what question, sir?

19 Q. You compiled all the documents to review for yourself?

20 A. Yes.

21 Q. Nobody else provided you any documents?

22 A. No.

23 BY MS. O'CONNOR:

24 Q. I'm sorry. You said that you worked with people at
25 Headquarters to prepare for this interview too?

1 A. Congressional Affairs as well as Office of General
2 Counsel and Office of Chief Counsel.

3 Q. Were you advised that there were certain words or
4 topics you weren't allowed to use or talk about?

5 A. No.

6 Q. Okay. I'm going to move on. From your experience in
7 El Centro, you then with Yuma. Correct?

8 A. Yes, ma'am.

9 Q. What kind of difference did you experience in the Yuma
10 Sector from the El Centro Sector?

11 A. Yuma Sector had a significantly higher daily encounter
12 rate. Obviously, El Centro did not have a centralized
13 processing center, you know, like the soft-sided facilities.

14 So Yuma did, and so they had capacity issues almost
15 every day. They were overwhelmed with transportation duties.
16 They were overwhelmed with processing duties. There was
17 multiple support requests to get detailed personnel in there to
18 assist with that. A large percentage of the Border Patrol
19 agents were pulled off of their line functions and performing
20 administrative or processing duties rather than performing that
21 frontline law enforcement mission.

22 So a very different working atmosphere and
23 significantly more challenges in Yuma Sector than El Centro
24 Sector at that time.

25 Q. And, Deputy, what are -- well, first of all, is there

1 a difference in responsibility when you're an acting deputy or
2 versus an affirmed deputy?

3 A. No. The duties and expectations are exactly the same.

4 Q. And what are those duties?

5 A. So I have, again, full operation oversight of the
6 entire sector. That includes all -- not only the law
7 enforcement personnel, but all the professional staff throughout
8 the sector, again, responsible for all the administrative, all
9 the processing oversight, all the administrative oversight and
10 then day-to-day operations.

11 So the deputy has probably one of the more complex
12 roles in that the deputy's job is to, simply put, know
13 everything about everything all the time and then to be, you
14 know, able to advise the chief on proper courses of action, be
15 able to weigh the risks associated with each one of those. So
16 all the work is done, typically, by the deputy before that
17 decision even reaches the chief's level.

18 Q. Would you say that, as deputy, you have more
19 visibility on the boots on the ground than the chief patrol
20 agent might?

21 A. I wouldn't say more visibility. I think it's a
22 different viewpoint. The deputy chief is also responsible for
23 all disciplinary action, and so I'm involved in discipline, you
24 know, which is something that the chief doesn't normally have to
25 do, and so people are a little more standoffish, I think, with

1 the deputy chief just because of those roles, particularly with
2 the disciplinary things and the negotiations I have to do with
3 the union.

4 I draw the hard lines. The chief in is more of a
5 negotiating position than the deputy is.

6 Q. How is the Yuma Sector unique compared to other
7 sectors regarding terrain and the way that it's laid out?

8 A. So I'm sure several of you have been to the southwest
9 border at one time or another. So every sector is very unique.
10 Even different stations within same sector have extremely
11 different challenges and terrain.

12 I think Yuma, what sets Yuma different than other
13 sectors is I'm one of two sectors in the entire southwest border
14 that owns territory in two states. So I have 126 miles of
15 border, but 16 miles of that are in California, and then I have
16 extremely diverse terrain in that I have everything from the
17 Imperial Sand Dunes, you know, which is just high dunes. It
18 looks straight out of a movie. It is in many movies. They film
19 a lot of scenes out there, and then that goes into the Colorado
20 River basin, and that's where the border turns north and south.

21 So there's one point you can stand -- you can be in
22 Arizona and you're looking at California and Mexico at the exact
23 same time. So it's a very unique kind of 90-degree turn to
24 where the river boundary goes north and south for 26 miles until
25 it hits San Luis down there at the very southwest corner of

1 Arizona and then, of course, the border turns back eastbound and
2 goes through the City of San Luis out into a wide open desert
3 area, the Cabeza Prieta, Organ Pipe National Park. All of that
4 is protected land out there that also joins next to the Barry M.
5 Goldwater bombing range, which is live-fire bombing range that
6 the U.S. military uses very frequently, so for high altitude
7 bombing as well as 30-millimeter straight fire runs.

8 Q. What kind of challenges does the diverse terrain
9 present for agents in Yuma?

10 A. So no one patrol tactic works in any one certain area.
11 Obviously, with sand dunes, you have to have a variety of
12 transportation. ATVs are very common to be able to use out
13 there. Vehicles get stuck very frequently. It's very difficult
14 to patrol that area.

15 Of course, with the river, the river is flowing. It
16 has a current. It's very dangerous, but it has extreme depth
17 changes, you know, where it can go from being just around ankle
18 deep to 22 feet deep, you know, just off the edge of a sandbar.
19 So that presents a danger and a challenge as that river is
20 flowing and then, of course, as you get further south down the
21 river basin, it's dammed and then it becomes dry.

22 So it's extremely accessible. Both vehicles and
23 people can really freely travel back and forth across that river
24 basin almost unimpeded. Then, of course, the city challenges,
25 you know, those all present unique challenges right there next

1 to the San Luis port of entry with a highly populous area, lots
2 of train travel flow, just the daily crossers for legitimate
3 crossing happens all day every day, very busy with agriculture
4 in Yuma.

5 Yuma is the lettuce capital of the world. We have
6 three growing seasons. So they grow all yearlong. Ninety
7 percent of America's leafy greens come from Yuma, Arizona during
8 the winter months. You know, if you've had a salad in
9 Washington, D.C. here in the winter, chances are it was grown in
10 Yuma.

11 So agriculture is very, very prevalent down there, and
12 then, of course, like I said, the open desert terrain to where
13 it is anywhere between 20 and 60 miles of open desert to get to
14 the nearest roadway, which is Interstate 8 if you cross the
15 international boundary out that in that area, and then I think
16 one of most unique aspects of Yuma, Arizona is just the extreme
17 summer temperatures.

18 It was 105 degrees when I left, and we consider that
19 cooling off. You know, summer temperatures of 115, 117, heat
20 index of 130 is not uncommon, you know, so very extreme
21 temperatures and then, of course, beautiful weather during the
22 winter, but we earn it during the summer.

23 Q. How many checkpoints does Yuma have?

24 A. Three.

25 Q. How many -- you mentioned they have a processing

1 center. Is it just the one south side facility?

2 A. So it is one, but it has had three expansions.

3 Q. Is it the same facility or in different areas?

4 A. No. It's all in the same location. It's all
5 connected. So it is one large facility, but it has grown over
6 time.

7 Q. What about the stations; how many stations does Yuma
8 have?

9 A. A total of three.

10 Q. Are your agents able to process migrants at the
11 stations too?

12 A. Yes.

13 Q. What's the detention capacity, first, at the
14 processing facility?

15 A. 1,375.

16 Q. What about the stations?

17 A. Capacity total is 1,791. So that includes ICE
18 station, you know, which is up the California side, Welton
19 Station, as well as Yuma Station.

20 Q. Does Yuma have any border wall?

21 A. Yes.

22 Q. Do you know how many miles?

23 A. 140.

24 Q. Is that helpful?

25 A. Very.

1 Q. In 2022, Secretary Mayorkas said that the gaps in the
2 border wall in Yuma would be filled. Do you know if the gaps
3 that were left in the wall have been filled?

4 A. So not all of them. So, again, to, I think, further
5 clarify, with 140 miles of barrier, right at a hundred miles of
6 that is primary and then 40 miles of that is secondary. You
7 know, again, in those very populous areas, there is a primary and
8 there is a secondary barrier.

9 Out of all of that, there are 14 gaps that we have in
10 Yuma and those are exploited almost daily, you know, as a
11 vulnerability in our infrastructure.

12 I will say that we are very happy that Secretary
13 Mayorkas did approve several of the gaps to be filled in Yuma
14 Sector. Morales Dam, I know is a very common area that people
15 know about. There's been multiple visits down in that area.
16 There's four gaps associated with Morales Dam. All four of
17 those gaps have been filled and completed as of two weeks ago.

18 Q. How did you filling those gaps impact patrol
19 operations?

20 A. So it almost completely eliminated the cross-border
21 traffic in that area. The Morales Dam, right as I was arriving
22 as the acting deputy in the Yuma Sector, the Morales Dam was one
23 of the hottest or highest volume crossing places in the entire
24 sector. Now that those gaps have been filled, it's virtually
25 zero, is what we're seeing there every day.

1 Occasionally, you will still a group that crosses
2 that, again, they just wait on the other side of the barrier
3 until agents are able to come and interview them and take them
4 into the processing center, but it virtually has shifted all of
5 the flow in that area to another gap.

6 Q. So people will come and wait on the Mexico side of the
7 barrier for agents to come?

8 A. So, again, this is where Yuma is unique, you know, and
9 it's very similar to what you see in Texas, where the functional
10 equivalent of the international boundary is the center of the
11 river. So because of engineering and all of those things that I
12 don't fully -- I'm not an engineer. I don't fully understand
13 that, but the actual barrier is on U.S. side, near what we call
14 the Levy Road, but it's technically -- in some places, it could
15 be anywhere from two to three hundred yards that is U.S.
16 territory before you get into the actual Mexico side of the
17 border.

18 So we're able to drive. Again, there's several gates
19 that we're able to access, you know, to get through the barriers
20 that we're still technically in the U.S., but it's several
21 hundred yards in some places before you get to the actual
22 international boundary.

23 Q. You mentioned that there were fourteen gaps. Four
24 have been filled. So are there ten gaps remaining or were there
25 originally eighteen?

1 A. No. So the other project that was approved by DHS was
2 the Yuma Hill Monument 198 gap, which is out in our far east
3 area of responsibility. It's has about a 1500-foot gap. That
4 project was also approved. It is currently underway, being
5 filled and is scheduled to be completed by the end of October.

6 There's also another replacement project that was just
7 approved, which is for a half-mile of new barrier just west of
8 the Andrade port of entry. So that project has been approved.
9 They're currently working on site preparation, ground
10 preparation in that. So, again, we're very looking forward to
11 getting that.

12 The other gaps that remain, there's currently, as I
13 understand, no plans to fill those just yet.

14 Q. In a broader sense, if all of these gaps were filled,
15 what kind of impact would that have on patrol operations?

16 A. So it allows me to concentrate the manpower on a daily
17 assignment more accurately, and that is the whole intent of the
18 border wall system. So it's not just the infrastructure. It's
19 a combination of that infrastructure, that technology that
20 allows me to put manpower in areas where there's more activity,
21 something that we commonly refer to as vanishing time.

22 When you're in a very urban area, vanishing time is
23 very low, seconds to sometimes minutes. The further out you go
24 into, some of the remote desert areas, vanishing time could be
25 hours to even days, and that allows more time for agents to

1 respond and resolve whatever kind of activity was detect out in
2 those areas, but any time you have -- if all of the gaps were
3 completely filled, we would be able to -- again, be able to move
4 manpower and resources and assets much more easily than just
5 having a known vulnerability. If the door is open, it's
6 typically utilized.

7 Q. I know that you weren't in Yuma when it happened, but
8 do you know if any of the border barrier projects that have been
9 started under the last administrative in Yuma were stopped under
10 this administration?

11 A. So, I mean, other than the entire border barrier
12 project being stopped --

13 Q. Right, but were there projects occurring in Yuma at
14 the time of the stop of the --

15 A. Yes. There's various stages, you know, for, like I
16 said, not only the actual infrastructure, but the lighting
17 system, the Linear Ground Detection system, the Pelco camera
18 system. All of those things were meant to be part of the border
19 wall system and all of those projects were stopped and are in
20 various stages of completion even today.

21 Q. As far as you know, are any of those projects
22 scheduled to be resumed?

23 A. Not that I'm aware of. Again, the only projects that
24 I'm personally aware of, again, is the Andrade fence replacement
25 that's happening, the Monument 198 Yuma Hill gap fill and then,

1 of course Morales Dam project, filling those four areas as well.

2 Q. I'm going to move on to some of the encounter trends
3 that you see in Yuma.

4 In January 2021, Yuma was experiencing about 1,624
5 encounters a month, and just one year later, Yuma had well over
6 20,000 monthly encounters. Do you know -- I know that you
7 didn't get to Yuma until August 2022, but do you know what kind
8 of impact that had on operations in Yuma? Were you briefed on
9 that?

10 A. Yes. I was fairly aware of the impact and, again,
11 there's duties that have to be performed, and when you have that
12 type of volume, which is overwhelming for any law enforcement
13 agency, it has an impact to operations because operations have
14 to be shifted into a humanitarian-type mission in order to
15 protect vulnerable populations, in order to perform transport
16 duties, in order to complete that processing to ensure that
17 overcrowding capacity issues are kept at a minimum.

18 So operations will suffer. Operation will be
19 impacted. They will be lessened in order to do that other
20 humanitarian mission.

21 [Majority Exhibit No. 1 was
22 marked for identification.]

23 BY MS. O'CONNOR:

24 Q. I'm going to show you -- I've marked it as Majority
25 Exhibit 1. It's publicly-available CBP data for the Border

1 Patrol in Yuma Sector. That's the reference numbers I'm talking
2 about.

3 So based on this data, since January of 2023, which is
4 the January column and the 2023 fiscal year-to-date row.
5 Encounters went below 10,000.

6 Pardon me. In February 2023, they were around 10,000
7 and they hovered right around there, going up to 13 and 15, but
8 recently have come very far down. What do you think has caused
9 that fluctuation?

10 A. You're referring to?

11 Q. Between February '23 and August '23, that top row.

12 A. So as we moved into our preparation for the end of
13 Title 42, and it would serve to help clarify that Title 42 was
14 not as big of an impact in Yuma Sector as it was in other
15 sectors, because 93 percent of all of our encounters were other
16 than Mexican. So most were not even amenable to Title 42. So
17 we were preparing for an increased flow; however, as with other
18 sectors that they experienced shortly after the middle of May, a
19 majority of those numbers dropped off.

20 That was something that was talked about. It was a
21 contingency that we were discussing, that there may be some kind
22 of a wait and see-type response by the cartel and the smugglers
23 to see what was actually going to happen as the nation
24 transitioned back to Title 8 processing, and so during that
25 time, I was fully appointed as -- of course, May 7th was when I

1 began as the full-time deputy chief there. I took the
2 opportunity to start leveraging consequences through Title 8
3 authority in Yuma Sector, knowing that while we were previously
4 dealing with 12, 13, 14 hundred arrests a day, we had dropped
5 down to 200 or sometimes less than 200 a day.

6 So once all of our decompression efforts were caught
7 up, we began processing all single adults as expedited removal,
8 and in Yuma, about 64 percent of our encounters are single
9 adults. So that was a large population that was able to be
10 impacted with that.

11 Again, near the end of May, Yuma Sector began
12 conducting the expedited or the enhanced expedited removals with
13 the credible fear interviews in conjunction with USCIS in our
14 facilities. That was another consequence that was able to be
15 leveraged.

16 There was also -- we began utilizing ICE ERO Air with
17 what they call DOC flights, which is the Detention Operations
18 Coordination Center. They have access to other ERO facilities
19 throughout the nation, and so we were able to utilize those DOC
20 flights to transfer migrants from our custody into ERO
21 facilities custody.

22 We were also able to increase some of our interviews
23 by our intelligence unit personnel as well as doing electronic
24 exploitation, you know, to look for any type of nefarious
25 correspondence or activity.

1 So all of this was being done in Yuma, and word
2 travels very quickly, that Yuma suddenly became a location where
3 it was not conducive to cross, you know, with a quick release
4 assured to an NGO or out of Border Patrol custody. So that word
5 spread very quickly, and I believe my -- what I believe has
6 happened is a lot of that flow, a lot of that traffic that was
7 coming to Yuma Sector has now been displaced to other
8 surrounding sectors, and so it just became an undesirable
9 crossing location because of the consequence impacts that we had
10 leveraged.

11 Q. So consequences work?

12 A. Yes, ma'am.

13 Q. When you say word travels, whose word? Among who?

14 A. So among the migrants themselves, among the smuggling
15 outfits. I mean, social media is widely used.

16 There was Tiktok videos being produced, you know, that
17 was documenting journeys how to cross. Particularly into Yuma
18 Sector, it was showing them firsthand accounts of which trails
19 to take, where the border wall ended, which gap to exploit, you
20 know, where to stay, all of those things.

21 So smart phones are everywhere, you know, and so word
22 travels extremely fast among migrants. It travels fast among
23 the transnational criminal organizations, local smugglers, and
24 the cartel.

25 Q. Have you seen that social media content that shows

1 things like routes and where to cross?

2 A. Yes.

3 Q. Where do you find that?

4 A. Tiktok. Any of these social media accounts have those
5 things. Again, I'm not personally involved in the exploitation
6 of it, but our intell units frequently find those things.
7 Again, they elevate them with the field information report up to
8 the intelligence units up at Headquarters.

9 I know there's aggressive campaigns that are trying to
10 take some of those things down, again, working with some of the
11 social media companies to be able to remove those from their
12 sites so that we don't encourage illegal migration.

13 Q. While relatively small in number, according to the CBP
14 data -- it's not going to be on here -- the number of Chinese
15 nationals encountered in Yuma has risen over 4,000 percent from
16 '86 in Fiscal '22 to 3,782 so far in Fiscal '23.

17 Does that increase in Chinese nationals cause you
18 concern from a national security perspective?

19 A. I believe we are always concerned about national
20 security no matter what specific demographic it may be
21 associated to. That's our job. That's part of our
22 mission -- right -- is to secure our nation's border.

23 So I'm always concerned about national security. That
24 is my day-to-day function no matter where they come from, no
25 matter what type of narcotic it is, if it's firearms, if it's

1 cash, weapons, anything. So national security is always a
2 concern of mine.

3 Q. There are certain nationalities that cause even more
4 scrutiny or more angst as far as national security is concerned.
5 Right?

6 A. We treat everybody the same. It doesn't matter where
7 you come from. It doesn't matter what your nationality is, what
8 your religious beliefs are. We are going to treat everybody
9 exactly the same. They run through the same screening, the same
10 processing, the same background checks. Everything that we have
11 access to, we are going to check on each and every person.

12 There are certain demographics that may warrant some
13 additional interviews or other agency notifications, but, again,
14 from Border Patrol's perspective, from my perspective as the
15 deputy chief in Yuma Sector, we treat everybody the same.

16 Q. Do you know if any additional investigation or
17 interviews are conducted on Chinese nationals in Yuma Sector?

18 A. Yes.

19 Q. In that they are?

20 A. Yes, they are.

21 BY MR. YI:

22 Q. Why?

23 A. So, again, we have great partnerships with our local
24 Homeland Security investigators that are actually embedded with
25 us in our facility as well as FBI. We have a great working

1 relationship with them.

2 I have sector intelligence unit agents that are
3 assigned to the FBI Joint Terrorism Task Force Team, and so FBI
4 has expressed an interest in doing additional screening and
5 interviews for Chinese nationals. So we are absolutely doing
6 that at every opportunity.

7 There are -- it was a large volume at one point. Now
8 it's virtually -- it's very rare to encounter anybody from China
9 in Yuma Sector, but yes. We were doing -- at one point when we
10 were seeing a higher volume, we were doing 100 percent
11 interviews of Chinese nationals.

12 Q. What other demographics require additional interviews?

13 A. So any migrant that comes from a special interest
14 country is a mandatory interview.

15 Q. So what are those special interest countries?

16 A. So there's -- for Yuma Sector specifically, we've
17 encountered migrants from 21 different special interest
18 countries. Our top five are Russia, Uzbekistan, Bangladesh,
19 Nigeria, and Egypt and, of course, obviously, there's some other
20 ones in there, Afghanistan, Iran, Iraq, Thailand, some other
21 places like that. Martinia is another one.

22 So we will do -- with our internal SIU agents, we have
23 a tactical terrorism response team. They will conduct mandatory
24 interviews with all special interest aliens that are encountered
25 in Yuma Sector. We notified the national targeting center

1 that's up in the D.C. area. We notified them of the encounter.
2 If they believe that additional screening, additional interviews
3 may be necessary, then we coordinate locally with FBI.

4 We work with ERO for the mandatory detention of that
5 migrant. They're typically transferred over to Eloy to Florence
6 in Arizona, and then if the FBI requires additional followups,
7 those are done while they're in ERO custody. We typically don't
8 facilitate that in the Yuma Sector.

9 Q. From whom do you receive instruction or labels that
10 these are specifically special interest countries?

11 A. So that all comes from the intelligence community up
12 here in Headquarters. So, again, we don't pick the list. We
13 don't nominate the countries. We just have the list and agent
14 know which countries require additional screening.

15 Q. Are you familiar with the news back in late August
16 about Uzbeks crossing the U.S.-Mexican border who had a smuggler
17 with ties to ISIS?

18 A. I'm aware of it. The majority of what I know is law
19 enforcement sensitive information, which I think would be
20 appropriate to discuss in another setting, in a more secure
21 setting.

22 Q. Have you seen an influx of Uzbeks crossing the Yuma
23 Sector in the recent months?

24 A. Not in recent months. Like I said, out of all the
25 special interest aliens that we've encountered in Yuma Sector,

1 Uzbekistan was number two, only behind Russia.

2 BY MS. O'CONNOR:

3 Q. So according to the CBP-publicly available data, so
4 far in Fiscal '23, Border Patrol has arrested 125 people
5 that -- this may not be correct, but 125 people on the terrorist
6 screening dataset at the southwest border.

7 Do you know how many of those were in the Yuma Sector?

8 A. Yes. It was total of 24.

9 Q. Do you think that -- that's a pretty high percentage
10 of the total. Do you think that has to do with the terrain in
11 Yuma and the idea that a lot of single adults try to get through
12 there?

13 A. So I think you kind of hit some of the reasons earlier
14 when you gave me this Exhibit 1 document. When you start
15 looking at 2020 when Yuma Sector 8,804 encounters for the year,
16 if you go back to even further, looking at some of the history
17 in Yuma -- and, again, I got to start in Yuma. So I actually
18 saw the high watermark in Yuma Sector in 2005, which was 136,000
19 encounters. Typically, most of those were people from Mexico.
20 That is what we typically have seen.

21 Shortly after that, again, Yuma started getting more
22 infrastructure. More agents were deployed in the Yuma Sector,
23 and so the enforcement posture was enhanced greatly there in
24 Yuma Sector and it really reduced the daily flow in Yuma Sector,
25 and so for almost 15 years, Yuma Sector was pretty normal for

1 10,000 or arrests during the year. There's a few spikes here
2 and there, but what that created was a fairly stable environment
3 on both the Mexican side of border as well as the U.S. side of
4 border.

5 So once this flow began to spike and increase again
6 moving up into FY '21-'22 and currently into '23, Yuma Sector is
7 widely known as a pretty safe and stable environment to cross,
8 and so it is desirable for accessibility and safety.

9 Q. I just want to correct the record. I just confirmed
10 that the publicly-available data now is the terrorist screening
11 dataset Border Patrol between ports of entry at the southwest
12 border has encountered 151 people on the terrorist screen
13 dataset.

14 According to CBP data, so far in Fiscal '23, Border
15 Patrol has arrested 12,659 convicted criminals. Do you know how
16 many of those were in Yuma?

17 A. Just over 800.

18 Q. Do you know what type of convictions those were?

19 A. We've seen all kinds, gang affiliation, murder.

20 Q. Convictions for gang affiliation?

21 A. Well, association, confirmed association, sure.

22 Murder, rape, child molestation, kidnapping,
23 extortion, armed robbery, assault with a deadly weapon, a
24 variety of charges. Yes. I mean, again, any crime that can be
25 committed, we do encounter people who have committed them.

1 Q. For some of those more serious crimes, has Yuma been
2 successful on imposing consequences on those illegal immigrants?

3 A. Yes.

4 MS. O'CONNOR: I think I'll pass to my colleague at
5 this point.

6 James, if you want to go.

7 Thank you.

8 THE WITNESS: Yes, ma'am.

9 BY MR. RUST:

10 Q. Sir, can you please describe some of the trends you're
11 seeing in terms of individuals or group that are turning
12 themselves in to the Border Patrol agents versus those who are
13 seeking evade apprehension in the Yuma Sector?

14 A. So Yuma Sector has typically in the past had a very
15 high volume of give-ups, particularly in areas where there's a
16 gap in the infrastructure. It's a well-known congregation-type
17 point where smugglers will show them where to go. They'll wait
18 there for agents to come and transport them.

19 We do the field data intake. So it's a fairly fast
20 process now at this point.

21 So a majority of what we do see -- and, again, I go
22 back to -- I always bring up the point of 93 percent of our
23 encounters are OTM, Other Than Mexican. So most of those
24 countries outside of Mexico are looking to surrender or give
25 themselves up to Border Patrol away.

1 The got-away trends, again, Yuma Sector is fairly
2 unique. I think we're very fortunate as in this fiscal year so
3 far to date, we've only had 10,300 known got-aways or just right
4 at 10,300 known got-aways. So that's a fairly low number when
5 you compare that to some of other sectors and, again, I do
6 believe it's because of how harsh and how vast our eastern
7 desert areas are. There's just not a lot of cross-border
8 traffic that goes out there and, again, our river corridor,
9 which is vulnerable, but it's primarily used for give-up groups.

10 Q. Do you know where the majority of the got-aways are
11 coming in to the Yuma Sector? Are there particular vulnerable
12 areas?

13 A. So, again, we see them -- there's potential
14 everywhere. We've seen got-away groups, again, when you look
15 out the Imperial Sand Dunes. It's in very close proximity to
16 Interstate 8. So it's very common.

17 Again, the cellphone technology is as easy as getting
18 an Uber for you and I, being able to coordinate with a smuggle
19 load. A lot of these are recruited out of larger cities. So we
20 have a lot of load vehicles that come down from places like
21 L.A., even San Diego where, again, they're recruited on line.
22 They can Venmo them a couple hundred bucks and Venmo them
23 another thousand once they pick up who they're supposed to pick
24 up, and then they'll Venmo an additional thousand once they drop
25 them off.

1 So it's that simple nowadays. It's not difficult to
2 coordinate.

3 So that area is exploited a lot. The river corridor
4 where, again, a vast majority of them are give-up groups in that
5 area, we do still have load vehicles that come in. It's all
6 about a timing issue to where we're heavily scouted every day.
7 They know how many patrolmen we have out in the certain areas.
8 Once a patrolman passes through a certain spot, especially
9 during shift change, it is very common they will bring a vehicle
10 in. Most of the time, it's a pickup truck or a van or
11 high-capacity transport vehicle. The group will exploit one of
12 the gaps. They'll run and load into the vehicle as quick as
13 possible and the vehicle just tries to beat us out of the area
14 before we can get behind them and attempt a vehicle stop or even
15 a vehicle immobilization technique.

16 Then the east desert does have some got-aways. Again,
17 those are more of your hardened, you know, career-type smugglers
18 that have lived and worked in that terrain for many, many, many
19 years. Their smuggling routes are well defined. They're passed
20 down from generation to generation, and then we also have what's
21 known as mass coordinated entries, typically, in the San Luis
22 area which is really right next to the San Luis port of entry.
23 That is a location where they will typically use just
24 overwhelming numbers against Border Patrol agents.

25 Again, one agent, you can typically arrest one, maybe

1 two people, and then the rest, you know, if they're intent on
2 getting away from you, there's really not much you can do to
3 stop that and then, of course, with the proximity of the city
4 there, there's no known stash houses. There's a lot of know
5 hiding locations. There's vehicle that are pre-coordinated.

6 So it's very difficult to round up anyone who get
7 through, but some of those mass coordinated events can be as
8 many as two or three hundred people at one time coming over the
9 border walls, overwhelming agents.

10 Q. These mass coordinated events and the coordination of
11 load vehicles and other smuggling activity in the sector, is
12 that being coordinated by transnational criminal organizations
13 in Mexico?

14 A. Yes.

15 Q. What are the TCOs in Mexico that are operating in the
16 south Yuma Sector?

17 A. So it's all Sinaloa Cartel. There's different
18 factions. Some of the smaller local gangs, there one in
19 particular that we've been dealing with for many years called
20 the Wonder Boys, the Chapitos, the Mayos, the Rusos. You know,
21 there's the new generation. They're all subsets of the Sinaloa
22 Cartel, but nothing happens without the approval of the Sinaloa
23 Cartel.

24 Q. So in your experience, an individual who wanted to
25 cross illegally would not do so without first contracting with

1 someone affiliated with the TCOs?

2 A. That's correct.

3 Q. If they tried to cross on their own, would there be
4 consequences for that?

5 A. It's certainly possible, yes.

6 Q. Do you know how much an individual would pay a
7 smuggler to bring them across the border illegally into the Yuma
8 Sector?

9 A. So it varies from demographic to demographic. There's
10 different guarantee packages, is what we commonly see during
11 interviews. I have seen everything from as low as two to three
12 thousand dollars all the way upwards of \$50,000 for someone
13 that's, say, from a very far away country or, you know, wants to
14 be able to guarantee entry into the U.S.

15 Q. When you say guarantee entry, do you mean that an
16 individual would pay a premium to be crossing the United States
17 with the intention of evading Border Patrol agents to make it
18 into the United States?

19 A. So evasion is always possible, but some of the ones
20 that we've interviewed and have claimed to have paid up 40, 50
21 thousand dollars were seeking to turn themselves in to claim
22 fear or to claim asylum, or to seek some kind of refuge in the
23 U.S. So it not necessarily to evade arrest.

24 Q. You mentioned the got-away number, 10,300 this fiscal
25 year.

1 A. Yes, sir.

2 Q. How does the Border Patrol measure known got-aways in
3 the Yuma Sector?

4 A. So a known got-away has to have -- generally, it's
5 through technology with positive visual confirmation. So a
6 sensor may alert. One of our remote video surveillance system
7 will pan to the location where a sensor goes.

8 If we're sure that it's people and we don't have an
9 agent to respond to interdict, then that is what's classified as
10 a known got-away. We have drawbridge cameras, typically what
11 people refer to a game cameras that takes a picture and gives a
12 number, gives us a count. All of those are positive visuals
13 that they're people and not an animal, not a vehicle, not a
14 false indicator.

15 Weather sometimes makes sensors alert. That's not a
16 person. So there has to be a positive visual that it's a person
17 and that it was confirmed and annotated in our ICAD system,
18 which is our dispatch record system that no agent was available,
19 and then that goes into a known got-away count.

20 Q. Given that there is a positive visual verification of
21 that a sensor alert would be a person, do you believe that the
22 got-away numbers in the Yuma Sector are fairly accurate then?

23 A. I believe they're fairly accurate, yes. I mean,
24 there's always a margin of error that's possible, but we try to
25 be as accurate in all of our statistics as possible.

1 Q. You mentioned earlier some of the crimes of
2 individuals who had been encountered by Border Patrol. I
3 believe some of them were fairly serious.

4 Does it concern you that there could be individuals
5 getting away from Border Patrol in the Yuma Sector who may have
6 serious criminal histories or other public safety concerns?

7 A. So as I stated earlier, border security, national
8 security, those are always concerns of mine. That is our job.
9 That is our daily function.

10 So I'm always concerned about that.

11 Q. Do your agent routinely conduct rescues of individuals
12 put in peril by the smuggling organizations in the Yuma Sector?

13 A. Yes, sir, we do. I'm very proud of the work that the
14 Border Patrol does, particularly in the Yuma Sector. No other
15 agency in the Yuma area conducts more lifesaving efforts and
16 rescue and efforts than the U.S. Border Patrol.

17 Q. So the TCOs ever put an individual in peril as a
18 tactic to divert Border Patrol resources?

19 A. I'm not sure that they would -- I would use the word
20 "peril". They do put them in situations that has the potential
21 for an injury or, in some cases -- there was a very well-known
22 video of a small Guatemalan child that was abandoned by a
23 smuggler right next to the Colorado River, just on the U.S.
24 side. That kid, if he had have taken five more steps, would
25 have fell into the Colorado River and drowned, no doubt about

1 it.

2 One of our camera operators spotted that event taking
3 place, was able to notify an agent, who responded extremely
4 quickly because of that vulnerable population, because of that
5 child that was abandoned there by that smuggler, and so those
6 events do take place.

7 Diversionary tactics are common. We know that happens
8 and then, of course, any time you cross through a remote desert
9 area, such as Yuma Sector's east desert where it's 40, 50, 60
10 miles to the nearest roadway, during summer months, it's humanly
11 impossible to carry enough supplies and water to sustain that
12 type of journey.

13 Q. Do your agents encounter individuals who have become
14 injured as a result of being smuggled in the Yuma Sector?

15 A. Yes. It's very difficult terrain. So if you're
16 walking through the desert at night, there's -- we call them
17 prairie dog towns where the ground will just give out underneath
18 you and you're knee deep in the desert. So you see twisted
19 ankles, twisted knees, broken wrists, you know, from falls and
20 mountainous terrain, you know, where you impact rocks, so
21 various injuries.

22 The same thing is very common for agents. You know, a
23 lot of agents get injured just through daily patrols as well.

24 Q. I believe you previously spoke about the enhancements
25 to the enforcement posture in the Yuma Sector having an impact

1 on the flow of illegal migration in the Yuma Sector. Would you
2 agree that it is important to deter individuals from crossing
3 illegally in between the ports of entry in the Yuma Sector?

4 A. Yes.

5 Q. And how do you achieve that deterrent affect in the
6 Yuma Sector?

7 A. So we have a really good partnership with the
8 Government of Mexico officials. We conduct mirrored patrols
9 fairly routinely. We have an excellent prosecution acceptance
10 rate, and then we do partnering with various consulates, the
11 Mexican consulate, the Guatemalan consulate. We recently did a
12 border community liaison event where, again, we talked about the
13 dangers of crossing not only in the desert, but the waterways.
14 Yuma has a lot of canals and irrigation systems that are, again,
15 also very dangerous.

16 So we talked about the dangers of the water, the
17 desert. All those are broadcasted through local media sources.
18 So we continue to encourage, you know, migrants that are seeking
19 entry in the U.S. to go through the port of entries the legal
20 way.

21 Q. What about assaults on agents; how often does that
22 occur in the Yuma Sector?

23 A. So fiscal year to date, we have had 31 assaults
24 against agents in Yuma Sector.

25 Q. Do you refer those cases for prosecution to the U.S.

1 Attorney's Office?

2 A. If there's an arrest associated with it, yes, and we
3 have a great partnership with the FBI. That is one of my
4 highest priorities. I know Chief McGoffin, it's one of his
5 highest priorities, is that we will not tolerate our agents
6 being assaulted during the commission of their daily duties, and
7 we will aggressively seek a prosecution of those and we've been
8 very successful.

9 Q. You mentioned you have three interior checkpoints in
10 the Yuma Sector; is that accurate?

11 A. Yes, sir.

12 Q. Are those checkpoints useful in encountering
13 additional narcotics or illegal entrants who may have made it
14 past Border Patrol in the first instance when they cross the
15 border?

16 A. Yes, they are.

17 Q. To your knowledge, was there ever an impact on the
18 operations of those interior checkpoints given the increase of
19 flow over the last few years you witnessed in Yuma?

20 A. Yes, sir. For the majority of Fiscal Year '22 and
21 even really up until May of this year, our checkpoints were
22 down.

23 Q. All three of them?

24 A. Yes, sir.

25 Q. And what impact does that have on the enforcement

1 posture of the entire sector when those checkpoints go down?

2 A. So it opens up the freedom of movement. It's pretty
3 common for -- you'll hear it a lot in law enforcement. For any
4 criminal organization to be successful, they require freedom of
5 movement, and that is key to being able -- whether it's moving
6 people or moving dangerous narcotics, weapons, cash, whatever it
7 is. Any time that's impeded, it has an impact.

8 We have well established what we call drive-around
9 routes that are very manageable. When the checkpoint is up,
10 especially on Interstate 8, there's only a couple of places to
11 go and those are easily managed through some technology as well
12 as patrols, and it's not a typical route that people travel, and
13 so it's a much lower traffic flow. It's easier to properly
14 identify who should and shouldn't be there.

15 Q. When those checkpoints were down, were they down
16 because the Yuma Sector needed the agents that would otherwise
17 be staffing those checkpoints for process, patrolling, other
18 duties?

19 A. Yes, sir.

20 Q. Do you know what the trends that you're currently
21 seeing in narcotic interceptions are?

22 A. Narcotics are -- the interdictions are up in Yuma
23 Sector. Yuma Sector is not a well-known narcotic corridor.
24 Again, it's mostly a human smuggling-type corridor. Those are
25 clearly defined with the cartels, but fentanyl is up. Cocaine

1 is up. Heroin is up.

2 Again, a lot of that is, again, because the
3 checkpoints are now up and fully operational, and so it doesn't
4 mean that we're catching everything. It doesn't mean that
5 there's not things that aren't getting away from us, but the
6 increase that you see this FY compared to the previous FY is
7 largely in part because the checkpoints are now fully
8 operational.

9 Q. Does that indicate that because those checkpoints were
10 not operational previously that there may have been a lot of
11 narcotics that were making it into the interior of the country?

12 A. Yes, sir. It's certainly possible.

13 Q. Do you encounter the majority of the narcotics in the
14 Yuma Sector at the checkpoints or in the field?

15 A. So in Yuma, for this fiscal year, the majority have
16 been encountered at the checkpoints. Previous fiscal year,
17 again, right before I arrived in Yuma Sector, they did have a
18 very large backpack meth load that was arrested or interdicted
19 out in the east desert area. That was fairly uncommon. That,
20 obviously, got a lot of attention in Yuma Sector. They were
21 actually -- you see them -- your typical rough totes that you
22 would see. For us, it's very common, especially those have been
23 around a long time, marijuana, the big bundles that you would
24 see was very prevalent, especially in the Arizona desert.

25 Typically, you'd see 20, 30 people carrying big

1 bundles and you knew right away it was narcotics. You don't see
2 a lot of marijuana smuggling anymore, and so when that was
3 noticed, it kind of -- most people are like why are they
4 smuggling marijuana; that doesn't make any sense, but once they
5 made the interdiction and they were able to open up and
6 discovery that it was all meth and it was almost 300 pounds, it
7 was a significant seizure, you know, being backpacked across
8 very remote rugged desert terrain.

9 MR. RUST: Thank you, sir. I believe our time has
10 almost expired for this hour. So I think we'll take a short
11 break before the next hour. Thank you.

12 We'll go off the record.

13 [Recess.]

14 MS. JACKSON: We can go back on the record. It's
15 10:16.

16 EXAMINATION BY THE MINORITY

17 BY MS. JACKSON:

18 Q. I just want to circle back and ask a couple of
19 questions about kind of background stuff. So in your
20 estimation, about how long would you say spent preparing for
21 this interview today?

22 A. In total, you know, I certainly took a couple of hours
23 every day since I was first notified to, again, just continue to
24 read up on any kind statistics, processes, things that, again, I
25 may not directly deal with day-to-day, be in the weeds with so

1 to speak, but certainly have oversight of and then, of course, a
2 few online sessions, you know, in preparation. So all in all,
3 several hours for sure.

4 Q. Would you agree that transcribed interviews aren't a
5 typical part of your work usually?

6 A. Yeah. I would agree with that, yes.

7 Q. If you hadn't been preparing for this, how would you
8 have been spending your time?

9 A. So, again, I have a full-time job and, again, being
10 the deputy chief, that is a more than full-time type job. I'm
11 on call 24-7. My phone never stops. Operations never stop.
12 Issues never stop.

13 So it's not uncommon to be handling work hours on days
14 off, after hours. I get woken up quite frequently every week,
15 you know, for a significant arrest, possibly assault, a death.
16 Anything like that, my will phone ring and you go to work or you
17 deal with it or you make all the notifications you need to.
18 So's it a nonstop obligation.

19 BY MR. YIM:

20 Q. When were you first notified about this interview?

21 A. I don't remember the exact date, but it was about a
22 month and a half ago.

23 Q. And you mentioned that you spent several hours over
24 several days preparing. How many days did you spend?

25 Strike that?

1 How many days did you spend preparing for this?

2 A. So I think every day, you prepare, you know, to be
3 able to talk about your job and the great work that Border
4 Patrol. So that comes very naturally.

5 Refining it, you know, making sure that I had the most
6 accurate, up-to-date statistics, again, at least a couple of
7 hours every day for at least a month was involved preparing for
8 this.

9 MR. YIM: Thank you.

10 By MS. JACKSON:

11 Q. Can you remind us what year you joined the Border
12 Patrol?

13 A. 2000.

14 Q. Okay. So you have served the Border Patrol through
15 different five different presidential administrations; is that
16 correct?

17 A. Yes, ma'am. That sounds right.

18 Q. Would you agree that throughout these different
19 administrations, you've witnessed shifts in immigration and
20 border policy from one administration to the next?

21 A. I would say that the shifts that we saw were generally
22 pretty minimal. There was always seasonal trends. There was
23 always minor nuances in there, but for anything overwhelmingly
24 substantive, not very typical.

25 Day to day, year to year, to me, it felt like it was

1 pretty consistent.

2 Q. So you just carry out your duties no matter what your
3 job has been to enforce the law that's on the books,
4 essentially?

5 A. So we're part of the Executive Branch. Right?

6 We execute the law. We execute the policies. I have
7 a chain of command. Even at this level, I have a clear chain of
8 command that I follow and I try to do the best job I can each
9 and every day.

10 Q. I'm going to shift gears a little bit and return to
11 the topic of human smuggling.

12 So you mentioned that smugglers are active on social
13 media. Is that what you said?

14 Like they kind of misinform migrants around, you know,
15 what it takes to enter the United States?

16 A. I would say every process of a smuggling venture can
17 and does typically occur through some type of social media,
18 everything from recruitment to explanations to payments to
19 planning.

20 So yes. It's widely used.

21 Q. So you mentioned that you have worked with social
22 media companies to combat some of the operations of smugglers;
23 is that true?

24 A. So not me personally. Again, that's a higher-level
25 initiative that, again, through some of my time up here at

1 Headquarters in Washington, D.C., I was aware, especially
2 through the Office of Intelligence, that some of those
3 initiatives were taking place in order to combat that.

4 Q. So, to your knowledge, from what you see on the
5 ground, smugglers do deliberately misinform migrants about what
6 crossing the U.S. border entails?

7 A. Yes.

8 Q. Can you elaborate?

9 A. So their concern is making money, plain and simple.
10 The human life has very little value to a majority of smugglers.
11 They care about getting paid. They care about making money.

12 So, again, a lot them do sell a false narrative that
13 they're going to be guaranteed release. That's not always the
14 case. So they never fully inform them of all of the dangers or
15 the consequences that are possible.

16 Q. Do you think combatting this misinformation through
17 the initiatives you mentioned are effective?

18 A. Yes, and, again, we do several local initiatives as
19 well, you know, partnering with media to be able to tell the
20 truth and inform everyone that we can of the danger.

21 Q. Are you ever aware of instances where migrants are
22 misinformed on what it takes to cross the border from U.S. media
23 or U.S. reporting?

24 A. I'm not sure I understand the question.

25 Q. I can strike it.

1 So I want to ask a couple of followup questions about
2 the checkpoints and drug interdiction. Have you in Yuma
3 received any new technology to better detect illicit fentanyl?

4 A. We typically use the same techniques we have.
5 Fentanyl is very unique, you know, in that it's actually a legal
6 narcotic, and so when people have -- they always think that the
7 canines, you know, are going to be able to detect it. It may
8 not necessarily be the fentanyl that they detect. You know, it
9 could be another illicit narcotic.

10 The majority of the same technology that's at the
11 checkpoint for narcotics detection is the same, particularly for
12 Border Patrol. A majority of the enhancements are most likely
13 at the port of entry.

14 Q. So the checkpoints are effective at helping prevent
15 that illicit fentanyl from spreading into the United States?

16 A. Yes, ma'am. Again, agents' experience, intuition, any
17 kind of the -- of course, the canine alerts, any kind of prior
18 information that we have through intelligence are all beneficial
19 and can lead to a significant seizure or arrest.

20 Q. So when someone is arrested, are they then referred to
21 like another agency for prosecution, typically?

22 A. Yes. Most typically, for us, our first call is always
23 to the Drug Enforcement Administration, DEA. If they decline,
24 then we work our way down. It could be HSI may be our primary
25 call if it's a human smuggling event.

1 Again, if no federal agency wants it, then we work our
2 way down to the states with the Arizona Department of Public
3 Safety, all the way to the Sheriff's Department, local P.D.s.
4 So we will continue to find an agency that will be able to
5 accept prosecution.

6 Q. And are all of the illicit smugglers that you
7 interdict, are they all working for cartels?

8 A. To the best of my knowledge, yes.

9 Q. And that's the same for human smugglers?

10 A. Yes.

11 Q. Do you know if any of these people arrested are U.S.
12 citizens in Yuma?

13 A. Yes. Some are.

14 MS. JACKSON: I think I'll pass to my colleagues.
15 Thank you.

16 MS. MARTICORENA: Thank you.

17 BY MS. MARTICORENA:

18 Q. Just to verify, you worked for Border Patrol before
19 the COVID-19 Pandemic began in March 2020. Correct?

20 A. Yes.

21 Q. So thinking back to before March of 2020, have you
22 seen surges of migrants occur before 2020?

23 A. Yes. In various locations, yes.

24 Q. Could you describe what some of those surges were or
25 when they were?

1 A. So to the best of my recollection, again, early 2019,
2 I believe, migrants caravans were pretty prevalent. We would
3 see those large caravans make their way up through Mexico, sometimes
4 possibly trying to do forcible entry into the United States. We
5 would see different demographic surges.

6 Again, even during some of my early time as a Border
7 Patrol agent in Yuma, you would see spikes of certain
8 demographics; but, again, it's just an ebb and flow that we
9 typically do see. Yes.

10 Q. And so would you agree that periodic surges or spikes
11 are not unprecedented at the southern border?

12 A. Certainly not unprecedented to see a surge or spike.
13 The volume that we're seeing recently, in my opinion, in my
14 career when I've seen is what I would consider unprecedented.

15 Q. All right. And can you briefly explain the protocols
16 for agents in your sector when they encounter an undocumented
17 migrant?

18 A. So, first off, we determine alienage. So that's done
19 through a series of questions, asking them where they're from,
20 if they have any legal documents. If they're not able to
21 provide any legal documentation to remain lawfully in the United
22 States, then they are placed under arrest.

23 We take field biographical information. A lot of that
24 is done through mobile intake now. Facial recognition,
25 biometrics, fingerprints, all of that is done electronically

1 now, and then once you arrive at the processing, you're put into
2 the appropriate pathway.

3 Q. And that mobile processing, when did roll out in Yuma?

4 A. So the early rollout began -- it started in, I
5 believe, 2019, really ramped up over the last couple of years,
6 and this point, we are a hundred percent for field deployment
7 for the ATAK system, is what it's called, Agent Tactical
8 Awareness Kits.

9 Q. And have you ever been instructed by CBP or any other
10 federal agency or component not to interdict or arrest a person
11 attempting to cross the border between ports of entry?

12 A. No.

13 Q. And after Title 42 lifted on May 11th, you returned to
14 using Title 8 authorities to process all migrants. Correct?

15 A. Yes.

16 Q. And is it correct to say Title 8 authorities impose
17 criminal consequences on people who enter the U.S. without
18 inspection?

19 A. Yes. That is correct.

20 Q. Can you explain what some of these criminal
21 consequences are?

22 A. So they, obviously, can be up to incarceration or
23 removal or deportation from the United States.

24 Q. And is one of those consequences also being barred
25 from entry into the United States for a period of years?

1 A. That is possible, yes.

2 Q. And this was touched on a bit before, but have your
3 agents imposed consequences on people who have entered without
4 inspection?

5 A. So we do the processing pathway. The immigration
6 system is very long, very lengthy. There's a lot of different
7 agencies involved.

8 The U.S. Border Patrol's role in that is to make the
9 encounter, determine admissibility, put them in the proper
10 processing pathway, and then, typically, they're turned over to
11 another agency for adjudication of their case.

12 Q. Understood. And you mentioned in the last hour there
13 was a great prosecution rate in the Yuma Sector. Could you
14 speak a little more bit about what you meant by that?

15 A. So Fiscal Year '23 to date for Arizona, we've had just
16 over 2,000 cases accepted for prosecution. Most of those are
17 for alien smuggling or narcotics smuggling as well as illegal
18 entry or entry after deportation, and so with the State of
19 Arizona, we have at 97 percent acceptance rate, which is
20 exceptional.

21 We also, again, deal with the Districts of Central and
22 Southern California. Those case acceptance rates are not quite
23 as good for the Southern District of California, about a 67
24 percent acceptance rate, and then we've yet to actually have a
25 case accepted by the Central District, but, again, those

1 consequences where a majority of my territory is in Arizona is
2 very beneficial.

3 Q. And over the past few years, have you seen the number
4 of cases referred for prosecution increase?

5 A. If you compare our cases this year to last year, it's
6 about a 30 percent increase and, again, some of that is also
7 indicative because our numbers are now lower, more manageable.
8 We're able to spend the time to process for prosecution, present
9 the cases; whereas, last fiscal year, where we were saw over
10 310,000 entries and arrests in Yuma Sector, a majority of the
11 time was spent just processing and decompression as rapidly as
12 possible.

13 Q. And circling back to Title 8 a bit, Title 8 has been
14 used for decades, so throughout your entire career in Border
15 Patrol; is that correct?

16 A. Yes, ma'am.

17 Q. And under Title 8 authorities, Border Patrol agents
18 can detain migrants who attempt to enter the United States
19 illegally; is that correct?

20 A. Yes.

21 Q. And when migrants are detained, are they screened for
22 criminal history or being on the watch list?

23 A. Yes. We conduct immigration and criminal history
24 checks on every person we encounter.

25 Q. And if someone has a flag, say, an outstanding

1 warrant, would they be referred to another agency?

2 A. Yes. Typically, we would contact that agency. In the
3 case of a warrant, like you mentioned, we would contact the
4 originating agency to determine if they were willing to
5 extradite. If they are, then we will hold and they'll come pick
6 them up. In other cases, we turn them over to Enforcement
7 Removal Operations with ICE for longer detention in one of their
8 facilities, and they will be able to coordinate with that other
9 agency.

10 Q. And if someone is wanted for a criminal offense or
11 they're a match on the terror screening dataset, is it correct
12 to say they're not just released into the United States without
13 followup?

14 A. That's correct.

15 Q. And on Title 42, if an individual was removed under
16 Title 42, did they face any legal consequences, either civil or
17 criminal, for entering the United States illegally?

18 A. Not as we perceive it, however, expulsion back into
19 Mexico from a lot interviews we've conducted was considered a
20 consequence for many migrants.

21 Q. And for those migrants or in the Yuma Sector
22 generally, did you see people who were expelled under Title 42
23 attempt reentry multiple times?

24 A. There were some, yes.

25 Q. And each time they were expelled under Title 42, they

1 did not face legal consequences in the United States; is that
2 correct?

3 A. No. If they were amenable to expulsion, then they
4 were quickly expelled again. Again, that was to prevent, you
5 know, overcrowding and keeping facilities as decompressed as
6 possible.

7 Q. Thank you.

8 And, to your knowledge or awareness, are some migrants
9 coming to the United States because they faced humanitarian
10 issues at home?

11 A. We see a wide variety of reasons, you know, possible
12 fleeing for criminal reasons, for humanitarian reasons, for
13 economic reasons, just for a better life reason. So, again,
14 there's a wide variety of reasons that people attempt to come to
15 the United States.

16 Q. And, to your knowledge, are some migrants utilizing
17 the CBP One app to appear at a port of entry instead of crossing
18 between a port of entry in the Yuma Sector?

19 A. So Border Patrol, of course, we don't -- we're not CBP
20 One app. We're not dealing with of that.

21 For Yuma Sector, San Luis port of entry is not one of
22 the locations that is processing migrants under the CBP One app.
23 So I don't have a lot of knowledge on that one.

24 Q. Understood. And in the last hour, you talked a bit
25 about your cooperation with Mexico. I believe you said you had

1 a good partnership with Mexico and, in some cases, were doing
2 mirrored patrols.

3 Could you speak a little bit more about that
4 partnership and what mirrored patrols look like?

5 A. Of course. So, again, we're all part of the border
6 security mission. They have an interest in securing their side
7 of the border just as we do. They're responsible for the safety
8 of their communities on the Mexico side as well.

9 We have a Foreign Operations Branch that conducts
10 almost daily liaison with Mexico GOM forces, Government of
11 Mexico forces as well as a lot of the local police forces.
12 There is some information sharing.

13 We also are tied in with what they call C-4, which is
14 their version of the 911 dispatch center. So 911 calls that are
15 routed through Mexico, we work with them and vice versa in order
16 to coordinate search and rescue efforts as well.

17 So a really integral part of the border security
18 mission is that partnership with the Government of Mexico.
19 We're very fortunate in Yuma to have a good partnership.

20 Q. And during your time in Yuma, would you say that
21 partnership has improved? Grown closer? How would you describe
22 that?

23 A. I would say in the most recent months, it has
24 improved. Again, in the early parts of Fiscal Year '23, when
25 most of our manpower was doing transportation and processing,

1 again, a lot of those duties were left unattended. So liaison
2 was not kept up as well as it should be.

3 So some of those relationships did suffer during a
4 time where we were completely focused on that processing and
5 transport mission.

6 Q. And does Border patrol work with any other countries
7 besides Mexico in the Yuma Sector?

8 A. So in the Yuma Sector, yes. We have brought officials
9 from Columbia as well as Brazil into our facilities. Again,
10 they have direct knowledge of smuggling tactics and
11 organizations in their home countries.

12 Yuma had seen a large influx of Columbians and
13 Brazilians at that particular time. Those government officials
14 were very instrumental in assisting with interviews, identifying
15 smuggling routes, as well as personnel that were involved in
16 that.

17 Q. And for those partnerships with Columbia and Brazil,
18 for example, did they help your agents vet or screen the
19 migrants from those countries?

20 A. Yes, of course. It was always very useful to have
21 someone from that same country as the migrants conduct those
22 interviews. Again, they had great firsthand knowledge of the
23 customs and the cultures in that particular country, so very
24 beneficial.

25 Q. And looking a bit more broadly, why would you say a

1 good relationship with the Government of Mexico or the
2 Government of Columbia or Brazil is important to Border Patrol
3 operations?

4 A. All the foreign partnerships are extremely important.
5 Once someone arrives at the southwest border, especially from
6 very distant countries, it's typically too late to have an
7 impact or to change their decision process. The expansion and
8 extension of the functional equivalent of the U.S. border is
9 absolutely critical in order to regulate, deter illegal
10 migration for the safety of the migrants as well as, you know,
11 the different people that encounter them through various
12 countries.

13 Q. And have you found that CBP, DHS, Headquarters have
14 been helpful in your efforts in building those relationships or
15 maintaining them?

16 A. So I know they have various efforts. Again, it's not
17 my, you know, area of specialty. I know we have lots of foreign
18 attaches out there that do great work each and every day. I
19 know they're doing best they can and I certainly hope those
20 efforts continue.

21 Q. Okay. So I would like to turn a bit to the resources
22 you employ and use in your sector to secure the border.

23 A. Yeah.

24 Q. I'll start with process coordinators. Can you
25 describe what they do?

1 Or do you have any in the Yuma Sector? Let me start
2 there.

3 A. Yes. We do have processing coordinators in Yuma
4 Sector.

5 Q. Can you describe what their role and responsibilities
6 are in your sector?

7 A. So the title is pretty indicative of the duties.
8 Again, they do assist primarily with processing. Again, that is
9 probably one of most arduous and lengthy tasks that we have,
10 entering all the information into the different systems and E-3
11 systems that we utilize.

12 Again, but they also provide other duties and
13 functions. I mean, they can assist with escorting, you know,
14 from PAs, processing areas, medical calls, things that just
15 require a lot of movement, a lot of coordination.

16 Welfare checks, those are done frequently, entering
17 those into our systems for record. All duties and functions,
18 anything that -- any action that occurs inside a centralized
19 processing center, they are able to do.

20 Q. About how many processing coordinators do you have in
21 the Yuma Sector?

22 A. I have 157.

23 Q. And about what percentage of the Border Patrol agents
24 in the Yuma Sector are dedicated to processing or are on the
25 front lines?

1 A. So currently assigned to the CPC, mainly doing the
2 processing duties and other functions that are just required
3 inside the CPC, about 20 percent of my manpower is assigned to
4 the CPC. It's an absolutely massive facility.

5 I'm not sure if you've been to one. I'll certainly
6 welcome you to Yuma. Any time you want to come visit, let me
7 know. I'll certainly be willing to take you, but about 20
8 percent of Border Patrol 1896 manpower is currently assigned
9 inside the CPC.

10 Q. And is it fair to say that these Border Patrol
11 processing coordinators have taken off some of the duties from
12 the agents and allowed some to return to the frontline?

13 A. Yes. That's accurate.

14 Q. And are you aware of when the Yuma Sector first
15 started receiving processing coordinators?

16 A. It was before I officially arrived in there. I'm not
17 sure of the exact date, but we continue to onboard more and more
18 during my time. I've sworn in several Border Patrol processing
19 coordinators that have been sent to the academy to come to Yuma
20 Sector.

21 Q. Do you know about what year the Border Patrol
22 processors rolled out to the field, generally?

23 A. I'm really not sure of the exact year. I don't want
24 to guess.

25 Q. Understood. So in your professional opinion, I know

1 we've covered this a bit, but would you say the process
2 coordinators have been helpful to border security efforts in the
3 Yuma Sector?

4 A. Yes. Border security is an actual -- I mean, it's a
5 multifaceted team. It requires everybody.

6 Q. And are you aware of the DHS volunteer force?

7 A. Yes, ma'am.

8 Q. Could you describe what they do?

9 A. So DHS volunteer force, again, are non-law enforcement
10 personnel. They're typically from various components within DHS
11 that perform administrative or support functions that otherwise
12 Border Patrol agents may have to be conducting themselves.

13 Q. And are there any members of the DHS volunteer force
14 in the Yuma Sector?

15 A. Currently, no.

16 Q. Have there been during your time in the Yuma Sector?

17 A. Yes.

18 Q. And what do they do in the Yuma Sector for you?

19 A. So, again, mostly stocking supplies, again, large
20 amounts of food, clothing, just everyday products that are
21 utilized by people.

22 They also were able to assist with a lot of the
23 property management restocking of supplies. Anything that
24 didn't involve -- they weren't allowed to have direct contacts
25 with the migrants. Again, we didn't want to put them in a

1 position where they may be subjected to any kind of unnecessary
2 exposure, but, again, very useful, certainly appreciative of
3 their help.

4 Q. And would you say that having those volunteers helps
5 some of your agents return to the frontline?

6 A. Yes. Certainly, it was not a one for one, but, again,
7 but it was Border Patrol agents who were going to Sam's Club or
8 Wal-Mart, you know, purchasing certain items prior to having the
9 option of a volunteer force or a processing coordinator to
10 assist.

11 Q. Okay. And do you have any DoD personnel in your
12 sector?

13 A. Yes, I do.

14 Q. How many?

15 A. 146.

16 Q. And what is their role?

17 A. So, again, they are primarily assigned to the
18 detection and monitoring mission. So they are manning our
19 mobile surveillance cameras that are out in the field to alert
20 detections and coordinate Border Patrol agent response.

21 They're also in our camera rooms, our dispatch rooms,
22 monitor the multiple remote video surveillance systems we have
23 as well as our sensors that we have. They also are -- we have
24 two Lakota helicopters that are manned by DoD. They are
25 absolutely vital in providing search and rescue efforts as well

1 as daily patrol for enhanced situational awareness.

2 Q. Can you talk a bit more about the search and rescue
3 efforts and the role of the helicopters?

4 A. So air is always faster than ground. Time is always
5 critical, especially when the heat and elements are a critical
6 role. For us, cellphone coverage has increased quite a bit out
7 in our area where. Previously, you wouldn't receive 911 calls
8 in certain areas, with the improvements of and additional cell
9 towers, 911 calls are pretty common and we're able to dispatch
10 those air assets very quickly.

11 They give agents a pre-warning, if you would. They
12 can give you a rapid assessment of, Hey, looks like everybody is
13 on their feet, they don't appear to be in severe distress. It
14 could be, No, this is person down, they're not moving.

15 So it allows agents time as they're moving via ground
16 to prepare for what they're encountering, make a plan, make some
17 coordination, and they're also used in some cases for emergency
18 evacuation. So, again, very critical.

19 Q. And would you say you find these DoD personnel helpful
20 to the border security mission?

21 A. Yes, ma'am.

22 Q. And when Title 42 lifted, the Department of Defense
23 sent 1500 troops to the southern border to assist with possible
24 migrants surges. Did the Yuma Sector receive any additional
25 troops?

1 A. Yes. We did. Yes, ma'am.

2 Q. And did you find these additional troops helpful?

3 A. Any help is always useful. We're certainly never
4 going to turn down help, but we are always conscious of other
5 agencies' mission and the fact that when you pull them away from
6 some of their duties, that can have an impact. So we're very
7 judicious and constantly evaluating what we need and how we
8 utilize it.

9 Q. And last week, the Biden Administration announced that
10 it would send an additional 800 active duty troops to the border
11 to assist with logistics. Are you aware of that?

12 A. I did see the news story, yes.

13 Q. Do you expect that those 800 will be useful to the
14 border security mission as support?

15 A. So I can only speak for Yuma Sector. As far as I
16 know, we are not slotted to receive any of those.

17 Q. Okay. Then do you have any other personnel in your
18 facilities or helping your agents, like the Office of Field
19 Operations, ICE ERO, HSI, HHS?

20 A. So yes. We do have some detailers in our facility
21 right now. Currently, we have seven OFO officers that are
22 assisting. I also have 10 HSI special agents that are in our
23 facility, and then I received notification a couple of days ago
24 that, beginning today, we are supposed to get eight TSA
25 personnel in to assist.

1 Q. And what are these TDY personnel doing in your
2 facilities?

3 A. So when they have law enforcement authority,
4 particular if it's U.S. Marshals or, you know, the FAMS or HSI
5 or especially OFO, they're able to assist us with hospital
6 watch, which, again, is very manpower intensive duties.

7 Sometimes they're able to help us with security on
8 flights. They're able to help with security on buses.

9 So, again, they're also able to do escort in and
10 around the facility that other people may not be authorized to
11 do. So, again, very useful. They can, essentially, other than
12 doing the actual processing, they are able to, essentially,
13 doing any duty that a border patrol agent can.

14 Q. And can you clarify why Border Patrol are using
15 flights or how these are used as well as buses?

16 A. So buses are integral each and every day to transport
17 from point of encounter out in the field to our centralized
18 processing center. The buses are sometime used -- again,
19 sometimes we have to transfer over to an ERO facility if they
20 don't have the capability of that. Buses are used for lateral
21 decompression, which is very common across the southwest border,
22 the same thing with the flights. Those could be varying
23 contracts flights. They could be ERO flights. Those are most
24 common.

25 Q. Is it fair to say that these buses and flights are

1 between government facilities, CBP facilities, while migrants
2 are in your care?

3 A. Yes.

4 Q. Okay. So I would like to discuss some of the
5 technology and assets employed by Yuma Sector. Does your sector
6 utilize towers?

7 A. What kind of towers? I'm not sure I understand.

8 Q. Whether it's mobile video surveillance towers or the
9 autonomous surveillance towers, does your sector use
10 surveillance technology?

11 A. Yes.

12 Q. Can you describe what some of those are and what they
13 do in your sector?

14 A. So we have fixed towers which we typically refer to as
15 remote video surveillance towers. They have daytime capability.
16 They have zoom capability. They have nighttime IR capability,
17 the same thing with a lot of our mobile surveillance camera
18 equipment. Those are also sometimes coupled and equipped with a
19 radar system which can detect anomalies, change pattern
20 identification, and in which case it would automatically pan to
21 that with a camera for visual, so a variety of different, and
22 then the autonomous surveillance towers, again, some of that new
23 AI technology. We are just now in the process of receiving our
24 first AST towers this week.

25 Q. That's great. How many towers are you receiving this

1 week?

2 A. Thirteen.

3 Q. And are there plans to receive more AST in your
4 sector?

5 A. Currently, there is not.

6 Q. And does your sector employ the Linear Ground
7 Detection system?

8 A. Yes, we do.

9 Q. Can you describe what the LGDS does?

10 A. So I don't want to go too far in depth, because,
11 again, it is, you know, something we don't want a whole lot out
12 there, but it is a cable that has the capability of detecting
13 activity, whether that be seismic, vehicular. Some agents that
14 are particularly good at monitoring that system can call an
15 agent to stop within one meter. They can tell if it's a
16 vehicle, if it's on foot, if it's someone climbing the border
17 wall, if it's someone cutting the border wall, a very accurate
18 system.

19 Again, it's an awareness enhancement and an early
20 warning detection device.

21 Q. So is it fair to say that the LGDS system helps your
22 agents detect individuals attempting to unlawfully cross the
23 border?

24 A. Yes.

25 Q. Would you say that it helps assist with stopping

1 cartel activity?

2 A. It does not stop it. That still requires a physical
3 response by an agent to either deter that activity or interdict
4 or arrest it, but it is similar to any sensor device. It will
5 allow us to expand that situational knowledge, and as the
6 operation commanders in the field, they're able to deploy their
7 resources as needed.

8 Q. Understood. So let me rephrase.

9 Would you say that the LGDS system assists with
10 responding to cartel activity?

11 A. Yes.

12 Q. Have you ever been instructed to turn off the LGDS
13 system in your sector?

14 A. No.

15 Q. About how many miles of Linear Ground Detection System
16 are installed in the Yuma Sector?

17 A. Twenty-seven.

18 Q. And are you aware of any plans to increase the LGDS
19 system in your sector?

20 A. No, I am not. In fact, the last seven miles were just
21 completed two weeks ago.

22 Q. Okay. So the LGDS system has expanded in your sector
23 during your time there; is that correct?

24 A. Seven miles, yes.

25 Q. Does your sector utilize unmanned aircraft systems?

1 A. Are you talked tethered or just drone?

2 Q. Both.

3 A. Yes. We have no tethered systems, but we do utilize
4 the drones. Yes.

5 Q. Can you describe how they operate and what their
6 function is?

7 A. So, again, it's to increase situational awareness. It
8 provides that overhead capability that you just don't have that
9 perspective from the ground. It's used for surveillance,
10 counter-surveillance, different techniques we have.

11 Any time we have a possible dangerous situation, we
12 can deploy that drone early to do a reconnaissance of the area
13 prior to putting personnel in that situation. So it's a great
14 enhancement to law enforcement.

15 Q. And does your sector employ counter-unmanned
16 aircraft systems?

17 A. Yes.

18 Q. Can you describe how these operate?

19 A. So I'm not the subject matter expert for them and,
20 again, most of how they operate is law enforcement sensitive
21 that I don't want to get too deep into in this setting, but the
22 basic understanding is that they're able to detect an entry.
23 They're able to classify it and, in some cases, can actually
24 mitigate it by taking control of that system and landing it
25 safely.

1 Q. And are you aware that DHS's authority to
2 counter-unmanned aerial surveillance will lapse at the end of
3 this fiscal year, this weekend?

4 A. So I had heard that, yes.

5 Q. Does that concern you?

6 A. Yeah. I'm always concerned any time a tool is removed
7 from the toolbox, any time one of our situational awareness or
8 safety enhancement measures is removed. Yes. It's always
9 concerning.

10 Q. And how would that affect your operations?

11 A. So day to day, I would say minimal. Border Patrol is
12 historically known to adapt, adjust, and overcome any obstacles.
13 We have a job to do day to day no matter what is or isn't in
14 effect.

15 Q. Does your sector utilize technology to detect cartel
16 tunnel activity?

17 A. Yes.

18 Q. Can you explain how those operate?

19 A. So, again, that one is best to discuss in a classified
20 setting, but it is a series of bore holes that are used to
21 detect subterranean seismic activity.

22 Q. So is it fair to say that tunnels are concern in your
23 sector?

24 A. Yes.

25 Q. Are you expecting the Yuma Sector to receive or deploy

1 any other technology systems, like communication systems, in the
2 coming year?

3 A. So the addition of the AST towers, as we talked about,
4 the 13 that are currently being installed, that was one of our
5 biggest anticipatory technology enhancements. We're continuing
6 to expand the use of the goTennas, which is like your mobile
7 repeater systems out there. Those are being issued. Most
8 agents currently have them. We're still continuing to get some
9 of that product in; but, again, that is a tremendous enhancement
10 to the Agent Tactical Awareness Kit, especially in some of those
11 remote areas that have limited radio coverage or cell coverage.

12 Q. Then I wanted to circle back to something discussed in
13 the last hour. You said that sometimes migrants wait on the
14 other side of the border wall and they're in U.S. territory
15 then; is that correct?

16 A. Correct.

17 Q. And once they're in U.S. territory and waiting on the
18 other side of the wall, do your agents have any obligations or
19 duties towards those migrants?

20 A. Yes.

21 Q. Can you describe what those are?

22 A. Yeah. So as quickly as possible and as resources
23 allow, agents will go make contact and determine admissibility
24 and, if appropriate, make the arrest.

25 Q. And so the fact that the wall is there does not affect

1 your duties with regard to these migrants; is that correct?

2 A. In those certain locations, again, particularly on the
3 river corridor where the infrastructure is not exactly on the
4 international boundary, there is U.S. territory on both sides,
5 and so yes. We're still responsible for enforcing laws on the
6 U.S. side no matter if it is or isn't on one side or the other
7 of the barrier.

8 MS. MARTICORENA: Understood. Thank you.

9 BY MS. JACKSON:

10 Q. You mentioned earlier the Sinaloa Cartel controls
11 territory south on the border in Mexico. Correct?

12 A. Yes, ma'am.

13 Q. Is it fair to say that they don't control territory on
14 the U.S. side of the border?

15 A. I wouldn't say they control territory, but they
16 certainly have personnel that operate in and around the U.S.

17 BY MS. MARTICORENA:

18 Q. And just as a followup on that, are some of the people
19 who operate with the cartel in the United States, are they U.S.
20 citizen?

21 A. Yes.

22 MS. MARTICORENA: Thank you.

23 BY MR. YIM:

24 Q. One question from me: You mentioned in the last hour
25 that word travels among migrants about the ease or difficulty in

1 crossing the border. Correct?

2 A. Yes, sir.

3 Q. And you explained that social media is a primary means
4 of passing along that information; is that correct?

5 A. Yes.

6 Q. Can disinformation about the United States' open
7 border policies be a driver among migrants to attempt to cross
8 the border?

9 A. I think any information, you know, could be a
10 deterrent or a driver. So it certainly has potential, yes.

11 Q. Would you be surprised to learn that some migrants
12 believe that the border is open because of this disinformation?

13 A. I don't get surprised very much anymore. I've seen a
14 lot. So, again, it's not particularly surprising, no.

15 MR. YIM: Okay.

16 MS. JACKSON: I think that's it. We can go off the
17 record.

18 [Recess.]

19 MR. McDONAGH: It's 11:07. We're ready to go back on
20 record.

21 FURTHER EXAMINATION BY THE MAJORITY

22 BY MR. McDONAGH:

23 Q. Thank you, sir, for being here again today. I'm going
24 to start off with some questions on migrant protection
25 protocols. You're aware of that program?

1 A. Yes, I am.

2 Q. Under that program, a migrant encountered between
3 ports of entry who claims a fear of returning to their country
4 would be returned to Mexico during the pendency of their removal
5 proceedings; is that correct?

6 A. Yes. That's correct.

7 Q. They weren't released into the interior of the United
8 States under that program?

9 A. No.

10 Q. While MPP was in place, were encounters across the
11 southwest border lower than in 2022?

12 A. I would have to have covered the entire dates that MPP
13 was in place. So I'm not sure of the exact same dates, but for
14 Yuma Sector particularly, FY '19, '18 were certainly lower than
15 what we've seen in '22 and '23.

16 Q. Was MPP ever in effect in a sector that you worked in?

17 A. No.

18 Q. No?

19 A. Not during the times that I was there, no.

20 Q. You mentioned earlier that consequences are important
21 to deter illegal entry?

22 A. Yes.

23 Q. Do you consider release into the interior of the
24 country to be an adequate deterrent to illegal entry?

25 A. Not in all cases. Again, it depends on what pathway

1 the migrant is in. There is always potential even if they are
2 released into the country that that case is going to continue to
3 be adjudicated. The end result could be removal from the
4 country, in which case, that is an effective consequence.

5 Q. What is the disposition of most illegal aliens; what
6 is the predominant processing pathway that you are using in
7 Yuma?

8 A. So currently in Yuma, all single adults are processed
9 as expedited removals. Family units are enrolled into FERM and
10 then we also have the enhanced expedited removal credible fear
11 interview process being enacted in Yuma.

12 Q. Are those individuals being detained?

13 A. Yes.

14 Q. What about in 2022; what was the predominant
15 disposition?

16 A. Again, I can only speak to the time that I was there.
17 You know, beginning in August of 2022, the majority of those
18 were notices to appear, border removals, or the warrant of
19 arrest notice to appear was the two most common processing
20 pathways.

21 Q. And under both of those pathways, illegal border
22 crossers were released into the interior of the country?

23 A. Some of the warrant of arrest. Again, it was all
24 dependant upon bed space in an ERO facility. It was often
25 limited in what was available to us, particularly in Arizona,

1 but if ERO bed space was maximized, then a notice to appear or a
2 removal was most common.

3 Q. In terms of the consequence, the processing pathways
4 that you and your agents have available, what would you consider
5 to be those that have the most deterrent effect and those that
6 have the least deterrent effect?

7 A. Always with detention and removal has the most
8 deterrent effect.

9 Q. Do your agents ever express or did they ever express
10 frustration when the majority were NTAs and released to the
11 interior that that was an inadequate consequence?

12 A. So I have heard frustration, yes, you know, when we in
13 a position to release a large majority of encounters. Yes.
14 Agents were frustrated.

15 Q. Can you provide us an example of that?

16 A. So, again, a lot of them, particularly that had been
17 in a significant amount of time, again, they've seen different
18 border environments situations. Surges are nothing new for us.
19 We've seen that; however, typically, they had a fairly short
20 time span.

21 This recent surge has continued for much longer than
22 most have anticipated and so, again, they do get frustrated when
23 they're not able to do their primarily function as a Border
24 Patrol agent. Your know, we're out there to patrol the line,
25 detract people, to make narcotics interdictions, and then when

1 that duty shifts into a more humanitarian focus-type mission, it
2 is frustrating.

3 Q. Shifting to more processing as opposed to being out in
4 the field?

5 A. Correct.

6 Q. So we had, I believe it was, Majority Exhibit 1, the
7 encounter statistics. So looking at that again, we had
8 discussed that, you know, the numbers have come down for recent
9 years, but overall, these numbers are still historically high.

10 Is that a fair assessment?

11 A. Yes. Fiscal Year '22 is the highest ever recorded
12 apprehension data for Yuma Sector.

13 Q. And in this fiscal year, 2023, it's still above what
14 was the general trend for Yuma pre-2021?

15 A. Second highest year of encounters in U.S. history.

16 Q. How has these surges, this ongoing surge, affected
17 morale? In any other way?

18 A. So morale is always tricky. Again, it comes and goes.
19 It depends on a lot of individuals. Some people are happy doing
20 processing. Some agents actually do like that. Others don't,
21 and so morale for us -- again, my job is more -- I focus most of
22 my effort and my time on ensuring that agents have as much
23 training and as many tools as they can to do their job as
24 effectively and safely as possible.

25 What makes people happy, it's kind of up to them.

1 Everybody is in control of their own attitude. I remind them of
2 that. We all signed up. We swore an oath to do this job, to do
3 the best we can each and every day.

4 It's not for everybody, and so I just remind them of
5 that daily any time I do see some of those morale impacts
6 happening.

7 Q. You mentioned that this ongoing surge to my colleague
8 affected the operation of checkpoints. What other effects has
9 this ongoing surge had on operations outside of the checkpoints?

10 A. So at some of the heights that we had back in FY '22,
11 again, prosecution suffered. We weren't able to get that. Some
12 delays on duty, they also decreased.

13 Again, any time you take uniformed agents off of their
14 primary patrol duties and functions, it has the potential to
15 impact operations.

16 Q. Do you live within the Yuma AOR?

17 A. Yes, I do.

18 Q. So you engage with local members of the community
19 pretty often?

20 A. Yes, sir.

21 Q. What is the primary concern or what some examples of
22 concerns that members of the community have regarding the surge?

23 A. So they're always, everyone is always inquisitive
24 about, you know, what are the current demographics, what's the
25 current daily apprehension rate, what's our in-custody

1 percentages, is there any chance that someone may be released
2 custody in the local area. So we have those conversations
3 almost daily.

4 I have a really good relationship with most of the
5 state, county, and local officials there and we're reliant on
6 each other. So what happens within the Yuma Police Department
7 or the Yuma Sheriff's Office, Border Patrol is going to assist
8 them as well.

9 So we have a great partnership of assisting each
10 other, and so one is certainly reliant on another and affects
11 another.

12 Q. What kind of tangible effects have you seen within the
13 Yuma Sector on the local community business in general due to
14 the surge?

15 A. So particularly in Yuma, not a huge impact, because
16 Yuma is not the destination. We are passthrough. The southwest
17 border is not the destination. Most everyone we encounter is
18 going somewhere.

19 So very few, if any, that we've encountered in any
20 surges stay in the local area. In fact, all the transfers we do
21 to ERO or partnering with the NGO, they're all leaving the area.

22 So for me, personally, the local impacts, I've seen
23 very minimal.

24 Q. Do you have any insight once a migrant is released on
25 an NTA or via some other pathway and you're engaging the NGOs;

1 do you know where they're going most -- like, predominantly,
2 where are they going?

3 A. Yes. A large percentage or a large population, we see
4 a lot go to Florida. We see a lot go to the northeast,
5 northwest, northern California.

6 Again, it's a long way from Yuma.

7 Q. So you mentioned earlier that you were in a Border
8 Patrol Tactical Unit?

9 A. Yes, sir.

10 Q. Did you -- in that role, did you witness instances of
11 human trafficking?

12 A. Of course.

13 Q. What are some examples of human trafficking that occur
14 that are related to your role as a Border Patrol Tactical Unit
15 agent?

16 A. So we were primarily the ones that did any kind of the
17 higher-risk enforcement. So if investigators had information of
18 a possible stash house and say they ran records checks and the
19 homeowner had a known criminal history, possible gang
20 affiliation, a history of violence, you know, against law
21 enforcement. They would typically call in our unit to serve
22 that warrant or to assist with a knock and talk so that there
23 was a heightened level of tactics and training available for
24 that, but I've seen all kinds.

25 The same thing with the high-risk vehicle

1 interdiction, but most of it was derived through the
2 intelligence community.

3 Q. Does a rise in encounters correlate -- or is there a
4 rise in trafficking with a rise in encounters?

5 A. It's hard to say for sure, but it is reasonable to
6 assume that, you know, with a high volume of encounters comes
7 additional criminal encounters, additional violent encounters.
8 All of that is possible, yes.

9 Q. You mentioned last hour that cartel-associated or
10 related individuals are active within the United States?

11 A. Yes.

12 Q. What kind of activities are they engaged in in the
13 United States?

14 A. So, again, I also mentioned earlier that the freedom
15 of movement is a very necessary thing for criminal organizations
16 to be successful. So having U.S. citizens that have traveled
17 across the border, may have family in Mexico, family in the
18 United States, again, those are all very, very common things for
19 the cartel to utilize.

20 Juveniles are utilized in some cases because there's a
21 lower risk to prosecution for juveniles, but, again, any
22 criminal organization typically multiple ties on both sides of
23 the border.

24 Q. Finally, my last question, you've had a very long
25 career in Border Patrol in different areas, a lot of insights.

1 I just wondered if you would speak to what it means to be a
2 Border Patrol agent, what character requirements, and how you
3 feel about the job.

4 A. So, again, I grew up in a law enforcement family. So
5 I knew from the Day 1 of what a career was that I was going to
6 be in some kind of law enforcement. Border Patrol presented
7 that opportunity straight of college for me. They embodied all
8 the values that I like, you know, vigilance, integrity, service
9 to country.

10 Those are all things that agents are extremely proud
11 of, get up, go to work every single day no matter what the
12 challenge is and, again, I'm super proud of the work that the
13 men and women in Yuma Sector do each and every day. They've
14 overcome just some insurmountable challenges.

15 Most of the time when people come down and visit us in
16 Yuma, most of them leave apologizing for what we have to do and
17 deal with each and every single day. We don't want an apology.
18 You know, we just want to be able to do our job the best we can
19 to protect our communities and our country.

20 I think's that the attitude that the majority of the
21 people that at least I deal with in Yuma Sector have.

22 MR. McDONAGH: Thank you, sir. I'm going to pass to
23 my colleague.

24 BY MR. SCHALL:

25 Q. I appreciate it. Thanks for being here.

1 A. Yes, sir.

2 Q. Now, I think you just said what you're dealing with
3 every day. Can you kind of talk about that a little bit?

4 A. So, again, these are for Yuma Sector history highs
5 from Fiscal Year '22 into Fiscal Year '23 and so, again, other
6 countries that we're seeing that we haven't typically
7 seen -- we've encountered people from 113 different countries
8 just in Yuma Sector, and so that's something that most agents
9 weren't typically prepared for.

10 Most people have, again, the idea that you come in and
11 we're going to track people that are trying to illegally from
12 Mexico, evade arrest, you know, make some drug arrests,
13 occasionally have a violent encounter that may require a use of
14 force incident, but that's your day-to-day expectation. This is
15 not what any -- certainly not in my career what I would consider
16 normal.

17 Q. And you mentioned earlier that migrants have paid up
18 to \$50,000 to come into the U.S. based on their demographics and
19 where they come from. Do you remember what demographics were
20 paying on the higher end?

21 A. The majority of the ones that I've seen that have come
22 from some of the intell interviews -- and, again, this is all
23 reliant upon what the migrants says. There's really no
24 financial backing to substantiate it. Most of those were from
25 either China, Russia, Uzbekistan. Those were the top three that

1 I remember as having some of the highest fees that I've seen.

2 Q. And you mentioned there was 31 assaults this year, I
3 believe.

4 A. Yes, sir.

5 Q. And is that up or down from last year?

6 A. So it's actually a little bit down from last year. We
7 had 46 yesterday -- sorry -- last fiscal year; but, again, back
8 to the previous conversation, you know, a higher number, higher
9 assaults, higher number, higher rescues.

10 So we're pretty well on pace with the same percentage
11 of encounter versus assault from this fiscal year from last.

12 Q. And you mentioned that Yuma wasn't the destination for
13 most of these migrants, but within the community, are you seeing
14 property damage, trash being left on the way in from migrants or
15 smugglers?

16 A. So not typically. There is in some remote desert
17 areas and, again, it depends on the method of entry. Sometimes
18 ATVs are used that can damage like the Cabeza Prieta, Organ
19 Pipe. That's all protected land. ATVs are prohibits.
20 Sometimes that entry can damage some of that land out.

21 The Bureau of Land Management and the Forestry Service
22 are responsible with the Department of Interior and then, of
23 course, along the river area, yes. There's a large amount of
24 trash left. We do have contracts in place for cleanup. We've
25 placed dumpsters in high-traffic areas.

1 So everything is being done to minimize the impact.

2 Q. When did those dumpsters go in?

3 A. So it was long before I arrived in Yuma, I assume as
4 early as the end of '21, early '22.

5 Q. And I believe you said during the got-aways portion
6 that you think that it's pretty close -- I believe it was
7 testimony that up to 20 percent, it could be almost 20 percent
8 higher for got-aways. Do you feel that number is accurate?

9 MR. JONAS: Which number?

10 BY MR. SCHALL:

11 Q. I'm sorry. Previous testimony from another border
12 agent was that got-aways could be missing -- the number could be
13 lower by about 20 percent. Do you feel that the known got-aways
14 versus the got-aways, period, could be that high?

15 A. So I don't have the full context of the testimony.
16 I'm not really even sure who you're referring to that actually
17 gave that testimony. So it wouldn't be responsible for me to
18 say yes or no to that number that I don't have any reference
19 for, but it is possible, certainly, that there are unknowns out
20 there that are not accounted for. For Yuma Sector, I believe
21 that we're pretty close.

22 Q. Okay. So the testimony, from my understanding, was to
23 the Committee on Home Security from Chief Ortiz. He testified
24 that Border Patrol is likely missing 20 percent of got-aways in
25 their numbers.

1 A. So Chief Ortiz speaking for Big Border Patrol, I
2 certainly trust him as the chief. For Yuma Sector, I believe
3 we're pretty close.

4 Q. Okay. I appreciate that.

5 Do you have any or have you had any communications
6 with Headquarters?

7 A. Yes.

8 Q. And who do you speak to at Headquarters?

9 A. So a variety of different people. Of course, we do
10 weekly calls, a lot of email correspondence. My direct line is
11 the deputy chief of law enforcement operations.

12 Q. And his or her name is?

13 A. So he is currently -- they just transitioned out.
14 Jeff Denisi is currently in that SES role.

15 Q. Who was it before?

16 A. Rick Moreno.

17 Q. And do you talk to, regularly, anybody else at
18 Headquarters?

19 A. There's different representatives in certain
20 divisions. Again, I don't generally talk to them directly, some
21 email correspondence back and forth, but communication with
22 Headquarters is a fairly regular thing.

23 Q. And what type of communication is that?

24 A. So we always inform them of significant events that
25 occur within our sector. Obviously, any time we encounter a

1 death or a significant injury, if there's been a potential
2 pursuit that's had damage or any kind of injury.

3 Any kind of high-profile visits, you know, that may be
4 occurring in our sector, we make sure that they have awareness
5 should any questions come up from the front office here at CBP
6 or even from department level.

7 So we do the best we can to keep them informed of what
8 is happening on the southwest border, and then there's regular
9 communication about what our needs are, what our anticipatory
10 impact may be, some of the challenges that we may be facing.

11 Q. Okay. Great.

12 And in Yuma, how many agents do you have?

13 A. I have currently have 885.

14 Q. And what is the total staffing?

15 A. I should have -- my whole T.O. is 1,218. So that
16 would be 950 Border Patrol agents and 268 professional staff.

17 Q. And how many agents do you think you need in Yuma to
18 effectively protect the border?

19 A. 950.

20 Q. What's that based on?

21 A. Our task organization requirements.

22 Q. At any point, did agents from other sectors get detail
23 to Yuma?

24 A. Yes.

25 Q. When was that?

1 A. So it was a little bit before I arrived, but, again,
2 it was primarily at the end of Fiscal '21 throughout most of
3 Fiscal Year '23 or -- excuse me -- Fiscal Year '22 and into the
4 beginning of Fiscal Year '23.

5 Q. And do you know how many agents or personnel were
6 detailed to Yuma?

7 A. So at a high watermark, there was as many as 160.

8 Q. Do you know where they came from?

9 A. All over the north border and some that were from some
10 of the less impacted southwest border sectors and also some of
11 the coastal sectors, as far out as Ramey.

12 Q. And did personnel from Yuma get detailed to other
13 sectors?

14 A. Not during that time, but now that we've transitioned
15 with a little bit slower flow in Yuma, we are reciprocating a
16 lot of the support that we received to other sector where I can.

17 Q. And how many agents is that?

18 A. So I currently have four that are detailed out to San
19 Diego. All four of those agents have CDLs. So they're very
20 instrumental in being able to drive those high-capacity
21 transport vehicles. I also currently have seven detailed over
22 to Tucson, particularly helping in Ajo with their decompression
23 efforts.

24 Q. And do you know how long they'll be gone for?

25 A. So they're on 30-day rotations. So we'll do a new

1 solicitation or we'll ask for volunteers to extend, but I have
2 guaranteed support as long as we can sustain it.

3 Q. In an Office of Inspector General's report, it was
4 reported that agents said that the changing policies made things
5 difficult. Do you agree?

6 A. So I haven't read that particular report. I wouldn't
7 be able to say yes or no.

8 Q. Have you heard of agents' morale being impacted since
9 2021?

10 A. So different impacts, again, you know, everybody is
11 different. For some newer agents, this is not anything new to
12 them. They think this is normal.

13 For other agents, yes. They've seen some of the
14 slower years. So they may be impacted more than some of the
15 newer agents.

16 Q. I appreciate that.

17 In January 2022, Secretary Mayorkas visited the Yuma
18 Sector. You weren't there, were you?

19 A. No, sir.

20 Q. Had you heard about that visit?

21 A. I'm aware of several visits that S-1 has made to the
22 southwest border.

23 Q. News reports said that an agent had turned their back
24 on the Secretary and that the administrative policies were not
25 particularly popular with them, the Border Patrol agents. Had

1 you heard about that incident specifically?

2 A. I had about that, yes.

3 Q. What else had you heard about that incident or that
4 visit?

5 A. That it was one particular agent that did that and it
6 certainly didn't reflect the majority that were there and that
7 the Secretary was actually very open and forthcoming and was
8 very willing to engage and answer questions of agents.

9 Q. I believe another agent said under President Trump,
10 everybody was doing their job. Do you know what that was in
11 reference to?

12 A. I don't have the context of that conversation. No,
13 sir.

14 Q. Another agent said that it was demoralizing to see
15 politicians and others demonize Border Patrol when they were
16 often saving illegal immigrants from injury and death. Do you
17 know what that was referring to?

18 A. Again, I don't have the full context of that one.

19 Q. Sure, and because you weren't there, I understand.

20 A. No.

21 Q. Let me move on.

22 Now, you mentioned that drug smuggling was not a
23 predominant thing in Yuma. Correct?

24 A. That's correct. It's mostly a human corridor.

25 Q. Is there any smuggling of guns or explosives into the

1 region?

2 A. In my time in Yuma, we have not encountered any
3 explosives, but, certainly, we've encountered several firearms.

4 Q. Do the cartels use drones in the area?

5 A. Yes.

6 Q. And what do their drones do? Is it to drop off drugs
7 or guns? Is it to spy on your operations?

8 A. So I have seen multiple, you know, utilizations of
9 them. Primarily, it is a surveillance tool so that they can
10 determine where agents are, what they're doing, but I've also
11 seen drones used to smuggle and drop off narcotics as well.

12 Q. And what other strategies do the cartels use?

13 A. I don't think there's any limit and so we could talk
14 all day about smuggling strategies, but any and all means are
15 possible. I have seen people with scuba gear, you know, trying
16 to come up with river. We've seen, of course, vehicles utilized
17 with predesignated pickup spots, remote foot traffic, you know,
18 like I said, the open bombing ranges. So they will walk through
19 live fire ranges because they know we can't patrol in those
20 areas.

21 Again, the utilization of the stash house, you know,
22 is very common. Again, they're looking for that opportunity to
23 move out of the area, trying to hope a checkpoint goes down or
24 that there's not as many DPS patrolling the highway during that
25 time. So there's really no limit to the techniques and tactics

1 that smugglers will do, and they absolutely have no regard for
2 human life while they're doing it.

3 Q. And how do the cartels treat aliens when they smuggle
4 them?

5 A. As a commodity, a number.

6 Q. Have you ever seen a stash house?

7 A. Yes.

8 Q. And what are the conditions like?

9 A. Typically, they are not what I would consider most
10 people consider sanitary. Most of the time, there's very little
11 food, very little water, you know, multiple people using one
12 restroom, if it's functional always not necessarily very clean
13 or functional furniture.

14 So most of the time, they're very run down.

15 Q. And are their children there?

16 A. In some cases, yes.

17 Q. And have you had the opportunity to interview any of
18 the people that have been smuggled into the stash houses?

19 A. So in some of my earlier years as a Border Patrol
20 agent, yes. We did several raids of stack houses, you know,
21 where we would conduct the interviews there and try to determine
22 the method of entry, how long have you been there, you know, how
23 much did you pay, all the basic information that you would want
24 to know, you know, trying to present a smuggling-type case.

25 So I've seen a wide variety of answers. Some say they

1 walked in. Some say they were driven in. Some said they were
2 in a trunk of a car. You know, some say they were blindfolded.
3 Some say they've been there for one hour. Some said one week.

4 So a wide variety of stories.

5 Q. So as a commodity, what type of like crimes were
6 committed by the cartel against these migrants?

7 A. So they weren't often free to leave, and so that
8 would, obviously, draw attention, possibly, of neighbors or
9 local police who were conducting patrols or, certainly, us. So
10 we respond to tips all the time from the local community.

11 We have a very good outreach program. So everybody
12 knows if you see something, say something. That's very
13 prevalent, including smuggling activity, especially along border
14 cities.

15 So most of the time, again, they weren't allowed to
16 leave. They were only able to eat or drink what the smugglers
17 chose to give them.

18 Q. And I'm going to switch back real quick, but how many
19 rescues did you say you had in Yuma this year?

20 A. So far, we're sitting at 395.

21 Q. And is that up or down?

22 A. It is up.

23 Q. And what type of rescue operations has this been and
24 how has that been a challenge to the Border Patrol agents in
25 your sector?

1 A. So we always prioritize the rescue operations, because
2 human life is in jeopardy. We're going to drop everything and
3 we're going to go respond to that 911 call.

4 In some cases, it's a single person that makes an
5 encounter with an agent and gives them a verbal report that he
6 left four people back, you know, a half-day's walk or a day's
7 walk. It could be any number of distances.

8 We're always going to utilize every asset that we
9 have. I mentioned the air assets previously, but any time you
10 have an increase in rescue operations, we always have to involve
11 other agencies. So that does impact local community resources
12 as well.

13 911 is being used pretty prevalent. You know, in some
14 cases, it's not always a lifesaving rescue. Sometimes it's just
15 people that get frustrated that we aren't picking them up and
16 transporting them fast enough and they call 911 because they're
17 ready to go.

18 MR. McDONAGH: I'm going to turn it over to my
19 colleague.

20 BY MS. O'CONNOR:

21 Q. So I know that my -- you were asked some questions
22 about processing a little bit earlier. I just want to into a
23 little bit more detail.

24 In Yuma Sector, are there specific criteria that
25 agents are considering when they're determining processing

1 pathway for someone they encounter?

2 A. Of course. Anybody with a substantial immigration or
3 criminal history, there's a certain processing pathway. A
4 family unit may not be subject to the same processing pathway
5 that a single adult. Juveniles, unaccompanied children is a
6 whole different category, as you probably well know, and so a
7 variety of factors are considered for each individual case.

8 Q. What about nationality?

9 A. Sometimes. If it's a special interest alien, then
10 there's certain protocol that have to be followed.

11 Q. Is that criteria determined within Yuma Sector or does
12 guidance come down from Headquarters telling agents which
13 pathways are appropriate for which criteria?

14 A. So guidance typically comes down from Headquarters;
15 however, I do have some discretion locally based on capacities
16 within ERO, the NGO, community resources.

17 So some of those decisions are made locally as well.

18 Q. So detention capacity could also impact the processing
19 pathway for individual migrants?

20 A. That's correct.

21 Q. So Border Patrol, then, is implementing -- well,
22 strike that.

23 Processing pathways are, essentially, a way of
24 determining which consequence to impose on an individual
25 migrant. Right?

1 It's ranging from release without an NTA with the
2 expectation to report to ERO to get your NTA all the way to
3 removal?

4 A. It is a considering factor, yes.

5 Q. Well, isn't that what you're doing, determining which
6 consequence to impose?

7 The pathways determine which consequent to impose.
8 Right?

9 A. I'm not sure I understand your question.

10 Q. So each processing pathway leads to a certain result.
11 Right?

12 A. It can, yes.

13 Q. Well, it will. Inevitably, there's a result at the
14 end of the pathway. Right?

15 You're either going to be released with an NTA or
16 maybe you're going to be interviewed during expedited removal or
17 maybe you're going to be removed?

18 MR. JONAS: What's the actual question here?

19 BY MS. O'CONNOR:

20 Q. The question is are those processing pathways leading
21 to a consequence at the end?

22 A. In every instance, it is our goal to deliver a
23 consequence and to treat everyone fairly no matter what their
24 case and claim and circumstances are.

25 The Border Patrol process is fairly simple. Most of

1 those are carried out in the custody of ERO, HHS, ORR, another
2 agency. Our part of the immigration process is fairly short.

3 Q. And the consequences, though, they can range in
4 severity?

5 I think we've talked about that already.

6 A. Yes.

7 Q. From like removal to facing immigration removal
8 proceedings within the United States?

9 A. Of course. If you have somebody who's been deported
10 five times, you know, as opposed to someone that this is their
11 first illegal entry, then yes. Someone with a longer
12 immigration or criminal history is possibly going to have more
13 jail time than someone who hasn't.

14 Q. But you get guidance about what criteria to use for
15 different pathways or what pathways are even available; you just
16 implement that guidance. Right?

17 A. Yes. We follow the law and we follow the policies.

18 Q. So if, for instance, you got guidance that said you
19 need to detain every single person, regardless of the ability to
20 do it at this point, if you got guidance that you need to detain
21 every single person and remove them, that's a Border Patrol duty
22 if that's the guidance that you got?

23 A. The Border Patrol doesn't remove anybody. ERO does.

24 Q. Sure. If your guidance was to detain everybody and
25 send them to ERO, that's what Border Patrol would do. Right?

1 A. Yes.

2 Q. When agents encounter somebody in the field, do any of
3 the processing steps begin in the field? Do they start an
4 investigation or do they bring them all back to the processing
5 center for investigation?

6 A. No. As I mentioned earlier, with our ATAK, Agent
7 Tactical Awareness Kits, we're able to do biometrics and mobile
8 data intake out in the field. So that, again, in my time, you
9 never know who you had until you did get them back to the
10 processing center to begin that; but now, in the field, you're
11 able to get a pretty quick return on someone's immigration or
12 criminal history that can enhance situational awareness for that
13 agent in the field, and then you're also immediately starting to
14 input that biographical and biometric information into those
15 phones.

16 So by the time they arrive at the processing sen
17 center, that is well on the way. It's a huge time saver for
18 agents right now.

19 Q. Are they able to do it consistently in the field?

20 A. Yes.

21 Q. When the migrant comes back to the processing center,
22 you mentioned before that there are processing coordinators.
23 Does a processing coordinator then take over the information
24 gathering when they're brought to the processing center?

25 A. That is one option. We also have data entry

1 specialists that could be doing that as well.

2 Q. At what point in the processing -- what's the word I'm
3 looking for -- processing process do the processing
4 coordinators -- how far do they go before it's handed over to an
5 agent to complete?

6 A. So they can go right up to signature of the I-213. A
7 sworn law enforcement agent has to be the one that signs off on
8 that. A Border Patrol supervisor will review and sign off on
9 every single case file that is produced no matter who it's
10 produced by.

11 So it's always -- that last step is always an agent
12 doing it.

13 Q. So the process coordinator could be filling out the
14 I-213. The agent reviews it and signs it and then a senior
15 agent reviews it?

16 A. It could be.

17 Q. When an agent reviews the I-213 that's filled out by
18 the processing coordinator, are they validating the information
19 that's in the I-213 or are they checking it for completeness?

20 A. So both. Every aspect is important. We're making
21 sure that every appropriate check was run. We're making sure
22 that the appropriate returns are tangible and included in the
23 case file, again, making sure that all data blocks are complete
24 and filled out. We're making sure the narrative is accurate,
25 that it has the appropriate names and identifiers are in there

1 and then that the proper processing pathway is being adhered to.

2 Q. Will the processing coordinator flag anything for the
3 agent that they think needs a second look or needs additional
4 investigation?

5 A. Yes. We have watch commanders, supervisors, floor
6 bosses that are always there, always available. Any time there
7 is a question, they know to elevate that instantly to get
8 supervisor guidance and approval.

9 Q. What type of information would a processor flag for an
10 agent?

11 A. So anyone that comes back with an alert. I mean,
12 obviously, if you get an Interpol red line, you know, they're
13 going to flag that. If they -- if just during the conversation
14 or during observation, they see something that could be a
15 possible indicator of some type of abuse or violence, you know,
16 they may say, Hey, I think this person should be interviewed by
17 our intelligence unit, you know, they could have been possibly a
18 trafficking victim or something like that.

19 So anything that raises that instinct to somebody that
20 something is not right can be elevated.

21 Q. What about gang affiliation, suspected gang
22 affiliation or tattoos, that kind of --

23 A. Of course. We're always going to elevate those up to
24 interviews with TTRT or even FBI or any other law enforcement.

25 Q. Are processing coordinator trained in observing

1 individuals for signs of trafficking, smuggling, abuse, criminal
2 behavior?

3 A. So I don't have the full curriculum of what they're
4 taught at the academy. I wouldn't be able to say for sure.

5 Q. Are you confident in what you've seen in the
6 processing coordinators' work, are you confident in their
7 ability to flag those type of issues for you?

8 A. I'm confident that if there is enough Border Patrol
9 agents working closely with the process coordinators that any of
10 those obvious signs are going to be noticed.

11 Q. And you had mentioned before that there are ERO
12 officers within the processing center. So is ERO working pretty
13 closely with Border Patrol when somebody is transferred maybe to
14 ERO custody that it happens pretty seamlessly within the center?

15 A. So I believe I said HSI, they are the ones that are
16 detailed there. That's Homeland Security investigators;
17 however, we do work closely. We have a liaison with ERO that
18 actually has an officer there at our sector headquarters that we
19 do daily coordination with.

20 Q. So if someone has to be sent to ERO custody, you
21 physically take them or ERO maybe comes to get them?

22 A. ERO comes to get them in our case.

23 Q. The DHS Office of Inspector General recently issued a
24 report titled "DHS Does Not Have Assurance that All Migrants Can
25 Be Located Once Released into the United States".

1 Have you read that report?

2 A. I have not.

3 Q. Are you familiar with it?

4 A. No.

5 Q. Essentially, in that report, the Office of Inspector
6 General found that Border Patrol and ICE doesn't always obtain
7 valid addresses for migrants' destinations, and of the records
8 that they reviewed, about 18 percent did not include valid
9 addresses from March of 2021 to August of 2022.

10 In Yuma Sector, have you -- do you know if your agents
11 are validating and addresses and in what way they are trying to
12 do that?

13 A. So, yes, we are. Every migrants that arrives has a
14 piece of paper with an address on it. It doesn't matter where
15 you're from, what country you're from, what language you speak.
16 They all have that because it's all organized by smugglers.
17 They know what they need to present.

18 We run every one of those addresses through the United
19 States Postal Service. If it comes back as a valid address,
20 we're done.

21 Q. So Border Patrol is not checking any additional
22 information about where the address is or what the address is;
23 you're checking for validation?

24 A. So it's recorded in the E-3 system as a valid address.
25 It's absolutely unreasonable that we would be able to check on

1 every single address for hundreds of thousands of people.

2 Q. You mentioned before that, right now, with the
3 processing pathways that Yuma is using, single adults are
4 largely expedited removal and that family units are also
5 expedited removal, but in the FERM program?

6 A. Correct.

7 Q. Are -- we'll start with single adults. Are they
8 detained before their credible fear interview?

9 A. So, currently, the credible fear interviews are taking
10 place in Border Patrol custody.

11 Q. Okay. So those people remain in custody they're
12 interviewed?

13 A. And there's also a program within ERO where they're
14 transferred to ERO and that is also conducted in ERO custody.

15 Q. Okay. So sometimes, they're staying within Border
16 Patrol custody for their interview and, sometimes, they're going
17 to ERO for their interview?

18 A. Yes. Both are possible.

19 Q. If they're found to have positive credible fear, is
20 Border Patrol going to issue an NTA and releasing them?

21 A. Yes.

22 Q. For the family unit, are they -- in the FERM program,
23 are they also -- do they also remain in custody for their
24 credible fear interview?

25 A. No.

1 Q. So how are they processed? What happens?

2 A. So their process is a WANTA or just through the FERM
3 program, which is just another box that you're checking on
4 there. They're released from our custody and then, again, if
5 any of the participating cities that are on that FERM
6 list -- and it's quite an extensive list. I don't have a full
7 recollection of every available city -- then they report to that
8 ERO office and that jurisdiction, in which case their credible
9 fear interviews are carried out in that field office.

10 Q. Well, they wouldn't be issued in NTA then?

11 They are issued in NTA?

12 A. Or the WANTA.

13 Q. With a warrant?

14 A. It could be, yes.

15 Let me see if I can find the exact pathway.

16 [Witness peruses document.]

17 THE WITNESS: Again, it's all through the Family
18 Expedited Removal Module.

19 BY MS. O'CONNOR:

20 Q. Right, but you're no longer in expedited removal if
21 you're issued an NTA. Right?

22 A. In that case, correct, but, again, it's not done in
23 our custody. So I don't think I'm going to be able to give you
24 the accurate information on that process.

25 Q. Is Yuma processing or considering anybody for

1 humanitarian parole?

2 A. Currently, no.

3 Q. If there was a consideration humanitarian parole, are
4 there approval requirements up the chain?

5 A. Yes.

6 Q. Does Yuma conducting any street releases currently?

7 A. No.

8 Q. Did Yuma ever use the parole plus conditions pathway
9 right before Title 42 -- or right after Title 42 expired?

10 A. Yes. We utilized both parole with conditions and
11 parole with ATD.

12 Q. Parole with ATD was well before the end of Title 42.
13 Right?

14 A. And it's still a current program.

15 Q. Parole plus ATD?

16 A. It's still an option.

17 Q. Did Headquarters provide guidance that you could still
18 use parole plus ATD as a processing pathway?

19 A. With prior approval. Currently, Yuma is not seeking
20 any approval.

21 Q. Did you receive that guidance in a memo?

22 A. Yes, prior to the end of Title 42.

23 Q. Was that a memo from Chief Ortiz?

24 A. I don't recall who originated it.

25 Q. My colleague talked to you about the criminal

1 consequences that can be imposed for violations of the
2 Immigration Nationality Act. Does Yuma refer to prosecution
3 somebody who is a first-time entry without inspection?

4 A. It is possible.

5 Q. Does Yuma?

6 A. Currently, no.

7 Q. Does Yuma refer reentries, illegal reentries, for
8 prosecution?

9 A. Yes.

10 Q. Do you refer all of them?

11 A. Currently, yes.

12 Q. Do you know since January -- well, if you know, since
13 January 2021, how many people have been released from Border
14 Patrol custody from the Yuma Sector?

15 A. I don't have an accurate number to be able to give
16 you.

17 Q. Do you know from your time in Yuma?

18 A. Somewhere between 65 to 70 percent.

19 Q. Of encounters?

20 A. Yes, ma'am.

21 Q. Are you familiar with the term "push and pull
22 factors"?

23 A. I have heard it used, yes.

24 Q. Can you explain your understanding of what push and
25 pull factors are?

1 A. Again, depending on where you're at, whatever
2 circumstances, whether they be physical, environmental,
3 economic, persuades you to leave a certain area to go to another
4 area based on the belief that that might be a benefit to improve
5 your current situation.

6 Q. Can you give examples of what you understand pull
7 factors to be to the United States?

8 A. So having -- being a United States citizen, I think
9 all of us can agree that this is the greatest country in the
10 world. I think that's a huge pull factor.

11 Q. Do your agents interview migrants that they encounter
12 about why they have come to the United States?

13 A. Yes.

14 Q. Do you know -- what are the reasons or most prevalent
15 reasons that people are giving to agents in Yuma Sector about
16 why they've come to the United States?

17 A. So a wide variety, obviously. Some of the more common
18 ones are better pay, better opportunities for the family, to
19 raise a family. Again, the belief that they are going to be
20 released with no consequence is certainly something that many
21 migrants tell our agents.

22 Q. My colleague asked you about a news report from when
23 Secretary Mayorkas came to the Yuma Sector -- I understand that
24 you weren't there -- and quoted an agent that said there were
25 policies that were unpopular with the line agents.

1 Have you heard from line agents that there are
2 particular policies that aren't popular among them?

3 A. I have not had that direct conversation with agents.
4 You know, again, our focus is more on what we can control.

5 Q. Yuma does not encounter, comparatively speaking, many
6 unaccompanied children. Right?

7 A. About two percent of our encounters are UACs.

8 Q. How do agents in Yuma verify the age of an
9 unaccompanied child?

10 A. So if they have any kind legal paperwork, we're able
11 to do that; otherwise, it's through an interview, which the
12 child may be able to disclose how old they are, the date of
13 birth, any other vital documentation. If they claim to be 14
14 and older, then we're able to fingerprint them and so we're able
15 to verify it through FINs or any other system that we use.

16 Mostly, it's upon the word of the migrant. Other
17 times, it's pinned to their chest.

18 Q. Pinned to their chest?

19 A. Yes.

20 Q. With the address and telephone number?

21 A. With a note that says who they are, when they were
22 born, what number to call, who their sponsor is, who their
23 parents are. Yeah.

24 Q. During surges of encounters, is it harder for agents
25 to verify information about unaccompanied children?

1 A. We're always prioritizing UACs, and so I haven't seen
2 anything inconsistent with how we treat UACs. That's always a
3 priority for us.

4 Q. Are there certain agents or processing coordinators
5 that are assigned to handle the UACs?

6 A. Yes. In fact, we actually have another set of
7 employees that are called caregivers that their sole purpose is
8 to care for UAC while they're in our custody.

9 Q. Do UACs go directly from your custody to ORR?

10 A. In HHS, yes.

11 Q. Do they come to pick them up?

12 A. Yes.

13 Q. We've heard that people will use -- it's called
14 rent-a-family where they'll use a child that's not theirs to be
15 considered a family unit to come into the -- to be released into
16 the United States.

17 Have you experienced any of that in Yuma?

18 A. Not in my time, not while I've been at Yuma, no.

19 Q. Did you see that at El Centro?

20 A. No.

21 BY MR. RUST:

22 Q. Just briefly, to your awareness, does ICE ERO
23 currently have any family detention capabilities or are they
24 processing family units for moving to alternative citizenship
25 programs?

1 A. So all the family units that we're encountering are
2 either rolled into FERM or receive NTAOR.

3 Q. So there's no detention capabilities for family units,
4 to your awareness, in the Yuma Sector that ICE would have?

5 A. No, currently not.

6 Q. Do you know if ICE previously had family detention
7 capabilities for family units referred from Border Patrol in the
8 Yuma Sector?

9 A. There was, yes. There used to be facilities
10 specifically for families.

11 Q. Do you know about when that changed?

12 A. I don't have an exact date, no.

13 MR. RUST: Thank you. I don't have any other
14 questions.

15 BY MR. McDONAGH:

16 Q. You mentioned decompression efforts. Could you
17 describe decompression efforts?

18 A. So, again, the southwest border is unified in a
19 wholistic approach. I always tell people nothing on my uniform
20 says Yuma. It says United States.

21 So things that happen in south Texas or California,
22 New Mexico, Arizona all affect one sector or another. We're
23 always going to support each other. We're going to utilize
24 whatever logistical assets or detention space we have to help
25 decompress a particular sector or facility that may be

1 overcrowded.

2 So when Yuma was experiencing an extremely high flow,
3 we were utilizing buses to go to San Diego, buses to go to
4 Tucson to be able to decompress our facility to other locations
5 that had sufficient detention space.

6 Q. Is that for processing or detention?

7 A. So it could be for both. In some case, an NGO
8 capacity might be exceeded, in which case a migrant would
9 already be -- could possibly be at least near processing
10 complete. We may have to finish out the book-out procedures,
11 but for the most part, it was to assist with processing at other
12 facilities.

13 Q. Okay. You mentioned access to criminal databases.
14 Does Border Patrol have access to the criminal databases of
15 foreign countries?

16 A. Not direct access, no.

17 Q. Do you have capacity to gain access then?

18 A. In some cases where we do require additional
19 information, we'll utilize embassies' attaches and they can
20 access some of those foreign country databases for extra
21 information, if needed.

22 Q. Have you ever been denied that information?

23 A. Me personally, no.

24 Q. You talked about community effects, and I just wanted
25 to ask a quick question on this. You talked about inadmissible

1 illegal border crossers coming across and then using 911 because
2 they were tired of waiting for you guys to come get them.

3 That's a social service. Right?

4 That's something the public uses, 911. Have you
5 noticed in your AOR in Yuma that other public services, like
6 hospitals, have been impacted by or affected by this?

7 A. So I know the Yuma Regional Medical Center -- again,
8 we have major hospital in Yuma, and so that is very busy. Any
9 time we encounter migrants that require medical treatment,
10 certainly, we're never going to deny treatment for somebody. If
11 the recommendation by medical personnel is that this person
12 needs to seek additional medical treatment, we're going to take
13 them to the hospital.

14 Sometimes that could be several people, and so that
15 would impact, say, emergency room triage capability, possible
16 bed space, you know, throughout the hospital, but it's a very
17 busy hospital and there's only one. So any time Border Patrol
18 takes people there, it could impact some of the local services.

19 Q. So my colleague had discussed how you guys take
20 addresses of migrants, and you said that -- and correct me if
21 I'm wrong -- that with the high levels, the hundreds of
22 thousands, it's difficult to do more than just run it through
23 the USPS system.

24 If the encounters were lower, then would you be able
25 to do a more thorough investigation into the validity of that

1 address?

2 A. Yes. It's possible, especially if we're able to
3 determine that maybe there's some duplication going on. That's
4 not terribly uncommon, but, again, that would be primarily an
5 ERO function. They're the ones that are more responsible for,
6 again, following up on anybody that's released from our custody
7 that they're going to their court dates and checking in if those
8 are part of their conditions.

9 So ERO would be the ones to really be able to verify
10 those addresses.

11 Q. And one more question: We discussed disinformation.
12 Did you say that 65 to 75 percent were being NTA'd in some
13 capacity?

14 A. It's closer to 65. Yes.

15 Q. So is it cartel disinformation or misinformation that
16 individuals who illegally enter the United States that there is
17 a significant likelihood of release into the interior of the
18 United States?

19 A. So they're telling half-truths. So you never -- they
20 never tell the whole story.

21 So even if you are released, it doesn't mean that
22 you're not subject to deportation at a later point. Once your
23 case is adjudicated and you're found inadmissible, you're
24 amenable to removal, and so you won't have legal status in the
25 United States even.

1 If that could take a long time to do, it's got to be a
2 mentally heavy burden for someone to know that, at any point,
3 the government could come and arrest you and remove you. That
4 is not the same as just being released.

5 Q. Right. So not misinformation that they're released,
6 but misinformation that the consequences could come at a later
7 date?

8 A. It's a half-truth exploitation to make money.

9 MR. McDONAGH: That's all I have. Thank you, sir.

10 MR. SCHALL: I have just a few more questions, and
11 this will be Majority 2, the Secure Fence Act of 2006.

12 [Majority Exhibit No. 2 was
13 marked for identification.]

14 BY MR. SCHALL:

15 Q. So there's been a lot of talk about the Secretary's
16 inability to maintain operational control as defined by the
17 Secure Fence Act of 2006 at the southwest border.

18 Are you familiar with this?

19 A. Not in depth, no.

20 Q. Are you familiar with the term "operational control"?

21 A. I am.

22 Q. And under operational control, it means the prevention
23 of all unlawful entries into the United States, including
24 entries by terrorist and other unlawful aliens, instrumental
25 altruism, narcotics, and other contraband.

1 Under this definition, do we have operational control
2 over the southern border?

3 A. Under this definition, I would say we've never had
4 operational control.

5 Q. So we do not have operational control currently?

6 A. No.

7 Q. A few other questions: Do you or did you run a social
8 media account in Yuma?

9 A. So during the time I was acting chief, I did have the
10 social media account for Yuma Sector tied to me.

11 Q. And were you ever told to take down any Tweets or
12 Facebook or any posts?

13 A. No, sir, I was not.

14 Q. And is controlled only by you?

15 A. There's a team that manages it. So we have a
16 strategic communication team, but every post under my account
17 was reviewed and authorized by me.

18 MR. SCHALL: Okay. That's it for me.

19 MR. McDONAGH: We're going to go off the record.

20 Thank you.

21 [Recess.]

22 MR. FINN: It's 12:15.

23 BY MR. FINN:

24 Q. I just wanted to go back to talk a little bit more
25 about your relationships. Also, we talked about the

1 relationships with community at the municipal level and local
2 levels. I wanted to talk about your relationships with state
3 law enforcement a little bit more.

4 So you said that working to kind of get to these stash
5 houses to kind of root out this problem, you worked with DPS.
6 Now is that Arizona?

7 A. Correct.

8 Q. And does the area in California have a DPS as well?

9 A. So they have the California Highway Patrol as their
10 state entity.

11 Q. Do you recognize that or do you see that your
12 relationship with Arizona's DPS -- is that important to your law
13 officer objectives?

14 A. Yes, absolutely.

15 Q. And do you think that having this relationship makes
16 it easier for Border Patrol agents to perform their duties?

17 A. It certainly enhances it, yes.

18 Q. And so does the DPS, when they reach a migrant, do
19 they perform the intake there? Do they send it directly to you
20 to perform biometrics? How does that work?

21 A. So we do all of the processing for any migrant
22 encounters. I think you're maybe going towards more like our
23 Stonegarden partnerships that we have, and so, again, that's
24 state, local, and federal.

25 So, again, they're able to assist with the border

1 security mission through a federal grant funding program, which
2 is absolute critical in the Yuma area.

3 MR. FINN: Okay. I guess that's pretty much all I
4 wanted to ask.

5 Do you guy have anything?

6 MS. O'CONNOR: We have no further questions.

7 MR. JONAS: I know it's a little unusual. I just want
8 to ask one clarifying point with respect to something you
9 raised.

10 EXAMINATION BY COUNSEL FOR CUSTOMS AND BORDER PATROL:

11 BY MR. JONAS:

12 Q. Do you have any memory of any guidance, emails,
13 anything from Headquarters regarding an injunction by a court
14 regarding parole with ATD, parole plus ATD?

15 Do you have any memory one of the other about guidance
16 with Headquarters about that?

17 A. No. I'm not recalling anything specific on that.

18 MR. JONAS: Okay.

19 MR. FINN: On behalf of Chairman Green, thank you so
20 much for being here.

21 MR. RUST: On behalf of Chairman Comer, thank you for
22 appearing today to answer all of our questions. We appreciate
23 it.

24 MR. McDONAGH: Thank you very much, sir.

25 MS. O'CONNOR: We'll go off the record.

1 [Recess.]

2 MS. JACKSON: We can go back on the record at 12:19.

3 FURTHER EXAMINATION BY THE MINORITY

4 BY MS. JACKSON:

5 Q. So if the Federal Government shuts down on October
6 1st, it's our understanding that Border Patrol agents in Yuma
7 would not receive paychecks, but they would still be required to
8 report to their duty stations. Is that your understanding as
9 well?

10 A. I haven't received any official guidance to clarify or
11 verify that just yet.

12 Q. Okay. Would you be concerned about the impact of a
13 shutdown on agent morale within Yuma?

14 A. Again, it's always a concern. So yes. It would be
15 something that we would have to address.

16 BY MS. MARTICORENA:

17 Q. Just a followup to that: Have you been with the
18 Border Patrol during previous shutdowns?

19 A. Yes.

20 Q. And during previous shutdowns, did you or your agents
21 receive pay?

22 A. To the best of my recollection, no, but there
23 was -- it was made up, you know, at a later date once the bill
24 passed.

25 Q. Understood. And I believe the last shutdown lasted 35

1 days. So that's two pay periods; is that correct?

2 A. That's close, yes, just over two pay periods.

3 Q. And did you hear of any concerns from agents or from
4 the field about the impact of not receiving pay during those two
5 pay periods?

6 A. Yes, of course. There's -- you know, individuals have
7 different financial situations and obligations. So any lack of
8 pay has the potential to impact people differently.

9 Q. And can you just expand a little bit more on what some
10 of those situations might be that could cause problems for
11 agents?

12 A. So, obviously, not being able to pay your mortgage or
13 your car payment or, you know, your child's dental bills or
14 medical bills. Any kind of those things associated to just a
15 family's obligations are certainly impactful.

16 You know, just the basic necessities that you need,
17 you definitely have to be very careful about what you spend your
18 money on.

19 Q. And in the last shutdown, did you hear about
20 communities stepping up to try and help Border Patrol agents or
21 other federal workers and, if so, what did that look like or
22 what did you hear about?

23 A. So yes. I heard a variety of different programs.
24 Some banks, some of the smaller banks, at least, were at least
25 foregoing mortgage payments, you know, until the shutdown ended.

1 Different community outreach resources were available to include
2 counseling sessions, in some cases, possibly food assistance,
3 should that be necessary.

4 So yes. Again, I think we have a great -- it just
5 shows to the great working relationship that we have with the
6 majority of our border communities, is that we're going to help
7 them. They're going to help us. We're certainly all in that
8 together.

9 Q. And do you think it's fair to say that not receiving a
10 paycheck or the prospect of not receiving a paycheck for an
11 extended period of time can cause additional stress to your
12 agents?

13 A. Yes. Certainly, it has the potential for additional
14 stress.

15 Q. And do you think this would impact national security
16 if they have this additional stress weighing on them about how
17 they're going to pay their bills?

18 A. I don't think it's going to have a tremendous impact.
19 Again, it's always -- it's what we do. It's what we signed up
20 to do.

21 When you put on the uniform and you go to work, that's
22 where your mind typically is. I think our agents are well
23 adapted to that and understand what their primary mission is.

24 Q. I believe you said in the last hour, your agents just
25 want to do their job every day and protect their country?

1 A. Correct.

2 Q. And so let me just ask you a little bit about the NGOs
3 in your community. Do you have a relationship with NGOs in the
4 Yuma Sector?

5 A. Yes, ma'am.

6 Q. Can you describe what that looks like?

7 A. So it's very good. We have one NGO in Yuma Sector.
8 It's the Regional Center for Border Health that's positioned
9 down in the City of Somerton, which is about 10 miles south of
10 Yuma, and the executive director, her name is Amanda Aguirre,
11 and she has been absolutely instrumental in being able to assist
12 us when we're seeing the high daily encounter numbers and being
13 able to assist migrants with their travel.

14 Q. Can you talk a little bit more about what you meant by
15 she was able to assist you during the surge and the high
16 numbers?

17 A. So we communicate quite often, especially when we were
18 over capacity. In some cases, we were pushing 200-plus percent
19 capacity. We were telling her what our requirements are. She
20 was able to gain additional resources.

21 So we were doing anywhere between 10 and 13 bus
22 transfers a day. Of course, the NGO picks up at our facility,
23 and so that constant adjustment and close coordination is
24 absolutely vital for the Yuma community.

25 Q. And what would be the impact of NGOs like the Regional

1 Center for Border Health not having the capacity to work with
2 your agents?

3 A. So we have limited options at that point. If there's
4 no ERO bed space for a transfer and there's no NGO capacity to
5 assist with the travel coordination and we're process complete,
6 we really don't have any further legal authority to hold. So
7 our only outlet is possibly releasing them into the community,
8 which is an absolute last resort for the Border Patrol.

9 Q. And during your time in Border Patrol, throughout your
10 entire career, has ERO ever had the capacity to detain everyone?

11 A. Not everyone, but in years past, they certainly had a
12 lot more capacity to be able to assist.

13 Q. Okay. But it would still be fair to say that some
14 were released into the community under different processing
15 pathway and different forms of supervision?

16 A. Yes, and in, certainly, smaller numbers, voluntary
17 return was, again, very prevalent back in my early days as a
18 Border Patrol agent and, again, that was just because the
19 majority of our encounters were people from Mexico. That
20 demographic has dramatically shifted.

21 Q. And when Border Patrol can release to NGOs instead
22 releasing to communities, does that help your agents focus on
23 mission priorities? Does it have an impact?

24 A. Not really. Again, it's better and, again, that's our
25 preference. We always want to maximize and utilize that NGO to

1 their fullest potential and capability, but for Border Patrol,
2 again, whatever processing pathway is being utilized, it really
3 doesn't change your day-to-day function. We have a daily flow
4 that we're going to be dealing with each and every day. Your
5 work is pretty much the same.

6 Q. So I'd ask the same question again for the cities
7 along the border or for the border communities. If those NGOs
8 didn't have the capacity, how would it affect the cities?

9 A. Again, most of the border communities, even Yuma -- to
10 me, it's a fairly large city. To other people, it's a small
11 city, but there are limited resources that are available.

12 So any time the NGO is overcapacity and not able to
13 keep up with that volume, it has the potential to reduce those
14 resources and logisticals that are available for those local
15 border communities.

16 Q. So would you agree that assistance to these NGOs from
17 the Federal Government is important to make sure they have
18 capacity to receive people?

19 A. Yes. I believe so.

20 Q. Okay. Thank you.

21 And then I just wanted to follow up on a few things
22 from the other round. You mentioned that you've seen migrants
23 from 113 countries in the Yuma Sector?

24 A. Just in Yuma, yes.

25 Q. Are there countries that are particularly hard to

1 deport migrants to and why is that the case?

2 A. So there are some countries that the United States
3 doesn't have agreements with that will not accept their citizens
4 back. So there are some countries that it's impossible to
5 deport to.

6 Q. And has that been a challenge throughout your career
7 in Border Patrol?

8 A. Not in recent recollection and, again, because Border
9 Patrol is not responsible for the ultimate removal of migrants,
10 that's an ERO function. That falls more into their category.

11 Q. So I'll be a bit more specific. I think some of those
12 countries are like Venezuela and Cuba, that it's hard to deport
13 people too. Is that your understanding as well?

14 A. That's my understanding, yes.

15 Q. Have those countries had a strained relationship with
16 the United States for a while, to your understanding?

17 A. So I know a little bit of history. So yes. I would
18 say that would be accurate. It could be strained.

19 Q. And so in previous years, was it also hard to remove
20 nationals of those countries if they showed up at the border?

21 A. I'm not for sure. Again, I wouldn't be able to give
22 you firsthand knowledge of that. So I wouldn't be able to give
23 an accurate answer.

24 Q. Understood. And then at the beginning of our
25 conversation or the beginning of this session, you mentioned

1 that the CBP has grown during your time. I believe you said it
2 grew twice.

3 A. Um-hum.

4 Q. When did those expansions happen?

5 A. So the original CPC had a capacity 375. That started
6 in April of 2021. In April of 2022, that expanded by 500. On
7 May 8, 2023, that expanded by an additional 500.

8 So we have a total capacity of 1,375 currently in our
9 CPC.

10 Q. So more than a 300 percent increase in capacity; is
11 that correct?

12 A. Yes.

13 Q. And then the last thing I wanted to -- sorry -- the
14 second to the last thing I wanted to ask about was you mentioned
15 you've seen firearms in your sector?

16 A. Um-hum.

17 Q. Are those mostly coming into the United States or
18 going south?

19 A. So, again, the port of entries would be the ones that
20 would encounter any kind of southbound stuff. So the weapons
21 that we encounter are typically in alien smuggling loads,
22 whether that -- and it could be a possible narcotics load. In
23 fact, one of the most recent narcotics load we had, there was
24 two firearms in that one, and that was a load of meth.

25 You know, so a majority of the firearms that we

1 encounter are in vehicles that are being utilized during
2 smuggling operations.

3 Q. So most of the smuggling, then, is about the drugs and
4 not the firearms that you're encountering?

5 A. Correct, or they're typically associated, but if I
6 recall accurately, at least a small percentage of them are
7 reported stolen.

8 Q. Okay. Then the last thing I wanted to ask about was
9 we talked a bit about the FERM program for families. Can you
10 just explain briefly what that is?

11 A. So that's the Family Expedited Removal Module. Again,
12 it's an ERO program. So our enrollment is if you have a family
13 that's going to certain cities that has been designated in
14 conjunction with USCIS and ERO, if a family declares that
15 they're going to one of these designated cities that's
16 participating in the FERM program, that we enroll them into that
17 module and then they're released from our custody.

18 They are most often turned over -- they are turned
19 over to the NGO. The NGO coordinates with their facility to
20 travel to that city. Once they arrive, they're supposed to
21 report to an ERO office, and then that expedited removal
22 credible fear process will be conducted at that local
23 jurisdiction.

24 Q. And is it your understanding that the removal process
25 for a family under this program is quicker than if they were

1 just released into the United States with an NTA?

2 A. I really don't have a good time reference to tell you
3 if it's fast or not.

4 Q. Okay. And do you remember when the -- approximately
5 when the FERM program rolled out?

6 A. So it's only been recently, I think in the last 30 to
7 45 days.

8 MS. MARTICORENA: Thank you.

9 BY MR. YIM:

10 Q. Chief, throughout the entirety of your career with
11 Border Patrol, has there been a time where Border Patrol has
12 been able to prevent all unlawful entries into the United
13 States?

14 A. No.

15 MR. YIM: No further questions.

16 MS. JACKSON: With that, we can go off the record.

17 [Whereupon, at 12:32 p.m., the interview concluded.]

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Certificate of Deponent/Interviewee

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I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

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COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
joint with the
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: GLORIA I. CHAVEZ

Tuesday, September 26, 2023

Washington, D.C.

The interview in the above matter was held in H2-176 Ford House Office Building,
commencing at 9:00 a.m.

1 Appearances:

2

3

4

5 For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

6

7 SLOAN MCDONAGH, COUNSEL

8 JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT

9 SARAH JACKSON, MINORITY COUNSEL

10 BLANCA TORRES, MINORITY COUNSEL

11 DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

12

13

14 For the COMMITTEE ON HOMELAND SECURITY:

15

16 FINN ARTHUR, RESEARCH ASSISTANT

17 NATASHA EBY, STAFF DIRECTOR, SUBCOMMITTEE ON

18 BORDER SECURITY AND ENFORCEMENT

19 ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND

20 INVESTIGATIONS COUNSEL

21 BRANDON SCHALL, OVERSIGHT AND INVESTIGATIONS COUNSEL

22 WILLIAM TURTON, PROFESSIONAL STAFF MEMBER

23 BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR,

24 SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT

25 FABIAN VALENTIN, MINORITY LEGISLATIVE ASSISTANT

1 For the U.S. DEPARTMENT OF HOMELAND SECURITY:

2

3 STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

4

5 For U.S. CUSTOMS AND BORDER PROTECTION:

6

7 STEPHANIE MUFFETT, OFFICE OF CHIEF COUNSEL

8

9 For GLORIA I. CHAVEZ:

10

11 SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

12 MIGUEL JUAREZ, ADJUTANT TO GLORIA I. CHAVEZ

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1 Mr. Rust. Good morning.

2 Chief Chavez. Good morning.

3 Mr. Rust. This is a transcribed interview of Chief Patrol Agent Gloria Chavez.
4 Chairman Comer and Chairman Green have requested this interview to obtain
5 information regarding border security from the Chief Patrol Agent in charge of U.S.
6 Border Patrol operations in the RGV Sector.

7 Would the witness please state her name for the record.

8 Chief Chavez. Gloria I. Chavez.

9 Mr. Rust. On behalf of the Committee on Oversight and Accountability and the
10 Committee on Homeland Security, thank you for appearing today. The committees
11 appreciate your willingness to appear voluntarily.

12 My name is James Rust, and I am a counsel for Chairman Comer on the Committee
13 on Oversight and Accountability.

14 I would ask the majority and minority members and staff from the committees to
15 please identify themselves.

16 Ms. O'Connor. Elizabeth O'Connor, senior counsel, Committee on Homeland
17 Security, majority.

18 Mr. McDonagh. Sloan McDonagh, counsel for Chairman Comer on Oversight.

19 Mr. Schall. Brandon Schall, counsel, Homeland Security.

20 Mr. Arthur. Finn Arthur, Homeland Security, majority staff.

21 Ms. Eby. Good morning. Natasha Eby, staff director, Border Security and
22 Enforcement Subcommittee, majority.

23 Mr. Turton. William Turton, Homeland Security, majority professional staff.

24 Mr. Yim. Daniel Yim, House Oversight, Democrats.

25 Ms. Jackson. Sarah Jackson, House Oversight, Democratic staff.

1 Ms. Torres. Blanca Torres, counsel, House Oversight, Democratic staff.

2 Mr. Valentin. Fabian Valentin, House Homeland, minority.

3 Ms. Marticoarena. Briana Marticoarena, House Homeland, Democratic staff.

4 Mr. Rust. I also recognize that the witness is accompanied by Department of
5 Homeland Security officials in addition to the agency counsels at the table.

6 Would those additional agency officials please state their names and titles for the
7 record.

8 Ms. Klisarska. Samantha Klisarska, congressional liaison, Office of Congressional
9 Affairs.

10 Mr. Juarez. Miguel Juarez, adjutant to Ms. Gloria Chavez.

11 Mr. Rust. Before we begin, I will briefly outline the procedure and guidelines we
12 will follow in this interview.

13 Questioning will proceed in rounds. The majority staff will ask questions first for
14 up to 1 hour, and then the minority staff will have an opportunity to ask questions for up
15 to 1 hour if they choose. We will go back and forth for four total 1-hour rounds or until
16 there are no more questions.

17 We will take a short break at the end of each hour. If the witness would like to
18 take a break at any other time, please let us know. If, however, there is a pending
19 question, we would ask that the witness finish answering the question before we stop to
20 take a break.

21 There is an official reporter taking down everything we say to make a written
22 record, so we ask that you give verbal responses to all questions. The reporter cannot
23 record nonverbal answers, such as shaking your head, so it is important to answer each
24 question with an audible verbal answer.

25 Chief, do you understand that you must give verbal responses?

1 Chief Chavez. I do.

2 Mr. Rust. To ensure the court reporter can take a clear record, we will do our
3 best to limit the number of people directing questions to you during any given hour to
4 just those staff whose turn it is.

5 To the extent possible, it is also important that we do not talk over one another or
6 interrupt each other. Please wait until each question is finished before you begin your
7 answer, and we will endeavor to wait until you finish your response before asking you the
8 next question. Furthermore, the majority staff will not ask questions or otherwise
9 interrupt the minority's round of questioning and vice versa.

10 I understand the witness is accompanied by agency counsels today.

11 Would those counsels please state their names for the record.

12 Mr. Jonas. Steve Jonas, DHS, Office of General Counsel.

13 Ms. Muffett. Stephanie Muffett, CBP, Office of Chief Counsel.

14 Mr. Rust. I would also like to confirm that agency counsel represents the agency
15 and not you personally. Is that an accurate understanding?

16 Chief Chavez. It is.

17 Mr. Rust. Are you choosing to have agency counsel in the room today?

18 Chief Chavez. I am.

19 Mr. Rust. You are encouraged to freely consult with counsel if you choose. If
20 you need to confer with counsel during the interview, please let us know, and we will go
21 off the record and stop the clock until you are prepared to continue.

22 During the interview, we ask that you please answer any questions in the most
23 complete and truthful manner possible. If you have any questions or you do not
24 understand a question, please let us know.

25 Do you understand?

1 Chief Chavez. I do.

2 Mr. Rust. If you do not know the answer to a question or do not remember, it is
3 best not to guess. If there are things you do not know or cannot remember, please just
4 say so and inform us who, to the best of your knowledge, might be able to provide a more
5 complete answer to the question.

6 If we ask about conversations or events in the past and you are unable to recall
7 the exact words or details, you should testify to the substance of those conversations or
8 events to the best of your recollection.

9 If you recall only part of a conversation or event, you should give us the best
10 recollection of those events or conversations that you do recall.

11 Do you understand?

12 Chief Chavez. I do.

13 Mr. Rust. Although you are here voluntarily and we will not swear you in, you
14 are required by law to answer questions from Congress truthfully, including questions
15 posed by Congressional Members or staff during this interview.

16 Witnesses who knowingly provide false testimony could be subject to criminal
17 prosecution for perjury or making false statements.

18 Do you understand this obligation to tell the truth today?

19 Chief Chavez. I do.

20 Mr. Rust. Is there any reason that you are unable to provide truthful answers to
21 today's interview?

22 Chief Chavez. No.

23 Mr. Rust. As mentioned, the House Oversight and Accountability Committee and
24 the House Committee on Homeland Security are seeking to obtain information regarding
25 border security from the chief patrol agents in charge of U.S. Border Patrol operations in

1 southwest border sectors.

2 We are interviewing you today to learn about matters related to border
3 enforcement and your roles, responsibilities, experience and observations. We are not
4 investigating you personally for any personal wrongdoing. His is a fact-finding endeavor.

5 Are you ready to begin?

6 Chief Chavez. I am.

7 Mr. Rust. Thank you. The clock now reads 9:05. We will begin the first round
8 of questions.

9 EXAMINATION

10 BY MR. RUST:

11 Q Chief Chavez, you previously testified on February 7th before the Committee
12 on Oversight and Accountability; is that correct?

13 A That is correct.

14 Mr. Rust. I would like to file as majority exhibit 1 the official transcript of that
15 hearing, and I have provided a copy to the witness.

16 [Chavez Majority Exhibit No. 1

17 Was marked for identification.]

18 Mr. Rust. Chief, please feel free at any point to refer back to this transcript if the
19 need arises during today's interview.

20 Mr. Jonas. I would also ask that, if you're going to make reference to something
21 that she has testified to before, that you do so with a page reference so that she can see
22 the full context of it.

23 Mr. Rust. Understood.

24 I'd also like to file as majority exhibit 2 the witness bio for Chief Gloria Chavez
25 submitted in connection with that hearing. I have also provided the witness with a copy

1 of that bio.

2 [Chavez Majority Exhibit No. 2

3 Was marked for identification.]

4 BY MR. RUST:

5 Q Chief, according to that bio, you began your career with Border Patrol in
6 1995. Is that accurate?

7 A That is correct.

8 Q Before you joined the Border Patrol, did you have any prior law enforcement
9 experience?

10 A I did. I was a police officer in Taft, Texas, at the Taft Police Department.

11 Q How long were you a police officer?

12 A Approximately 1 year.

13 Q And, prior to serving as the Chief Patrol Agent in the RGV Sector, you were
14 the Chief Patrol Agent in El Paso Sector from March 2020 through October 2022. Is that
15 accurate?

16 A March 2020 to October 2022, yes, in El Paso, Texas.

17 Q And, prior to that, you served in various roles, including supervisory roles, on
18 the northern border, the southern border, and CBP headquarters. Is that accurate?

19 A That is accurate. I also served as a chief patrol agent in El Centro Sector
20 from 2018 to 2019.

21 Q Are you a current member of the Senior Executive Service?

22 A I am.

23 Q When did you become an SES?

24 A November of 2015.

25 Q And you began your current role in RGV in October of 2022. Is that

1 accurate?

2 A That is correct.

3 Q How many personnel are you responsible for in the RGV Sector?

4 A Approximately 3,200 Border Patrol agents and a little bit over 500 civilians.

5 Q What roles do those civilian personnel play?

6 A Incorporated into the civilian cadre, we're looking at the Border Patrol
7 processing coordinators, as well as logistics, administrative, staff assistants, budget,
8 procurement, finance, human resources, et cetera.

9 Q Do you know approximately how many Border Patrol processing
10 coordinators you have currently in RGV Sector?

11 A We have approximately about 245.

12 Q In February, I believe you explained to the committee that the current trend
13 you were seeing in RGV consisted of single adults from Central America and Mexico.

14 Is that an accurate understanding of the trend from February?

15 A At the time in February, yes, single adults was the demographic we were
16 encountering in the majority.

17 Q Is that still the trend currently in RGV, or have things changed?

18 A Things have changed. Now we are encountering family units as a majority
19 population.

20 Q Do you know approximately what the proportion of family units you're
21 seeing compared to the overall population would be?

22 A I'm not exactly sure.

23 Q But it is a majority of --

24 A It is the majority.

25 Q -- family units?

1 A Uh-huh.

2 Q You also explained in February that migrant encounters had decreased by 41
3 percent as of February that fiscal year.

4 Is that an accurate understanding of the trend in February that you were seeing?

5 Mr. Jonas. Do you have a reference?

6 Chief Chavez. As to the page?

7 BY MR. RUST:

8 Q Just one moment. I believe it's page 9, the very first paragraph at the top
9 of the page.

10 A That is correct.

11 Q Has that decrease been sustained throughout the fiscal year to the current
12 day, or have you seen an increase in encounters since February?

13 A Our encounters currently, compared to last year, are about a 29-percent
14 decrease.

15 Q So, compared -- currently today, compared to last fiscal year, a 29 percent
16 decrease from fiscal year 2022?

17 A Correct.

18 Q Is that overall fiscal year numbers, or is that just the -- what is the lookback
19 period on that?

20 A I think it's fiscal year to date. I just -- from this morning.

21 Q Do you know what the current gotaway statistics are for the RGV Sector?

22 A We're approximately 21,000 gotaways.

23 Q What time period is the 21,000 looking at?

24 A From October 1st to this morning.

25 Q So that's total this fiscal year?

1 A Yes, sir.

2 Q How does Border Patrol measure gotaways in the RGV Sector?

3 A For us, it has to be a validated entry, which means we can verify it through
4 either camera images, sign cutting, looking at tracks on the ground, witness statements
5 that a person entered and then, obviously, was not detained.

6 So it's a validated entry for us to consider it a gotaway.

7 Q Because those numbers are validated, do you believe that 21,000 number is
8 fairly accurate and closely approximates the number of actual gotaways in RGV Sector?

9 A When you say "actual," can you rephrase the question? Like actual --

10 Q Do you believe the Border Patrol's measurement of known gotaways
11 approximates the reality of actual gotaways in the RGV Sector?

12 A Well, of the ones that are validated for us, those are the ones that for us are
13 accurate, because we know to validate those entries. There -- it's a vast border, so
14 there's a lot of other areas that I'm sure we're not 100 percent accurate on seeing what
15 comes across, you know.

16 Q Of the trend you're currently seeing, do the majority of individuals turn
17 themselves in to Border Patrol after illegally crossing, or are you seeing individuals
18 attempt to evade apprehension?

19 A Currently, we're seeing a lot of family units turning themselves in to our
20 Border Patrol agents.

21 Q Do your agents also encounter individuals who have sought to evade
22 detection?

23 A We do. Mostly, at times, it's single adults.

24 Q Do your agents encounter individuals in the field who have prior criminal
25 convictions or outstanding warrants?

1 A They do. Our agents encounter that.

2 Q What types of crimes or allegations are you seeing?

3 A So there's a variety that are encountered. Many times it's gang Members.

4 Other times, there are criminal records of sex offenders, homicide, burglaries, et cetera.

5 Q Do you encounter individuals who have a prior removal history?

6 A We do.

7 Q And do you encounter individuals who are found to have derogatory

8 information in terrorist screening databases?

9 A We do.

10 Q In RGV Sector?

11 A In RGV, uh-huh.

12 Q Given that you encounter individuals with prior criminal histories, prior
13 removal histories, potential terrorist concerns, does the gotaway population concern you
14 from a national security standpoint?

15 A Of course. I think it concerns every Border Patrol agent. Our focus and
16 our mission is to secure the border between those ports of entry. So, for any Border
17 Patrol agent, it is a concern.

18 Q What is your total current holding capacity in the RGV Sector?

19 A It's about 4,600 people.

20 Q Are there times that you've been over capacity in recent months?

21 A We have been, yes.

22 Q Are you currently over capacity?

23 A We are not.

24 Q What actions do you take to reduce capacity if you become overwhelmed in
25 the holding facilities?

1 A So we have two facilities in RGV: We have the Ursula facility in McAllen,
2 Texas; and then we have the Donna facility in Donna, Texas. Between both of those
3 facilities, we have a total of 4,600 migrant capacity.

4 When we get overwhelmed, we look at expanding holding to the Border Patrol
5 stations along the border, and then we look at working with our partners, like ERO, to see
6 if they have bed space to be able to take on some additional migrants that we have in
7 custody after being processed. And then we use the available pathways to process
8 people through as efficiently as possible.

9 Q Do you know what the average time an individual would spend in custody
10 before being released, removed, or transferred to ICE ERO is?

11 A It varies per person. If we are looking at a demographic of a child,
12 unaccompanied child, we are doing fairly well in that aspect. Between 24 to 48 hours,
13 that child is transferred to HHS.

14 Or, with families, it's a little different because the majority are families. So it
15 takes a while to process and then get the information, process them, and then coordinate
16 with ICE ERO for a release under notice to appear.

17 And then the single adults are a different population, because many of them,
18 depending on their criminal history, gets processed a certain way. Many of those are
19 held by ERO if available bed space is there, uh-huh.

20 Q Do you have an average time in custody?

21 A Average time for single adults or --

22 Q For family units.

23 A We have, by policy, at CBP, we only have up to 5 days to hold families in
24 custody.

25 Q Do you make a referral to ICE ERO in every case before a release from

1 custody, or does Border Patrol also release directly from Border Patrol custody without
2 making that referral to ICE ERO?

3 A So we do referrals, for the most part, to ICE ERO. We have a CASS system.
4 Well, ICE has a CASS system in the -- as you process over. Once a 213 and paperwork is
5 done, it transfers over into the CASS.

6 And then, in CASS, it's pending approval and referral by ICE. At times, ICE does
7 the release; and there's other times, depending on the disposition, that Border Patrol
8 conducts the release.

9 Q Is it more likely that an individual would be released without a referral to ICE
10 ERO during times of high migrant flow or over capacity?

11 A Can you repeat the question?

12 Q When there -- when facilities are over capacity and you need to release
13 individuals quickly, does Border Patrol release individuals directly from their custody
14 instead of referring to ICE ERO, or is that not what happens?

15 A Well, ICE ERO is at our facility, so there's a lot of consultation and
16 communication among them at the facility in Donna.

17 So I'm not sure if, in every case, there's coordination to get approval from ICE to
18 release. I think that it all depends on the disposition, really, and the pathway that that
19 person is being processed by.

20 Q You previously testified about the workforce in RGV Sector, including Border
21 Patrol agents, being your priority, and you discussed at the hearing some of the
22 difficulties of the job of being a Border Patrol agent.

23 Are your agents ever victims of physical assaults in the line of duty?

24 A They are.

25 Q And how often does that happen?

1 A It's more often here recently where our agents are facing assaults compared
2 to previous times. I know --

3 Q Do you have any understanding of why that trend has -- why that assault
4 trend has increased?

5 A I do not.

6 Q When an assault occurs, do you refer those cases for prosecution to the U.S.
7 Attorney's Office?

8 A We do. On every single case, we coordinate with FBI to see if they can
9 accept the case. And then, from there, FBI coordinates as well with an AUSA. And
10 every effort is made to prosecute every case like that.

11 Q Are those cases generally accepted for prosecution, in your experience?

12 A For the most part, yes.

13 Q What about rescues, what are the trends that you're seeing currently
14 in -- with regard to Border Patrol agents having to rescue individuals who are in peril?

15 A So agents are every day out there on patrol and, for the most part, are, you
16 know, encountering a lot of these migrants that are, especially with the weather,
17 dehydrated. They are found in remote areas, different ranches out there. And they're
18 rescuing people every day.

19 When it comes to either families or single adults, just this morning I was informed
20 of a 2-month-old infant that was abandoned at the border and rescued by agents this
21 morning in the Rio Grande City Station. So rescues are happening every day by our
22 agents.

23 Q Do those rescues ever put agents in harm's way?

24 A It does. Our agents constantly are risking their own lives to save other
25 human lives. And I'm very, very proud of the actions that they do every day, but it is a

1 concern and a risk because they're in areas that are very remote, and many times their
2 own life is at peril.

3 Q In your experience, do smuggling organizations put migrants in peril
4 intentionally, as a tactic?

5 A They do. In my experience, I've seen that.

6 Q Just in RGV or in other sectors that you've worked as well?

7 A I think it's a common tactic by criminal organizations. I've seen that as a
8 chief in El Centro. I've seen that as a chief in El Paso as well.

9 Q Do you have interior checkpoints in RGV?

10 A We do.

11 Q How many?

12 A We have three.

13 Q Are those interior checkpoints useful in apprehending illegal border crossers
14 or narcotics?

15 A They are. Our checkpoints are very useful. It is our force multiplier. The
16 Kingsville checkpoint, Falfurrias checkpoint, and the Highway 4 checkpoint on Boca Chica
17 Boulevard in Brownsville are extremely effective.

18 They deal with traffic in the thousands of vehicles that come through every day
19 and as well as narcotics seizures and illegal border crossers.

20 Q What types of narcotics have you encountered at your checkpoints?

21 A So we encounter methamphetamines as well as cocaine. There's been
22 times heroin has been seized as well. Recently, there was also a seizure of fentanyl that
23 was made in coordination with our -- with our personnel and other law enforcement
24 agencies.

25 Q In addition to encountering narcotics at the checkpoints, do your agents

1 encounter narcotics in the field as well?

2 A They do. The majority of narcotic that we have encountered in RGV has
3 been marijuana, bundles of marijuana in the Brownsville Station AOR.

4 Q Have the migrant surges had any impact on operations at the checkpoints?

5 A To some extent, they have, because we have to at times assign agents from
6 different stations, to include the checkpoints, to go help process inside the Central
7 Processing Centers.

8 Q Are you concerned that, with fewer agents manning the checkpoints, there
9 could be narcotics or illegal aliens who slip through the cracks?

10 A It is always a concern with manpower. Manpower is very limited, but it's
11 very valuable. So, when we have to reassign agents from critical positions, especially
12 our checkpoints, to processing, it does have an impact on our border security front when
13 it comes to the seizures and the effectiveness of those checkpoints.

14 Q You mentioned a fentanyl seizure in connection with other law enforcement
15 partners. Do you know the amount of fentanyl that was seized during that seizure?

16 A I don't recall the total, but it was with Guadalupe County Sheriff's
17 Department. And we have a lot of technology that is deployed in our area with regards
18 to either license plate readers or other types of technology that we coordinate with other
19 law enforcement to be able to interdict some of these vehicles.

20 Mr. Rust. Okay, thank you.

21 BY MS. O'CONNOR:

22 Q Good morning, Chief.

23 A Good morning.

24 Q I'm going to go a little bit deeper into some of the encounter trends in RGV.
25 But first, you came to RGV in October 2022, right?

1 A That is correct.

2 Q And, before that, you were in El Paso?

3 A I was.

4 Q So I just have a quick question about El Paso. According to CBP's
5 statistics -- and I can show you if it's helpful. Right before you left --

6 Ms. O'Connor. This will be majority exhibit 3.

7 [Chavez Majority Exhibit No. 3

8 Was marked for identification.]

9 BY MS. O'CONNOR:

10 Q If you look at August in the 2022 row, August encounters were about 30,000.
11 And then, in September, the encounters went up to about 50,000.

12 Do you have any idea why that surge happened?

13 A I left in October of '22, and I do recall that at the tail end of my time in El
14 Paso, we started seeing an uptick of Venezuelan nationals coming across from Juarez into
15 the U.S., specifically the El Paso Stations area.

16 Q Did that -- that big jump cause any impact to El Paso's operations right
17 before you left?

18 A It did.

19 Q What happened?

20 A So it required resources to be deployed from other stations to be able to
21 help El Paso with the surge that came from one month to the other.

22 We had to also find a way to deploy mobile processing to the field to make it more
23 efficient so that we're able to process people a little bit quicker in the field environment
24 versus waiting for buses and vans to come and pick up people from the field and
25 transport them to the center.

1 Fortunately for us, there in the El Paso area, there was a facility that we used right
2 at the border for processing. So, in some cases, because we lacked transportation that
3 was available, we lined up -- I remember the agents were lining up people and were
4 walking them literally a few yards down the border road into this facility.

5 So I think, logistically, it became a very big challenge for us, because we were
6 trying to process people as efficiently as possible, but the logistics of transferring were
7 causing a setback.

8 The other was personnel from other locations that had to come in to help manage
9 that flow.

10 Q The facility you're talking about near the border, was that -- would that be
11 considered mobile processing that you were using? What is mobile processing?

12 A Mobile processing is at times you could process like from your ATAK device
13 in the field or you could have what we call TOPS. The TOPS is temporary outside
14 processing sites, which is really like a Conex box that has a lot of connections and they're
15 with computers, laptops, printers. And they're actually mobile. They deploy them out
16 to a certain location.

17 Before I left El Paso, in September of 2022, those TOPS systems arrived in El Paso
18 to be set up in a mobile environment outside at the border to help with the processing.
19 And a temporary holding location was established right on the border road there where
20 they were crossing.

21 Q Was El Paso the first place to try out the TOPS?

22 A No, ma'am. Those came from RGV, from Rio Grande Valley, yeah.

23 Q How far in the processing process can an agent go mobile-y?

24 A Oh, they do the biometrics. They do photographs. They do records
25 checks off of the ATAK or that process. For the most part, they can do most of the work.

1 They still -- folks -- remember, that was the time of title 42. So the requirements for
2 what was needed in order for the person to get title 42 was very much more efficient for
3 us than under title 8; it's a more lengthy process.

4 So there in the field, it was -- it captured what it needed under that time, for title
5 42.

6 Q And they were able to expel people right then and there for the mobile
7 processing centers for title 42?

8 A For the most part, yes.

9 Q Does RGV currently use the mobile processing centers still?

10 A We had them ready to go here during this last uptick in Brownsville. At the
11 sunset of title 42, there was an expectation that we didn't know what to expect. We
12 didn't know if we were going to get an uptick surge or we were not.

13 So we had everything ready to go. The TOPS that were at the McAllen Station,
14 they're right next to the port of entry; they were all logistically ready to go. We had
15 them operational for a few days, but it was eventually -- we shut them down because the
16 flow was just not there. Yeah.

17 Q Do you think that mobile processing is as thorough as processing in the big
18 processing facilities?

19 A I have high confidence in the mobile processing, because the systems are the
20 same, right? I think that mobile processing allows agents to be more agile and more
21 efficient in the field.

22 Obviously, if there is a concern of a certain individual when they do the intake on
23 the mobile site, they can always place that individual to the side and take him in for a
24 more thorough process at the center. So I'm highly confident on their effectiveness.

25 Q Do you think the agents feel that way, or do you think that there would be

1 kind of an impetus to rush through because you're mobile and you're out in the field and
2 you can just do them really fast?

3 Do you think they do as much investigation as they otherwise do at a regular
4 facility?

5 A You know, I don't want to speculate on what the agents think. I really have
6 not had a conversation with them about that or heard them mention that. So I couldn't
7 speculate on that.

8 Q Okay.

9 Ms. O'Connor. So, then, you arrived in RGV in October 2022. And the
10 encounters at that point in RGV -- and I'll just, so we can talk about them, majority 4, the
11 CBP.

12 [Chavez Majority Exhibit No. 4

13 Was marked for identification.]

1

2

BY MS. O'CONNOR:

3

Q Do you know for RGV -- so, when you got there, the first 2 months you were there, encounters hovered around 20,000 per month.

5

Was there a difference in how RGV was processing those numbers to how El Paso had been processing those numbers?

7

A Great question. There is. There was. I remember learning of the process that RGV utilizes, and it was quite a bit more efficient. It was more coordinated.

9

As I mentioned earlier, there's a sense of unity among the agencies that are at the center, where you have ICE ERO there. I think at one point, walking through there, we had a representative from CIS that I remember seeing there.

12

And then the coordinators. They had an abundance. The coordinators are truly invaluable for us in the processing environment. I don't recall the number of coordinators that El Paso had at the time, but RGV had a good amount that I could see their duties and responsibilities being expanded and utilized effectively there. So it helped a lot with the processing.

17

The other thing was also the model RGV uses as you work through like an assembly line of where they're set up, where the -- where the property is taken, the intake area, all that was quite impressive. So, even till today, I think RGV's model is continuously being used as a -- something to replicate at other sectors.

21

Q Looking back at the data, in January of 2023, encounters went down pretty significantly and held for 3 months at that lower level, but then, April and May, they went back up. In June, they went down. July and August, they're back up again.

24

How do the ups and downs and the surges impact operations in RGV?

25

A So they impact operations in a way that -- you know, I think RGV, I always

1 say RGV's a mature, experienced workforce. They've been through many of these
2 surges over the last decade. And looking at these numbers, that's steady between
3 January through March, 14,000, 14,000, March 17,000, and then you see a trend go up in
4 April to 37,000.

5 We started noticing we do have camps south of the border, Venezuelan nationals
6 who are camped in Matamoros south of the border. The majority of that increase in
7 April through May is getting close to the sunset of title 42.

8 And, April 16th through May 11th, we experienced a surge of Venezuelan
9 nationals in Brownsville, Texas. So that's something that for us was a concern. We
10 deployed resources from other stations to help Brownsville Station.

11 It's the logistics of a surge and what the agents quickly align to to establish mobile
12 processing in the field environment to be more efficient at processing, the logistics of
13 transport to be able to have people hold temporarily on the ground, load them into buses
14 and then transport them to our facilities, the ability to now deploy medical personnel to
15 the ground, to the field, to assess injuries or conditions of migrants. So it does impact
16 the field.

17 Q You did notice that Venezuelan encounters went up over 400 percent in
18 2023 from 2022. Would you attribute that largely to that big surge that you had
19 between April and May?

20 A I would. I think Venezuelan -- yes, from '22 to -- the difference between
21 2022 and '23, we saw -- if you look at the numbers, our numbers are not -- since my
22 arrival, that's the first surge that I saw Venezuelan nationals.

23 Q Do you have any idea why there are surges of particular nationalities? You
24 mentioned that there were camps south of the border.

25 Does it happen that people start congregating south of the border and then they

1 all come at the same time? Is that what typically causes the surges in a specific
2 country's demographic?

3 A I can't speak for exactly why they decide to cross at a moment in time versus
4 staying in one place throughout, but I will tell you that at times misinformation that is
5 shared among the shelters.

6 This is just information, obviously, that we receive after the debriefs of these
7 individuals crossing, that they receive from whether it's smugglers or guides of: Hey, the
8 time is now to cross. Otherwise, this and this will happen.

9 So misinformation a lot of times causes them to react.

10 Q What type of misinformation?

11 A That opportunities are being limited for them to stay in the United States, or
12 other reasons are really also the criminal activity going on in those camps. Other
13 reasons that we have found is that migrants have said that they're being assaulted,
14 they're being robbed, and they just don't want to be at the camp anymore. So they
15 decide to cross.

16 Q So not just the misinformation that time is running out for you to get over
17 but also crime within the camps that they're staying?

18 A Yes. There's all sorts of reasons of why they -- they come back and say:
19 Well, we decided to cross because of X, Y, and Z. It's not just one specific reason.

20 Q Is it strange that the misinformation that the time is running out for you to
21 cross, if that's misinformation then what is the true information? That you can cross
22 whenever and be released into the United States? Why would that cause a surge?

23 A I couldn't speculate to that. I don't know what they would be -- what they
24 would consider true information. Like, we don't ask that question. We just find out
25 when we debrief the reasons why: Why cross now? Why didn't you cross a month

1 ago? You've been living at that camp for a month, for 3 months. Why now?

2 Q Right.

3 A You know.

4 Q I guess you called something like the time is running out to get across as
5 misinformation.

6 A Well, in the light of like, for example, if you look at these numbers, this
7 happened in April and May. So that was the sunset of title 42. There was a lot of
8 information out there that migrants couldn't understand, I think. From the feedback
9 that we received through the debriefs, that they didn't know whether to cross or not
10 before title 42 would be sunset.

11 So our information that we collected from those interviews was that they didn't
12 know whether, hey, the opportunity is running out for us to cross now that title 42 is
13 going to be lifted -- they didn't have the accurate information of what even title 42 was,
14 what title 8 means. So, when we interviewed these folks, that's the information we
15 collected.

16 Q I guess I'm wondering what the opportunity is. Is the implication that the
17 opportunity is, "You cross now, you'll be released; after title 42, we just don't know
18 what's going to happen"?

19 A I don't know. I can't speculate on that.

20 Q So this past -- well, in August CBP's publicly available data shows that RGV
21 saw about 46.5 thousand encounters.

22 Do you know what caused that surge --

23 A From 26 to 46.

24 Q -- from 26- to 46,000?

25 A I do not recall at this time.

1 Q Do you know what kind of impact, or was it a similar impact just on logistics
2 that that surge had on RGV?

3 A So, when we have the surges, it's pretty typical. The logistics, the
4 personnel, the impacts are very similar. The one thing I think that we are doing quite
5 well in RGV right now is that we're still maintaining a semblance of enforcement
6 assignments for our agents. It's between 52 to 64 percent that we try to keep our
7 agents on the front line doing patrol work versus the processing and nonenforcement
8 details.

9 But surges, when they happen, logistically, they absorb -- they absorb resources,
10 right? So it's pretty similar with one to the other.

11 Q So more agents that are doing processing, less front line during those
12 surges?

13 A For the most part.

14 Q What kind of impact does that have on agents' morale?

15 A It has a significant impact. I think agents, for the most part, want to be on
16 patrol. They want to do the mission of border security. To us, it's a concern everything
17 that happens between those ports of entry.

18 So, for them, they prefer to be in the field environment doing the mission that
19 they're tasked with. But they also understand that we have to identify and classify every
20 single person that comes between those ports of entry.

21 So, as needed, we have Border Patrol processing coordinators. We now have
22 contracts of processors that process people for us. And then we have a limited amount
23 of agents as well.

24 Q Back to the surge number, the -- in July and August of '23, there was a surge
25 in family units. You mentioned earlier to my colleague that RGV had seen recently an

1 increase in family units. And the numbers showed, in July of '23, 17,000; in August of
2 '23, 33,000.

3 Do you know what types of -- what reason there would be a surge in family units?

4 A I do not know.

5 Q Do your agents interview or debrief the -- all of the immigrants that they
6 encounter and process?

7 A They do.

8 Q Do you know what reasons the immigrants have been giving recently as to
9 why they're coming over?

10 A I haven't -- no. I haven't received that update.

11 Q Historically, within RGV, do you know what the reason has been that
12 immigrants have given that they've come over?

13 A I think historically, in my experience, it's been economic instability of their
14 country. They're trying to make a better life. They're coming here because they're not
15 happy in their home country. Many fear threats and violence.

16 So those -- in my experience, those are some of the reasons. Specifically in RGV,
17 I can't give you an exact, because I haven't been briefed on that.

18 Q When agents in RGV encounter family units, do they verify the relationship
19 between the parents and the children?

20 A They do.

21 Q How do they do that?

22 A So we have the ability to interview the families, interview the children if
23 they're of age to get interviewed. Agents do this. We also have a team of Border
24 Patrol agents from our intelligence side to be able to do that and collect information.

25 We also lean on our partners, like ICE his to help us with that. And, on an ad hoc

1 basis, we have the ability to get rapid DNA through a Purchase Card, so that we're able to
2 acquire the DNA of a child if we find that that's very questionable that that is even a
3 family unit.

4 We do our very best to keep families together, and our agents are very astute and
5 skilled to be able to extract that to see if there is a family that may be potentially
6 fraudulent; then they're going to have to take extra steps to verify even with the
7 consulate to figure out if they can help and assist to determine if that's a family unit.

8 Q At what point do you bring in his when there's some sort of concern that
9 there may be something going on?

10 A So it depends. At times his is already at the Center assigned to us. You
11 know, his has been detailed to us to assist us. I think here lately we have 30 his agents
12 assigned to our Central Processing Center. And we also have FAMS. We have Office of
13 Field Operations, the blue uniforms at CBP that come help us. So we have a team of
14 people that are there already to help us with those interviews.

15 Q What kind of tasks do the his agents that are assigned to the Processing
16 Center do?

17 A I'm not familiar exactly with what tasks they do, but I do know that they
18 assist with interviews.

19 Q Do you have concern that with the surges, particularly right now with the
20 large surges in family units, that any of this familial verification may slip through the
21 cracks because everybody is processing so quickly?

22 A There's always a concern that families aren't forthcoming with truthful
23 information. There's also a concern that at times they may not -- we may not be able to
24 verify exactly the identity of that person. I want to say we take a -- we take our time to
25 interview people.

1 However, I mean, there's always -- especially in busy times, there's always a
2 concern that not everyone is accurately interviewed, or we may not get to identify that
3 that person is legitimately a family or not.

4 Q We've been told that, in some sectors, there's been this kind of rent-a-family
5 scheme, where children will be recycled through in order for adults to be processed as
6 family units likely to be released.

7 Do you see any of that in RGV?

8 A I do not see any of that in RGV. I do remember getting briefed on that
9 when I was the chief of El Paso.

10 Q So El Paso saw some of that?

11 A When I was assigned there, uh-huh.

12 Q How do agents confirm the age of unaccompanied children?

13 A The agents -- if they're of age that can speak, the agents will ask them.
14 They will check and see if there's any documentation, like a birth certificate. If there is
15 not, then the next thing is they'll connect with a consulate.

16 A lot of times the unaccompanied children for the most part, not always, have
17 some sort of a phone number or a name in their backpack, in their pocket. This
18 morning, an infant had a ribbon tied to their clothes with a name and a phone number.

19 So then not us, but the -- and at times it's actually at the Center or with a
20 consulate's assistant to connect through that phone line to find out more about the child.
21 So they're able to sort of investigate and try to find out as many details about that child if
22 they're not able to verify it immediately with a birth certificate or something.

23 Q And a child at 2 months old would then be sent to ORR, right?

24 A The child will be sent to ORR.

25 Q Do you ever find out what happens with those children, I guess in the

1 context of if that child is reunited with a parent and the parent was already here, or
2 whether the parent abandoned the child at the border and was processed separately and
3 the child was brought in separately? Do you ever find out the circumstances around
4 those UACs?

5 A We do not. It's really up to HHS.

6 Q Do you think that with the surges -- I guess in the same vein as the family
7 units, with the surges do you ever have concern that verifying UACs, either their age or
8 trafficking situations, may fall through the cracks when agents are really busy processing?

9 A I'm very -- I'm -- in my experience, it's been -- I've been very confident on the
10 skills and the process that our agents take at these centers. Even though we are
11 busy -- and I'm thinking of flow as it comes into the CPC -- there's a process to go through
12 and the interview, especially as it deals with unaccompanied children.

13 They're a very vulnerable population. We have certain agreements that we have
14 to follow as well as policies. The Flores agreement, a few other things that we have to
15 ensure. So they take their time to make sure that we follow through that process.

16 Now, in the world of processing, to say 100 percent accurate that we -- we do it
17 well 100 percent of the time, I can't state that, because, obviously, things happen
18 sometimes. So -- but I'm fairly confident in the process that we have in place and with
19 the agents and how they -- they're skilled to process and really look into the cases of
20 UACs.

21 Q Are there particular agents or processing coordinators that are assigned
22 specifically to process UACs or does everyone process everybody?

23 A I'm not sure on how they assign people in the Center.

24 Q I want to go back to demographics for a second. In your January testimony
25 before the Oversight Committee, you mentioned there had been an increase in Chinese

1 nationals as of your testimony.

2 Since then, there's been a jump to over 7,400 this fiscal year alone, which is about
3 a 1,000-percent increase over fiscal '22.

4 Does that jump in Chinese national encounters cause you concern?

5 A Well, any type of nationality when we see an increase between the ports of
6 entry is of concern. I mean, our focus is national security. It's border security. So, for
7 us, we monitor the different types of nationalities coming across.

8 For us in RGV, we did see a surge of Chinese nationals being encountered at one
9 time period. That's mentioned in my testimony previously. Today, it's a very different
10 scenario, whereas, now we don't see Chinese nationals as often as we used to back then.
11 So any type of entry between those ports of people entering illegally is of concern to us.

12 Q There are some nationalities, though, that obviously cause more of a
13 Homeland Security concern than others, right?

14 A Well, yes, of course.

15 Q When agents are processing Chinese nationals, are they determining
16 whether those Chinese nationals have any CBP or PLA ties?

17 A So I think, for something like this, I think it would be better discussed
18 in -- like in a classified environment.

19 Q I don't need specific information. I just want to know if that's something
20 that the agents look into.

21 A Well, the agents look into a lot of different details with regards to all
22 nationalities. Now, again, for what the agents look at particular nationalities, I would
23 prefer it to be in a secured environment to discuss those types of questions or details that
24 they manage.

25 Q But agents do look for, generally, affiliations to various entities, no matter

1 the nationality?

2 A They look at everything, yes.

3 Q Are you aware if any of the points of entry around the RGV Sector use CBP
4 One for appointments?

5 A Yes. So there's the Gateway Bridge in Brownsville, and there's the Hidalgo
6 point of entry in Hidalgo.

7 Q At one point, Secretary Mayorkas has said that use of the CBP One app for
8 appointments in the ports of entry and also the CHNV parole program would put cartels
9 out of the process for these migrants.

10 Has it been your experience in RGV that the cartels have been cut out of the
11 process?

12 A So I don't want to speculate on what the Secretary has said or not, but to us
13 CBP One is really managed by the ports of entry and our brothers and sisters in blue. So
14 they'll be more apt to discuss or, you know, talk to that program. I'm not deep in
15 knowledge of how CBP One works at the port of entry, so it would be hard for me to even
16 answer that question.

17 Q So my question doesn't really have to do with CBP One --

18 A Okay.

19 Q -- or Secretary Mayorkas' statement.

20 A Okay.

21 Q It was kind of a precursor.

22 My question is, have you seen -- has it been your experience in RGV that this year
23 since the CBP One app and CHNV programs have started that the cartels have been cut
24 out of the immigration process, or the illegal immigration process?

25 A I would have to assess that. And I haven't even looked at that, whether

1 that's, in fact, happening or not.

2 Q So you don't know whether the cartels are still in the illegal immigration
3 process this year?

4 Mr. Jonas. That's not what she said.

5 Chief Chavez. Yeah.

6 Ms. O'Connor. Well, that is my question.

7 Mr. Jonas. Are you asking whether the cartels are now completely out of
8 business as a result of CHNV?

9 Ms. O'Connor. That wasn't my question. My question was --

10 Mr. Jonas. Well, then it's a question of whether it's had an impact. And she's
11 saying she hasn't studied that. So maybe you could clarify.

12 BY MS. O'CONNOR:

13 Q Okay. So my question is -- I'll preface the question with the CHNV parole
14 program started in 2023. The CBP One app has been utilized in 2023.

15 My question to you is, in 2023, in your experience, are cartels still part of the
16 illegal immigration process?

17 A So the cartels have not stopped being in the illegal immigration process,
18 period.

19 Q Are the cartels currently profiting from the illegal immigration process?

20 A They are.

21 Ms. O'Connor. I'm going to pass on to my colleague before jumping to another
22 topic. Thank you.

23 BY MR. MCDONAGH:

24 Q Chief, you started in Rio Grande Valley in September 2022. We've said that
25 a couple times. I'll just go beyond that.

1 Was the Migrant Protection Protocol program in effect at any time during your
2 tenure as Chief Patrol Agent of the El Paso Sector?

3 A I started in RGV in October of 2022. And, yes, the Migrant Protection
4 Protocols were in effect in El Paso.

5 Q Under that program, a migrant encountered between the ports of entry who
6 claimed a fear of returning to their country would be returned to Mexico during the
7 pendency of the removal proceedings, correct?

8 A Can you repeat the question, please?

9 Q So under that program, a migrant encountered by Border Patrol between
10 ports of entry who claimed a fear of returning to their country would be returned to
11 Mexico to wait and remain in Mexico during the pendency of their removal proceedings?

12 A If they claimed fear after being processed for fear, and if they qualified for
13 the MPP, yes, they would be returned to Juarez.

14 Q They were not released into the United States?

15 A They were not.

16 Q During that time, were encounters of illegal border crossers by Border Patrol
17 in El Paso lower than they have been in recent years?

18 A At the time, they were -- what year was the MPP? I don't recall the year of
19 the MPP.

20 Q It was 2019, 2020.

21 A So 2019, we concluded that year with 182,000 apprehensions. So it was
22 quite high.

23 Q Do you think that MPP is an adequate consequence to illegally crossing into
24 the United States?

25 A I think at the time that program effectively helped us manage capacity at our

1 facilities in El Paso.

2 Q What do you consider adequate consequences for illegal entry into the
3 United States?

4 A So, you know, in my time -- I'm not a policy person. I enforce the policy,
5 the rule of law and such. But, you know, we -- in the Border Patrol, for us, it's mostly the
6 consequences that -- that bring a balance to illegal immigration, obviously, for entering
7 illegally between those ports of entry.

8 Any consequence where a person is able to receive a penalty for an illegal act
9 is -- will work, will work to -- to balance, you know, that -- that -- that illegal immigration
10 type situation.

11 I think that, when there's not a consequence, we continue to see some of these
12 surges that we -- that we're experiencing here recently.

13 Q Is a goal of -- a goal in consequences for illegally crossing into the United
14 States, is it to deter others from crossing into the United States?

15 A It is, to some extent, yes.

16 Q Is a disposition of an illegal border crosser where they are released into the
17 United States a deterrent?

18 A A disposition?

19 Q Yeah, a disposition, NTA/OR, parole.

20 Mr. Jonas. I'm sorry. What is the question, again, Sloan?

21 Mr. McDonagh. Sorry, let me rephrase.

22 Is release into the interior of the country an adequate consequence that deters in
23 other individuals abroad who may be seeking to enter into the United States illegally a
24 deterrent?

25 Mr. Jonas. By "release," you mean what? Like with an NTA/OR?

1 BY MR. MCDONAGH:

2 Q With an NTA/OR or via parole, anything that brings -- allows the individual to
3 remain in the United States, not in custody.

4 A So, for us, I mean, we look at the pathways, right? So the pathways that
5 are available for us to identify, classify people, process them through.

6 The disposition at times for us is out of our control. It is a disposition that's
7 obviously the only option available. So, whether it's an NTA/OR or whether it's a
8 voluntary withdrawal or removal out of the country, that is a disposition that's -- that's
9 identified for that individual.

10 So, when a person is, to your question, clarifying that it's an NTA/OR, in our
11 experience -- in my experience, many times, obviously, when you line up those
12 consequences, the NTA/OR is not as high as a removal out of a country, right?

13 Q So, that being said, is it the goal of an illegal border crosser to be released
14 into the United States, to enter and be released in the United States?

15 A The what? I'm sorry.

16 Mr. Jonas. I'm sorry?

17 BY MR. MCDONAGH:

18 Q Is it the goal of an individual crossing illegally into the United States to be
19 released or to remain in the United States?

20 A Oh, I can't speculate what the goal of the individual is -- yeah -- that's
21 crossing illegally.

22 Q So we've had this -- and we've -- my colleague has gone through the
23 numbers. The -- a general increase in the most recent years, ebbs and flows.

24 Have you seen any community effects? Have local -- people in Del Rio -- or Rio
25 Grande Valley and El Paso, have they expressed any concerns about these encounter

1 numbers?

2 A These high numbers of entries?

3 Q Yes.

4 A So more so in my time in El Paso. I worked really closely with the city
5 representatives, the mayor, the county judge, the community NGOs, and -- and the
6 impact to that city. So, yes, I think it's a concern for those communities.

7 Currently, in the RGV, we are very well as well coordinated with our community,
8 but we have been able to manage currently that surge, like the one we just had in April
9 through May, and these numbers currently happening. So more so in El Paso, in my
10 experience.

1 [10:00 a.m.]

2 BY MR. MCDONAGH:

3 Q Could you provide some examples of what community members were saying
4 in El Paso during your time?

5 A I think their concern were the community releases into the community, into
6 the streets, how were these going to get coordinated. There was a big effort on our
7 behalf at the department, CBP level, to really engage our stakeholders, like the NGOs, like
8 the city council, and a few other folks from county, so that they could have a plan in place
9 so that we could avoid from doing those community releases. But their frustration was
10 and concern was that people were going to be released into the streets of El Paso at the
11 time.

12 Q So can you explain the difference between trafficking and smuggling across
13 the border in terms of human beings? Like, what is the distinction between those two
14 terms?

15 A So his is really the agency that manages trafficking. We deal a lot with alien
16 smuggling, so I'm more comfortable speaking about the smuggling of individuals. That's
17 pretty much done -- in layman's terms, the smuggling is voluntary. They're contracting
18 people to smuggle them across, and it's a joint agreement.

19 Whereas trafficking, a lot of times, it's the exploitation of that individual by
20 financial means or physical means, et cetera. But I'm not the expert in the trafficking.
21 It's mostly his.

22 Q Who would be illegal border crossers contracting with to illegally enter the
23 United States?

24 A They would hire smugglers, guides, criminal organizations, cartels.

25 Q What cartels are active south of the Rio Grande Valley Sector?

1 A The Gulf Cartel.

2 Q Okay. Do you have any insight of how much an illegal border crosser would
3 pay the cartel to enter through your sector?

4 A I don't have the specific numbers for that.

5 Q When you started in 1995, what was the demographic at that time?

6 A It was Mexican nationals.

7 Q What was the major -- what was the predominant disposition for those
8 illegal border crossers?

9 A That was voluntary returns to Mexico.

10 Q Today, what is the predominant disposition?

11 A For RGV?

12 Q Yeah.

13 A It would be Venezuelans, followed by Central Americans, and then Mexico.

14 Q Right. So that demographic, what's their disposition? What's the end
15 result?

16 A It would be, currently, either a removal -- an ER, expedited removal, or a
17 notice to appear, OR, and/or a voluntary withdrawal.

18 Q Out of those three, which is the most used?

19 A For the most part, it's notice to appear, OR.

20 Q I don't want you to speculate, but do you have like a percentage idea of
21 what that would be?

22 A In the RGV, we have processed over 104,000 migrants in fiscal year '23, and
23 NTA/OR is the leading processing pathway. And disposition, it's like 33 percent --

24 Q Thirty-three percent?

25 A -- of the encount- -- of the apprehensions.

1 Q Really quickly, what's the second largest number there? Percentage.

2 A Oh, aside -- on those three pathways?

3 Q Yeah.

4 A It would probably be the ER.

5 Q Okay.

6 A But I don't have the percentage.

7 Mr. McDonagh. Of course. Thank you, Chief. I appreciate it. That's all I
8 have for now.

9 Ms. O'Connor. We just have one more minute. I think we can stop here
10 because we've just got one more minute.

11 Mr. Rust. We'll go off the record.

12 [Recess.]

13 Ms. Jackson. We can go on the record. It is 10:15.

14 EXAMINATION

15 BY MS. JACKSON:

16 Q Have you participated in a congressional transcribed interview before?

17 A I have not.

18 Q Okay. So would you agree that transcribed interviews are not a typical part
19 of your duties as chief patrol agent?

20 A I could agree with that, yes.

21 Q If you hadn't been preparing for this transcribed interview or been with us
22 today, how would you have been spending your time?

23 A I'd probably be at the border with my -- either with my agents or I'd be with
24 some stakeholders and meetings with the partners.

25 Q And just to clarify, you've served continuously with Border Patrol since you

1 started in 1995, correct?

2 A That is correct.

3 Q So you've been with Border Patrol through five different Presidential
4 administrations?

5 A I have, yes, ma'am.

6 Q And do you agree that, under these administrations, you've witnessed shifts
7 in border policy from one administration to the next?

8 A We have, yes.

9 Q But you would agree that it's your job to just enforce the law. You're not a
10 policy expert. Is that correct?

11 A That is correct. We're apolitical.

12 Q I'm just going to shift and ask some questions around misinformation
13 because we talked a little bit about that last round.

14 You said that migrants might be misinformed around kind of the conditions of
15 crossing the border and what they might find in the United States. Do you agree with
16 that?

17 A I do.

18 Q Do you know who is providing this kind of misinformation?

19 A Well, many times, to our knowledge, it's the alien smuggling organizations,
20 the criminal organizations that are trying to exploit migrants.

21 Q So you would agree that they have a financial incentive to misinform these
22 migrants?

23 A I do.

24 Q And does this misinformation endanger migrants as they're attempting to
25 cross?

1 A At times, it does.

2 Q Do you think that these third parties misinform migrants about whether or
3 not the border is, quote, open?

4 A I think based on the feedback -- I'm trying to think back on the briefs that
5 I've received -- they do misinform them on the resourcing that we have at the border and
6 the enforcement posture that we have with regards to technology and the ability to be
7 detected and arrested.

8 Q I want to talk just quickly about checkpoints again. So you have a few
9 checkpoints operating within your sector that you mentioned. Do you agree that these
10 help prevent the flow of fentanyl and other drugs from spreading throughout the United
11 States?

12 A I believe so, yes.

13 Q How so?

14 A Our checkpoints are our second tier. They act like force multipliers for us
15 because they're in the interior. They're not too far from the border. They are at
16 critical highways that we know are highways of egress for smuggling.

17 Our primary duty at our checkpoints is obviously to check immigration status of
18 people traversing through those corridors from the border to the highway. But through
19 that inspection, you're also -- we have the authority also to seize narcotics. And we
20 have found that, through the years, that is one of the also assignments of our agents that
21 we -- they do a lot of seizures when it comes to narcotics.

22 Q So if someone's caught attempting to smuggle drugs, they'd be arrested. Is
23 that correct?

24 A That is correct.

25 Q And what happens from that point? Are they referred to other law

1 enforcement agencies?

2 A At times, they are. For example, if it's at the checkpoint, there is a seizure
3 of a narcotic, we're going to, through different authorities that we have gained from
4 different agencies, we would notify DEA or we would notify ICE his, depending on the
5 type of narcotic or person being detained there.

6 Q And do you work with other law enforcement agencies to combat narcotics
7 smuggling or human smuggling to prevent it?

8 A We do.

9 Q How so?

10 A We work with, for example, his. I have agents assigned on task forces with
11 different agencies. Some of them are assigned to his for the alien smuggling enterprise,
12 and other ones are assigned to ATF because of the weapons smuggling, and then some
13 are assigned to DEA because of narcotics smuggling. We also do a lot of liaison and
14 coordination with local law enforcement.

15 Through the different systems, we have Operation Stonegarden, which is a great
16 initiative to support local law enforcement. So through those different means, we are
17 able to really collaborate as agencies for the benefit of targeting criminal activity.

18 Q So that collaboration with local law enforcement's effective?

19 A Yes, it is.

20 BY MS. MARTICORENA:

21 Q Chief, I apologize, I'm going to touch on some of the same topics my
22 colleagues touched on in the last hour.

23 And just to start, you worked for Border Patrol before the COVID-19 pandemic
24 began in March 2020, correct?

25 A Correct.

1 Q Okay. And thinking back to before March 2020, how often would surges of
2 migrants occur?

3 A Before 2020? I do remember in 2014, we had a migrant surge of
4 unaccompanied children. I think it was here in the Rio Grande Valley. Another time in
5 2016, there were surges of family units. At the time, I do remember I was in -- actually
6 assigned to headquarters at the time, so I do recall that surge. And then in 2019, the
7 family units in El Paso.

8 Q Okay. Thank you.

9 And would you agree that migrant encounter numbers change with the season,
10 That they rise in spring and come down in winter, generally?

11 A Well, we have seasonal upticks in migration through the years. Some of
12 them have been not as consistent as other years, but we sort of expect certain upticks
13 that are seasonal.

14 Q So would you agree that periodic surges of migrants at the southern border
15 are not unprecedented?

16 A I don't know --

17 Q Let me rephrase.

18 Mr. Jonas. Whether there are surges or the amounts of the surges?

19 Ms. Chavez. Yeah. That's where I was --

20 BY MS. MARTICORENA:

21 Q So I was asking, would you agree that we've seen surges at the southern
22 border before?

23 A We have.

24 Q Okay. Thank you.

25 And can you briefly explain the protocol for agents within your sector when they

1 encounter an undocumented migrant?

2 A So when they encounter a migrant crossing illegally into the U.S. at the
3 border, they'll immediately assess if he or she is okay, then start asking the questions
4 about who they are, where they're from, how did they get there to the border, and try to
5 gain more of an understanding. Are there others in the general area? And then
6 transport them to a central processing center to collect the data, and then process them
7 through for a different -- for a pathway and then a disposition.

8 Q And you talked briefly about processing efficiency in the last hour. Would
9 you agree that when Border Patrol can process someone quicker, it allows agents to get
10 back to the front line and do their job in a more timely manner?

11 A It does when the processing takes place in the field.

12 Q And have you ever been instructed by CBP or any other Federal agency or
13 component not to interdict or arrest a person attempting to cross the border between
14 the ports of entry?

15 A No.

16 Q Okay. So I'd like to talk a little bit about Title 8 and Title 42.

17 After Title 42 lifted on May 11th, you returned to using Title 8 authorities to
18 process migrants, correct?

19 A That is correct.

20 Q Okay. And Title 8 authorities impose criminal consequences on people who
21 enter the U.S. without inspection. Is that correct?

22 A Title 8, yes.

23 Q Okay. Can you explain what some of those criminal consequences are?

24 A Well, many times, they are detained. See, we process -- on the CBP end,
25 we do temporary holding and processes, and we try to be as efficient as possible so they

1 can move on to the next step.

2 Normally, if a person has a criminal record of sort, that person is then transferred
3 over to ICE ERO, and they look for long-term holding so that that person can go through
4 the process of seeing a judge, getting a consequence, et cetera.

5 Now, with folks that don't have criminal records but have entered illegally,
6 obviously they get processed through a certain pathway, whether that be, currently, an
7 NTA/OR, an ER, return back to their country, or the voluntary withdrawal.

8 Q And under Title 8, are there consequences for someone who's illegally
9 entered the United States before?

10 A Yes. We've always processed people under Title 8, except for the time that
11 COVID was here that we switched over to Title 42, and now we're back to Title 8
12 authority.

13 So there are a list of consequences, whether it's -- depending on the charge, right?
14 So it could be entry without inspection, a 1325. It could be an alien smuggling case,
15 1324 case. A reentry after deportation, a 1326. So it sort of varies, right?

16 Q Understood. And in comparison, are there consequences available for
17 someone processed under Title 42, or were there consequences available?

18 A It was just an immediate expulsion and return to Mexico through a port of
19 entry.

20 Q Okay. And under Title 8 authorities, Border Patrol agents can detain
21 migrants who attempt to enter the United States illegally. Is that correct?

22 A That is correct.

23 Q And you touched on this before, but when migrants are detained, they are
24 screened for their criminal history, whether they're on the watch list. Is that true for
25 every migrant who's encountered?

1 A Yes.

2 Q Okay. And if someone has a flag, say, an outstanding warrant, would they
3 be referred to another law enforcement agency?

4 A They are.

5 Q Okay. And if someone is wanted for a criminal offense, is it correct to say
6 they're not just released into the United States without any followup?

7 A They are not. They are processed through and then coordinated with the
8 agency that has that wanted warrant.

9 Q Okay. And was that also true during COVID, that if someone had a warrant
10 or was wanted for a criminal offense, that they were referred to another agency or
11 processed accordingly?

12 A To my knowledge, it was.

13 Q Okay. So under Title 42, is it correct to say that an individual could enter
14 the country any number of times, be removed, and not face any legal consequences?

15 A That is correct.

16 Q Okay. Okay. Let me -- sorry.

17 Okay. So, Chief Chavez, is it true that some migrants are coming to the United
18 States because they face humanitarian issues at home?

19 A It is true from the debriefs I've received, uh-huh.

20 Q And would you agree that encounters and migrant travel volumes can be a
21 result of violence and political instability in a migrant's home country?

22 A I would agree based on the information I've been provided.

23 Q And these factors are called push factors generally. Is that correct?

24 A They're -- among some others, yes.

25 Q Okay. Chief, you previously testified about the benefits of collaborating

1 with Mexico to enforce security on both sides of the border, and you mentioned that you
2 have a strong partnership with Mexico.

3 How does Border Patrol work with the Mexican Government to deter unlawful
4 crossings?

5 A So the Government of Mexico has really stepped up to assist us south of the
6 border. There in Tamaulipas, for example. We coordinate through agents that are
7 assigned as a liaison duty, and they coordinate and communicate on a daily basis with our
8 Mexican counterparts.

9 Now, on the Mexican side of the border, you're talking about the military,
10 SEDENA. You're talking about SEMAR for the marine. You're talking to local law
11 enforcement, municipal, or even State or National Guard. But the coordination is
12 regular.

13 I know I have regular contact with the general that oversees that territory in
14 Tamaulipas with SEDENA. I know I have coordination with the director of
15 immigration -- Mexico immigration -- for the Tamaulipas region on a regular.

16 It is super important that Mexico assists us with mirror patrols along the border.
17 They also assist with notifying us when they witness large groups congregating south of
18 the border in certain regions so that we are better prepared on the north side to be able
19 to deploy some enforcement posture in certain areas.

20 Q Thank you.

21 And during your time in RGV, would you say that that partnership has been
22 improving or staying the same?

23 A Oh, no, it's -- every day is an improvement. We are at the point where I've
24 offered some exchange opportunities so that we can have one of their military liaisons
25 embedded in RGV for information sharing. And then also the coordination so that we're

1 able to ensure the safety not only of the personnel on the Government of Mexico side,
2 but our agents on the north side when things get a little bit busy with criminal activity in
3 those regions.

4 Q Okay. And does Border Patrol in the RGV Sector work with any other
5 countries besides Mexico?

6 A We do. I think that -- so through our liaison, we have had the opportunity
7 in our headquarters to be able to work with countries like Guatemala. Visited countries
8 like Honduras and Panama to educate and learn about some of their processes and
9 strategies that they have, as well as increase situational awareness on what they know
10 about migration flows.

11 Q And can you explain why this collaboration with Mexico and partnerships
12 with other countries is important to border security?

13 A So to us, it's really important because it's the point of origin of where many
14 migrants are coming from. It gives us awareness on trends; it gives us awareness on
15 populations; and it gives us also awareness on tactics, techniques, and procedures of
16 some criminal organizations. And that's where we want to know more about on how
17 they operate and how they look for ways to exploit the integrity of our border between
18 the United States and Mexico.

19 Q Thank you.

20 So I'd like to talk briefly about some of the resources you employ and the
21 resources you need to secure the border in the RGV Sector. I'll start with processing
22 coordinators. I remember you touched on them earlier. Can you describe what a
23 processing coordinator does in your sector?

24 A They do a variety of duties. I think, for the most part, they focus a lot at the
25 intake. When we first bring in groups of migrants into our processing centers, they do a

1 lot of the searching of people. They collect their baggage for inventory. They also
2 check on -- in the system, they collect the information to be inputted into the system.

3 The only thing that they do not handle are sworn statements or affidavits that
4 need to be signed by our agents. Our agents handle that. But everything else having
5 to do from the point of intake all the way through putting the file together for supervisory
6 review, the Border Patrol processing coordinator is involved.

7 Q And just to clarify, there is a piece of processing that a law enforcement
8 officer has to do. Is that correct?

9 A That is correct.

10 Q Okay. So taking law enforcement officers completely out of processing is
11 not a possibility?

12 A It is not.

13 Q Okay. And I believe you mentioned you had 245 processing coordinators in
14 the last hour. Is that correct?

15 A Approximately, uh-huh.

16 Q Okay. And during your time at RGV, have you received additional
17 processing coordinators?

18 A We have. I've entered on duty several more coordinators that have arrived
19 for RGV.

20 Q And do you know when processing coordinators started rolling out to RGV or
21 the southwest border broadly?

22 A I want to say -- I was in El Paso at the time as the chief. I want to say
23 maybe in 2021, possibly. And there were only two sectors that received the
24 coordinators. It was El Paso Sector and RGV.

25 Q Thank you.

1 And in your professional opinion, would you say that the processing coordinators
2 have been beneficial to the work of Border Patrol in RGV?

3 A The coordinators have been extremely beneficial. They are an added value
4 to the workforce, especially in the central processing centers. Their input and their
5 contribution to the processing has been exemplary. I mean, they have taken on a high
6 load of responsibility that has allowed -- especially in RGV -- for me to be able to have a
7 more balanced approach with agents on the front line.

8 I'm averaging between, like I mentioned, 52 percent to maybe 64 percent on
9 different days of personnel being on enforcement duties in the field because of the fact
10 that I have coordinators handling most of my processing in the centers.

11 Q Thank you.

12 And just to clarify that point, so would you say that the processing coordinators
13 have allowed more of your agents to return to the field?

14 A That is correct.

15 Q Okay. And would you say that helping the agents return to the field helps
16 morale?

17 A It does.

18 Q So, Chief Chavez, you previously testified that partnerships with the
19 Department of Defense help with increasing our situational awareness daily. Can you
20 describe what that situational awareness is?

21 A So Department of Defense assists us mainly behind the scenes. We get
22 soldiers that come in and do a lot of our manning of technology at different high points,
23 different strategic locations through our area. And they manage those 24/7, different
24 types of -- whether they're inside an MVSS truck, whether they're at a tower where they
25 can increase surveillance for us. So they're very critical to that mission and very valuable

1 to what they do.

2 Q And do you have DOD personnel in the RGV Sector currently?

3 A Yes. We have soldiers right now deployed from DOD that are assisting us
4 with our mission, and we meet regularly with their leadership there at the sector.

5 Q Okay. And when Title 42 lifted, the Department of Defense sent 1,500
6 troops -- additional troops to the southern border to assist with possible migrant surges.
7 Did you receive any of those 1,500 troops?

8 A Yes, we did. In RGV, we received, I want to say, a couple hundred of them.
9 Little bit over 200. And they assist us, like I said, with the 277 miles of river that we have
10 there.

11 Q And DHS announced -- this is last week -- that they're going to be sending
12 additional Active Duty troops. Or I apologize. The White House announced that they
13 would be sending additional Active Duty troops down to the southern border.

14 Are you expecting to receive any of those additional troops?

15 A I have not been briefed on that yet to know if, in fact, RGV will be one of
16 those sectors.

17 Q Okay. And for the additional troops you received after Title 42 was lifted,
18 did this help free up Border Patrol agents to return to the front lines?

19 A It does. When DOD is assigned to us to fulfill roles behind the scenes to
20 manage technologies for us, it really releases our agents from those responsibilities so
21 that they can go and do patrol and interdiction duties on the front line.

22 Q Okay. Chief, you testified previously that every badge back to the border
23 equals seizable currency from cartels, hard narcotics, guns, and keeping criminals off the
24 street, and allows to allocate resources and manpower to address areas experiencing a
25 high number of gotaways.

1 Is it true that funding by Congress -- increasing funding by Congress allows you to
2 get agents back to the field?

3 A Well, it does. And it all depends on in what areas. We spoke just briefly
4 on the coordinators. You know, the coordinators are a critical asset for the central
5 processing centers, and it couldn't have been done without the support of Congress to
6 get those on line.

7 But currently, for example, coordinators are at a GS-5 position, and it's a very
8 competitive world out there. After we train them, we send them to the academy, they
9 come out and work with us, many of them find different duties and jobs within the
10 Federal Government. So there's like an attrition, right, that then we end up losing them.

11 So I think providing support for critical positions and resources by Congress really
12 does impact positively the deployment of agents to the front line.

13 Q And there's been some discussion about cutting budgets in Congress this
14 year. Would you agree that cutting CBP's budget would mean fewer agents available to
15 seize narcotics and other contraband from cartels?

16 Let me rephrase.

17 Mr. Jonas. Can you be more specific? Yeah.

18 Ms. Marticorena. Sure.

19 Ms. Chavez. Too broad.

20 Ms. Marticorena. If CBP's budget were cut, it would likely mean fewer Border
21 Patrol agents on the southwest border. Would you agree that would have an impact on
22 how much contraband or other illegal goods that Border Patrol could seize on the
23 southwest border?

24 Mr. Jonas. If there were fewer agents?

25 Ms. Marticorena. If there were fewer agents, correct.

1 Ms. Chavez. If there were fewer agents, we would have a negative impact to be
2 able to be effective and efficient in our duties and responsibilities.

3 BY MS. MARTICORENA:

4 Q Okay. I'd like to look a little more specifically at some of the technology
5 you use in your sector.

6 Does your sector utilize towers?

7 A We do utilize some towers.

8 Q What types of towers do you employ in the RGV Sector?

9 A We have the ASTs deployed in certain stations. We also have RVSS
10 technology at different AORs -- the different stations along the border. We have
11 counter-sUAS technology for the drone detections that we encounter. I think RGV
12 currently is the leading sector with over 75,000 drone detections along that border. So
13 counter-sUAS is critical to our mission. And those are some of the technologies, yes.

14 Q Okay. And looking at the technologies you just mentioned, can you
15 describe what the AST does or how it operates in the field?

16 A Yeah. So there are several -- the ASTs are about 18 feet high. They're
17 critically placed in certain regions that are able to provide us some situational awareness
18 and persistent surveillance.

19 For us, air superiority -- anything from the air or anything at a high point gives us
20 the advantage to keep an eye on what's going on on the ground. And these ASTs are
21 effective, but not as effective as maybe high-altitude technologies that can keep an eye
22 on the border.

23 Q Okay. And are you aware of any plans to increase the number of ASTs in
24 your sector?

25 A There are plans to increase technology platforms. I'm not sure specifically

1 what type of platforms.

2 Q Okay. And then you mentioned RVSS as well. Can you describe what that
3 is and how it differs from the ASTs?

4 A The remote video surveillance systems is something that we've had in place
5 as far as I can remember that I've been in the agency. We have them all across our
6 border.

7 Many of those systems -- there's a central command center at the station of that
8 area, and then the cameras are up in towers, and then there's people manning those
9 cameras. Sometimes it's the soldiers that are inside the control room manning those
10 cameras of specific locations at the border.

11 The RVSS is not as agile as an AST, but it does provide some significant surveillance
12 for us.

13 Q And then you also mentioned the importance of counter-UAS systems. Can
14 you talk a little bit more about why they're so important?

15 A So the counter -- you know, as we move -- as we evolve through the years,
16 different criminal organizations -- obviously, they also evolve with their technology to try
17 and exploit, like I said, the integrity of our border. So -- and they want to have that
18 advantage over our agents who are on patrol. So they are launching drones daily to do
19 countersurveillance on our agents, to do countersurveillance on our soldiers that are
20 there assisting us with the mission.

21 The counter-sUAS is assisting us by being able to monitor any type of drone that is
22 within the area of the United States, to be able to acquire the drone, bring that drone
23 down, and be able to exploit the information in the drone so that we're able to
24 collaborate and figure a way to prosecute these individuals that are conducting this type
25 of activity.

1 So counter-sUAS is very helpful because it increases the officer safety of our
2 agents, and it also helps us to mitigate any type of criminal activity that they may be
3 planning. A lot of times, a countersurveillance on our agents by that drone is to be able
4 to assess where they're going to push a narcotic load through.

5 Q And during your time in RGV, have you received additional C-UAS systems or
6 do you know if there's plans to provide more of these systems to your sector?

7 A So we only have about three of those systems in place in RGV. I would like
8 to see a lot more of those because we are the highest threat with drone activity on that
9 border right now. And there are plans to bring more of those and different platforms.
10 So I'm hopeful that in FY '24 we're able to acquire more.

11 Q Okay. And are you expecting the RGV Sector to receive and deploy any
12 other technology systems, like communications systems, in the coming months?

13 A I am. We've had some discussion about RGV being the -- one of the sectors
14 for new innovative technology for testing. So I am hopeful that here in the near fiscal
15 year and the next fiscal year, we acquire more communications systems to help us
16 expand that coverage.

17 Q And can you explain a bit more why these communications systems are so
18 important for your agents?

19 A So a lot of times -- and still in areas today in 2023 -- there are areas that are
20 quite remote. There are areas that we know our agents go on patrol in the blind, we call
21 it, because there's no connectivity to their radios.

22 So communications systems, towers, anything that can help us increase the
23 availability of comms so that agents are able to hear each other and know where they're
24 at is 100 times an investment because it does increase officer safety for them.

25 Ms. Marticoarena. Thank you. I'll turn back to my colleague.

1 Ms. Jackson. Thank you.

2 BY MS. JACKSON:

3 Q Chief, how would a Federal Government shutdown impact Border Patrol
4 operations in RGV?

5 A Well, as previous times -- because we've had those in previous years -- it will
6 impact our border operations, primarily, I think of nonessential personnel that do a lot of
7 the work behind the scenes to cover every aspect of what agents need support with.

8 The other is primarily the concern I have for my Border Patrol agents' salaries.
9 You know, many of my agents are single-income earners. The wife and children are at
10 home. And it causes stress on them.

11 And today, I mean, we've had some significant setbacks with suicides, especially in
12 the RGV. Since my arrival there in October, we've experienced four this fiscal year.
13 Very sad tragedies. And I find -- I look for ways now to try to relieve any stress agents
14 may have, to try and find ways to get them assistance and help to destress and such.
15 And a government shutdown, I'm sure, will be of high concern to them, especially as it
16 relates to their welfare and stability.

17 Q So a shutdown would impact morale?

18 A It would certainly impact morale.

19 Q Would it also interfere with Border Patrol's ability to operate checkpoints or
20 do other things to secure the border?

21 A It would impact in a -- it's really nonessential personnel that wouldn't be
22 available. Our agents would be there 24/7. However, what's going to happen when
23 we have government shutdowns, since professional staff is not available to do those
24 duties behind the scenes, agents will now leave primary duties to go handle, for example,
25 time and attendance sheets, getting their paperwork taken care of.

1 Injuries happen on the border every day. Who's going to do the workers'
2 compensation forms? Who's going to take care of the behind-the-scenes things? That
3 would be agents that would have to get pulled to do those type of duties.

4 Ms. Jackson. Thank you. No further questions.

5 BY MS. MARTICORENA:

6 Q I just wanted to follow up on this a bit about what would happen in a
7 shutdown or what you've seen in the past.

8 I understand -- or is it accurate to say that you have a number of TDY personnel in
9 the RGV Sector right now assisting your agents?

10 A As a matter of fact, in RGV right now, we have -- we do have agents from
11 Laredo Sector assisting us, about 20 of them assisting us on a non-per diem detail right
12 now because of -- they live in the Valley but work in Laredo. So many of them are there
13 assisting us on a non-per diem. There are other agents, like his agents from other areas,
14 that have come in to assist us on TDY.

15 Q And I believe you also mentioned before his, FAMS, Office of Field
16 Operations. Are they all in your sector right now?

17 A They are. FAMS have actually retreated, so I only have right now his
18 agents, CBPOs from OFO, and the Laredo Sector agents assisting us.

19 Q Do you have anyone from the DHS Volunteer Force in your sector?

20 A We actually did have DHS volunteers. Had about a group of 20. I don't
21 know the status of today if they're still with us or if they returned to their offices.

22 Q And can you briefly describe what the DHS Volunteer Force is and what they
23 did in your sector?

24 A Sure. So just like the coordinators, I think the volunteer workforce has
25 been very resilient in coming in to assist us in RGV. They do a lot of duties behind the

1 scenes, mostly handling a lot of the central -- they're assigned to the central processing
2 centers. And what they do -- they do a lot of inventory and warehouse storage and
3 making sure everything is in order with regards to all things coming in.

4 They also help with ensuring that people that -- like, the migrants that need
5 clothing, that all that is organized so that when certain sizes are needed during a time
6 that's very busy in that center, things are organized and it's a free flow. They handle a
7 lot of the behind the scenes.

8 Q And in a shutdown, for personnel who are TDY with per diem, is it likely that
9 they would have to return to their home stations, and is that a concern for you?

10 A Well, yes. During a shutdown, there's no TDY funding, so that personnel
11 will have to return back. And obviously, it's a concern for the same reasons that then
12 agents will have to step up to handle those responsibilities.

13 Q And so for your sector right now, that would include his and OFO. Is that
14 correct?

15 A That would include his. OFO is local, so they're not technically on TDY.
16 But that would be some of the his agents that have come outside of RGV, and pretty
17 much it for them on the TDY status.

18 Q And I know we touched on this in the last hour, but can you remind us what
19 the his personnel are doing in your facility right now?

20 A Yes. So his agents help our intel agents with a lot of the interviews,
21 whether it's family units or potential families that are suspected to be of fraudulent
22 nature, or also investigative interviews on possible people with criminal records, gang
23 members that they want to get more information on and such. So they're more on the
24 investigative side assisting with interviews.

25 Q And would you say that these his agents have additional training on

1 interviews and on investigations than the typical Border Patrol agent?

2 A That is correct. They're investigators by nature.

3 Q And so would you say it is detrimental for these his investigators to have to
4 return home for national security reasons?

5 A Well, it is because their duties and responsibilities at the CPC are critical.
6 Otherwise, I would have to probably pull more intelligence agents from other
7 responsibilities to come and fill that gap.

8 Q Thank you.

9 And then just touching on a few things from the last hour. I believe you
10 mentioned that about 33 percent of people coming through your sector are released on
11 an NTA/OR. Is that correct?

12 A That is correct.

13 Q So is it fair to say, then, that 67 percent of people coming through your
14 sector are voluntary returned or put through the expedited removal process?

15 A So the delta would be other pathways and other dispositions.

16 Q Okay. And there was a bit of a talk about consequences both this hour and
17 the last hour. If processing is quicker, if migrants are moved through the disposition
18 process quicker and the final decision is made whether to deport them or allow them to
19 stay, would you agree that a quicker timeline might have a deterrent effect on migrants if
20 they're sent back to their home countries in months rather than years?

21 A I know that a more efficient processing on our end is something that we seek
22 because we want to get to our duties and responsibilities on the frontline for border
23 operations. I don't know -- I don't want to speculate on whether it's a deterrence for
24 migrants if they get processed quicker. I wouldn't know that, if that's what they think,
25 you know.

1 Q Understood. And you were asked about the CHNV program and the CBP
2 One app. Just to clarify, do people who use the CHNV program or the CBP One app get
3 interdicted by Border Patrol?

4 A So we interdict the folks that are part of the CVNH [sic] program, but the CBP
5 One is made for ports of entry. So many times, we don't encounter the people that are
6 waiting for their appointments to go present themselves at a port of entry, unless the
7 decision is made that they enter illegally. But for the most part, we haven't
8 encountered those individuals yet.

9 Q And for the CHNV program, for those who are approved in their home
10 countries to come to the United States through a port of entry, would those be
11 encountered by Border Patrol in the field?

12 A They would not.

13 Q Okay. And then you were asked a bit about the Migrant Protection
14 Protocols program.

15 Just to clarify, was everyone sent back to Mexico under MPP or were there some
16 people who didn't qualify?

17 A There were some people that did not qualify under the criteria that was
18 established at the time.

19 Q And can you explain what some of those reasons someone might not qualify
20 for MPP were?

21 A I can't recall from El Paso time.

22 Q Understood. Do you recall if capacity within Mexico to receive people also
23 factored into whether people could be returned?

24 A I know there was coordination with Mexico, specifically immigration Mexico,
25 and they would also provide their input on how many they could absorb per day. And

1 there was some certain parameters. During daylight hours, not at night. And we tried
2 our very best to stick to a timeframe every day to keep it on a routine basis. But if
3 Mexico wasn't able to absorb them during that time, we had to hold them till Mexico was
4 ready. So it was sort of like an arranged type of return. But they played a role in
5 providing when people could get returned.

6 Q Okay. Thank you.

7 BY MR. YIM:

8 Q Chief, just a couple questions, more for my benefit here.

9 My understanding of a shutdown is Border Patrol agents would not receive
10 paychecks but would still be required to report to their duty stations. Is that correct?

11 A That is correct.

12 Q How does not receiving a paycheck for the work you're still completing affect
13 the morale of your agents?

14 A Significantly, and in a negative way. Like I mentioned earlier -- because I
15 have lived through some of these. And I'll tell you, in my time in El Centro, we had a
16 government shutdown, and there were some significant impacts to the morale but also
17 the welfare and stability of our Border Patrol agents and their families.

18 Agents are very proud. They do not go and ask for help. They hesitate to say, I
19 have a need for groceries. I am in this situation.

20 I remember working with our local county and city of the Imperial Valley there in
21 El Centro so that we could bring organizations in -- we could bring organizations in to a
22 station facility so that they could have and provide food for agents, whether it was pasta,
23 beans and rice, and they would put them in bags. This is the reality of what we lived
24 through.

25 And agents -- it would be easier for agents to get it from a muster room. The

1 bags were there. They'd put them in the car and they'd take food home, versus them
2 having to go to a facility in the city to acquire groceries and such because they just -- they
3 were embarrassed to do that.

4 Q Are you preparing a similar food bank of sorts in case there's a shutdown in
5 the coming weeks?

6 A We haven't started that yet, but as we get closer to the end of this week, I
7 have to say that I'm very concerned about a government shutdown because I've lived
8 through some of those, and I see the impact it does to our Border Patrol personnel.

9 Q And is it fair to say the agents and their families rely -- strike that.

10 Is it fair to say a lot of your agents and their families rely solely on the paycheck
11 they receive from Border Patrol to survive?

12 A That is correct. Many of my Border Patrol agents are single-income
13 earners, where they have their wives at home caring for the children. So it is a concern.

14 Q You would agree with me that not receiving a paycheck would increase
15 stress on these agents?

16 A It would, yes, sir.

17 Q And as you mentioned, there've already been concerns about the suicide
18 rate among these agents. Is that right?

19 A Yes, sir.

20 Q Would you agree with me that not receiving a paycheck -- strike that.

21 Would you agree with me that not giving Border Patrol agents a paycheck would
22 affect national security?

23 A I would say that agents not receiving a paycheck will cause significant stress
24 to them, that their mind will not be fully focused on national security.

25 Q And as you mentioned, you would be required to move some of these agents

1 out of the field to perform other work that they would not normally perform. Is that
2 right?

3 A That is correct.

4 Q So they would not be out in the field interdicting narcotics or individuals who
5 are attempting to cross. Is that fair to say?

6 A That's fair.

7 Q Chief, just going back to the beginning of the questioning at this hour, this
8 interview marks the second time that you've appeared before these committees this year
9 in an official congressional proceeding. Is that right?

10 A That is correct, sir.

11 Q And you appeared before these -- strike that.

12 You appeared before the House Oversight Committee in February and testified
13 during the hearing. Is that right?

14 A That is correct.

15 Q Going back to that hearing in February, how long did you spend preparing
16 for that, approximately?

17 A I want to say that it took me about 3 days, 3 days to just gather my thoughts,
18 my information, on potential things that I could get asked about RGV.

19 Q And as far as today's interview, how long did you spend preparing for this
20 interview?

21 A Well, today -- I flew on Sunday. So I want to say periodically through the
22 week, because I was committed to a different meeting through the week last week, so I
23 want to say maybe 4, 5 days just reading through materials and --

24 Q Sure. So is it fair to say that you spent approximately a week of your time
25 preparing to appear before these committees?

1 A That's fair. Yes.

2 Mr. Yim. Okay. No other questions from me.

3 Ms. Jackson. We can go off the record.

4 [Recess.]

5 Ms. O'Connor. It is 11:12. We'll go back on the record.

6 BY MS. O'CONNOR:

7 Q Chief, I want to ask you about -- some more detailed information on
8 processing, but I do have a quick question.

9 My colleagues in the last hour talked to you about surges and mentioned that
10 there had been surges in 2014 and surges in 2016 and a surge in 2019. What does a
11 surge mean to you?

12 A A surge is an uptick of migration flow that's unexpected, where we have
13 steady State entries on an average happening, and all of a sudden, there's an uptick in
14 those numbers -- right -- through a certain area or a certain zone on the border.

15 Q Does a surge occur in one particular point in time?

16 A It could happen at different locations, but it is in a period of a certain time.

17 Q Okay. So that's how your defining it, is --

18 A Yes.

19 Q -- an uptick in a period of time, and then they go back down?

20 A Yes.

21 Q In your 27 years of experience with Border Patrol, have you ever seen the
22 number of encounters sustained for this long over the last 3 years?

23 A No.

24 Q I want to talk to you about processing. What criteria do your agents use
25 when they encounter someone when they begin the processing process? What criteria

1 do they use to determine the path?

2 A So, primarily, they'll look at the demographic, right? They'll look at single
3 adult males, family units, unaccompanied children. Obviously, unaccompanied children
4 are separate and apart from everything else because that's a coordination with HHS or
5 ORR.

6 But when it comes to families and single adults, single adults, we'll always
7 prioritize to get an ER or try to work with ICE ERO to hold them in custody, if ICE ERO has
8 the bed space to do that, obviously.

9 When it comes to families, it's a vulnerable population. So families are treated a
10 little bit more differently and they're looked at -- once records checks -- they check
11 everything on it, they tend to be processed more towards an NTA/OR because they
12 coordinate with ICE ERO. If ICE ERO doesn't have a facility or bed space for families, the
13 pathway or disposition will be an NTA/OR.

14 Q ICE ERO doesn't have any more family detention facilities, right?

15 A They don't. They had two, and they no longer have those staffed.

16 Q The criteria that the agents are using, particularly the demographics -- the
17 single adults being largely considered for detention or ER and then the family units largely
18 for NTAs -- is that a written policy or is that discretionary within your sector?

19 A I don't -- it's not discretionary just at my sector. I think that it is, at times,
20 guidance that we receive from our headquarters. Like, in our opera- -- our number
21 three in command of operations that sends some of that guidance down to the chiefs.

22 Q So are there some times where those specific demographics have been
23 treated differently or have those kind of always been the default pathways for those two
24 demographics, the single adults and family units?

25 A In my experience, I see them -- quite common, I think, when it comes to

1 families for the NTA/OR pathway.

2 Q What about nationality? Does that ever impact the pathways?

3 A It does when you have a certain type of program, like the CVNH [sic]
4 classification or -- it does in that manner. But otherwise, if it's a family unit, it's a family
5 unit.

6 Q Have you ever received guidance that particular nationalities should be
7 considered for parole as a pathway when parole is being used often?

8 A Nationalities, not per se. Demographics. For example, families, right?

9 Q Does detention capacity ever impact pathway determinations? Border
10 Patrol detention capacity.

11 A Border Patrol? Well, ours is temporary holding. So it does, yes, because
12 it's capacity. Capacity is an issue for us sometimes.

13 Q And what kind of impact does that have on pathway determination?

14 A Well, let's say -- there's regulations when it comes particularly to families,
15 right? If there's a dad and a daughter, there are certain regulations that a father and a
16 daughter should be separate and apart in one area in holding, and others cannot be in
17 that same pod-type thing.

18 So then we have to -- if it's just one dad and a daughter or two, that pod is already
19 used. We can't use that for anything. That impacts my capacity because now I have to
20 use these other pods and maximize the space as I can when it comes to that
21 demographic.

22 So for us, especially now that we have a policy in place that we can only have
23 families for 5 days in CBP custody, we have to find the most efficient pathway -- in this
24 particular case, NTA/ORs -- to get the families processed through.

25 Q So it makes sense for you to move those families so they don't take up that

1 space --

2 A Correct.

3 Q -- for just that family?

4 A Correct.

5 Q So it makes sense for you to move them out?

6 A Correct.

7 Q So when someone's being processed for an NTA/OR, is Border Patrol making
8 that determination or is the person being sent to ICE to be made -- for the OR
9 determination to be made?

10 A No. We make the determination on the NTA/OR, and then we coordinate
11 with ICE for the transfer out.

12 Q Okay. So the body is being sent -- after the NTA is issued, the body is then
13 sent to ICE, and ICE is coordinating the release?

14 A Yes. But just for clarification, the actual body may not be leaving our
15 facility, because we have ERO in our facility. So it's from there that it gets transferred
16 out.

17 Q Okay. So I guess maybe more the file than the body?

18 A The file. The file. Yes.

19 Q Okay. The processing coordinators, how far along in the pathway
20 processing does the coordinator go? Are they making all these determinations,
21 considering all of these criteria for the processing pathway?

22 A No. The processing pathway, it's really done by the Border Patrol agent.
23 They work hand-in-hand at the center. The coordinator, for example, handles, again,
24 the inventory, the intake, the fingerprinting, the biographic, the information that's being
25 collected for the file. Electronically, they're actually hands on keyboard entering

1 information.

2 Q Is that in e3?

3 A In e3.

4 Q Okay.

5 A In the e3 system. So it's being captured. However, when it comes to the
6 statements -- affidavits, sworn statements -- that has to be done by a Border Patrol agent.
7 The agent has to be the one to sign the 213. So he's got to validate everything that's on
8 there.

9 But the coordinator doesn't determine the pathway. The Border Patrol agent, in
10 coordination with the supervisor and what they currently have on the floor, is what
11 determines, hey, today we have X amount of family units. Clearly, we're running out of
12 space here. It's going to be NTA/OR, so this is how we're going to handle it.

1

2 [11:20 a.m.]

3 BY MS. O'CONNOR:

4 Q What about for issues like gang affiliation or gang
5 tattoos or issues with prior removals, are those something that the processing
6 coordinator is expected to uncover, or is that something that the agent wants to get the
7 file uncovered?

8 A That's on the agent, as well as not only the processing agent but also the
9 intelligence agents that are assigned to the CPC because as an agent is processing our
10 encounters at intake, for example: Let's say a group comes from the field. They come
11 into intake in a general area. The coordinator's collecting information. They are going
12 to have an eye for what's identifiable on a person flagged. Border Patrol agent is
13 notified. Agent now brings person. They are now talking to them. And now
14 they -- you know what? That needs further interview; let me get an intel agent to talk to
15 them. This looks more like gang-affiliated person; so that way they can extract that
16 information.

17 So it is all in coordination, but it is not the coordinator that does the final
18 determination. It is between the Border Patrol agents and the Border Patrol agent intel
19 that is there to coordinate.

20 Q What about if the coordinator maybe missed something, does the agent
21 have enough time, or is the agent -- does the agent know that they are supposed to also
22 be on the lookout for those things, you know? Say there was a tattoo on the upper arm,
23 processor missed it; is the agent supposed to be keeping an eye out for those things too,
24 or are they relying on what the processor has put into the --

25 A You know, I couldn't answer that at the center with that specificity, but I

1 would expect the agent and coordinators, they are there to talk, but I couldn't say
2 100 percent.

3 Q What about verifying information that the immigrant has provided? For
4 instance, before someone is released and they give an address, what kind of processes
5 are in place for verifying information like an address?

6 A So the agents have a few minutes, right, to verify information. And a lot of
7 times the migrant will provide an address for the record, and that's the information we
8 take. Whether agents have time to be calling these locations to verify if it is a valid
9 address, I don't have that level of specificity whether it happens or not. But I assure you
10 it's -- in the busy world of a central processing center, 100 percent of the time they are
11 not verifying these addresses. There's an address that's provided; address is inputted;
12 and then they move on to the next step.

13 Q Is that generally how verification occurs? Agents just have to take the
14 migrant's word for it, right, because there is not either time to verify in more depth or no
15 documentary evidence to verify?

16 A There is a time that agents do receive information that clearly Intel needs to
17 get involved because the same address is being used to a center, for example, in San
18 Antonio so then they have to dig a little more to say: Well, why is the same address
19 being used for a center; we don't have an actual address in the U.S.

20 So then more investigative steps are taken. But, to what extent that happens or
21 how often or -- I don't have that level of detail.

22 Q Are you familiar with the recently issued DHS Office of Inspector General
23 report that talks about alien addresses?

24 A I'm not familiar with that, no.

25 Q So the DHS office of Inspector General recently released a report that

1 says -- the title is "DHS does not have assurance that all migrants can be located once
2 released into the United States." And essentially they did an audit of the A files and
3 found that there were, about 18 percent of the files that they audited, the addresses
4 were either missing or unverified. And so there was no way for DHS to essentially find
5 these people once released into the United States.

6 Does it concern you that agents don't have the time or the agent to verify
7 addresses of immigrants that have been released into the United States?

8 A It concerns me that we don't -- we're not able to capture detailed
9 information as needed because of the busy pace of a central processing center. I will tell
10 you many times the migrants themselves, as we all know, provide false information. So
11 then the manpower is not available to have a unit just specifically to verify all
12 addresses -- well, is it a true address; is it not a true address -- to that detail. So, yeah, it
13 is concerning to me.

14 Q Is there anything other than additional manpower that you think would be
15 helpful in gaining that information or that verification?

16 A Well, primarily it takes people to do the work. So that in itself is a huge
17 need, and the verification of locations all done obviously via the web. So I think
18 personnel would be key because, at the end of the day, we only have so much personnel
19 to process people through.

20 Q Are migrants required to provide an address in order to be released?

21 A They are required to provide an address whenever they do the NTAORs.

22 Q What if they don't have one?

23 A If they don't have one, you know, I don't know if they contact the consulate,
24 or they figure a way to provide them -- I would have to -- I don't want to speculate
25 because I don't know, I don't know.

1 Q Would they be -- would Border Patrol send them to ICE at that point if they
2 didn't have something to immediately provide Border Patrol to make their
3 determination?

4 A I think they would -- my -- and this is purely -- well, I don't want to guess, but
5 the coordination with ICRO is succinct; they are at the center. And NTAORs are
6 requirement of notice to appear so ICE would probably have some input into that.

7 Q When you were in El Paso, did El Paso utilize notices to report that you
8 remember?

9 A I don't recall. I don't recall whether they used them or not.

10 Q Do you remember if El Paso used the parole plus ATD?

11 A Plus ATD? I don't -- I don't know.

12 Q Your current processing, I know that processing changed a lot or is different
13 now than it was prior to the end of title 42 because you had the option of expulsion
14 under title 42. We've touched on this a little bit, but -- so you mentioned that about
15 one-third of encounters are being processed as NTAS or through Border Patrol.

16 A That's correct.

17 Q So somebody comes across and asserts a claim of fear; are they put into
18 expedited removal proceedings?

19 A If they claim fear, they are separated from the group, apart, and they start
20 the process for their credible fear interview, uh-huh.

21 Q Are they detained by Border Patrol while they wait for that credible fear
22 interview?

23 A Yes, they are holding at our CPC.

24 Q Are there -- how are the credible fear interviews conducted? Are they
25 remote or do you have USCIS people in the processing centers?

1 A So I remember seeing a couple, maybe one or two USCIS upon my arrival in
2 RGV at the center. I think right now they manage them virtually. We have rooms that
3 are like interview rooms with a virtual computer and communication to do their USCIS
4 interviews or phone calls, as needed.

5 Q Do you have any idea what percentage of your encounters are -- go through
6 the credible fear process?

7 A I don't have that. I know that -- I have it for EER. The EER program,
8 credible fear.

9 Q What is the EER program?

10 A We had this program since April 4th, and it's to allow folks that claim
11 credible fear to go through a process while they are holding -- we usually hold them for
12 about 10 days and go through the process FOR their interview with USCIS.

13 Q Is it different from the regular expedited removal?

14 A It is different from expedited removal, but this is more like -- well,
15 expedited -- it's EER.

16 Q Expedited expedited removal?

17 A It is like enhanced. It is kind of sort of trying to speed up the process for
18 them in a more expeditious way, it is EER CS. And then we have it in RGV. We started
19 on the 4th of April. And there's interview rooms. There's the ability for them to have
20 their interviews with CIS at any time. They can contact also their attorneys. And it has
21 been a process that we've had in place. We have a unit of agents that dedicate
22 themselves to that. And it's been something that we've been working with now for a
23 few months. We've had a total of 2,782 of those cases processed through. It's a team
24 of maybe five, six agents. Yeah, it's a process we exercise with them.

25 Q Who qualifies for that? Who do you consider in that program?

1 A I think we have several countries that qualify for that. People from Cuba,
2 Venezuela, Nicaragua, Colombia, Peru, the Dominican Republic, El Salvador, Honduras,
3 and Guatemala. It's about 10 days from arrest to determination. Migrants are offered
4 a withdrawal before being referred to USCIS; they have that option. Most stay with the
5 process, but we have had some that have disenrolled, like 535 have disenrolled of the
6 2,082 that we have processed through. From those 2,700 determinations, about 1,500
7 have been negative determinations.

8 Q Does --

9 A By CIS.

10 Q Are those largely single adults or family units?

11 A It is mostly single adults, yes -- or all of them I should say are single adults.

12 Q If they have -- so, if this is operating the same way as an expedited removal,
13 once there's a positive credible fear, in this program, are they then issued an NTA and
14 released, or is their asylum claim considered immediately thereafter?

15 A So I would have to probably refer you to CIS for that one. I don't
16 know -- once we have a positive determination, we coordinate with CIS, and then we
17 literally turn the person over to CIS to provide the disposition or the next step.

18 Q Well, CIS doesn't detain anybody, though. Right?

19 A No, they facilitate.

20 Q I guess, even in regular expedited removal then, if somebody is found to
21 have a credible fear then that order has to be rescinded and issued an NTA. Right?

22 A Correct.

23 Q So is that CIS issuing an NTA or Border?

24 A Oh, no. We do the NTA OR, and we coordinate with CIS.

25 Q So, if somebody has a positive credible fear, then the order is rescinded; they

1 are issued an NTA, and they are released --

2 A Yes, in coordination with CIS.

3 Q Got it. And then, if somebody has a negative credible fear, but they appeal
4 it to the immigration judge, do they stay in your custody or are you moving them to ICE
5 custody, or are they released?

6 A We coordinate with ICE ERO for that.

7 Q Okay. And then ICE makes a decision whether they are going to hold them
8 or release them?

9 A That is correct.

10 Q During the pendency of that?

11 A To my knowledge, that is correct.

12 Q The 1,500 people that have negative findings in the EER program, were they
13 then removed?

14 A They were, to my knowledge.

15 Q What about people with people with prior removal orders, what processing
16 pathway do they typically take?

17 A You're talking about the reentry after deportation, a 1326?

18 Q Correct.

19 A We continue to process them as a, you know, I have to -- you know, I'm not
20 sure. I'm not sure right now on that latest. I don't think I got briefed on that.

21 Q Do you know if you're reinstating the prior removal order for all of them?

22 A I do not. I do not.

23 Q Okay. Do you know if people with prior removal orders have been released
24 from RGV?

25 A I do not know.

1 Q What about community releases, has RGV been doing any community
2 releases?

3 A Since my -- no, since my arrival, we have had no community releases.

4 Q There was a very brief period where Border Patrol was utilizing parole plus
5 conditions right before title -- right after the expiration of title 42. Did RGV utilize use
6 the parole plus conditions?

7 A We did. Let me see. We processed about 1,647 migrants during that time
8 from Venezuela and Colombia. It was both types of demographics, single adults and
9 family units. And there was certain criteria, right, that our headquarters had asked us to
10 consider when utilizing parole with conditions. One of those was that the sector
11 capacity would be over 125 percent; that our holding or arrests across the southern
12 border would be 7,000; and that our TIC time, or our time in custody, for the Border
13 Patrol at that location was over 60 hours. And, at the time, RGV met all those three
14 criteria, so we utilized the parole with conditions as prior to the sunset of title 42.

15 Q So parole plus conditions, were the immigrants transferred to ICE before
16 release for conditions to be imposed?

17 A They were at the facility, getting processed. ICRO is at the facility, and
18 then, from there, they were transferred to the NGO. So, to the specificity of whether it
19 was us or whether it was ICE, I don't have that detail, but it was done from the CPC to the
20 NGO.

21 Q Was there guidance on what kind of conditions were to be placed on the
22 parole?

23 A There was not.

24 Q And was there guidance on nationality demographics, or was it just
25 Venezuelan and Colombians were the ones that RGV encountered?

1 A So that guidance came to us through RGV. Those were, some of the
2 Venezuelans were the highest encounters for us so we applied it to them. But I don't
3 recall whether that was the same guidance across the southern border.

4 Q But you had guidance to apply to Venezuelans specifically or whoever you
5 encountered the most?

6 A No Venezuelans and Colombians specifically.

7 Q My colleagues last hour asked you about title 8 and how there can be
8 criminal consequences under title 8. Does Border Patrol and RGV refer anyone for
9 prosecution in Federal court for immigration offenses?

10 A For immigration offenses, yes?

11 Q How often?

12 A Quite often. It depends on the case, if it's a 1324 alien smuggling case I
13 know that U.S. attorneys in Houston for our district is very, very high on the alien
14 smuggling cases, so we have been having quite success with those alien smuggling cases.
15 Not so much on the 1325s.

16 Q For the record, what is a 1325?

17 A Entry without inspection. And then, yeah, 1324s are probably the one
18 highest that we have.

19 Q Do you send any entries without inspection to the U.S. Attorney's Office for
20 criminal prosecution?

21 A We do; at times, we provide them. There are agents that are working at
22 the U.S. Attorney's Office to kind of facilitate the liaison and communication on many of
23 these cases. But I know that the priority right now is given to the 1324s.

24 Q How many 132 -- entry without inspections have you referred to the U.S.
25 Attorney's Office since you've been at RGV?

1 A I don't have that level of detail.

2 Q What about illegal reentry? Do you send those?

3 A For 1326? I would have to verify on that. I don't have that level of detail.

4 Q Are there criteria or factors that would -- that Border Patrol would consider
5 when making the referral for prosecution for instance? Not every entry inspection gets
6 prosecuted, but would you consider factors like someone has a criminal history or some
7 other sort of aggravating circumstance before you would defer refer them to
8 prosecution?

9 A We do. We consider those.

10 Q Do you know, since you've been with RGV, how many people have been
11 released from Border Patrol custody into the interior of the United States?

12 A I don't have those facts with me today.

13 Q Do you have any idea the percentage of individuals encountered by Border
14 Patrol to ultimately be released from custody?

15 A I do not.

16 Q My colleagues asked you about some of the push factors that would bring
17 somebody -- immigrants to come illegally to the United States. Are you familiar with
18 push and pull factors?

19 A I am.

20 Q What are some pull factors that would bring someone to the United States?

21 A It would be families that are already in the United States pulling their
22 relatives, you know, encouraging their relatives to come out. It would be companies or
23 organizations that are hiring these individuals in the United States that others have told
24 them: Hey, you can get a job here type thing.

25 I think it's the feedback that people that are here already provide them to

1 encourage them to come.

2 Q What kind of feedback do you think people provide that would encourage
3 others to come?

4 A Job, opportunities, housing, better quality of life type conversation.

5 Q What about potential for release into the United States?

6 A Possibly. I'm not 100 percent sure, but that is possibly a conversation that
7 takes place as well.

8 Q Do you think that perception of favorable policies -- of favorable immigration
9 policies in the United States could be a pull factor too?

10 A It could be, yes.

11 Q Okay. I have one question that's really switching gears, but do you know
12 how many miles per agent RGV currently has, border miles per agent?

13 A How many border miles per agent. Okay, explain that to me.

14 Mr. Jonas. Or agent per border mile.

15 Ms. O'Connor. For instance -- or agent -- I guess agent per border mile, but then
16 we would be getting into decimals I assume. If you've got 100 miles and 10 agents, it is
17 10 miles per agent, right?

18 Chief Chavez. So we have about 2,300 agents and 277 river miles.

19 BY MS. O'CONNOR:

20 Q So when -- I guess the point of my question is, when there are miles -- even
21 when you're fully staffed, there are miles that are unpatrolled by agents, right, so you
22 don't have one agent per mile.

23 A Correct, correct.

24 Q When there's a surge and you have to take a bunch of agents off the line,
25 does that leave many more miles wide open on the border without patrol?

1 A It does leave vulnerability for us, because agents are being pulled away from
2 primary patrol duties to come access a certain situation.

3 Q Is that a statistic that you've ever considered or that you've heard
4 considered when discussing agent staffing and border vulnerability, miles per agent?

5 A It is something I've heard in the past. For us it's the time on task that an
6 agent has while on patrol duties. Time on task is super important to us. They want to
7 get right back to patrol. They want to get back to national security duties and
8 responsibilities so anything that keeps them away from that is critical. We want to get it
9 done as quickly as possible so that we can get back to the primary duty.

10 Q Do you keep track of time on task?

11 A To some extent, we have a system that tracks the duties and responsibilities
12 and assignments agents do in BPETS. It's our BPETS system, and it's field assignment,
13 transport duties, processing. It's not on the hour, but it's like the daily, like where are
14 they assigned.

15 Q Okay. But somebody whose assigned to the field could get some
16 processing duty as well in the field. Right?

17 A If we're experiencing a surge, yes.

18 Q Okay. That just gives you kind of a general idea?

19 A Just a general idea.

20 Q What other statistics or are there other statistics that Border Patrol
21 headquarters is interested in from each sector that you're reporting on?

22 A Well, they have access to all our entries, our apprehensions, our time in
23 holding. The system that we look at to assess our steady state at the border or the state
24 at the border is the same systems they have access to. So, at times, there's really not a
25 requirement of what they want us to report on because they have full access to it. I

1 think for the most part it's the -- the things they don't know that are happening as they
2 happen. For example, a shooting incident, a situation where a cross-border incident, or
3 agents get hurt and some fatally. They want to know about those immediately. But,
4 for the statistics and all sorts of things like that, they have the same access. They are
5 actually collecting as well to assess and then have conversations with those chiefs about:
6 Hey, we're seeing your capacity levels to this level. We're seeing these interdictions that
7 are happening. You have a high number of meth that's being seized. Are we seeing
8 some sort of uptick? They want to know more because they keep an eye on things
9 going on.

10 Q Are there specific statistics that headquarters gives you back on more often?

11 A They keep an eye most -- right now it's obviously on the time in custody.
12 Right? Our facilities are not made for certain populations, as you know. And it's a
13 concern that our central processing centers get to full capacity and that our stations get
14 to full capacity. So they are always keeping an eye on the capacity for CBP overall.

15 Ms. O'Connor. Thank you.

16 I'm going to pass to my colleague for questioning.

17 BY MR. SCHALL:

18 Q Thanks for being here.

19 A Thank you, sir.

20 Q So I'm going to follow up on that real quick. Who do you hear from
21 headquarters about that data that you were just referring to?

22 A It's usually our operations folks in our Operations Division. Chief David
23 BeMiller is our operations chief and he's had a deputy and has a team of people that
24 communicate on a regular with the field.

25 Q Great. And is there anybody else that you hear from about guidance or

1 statistics, or is that really the only person that you would have regular contact with?

2 A It's pretty much Chief BeMiller who we talked to.

3 Q Okay, great. I just wanted to follow up on a few questions. And one that
4 would be -- can you kind of describe the weakness of the Rio Grande Valley specifically?
5 I think you mentioned that there was -- and I'm going to get this wrong -- 200 miles or
6 2,000 miles?

7 A It's 277 river miles; that's it. 2,000 is the entire border.

8 Q I'm sorry. I meant 2,000 --

9 A -- I would be very --

10 Q -- border agents. So can you kind of just talk about some of the challenges
11 with the area specifically related to your sector and what maybe creates a challenge and
12 what is also helpful?

13 A Yes. So it's 277 river miles. All the way from the mouth of the river in the
14 Gulf all the way to Rio Grande City. Rio Grande City Station is the same station with
15 Zapata Station of Laredo Sector. So that's 277 miles. We have a total of nine stations
16 and three checkpoints. Right? The majority of our busy activity is happening at our
17 sectors' end points, Brownsville, Texas, and RGC. The one of highest concern is
18 obviously RGC because that incorporates migration flow. It incorporates criminal
19 activity south and north of the border. It incorporates thrown activity on a regular basis,
20 daily basis, and where we have had recent discoveries of ammunition, long rifles and such
21 because it's a very high volatile area for cartel activity because of the scene Falcon Lake
22 location. On the Brownsville side, it's mostly migration and narcotics smuggling,
23 primarily marijuana. So those are the two that keep us quite busy on the front line.

24 When you go to the interior, you are going to run into a much, much ranch land, a
25 lot of desolate, remote ranch land to include King Ranch, a very large ranch. That area is

1 being traversed by smuggling organizations of those that do get through and are getting
2 smuggled by these smugglers through the highway, through the ranch area, and
3 circumventing our checkpoints. Our two very strategic checkpoints are through two
4 arteries north. You have Falfurrias on Highway 281 and you had Kingsville on
5 Highway 77. These are my highly, highly busy checkpoints. The other one is Highway
6 4. Highway 4 goes laterally. It goes from Brownsville to the Boca Chica beach area
7 right past basics into the Gulf of Mexico. We don't check cars going into the beach; we
8 check the cars coming out. There is a lot of smuggling that goes around that wants to
9 take that highway back into the city. So it is a very strategic location for us to inspect.
10 Those are the three checkpoints.

11 Q Can I just ask why you think the two -- I'm sorry, Brownsville and the other
12 one are such a focal point? Is there a reason based upon geographic area? It's the
13 easiest to get across --

14 A Yes. So historically RGC has been the more complex volatile location. It's
15 less technology exists in my AOR out there. Very remote, there's no lateral access along
16 the border, "laterally" meaning Border Patrol Agents can go from this end to this end
17 right along the river. There is nothing like that. It exists in other AOR substations -- not
18 that one. That one, a Border Patrol agent to get here is going to have to go north to the
19 highway, go through the highway, come back out. So there's an entry happening here,
20 and an agent is literally next to it. It can't go this way. He has to go to the highway and
21 try to interdict it this way before this person or the smuggling goes elsewhere.
22 Historically RGV Falcon Lake area has been very much known as a narcotic corridor for
23 cartel activity. On the Brownsville side, it has become a busy area because, as I
24 mentioned earlier, there is a camp of Venezuela nationals literally established south of
25 the border, south of zone 19 in Brownsville station. So that's why we have seen a lot of

1 the busy work of migrants coming across through there, and when agents are busy with
2 surges, many times cartels try to move narcotics around, so that's where Border Patrol
3 agents in Brownsville have been seizing many bundles of marijuana. So that's why it is a
4 busy activity on both ends.

5 Q And so that's perfect and leads into my next question. So you see the
6 cartel kind of understanding and watching the Border Patrol, and if they are taking off or
7 there's a surge in other areas, that's when they kind of come in through that area and
8 start moving people or drugs?

9 A That is correct. We've seen that traditionally as well as in RGC and in
10 McAllen and Weslaco. So we know those tactics that they utilize when we have high
11 activity of migrants coming across.

12 Q And I believe you said this which cartels are doing that.

13 A So, south of us in Tamaulipas is the Gulf Cartel that manages that area.
14 There is a sliver or portion in Starr County by the boundary of Laredo and RGV that the
15 Cartel Noreste on the south side covers just a few miles of that, but mostly it's Gulf Cartel
16 for us.

17 Q And do you know how much people pay or what you have heard people pay
18 to be smuggled into the U.S.?

19 A I don't know exact numbers per nationality, but I know that I've heard from
20 just briefings from Intel anywhere from \$4,000 up to \$20,000 depending on nationality.

21 Q And \$4,000 was for do you remember which nationality?

22 A I do not know or how far they came from, no.

23 Q And do you remember who was the \$20,000, what nationality would pay for
24 \$20,000?

25 A I do not, no.

1 Q Have you heard that Chinese nationalists have paid more to be brought into
2 the country?

3 A I have heard that Chinese nationals have paid significant amount of moneys.
4 I just don't know the -- I can't recall the total.

5 Q And have you heard why they would pay so much money to come in?

6 A Trajectory, I think from what I recall from some briefs. It was distance and
7 how far they are coming from.

8 Q Have you heard that possibly migrants with ill intentions towards the U.S.
9 would pay more to be smuggled in while they have pushed surges in other areas? So
10 they would push a surge and then pay additional money to be brought in to ensure that
11 they would be brought in?

12 A That's probably more of a brief maybe in a classified environment, to be
13 quite honest, because I can't recall that information.

14 Q And I know you just mentioned that and also brought up that with my
15 colleague; is there kind of any nonclassified information or briefing that you can confide
16 about the Chinese nationals that you feel comfortable discussing here?

17 A Other than the stats that were shared earlier, I really don't have much
18 information to share in this environment. You know, we did offer a classified briefing to
19 some of our Congressional Representatives recently, uh-huh.

20 Q Great. Is there any other nationality that you're significantly concerned
21 about, not related to the Chinese migrants, that raise additional concerns?

22 A You know, no. I think that for us every nationality that comes across that
23 border is a concern. I don't want to highlight one in particular. But we will continue to
24 keep an eye on some of those that are part of those SSIA countries.

25 Q Do you know of aliens that ever go into debt to pay for the cartel to come

1 into the United States?

2 A I have heard from different debriefs from our intelligence agents that many
3 of the migrants that do hire human smugglers at times haven't even paid their debt yet
4 until they get find a job in the United States to pay that debt. I have heard that from
5 different briefs.

6 Q Do you know, like, how that debt is secured afterwards? So is it working
7 within the U.S., is it, you know -- how is you that paid later?

8 A I don't have that level of information.

9 Q Do you know what happens if the debt isn't paid?

10 A No. I mean, I can assume, but I'm not going to assume what would happen
11 to that person.

12 Q Have you seen any intelligence or briefings that would suggest what occurs if
13 migrants don't pay their debt?

14 A I have not, no.

15 Q In your sector, are you aware of any incidents of kidnapping or extortion of
16 aliens by the cartel?

17 A Not to my knowledge.

18 Q Can you explain kind of how the cartel smuggling operation occurs in your
19 sector?

20 A Well, it starts on the Mexican side of the border, and they are hired with
21 guides or smugglers to get them to the border. Because we have a river, many come
22 across the river in inflatable tubes. Some of them come as single adults, sometimes they
23 mix the guides and smugglers will mix the inner -- the inflatable tubes with families so
24 that that is an assurance that, if Border Patrol were to be on the water to interdict, they
25 can very quickly drop a child into the water or a woman so that they can guide and the

1 smugglers can get away, and they are able to escape from that activity. For the most
2 part, between the ports of entry, they have to cross that river so it's inflatables that they
3 use to bring them across.

4 Once on the north side, if they are not detected or interdicted, they are going to
5 board a vehicle, a conveyance of some sort. And they are going to be transferred from
6 that river edge to a vehicle, and that vehicle's going to make their way somewhere north
7 to either stage in a stage hut in a stash house or put them in a vehicle larger conveyance
8 that's going to be going north to circumvent the checkpoint or try to get through the
9 checkpoint, whether that's through placing them in crates, the back of trailers, wherever
10 they can to smuggle them in.

11 Q And can you kind of describe what is a stash house, and have you seen one
12 in person in your sector?

13 A So I have not seen one in person in RGV. In my experience, I have seen
14 stash houses. In my role in El Paso, mostly in El Paso, never in El Centro. A stash house
15 is a house that is rented by a criminal organization or someone that is involved in alien
16 smuggling, and that house is really just a location that is available to place migrants in in a
17 holding pattern until they are ready to have enough migrants that they can put into a
18 conveyance to move those migrants further north in the United States. A stash house is
19 a temporary location that, on the outside may look like a regular residence, but inside, it
20 is really no furniture. It's just enough furniture to sustain people in high numbers in
21 holding while they are ready, getting them ready to transfer them north.

22 Q And so you said you have seen one in El Paso. What type of report is filed
23 after you've found a stash house, and kind of what information goes into those reports?

24 A So, a lot of times, the Border Patrol Agents that work to interdict stash
25 houses, they are on like a task force, or they are in a specialized unit that works very

1 closely with his from ICE to be able to target some of these stash houses. When that
2 happens, it is in coordination with his. They have to acquire witnesses, obviously that
3 can say: Hey, I was smuggled. I was held here, et cetera. This is what's going on.

4 So they would have to file the necessary paperwork, whether it is Border Patrol or
5 his to do those narratives, whether it is an I-34, a 213, just different types of forms that
6 would be required based on the arrest of those individuals.

7 Q And what type of stories do you hear from these individuals that have been
8 in the stash houses?

9 A I want to say, just from what I recall, many of them, I mean, they state that
10 they were smuggled. They hired -- they hired a guide and a smuggler to get them
11 across. They are headed to certain cities in the United States that they've already
12 decided to go to and that they were waiting for transfer. Rare occasions people actually
13 do report abuse; they report being mistreated or haven't been fed in days. Other
14 occasions, some of the stash houses have very much secured where people are held there
15 without their will so FBI gets involved and his gets involved in those cases.

16 Q And so obviously there are stories that you hear of mistreatment?

17 A Correct, that is correct.

18 Q And I think you mentioned this with the drugs, but cartels do intentionally
19 put aliens in peril to either save the drugs, save other smuggling operations of humans,
20 you know, to make sure that they get -- is that correct?

21 A That's correct. They use different tactics with using migrants, whether it's a
22 human smuggling load at a checkpoint and then agents being tied up with a human
23 smuggling load. Then the next types of loads coming through could be narcotics. So
24 we know those tactics so we try to prepare as we can to be able to interdict those. The
25 same situation at the border, obviously when you have a surge, all attention goes to the

1 surge to be able to place people in processing. So then other areas become vulnerable
2 as such.

3 Q And are there any other tactics that the cartels use that you haven't
4 mentioned?

5 A Well, I mean, we've seen this in different locations at the border where
6 many times they camouflage migrants coming across so they can blend in with the
7 environment. They place these booties on their feet so they don't leave tracks on the
8 sand or on the dirt or agents would be able to track them. There is a lot of counter
9 drone -- there is a lot of drone countersurveillance on us from the air. I think, since July
10 of 2021, RGV has seen over 75,000 drone detections of criminal organizations putting up
11 drones, keeping an eye on what we are doing at the border, very concerning.

12 Q And are you -- what happens -- excuse me. How are you able to stop these
13 drones, or are you able to stop the drones?

14 A So we are not able to stop all the drones. I think that the counter-sUAS
15 technology is vital to a sector like RGV. We need more of those. In fact, I think we only
16 have operational three right now that are helping us. And I've got them spread out
17 between my western portion of the AOR, eastern portion and one in the middle area of
18 McAllen/Welsaco. That kind of drone technology is critical because it allows us to
19 capture that drone and acquire it, bring it down. And, once it's secure, we are able to
20 extract the information in the drone and be able to identify the culprits that launched it
21 because it has GPS systems. Many times these operators are very nonconcerned about
22 how the drone is capturing images. So many times it captures their own image at the
23 very beginning of the video so that allows us to have an identifier of who the person is.
24 And we then work with that information to try and acquire coordination with Mexico on
25 the south side to try and see if we can target and figure out who these people are from

1 those locations on the Mexican side. But those are far and between because we only
2 have three systems for counter drone sUAS.

3 Q Sure.

4 A So I think, at one time, in talking to my patrol agents in charge of those
5 stations and asking them how many counter-sUAS would you need there, and he said:
6 Chief, if I could get 10 to 15 at this station alone, we would be quite effective.

7 But, you know, right now, they have one. So it is kind of a difficult environment
8 when we have that type of activity in the sky that we can't counter and mitigate.

9 Q Sure. I appreciate that. Just to be clear, drugs and humans do not come
10 into the U.S. without being brought by the cartel. Is that fair?

11 A By the criminal organizations.

12 Q Sure.

13 A To include cartels.

14 Q Yes. So they effectively control south of the border?

15 A Cartels do control the south terrain of the border.

16 Q Now, I know we've -- I know we've talked generally about the Secretary's
17 ability to maintain operational control. Are you familiar with the Secure Fence Act of
18 2006?

19 A I am.

20 Q I just want to input this as majority exhibit 5.

21 [Chavez Majority Exhibit No. 5

22 Was marked for identification.]

23 BY MR. SCHALL:

24 Q So, based upon the definition of operational control, does the Secretary have
25 operational control over the border?

1 A The definition reads: means the prevention of all unlawful entries into the
2 U.S., including entries by terrorists, other unlawful aliens, instruments of terrorism,
3 narcotics, and other contraband.

4 Based on this definition, we don't have operational control of the border --

5 Q I appreciate that.

6 A -- in RGV.

7 Q I appreciate that. Sure.

8 I know you mentioned that additional technology drones would be helpful. I
9 believe you told my colleague that someone to look up addresses to verify addresses
10 would be helpful. Is there any other specific tools or strategies that might be helpful to
11 gain operational control?

12 A I think that we all look at -- in my experience, we look at the toolbox; what is
13 it that we have? And I'm just fascinated by the evolution of technologies because they
14 have come in just in time to help us with being efficient when it comes to surveillance,
15 persistent surveillance systems, the ASTs the towers. Air superiority right from the sky
16 looking down at the terrain is a huge benefit. The counter-sUAS, the mobile systems
17 where agents could be mobile in the field to be more efficient, that helps tremendously.
18 The sensors, the UGCs, the underground sensors that help us with vehicle incursions or
19 people traversing. Smart technology for border barrier infrastructure, LGDS, linear
20 ground detection system, that is installed and allows us to have advanced notice of
21 possible detection at a border infrastructure, it's huge. So all those technologies help us
22 be more efficient in our job. So, any time that there's an opportunity, I know that RGV is
23 one of the designated sectors to testing technologies; I'm always encouraging that
24 because it does certainly provide a great tool in the toolbox. But, aside from that, the
25 border barrier helps in certain strategic locations, and the most valuable thing our

1 personnel.

2 Q And, just one more time, how many personnel, how many Border Patrol
3 Agents did you have in your sector?

4 A -- approximately 2,300 Border Patrol Agents.

5 Q And how many do you think you would need to get close to operational
6 control?

7 A Well, I would have to definitely assess that. I've never been asked that
8 question, but I like it. I think that I would have to probably get back to you on that one.
9 I don't -- I couldn't even speculate today. But I know that what I have currently to
10 manage those 277 river miles in a very busy sector like RGV is not enough.

11 Q Great. And I wanted to circle back to the NGOs that you say you worked
12 with after processing, do you know which NGOs those are?

13 A In RGV, we work primarily with Catholic Charities in McAllen. We also work
14 with the Ozanam Center in Brownsville, and they have an Office of Emergency
15 Management in Brownsville. It's also a partner that we work with as well that assists us.
16 And there's a few others, but those are my primary. I really do think that Catholic
17 Charities in McAllen absorbs most of the NTAOR migrants that are facing that type of
18 disposition.

19 Q And I saw that you have a social media account. Is that run by you?

20 A That's run by me, myself and the team. I have a team of people that
21 provide daily updates, regular updates I should say, but I -- it is approved by me every
22 time a post is uploaded.

23 Q Well, I appreciate that. I had a look through it, and I thought it was very
24 helpful, so thank you.

25 Question, have you -- are your posts monitored or controlled by anybody else?

1 A Not to my knowledge.

2 Q Okay. So you have never been told to remove a tweet from headquarters
3 or anybody higher up, you've not been told that is unacceptable to post anything in your
4 Twitter?

5 A I think a Chief BeMiller on one time. I do remember speaking to Chief
6 BeMiller about a post with regards today a rescue. I think it was a pregnant woman that
7 we posted. I don't recall what the issue was. I want to say it was a word that was used
8 on this rescue of a pregnant woman that was encountered by our agents; it saved her life.
9 She gave birth, and then she was returned to Mexico. I just don't recall what the issue
10 was because it came through my staff, and I remember having -- I didn't see anything
11 wrong with the post so I called Chief BeMiller to discuss. And I just can't think of what
12 the issue was, but they had asked me to edit it. But I couldn't edit it because, on
13 Twitter, you can't edit; you have to remove it. So I had to remove it, but that was it.

14 Q So it was monitored by --

15 A By him.

16 Q Headquarters or him?

17 A Him -- he's the one that I spoke to, because headquarters had called my
18 team.

19 Q Okay.

20 A Yeah. That's the only time I know of.

21 Q I appreciate it.

22 Did you have any follow up?

23 Ms. O'Connor. One question, I have 1 minute.

24 BY MS. O'CONNOR:

25 Q Back to the processing, does RGV still utilize parole, humanitarian parole?

1 A We do not.

2 Q Is anyone ever considered for parole?

3 A We did, but I think currently we're not doing any paroles. Yeah, we did,
4 uh-huh.

5 Mr. Schall. Again, thank you very much.

6 Chief Chavez. No, thank you, sir.

7 Mr. Fabien. On behalf of Chairman Comer, thank you for coming today and
8 answering all of our questions.

9 Chief Chavez. Thank you, sir. Appreciate it.

10 Mr. Schall. On behalf of Chairman Green.

11 Chief Chavez. Thank you, sir.

12 Ms. O'Connor. Off the record.

13 [Recess.]

14 BY MS. JACKSON:

15 Q I'd like to return your attention to the Secure Fence Act, which was the last
16 exhibit introduced. So I want to turn to the definition of "operational control." It
17 should be midway down the first page, I think. And it says: In this section, the term
18 "operational control" means the prevention of all unlawful entries into the United States,
19 including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics,
20 and other contraband.

21 To your knowledge, in all of your tenure with Border Patrol, has Border Patrol ever
22 prevented all unlawful entries within the RGV sector?

23 A In my experience, in the places that I have been assigned, as a Border Patrol
24 agent and then supervisor and manager, I never experienced to have operational control.

25 Q Would you agree that operational control is more of an evolving metric?

1 A Operational control, in my experience, the way I look at assessing an area
2 that is secure, more secure than others is, yes, you look at different types of metrics.
3 Right? That's the condition of that border zone, uh-huh.

4 Q And are you familiar with the term "operational advantage"?

5 A Yes, I am.

6 Q So what does that mean to you?

7 A So the operational advantage is a term that has now formed part of our
8 strategy in Border Patrol. I see it as a more realistic type of a term on how we manage
9 areas on the border to evaluate what advantage do we have over certain zones of the
10 border. We take into consideration deployment of manpower. We take into
11 consideration technology, border barrier, condition of that environment, not only on the
12 north side but also on the south side, different types of metrics.

13 Q So why is a focus on operational advantage important for border security?

14 A Well, for us, it's super important to have the advantage over the adversary.
15 In many cases, along the border, it's the other way around. The adversary has the
16 advantage over us, whether that's physical terrain because its hills and slopes on the
17 Mexico side or whether it's just a more robust criminal organization that's exploiting
18 every opportunity to bring people north or narcotics north.

19 Ms. Jackson. I'll pass to my colleague.

20 Ms. Marticoarena. Thank you.

21 BY MS. MARTICORENA:

22 Q Chief Chavez, I would like to go back AND revisit some topics we talked
23 about before. Starting with the government shutdown and the implications for your
24 personnel, you mentioned previously that a lot of the nonessential people do a lot of
25 work behind the scenes. Can you talk a bit more what those jobs are and what roles

1 they fill?

2 A So, primarily, I'll focus on the professional staff, which is my civilian staff.
3 I'm talking about the secretarial staff that handles all the correspondence coming through
4 the offices. I am talking about the logistics staff, the teams that are out there evaluating
5 everything logistics. Buildings, the lawn care. Literally the lawn care at a facility. The
6 repairs on pipes and roads, things that everyday work logistics handles. The other one is
7 human resources; we have a team of extraordinary team members that handle the time
8 and attendance and paychecks and process of not only the salaries of our agents and
9 personnel, but also the injuries because agents get injured everyday so the injuries and
10 workers compensation and processing such. And then also our mechanics. Our
11 mechanics are civilians. They are the ones that fix our vehicles when they need repair so
12 they -- to us they are people that we need to keep our vehicles moving for patrol duties.
13 And then, more recently, if we really think about it, the Border Patrol processing
14 coordinators are not technically a law enforcement covered position so they -- I'm a little
15 worried and concerned that if we go into a government shutdown, will coordinators be
16 considered essential as law enforcement, or will they not be? Because if they are not
17 going to be, I have approximately 245 of them that will not be helping us at the central
18 processing center, which will then require me to bring more Border Patrol Agents from
19 the field.

20 Q Thank you. And, of the secretarial staff, the mechanics that you just
21 mentioned, which of those duties would still have to occur during a shutdown that agents
22 might have to do instead?

23 A Well, I think we can survive without the correspondence to some extent.
24 We can always just prioritize the essential correspondence things to get out for policies
25 and procedures and such and the rest can wait. But, if you're actually talking about time

1 and attendance, that needs to happen, and obviously we need to track -- still even agents
2 are not getting paychecks; we still need to process their hours worked. There is still a
3 need for that.

4 The other is injuries, right; the workers' comp, that has to happen. These are
5 things that we have to get filled within certain hours of time limits for submission into
6 other agencies, like Department of Labor, that has some requisites and requirements for
7 us to fill that information. The mechanics I mentioned, they are critical to our mission.
8 If our vehicles breakdown and they can't get repaired, well, they are just going to stack
9 up, and they stay there, and then it limits my ability to deploy agents to go on patrol
10 duties.

11 On the other ones, the coordinators, well, you know what they do, and they do a
12 lot in those central processing centers that, with high amount of migrants in those
13 facilities right now trying to get processed, it's going to delay their time in custody, and it
14 is going to increase capacity, and it's going to require me to pull agents from the line to
15 come backfill those positions, uh-huh.

1 [12:30 p.m.]

2 BY MS. MARTICORENA:

3 Q Thank you.

4 And for the tasks you just mentioned that need to still happen, the time and
5 attendance, workers' comp, filing for that, would agents be pulled to do those duties, and
6 do they have the training to do those duties?

7 A So many agents, they will get pulled to do those duties. It will probably be
8 management people that I may have to lean on to be pulled to help me with that.
9 Many -- they're called special operation supervisors, SOSs, that are assigned at stations
10 that handle the in and outs of administrative responsibilities for the station. It may have
11 to be them that we may have to lean on, but then also agents to help, right? So it will, it
12 will have an impact.

13 Q And that would have a domino effect. Is that correct?

14 A It will, because, obviously, if we pull someone to handle certain types of
15 responsibilities, someone else needs to backfill. So those people will be pulled from
16 other duties.

17 Q And if you don't have access to your civilian mechanics, do you have other
18 people in your station who can fix the cars, or what happens to them?

19 A No. I think what -- sometimes what we do, in the past, if it's just required
20 that it needs an oil change or a tire change, agents will change tires. Some agents may
21 even know how to, you know, change the oil in a vehicle. But for the most part, we're
22 going to have to rely on vendors, but then the vendors will have to understand that we
23 can't pay them right now because it's a government shutdown.

24 So it kind of -- it kind of stacks up a little as many vendors will want to get paid.
25 So they may not work with us, you know, on that. So it kind of just kind of stacks up a

1 little.

2 Q And in the last government shutdown, did you have that issue where some
3 vendors didn't want to work with you because they couldn't get paid?

4 A I do remember back in El Centro we were having some challenges with some
5 vendors, because it was a smaller community. And then -- but then there was others
6 that were working with us. So it sort of helped us. We did -- we did struggle a little to
7 try and get some of the services done.

8 Q Thank you.

9 And then you mentioned before that food was provided for agents during the
10 shutdown, that it was brought, I believe, into the muster area. Who provided or
11 donated that food?

12 A So we worked with the city of Imperial County at the time in El Centro,
13 California. And they were doing -- they had heard about the Federal Government
14 shutdown. Many agents in communities like that. That's a small community, so the
15 majority are Border Patrol agents and are coaches. Their wives are teachers. Their
16 spouses are teachers. And the community, they've been there for a while. They know
17 each other. So they wanted to help, these organizations.

18 So they approached us, I remember, and they asked -- we have an auditor -- not
19 an auditorium. It's like a center, like a community center. And we thought to bring in
20 all these organizations, whether -- even to include medical, so that their children can get
21 whatever medical assistance they need while the government shutdown's in place.

22 But what they found -- I thought it was a great idea that they set up in this
23 community center. I even went to visit it with my deputy. We went in and we looked
24 at all the organizations that were there. And we highly messaged and communicated to
25 our workforce to go there between the hours of such on these days, because they were

1 there to facilitate support for them.

2 And I was quite surprised when, at the end of that second day, they came back to
3 me and said very few employees from the Border Patrol stopped by. Many -- we didn't
4 expect to see so low numbers. And we started talking. He goes, I think most of them
5 are embarrassed to come out here and ask for help.

6 So we came up with the idea. I said, well, if they won't come to you, what if you
7 all come to us. I said, let me run it by counsel. Let me see if it's okay if these
8 organizations can be in our muster room at a government facility for a period of time.
9 And that maybe it's easier for agents to -- it's in their own station. They can come in and
10 talk to the organizations.

11 And we did see a huge success with that. They stopped by. They talked to
12 these agencies. They took food and items with them back home.

13 Q And just to clarify, these were items or services donated by the local
14 community or donated by the local city?

15 A It was. It was the local organizations, the local community that were -- that
16 was volunteering to provide services or food for agents and their families.

17 Q And other than food and medical, what were some of the other services or
18 items that were being donated?

19 A There was -- also, like, I think they had some -- I remember dentists, if
20 people needed to go get their dental work or teeth cleaned. There was some services
21 like from a gym that was there that was willing to work with them if they still needed to
22 work out. They would, like, waive the first month and then wait until they got paid to
23 charge them for gym service.

24 Like, a lot of them really leaned in and tried to work with -- with our employees,
25 because the government shutdown was going a bit long. That didn't happen within the

1 first week. I'm talking once we knew -- it was like about week three. That's
2 when -- obviously, they missed their first paycheck, and now they're feeling the effect on
3 paycheck number two not arriving. Yeah.

4 Q And are you aware of any agents in the last shutdown who had to take out
5 loans or pull out from their retirement because of missing that paycheck?

6 A So I don't know of any specific agents that did. I did hear of some of them
7 doing that, but I don't know for certain 100 percent, because it was just information that
8 was being circulated around.

9 Q And are you aware of agents who had problems or concerns about paying
10 their rent or their mortgage?

11 A Yes, I did hear about that. I know the union was very active. They
12 partnered with the agency to try and help our agents through that period of time. But I
13 did hear there was concerns about their mortgages.

14 Q And we talked a lot about resources in the last hour. Would you agree that
15 having received additional resources during your time in RGV, whether that's personnel
16 or technology, has been helpful?

17 A Yes.

18 Q Okay. So I'd like to talk a bit about the new CBP Shelter and Services
19 Program, which was previously the Emergency Food and Shelter Program, the
20 humanitarian program.

21 Are you familiar with that program?

22 A I am.

23 Q Okay. So can you talk a little bit about what that program does?

24 A So it was the -- are you talking about the FEMA Emergency --

25 Q Yes.

1 A -- Shelter Program? So for some time, I think for almost 2 years, I served as
2 the lead field coordinator for Region VI, which meant mostly all the Texas sectors, to
3 include New Mexico, for coordination on any type of migration flow.

4 So I was first exposed to FEMA and the Food and Shelter Program when I was the
5 chief in El Paso. And we were working with communities and organizations when it
6 came to the transfer of migrants on notice to appear to certain facilities or shelters. In
7 El Paso, it was a challenge because there was only one shelter that was there.

8 Mr. Ruben Garcia ran that shelter and partnered with other community organizations.

9 But I remember FEMA was an active partner in El Paso, and they really ran most of
10 that program, but I'm familiar with it because I would get the briefs from them on them
11 working with local organizations to provide them support, whether it was personnel that
12 they could hire and then get refunded through that program, or whether it was erecting
13 additional space and shelter at those organizations.

14 Q Thank you.

15 And to clarify, the NGOs working under this program provide emergency
16 assistance to migrants, including food and shelter. Is that correct?

17 A That's correct.

18 Q Okay. And were you aware of this program, or was the program operating
19 before the COVID-19 pandemic?

20 A I don't recall it, hearing of it before that time in El Paso.

21 Q And can you remind me when you were in El Paso?

22 A From 2019 -- I was there in July of 2019 as the interim chief up to February.
23 And then I became the permanent chief March of 2020 to October of 2022.

24 Q And what was the timeframe you were at the Region VI?

25 A At the Region VI, I was in 20 -- in 2022. I want to say beginning of 2022

1 through '23.

2 Q And what role do these NGOs play? Why does Border Patrol partner with
3 these organizations?

4 A So I thought it was really important, as the chief of El Paso at the time, to
5 keep a relationship not only with our community leaders from the community, but also
6 entities like nongovernmental organizations, because I realize that those shelters are the
7 ones that coordinate -- at the time were coordinated mostly with ICE ERO, but we found
8 ourselves at different situations when I was in El Paso needing to understand like capacity
9 at those shelters, understand some of their challenges, some of their -- some of their
10 needs, because of the fact that the pathway and disposition of most of these families,
11 because there were family units, was notice to appear/ORs. So these shelters were
12 absorbing most of those transfers in lieu of people being released into the communities.

13 So I found it extremely valuable to have a partnership and coordination with these
14 individual NGOs, as well as our law enforcement partners, as well as our medical
15 community, because many of the hospitals were being impacted during the surge
16 situation, that the CEOs at those hospitals, we needed to have some coordination with
17 them. And then, obviously, our city and county representatives.

18 Q And can you speak a bit more about why you found it helpful for these
19 organizations to have capacity to receive migrants?

20 A So it was important to me at the time because I wanted to make sure that,
21 first of all, I know our capacity limitations at CBP. I know it is temporary holding. And
22 we couldn't hold very long. And, again, I knew that if we couldn't hold very long, there
23 was -- we continued to receive on the front end. The back end kept just stacking. We
24 needed to work with NGOs in order to have that transfer out, out of our facility because,
25 otherwise, we would have to be forced to release into communities. And we take into

1 consideration our communities. These are the communities we live in, we operate in.

2 We also have partnerships with the city and the county, because they also care
3 about the vitality of those communities. And then the hospitals, right? The hospitals,
4 in the end, will absorb most of the people that were taken there, so we needed to
5 partner with them.

6 So, for me, my capacity was a huge concern. It's a high risk when we have so
7 many people in holding for a very long time. So we have to do our very best to be
8 efficient in those centers.

9 Q And there's been some discussion about cutting funding for this program.
10 If the funding is cut and these organizations had less capacity as a result, would that mean
11 more street releases for Border Patrol into communities?

12 A We would -- we would be significantly challenged, with the current capacity
13 that we have, that we would have to work with ICE ERO, of course, and then not have
14 another option but to release into communities.

15 Q And when there's street releases into communities, what's the impact on the
16 local community?

17 A Well, I think that, from a city perspective, I think maybe a mayor or the city
18 representatives would have a better, you know, idea on that impact for their -- their
19 communities.

20 I do know, from our end, it's always looked upon negatively when Border Patrol
21 has to release, not understanding that Border Patrol doesn't have any other options
22 sometimes because of our capacity limitations, you know.

23 Q And, Chief, you previously testified that you coordinate with local NGOs in
24 your sector, and you said that when the situation at the border becomes overwhelming,
25 NGOs can step up to help. Can you describe what you meant by that?

1 A Yes. So in RGV, for example, knowing what I experienced in El Paso and
2 transferring to RGV in October, we were looking at our numbers. I looked at the
3 numbers earlier for October, November, and December of '22. They were high but still
4 managing.

5 But we did notice that uptick, so I immediately coordinated with my team. And I
6 said, you know, let's -- let's do this. I know that Title 42 is a discussion point right now
7 where it could be sunseting at the end of December. Then we had another date like in
8 February. It eventually lifted in May. But let's get ready with our community
9 engagement. Let's get ready with our partners. Let's ensure that they know the
10 situation going on in RGV and how overwhelming it can become and then what actions
11 we're going to have to take as an entity to address the surge situation. Obviously, the
12 last option is release into communities, so let's figure out how are we set up in the Rio
13 Grande Valley.

14 So that's when I really ramped up our meetings with Catholic Charities, with Office
15 of Emergency Management in Brownsville, a few other smaller shelters between
16 Brownsville and McAllen, and we began the discussion points.

17 Unbeknownst to me, those organizations are already very robust in the Valley.
18 They've been through this now for about a decade or so. So I was quite impressed with
19 their process that they have in place and how all smaller communities around the Rio
20 Grande Valley really lean into McAllen Catholic Charities as a larger entity. And then on
21 the Brownsville side, the Ozanam Center as well as Office of Emergency Management
22 have their own particular protocols.

23 So it was quite, I wouldn't say easy, but it was quite efficient, I would say, on how
24 they had that set up. If there was ever a need to release into the community, it would
25 have been because those locations are not able to absorb more.

1 Q And then in the last hour, my colleagues touched on the cartel control south
2 of the border. Just to clarify, the cartels don't control territory in RGV north of the
3 U.S.-Mexico border. Is that correct?

4 A That is correct. It's north of the -- it's south of the border in Mexico.
5 There's areas along the river on the Mexico side of the border that they -- they have some
6 control over or most control over, that there's a fee that needs to be paid for whatever
7 transactions happen in those areas.

8 Q And then you were also asked about kidnappings and extortions of migrants.
9 Are you aware of kidnappings and extortions or assaults happening south of the border in
10 Mexico to migrants?

11 A Only through what you read in social media or in the news, things like that
12 taking place.

13 Q Okay. And then there's been some discussion about DNA tests as well for
14 verifying families. Do your agents still have access to DNA tests when they have a
15 concern about a family?

16 A We do. We have our -- CBP has the ability, on an ad hoc basis, to use
17 purchase cards to be able to purchase the services to get DNA testing on a particular
18 family that we may suspect is fraudulent.

19 In the past, we did have a contract in place -- well, I think it was an ICE contract
20 that was in place that was used as well for DNA testing.

21 Q Understood. And that ad hoc manner, it still does allow your agents when
22 they have a concern to ask for that test. Is that correct?

23 A That is correct.

24 Q And then I wanted to follow up on some questions you received about
25 Chinese nationals. I saw from the statistics they have decreased in recent months. Is

1 that correct?

2 A That is correct.

3 Q Can you talk broadly about some of the procedures you put in place for your
4 sector in encountering Chinese migrants?

5 A So I think we were quite proactive when we started seeing an uptick of
6 Chinese nationals in RGV. We immediately -- I was briefed on it, I remember. We
7 discussed it with our intelligence agents and made the decision that we were going to
8 interview Chinese nationals 100 percent, which means every national would go through
9 an interview.

10 As you know, they speak Mandarin. So it was quite difficult and a challenge to
11 get Mandarin speakers for the translation. We had to go through a translation service.
12 That translation service took about 6 to 7 hours to interview a Chinese national. So that
13 was very tasking on our end. So we had to quickly pivot and see if within DHS we had
14 any officers, agents, employees that spoke Mandarin that could be TDY to RGV to help us
15 with our interviews.

16 We did find some assistance in that, and that reduced the interview time to about
17 3 to 4 hours, which was quite helpful on our end, but we didn't -- we didn't stop. We
18 kept doing the 100 percent interviews, extracted and collected as much information as
19 possible.

20 And it was -- we actually acquired information from their cell phones as well.
21 And information I'm sure got back to the smugglers and smuggling organizations, because
22 people were being held. ERO was holding most of them as well, and even so some that
23 had some sort of derogatory information that needed further evaluation were held.

24 And -- and then just like that, a few months later, the switch happened where
25 criminal organizations, they own the smuggling process, so they switched to -- to other

1 sectors like in California; Yuma, Arizona, type.

2 Q And do you believe that these processes and procedures you put in place
3 had an impact on smugglers choosing to switch to a different sector?

4 A I do. I do believe that.

5 Q Okay. And then when you've had needs in your sector, like the need for
6 Mandarin speakers, while you've been in RGV, have you found CBP and DHS to be
7 responsive to your requests?

8 A They were responsive. The challenge is that we just didn't have enough
9 Mandarin speakers out there as employees, right? On the translation services side, it's a
10 challenge. There's a process to acquire, procure services like that that we have to
11 follow. And then at the end of the day, it's a service that just takes their time to get that
12 done.

13 Q Understood. And then just looking a bit more broadly, as you have surges
14 or changes in circumstances in the RGV Sector or as you've experienced them over the
15 past year and you've made requests to CBP or DHS, have you found them generally to be
16 responsive?

17 A I have. I think that in RGV -- in particular right now, as I mentioned, RGV, as
18 complex as it is, with migration and other things going on, we have been designated as
19 the innovative -- as an INVNT sector, which means we're a test sector for any new
20 technologies, right?

21 And I think funding is always a challenge. I send my requirements up. I ask
22 them to prioritize certain types of technologies over other or resources over others, but
23 it's competing priorities, and then we go right back to the funding issue.

24 So I think they've been responsive to when I've submitted my requirements up to
25 Border Patrol and then the larger CBP, yeah.

1 Q Thank you.

2 And then I wanted to ask a bit about some of the Texas policies that we've seen on
3 the border. Has your sector encountered any of the razor wire or buoys that Governor
4 Abbott has put in place along the U.S.-Mexico border?

5 A In RGV, we do not have buoys on the river. We do have concertina wire
6 that's deployed in key locations along the AOR by the State.

7 Q And do you have any concerns about buoys or this razor wire being deployed
8 in your sector?

9 A So I think about the buoys on the river. We have concerns now, because
10 the river, from the Weslaco Station all the way to the mouth of the ocean, is full of
11 hydrophytes, or Hydrilla, vegetation. It is so thick in there right now that I can't even
12 launch my vessels in that area, right, because they get stuck in there.

13 So placing buoys there, it could complicate things even further. But they're not
14 in my sector right now so I'm not going to be concerned about that right now. But the
15 razor wire, the concertina wire that's located at key locations, it's a deterrence.

16 I'm concerned about the decisions of migrants crossing through there and getting
17 cut. But it's serving a purpose, because it certainly did, in some locations, make
18 migrants make a decision to go elsewhere. In other areas that, you know, for us, it's
19 been quite effective in us detaining and making an interdiction. But in other areas,
20 they've decided not to. And at times, we do encounter migrants that get injured, right,
21 from that concertina wire.

22 Q And does that pose a risk to the migrants or to your agents?

23 A Well, in cases, our agents have gotten cut by this concertina wire
24 themselves. So it is a concern to me that at times it could injure my agents, and then, of
25 course, I mean, injure another human life, right, the migrants.

1 Q Have there been any serious injuries to your agents?

2 A Aside -- on the concertina wire, no. But assaults, possibly, yeah.

3 Mr. Yim. Is the State of Texas, when they implement this concertina wire, are
4 they doing that in coordination with Border Patrol or are they doing this unilaterally?

5 Ms. Chavez. So they communicate to me and notify me that they are going to be
6 doing that, but it's not in a coordinated way. It's more of a situational awareness. Let
7 me let you know we're coming in to do this in this area. We know you have your
8 operations there. We're just letting you know, Chief, that we're going to be launching
9 some concertina wire from point A to point B type thing.

10 Mr. Yim. So it's fair to say they make the decision about where to put it and then
11 they'll notify you after they make that decision?

12 Ms. Chavez. That is correct.

13 Ms. Marticorena. I have no more questions.

14 Ms. Jackson. We can go off the record.

15 [Whereupon, at 12:55 p.m., the interview was adjourned.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

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COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
joint with the
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: ANTHONY SCOTT GOOD

Thursday, June 29, 2023

Washington, D.C.

The interview in the above matter was held in room H2-176, Ford House Office Building, commencing at 8:58 a.m.

1

2 Appearances:

3

4

5 For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

6

7 BILLY GRANT, LAW CLERK

8 SLOAN MCDONAGH, COUNSEL

9 JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT

10 ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL

11 SARAH JACKSON, MINORITY COUNSEL

12 SYDNEY RICHARDSON-GORSKI, MINORITY STAFF ASSISTANT

13 DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

14

15

16 For the COMMITTEE ON HOMELAND SECURITY:

17

18 FINN ARTHUR, RESEARCH ASSISTANT

19 CHRISTY KORTOKRAX, COUNSEL

20 IAN MCDONALD, COUNSEL

21 ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND

22 INVESTIGATIONS COUNSEL

23 SANG YI, DIRECTOR OF INVESTIGATIONS

24 WILLIAM TURTON, PROFESSIONAL STAFF MEMBER

25 LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

1 ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

1

2 For the DEPARTMENT OF HOMELAND SECURITY:

3

4 STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

5

6

7 For U.S. CUSTOMS AND BORDER PROTECTION:

8

9 DANIEL BARRON, ADJUTANT TO ANTHONY SCOTT GOOD

10 SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

11 STEPHANIE MUFFETT, OFFICE OF CHIEF COUNSEL

1

2 Mr. Yi. Good morning. This is a transcribed interview of Anthony Scott Good.
3 Chairman Comer and Chairman Green have requested this interview to obtain
4 information regarding border security from the chief patrol agent in charge of U.S. Border
5 Patrol operations in the El Paso Sector.

6 Will the witness please state your name for the record?

7 Mr. Good. Anthony Scott Good.

8 Mr. Yi. On behalf of the Committee on Oversight and Accountability and the
9 Committee on Homeland Security, thank you for appearing today. The committees
10 appreciate your willingness to appear voluntarily.

11 My name is Sang Yi, and I am the director of investigations with Chairman Green's
12 staff for the majority on the Committee on Homeland Security.

13 I now ask that the majority and minority staff from the committees please identify
14 themselves.

15 Ms. O'Connor. Elizabeth O'Connor, senior counsel, Committee on Homeland
16 Security, majority.

17 Mr. Rust. James Rust, counsel for Chairman Comer on the Committee on
18 Oversight and Accountability.

19 Mr. McDonagh. Sloan McDonagh, counsel for Chairman Comer with Oversight
20 and Accountability.

21 Mr. Yim. Daniel Yim, House Oversight, Democratic staff.

22 Ms. Jackson. Sarah Jackson, House Oversight, Democratic staff.

23 Ms. Richardson-Gorski. Sydney Richardson-Gorski, House Oversight, Democratic
24 staff.

25 Ms. Dennett. Lydia Dennett, House Homeland, Democratic staff.

1 Mr. Gaertner. Jeremy Gaertner, House Homeland, Democratic staff.

2 Ms. Northrop. Alison Northrop, House Homeland, Democratic staff.

3 Ms. Kortokrax. Christy Kortokrax, House Homeland, majority counsel.

4 Mr. McDonald. Ian McDonald, House Homeland, majority counsel.

5 Mr. Turton. William Turton, House Homeland, majority, professional staff
6 member.

7 Mr. Arthur. Finn Arthur, House Homeland, majority, research assistant.

8 Mr. Grant. Billy Grant, Oversight Committee, majority, law clerk.

9 Mr. Yi. I also recognize that the witness is accompanied by Department of
10 Homeland Security officials, in addition to agency counsels, at the table.

11 Will the additional agency officials please state their names and titles for the
12 record?

13 Ms. Klisarska. Samantha Klisarska, congressional liaison, Office of Congressional
14 Affairs, CBP.

15 Mr. Barron. Daniel Barron, adjutant to Chief Anthony Good.

16 Mr. Yi. Before we begin, I will outline the procedure and guidelines that we'll
17 follow in this interview.

18 Questioning will proceed in rounds. The majority members or staff will ask
19 questions first for up to 1 hour, and then the majority -- or minority members or staff will
20 have an opportunity to ask questions for up to 1 hour, if they choose. We will go back
21 and forth for six total 1-hour rounds or until there are no more questions. We'll take a
22 short break at the end of each hour. If you would like to take a break at any other time,
23 please let us know. If, however, there is a pending question, I ask that you finish
24 answering the question before we stop to take a break. We will also take a break for
25 lunch after the third hour of questions.

1 There's an official reporter transcribing everything we say to make a written
2 record, So we ask that you give verbal responses to all questions. The reporter cannot
3 record nonverbal answers such as shaking your head, so it is important you answer each
4 question with an audible, verbal answer. Do you understand?

5 Mr. Good. I understand.

6 Mr. Yi. To ensure the court reporter can take a clear record, we do -- we'll do
7 our best to limit the number of people directing questions to you during any given hour
8 to just those members or staff whose turn it is.

9 To the extent possible, it is also important that we do not talk over one another or
10 interrupt each other. Please wait until each question's finished before you begin your
11 answer, and we will wait until you finish your response before asking you the next
12 question. That goes for everybody present at today's interview.

13 Furthermore, the majority members or staff will not ask questions or otherwise
14 interrupt the minority's round of questions and vice versa.

15 I understand the witness is accompanied by agency counsel today.

16 Would counsels please state their names for the record?

17 Mr. Jonas. Steve Jonas, DHS OGC.

18 Ms. Muffett. Stephanie Muffett, CBP, Office of Chief Counsel.

19 Mr. Yi. I also want to confirm that you understand that agency counsel
20 represents the agency and not you personally. Do you understand?

21 Mr. Good. I understand.

22 Mr. Yi. Are you choosing to have agency counsel in the room today?

23 Mr. Good. Yes.

24 Mr. Yi. You are encouraged to freely consult with counsel if you choose. If you
25 need to confer with counsel during the interview, please let us know, and we will go off

1 the record and stop the clock until you are prepared to continue.

2 During the interview, we ask that you please answer any questions in the most
3 complete and truthful manner possible. If you have any questions or if you do not
4 understand a question, please let us know. Do you understand?

5 Mr. Good. Understand.

6 Mr. Yi. If you do not know the answer to a question or do not remember, it is
7 best not to guess. If there are things you do not know or cannot remember, please say
8 so and inform us who, to the best of your knowledge, might be able to provide a more
9 complete answer to the question.

10 If I ask you about conversations or events in the past and you are unable to recall
11 the exact words or details, you should testify to the substance of those conversations or
12 events to the best of your recollection. If you only recall a part of a conversation or
13 event, you should give us the best recollection of those events or conversations that you
14 do recall. Do you understand?

15 Mr. Good. I understand.

16 Mr. Yi. Although you are here voluntarily and you will not -- and we will not
17 swear you in, you are required by law to answer questions from Congress truthfully,
18 including questions posed by congressional members or staff during this interview.
19 Witnesses who knowingly provide false testimony could be subject to criminal
20 prosecution for perjury or for making false statements.

21 Do you understand this obligation to tell the truth today?

22 Mr. Good. I understand.

23 Mr. Yi. Is there any reason you are unable to provide truthful answers to today's
24 interview?

25 Mr. Good. No.

1 Mr. Yi. Before we begin, I would like to explain briefly why we are here today.

2 As mentioned, the House Committee on Oversight and Accountability and House
3 Committee on Homeland Security are seeking to obtain information regarding border
4 security from the chief patrol agent in charge of U.S. Border Patrol operations in the El
5 Paso Sector.

6 We're interviewing you today to learn more about matters related to border
7 enforcement and your roles, responsibility, experience, and observations. We are not
8 investigating you personally for any personal wrongdoing. This is a fact-finding
9 endeavor.

10 Are you ready to begin?

11 Mr. Good. I'm ready.

12 Mr. Yi. Thank you. The clock reads 9:03 a.m. we will now begin the first
13 round of questions.

14 EXAMINATION

15 BY MR. YI:

16 Q Chief Good, thank you for being here this morning. Good morning.

17 A Good morning.

18 Q So we're going to start with some very basic questions related to your
19 voluntary participation in today's interview and then learn more about your background
20 and your experience.

21 Have you ever participated in a congressional transcribed interview?

22 A No.

23 Q Have you ever been a deponent in a congressional deposition?

24 A No.

25 Q Have you ever testified in any deposition for legal cases?

1 A No.

2 Q Okay. How did you prepare for today's interview?

3 A I spoke with OCA, OCC, and PAO or STRATCOM.

4 Q Can you explain what --

5 A Public affairs.

6 Q Okay. Public affairs officer for --

7 A For Border Patrol.

8 Q For Border Patrol.

9 A CPB.

10 Q Okay. And did you -- did any executive branch officials express to you at
11 any point that the committees repeatedly offered to travel to your sector to conduct this
12 interview to minimize any operational impacts on your official duties or schedule?

13 A It was mentioned to me.

14 Q Did you express to those officials your preference for where this interview is
15 conducted?

16 A It was mutually agreed upon that we would do it up here.

17 Q Did you have a preferred location for this interview?

18 A No.

19 Q Okay. Were you offered an explanation why the department officials
20 preferred the interview to take place in Washington, D.C.?

21 A No.

22 Q Did you ask?

23 A No.

24 Q Okay. Did you review any documents to prepare for today's interview?

25 A I made some notes.

1 Q Were you provided any documents to review by any agency officials?

2 A No.

3 Q Were you told that there were any topics you were not authorized to talk
4 about?

5 A No.

6 Q Were you advised that there are certain words or phrases you can or cannot
7 say?

8 A No.

9 Q Have you spoken to any other chief patrol agents about this interview?

10 A Only that they had done the interview and the length of time that it took.

11 Q Nothing to do with the content --

12 A Correct.

13 Q -- of the interviews?

14 Have you spoken to -- that's it.

15 Let's move on to your background. Can you please start by describing your
16 educational history?

17 A I have a bachelor's in criminal justice with a minor in sociology from Bowling
18 Green State University and a master's degree, Military Master's of Arts and Science, from
19 the Command and General Staff College, U.S. Army, in homeland security studies.

20 Q And for the record, can you please state your current position with the U.S.
21 Border Patrol?

22 A Chief Patrol Agent, El Paso Sector.

23 Q And when did you first start with the Border Patrol?

24 A I started with the Border Patrol February 11th, 2001.

25 Q And when did you start your current position?

1 A I started as the El Paso Chief Patrol Agent March 12th of this year.

2 Q And what was your immediately preceding position?

3 A Chief patrol agent of the Grand Forks Sector, Grand Forks, North Dakota.

4 Q And for how long did you hold that position?

5 A A little over 2 years.

6 Q Did you have any prior law enforcement experience before joining the
7 Border Patrol?

8 A I was a military police officer in the Army Reserve.

9 Q For how long did you serve there?

10 A About 4 years.

11 Q And so going back to your time as chief of Grand Forks, how did your
12 experience in Grand Forks differ from the experience you're having in El Paso?

13 A In Grand Forks there were less than 200 Border Patrol agents in the Grand
14 Forks Sector for North Dakota and Minnesota, as well as Wisconsin, with a much larger
15 area with less agents but also less migration coming through in those areas, compared to
16 in El Paso where I have a little over 2,000 uniformed employees and a smaller area but a
17 lot more migration through the area.

18 Q And the migration patterns, given those, what is the composition of the
19 types of activities you're seeing in the El Paso Sector compared to the Grand Forks
20 Sector?

21 A As far as numbers?

22 Q In terms of the types of activities you're seeing.

23 Mr. Jonas. Do you mean demographics or you're talking about something
24 different?

25 BY MR. YI:

1 Q What -- what type of crossing patterns do you see in Grand Forks versus
2 illegal crossing patterns in El Paso?

3 A So in Grand Forks, everyone that I've seen that have tried to illegally cross in
4 between the ports of entry have tried to evade apprehension, whereas in El Paso there
5 are times when large numbers of people give themselves up at the border in between the
6 ports of entry.

7 There are still people that try to evade in El Paso, but you don't have that dynamic
8 where large groups of people are giving up or turning themselves in at the border in
9 Grand Forks Sector.

10 Q What do you think from, based on your experience as a Border Patrol agent
11 for 22 years, the explanations that could lend why those in El Paso Sector might give
12 themselves up more often than those who cross in Grand Forks Sector?

13 A I think one reason could be the ease of travel from South America to Mexico
14 to the United States, compared to taking commercial travel to Canada and to legally enter
15 into Canada before coming into the United States illegally.

16 Q But when you were in Grand Forks, compared to the current time period in
17 El Paso, even when you were in Grand Forks, you must have been aware of what was
18 going on on the southwest border and the trends throughout your 20 years of service,
19 right?

20 I should have asked you, Where did you serve before Grand Forks?

21 A Havre Sector, Havre, Montana.

22 Q Have you served in the southwest border on the sector before?

23 A Laredo Sector prior to that.

24 Q What years were those?

25 A I was in Laredo for about 2.5 years, and that was 5 years ago.

1 Q Okay.

2 A 2018. Prior to that, I was in Ajo -- I was the patrol agent in charge of the
3 Ajo Station in Tucson Sector. Before that I was at headquarters in Washington, D.C.; and
4 before that, Deming, New Mexico; and before that, Blythe, California; before that, where
5 I started, Calexico, California.

6 Q Did you see large groups that were giving themselves up like you do in El
7 Paso today back when you served in Laredo in 2018 or in the Tucson Sector prior to that?

8 A No.

9 Q What do you think's changed?

10 A There's many reasons that could be accredited to that. I couldn't guess all
11 the reasons that that could be.

12 Q Can you provide some examples of these reasons?

13 A Social media, for one, has really changed migration patterns. Smugglers
14 and people are able to lie to people that are trying to cross or that want a better life or to
15 find work. They can more easily get false messaging out that if you cross in a particular
16 area, you could be provided work authorizations, you could be provided safe travel to
17 wherever you're going. A lot of times these things are not true, especially crossing
18 illegally in between the ports of entry, but social media has created a draw.

19 Q At which times are they true?

20 A Work authorizations could be granted if they are legally entering through the
21 ports of entry. I'm not sure --

22 Q But those people wouldn't have been impacted by those social media posts
23 that you're talking about, that you say are lies by the smugglers, right?

24 A Correct.

25 Q So -- and you had mentioned that a lot of times these are not true. So are

1 there times when the smugglers are actually correct, that people who might cross
2 through these smugglers -- because if they're using a smuggler, they're obviously coming
3 in illegally. The smugglers are not travel agents, valid travel agents.

4 So when are -- when is it a time where these people do experience safe travel or
5 work authorizations or any other of these lies or false messages that you mentioned?

6 A I don't know the scenarios when they would get work authorizations. And
7 there are times when NGOs have paid for their travel further into the interior of the
8 United States. Typically, in recent -- since I've been in El Paso, especially when
9 migrants -- when we've NTA OR'd migrants and they've gone to the county or the
10 NGO -- I'm sorry?

11 Q Can you please spell that out for us, for the reporters, on your acronyms?

12 A Nongovernmental organization.

13 Q The NTRs.

14 Mr. Jonas. NTA.

15 BY MR. YI:

16 Q NTA.

17 A NTA, notice to appear on your own recognizance.

18 Q Okay. Please continue. Sorry.

19 A So we turn them over to -- after -- after that, the county assists them or the
20 NGO assists them to find a -- to get their sponsor, wherever they are in the United States.
21 And typically, the migrant pays for their own travel to those locations.

22 However, on the NGO side, they have paid -- I don't know how many have been
23 paid for and how many haven't, but it does happen where the NGO actually pays for their
24 travel further into the interior of the United States.

25 Q Is it your observation that some of these social media posts by these

1 smugglers incorporate information about NGOs and how they can be helpful to the
2 migrants after they arrive?

3 A I'm not aware of that piece on the social media front.

4 Q Okay. So in addition to social media having changed migration patterns,
5 what are other factors that have changed these migration patterns?

6 A We've had an increase in Venezuelan migrant crossings, and I think that's
7 due to failed government in Venezuela. So things like conditions in the home country
8 increase that migration pattern.

9 Q So failed government in Venezuela would encourage Venezuelans to travel
10 through multiple countries to be in the United States?

11 A Yes.

12 Q Why wouldn't they go to any other countries?

13 A Well, I would circle back to the social media, right, and to what the
14 smugglers are telling them, that they're promised a lot of things in the United States,
15 because the smugglers want to be paid. Want -- they don't care about human life.
16 They don't care about telling the truth. They just want customers. And so they'll seek
17 out those folks and many times taking advantage of very vulnerable populations.

18 Q Okay. So we have social media, an increase in Venezuelans because of
19 their failed government.

20 What other factors?

21 A There can be draws based on the amount of people that are released from
22 custody, as opposed to being sent back to their home country or returned to Mexico.

23 Q And that would not be any false messaging or misinformation by the cartels
24 if they were to spread and promulgate messages that, hey, people get released after
25 they're in custody and they'll be able to remain in the United States. Is that a fair

1 statement?

2 A Many times it's not just the smugglers doing that, right. If -- if somebody's
3 released, then that person that was released will get on social media and say, Hey, look at
4 me, I've been released. And then that creates a draw specifically to that area. So if it
5 happens in El Paso and they post that on social media, that will create a draw to El Paso,
6 same for any other sector.

7 Q Okay. We'll get to more about the statistics later. But is it fair to say that
8 if someone were to be released from custody, especially in a short period of time or
9 whatever their experience may have been, that they might call their friends or family
10 back home and say, Hey, this has been my experience and it was relatively painless?

11 A Whether it's a call or a social media post, yes, that occurs.

12 Q And is it fair to say that that might feed into the narrative that smugglers are
13 promulgating that there's safe travel and you'll be able to stay and you'll -- you'll be
14 good?

15 A The safe travel is the scary part, especially getting to the United States.
16 There's a lot -- and even into the United States, if they're put into stash houses, if they're
17 required to pay off their debts through driving load vehicles, smuggling drugs, smuggling
18 people, those kinds of things occur as well.

19 And so in the stash houses, deplorable conditions, right, no water, no electricity.
20 If there is water, they're drinking out of a bathtub. Overcrowded, diseased, those kinds
21 of things, as well as sexual exploitation, very bad conditions.

22 Q Is --

23 A So that -- that safe travel piece is -- is not true, and it's very dangerous for
24 the migrants to rely on the smugglers' lies.

25 Q There's a very heavy human cost not just to the American public but also to

1 the migrants who make that journey, correct?

2 A Yes.

3 Q And you mentioned that cartels are exploiting this through their false
4 messaging, through social media, or any messaging to social media that may sometimes
5 turn out to be true. And then you also mentioned that there's an increase in
6 Venezuelan migration because of the failed government there. But none of those could
7 exist if -- or it would be harder to have a pull factor if the United States had different
8 views or different approaches on how these migrants were handled, correct?

9 Because if none of them were released on custody, then they wouldn't be on
10 social media telling their friends and neighbors and family, I got released. I made it
11 here. The social media posts from the cartel, maybe -- maybe it wasn't true that it was
12 so safe because I got, you know, abused along the way or whatnot, but I'm here.

13 That part was true. Is that -- is that --

14 Mr. Jonas. What are you actually asking, Sang? I mean, that was -- do you
15 understand what he's asking?

16 Mr. Good. I would say that the more people that are released, the more there is
17 a draw.

18 BY MR. YI:

19 Q Okay. Great. Going back to also a little bit about your background. Did
20 you apply to be the Chief Border Patrol Agent in El Paso Sector?

21 A No.

22 Q How does that selection process work?

23 A I was called by Chief Ortiz to see if I was interested in the position, which I
24 was and happy to do it. And so then they submitted a packet for me. And I'm not sure
25 what happens after that.

1 Q So there was no formal interview process?

2 A Not for chief of El Paso, because I was already a chief in Grand Forks.

3 Q So is it your understanding that there is a formal interview process if one is
4 not currently a chief and then becomes a chief of a sector? But if you are already a chief
5 of a sector, there is no interview process to become a chief of another sector?

6 A If you're a chief in the senior executive service, yes. GS-15 chiefs still have
7 to apply and be selected for an SES chief.

8 Q Okay. Because all of the chief -- sector chiefs are SESes?

9 A Not all.

10 Q Okay. But El Paso is?

11 A Yes. And so is Grand Forks.

12 Q And so -- and already kind of went over this a little bit, but can you explain,
13 describe briefly your roles and responsibility as chief of that sector?

14 A The chief's responsible for all Border Patrol operations in El Paso Sector,
15 administrative functions, as well as coordination with all the partners in El Paso Sector.

16 Q And what are those partners?

17 A The community, government officials, NGOs, law enforcement partners,
18 local, Federal, State.

19 Q How often do you personally work with NGOs?

20 A Over the past 4 months, about -- I would have meetings with the NGOs
21 about four times a month.

22 Q So about weekly?

23 A Yeah.

24 Q So when you first took over, in addition to being told about these
25 partners -- obviously, you must have been told about the partners to understand your

1 responsibilities there in the sector -- what other matters were you briefed on?

2 A Ongoing operations, migration trends, budget items, the current state of
3 programs, Border Patrol programs.

4 Q Were there any particular challenges that were identified to you about your
5 sector?

6 A The -- the traffic in -- on the New Mexico side of the AOR and the Santa
7 Teresa AOR where the overwhelming majority of the migrants in that area are trying to
8 evade and they're using a lot of tactics that are unsafe for agents and community, such as
9 load drivers, driving recklessly, the stash houses, the propensity for violence.

10 Q Is there more?

11 A That's it.

12 Q Okay. Can you explain the load drivers? What -- what -- can you -- I'm
13 not sure I understand what that means.

14 A So if a group of migrants are being smuggled by a smuggler, particularly in
15 that area, they will try to load up or get into a vehicle. And the smugglers will either get
16 somebody in that group to drive the vehicle as part of their payment or try to coerce even
17 young United States citizens, children -- or, you know, teenagers to drive those load
18 vehicles. Or regardless of who they have drive the vehicle, they'll instruct them to drive
19 recklessly, get wherever they're going really fast. And we've seen a lot of accidents as a
20 result of that.

21 Q Have any Border Patrol agents been injured in the pursuit of these load
22 drivers?

23 A Minor injuries, yes.

24 Q And you mentioned that there's a growing or -- correct me if I'm misstating
25 that, but I thought you said there was a growing propensity for violence. Can you

1 explain that in further detail?

2 A We've seen a lot of rock -- people throwing rocks at agents and their
3 vehicles. They've also been very or more likely in recent years to fight agents in order to
4 evade arrest, like physically fight them. And more and more load drivers are armed
5 now.

6 Q What would you estimate as the time period in which this occurrence has
7 become more and more prevalent?

8 A I've only been in El Paso for -- since March 12th, but I know it's -- in recent
9 years it's increased.

10 Q In recent years as in the last year, last 2 years?

11 A I would say last 2 or 3 years.

12 Q Last 2 to 3 years.

13 Who briefed you on all of these when you first took over the sector?

14 A Multiple people throughout my entire staff.

15 Q People from the sector, though?

16 A Yes.

17 Q No one from headquarters?

18 A There were discussions with -- with my bosses at Border Patrol headquarters
19 prior to and as I got into the position there.

20 Q And those bosses, did they tell you about these patterns as well, or talk to
21 you about these patterns and challenges?

22 A The discussions were more broad, basically the amount of traffic in the Santa
23 Teresa AOR.

24 Q What do you believe is the awareness of headquarters in Washington of
25 these growing patterns and challenges in your sector?

1 A We report most of what happens in the field up to headquarters, as well as
2 have discussions with them. So I -- they're pretty aware.

3 Q Who are the individuals who have received these reports?

4 A I report to David BeMiller and the deputy chief of the Border Patrol, Matt
5 Hudak, as well as Chief Ortiz.

6 Mr. Yi. Okay.

7 BY MS. O'CONNOR:

8 Q Morning.

9 A Good morning.

10 Q I'm going to jump back real quickly to the give-up group you were talking
11 about before.

12 The purpose of every migrant coming into the United States is to get into the
13 interior, right? Would you agree?

14 A Yes.

15 Q They want to be released, right?

16 A I have heard or I have seen that some have come across for medical
17 attention or to have a child born in the U.S. without intention of living in the U.S.

18 Q Right. But they want to get inside, right? They want to be released into
19 the United States, whether for medical attention, have their kid, or to live?

20 A Not all, but most.

21 Q Okay. And when you were on the southwest border before in Laredo, you
22 said there weren't really that many give-ups, right?

23 A That is correct.

24 Q And people were evading arrest because that was the way that they could
25 get into the interior, right?

1 A Yes, they were trying to evade apprehension to get into the interior of the
2 United States.

3 Q And the people that were apprehended weren't very likely to get into the
4 United States because there were consequences, right?

5 A Once apprehended, yes, they would -- they would be -- they would have
6 consequences, whether it was being turned in to ERO or to be returned to their country.

7 Q And MPP also does things like that, right?

8 A Yes.

9 Q And then now when you're in El Paso, there's large groups that are just
10 giving themselves up, right? Yes or no.

11 A We had large groups up till May 11th. May 12th, after Title 42 ended, we
12 did not see as many large groups, not near the numbers that we saw during Title 42.

13 Q But people are giving themselves up still, right? They're not trying to evade
14 arrest.

15 A The majority of folks right now are trying to evade arrest in El Paso Sector,
16 but there are some that still give up.

17 Q So you mentioned before that one of the big differences in El Paso versus
18 Grand Forks is that people are giving themselves up in El Paso.

19 A Yes.

20 Q And the people are giving themselves up in El Paso because they think
21 they're going to be released in El Paso, right?

22 A That is what they think, yes.

23 Q And then, for the most part, they are released in El Paso, right?

24 A No, not right now. Right now it's about 50 percent of the time we'll see
25 NTA ORs. And then with expedite or removal, many are being returned to their home

1 country or returned to Mexico.

2 Q So you guys are utilizing expedited removal in El Paso?

3 A Yes.

4 Q How often, would you say?

5 A About 50 percent of our migrant population.

6 Q Are put in expedited removal proceedings?

7 A There's also the ER credible fear process.

8 Q Sure. But it's all the same process, though, right? You're an
9 exp -- you're --

10 A But it's an expedited removal if no fear --

11 Q Right.

12 A -- is found by USCIS or if they see an immigration judge and the immigration
13 judge says that there's no fear claim to be had there, then they're part of the expedited
14 removal.

15 Q Sure. So how many people are you -- is Border Patrol removing based on
16 expedited removal order?

17 A About half of the population right now.

18 Q Is being removed on an expedited removal order?

19 A There's also reinstatements.

20 Q I understand. I'm asking about expedited removal specifically.

21 A I don't have the exact number.

22 Q Okay.

23 A But I will say that only about half of the population right now is being
24 released on NTA OR.

25 Q Okay. And that's after the expiration of Title 42?

1 A Correct.

2 Q Are you familiar with the processing before the expiration of Title 42 in El
3 Paso? I know that you just arrived in March.

4 A Yes.

5 Q And were there more releases before the expiration of Title 42?

6 A Yes.

7 Q Do you know a percentage?

8 A It was a much higher percentage.

9 Q Okay. I want to ask you a little bit about the general encounter trends,
10 again, acknowledging you've only been there since March '23. Were you -- you did
11 mention you were briefed on the migration trends in El Paso, though, right?

12 A I was.

13 Q In March '23, there was a 20 percent increase in encounters from January
14 2023. Do you have any idea why that big jump happened? I can show you the
15 numbers if it would be helpful too.

16 A Was that in El Paso or --

17 Q In El Paso. I can -- I'll show you what I've marked as majority exhibit 1.

18 [Good Majority Exhibit No. 1

19 Was marked for identification.]

20 Mr. Good. Thank you.

21 BY MS. O'CONNOR:

22 Q So if you look at January, the encounter -- January '23, the top row, the
23 encounter numbers were about 30,000. And then by March they had risen to 40,000;
24 by April, 42,000.

25 Do you know what drove that 2-month jump?

1 A I do not.

2 Q Did Border Patrol feel the impact of that large jump?

3 A Yes.

4 Q And in what ways did it impact operations?

5 A When you have larger influxes such as this, it takes more agents to assist in
6 processing, not only for the processing of the migrants but the welfare and care of the
7 migrants, the security of those facilities.

8 So that -- that is a draw of manpower from the field, which is where we'll see an
9 increase in things like got-aways, what we call when migrants evade us and we don't
10 make the encounter or apprehension.

11 Q You guys have a new, big processing center, right?

12 A We do.

13 Q Are you utilizing that yet?

14 A Yes.

15 Q And you have processing coordinators?

16 A We do.

17 Q So even with the new processing center, the processing coordinators, that
18 big influx still causes agents to be pulled off the line to help with processing?

19 A Yes.

20 Q In the fall of '22, El Paso started to hit -- hit its peak numbers. In
21 September -- I just want to make sure I'm saying the right numbers here. Strike that.
22 I'll move on.

23 In preparing for future surges similar to the ones that you saw from January to
24 April, have you discussed how El Paso has handled prior surges before you got there?

25 A Yes.

1 Q So are you familiar with how El Paso handled surges that occurred in 2021
2 and 2022?

3 A Yes.

4 Q In August of 2022, encounter numbers were at almost 30,000. By
5 September, the encounters went up to 50,000. Do you know what impacts that had on
6 operations in El Paso?

7 A Like I mentioned before, it draws manpower from the field. It puts a strain
8 on resources, such as transportation to transport from the field to processing. We
9 require more support from other sectors to help us out with manpower, as well as virtual
10 processing.

11 Q Do you have agents right now detailed from other sectors?

12 A Yes.

13 Q Do you know about how many?

14 A It's a low number right now.

15 Q What's a low number, context?

16 A I would say under 20 folks. Big Bend supports us in our processing because
17 we process -- help them process. So then helping out the neighboring sector, they give
18 us some manpower for that. We do have some partner agencies that assist us as well.

19 Q Like who?

20 A ERO.

21 Q HSI?

22 A Yes.

23 Q Air Marshals?

24 A Yes.

25 Q U.S. Marshals?

1 A I don't know that we currently have U.S. Marshals.

2 Q Do you know if they have in El Paso?

3 A I don't know if they have in the past or not.

4 Q What would be a large number, or are you aware of how many -- the
5 greatest amount of additional Border Patrol agents that have been detailed to El Paso in
6 the last 2 years since the surges began?

7 A Before I arrived in El Paso, I know that we had about 40 a month from the
8 northern border that were assisting, as well as folks from the northern border assisting us
9 from the northern border with virtual processing, as well as -- as detailers helping us out
10 with transportation, things like that.

11 Q Were you -- when you were in the northern border, were you sending agents
12 down to the southern border?

13 A I was.

14 Q And were your agents at the northern border helping process remotely?

15 A Yes.

16 Q Did that impact your operations in the northern border at all?

17 A Yes.

18 Q In what way?

19 A Like I said before, we only have 200 agents for over 800 miles of border in
20 the Grand Forks Sector. So sending sometimes up to 30 agents, the numbers went
21 down progressively as the -- as time went. But it required us to have less shifts.

22 So if a station had two shifts for a 24-hour period, that'd be reduce -- they were
23 reduced to one shift. And there was a station that had three shifts, a 24/7 operation,
24 that reduced to two shifts.

25 And we were successful by leveraging our Stone Garden partners, local law

1 enforcement in those areas to assist us. However, there were less agents in the field
2 doing border security missions in the Grand Forks Sector.

3 Q When you were fully staffed in Grand Forks at the 200, how many miles per
4 agent was your sector, if you know?

5 A I don't know the math on it, but it was over 800 miles of border with less
6 than 200 agents.

7 Q Is that a statistic that Border Patrol considers in their staffing?

8 A It has been used as a statistic to do that.

9 Q Is that a statistic used in El Paso right now?

10 A Not that I'm aware.

11 Q I'm going to ask you a little bit about specific demographics.

12 The publicly available CBP numbers show that, while small and relative numbers,
13 the number of Chinese nationals encountered in El Paso in fiscal year '23 year to date has
14 increased over 500 percent since fiscal '22. Do you have any idea why that is?

15 A So the last numbers that I have for Chinese nationals is 147.

16 Q That's '23 year to date, right?

17 A '23 -- probably my numbers are up to the end of last month, 147, whereas
18 last year there were 26.

19 Q Right. Do you have any idea why that is such a big percentage increase?

20 A Through interviews we've heard that it's the safety and ease of crossing
21 through Juarez into El Paso.

22 Q Does that cause you concern for national security purposes?

23 A Yes.

24 Q Why?

25 A It's not the demographic that we normally see, i.e., Mexico, Northern

1 Triangle countries. And so when people come from other continents, it's -- we try our
2 best to figure out why they're coming, but, of course, that information can be hidden.
3 Their agendas, their ideologies, the reason for them coming could be missed.

4 Q Do you know what reasons Chinese nationals have given in their interviews
5 for coming?

6 A The typical reason is the same as most of the migrants, for work or a better
7 life.

8 Q Economic reasons?

9 A Economic reasons.

10 Q The data also shows that there's been a drastic increase in nationals from
11 Turkiye. In fiscal year 2022, there were almost -- there were 11,600 encounters
12 between ports of entry of Turkish nationals, which is nearly a thousand increase over
13 fiscal '21.

14 Does that cause you any concern for national security purposes?

15 A Yes, for the same reasons as China, just we don't know their intent.

16 Q Have -- have the Turkish nationals given the same reasons in their interviews
17 for coming?

18 A They have. That number, although high for 2023 also, so far we have
19 6,106. Most of those came in in the few months before my arrival. We haven't been
20 seeing a large number. We have seen folks from Turkiye but not a large number.
21 Most of those came in prior to my arrival to El Paso Sector.

22 Q Do you have any idea why there was such a large number and then a
23 drop-off?

24 A Their smugglers, from my understanding, moved to another sector, I think
25 toward the California side.

1 Q So sometimes can nationality demographics be controlled by the cartels and
2 the smugglers?

3 A Yes. A lot of times.

4 Q Have you seen any other shifts into El Paso caused by smugglers,
5 demographic shifts?

6 A Venezuelans.

7 Q Have come into El Paso?

8 A The numbers have reduced since the end of Title 42, but still one of our
9 highest demographics in El Paso Sector is the Venezuelans.

10 Q Do any of the ports of entry in El Paso use CBP One app for appointments,
11 that you know of?

12 A Yes. Paso del Norte.

13 Q Do you know if the use of the CBP One app or the CHNV parole program has
14 impacted the Venezuelan numbers in your sector at all?

15 A I know that there's a population in Juarez waiting to cross and that from our
16 reports, many of them -- from intelligence that my folks have gathered, that many of
17 them are waiting for that.

18 Q To use the CBP One app --

19 A Yes.

20 Q -- or the CHNV program?

21 A Yes.

22 Ms. O'Connor. Okay. I'll pass to my colleague.

23 BY MR. RUST:

24 Q I believe you mentioned before you have 2,000 uniformed officers in El Paso
25 Sector. Is that correct?

1 A Just over 2,000.

2 Q Does that include non-law enforcement personnel?

3 A 2,027.

4 Q Do you also have non-law enforcement personnel you oversee?

5 A Yes.

6 Q Do you know how many?

7 A So professional staff, including -- well, we have over 200 Border Patrol
8 processing coordinators and we also have about 405 professional staff.

9 Q Are you at your full staffing contingent of uniformed Border Patrol agents in
10 the El Paso Sector?

11 A According to our task organization, yes.

12 Q Do you believe those resources are sufficient, given the current migrant
13 surges that you've encountered in the El Paso Sector?

14 A No.

15 Q You mentioned that the majority of individuals in El Paso currently today are
16 seeking to evade apprehension. Could you estimate the proportion that are seeking to
17 evade apprehension versus those who turn themselves in?

18 A I wouldn't have a accurate statistic of that, but it's -- it's the majority.

19 Q The majority are seeking to evade apprehension?

20 A Yes, currently.

21 Q Is there still a sizeable population that is turning themselves in to Border
22 Patrol still?

23 A No, the numbers are low for that.

24 Q The numbers are low. Would you say they're less than a quarter?

25 A Yes.

1 Q And what tactics are you encountering when smugglers attempt to evade
2 Border Patrol entirely?

3 A We've seen a smuggling trend where smugglers are charging the migrants
4 for the amount of times that they can make a crossing attempt. So they'll have larger
5 groups cross in a particular area and then send smaller groups into other areas so that
6 those can evade us as we work toward the larger groups. They have scouts that are
7 constantly trying to monitor our activity and our presence so that they can evade us that
8 way. Of course, I mentioned reckless driving, those kinds of tactics, and increased
9 violence such as throwing rocks, those kinds of things, to distract us to other areas so that
10 they can evade other areas, as well as to blend in to congested areas.

11 Q Do you know, based on interviews or other intelligence, what the smuggling
12 organizations are charging each individual migrant to cross with the smugglers in the
13 El Paso Sector?

14 A The numbers vary widely, from -- anywhere from 5,000 to even \$50,000 per
15 migrant, depending on the amount of crossing attempts, how many -- how many
16 attempts, also their country of origin. Certainly, as we talked about, China, Turkiye, the
17 cost goes up a lot compared to Northern Triangle countries or Mexico.

18 Q Do they charge a premium for individuals seeking to evade apprehension
19 versus those who intend to turn themselves in to Border Patrol?

20 A Typically, yes.

21 Q Do transnational criminal organizations in Mexico control the smuggling
22 routes into the El Paso Sector?

23 A South of the border?

24 Q Yes, sir.

25 A Yes.

1 Q And if an individual who intends to cross illegally in between ports of entry in
2 the El Paso Sector wanted to do that without contracting the smugglers, would there be
3 consequences for doing that?

4 A Yeah, the transnational criminal organizations would apply a consequence to
5 an individual that tried to cross without going through them.

6 Q Do you have border barrier system in the El Paso Sector?

7 A Yes.

8 Q And does the presence of border barrier system in certain areas in the
9 El Paso Sector enhance your ability to achieve your border security mission?

10 A Yes.

11 Q Are there areas without border barrier system where you think it would be
12 beneficial to install in the El Paso Sector?

13 A Yes.

1

2 [9:57 a.m.]

3

BY MR. RUST:

4

Q Do you know the number of known got-aways in the El Paso Sector current
5 this fiscal year?

6

If you'd like, we can come back to that in the second hour after the break and I
7 can move on with other questions, if that would be preferable.

8

How does Border Patrol measure known got-aways in the El Paso Sector?

9

A Please repeat the question.

10

Q How does Border Patrol measure known got-aways in the El Paso Sector?

11

A It's a daily function where got-aways have been identified through either
12 technology or agents actually seeing it or our partners seeing it, reporting it, as well as
13 sign-cutting operations, tracking their footprints, those kinds of things.

14

And then, during that shift, the watch commander for each shift at each station
15 looks at that information and makes sure that -- because we maybe have seen it on a -- in
16 technology, and also an agent saw it, or also somebody reported it, or also we saw
17 footprints -- they do the best they can to make sure that it's accurate, whatever that
18 number is for each group, and it's entered into our system as it occurs each shift.

19

Q And those numbers would be reported to Border Patrol headquarters?

20

A Yes.

21

Q And do you believe that the estimates of known got-aways in the sector are
22 fairly accurate then?

23

A I do.

24

Q Given the migrant surges that have been experienced in recent years, does
25 that have an impact on Border Patrol's ability to reduce the number of known got-aways

1 in the El Paso Sector in terms of diverting resources or some other factor?

2 A As we're spread thin doing other functions and have less agents available to
3 make interdictions, that increases the likelihood of got-aways.

4 Q Are you concerned that individuals who are more likely to evade
5 apprehension, then turn themselves in to Border Patrol, may have a criminal history or
6 some other derogatory information that could lead to a public safety risk?

7 A Yes.

8 Q Has Border Patrol in the El Paso Sector, do they routinely encounter
9 individuals with prior criminal histories?

10 A Yes.

11 Q Do these criminal histories relate to crimes involving public safety concerns?

12 A Yes.

13 Q Do your agents in the El Paso Sector encounter individuals who have
14 derogatory information related to terrorism?

15 A Yes.

16 Q Do you know how many individuals have been encountered this fiscal year
17 with later found to have derogatory information related to terrorism in your sector?

18 Mr. Jonas. When you say "later," what do you mean by that?

19 Mr. Rust. After the initial apprehension, when their biometrics are run and
20 databases are queried, information is discovered that would be derogatory information
21 related to terrorism.

22 Mr. Good. Currently, for this FY, we have 39 positive alerts. That doesn't mean
23 that every single one of those was a terrorist. Some have associations with or
24 sometimes even similar names. But we've had 39 positive alerts.

25 Mr. Rust. What is the process that your agents go through when they discover

1 that someone has derogatory information related to terrorism in their record?

2 Mr. Good. They put a hold on them in our system immediately so that they're
3 not inadvertently released. They contact the JTTF and the FBI, the entity that put the
4 alert in, to see if they want to do an interview. And through FBI and NTC, National
5 Targeting Center for the Border Patrol, they check to see if it can be confirmed that it is
6 that person and that it is a positive alert.

7 Then they are put in for prosecution. If prosecution is declined, space is
8 provided by ERO, and they're turned over to ERO after interviews have been conducted.

9 Mr. Rust. Thank you.

10 I believe our time has expired for this hour, so we'll go off the record.

11 Mr. Yi. We'll go off the record at 10:04 a.m., and we'll take a short break.

12 [Recess.]

13 Mr. Yim. All right. We'll go back on the record.

14 The time is 10:15.

15 EXAMINATION

16 BY MR. YIM:

17 Q Chief Good, thank you for being here today.

18 I'd like to circle back and discuss your background with Border Patrol.

19 Now, you mentioned that you joined Border Patrol on February 11th, 2001.

20 Does that sound correct?

21 A Yes.

22 Q Have you served continuously with Border Patrol since that day?

23 A Yes.

24 Q When you began your career with Border Patrol in 2001, that was during the
25 George W. Bush administration. Is that correct?

1 A Yes.

2 Q And after the George W. Bush administration, you continued to serve with
3 Border Patrol during the Obama administration, correct?

4 A Yes.

5 Q And following the Obama administration, you continued to serve with
6 Border Patrol throughout the Trump administration. Is that correct?

7 A Yes.

8 Q And most recently, President Biden took office in January of 2021. You've
9 continued to serve with Border Patrol under the Biden administration as well, correct?

10 A Yes.

11 Q So in total, after reviewing those administrations, you have served with
12 Border Patrol under four different Presidential administrations, correct?

13 A Yes.

14 Q Would you agree that, under these administrations, you have witnessed
15 shifts in immigration and border policy from one administration to another?

16 A Yes.

17 Q So, for example, after the 9/11 attacks, when you first came on as a Border
18 Patrol agent, the Bush administration implemented the National Security Entry-Exit
19 Registration System. And, briefly, that system required individuals from certain
20 countries to undergo additional screenings when traveling to the United States.

21 Now, whether that was effective or not, you would agree that this registration
22 system was a shift in immigration policy. Is that right?

23 A From what you've read, it's a change in policy.

24 Q That was a decision made by the Bush administration regarding immigration
25 policy, correct?

1 A I'm not familiar with the policy.

2 Q Sure. The policy aside, that was a decision made by the Bush
3 administration to implement a new program in immigration law. Is that right?

4 A From what -- from what -- yes.

5 Q Now, the Obama administration implemented the Deferred Action for
6 Childhood Arrivals Program, otherwise known as DACA, temporarily shielding certain
7 immigrants from deportation, among other things.

8 Now, similar to the 9/11 registration system, you'd agree that DACA reflected a
9 change in immigration policy. Is that right?

10 A DACA was a change in policy, yes.

11 Q Great.

12 President Trump decided to build 450 miles of border wall. And, again, that was
13 a policy decision relating to the southern border. Is that right?

14 A Building infrastructure being a policy?

15 Q Sure. As opposed to other measures, such as immigration -- immigration
16 measures that can make it more stringent or more lenient, his decision to build more wall
17 was a policy decision on his administration's behalf. Is that correct?

18 A Sounds correct.

19 Q And I guess what I'm getting at, you'd agree with me that each
20 administration has different immigration and border policies, correct?

21 A Yes, I agree.

22 Q And it's fair to say that Border Patrol agents are used to dealing with these
23 changes in immigration and border security policies as a part of their duties as an agent.
24 Is that right?

25 A Yes.

1 Q Great.

2 Chief, can you remind me, when did you become chief patrol agent for the El Paso
3 Sector?

4 A March 12th of this year.

5 Q Given that date, you've only been chief patrol agent of the El Paso Sector for
6 nearly 4 months. Is that right?

7 A Yes.

8 Q And can you remind me, where were you prior to El Paso?

9 A Grand Forks Sector.

10 Q And that's on the northern border. Is that correct?

11 A Yes.

12 Q And how long were you at the Grand Forks Sector?

13 A A little over 2 years.

14 Q So you began in the Grand Forks Sector in 2021. Is that right?

15 A Yes.

16 Q Okay. And, to clarify, you were not at the southern border between 2021
17 and 2023 before you accepted this new position. Is that right?

18 A Correct.

19 Q All right.

20 Chief, how often do you speak to outgoing Border Patrol Chief Ortiz?

21 A Monthly.

22 Q Has Chief Ortiz visited the El Paso Sector during your tenure as chief patrol
23 agent of the El Paso Sector?

24 A Yes.

25 Q When was that?

1 A My first week that I was there, so the March 12th timeframe, as well as the
2 week -- either the week of or the week before Title 42 ending. So early May.

3 Q So he's visited twice while you've been chief there?

4 A Yes.

5 Q Relating to his visit in March, what did you discuss with Chief Ortiz during his
6 visit there?

7 A Most of the conversation revolved around the got-away traffic in the
8 Santa Teresa AOR.

9 Q Okay. Did you discuss resources needed in the El Paso Sector at that time?

10 A My first week there, no.

11 Q When it came to got-aways, did you discuss means to limit the number of
12 got-aways in the El Paso Sector?

13 A Yes.

14 Q And how long did Chief Ortiz stay during this visit?

15 A Both visits were several days.

16 Q Okay. Now, regarding the second visit, in May, you mentioned that was
17 before the expiration of Title 42. Is that correct?

18 A Yes.

19 Q And what was discussed during that visit?

20 A That revolved more about resources that we needed.

21 Q Resources needed for after Title 42 expired?

22 A Just -- yes, and to include just general what we needed.

23 Q Okay. Did you discuss plans in place to address migrant encounters
24 following the expiration of Title 42?

25 A Yes.

1 Q When you were chief of the Grand Forks Sector, approximately how many
2 visits did you get from Chief Ortiz during your time there?

3 A Physically at Grand Forks? I don't remember a visit.

4 Q Okay. And just to clarify, in your 4 months as chief patrol agent of the
5 El Paso Sector, Chief Ortiz visited you twice?

6 A Yes.

7 Q Okay. Now, have you had the opportunity to speak with Chief Owens since
8 the announcement of his appointment to Chief of Border Patrol?

9 A Yes.

10 Q What did you have -- what did you discuss?

11 A He is in El Paso right now for an agent graduation, BORSTAR graduation
12 that's tomorrow, so we discussed that, as well as an event that's going on tonight for
13 agents and their families to be recognized for their hard work. So he's going to attend
14 that as well.

15 Q Okay. Now, he has not formally come on board as chief of Border Patrol,
16 but during that prior discussion, did you talk about anything going on in El Paso relating to
17 your operations?

18 A Yes. In his role as the deputy LFC, he was the Region 6 deputy for Region 6,
19 which includes El Paso.

20 Q Can you define LFC for me?

21 Mr. Jonas. We'll come back to you.

22 Mr. Yim. That sounds good.

23 BY MR. YIM:

24 Q So, earlier, my Republican colleagues asked you about your duties and
25 responsibilities as a chief patrol agent in regards to your role in El Paso. And I'll note

1 that policy drafting or development was not among the duties that you listed. You'd
2 agree with me that policy drafting or development is not part of your role as chief patrol
3 agent of El Paso?

4 A Not typically. Policies can be further refined at the sector level, but
5 certainly most policy is created at the national level.

6 Q Sure. And you have no role in creating those policies at the national level,
7 as you put it?

8 A We're asked for input at times.

9 Q Sure.

10 A But not the creation of.

11 Q Okay. Chief, I want to circle back again to a few questions my colleagues
12 asked about preparing for this interview.

13 You mentioned that you have not participated in a congressional transcribed
14 interview before, correct?

15 A Correct.

16 Q And in your 22 years of service at Border Patrol -- strike that.

17 Would you agree that transcribed interviews are not a typical part of your duties
18 as a chief patrol agent?

19 A Correct.

20 Q You mentioned to my colleagues that you have spoken to other chiefs about
21 their interviews with these committees this year, correct?

22 A Just the fact that they did it and how long it took.

23 Q So during your career as a Border Patrol agent, before the interviews that
24 took place this year, are you aware of any chiefs ever participating in another transcribed
25 interview?

1 A I don't know.

2 Q You don't know, or you don't recall?

3 A I don't know of any other chiefs that had to do transcribed interviews prior
4 to this past year.

5 Q That's helpful. Thank you.

6 And remind me, how long do you estimate you spent preparing for this
7 transcribed interview today?

8 A Several hours, over a day.

9 Q Over a day? Would you say more than 5 hours?

10 A Yes.

11 Q Would you say more than 8 hours?

12 A Yes.

13 Q Would you say more than 10 hours?

14 A No.

15 Q Had you not been spending approximately 9 hours preparing for this
16 interview today, how would you have been spending your time as chief patrol agent in
17 El Paso?

18 A I would be at the event this evening recognizing our agents and their families
19 for the hard work that they do, I'd be communicating with the field, and I would be
20 overseeing things in El Paso.

21 Q So it's fair to say you'd be monitoring operations in the El Paso Sector?

22 A Yes.

23 Mr. Yim. Great. I'll turn it over to my colleague.

24 Ms. Northrop. Okay. Great.

25 Hi, Chief.

1 BY MS. NORTHROP:

2 Q I wanted to follow up on a couple things that you discussed with my
3 colleagues earlier regarding Border Patrol's encounters with migrants.

4 And, specifically, I want to take a step back and ask you to think back to before
5 March 2020, when the COVID-19 pandemic began, and ask how often you witnessed
6 seasonal shifts in migration patterns on the southwest border. Was that a
7 commonplace thing? And how frequently did you see it?

8 A Seasonal migration trends have always, throughout my career, have
9 occurred.

10 Q So you would agree then that periodic surges of migrants at the border are
11 not unprecedented?

12 A Yes.

13 Q Can you briefly explain to us the protocol for agents in El Paso Sector once
14 they encounter an undocumented person, a migrant?

15 A They would get transportation through a contracted transport. They would
16 take the migrant to our processing facility. Right now, it's the hard- and soft-sided
17 facility.

18 There the intake would take place where they would get general information.
19 And then, after that, they would be provided food, showers, those kinds of things,
20 well-being. They'd be checked by medical staff either before or during the intake
21 process.

22 And then they would go into normal processing functions, so just data entry and
23 biographical or biometric searches, as well as interviews from the agents or Border Patrol
24 processing coordinators there at the processing facility.

25 Once processed, depending on whether or not the -- what pathway that they

1 came, would happen after that, whether it's go to ERO, go to an NTAOR, be expedited
2 and removed via air transport, or sent to Mexico via bus.

3 Q And any derogatory information that would be gleaned from those
4 processes would be resolved prior to their release, correct?

5 A Yes.

6 Q Okay. Have you or -- sorry, strike that.

7 Have you ever been instructed by CBP or any other Federal agency or component
8 not to interdict or arrest someone?

9 A No.

10 Q Okay. So then, looking at post-Title 42, after Title 42 lifted on May 11th,
11 you returned to using Title 8 authorities to process migrants. Is that right?

12 A Yes.

13 Q Okay. And Title 8 authorities impose criminal consequences on people who
14 enter the U.S. without inspection. Is that right?

15 A Yes.

16 Q Can you explain what some of those criminal consequences are and what
17 they might look like?

18 A So the expedited removal would mean they're flown to their country of
19 origin or to Mexico. And there's also prosecutions for 8 U.S.C. 1325, entry without
20 inspection; and 1326, reentry; and, if they're smugglers, then 8 U.S.C. 1324 for smuggling.

21 Q Okay. And then, under those authorities, Border Patrol agents can detain
22 migrants who attempt to enter illegally, correct, just to be clear on that?

23 A Agents can detain anyone illegally entering the United States in between the
24 ports of entry.

25 Q Okay. And then, when the migrants are detained, like we said, they're

1 screened for criminal history, checked whether they're on a watch list.

2 Can you speak a little bit more if there is a flag -- let's say a warrant -- how that
3 process runs?

4 A If there is a warrant for their arrest --

5 Q Yes.

6 A -- we will contact the agency that has the warrant for them to see if it's
7 extraditable. If it's extraditable, we will process them for our charges, but then turn
8 them over to -- and put an immigration hold on them -- and then turn them over to the
9 agency that put the warrant out.

10 If it's not extraditable, the warrant, it's something that the agency that put in the
11 warrant isn't willing to receive the migrant with the warrant, then we will continue to
12 process under normal pathways.

13 Q And they remain in your custody while that process plays out, correct?

14 A Yes.

15 Q Okay.

16 Ms. Northrop. Thank you.

17 I'm just going to keep following up on that.

18 So there were a number of concerns before lifting of Title 42 that it would result in
19 a massive surge of migrants attempting to cross the border. But in the days following
20 the winding down, that actually was not the case.

21 So on May 14th Secretary Mayorkas said -- I'm quoting -- "Over the past 2 days,
22 United States Border Patrol has experienced a 50 percent drop in the number of
23 encounters versus what we were experiencing earlier in the week before Title 42 ended
24 at midnight on Thursday."

25 Are you familiar with that statement?

1 Mr. Good. I'm not familiar with the statement.

2 Ms. Northrop. But would you say that that's more or less in line with what you
3 saw in El Paso?

4 Ms. Good. We went from 2,000 -- 1,000 to 2,000 apprehensions a day during
5 Title 42 to anywhere from 300 to 500 per day after Title 42, post-Title 42.

1

2

[Good Minority Exhibit A

3

Was marked for identification.]

4

BY MS. JACKSON:

5

Q So I want to hand you this article. This is going to be minority exhibit A.

6

It's an article from Reuters entitled "Mexican border crossings are down 50 percent since

7

title 42 expiration." I'm going to pause to pass.

8

And that's just -- I'm going to direct you to the highlighted part on the back. And

9

that's the part of the article that says: "Mayorkas said that U.S. Border Patrol agents

10

had seen about 6,300 encounters with border-crossers on Friday" -- this would have been

11

right before the lifting of Title 42 -- "and another 4,200 on Saturday, compared with more

12

than 10,000 shortly before the expiration."

13

So I just want to ask, based on your 20 years of experience with Border Patrol,

14

would you agree that going from 10,000 migrant encounters a day to 6,000, and then

15

4,000, just in the span of less than a week, is that a pretty remarkable decrease?

16

A It is a large decrease.

17

Q And then just recently, on June 20th, CBP released its May 2023 operational

18

update, which indicates that more than half of Border Patrol encounters in May occurred

19

before the lifting of Title 42.

20

And just to confirm, that matches your experience in El Paso as well?

21

A For the month of May?

22

Q Uh-huh.

23

A Yes.

24

Q Thank you.

25

So my colleague talked a little bit about Title 8 versus Title 42. Obviously, Title 8

1 was used for decades prior to Title 42.

2 And under Title 8, just to confirm, an individual being removed would face a
3 number of severe consequences, including potentially being barred from entry into the
4 United States for a period of years, and also potentially face a criminal prosecution if they
5 did violate that order not to enter.

6 Is that correct?

7 A Yes.

8 Q And would you agree that with the implementation of those more severe
9 consequences under Title 8 we have seen a drop of the number of individuals
10 encountered?

11 A That is one reason, yes.

12 Q I just want to turn briefly to talking about human smuggling, which we talked
13 a lot about in the last hour.

14 To clarify, most human smugglers operating in the El Paso Sector, they are
15 affiliated with or working directly with cartels. Is that correct?

16 A Say that again, please?

17 Q Yeah. No worries.

18 Most of the human smugglers that are operational, bringing migrants in through
19 your sector between those ports of entry, are they working with cartels, affiliated with
20 cartels directly, the smugglers themselves?

21 A Yes.

22 Q And I believe you said that most migrants cross between those ports of entry
23 with the assistance of cartels because, if they don't, they are subject to intimidation or
24 violence from the cartels.

25 A Yes.

1 Q But it's also correct to say that cartels don't actually control any territory on
2 the U.S. side of the border, correct?

3 A They have -- cartels have regions that they operate within the United States,
4 but they do not have control over those areas.

5 Q So they don't control territory on the U.S. side of the border the way they do
6 on the southern side.

7 A Correct.

8 Q So we talked a lot about social media and misinformation. So, to clarify,
9 cartels are deliberately misinforming migrants about what crossing the U.S. border entails
10 in order to entice them to cross?

11 A Cartels, smugglers, all a part of the transnational criminal organizations, yes.

12 Q How do cartels and smugglers spread this misinformation on social media?

13 A Just constant messaging, whether it's -- WhatsApp's very popular. I'm not
14 sure all the social media platforms. But contact information for the smuggler, the cost,
15 the ease of -- the lies about how easy it is, and the locations to meet and those kinds of
16 things.

17 Q So they misinform -- so smugglers and cartels misinform migrants about the
18 difficult nature of crossing the border as well?

19 A Absolutely.

20 Q Uh-huh. Can you give an example, just to your knowledge, of the kinds of
21 things they say about the journey itself?

22 A They'll say that it's an easy process, that risk is minimal or that there is no
23 risk. They don't mention that they will leave you if you can't keep up in the desert.
24 They won't mention that you'll be sexually exploited, that you'll have additional debt
25 bondage, that you could be hurt not only just crossing the immediate border, but be

1 taken advantage of the entire journey to the United States.

2 Q And do smugglers also provide migrants with false information about job
3 opportunities in the U.S.?

4 A They say -- they do say that they will easily get a job.

5 Q And what about -- is there misinformation spreading about the assistance of
6 NGOs, nongovernmental organizations, or charities? For example, is there information
7 that these organizations would help migrants once they enter the United States?

8 A I'm not aware.

9 Q So does Border Patrol work to combat this misinformation on social media at
10 all?

11 A Yes.

12 Q How so?

13 A Our public affairs, STRATCOM, puts out messaging not only with the media,
14 but also with social media platforms, to warn and to explain the process of and the
15 consequences of illegally crossing in between, but also the risks involved in doing so.

16 Q Okay. And do you think those -- that kind of work to combat the
17 misinformation, is that helpful? Does it prevent people from crossing?

18 A I think the effort helps somewhat, but people in general want to hear what
19 they want to hear, right? So if a smuggler is giving them false information and it sounds
20 more about what they want to hear, I think that it's tough to message enough to be able
21 to get the real word out there.

22 Q And are you aware of any initiatives from CBP or DHS broadly to combat
23 smuggler disinformation?

24 A I've seen videos go out from above the headquarters level, but I don't know
25 if it resided with the CBP or DHS level. But there have been efforts.

1 Q And do you think those initiatives are effective, to your knowledge?

2 A I'm sure that they reduce numbers somewhat, but obviously not completely.

3 Ms. Jackson. I don't have any other questions. I'll turn to my colleagues.

4 Mr. Yim. Chief, if you could just bear with me for one second, please.

5 BY MR. YIM:

6 Q Chief, I have a couple of follow-up questions here.

7 First, I'd like to begin with the questioning related to Chinese nationals and

8 Turkish nationals.

9 Can you remind me of the number of Chinese nationals you've encountered year
10 to date in the El Paso Sector?

11 A My numbers are, for the end of last month, 147.

12 Q And as a -- strike that.

13 As a percentage of the overall encounters of migrants that you see in the El Paso
14 Sector on a monthly basis, how large of that percentage is Chinese nationals?

15 A That's a nominal number compared to the rest.

16 Q And can you remind me of the number of Turkish nationals that you've
17 encountered year to date?

18 A 6,106 for this FY.

19 Q That number is larger than Chinese nationals, correct?

20 A Yes.

21 Q But would you agree that's still nominal compared to the migrants that you
22 encounter from South and Latin America?

23 A It's a much smaller number.

24 Q Would you agree it's a nominal number?

25 A Yes.

1 Q Earlier you spoke about how migrants are coming to the border because
2 they may be released into the country. That, you would agree, is a pull factor. Is that
3 right?

4 A Yes.

5 Q But that's merely one factor. You spoke about the political conditions in
6 Venezuela, for example.

7 A Yes.

8 Q Those would be called push factors. Is that right?

9 A Yes.

10 Q Are there other push factors that you're aware of?

11 A Economics, violence seem to be the main ones that I've seen.

12 Q Would you agree with me that there are numerous factors that go into the
13 reasons why migrants are coming to the southern border, both push and pull factors?

14 A Yes.

15 Q There is not singularly one factor that drives these migrants?

16 A Correct.

17 BY MS. JACKSON:

18 Q I have a quick follow-up question about human smuggling.

19 You discussed that you've seen a large number of Venezuelan nationals
20 surrendering. And CBP announced earlier this year that a large group surrendered
21 because of false information on social media indicating that, if they surrendered, they
22 could remain in the U.S.

23 Are you familiar with that particular incident, or just that trend in general?

24 A The trend, yes.

25 Q Okay. Do you know if the Venezuelan migrants, how they're coming across

1 that misinformation? Is it the same thing as you've been discussing with the cartels, or
2 is there, like, a specific source?

3 A WhatsApp has seemed to be the largest being used based on our interviews
4 that we've conducted.

5 Q Uh-huh.

6 Ms. Jackson. Thank you. I have no further questions.

1

2

BY MR. EWENCZYK:

3

4

5

Q And, Chief Good, the WhatsApp information you were referring to, that's misinformation that is being shared on WhatsApp, is that correct, that you were referring to?

6

7

8

A Yes. Most of the stuff that they've been told is the jobs that are available, how easy it is to cross, even the initial cost. There's a lot of misinformation that's being put out.

9

10

11

12

Q And in fact, Chief, you've warned potential migrants, isn't it correct, that they should not listen to the lies of smugglers who often take advantage of vulnerable migrants by providing false information in order to profit from charging migrants to cross the border illegally?

13

14

15

A Yes.

Q And is it fair to say that your message to potential migrants is that U.S. Border Patrol will continue to fully enforce immigration laws at the border?

16

17

18

A Say that question again?

Q Isn't it fair that your message to potential migrants is to remind them that U.S. Border Patrol will continue to fully enforce immigration laws at the border?

19

20

21

A Yes.

Q And that includes making sure that there are consequences for those who attempt to cross illegally into the United States. Is that correct?

22

23

24

A Yes.

Mr. Yim. We'll go off the record.

[Recess.]

25

Mr. Yi. We'll go back on the record at 10:58 a.m.

1 BY MR. YI:

2 Q Chief Good, earlier one of our colleagues asked you about encounter stats
3 and numbers. And, as you know, that these numbers are publicly available and they're
4 published by each sector as well and you can delineate the data in many different ways.

5 Are you familiar with the fact that the agency adjusts these numbers after
6 publication?

7 A I'm not aware.

8 Q So, in your 20-some years, have you ever checked out any of these numbers
9 publicly available? For instance, the one on exhibit 1 that was shown to you earlier, that
10 web page, have you ever seen that web page before?

11 A I have.

12 Q And you have never noticed numbers that have changed?

13 A I haven't cross-referenced numbers, no.

14 Q As a sector chief, I assume -- please correct me if I'm wrong -- that the sector
15 reports the numbers to headquarters?

16 A So for apprehensions, that's directly from E3, which is our system of record
17 for -- as we input people into the system when we encounter them. For got-aways and
18 turn-backs, we send those numbers up through a system, Tracking and Sign-cutting
19 Module, TSM, to headquarters.

20 Q So the encounter numbers go through a system called E3? Is that right?

21 A That's our processing system, yes.

22 Q And this processing system, can you explain a little bit more about how this
23 works?

24 A So when a migrant is brought to our processing facility -- or even if they're
25 processed at the station -- they're brought in. They provide a fingerprint -- or all their

1 fingerprints -- and their photo for biometric information.

2 And then that goes into a system along with the information that's
3 input -- biographical information, interview stuff all goes into that system. And then
4 that's how files are created for them.

5 Q And those numbers get logged, and then they get sent up to somebody
6 in -- is it Public Affairs that publishes these numbers or maintains this site?

7 A Most systems draw from E3. So multiple different people can draw from
8 that system to get whatever information they've queried.

9 Q And because it comes through the E3, the way you understand it, you're not
10 aware of any adjustments that occur to numbers that are published?

11 A Information could change as far as a pathway if they're entered in for one
12 pathway but then it's determined that they are not amenable to that pathway or the
13 pathway is being changed.

14 For example, if they went in for an expedited removal but then it was found that
15 they had credible fear and that they were going to be released on NTAOR, then that file
16 would be changed, and so the information in E3 would change at that point.

17 Q But an encounter would still be an encounter, wouldn't it?

18 A Correct.

19 Q So is there any reason why an encounter number should change
20 post-publication?

21 A I'm not aware of a reason to do that.

22 Q And you've never been a part of any process or seen any guidance about
23 how numbers can be adjusted or why they should be adjusted for encounters?

24 A I'm not aware, no.

25 Mr. Yi. I'll pass to my colleague.

1 Mr. Rust. Do you have the number of known got-aways in the El Paso Sector for
2 fiscal year 2023?

3 Mr. Good. I do. FY 2023 so far --

4 Mr. Jonas. It's funny you mention that.

5 Mr. Good. -- 166,344.

6 BY MR. RUST:

7 Q And that number is specific to El Paso, correct?

8 A Yes.

9 Q In your experience in El Paso, do the smuggling organizations ever put
10 migrants in peril intentionally as a diversion tactic?

11 A Yes.

12 Q And then Border Patrol agents are then responsible for rescuing those
13 migrants, correct?

14 A Yes.

15 Q Do you know whether the number of rescues performed by Border Patrol
16 agents in El Paso, do you know what those trends are? Have they been increasing or
17 decreasing over the years?

18 A They've been increasing over the years for rescues.

19 Q What types of rescues do Border Patrol agents perform in El Paso?

20 A There's not a lot of water in El Paso; however, there are seasons when we
21 have large currents in waterways. And so smugglers will tell them to swim across, the
22 migrant to swim across, but the actual design of the canal is to suck debris through, and
23 so there's this large current that kind of sucks people in. And so there's water rescues
24 there where people are drowning from that.

25 Smugglers will have people climb up a ladder on the south side, and then they'll

1 pull the ladder away, and sometimes you're talking about 30-foot fence, sometimes
2 18-foot fence, and then they'll make them scale down on their own because they're stuck
3 up on top of the fence.

4 And then they'll -- smugglers will take groups of migrants through the desert, and
5 temperatures are extremely hot in the area, in the desert. And if the migrant can't keep
6 up with the smuggler, then the smuggler just leaves them behind. And so there's
7 rescues there. There's also deaths there if we can't get there soon enough to make a
8 rescue.

9 There is also -- we talked about load vehicles. Some of those are people that are
10 put into trunks of vehicles, that are put into the back of box trucks, hidden
11 compartments, those kinds of things. And when you compile that with the extreme
12 heat or vehicle accidents, many times we've rescued people from those situations.

13 Q And you mentioned that deaths have also resulted as a result of these
14 smuggling tactics.

15 A Yes.

16 Q Do you believe it is important to deter individuals from crossing illegally in
17 between ports of entry in your sector given these dangers?

18 A Yes.

19 Q Do you know about the current time in custody for an individual who is
20 encountered by Border Patrol agents in the El Paso Sector?

21 A It varies. If it's a part of the ER/CFI process, it could be anywhere from 8 to
22 14 days in custody, whereas --

23 Q All in Border Patrol custody or in --

24 A All in Border Patrol custody. And it could be as low as 1 day for a voluntary
25 return of a Mexican national.

1 Q For individuals who are released with NTA on their own recognizance, do
2 you know about how long they would spend in custody?

3 A It depends. It could be a few days. However, if it's as a result of a positive
4 fear finding in the ER/CFI process, it could be further, it could be a much longer detention,
5 that 8 to 14 days that I mentioned.

6 Q And when someone is released with an NTA on their recognizance, how is
7 that release conducted? Where does the release take place?

8 A Typically, family units are released to NGOs, where single adults have
9 typically, recently, since I've been there in El Paso, have been released to the county.
10 And the county, El Paso County, has a system of assisting migrants who can find their
11 sponsor as well as -- with the amount of money that they have for them to be able to pay
12 their own way to their location.

13 Q When you say the county assists them, does the county provide
14 transportation, to your knowledge?

15 A They only coordinate transportation from El Paso out, to my knowledge.

16 Q Okay. Would you agree that there's an inherent risk factor in being a law
17 enforcement professional, including being a Border Patrol agent?

18 A It is absolutely inherently dangerous for the men and women of the Border
19 Patrol and multiple other law enforcement organizations that work in both extreme
20 environments and with the threat of the transnational criminal organizations with
21 malintent to the United States.

22 Q Does the risk profile for Border Patrol agents increase with increasing flow of
23 illegal immigration in between the ports of entry?

24 A Yes.

25 Q And how so?

1 A There's limited manpower dealing with large groups. We've got less agents
2 in the field because agents are processing in the processing centers. And then, with the
3 less agents in the field, they're dealing with more people. And people with bad
4 intentions can be mixed into those large groups. That can be overwhelming to any law
5 enforcement official that could be in one of those crowds.

6 Q Do you keep statistics, or does Border Patrol keep statistics, on assaults
7 against agents in your sector?

8 A Yes.

9 Q Do you know if assaults on agents in the El Paso Sector have been increasing
10 or decreasing with the increasing immigration trends we've seen over the last few years?

11 A I don't have the statistics for over multiple years, but the information is
12 there.

13 Q Do you know how common it is for an agent to be assaulted in the course of
14 their duties currently in the El Paso Sector?

15 A So in Texas, so far this FY, we've had three assaults referred for prosecution,
16 and in New Mexico ten.

17 Q Does the U.S. Attorney's Office for your district normally accept those cases
18 for prosecution?

19 A It is 66 percent accepted in Texas for this FY so far and 50 percent accepted
20 in New Mexico, two different districts, Western District for Texas, and then the New
21 Mexico District.

22 Q Are you aware of what reasons are given for declining a case of an assault
23 against a Border Patrol agent?

24 A In New Mexico, it's less likely for a prosecution to be accepted due to a
25 higher standard of what happened. So if the agent is not physically injured, it's less

1 likely to be accepted than it would be in Texas.

2 Q And this is based on the internal policies of the U.S. Attorney's Office for that
3 district?

4 A Correct.

5 Q What types of criminal cases do Border Patrol agents refer to the U.S.
6 Attorney's Office apart from assaults on Border Patrol agents?

7 A So reinstatements of crimes. Also, 8 U.S.C. 1324 and 8 U.S.C. 1326.

8 Q Do you know what factors make it more likely that one of those cases will be
9 accepted for prosecution?

10 A It's more likely in Texas that it will be accepted for prosecution in the
11 Western District of Texas.

12 In New Mexico, if we're trying to prosecute someone that has had a previous
13 crime, it can't be immigration related in New Mexico. And, if it's for many crimes, if it's
14 over 10 years that it happened, then New Mexico District will not prosecute.

15 Q Do you ever engage in any meetings with the U.S. Attorney's Offices for the
16 Western District of Texas or New Mexico with respect to accepting Border Patrol
17 referrals?

18 A My staff has met with them regularly. I have only met -- I still have more to
19 do with that in New Mexico. I'm planning some additional meetings for that.

20 Q Do you operate interior checkpoints in the El Paso Sector?

21 A Yes.

22 Q Do you know approximately how many interior checkpoints you have
23 operational in the El Paso Sector?

24 A Six checkpoints that are permanent checkpoints. We also have tactical
25 checkpoints that we'll put up from time to time.

1 Q Those tactical checkpoints are in response to intelligence being received or
2 migration trends or other factors?

3 A If we see an increase of smuggling loads, reckless driving, those kinds of
4 things, we'll put up additional checkpoints to try to make the community more safe.

5 Q Has the increase in illegal migration over the last few years impacted the
6 ability to keep those checkpoints operational?

7 A It makes it more challenging, yes.

8 Q What happens when a checkpoint shuts down and is not operational?
9 What is the --

10 A We keep our checkpoints open as much as possible. There are times when
11 weather -- extreme weather or lack of manpower for a particular shift could shut down a
12 checkpoint.

13 In those cases, we'll have agents that are patrolling the highway in that area to be
14 on the lookout for potential load vehicles or other crimes on the roadway for immigration
15 purposes.

1

2 [11:15 a.m.]

3 BY MR. RUST:

4 Q At these checkpoints, do you routinely encounter individuals who were not
5 apprehended in the field earlier?

6 A Yes.

7 Q Have any of those individuals had criminal histories?

8 A Yes.

9 Q Do you encounter narcotics in these interior checkpoints?

10 A Yes.

11 Q Do you know what types of narcotics you're currently encountering?

12 A All types. But in El Paso Sector specifically, the number of drug seizures are
13 low compared to the rest of the southwest border.

14 Q Are drug seizures low as a function of, you believe, less drugs are coming, or
15 is it a function of manpower, or what is the explanation for that trend in the El Paso
16 Sector?

17 A It could be both. You saw the number of got-aways that we have. There
18 could be drugs associated with those got-aways. We don't know. But also the -- just
19 the fact that less are coming through those areas.

20 Q We talked a little bit before about temporary details. Is it common for
21 Border Patrol agents in El Paso to be detailed to other sectors or is it more common for
22 other Border Patrol sectors to send detailees to the El Paso Sector?

23 A It's more common for detailees from other sectors to come to El Paso.

24 Q Is that a function of the high volume and workload in El Paso or some other
25 reason?

1 A The high volume and workload.

2 Q What do you do to ensure that detailees with law enforcement backgrounds
3 are given responsibilities commensurate with their professional experience?

4 A Typically, the detailers are put where the need is, which is usually processing
5 and transportation.

6 Q So it's possible that a law enforcement agent would be engaged in
7 processing and transportation because that's where the need, the staffing need would
8 be?

9 A Yes.

10 Q Do you know how many detailees you currently have? I believe you
11 mentioned about 20?

12 A Less than 20.

13 Q Are those all from U.S. Border Patrol or are those from other law
14 enforcement agencies?

15 A It's a mix.

16 Q Do you have any concern -- or do you also utilize overtime to ensure that
17 you can staff the shifts?

18 A Overtime is available.

19 Q Do you know if the use of overtime increased with migrant surges over the
20 last few years?

21 A Yes.

22 Q It has increased?

23 A Typically, more overtime is available during times when there's more
24 migrant activity.

25 Mr. Rust. I'll pass to my colleague.

1 BY MR. McDONAGH:

2 Q You currently live in El Paso?

3 A I do.

4 Q So now you've become part of that community?

5 A Yes.

6 Q What are the biggest concerns that members of your community have
7 regarding the increased flow in illegal immigration?

8 A Congestion downtown with migrants in those areas. We've seen an
9 increase during the times that there were large numbers of migrants downtown in El
10 Paso, that there was additional trash, that there was additional prostitution that was
11 going on, that there was just an increased heightened concern for safety in the
12 downtown area. But as well as even in schools and in people's yards and those kinds of
13 things where migrants would be coming through, it creates an unsafe situation for the
14 community and their families.

15 Q Any property damage?

16 A There has been with vehicle accidents, as well as vandalizing. Those types
17 of crimes.

18 Q And you mentioned schools. What effect does the increased flow have on
19 schools?

20 A In the smaller border communities along the immediate border, migrants
21 will be running through and try to blend in with people in those campuses, as well as just
22 the overall congestion of migrant activity in those areas.

23 Q We've discussed cartel activity, both south of the border and in the interior
24 of the United States. Do cartels or cartel-affiliated individuals commit crimes in the
25 United States?

1 A Yes.

2 Q What kind of crimes?

3 A Stash houses, those load vehicles with the reckless driving. But going back
4 to stash houses, deplorable conditions for the migrants themselves, but also increases in
5 disease and those kinds of things that are brought into the country fester there in those
6 locations. Lack of water, lack of electricity. And we're talking about hot places where
7 you need air conditioning to survive, especially when you put large numbers of people
8 into small trailer houses or houses, those kinds of things. So an increased safety risk as
9 well.

10 Q Last hour we discussed shifts in policy from administration to administration.
11 Actually, my colleagues discussed that.

12 Do some shifts in policy lead to an increase in flow of migrants at the southwest
13 border?

14 A Yes.

15 Q I think we've discussed this already, but I want to hit it again. Does the
16 likelihood of release into the interior of the United States increase the likelihood that
17 individuals will attempt to illegally enter the United States?

18 A It increases the likelihood.

19 Q I want to talk a little more about demographics. Correct me if I'm wrong,
20 you started your career in Calexico in 2001?

21 A Yes.

22 Q What were the demographics then?

23 A Typically, Mexican migrants. Every once in a while you would have OTM,
24 other than Mexico demographics, but it was mostly Mexican.

25 Q Economic migrants?

1 A Economic migrants from Mexico.

2 Q Were those individuals released into the interior of the United States?

3 A No.

4 Q What was their disposition?

5 A Typically, a voluntary return until -- but then once they returned after
6 receiving a voluntary return, especially the more times that it would occur, would
7 increase the likelihood that they would be prosecuted for reentry.

8 Q They weren't giving up as we've seen in the recent years?

9 A Correct.

10 Q Why weren't they giving up?

11 A They typically wanted to reenter after receiving a voluntary return, because
12 that was common at the time, and they didn't claim credible fear.

13 Q It was because they were unlikely to be released into the interior of the
14 country?

15 A That was one factor, yes.

16 Q Were the large number of releases that occurred in recent years, prior to the
17 expiration of Title 42, a more recent phenomenon? Have you ever seen that before?

18 A In the past few years, I haven't seen what we've been doing with that in the
19 past few years prior when I was on the southwest border. So we're talking over 5 years
20 ago.

21 Q You were in Laredo in 2018, '19?

22 A Yes.

23 Q My colleagues cited shifts in policy. Is it possible that some policies that
24 administrations develop and implement, policies or programs, are illegal under
25 congressional statute?

1 A I can't speak to the legality of them. If I was asked to do something illegal, I
2 would certainly bring that up to my chain of command and make sure that that was
3 addressed. But I can't speak to the overall legality of a particular policy. I just don't
4 know.

5 Q Are you aware that a Federal court ruled DACA unlawful?

6 Mr. Jonas. Do you want to cherry-pick what different Federal courts have ruled
7 is lawful versus unlawful? Because we'll be here for a while. It's a kind of an unfair
8 question.

9 Mr. McDonagh. We'll move on.

10 Mr. Yi. I think he can answer the question for himself, Steve, unless you want to
11 be interviewed too.

12 Mr. McDonagh. I'm fine --

13 Mr. Yi. If he doesn't want to answer the question --

14 Mr. Jonas. It's an unfair question.

15 Mr. Yi. Your objection is noted, but --

16 Mr. Jonas. It's really inappropriate. It's an inappropriate question.

17 Mr. Yi. If the chief wants to answer the question, he's welcome to answer the
18 question. If you're telling him to deny answering the question, then tell him to deny
19 answering the question.

20 Mr. Jonas. What's the question, again?

21 Mr. McDonagh. I'm fine with moving on, Steve.

22 Mr. Jonas. Okay.

23 BY MR. McDONAGH:

24 Q Are you aware of the Migrant Protection Protocols?

25 A MPP, yes.

1 Q Were you ever stationed at the southwest border while MPP was being
2 implemented?

3 A I was stationed at the southwest border, but it wasn't occurring in the sector
4 that I was in at the time.

5 Q But you're aware of the program?

6 A I am.

7 Q Under that program, a migrant encountered between ports of entry who
8 claimed a fear of returning to their country would be returned to Mexico during the
9 pendency of their removal proceedings, correct?

10 A Yes.

11 Q They were not released into the interior of the country?

12 A Under MPP, that is correct.

13 Q During the time that MPP was being implemented, encounters were less
14 than they are today, correct?

15 A There's been two versions of MPP. I'm not sure what the migration trends
16 were for both as far as the numbers of flow.

17 Q So MPP was being implemented in 2019, correct?

18 A I'm not sure of the dates.

19 Q Individuals processed under Title 42 were not rewarded with release into the
20 interior of the country similar to MPP, correct?

21 A Under Title 42, they were returned to Mexico.

22 Mr. McDonagh. That's all I have. Thank you.

23 Ms. O'Connor. I have some questions.

24 BY MS. O'CONNOR:

25 Q I touched briefly on the new processing center in El Paso. Does that have a

1 name?

2 A It's the El Paso hard- and soft-sided facility.

3 Q Is that the only processing center in El Paso?

4 A We also have the soft-sided facility in the CPC. Currently, we're mainly
5 using the hard- and soft-sided facility.

6 Q Do you know how much that cost to build?

7 A No.

8 Q Do you know how much the daily operating cost for that is?

9 A I do not.

10 Q Are there agents that are assigned for an entire shift to be in the processing
11 center?

12 A Yes.

13 Q How many daily Border Patrol agents are assigned to the processing center?

14 A It's about 12 percent of our Border Patrol agent workforce currently.

15 Q Are they assigned per shift or is somebody just assigned to the processing
16 center?

17 A There are times when we detail on a daily basis. Currently, we have a
18 detail that's a longer term detail at the soft-sided facility, hard- and soft-sided facility.

19 Q Okay. So generally speaking, at any point in time, it's about 12 percent of
20 the workforce that's --

21 A Since I've been there, yes.

22 Q Okay. And so that's 12 percent of about 2,000?

23 A Yes.

24 Q And you mentioned that other --

25 A Twelve percent of the Border Patrol agents. So that's about -- because

1 when I say 2,029, or whatever that number was, 2,000-plus agents, right, that includes
2 managers and other positions that aren't a Border Patrol agent, field --

3 Q Line agent?

4 A -- line agent. And so that number is a little over 1,600. So 12 percent of
5 that number.

6 Q Of 1,600.

7 And then you mentioned that other details from other agencies typically help with
8 processing and transportation. So they're working within those processing centers too?

9 A Yes.

10 Q My colleagues asked you about the general flow of after encounters, the
11 processing of an alien after an encounter. I just want to ask a little bit more specifically
12 about that.

13 So when Border Patrol agents encounter somebody in the field, they stop them,
14 they detain them. Is it always a contractor that comes and picks them up or do the
15 agents sometimes transport them?

16 A The agents also transport.

17 Q What's the distinction? Is it numbers?

18 A Numbers, availability of transportation.

19 Q They come -- the aliens then come to the processing center for intake.

20 Who does the intake? Is it coordinators, agents, or either?

21 A Either.

22 Q Then you say they're provided food and showers and medical check, then
23 sent for biometrics. Who's taking the biometrics, coordinators, agents, or either?

24 A Either.

25 Q Then they go for the interviews?

1 A Simultaneously in that process.

2 Q The biometrics?

3 A Yeah, the biometrics. They're being interviewed, but the interviews will
4 take longer than the initial biometric piece.

5 Q Who is doing the interviews? Are processing coordinators also doing
6 interviews?

7 A They are. And then we also have part of our intelligence team has a team
8 that's there that will look at anybody that has any kind of derogatory information and
9 have extended interviews with them. And anybody that might look out of place, like,
10 might look like a gang member or something like that, they'll do additional information
11 to -- additional interviews to garner additional information, whether to be for harsher
12 consequences or for general awareness.

13 Q So that after that interview, then, that the processing outcome is
14 determined?

15 A Yes.

16 Q Who makes that determination?

17 A The Border Patrol agent.

18 Q So it's always a Border Patrol agent that makes the processing outcome
19 determination after an interview?

20 A Yes, at least reviewed. A Border Patrol processing coordinator may kind of
21 know what that is going to be, but it will be a Border Patrol agent that makes the
22 determination.

23 Q Does the coordinator make a recommendation?

24 A Yeah.

25 Q What kind of information are coordinators or agents considering when

1 they're making a determination of processing outcome?

2 A Figuring out what they're amenable for, what their criminal history is, or if
3 there is a criminal history. If through the interviews they find that there's a malintent to
4 the United States or that they're some way involved with the smuggling effort, that
5 pathway will change for them.

6 Q I guess, what are the -- what is the criteria that's being used, though, in order
7 to determine a pathway? Age? Demographic? Who they're with? Where they're
8 from? What kind of factors are agents considering?

9 A Their demographic is considered, as well as if they're claiming fear. If they
10 claim fear and they're from a country that's amenable to the ER/CFI process, they could
11 go that route.

12 Q What makes a country amenable to the credible fear process?

13 A There's several countries that are amenable. I don't have the -- all the
14 demographics in front of me, but Venezuela is one.

15 Q Is that created by policy? Does someone tell you that these are the
16 nationalities you can consider for credible fear? Because the statute itself applies to
17 everybody.

18 A Yes, there's a -- there's guidance.

19 Q Who sent you that guidance?

20 A Headquarters, Border Patrol.

21 Q Was that guidance already in place when you got there --

22 A No.

23 Q -- to El Paso?

24 A No. The ER/CFI process started after I arrived.

25 Q When?

1 A We started a smaller number of folks in the months leading up to Title 42
2 going away, and then after Title 42 went away, we started doing more.

3 Q Was the guidance that you received written guidance?

4 A Yes.

5 Q Is El Paso one of the areas where they were doing -- another
6 interviewer -- interviewee had mentioned a pilot program for the expedited removal
7 process where they were using specific nationalities or bringing in certain asylum officers
8 to come help.

9 A Yes. I don't know if it was --

10 Q Is that the way you understand it?

11 A Yeah. I don't know if it was technically considered a pilot, but it was
12 certainly started at a small number and then increased as we passed Title 42.

13 Q And do you know if that was implemented in every sector?

14 A I do not.

15 Q This guidance, you mentioned that you don't have it in front of you, but is
16 the criteria for expedited removal based on nationality mostly? For instance, are you
17 considering people who are in the CHNV pot who aren't applying? Are you using
18 expedited removal with those people?

19 A Expedited removal for folks that don't claim fear, yes. Of those
20 demographics, yes. If they -- but if they claim fear and they're amenable to the process,
21 then they're put in the ER/CFI process.

22 Q But it's only those nationalities that you're considering, or only particular
23 nationalities that you're considering?

24 A Yes.

25 BY MR. YI:

1 Q Do you know the name of that guidance or the date of that guidance?

2 A I do not. I mean, I know that there was training sessions that our folks that
3 are kind of over processing went to to bring back that process, to start that process.
4 And I know that there's been written guidance for the sector, but I don't know if there is
5 one document that explained everything together in a policy.

6 Q So it's a multiguideance -- multiple documents that make up this guidance?

7 A Multiple correspondence that make that up.

8 Q Correspondence between who?

9 A Headquarters and the field.

10 Q So these -- the written guidance is comprised of multiple correspondences
11 between the headquarters and the field, and so they are via email?

12 A That I'm aware of, yes. There may be a policy, but I don't know if
13 there's -- what that is offhand.

14 Q Who in the field would be on these correspondences?

15 A Be a combination of the sector command staff as well as the processing
16 center.

17 Q Are you on those correspondences?

18 A I am.

19 BY MS. O'CONNOR:

20 Q Is there a difference between the way that expedited removal is processed
21 right now than it was in your prior experience doing expedited removal? I guess, why
22 the new guidance?

23 A As far as expedited removal/CFI?

24 Q Well, sure. Credible fear interview has always been part of expedited
25 removal, the whole process, right. So why is there different guidance now than there

1 may have been before, in your experience? What is different about the expedited
2 removal process now than before that required new guidance?

3 A So now USCIS is with us in our facility to help with those determinations of
4 initial fear claims, and then doing the IJ, if they choose to go to an IJ, then that's done
5 virtually from our facility, as opposed to releasing on an NTA OR and having that interview
6 done after they're released.

7 Q Okay. And you mentioned that when someone gets a positive credible
8 fear, they are released with an NTA on their own recognizance. Are they transferred to
9 ERO and ERO makes the OR decision or are you guys making that decision?

10 A The NTA OR, after an IJ says that they have fear, comes from Border Patrol,
11 directly from a Border Patrol facility to the field.

12 Q Okay.

13 A Or out -- NTA OR from the facility.

14 Q You mentioned earlier that about 50 percent of people are released NTA OR
15 outside of the ER credible fear process, right?

16 A To include -- so part of that 50 percent is folks that have been determined to
17 have fear and receive an NTA OR.

18 Q Okay. What kind of people are receiving an NTA and being released OR
19 that haven't asserted a fear?

20 A Typically, family units, folks that claim fear and maybe they're a part of a
21 protected class.

22 Q What's a protected class?

23 A LGBTQ+ or --

24 Q Is protected class defined in some sort of guidance?

25 A I don't recall.

1 Q So not everybody that gets an NTA has some sort of fear, right? Some
2 people are just released OR based on their demographic?

3 A Some.

4 Q Is El Paso currently using humanitarian parole?

5 A El Paso Sector has provided a parole -- parole for people with significant
6 medical humanitarian needs.

7 Q So, currently, El Paso is only doing parole for medical reasons?

8 A Right. I did one within the past week. I approved one for a person that
9 had a requirement for brain surgery and was hospitalized.

10 Q So do you have to approve all parole requests?

11 A Yes.

12 Q When did that start?

13 A I don't recall.

14 Q Have you always had to approve parole requests since you've been in El
15 Paso?

16 A Parole requests for humanitarian reasons, yes. For medical -- significant
17 medical reasons, at the hospital or something like that, yes. There were a couple of
18 days when we were authorized parole releases for decompression efforts. I did not
19 have to approve -- I did not require an approval from me to the field for those.

20 Q So you were making a parole processing determination based on capacity
21 issues?

22 A Yes.

23 Q When was that? Was that right before the expiration of Title 42 when
24 Chief Ortiz issued that memo or is this a different time?

25 A It was that time.

1 Q Are you still authorized to use parole for decompression purposes?

2 A No.

3 Q Has El Paso, since you've been there, conducted any sort of street releases?

4 A No. The NGOs and county have been able to take all of our NTA ORs so far.

5 Q When you process -- you mentioned before that family units are typically the
6 demographic that will receive an NTA OR even if they don't necessarily claim fear. Is
7 there -- are family units ever not given an NTA OR?

8 A I don't have that information with me right now.

9 Q Would it be safe to say that most are given an NTA?

10 A Yes.

11 Q What is the situation? Because you said before that the NTA ORs, the
12 decision's being made by Border Patrol. When is a situation that the aliens are being
13 sent to ERO for processing? Is that if you've made a detention determination?

14 A When we've made a determination and space is available with the ERO.

15 Q Okay. So are you -- I guess I'm just trying to understand the flow of people.
16 So if you're -- Border Patrol is issuing an NTA and releasing people OR directly to
17 the NGO or the county. What situation would you say -- would you send that alien
18 instead of releasing over to ERO for processing? Is it a capacity issue?

19 A So we process everybody, but to send them to ERO, it would be capacity on
20 their end, but also time in custody constraints, those kinds of things.

21 Since Title 42 has ended, we have kept people longer, but we have been able to
22 expeditedly remove folks from our custody through ICE transportation to their country of
23 origin or to allow voluntary returns of Mexican migrants, as well as withdrawals from
24 other nationalities that return to Mexico, and then the Mexican Government takes them
25 further to the southern portion of Mexico.

1 Q So there are only certain people that you can -- or certain demographics that
2 you can send back to Mexico, right?

3 A Yes.

4 Q Which ones are those?

5 A Typically, I've seen Venezuela and Guatemala. There are multiple others.
6 I don't have that information with me right now.

7 Q When you were preparing for the expiration of Title 42, were you given any
8 guidance on how to handle an influx?

9 A Just to remain flexible. We all -- all the border chiefs recognized that we
10 would have to assist other sectors with their decompression efforts because we were
11 going to need to hold people longer to effect the expedited removal process.

12 Q Were you prepared for the influx that actually ended up coming right before
13 the expiration as opposed to after?

14 A It was certainly challenging --

15 Q Were you prepared?

16 A -- before -- yes.

17 Q How -- strike that.

18 Are you able to use voluntary returns to Mexico at the same rate that you were
19 using Title 42 to expel Mexican adults back to Mexico?

20 A Yes.

21 Q You think it's about the same --

22 A About the same.

23 Q -- rate?

24 A Yeah. For Mexican nationals.

25 Q Right.

1 A Yes.

2 Q My colleague asked you about criminal prosecutions, and you mentioned
3 that you will refer people for illegal entry. Are the U.S. attorneys actually prosecuting
4 straight illegal entry charges?

5 Mr. Jonas. You mean only illegal entry charges?

6 Ms. O'Connor. Yes, only illegal entry charges.

7 Mr. Good. Like 1325?

8 BY MS. O'CONNOR:

9 Q Right.

10 A Entry without inspection, yes.

11 Q Yes. They're accepting those cases?

12 A Yes.

13 Q How often?

14 A So in FY '23, in the State of Texas, we have 233 1325 that were accepted.

15 And for New Mexico, 161. But I don't have the number with me of how many were
16 referred. Those are only the accepted number, and not all of them that were referred
17 were accepted.

18 Q Are those the people you were referring to earlier who were criminals?

19 You refer people who enter without inspection with a criminal record?

20 A Or that have cut the fence or some other aggravating circumstance.

21 Q So there's some other factor beyond just entry without inspection?

22 A Yes.

23 Q Since you've been in El Paso, do you know approximately how many people
24 who have been encountered by Border Patrol have been released into the interior of the
25 United States?

1 A I don't have that number with me.

2 Q Do you have an estimate of what that number would be?

3 A No.

4 Q Is it more than half the people encountered, do you think?

5 A Since I've been in El Paso? Well, when you include Title 42, I just don't
6 know what the -- I'd have to get the statistics. I don't have them with me.

7 Q What do you think -- how do you think Title 42 impacted those statistics?

8 A There was a lot of people that were returned to Mexico, but there was a lot
9 of recidivism also where we would see them again in our area.

10 Q Do you see that with voluntary returns too?

11 A Yes.

12 Q Do you know the recidivism rate in El Paso?

13 A I don't have that number with me right now.

14 Q What is the average age of unaccompanied children that you encounter in El
15 Paso? Do you know?

16 A It varies. It's all ages.

17 Q How do agents confirm the age of the unaccompanied children?

18 A Typically, through interview. They can be -- if it's in question, it can be
19 brought to medical to see if there's a way to determine. Many of the migrant children
20 that we encounter do not have any kind of documentation with them that would prove
21 their age.

22 Q Do you think that's on purpose?

23 A Yes.

24 Q What purpose does that serve?

25 A Especially when they're in their teenage years, somebody that could be 19

1 could try to say he's 17 or something like that to evade potential consequences or return.

2 Q We talked earlier about the increase in Turkish nationals, and there are a
3 number of unaccompanied Turkish children. How do those children become
4 unaccompanied traveling from Turkiye?

5 A We've seen multiple different ways. Some are with a family member that
6 may not be an immediate family member. Others, the smuggling organization takes the
7 child completely, or right at the immediate border they'll separate themselves so that the
8 child can be turned over to ORR and given to their sponsor in the United States.

9 Q Are you ever able to catch that type of scenario?

10 A Through interviews, yes.

11 Q When a child comes with someone who's not their immediate family
12 member, you treat that as an unaccompanied child?

13 A Yes.

14 Q When there are --

15 A Or legal guardian.

16 Q How do they prove that they're --

17 A They would have to have documentation to prove that they're a legal
18 guardian.

19 Q So if somebody doesn't have documentation, then --

20 A Well, sometimes family members don't -- the mom, the dad, but --

21 Q How do you verify that relationship?

22 A Typically, through interview.

23 Q When there are surges in illegal crossings and agents become overwhelmed,
24 do you think that there's always been enough time to interview thoroughly enough to
25 make those kind of determinations?

1 A Not always.

2 Q When the unaccompanied children are brought to your processing center, is
3 ORR -- do they have representatives within the processing center?

4 A We have people for the care of children, medical personnel, volunteer
5 workforce, et cetera. As far as full-time ORR staff, I'm not aware of any.

6 Q So how long are they typically in your custody before they go to ORR?

7 A Typically, less than 72 hours.

8 Q And does ORR come and get them?

9 A ERO will transport them to ORR facilities.

10 Q How many -- is there an ORR facility close to your processing centers in El
11 Paso?

12 A Yeah, it's on Fort Bliss.

13 Ms. O'Connor. I have no further questions. I don't know if any of my
14 colleagues do. We're just about out of time.

15 BY MR. YI:

16 Q You mentioned that there was a guidance about protected class, but you
17 didn't recall if there was actually specific written guidance. Who would know?

18 A My boss, David BeMiller, would know, at headquarters.

19 Q Who helps you adhere to that guidance in your sector?

20 A The management at the processing facility, as well as my division chief at
21 that sector that's over that program as well.

22 Q So the division chief would know the -- would have this guidance?

23 A He would.

24 Q What's the division chief's name?

25 Mr. Jonas. What level?

1 Mr. Good. GS-15.

2 Mr. Jonas. Yeah, we're not going to give you the name.

3 Ms. O'Connor. 15?

4 Mr. Jonas. Correct. SES and above.

5 So is there any further --

6 Mr. Yi. How many division chiefs do you have?

7 Mr. Good. Three.

8 Mr. Yi. Are they all 15s?

9 Mr. Good. Yes.

10 Mr. Jonas. So which division chief are you talking about? Not by name.

11 Mr. Good. Operational programs.

12 Mr. Jonas. Operational programs division chief. There you go.

13 Mr. Good. We can certainly get you the information in writing.

14 Mr. Yi. We'll take that information in writing then. Thank you, Chief.

15 Okay. The time is 11:57 a.m. We'll take a break after this for lunch, and we'll

16 go off the record.

17 [Recess.]

1 [12:47 p.m.]

2 Mr. Yim. We'll go on the record. The time is 12:47 p.m.

3 BY MR. YIM:

4 Q Chief, I would just like to briefly discuss operation control and the metrics
5 that Border Patrol uses to measure border security.

6 I'm going to hand you what will be marked as minority exhibit B.

7 [Good Minority Exhibit No. B

8 Was marked for identification.]

9 BY MR. YIM:

10 Q And do you recognize what I just handed you?

11 A Yes.

12 Q What is this?

13 A It's the Secure Fence Act of 2006.

14 Q That's correct. This statute was first enacted in 2006, as you mentioned,
15 during the George W. Bush administration.

16 Now, I'm going to point you to page 2. There should be some highlighted text in
17 front of you. The sentence begins "Operational control defined." Do you see that?

18 A I do.

19 Q So the statute reads here: Operational control defined. In this section,
20 the term "operational control" means the prevention of all unlawful entries into the
21 United States, including entries from terrorists, other unlawful aliens, instruments of
22 terrorism, narcotics, and other contraband.

23 Chief, based on your 22-year tenure and knowledge of Border Patrol operations,
24 has there been a year where Border Patrol has ever prevented, quote, all unlawful entries
25 into the United States?

1 A Not in their relocation, no.

2 Q And to your knowledge, has Border Patrol ever prevented all unlawful
3 entries in the history of Border Patrol?

4 A Not that I'm aware.

5 Q You would agree then, just based on how operational control is defined in
6 the Secure Fence Act, that operational control has never been achieved by Border Patrol?

7 A According to the language from section 2 bravo, that is correct.

8 Q Great.

9 Mr. Yim. I'll turn it over to my colleague.

10 BY MS. NORTHROP:

11 Q Okay. Chief, I wanted to go back a little bit and talk about some of the
12 resources that you currently use in El Paso Sector and things you might need to secure
13 the border in your sector. And we talked a little bit before about the processing
14 coordinators, but I wanted to delve a little bit more deeply into that.

15 Can you speak to or give us a sense of what percentage of the Border Patrol
16 workforce in your sector is dedicated to processing activities currently?

17 A Currently, around 12 percent of the Border Patrol field agents.

18 Q Okay. And is it fair to say that processing, care and custody, those kinds of
19 activities, have always been a part of a Border Patrol agent's job to one extent or another,
20 since you've been in Border Patrol?

21 A Since I've been in Border Patrol, not on the scale that we see now, but
22 processing has been a function that Border Patrol agents have performed.

23 Q Okay. And then you mentioned the scale. And we talked a little bit
24 before about processing coordinators. Is it fair to say that processing coordinators were
25 brought on board to alleviate some of that responsibility, the parts that can be at least,

1 from the Border Patrol agents so that they can do the law enforcement-specific missions,
2 whether that be being out in the field or things that they have to do as far as processing
3 migrants in custody?

4 A Yes.

5 Q Okay. I think you touched on this before, but how many processing
6 coordinators do you currently have in El Paso Sector?

7 A Over 200.

8 Q Okay. And then do you recall when El Paso Sector first started getting
9 coordinators? I'm guessing it may have been, obviously, pre your arrival in El Paso
10 Sector, but are you aware of when they came on board?

11 A I don't know the date that they came on board.

12 Q Okay. But they were there when you arrived in El Paso Sector?

13 A Yes.

14 Q Okay. In your opinion, as chief, have the coordinators been beneficial to
15 the work of the agents in your sector?

16 A Yes.

17 Q And have they allowed your agents to return to the line, to the field, carrying
18 out their patrol duties?

19 A Yes.

20 Q Would you say that the introduction of the border -- that the -- pardon me,
21 of the processing coordinators has helped you better secure the border?

22 A Yes.

23 Q Okay. Are you aware that DOD, the Defense Department, sent 1,500
24 troops to the southern border to assist with possible migrant surges associated with the
25 end of Title 42?

1 A El Paso Sector received 200 -- approximately 200 DOD personnel.

2 Q Okay. And of those 200, do you know how many are still in El Paso Sector?

3 A Currently, that's the number.

4 Q Still 200? Okay. So they're still there.

5 Okay. It's my understanding that the 1,500 additional troops brought the total
6 military personnel assigned to Border Patrol to about 4,000. Is that your understanding
7 as well?

8 A I don't know the national numbers. I do know that we have additional DOD
9 support that we use in the field for surveillance. They run our MSCs and sometimes
10 work in our camera rooms as well, and they've been a big help there.

11 Q Okay. So it's fair to say -- you mentioned the MSC, the camera rooms.
12 They do various administrative and support activities to allow Border Patrol agents to get
13 to the field, get on the line, and do their law enforcement duties to secure the border?

14 A Yes, and also warehouse duties at the processing centers.

15 Q Okay. Are there any other duties that they're able to take care of so that
16 Border Patrol can do its mission better?

17 A We're also slowly getting them access to our systems so that they can help
18 us do data entry to aid in processing.

19 Q Okay. Are you aware, Chief, of the volunteer force that DHS implemented?

20 A Yes.

21 Q And so can you describe what that is for us?

22 A Usually, professional staff or nonuniform staff will come help with
23 warehouse functions, with processing, with -- or data entry, with care of migrants, and
24 looking after children in our facilities as well. They've been a great help.

25 Q And you currently have members of that volunteer force in El Paso Sector?

1 A Yes.

2 Q Do you know about how many?

3 A No.

4 Q Do you know about when Border Patrol in El Paso Sector received -- started
5 receiving these individuals?

6 A I don't know the date.

7 Q Predates to your time? Okay.

8 Let's see. But overall, I mean, you said that they've taken some responsibilities
9 that previously Border Patrol agents were doing?

10 A Yes.

11 Q So then it's fair to say that that help has been beneficial to your agents?

12 A It has.

13 Q Chief, do you agree that DHS has made progress in digitizing various stages
14 of the migrant processing process in an effort to get agents back to the field?

15 A Yes.

16 Q Okay. And then do you agree that programs that help migrants before they
17 approach the border and then allow them to present at a port of entry helps to reduce
18 the flow of individuals you're seeing between the ports of entry?

19 A Anything we can do to get migrants to go to the POE would clear the clutter
20 of bad people with bad intent getting into or trying to evade us in between the ports of
21 entry.

22 Q So then having these individuals present themselves at a port of entry helps
23 promote a safe and orderly border. Is that correct?

24 A I would encourage all migrants to try to go to the POE instead of in
25 between -- illegally in between the ports of entry.

1 Q Are you aware of the Southwest Border Coordination Center, SBCC?

2 A Yes.

3 Q And can you talk about what the SBCC's role is?

4 A I don't know all their roles and functions, but they do a lot of coordination.

5 They work with FEMA. There's a lot of partnership organizations there at that level that

6 help with determinations of support to the field to -- for flights to be removed from the

7 United States for the expedited removal process, as well as transportation concerns and

8 those type of things.

9 Q So we talked a bit about the personnel that you had to put in El Paso Sector.

10 I want to talk a little bit also about the technology and other assets and how those

11 technologies or assets are used given the topography and sort of the climate conditions in

12 El Paso Sector.

13 Can you talk a little bit about the topography and sort of the characteristics of the

14 sector?

15 A There's various terrain types because we encompass the entire State of

16 Mexico as well as the El Paso area. So there's mountains and as well as desert terrain in

17 the areas, less waterways than other southwest border sectors.

18 Q And then it's fair to say both urban and rural environments?

19 A Yes.

20 Q Does your sector utilize towers?

21 A Yes.

22 Q Can you tell us what types you use?

23 A We have RVSS towers that are permanent towers, and we also have AST

24 towers, automated surveillance towers, that we can move around to different locations.

25 Q And how do those automated surveillance towers operate? Just generally

1 speaking, not the --

2 A They have daytime/nighttime capability to be able to track movement of
3 people or vehicles or anything that's moving, and that information can be sent to a
4 different location to where an agent doesn't have to be at the tower site to view what's
5 being done.

6 Q So it's fair to say, then, that they would assist your agents in identifying
7 individuals crossing the border and allow Border Patrol to be better able to interdict
8 individuals?

9 A Yes.

10 Q Since the beginning of the current administration, the Biden administration,
11 in the El Paso Sector, has the number of those towers employed increased?

12 A Yes.

13 Q And are you aware of plans to further increase the number of those towers?

14 A Yes.

15 Q Do you have any specifics on how many more you expect to receive?

16 A Currently, we have 20. When I got to El Paso Sector in March, we had 15,
17 and we're anticipating at least 4 more in the near future.

18 Q Turning to linear ground detection system, is that something that's used in El
19 Paso Sector?

20 A Yes.

21 Q And then can you explain about how those systems operate or what their
22 purpose is?

23 A It's an underground line of sensor that detects movement where we can
24 detect people crossing that cable that's underground.

25 Q So then they would also assist your agents in detecting movement across the

1 border, individuals trying to enter the United States between the ports of entry?

2 A Yes.

3 Q And potentially also, then, cartel-related activity. Is that right?

4 A Yes.

5 Q How many miles of these systems, if you know, are currently installed in El
6 Paso Sector?

7 A I don't have the number with me right now. There are plans to increase
8 the number as well.

9 Q Do you know by how much?

10 A I do not have those numbers with me.

11 Q Okay. But there is a plan to deploy more of that detection system to El
12 Paso Sector?

13 A Yes.

14 Q So you mentioned, I think -- no. You mentioned RVSS and ATS. Is that
15 correct? Before -- I'm sorry, I'm switching back to the towers.

16 A Yes.

17 Q So you mentioned that there's RVSS and then as well the ATS. I want to ask
18 about the mobile video surveillance systems. Do you use those as well?

19 A Yes.

20 Q And then those have a radar capability. Is that correct?

21 A That is correct.

22 Q And then how are they typically used, as opposed to the other kinds of
23 towers or similar technology?

24 A Currently, in El Paso, they are moved around, but typically, they're in spots,
25 high traffic areas, and we have DOD personnel that are actually running those for us in

1 those locations.

2 Q And do you know, is there plans to increase the number of MVSS that you
3 have in El Paso Sector?

4 A I'm not aware right now.

5 Q Okay. Turning now to, I guess, a different technology, unmanned aircraft
6 systems. Is UAS technology something that you utilize in El Paso Sector?

7 A Yes.

8 Q And what does that look like for El Paso Sector?

9 A An agent can deploy an sUAS and have a better picture of an area, cover
10 more ground than they could on foot just with the line of sight. They go above line of
11 sight with the sUAS to be able to detect illegal activity.

12 Q And is it fair to say that's helpful given the terrain you have in El Paso Sector?

13 A Yes.

14 Q Any plans that you're aware of to increase the number of those systems in El
15 Paso Sector?

16 A I don't know.

17 Q Does your sector employ counter-UAS technology?

18 A The technology is being used in El Paso Sector.

19 Q And can you explain just generally how that technology works or how it's
20 used by Border Patrol?

21 A There have been successes in other areas. However, in El Paso Sector, I
22 don't believe we've mitigated an sUAS from a smuggler or from the TCOs, but the intent
23 of that technology and what we're working toward is to be able to take down the sUASes
24 that are being used against the United States.

1

2 [1:03 p.m.]

3 BY MS. KLISARSKA:

4 Q Is -- are cross-border tunnels an issue in El Paso Sector?

5 A Storm drain tunnels are being used, yes.

6 Q Is there technology that Border Patrol uses in El Paso Sector to detect that
7 kind of activity?

8 A Yes.

9 Q And then what is that technology like, and how do you use it?

10 A Sensors are used to detect if there's activity in the tunnels, as well as some
11 tunnels are welded shut to prevent people from going through those areas. And we
12 also use intelligence to predict where certain tunnels might be used.

13 Q I want to talk a little bit also about the funding that Congress has provided to
14 Border Patrol.

15 Now the fiscal year '23 omnibus bill provided funding to add 300 new border
16 patrol agents to the workforce, which was the first increase since 2011.

17 Do you believe that these additional agents will help secure the border?

18 A Yes.

19 Q So the '23 omnibus bill also provided \$800 million for a new CBP Shelter and
20 Services Program which is intended to bolster the capacity of organizations that assist
21 migrants recently released from Border Patrol or CBP custody.

22 What role do these organizations play from your vantage point in El Paso Sector?

23 A I'm not familiar with the bill that you're talking about or the services
24 provided.

25 Q Okay. So actually let's just take a step back then. So services provided by

1 nonprofits or others who assist migrants who are released from CBP custody, specifically
2 Border Patrol custody in El Paso Sector, so resources for them.

3 A So having the ability to release migrants to NGOs is beneficial for the
4 community so that there's not safe community releases where people are like what we've
5 seen in downtown El Paso where large numbers of people can congregate.

6 Q And you mentioned it's helpful to the community. Would you also say that
7 having the ability to release people out to the community in an orderly way is helpful to
8 Border Patrol, as well, in your operations let's say in El Paso?

9 A Being able to reduce the volume of people that are in the community is
10 helpful for us to be able to identify who should and shouldn't be in the community.

11 Q So the Homeland Security Committee held a hearing in March of this year.
12 And Chief Ortiz stated, and I'll quote, With the investments that this Congress has made
13 into the Border Patrol, CBP as a whole, we have greater situational awareness now than
14 I've ever had, unquote.

15 Do you agree with Chief Ortiz's statement?

16 A I don't know the context of his statement. But I will say that in El Paso
17 Sector, our situational awareness has increased.

18 Q So we've talked a little bit about how funding the Border Patrol has helped
19 you carry out your mission.

20 Would you agree that rolling back funding to Border Patrol in El Paso Sector would
21 be harmful to your mission?

22 A Reducing funding to the Border Patrol would be harmful to the mission.

23 Q So would a 22 percent cut in resources affect your ability to secure El Paso
24 Sector?

25 A A 1 percent reduction would adversely affect my operations.

1 Q Okay. So DHS estimates that capping the department's budget at fiscal
2 year 2022 levels would result in a reduction of CBP frontline law enforcement personnel
3 by up to 2,400 agents.

4 Is it then fair to say that losing 2,400 CBP officers, agents across the board would
5 be detrimental to your work?

6 A A reduction in manpower in my sector would be detrimental to my
7 operations.

8 Q Okay. So DHS also estimated that capping their budget at those '22 levels,
9 fiscal year '22 levels, would result in an additional 1,000 -- pardon me -- 1,000 -- 900
10 pounds of fentanyl, 2,000 pounds of heroin, 17,000 pounds of meth, and 150,000 pounds
11 of cocaine not being seized by DHS.

12 So budget cuts, again, I take it you would agree then that they would hamper your
13 ability to seize illicit drugs, as well.

14 A All cross-border activity would be adversely affected if funding or manpower
15 resource were reduced.

16 BY MS. JACKSON:

17 Q I'd like to return briefly to the topic of NGOs.

18 Is it fair to say that without NGOs you would have to rerelease more migrants
19 through, like, the Safe Streets release program or just release them?

20 A Yes.

21 Q And do NGOs provide other emergency assistance to migrants like food or
22 water as part of their operations?

23 A They do.

24 Q Would you agree that without those resources provided by NGOs, Border
25 Patrol would have to kind of deviate manpower and resources in order to address those

1 safety concerns that migrants face? Like without that --

2 A Post-release?

3 Q Well, I guess, to clarify, if NGOs weren't on the ground, providing some
4 emergency assistance, would Border Patrol have to provide that assistance like food or
5 other emergency services?

6 A There could be instances where Border Patrol would be providing those
7 things, those resources.

8 Q And so do you remember, in April, giving an interview to the El Paso Times
9 about the wind down of Title 42?

10 A I don't remember the particular interview, but I know that I did a lot of
11 interviews during that time.

12 Q Okay. So just to help, I can show you a summary of that interview. We'll
13 call this exhibit C.

14 A Okay.

15 [Good Minority Exhibit C

16 Was marked for identification.]

17 BY MS. JACKSON:

18 Q And there's a highlighted part where you talk about the idea that Safe Street
19 releases are really the last resort.

20 Do you still agree that that's your last choice?

21 A Yes.

22 Q And why is that?

23 A Again, for the community, it's safer to release to someone that can provide
24 services to them, as opposed to leaving -- releasing people to a general area without
25 support to be able to leave the area. They'll just continue to congregate in the area

1 without resources.

2 Q I'm going to pivot again to talk a little about drug interdiction and vehicle
3 checkpoints. We talked about that in the last hour.

4 I just wanted to clarify that there's -- there's no way of knowing if a getaway is
5 bringing in drugs. Is that correct?

6 A We could know that someone is bringing in drugs and they could get away,
7 but typically of the got-aways that we encounter or that we did not encounter, we don't
8 know.

9 Q And if someone is caught, attempting to smuggle through one of these
10 vehicle checkpoints, that'd be arrested. Correct?

11 A Yes.

12 Q And would you mind shedding more light on what happens when Border
13 Patrol arrests someone for attempting to smuggle? For example, would that person be
14 detained and then referred to a prosecuting agency?

15 A Yes.

16 Q And then if people are detained after arrest, are they screened for prior
17 criminal history or kind of do they undergo biometric screening, as well?

18 A They do.

19 Q Okay. Then just a couple of questions around the demographics of drug
20 smugglers.

21 So are most of the drug smugglers that you interdict, are they working for cartels?
22 Do you know?

23 A It's a transnational criminal organization.

24 Q And --

25 A Cartels, smugglers, all together.

1 Q And does Border Patrol work with other law enforcement agencies to
2 combat those transnational criminal organizations-affiliated smugglers?

3 A Yes.

4 Q How so?

5 A We share intelligence. And we have Task Force Officers, Border Patrol
6 agents that are assigned to other agencies to help share information and to jointly work
7 on investigations, his, FBI, JTTF Task Force, as well as DEA.

8 Ms. Jackson. I don't have any further questions.

9 BY MR. GAERTNER:

10 Q Briefly and kind of going off of that, as well, and jumping back to some of our
11 previous conversations, you know, when we talk about process and vetting individuals,
12 going back to when we discussed the TSDS a little bit, is it fair to say when you are
13 processing and vetting individuals that you check them against several databases that
14 also include the TSDS?

15 A Yes.

16 Q And has that always been the case?

17 A Systems have been added but -- or changed, improved. But they've always
18 been run through some -- well -- when I first started in Calexico, that was not always the
19 case. There were sometimes field ERs where, if the facility was overcrowded, that they
20 would be only a document was created and they were VR'd at the port of entry, turned
21 over to Mexican immigration at that point.

22 Q And so it's fair to say we have additional systems that check people against.

23 A Yes.

24 Q And is it fair to say as part of that process, say, when somebody is hit -- is a
25 hit on the TSDS that they're not released into the community?

1 A Correct.

2 Mr. Gaertner. Okay. Thank you.

3 BY MR. YIM:

4 Q Chief, I'd like to turn back to minority exhibit C which is the article that my
5 colleague just handed to you. And if you'll flip the page for me and take a look at that
6 highlighted section, now right below that there's a sentence that starts "what is the
7 message from Border Patrol."

8 Do you see that?

9 A I do.

10 Q It reads: What is the message from Border Patrol right now to migrants
11 waiting in Juarez?

12 And you respond: The message is not to cross. It's they need to go to a safe
13 place and wait and use the CBP One app.

14 To put this in the context, you were advocating migrants -- strike that.

15 In your role as chief patrol agent of the El Paso Sector, you were advising people
16 waiting in Juarez not to cross the border. Is that correct?

17 A That's correct.

18 Q And you were encouraging them to use the CBP One app. Is that correct?

19 A Yes.

20 Q Is the message still not to cross the border?

21 A Not to cross the border illegally in between the ports of entry, yes.

22 Q Good. Thank you.

23 I'd like to circle back to the resources a little bit you have within the El Paso Sector,
24 and you talked a bit about this with my colleagues. You mentioned that a new
25 processing facility was built in El Paso. Is that correct?

1 A Yes.

2 Q When was that built?

3 A It opened early June, this month.

4 Q Great. And how has that helped El Paso's processing capacity?

5 A It's provided us a larger space with a capacity of 2,500 people. It's provided
6 additional boosts for telephonic communication, video communication with USCIS and
7 the IJ for the credible fear process, as well as for migrants to speak to their families during
8 that process.

9 Q Would you say that the implementation of this new facility has made
10 processing in the El Paso Sector more efficient?

11 A Yes.

12 Q Would you agree that the implementation -- excuse me -- of this processing
13 facility has allowed more of your agents to return to the border because of the more
14 efficient processes within the facility?

15 A I wouldn't say that more agents have gone back to the field as a result of
16 that processing facility because there are -- because we have that facility, we're assisting
17 other sectors to decompress which increases our processing needs in -- within the sector
18 to help out sectors such as Del Rio and Tucson that are seeing an influx of migration at
19 this point.

20 Q Okay. To dive into that a little bit more, when you say assisting with
21 decompression, is it fair to say that the implementation of this new processing facility
22 assists with processing efficiency across the southern border, more than just the El Paso
23 Sector?

24 A It does in other sectors as well.

25 Q Now you also mentioned the building of soft-sided facilities in El Paso. Is

1 that correct?

2 A That is a hard- and soft-side facility, yes.

3 Q I see. Do you have other facilities in addition to the new processing
4 facility?

5 A We have one that's still pretty new, but it's older, soft-sided facility right
6 next to it.

7 Q And when you say pretty new, when -- when did you receive that?

8 A It was before I arrived in El Paso. I don't -- I don't know how long it's been
9 there.

10 Q Okay.

11 A But it is recent.

12 Q Okay. I'd like to talk about the trends you're seeing after the expiration of
13 Title 42.

14 Can you describe to me the -- have you received a -- strike that.

15 Have you witnessed a decline in encounters since the expiration of Title 42?

16 A Yes.

17 Q Can you give me an estimation as to the percentage of decline in
18 encounters?

19 A I can speak to the change in the numbers on a daily basis. We were seeing
20 anywhere from a thousand to 2000 people a day toward the end of Title 42. And then
21 after Title 42 went away, we're currently seeing anywhere from 300 to 500 people a day.

22 Q Okay. You mentioned earlier, you made a comment to my colleagues that
23 you can always use more resources. Is that true in every sector that you've served in,
24 that you can always use more resources to secure the border?

25 A Yes.

1 Q Great. And you mentioned drug seizures in the El Paso Sector are
2 comparatively low to other sectors on the southern border. Is that fair to say?

3 A Yes.

4 Q And the technology that has been implemented that my colleague went
5 through assists in your detection and seizure of drugs that do attempt to cross the El Paso
6 Sector. Is that correct?

7 A Yes.

8 Q Do you think the implementation of that technology has played a role in the
9 relatively low number of seizures that you're seeing in El Paso?

10 A I think it would play a part of the picture.

11 Q Sure. And adding more resources and more technology would only bolster
12 your ability to detect those drugs. Correct?

13 A Yes.

14 BY MR. EWENCZYK:

15 Q Just quickly, Chief, I wanted to come back to the issue of NGOs that you
16 touched on with my colleague.

17 Taking a step back, you would agree with me, right, that it has never been the
18 case that Border Patrol has detained all of the migrants that it encounters.

19 A Every time we encounter somebody, we detain them. If -- they may
20 receive a voluntary return or something that's a quick Title 42. But there's still a
21 detention that takes place. The mere arrest is a detention.

22 Q Understood. And sorry for the lack of clarity.

23 But following through, would you agree with me that there's always been a
24 certain portion of the migrants that are released and not detained for a significant period
25 of time?

1 A Released into the community?

2 Q Yes.

3 A I don't recall that always being the case.

4 Q So, for example, asylum seekers coming to the border, pending resolution of
5 their asylum matters, some of them are released pending.

6 A That would be a function of -- in the past that would have been a function of
7 ICE. If they were already in ICE's custody, they would have been making that
8 determination. So from the Border Patrol side, that's not necessarily always true.

9 Mr. Ewencyk. Okay. I think I'll leave it there.

10 Mr. Yim. We'll go off the record.

11 [Recess.]

12 Mr. Yi. So we'll go back on the record at 1:25 p.m.

13 You ready?

14 BY MR. MCDONAGH:

15 Q Chief, does Border Patrol have access to all foreign and criminal databases?

16 A All foreign and criminal databases in the world? No.

17 Q So is it possible that individuals that are not flagged by our systems could
18 have derogatory criminal histories abroad that we're not aware of?

19 A Yes.

20 Q So DHS Office of Inspector General recently released a report entitled,
21 "Intensifying Conditions at the Southwest Boarder Are Negatively Impacting CPB and ICE's
22 Health and Morale."

23 I'd like to submit that to the record asthma majority exhibit 2.

24 [Good Majority Exhibit No. 2

25 Was marked for identification.]

1 BY MR. MCDONAGH:

2 Q Chief, could you please turn to page 22?

3 A Yes.

4 Q Under the heading, "Unpredictable Immigration Policies Have Impacted
5 Morale," starting at the second sentence, the report reads:

6 Since the fiscal year 2019, immigration policies have shifted significantly as the
7 United States experienced the COVID-19 pandemic and transitioned from one
8 administration to another.

9 Our interviews and surveys comment show staff frustration and lower morale was
10 related to changing policies, especially when the respondents felt the changes were
11 inconsistent with the law enforcement duties.

12 In the view of some law enforcement personnel, these policies have made it
13 difficult for them to enforce the laws and carry out their mission. One said they feel as if
14 they were doing their job with one hand tied behind their back.

15 Have you heard these complaints from your agents in El Paso?

16 A I have heard similar complaints, yes.

17 Q Turning to page 23, we're going look at the penultimate sentence in the
18 second full paragraph, starting with "as with Title 42." It reads -- sorry.

19 A Where that's at?

20 Q It's page 23, second to last sentence of the second full paragraph, "as with
21 Title 42."

22 A Okay.

23 Q As with Title 42, CPB personnel explained the ending of the Migrant
24 Protection Protocols, MPP, would further overwhelm their resources. From the
25 frontline perspective, MPP has helped agents regain operational control of the border

1 and stop migration north.

2 Do you agree with that assessment or that opinion? Sorry.

3 Mr. Jonas. Do you want to break it down by sentence maybe?

4 Mr. Good. So with the -- with the first sentence, using MPP does require more
5 resources to do an additional pathway, the effectiveness of MPP, I can't speak to that
6 one. I don't know the overall success or failure of the program.

7 Mr. McDonagh. But to clarify, ending MPP would further overwhelm their
8 resources.

9 Mr. Jonas. I think he's asking you whether the end of MPP further overwhelmed
10 the resources of the Border Patrol.

11 Mr. McDonagh. It provide -- ending MPP --

12 Mr. Jonas. Maybe not?

13 BY MR. MCDONAGH:

14 Q Yeah, it is what I'm asking. Ending MPP eliminated a processing pathway
15 for Border Patrol which MPPs, the thrust of MPP was to disincentivize illegal crossings.

16 Is that your assessment of MPP when it was being implemented, that it decreased
17 crossings?

18 A I don't know the effectiveness of the program.

19 Mr. McDonagh. That's fine. That's all I've got.

20 BY MS. O'CONNOR:

21 Q I'm going to jump around a little bit because I'm just going to follow up on
22 some stuff. So bear with me.

23 First, I'm going to ask about the processing criteria we talked about earlier. You
24 said that there was a bunch of different things that agents consider when determining
25 processing pathways, demographic, why they're here, things like that.

1 Are those criteria recorded?

2 A Are you asking the -- what the agent used to determine it is recorded or --

3 Q Right.

4 A -- the pathway that's allowed is recorded?

5 Q The factors that the agent used to determine the pathway, are they
6 recording that information anywhere when they're interviewing a person?

7 A Yes, it's documented in the narrative portion.

8 Q Of what?

9 A Of their 213 form.

10 Q Okay. So the factors that are considered for pathway processing pathway
11 are recorded in the Form I-213.

12 A I don't know that that's always the case.

13 Q So the criteria's not always recorded is what you're saying?

14 A I don't know.

15 Q Okay. You mentioned that processing coordinators are sometimes doing
16 the interviews. Are processing coordinators sometimes recording information on the
17 Form I-213?

18 A Yes.

19 Q But the I -- the Form I-213 has to be signed by a Border Patrol agent.
20 Right?

21 A I believe so.

22 Q So how is that Border Patrol agent verifying the information the processing
23 coordinator puts on the Form I-213 in order to sign it?

24 A They're reviewing all the material at hand.

25 Q What's all the material at hand?

1 A All their biographical information, the criminal history or lack thereof that
2 comes through in the system, any of the system information that's provided, as well as
3 any of the statements that are made from the migrant themselves.

4 Q Are they reviewing it all electronically in E-3?

5 A Yes, it should all be done electronically through E-3.

6 Q When -- during these interviews, are agents or processing coordinators
7 asking migrants why they've come to the United States?

8 A Yes.

9 Q Do you know what the main reason people have given as to why they're
10 coming in El Paso?

11 A Most reasons given are economic, prosperity.

12 Q Do you know if any migrants mention in their interviews -- strike that.

13 A As well as concerns for safety, fear claims, those kinds of things.

14 Q Which would you say is more prevalent, economic migration or fear claims?

15 A We see a lot of both. I wouldn't know which one is more prevalent than
16 the other.

17 Q President Biden visited the El Paso Sector early this year. Are you aware of
18 that?

19 A Yes.

20 Q You were not there yet. Right?

21 A Correct.

22 Q There was reporting that very shortly before President Biden visited El Paso
23 that the migrants who had been staying on the streets essentially in El Paso were moved
24 out of the sector. Are you aware of that movement?

25 A I'm not.

1 Q Are you aware of any of the I guess process around what happens
2 before -- in El Paso before a President or other noteworthy person visits?

3 A I know that Secret Service will come to a location and make sure that the
4 area's safe for political leaders. There's really not a process to -- other than scheduling
5 visits and ensuring that the scene is safe.

6 Q What about optics? Is that ever considered?

7 A Not that I'm aware.

8 Q I'm going to jump to cartels.

9 You mentioned that previously during a lot of the questioning that cartels control
10 the smuggling operation. Which cartels are prevalent in El Paso?

11 A South of El Paso, the Sinaloan cartel, the Sonoran cartel, and the Juarez
12 cartel are active.

13 Q Are there any specific tactics that those cartels use in smuggling people?
14 For instance, do they use the tags that we've seen in the media or --

15 A I've seen the tags in the media. And there have been -- they're very small,
16 less than 10 instances in the area, in the El Paso area. And they were before I was there.
17 The -- I'm aware of the use of the bracelets, but they're not typically used in the El Paso
18 area.

19 Q Are there other tactics that are used in El Paso to essentially keep track of
20 the -- for the cartels to keep track of the migrants?

21 A I'm not aware.

22 Q You mentioned scouts, that the cartels used scouts. Do those scouts know
23 about situations where Border Patrol is vulnerable like when you have to shut down
24 checkpoint because of decompression or weather extremity?

25 A Yes. People, scouts will frequently drive through the checkpoints to see if

1 they're open or not, yes.

2 Q What about drugs? We touched on that a little bit, and you had said that
3 the drugs in El Paso aren't as prevalent as some of the other sectors. What drugs are
4 most prevalent in El Paso?

5 A Marijuana is the most prevalent, followed by methamphetamines, then
6 cocaine, and then fentanyl and then a very small amount of heroin and then other drugs
7 after that.

8 Q How are you interdicting those drugs is? It largely at the checkpoints in a
9 vehicle, or is it on a person?

10 A It's a mix, but the larger quantities that we've encountered have been in
11 vehicles.

12 Q You said that in those vehicles the smugglers are -- more often armed now.
13 Do you have any indication as to why that might be?

14 A No.

15 Q Has El Paso used aerostat?

16 A Yes.

17 Q Do they still use it?

18 A No.

19 Q Have they used it since you've been there?

20 A There was a test pilot program for an aerostat that was a little bit smaller
21 than the aerostats that have been used previously. That was tested for about a month
22 in the Santa Teresa AOR.

23 Q Are those -- is aerostat helpful in the El Paso sector in identifying any sort of
24 illegal crossings?

25 A Yes.

1 Q I know you've been asked about pull and push factors already. Would you
2 say that a public perception of favorable immigration policies would be a pull factor to
3 the United States?

4 A Could you repeat the question, please?

5 Q Would you say that public perception of favorable immigration policies
6 would be a pull factor to the United States?

7 A If immigration laws were more lax for migrants to be able to more easily
8 enter the United States?

9 Q Not the laws necessarily, the policies implementing the laws. If someone
10 perceives that they're going to be released, is that a pull factor?

11 A Yes.

12 Q Before taking office or right as he took office, President Biden issued a
13 100-day pause on enforcement and removals. Do you think that's the type of favorable
14 policy that people perceive as a pull factor -- that is a pull factor?

15 A If there aren't deliverable consequences to entering the country illegally,
16 then there will be a pull factor.

17 Q Okay. Just a couple of questions about the NGOs in El Paso. Which ones
18 are the biggest operators in El Paso?

19 A The Annunciation House.

20 Q Do you know how long they've been there?

21 A I do not.

22 Q Are there any others that work a lot in El Paso?

23 A There are others that Annuncia -- that Ruben Garcia with the Annunciation
24 House works with. I'm not sure if there are outside of that Annunciation House but he
25 works with them and helps them coordinate.

1 Q Do the NGOs ever make requests for processing dispositions for particular
2 migrants?

3 A Not since I've been there. I've not experienced that.

4 Q My colleague asked you whether, if there were no NGOs to help you,
5 whether you'd be -- you'd have to release everyone to the street. You agreed with that.
6 Right?

7 A If the NGOs weren't there and the county wasn't there, then we would do
8 Safe Street releases.

9 Q Right. But you don't have to release anybody. Right? It's the policy that
10 drives the decision to release.

11 A As well as capacity.

12 Q But there are other options. MPP, for instance, MPP wasn't releasing
13 people into the interior of the United States. They were sending people back to Mexico.
14 So it's not a requirement that everyone must be released if there's no NGOs to send them
15 to. Right?

16 A There could be other policies implemented that would change that.

17 Ms. O'Connor. Okay. I have no further questions.

18 BY MR. YI:

19 Q Can you share with us if any resources, any Border Patrol resources are
20 shared with NGO in El Paso Sector?

21 A Not that I'm aware.

22 Q So earlier you had mentioned that you coordinate or you were briefed that
23 they were partners. So I assumed that partners would coordinate. In which way do
24 agents in El Paso Sector coordinate with NGOs?

25 A When we're releasing via NTA OR, we will let them know as soon as we can

1 so that they can make space available for them.

2 Q Do you share any official documentation with NGOs?

3 A No.

4 Q Is there any ever paperwork that's generated from your contact or
5 coordination with NGOs? And by "your," I mean anyone in your sector.

6 A I don't know if there's a manifest created for the migrants that are being
7 released by us for them to pick up.

8 Q So what happens in these weekly meetings at the NGOs? Earlier --

9 A They're not --

10 Q -- you --

11 A -- meeting --

12 Q -- had mentioned that it happens about four times a month is what you said.

13 A Right.

14 Q So maybe, I don't know, it could happen four times in first week of the
15 month.

16 A Yeah --

17 Q What happens in those meetings?

18 A It's a discussion on what their capacity is. There was a lot of concern in
19 El Paso. So it's not just with them. It's with other community leaders, the mayor, the
20 county judge, ERO, us, the Border Patrol, the Catholic Diocese. Everybody comes
21 together and discusses issues specifically with the NGOs. It's will the county and the city
22 be able to receive migrants that are being released to us at a pace that we're not doing
23 safe community releases into downtown El Paso.

24 Q Are grants ever discussed in these meetings, whether Federal or even State?

25 A No. I haven't had any kind of budgetary conversations with anyone or with

1 NGOs.

2 Q So you had mentioned that you served on the southwest border earlier in
3 your career. Were NGOs prevalent back then, as well?

4 A No.

5 Q When would you say NGOs appeared to become prevalent on the southwest
6 border?

7 A I don't know when they started being prevalent, but I didn't have experience
8 working with NGOs until I got to El Paso.

9 Q Does that mean that NGOs were not around in the Grand Forks Sector?

10 A That's correct.

11 Q Okay. And if I recall correctly, you became a Border Patrol agent in 2001.

12 A Yes.

13 Q Were you an agent during the 9/11 terrorist attacks?

14 A Yes.

15 Q I forgot to ask you. What inspired you to become a Border Patrol agent?

16 A I don't spend as much time outdoors now as I would like to, but the working
17 outdoors and being able to serve the country in an outdoor environment is what drew me
18 to the job.

19 Q Okay. We appreciate your service. And I'm sure that in your first year as
20 an agent, during the 9/11 attacks, that must have been a very interesting time for you
21 and your service.

22 A Thank you.

23 Q So my Democrat colleagues earlier read you the definition of operational
24 control established in 2006. Okay. And in it you understood the operational control
25 definition.

1 A Yes.

2 Q We don't have to reread it to you again. But why do you think it's
3 important -- it's an important aim to prevent all unlawful entries, including entries by
4 terrorists and other unlawful aliens?

5 A We want to protect the country. So anyone that evades apprehension
6 from us, we don't know what their intent is or what they're capable of.

7 Q I think that's probably especially important, given the time period in which
8 you started your service as a Border Patrol. So to clarify, I think the -- my Democrat
9 colleagues alluded to this and agreed to this. But do we have operational control under
10 the law?

11 A Not in El Paso Sector.

12 Q Not in -- okay. So the Secure Fence Act also requires the Secretary to take
13 all actions necessary and appropriate to achieve and maintain operational control.

14 As someone who's been on the ground and leads over 2,000 men and women in
15 the El Paso Sector, charged with securing our border, what actions would you
16 recommend, in addition to those that are already taken, to achieve and maintain
17 operational control?

18 A More resourcing and manpower. In El Paso, specifically for El Paso Sector,
19 we could use more resourcing, more manpower, more infrastructure.

20 I don't know if it sits with where policy changes or laws sit as far as what can be
21 done but if -- if -- if it was made illegal to claim credible fear, if you cross illegally in
22 between the ports of entry and you claim credible, then you wouldn't be able to claim
23 credible fear, you would have to go through a port of entry, that would reduce and make
24 it a better environment for us to be able to catch people trying to evade us because we'd
25 have more resourcing in between the ports of entry.

1 Anything that we can do to increase the legal crossing at the ports of entry, as
2 opposed to in between the ports of entry, would be beneficial for the Border Patrol and
3 border security as a whole.

4 Q And you mentioned that increased infrastructure, as well. Would that
5 include border barriers?

6 A It would.

7 Q And what is the current state of border barriers in El Paso Sector? Are they
8 all complete?

9 A No.

10 Q How much of it is not, is incomplete?

11 A We have a lot of old fencing that's made of mesh, and it's easily cut. And
12 so smugglers are consistently cutting that and -- and it's difficult for us to maintain that
13 barrier because it hasn't been updated since it's very old. Currently we have 167 miles
14 of border barrier, and that's not enough for the 264 miles of border that we have.

15 Q Are there any border barrier system materials that are still laying there in
16 your sector, unused, from the canceled contracts?

17 A I'm aware of two sites, one near Fabens, one near -- and one in New Mexico.
18 There might be more, but I'm aware of two sites for that.

19 Q Can you describe what kind of materials are left on the ground?

20 A I haven't been on the site. But just driving around near it, it's large sections
21 of steel.

22 Q What condition is that steel in now?

23 A I don't know the condition.

24 Q Okay. And I guess I'll ask an earlier question in the inverse. What current
25 actions or policies do you believe deter from achieving or maintaining operational

1 control, aside from border barrier systems that we just talked about?

2 A What other methods would help us to achieve operational --

3 Q Well, what are the actions that are currently taken? So remember the
4 Secure Fence Act requires the Secretary to take all actions, necessary and appropriate, to
5 obtain and maintain, achieve and maintain operational control.

6 But what are some actions or policies that you see that are implemented now, as
7 someone on the ground, where you believe that is actually deterring the ability to achieve
8 or maintain operational control?

9 A That limit us from obtaining operational control?

10 Q Aside from border barrier contracts being canceled.

11 A I can't speak to specific policy but I would -- I would say that resourcing
12 manpower, technology, and infrastructure are all three things that we need in El Paso
13 Sector.

14 Q Okay. One last question. You're taking a lot of notes that you've you
15 brought with you. Who helped you prepare all that information?

16 A So I just took notes of not all the stats but just some of the things that I
17 thought might be asked based on my conversations with OCA and OCC and PAO, public
18 affairs.

19 Mr. Yi. Well, Chief, we appreciate your time today.

20 And on behalf of Chairman Green, I want to thank you for your appearance.

21 And --

22 Mr. Rust. Also on behalf of Chairman Comer, thank you for appearing and
23 answering all our questions today.

24 Mr. Good. Thank you.

25 Mr. Yi. The time is 1:53 p.m., and we'll go off the record.

1

2 [2:00 p.m.]

3 Mr. Yim. We'll go back on the record. The time is 2:00 p.m.

4 Chief, I'd like to turn back to majority exhibit No. 2, which was the report issued by
5 the DHS Office of Attorney General on May 3rd, 2023.

6 Mr. Jonas. Inspector general? Inspector general report?

7 Mr. Yim. Inspector general. I apologize. Yes. Inspector general.

8 BY MR. YIM:

9 Q Chief, prior to coming here today, had you read this report?

10 A No.

11 Q Okay. Were you aware of this report?

12 A No.

13 Q Okay. I'd like you to turn to page 3, please.

14 The last paragraph on the bottom left, it starts, We received. Do you see that?

15 A Yes.

16 Q The first sentence reads, We received responses from 9,311 law
17 enforcement personnel, approximately 16 percent of the total population surveyed.

18 Were you aware that this report is based on only 16 percent of the total
19 population of CBP personnel?

20 A No.

21 Q Now, there's a paragraph directly to the right of the sentence I just read to
22 you. It begins, We conducted. Do you see that?

23 A I do.

24 Q It reads, We conducted a nonstatistical survey. The survey results
25 presented throughout this report cannot be projected to the entire population of CBP and

1 ICE law enforcement officers and agents. Our survey results are only representative of
2 the views of the law enforcement officers who responded to our survey.

3 Were you aware that this report was a nonstatistical survey?

4 A No.

5 Q Okay. I'm going to have you turn to page 30 for me. There's a sentence
6 at the top of the page that begins, We conducted. Do you see that?

7 A I do.

8 Q It reads, We conducted a nonstatistical survey and acknowledge that the
9 survey results cannot be projected to the total population of CBP and ICE law
10 enforcement personnel.

11 That is similar to the sentence we just read where the OIG already reiterated that
12 this was a nonstatistical survey, right?

13 A Yes.

14 Q So this is them, again, saying that this is a nonstatistical survey that cannot
15 be projected to the total population of CBP and ICE personnel, correct?

16 A Yes.

17 Q I'm going to have you turn the page to page 32, please.

18 The second paragraph there begins, We conducted. Do you see that?

19 A Yes.

20 Q It reads, We conducted this performance audit from November 2021
21 through November 2022 pursuant to the Inspector General Act of 1978, as amended, and
22 according to Generally Accepted Government Auditing Standards, with the exception of
23 data reliability.

24 Were you aware this report was not based on reliable data?

25 A No.

1 Q Chief, can you remind me: How many CBP personnel do you have
2 employed at the El Paso Sector?

3 I apologize. Strike that.

4 How many Border Patrol personnel do you have employed at the El Paso Sector?

5 A Just over 2,000.

6 Q Okay. And you mentioned, I believe, that there are about 1,600 agents.
7 Is that correct?

8 A Border Patrol agent, nonsupervisory field agents, yes.

9 Q Understood.

10 My colleagues read to you a statement from a single Border Patrol agent. You
11 would agree with me that the opinion of a single Border Patrol agent is not reflective of
12 the entire population of Border Patrol agents. Is that correct?

13 A Yes.

14 Q That is a singular opinion that that one agent holds?

15 A Yes.

16 Q Okay. I'm going to read you a couple sentences from this report, so I'll be
17 jumping around a bit. And, if you'd like the page number, I'm happy to send -- I'm happy
18 to point it to you.

19 The report finds that, quote, "CBP and ICE workloads have grown significantly due
20 to factors beyond the Department of Homeland Security's control; namely, increasing
21 border encounters and travel volume."

22 And that's on the highlights page, just for your reference.

23 Chief, would you agree that increased encounters in travel volume are partially a
24 result of violence, political instability, and economic stagnation in migrants' home
25 countries?

1 A Yes.

2 Q Those are push factors, as we spoke about earlier?

3 A Yes.

4 Q Okay. Now, on page 11 of this report, it notes that detention and
5 processing is preventing Border Patrol agents from carrying out other duties they were
6 hired for, thus contributing to lower morale that they find in this report.

7 We've interviewed a handful of other sector Chiefs, and they have informed us
8 that, in their opinion, agents prefer being in the field as opposed to processing
9 individuals.

10 Would you agree with that assessment?

11 A Yes.

12 Q And you would agree that programs and policies that allow more agents to
13 return to the field will increase agent morale. Is that fair to say?

14 A Yes.

15 Q We previously discussed how the addition of processing coordinators have
16 allowed your agents to return to the field, correct?

17 A Yes.

18 Q And we discussed the deployment -- I believe you mentioned 200 military
19 personnel currently in El Paso to perform administrative tasks. Is that correct?

20 A Yes.

21 Q And we discussed the volunteer force. These additional volunteers also
22 allow some Border Patrol agents to return to the field, correct?

23 A Yes.

24 Q Okay. Chief, in this report, DHS submitted a response to the findings of the
25 inspector general. And, in the response, they mentioned that DHS has deployed

1 clinicians to several sectors along the southern border to provide healthcare services,
2 critical incident responses, and outreach activities.

3 Have clinicians been deployed to the El Paso Sector?

4 A Yes.

5 Q Can you describe for me what they do in their operations?

6 A They provide agents with -- or anybody -- professional staff, agents, Border
7 Patrol processing coordinators, anybody in our staff -- the opportunity to -- to talk about
8 things that they're going through. Everybody goes through things. And, with a high
9 number of suicides and those kinds of things, it's good to have somebody that's trained in
10 counseling or clinical psychology to be able to assist and -- and to help people with those
11 issues.

12 Q How many clinicians do you have in El Paso?

13 A The number has expanded. I don't have the number with me.

14 Q Can you give me an estimation? More than a dozen?

15 A No. No. No.

16 Q More than five?

17 A Three full-time and three part-time and a clinical psychologist, somewhere in
18 that ballpark.

19 Q Were those clinicians on the ground in El Paso before you were appointed
20 Chief?

21 A There was a -- somebody that had left, and another one came in during my
22 time there.

23 Q Okay. Just based on your description of their operations, would you say
24 the presence of clinicians in El Paso has been beneficial to the well-being of your
25 personnel?

1 A Yes.

2 Q Okay. Are you aware of any programs to increase recruitment of Border
3 Patrol personnel?

4 A Recruitment is consistently a priority for the Border Patrol. We are
5 continually trying to enhance our recruitment efforts.

6 Q Are you aware of the existence of discrete programs directed at hiring new
7 Border Patrol agents quickly?

8 A I'm not aware of the programs.

9 Q Does El Paso have any programs currently ongoing to recruit more agents or
10 personnel?

11 A Yes. We have a recruitment program with Border Patrol agents that assist
12 in recruiting efforts.

13 Q Can you describe to me how this program operates? Do they utilize social
14 media? Do they attend community events? How do these operate?

15 A They do both of those things -- social media outreach, going to military
16 bases, college campuses, community events, anywhere that we can find potential
17 applicants to join the Border Patrol.

18 Q Because, as you mentioned, bringing on more agents and more personnel
19 assists with border security. Is that correct?

20 A Yes.

21 Q All right. Now, apologies. I'm going to jump around just a bit.

22 Now, we talked a little bit about the barriers in the El Paso Sector, and you spoke
23 to that aspect with my colleagues. You'd agree with me that barriers are just one tool in
24 the toolshed, for lack of a better word, of Border Patrol agents in securing the border. Is
25 that correct?

1 There are other things, such as technology, such as more agents, that also
2 contribute to border security?

3 A Yes.

4 Q And barriers are just one aspect of that. Is that correct?

5 A Correct.

6 Q Okay. Chief, are you familiar with the concept of operational advantage?

7 A Yes.

8 Q Can you just describe that for me generally?

9 A Generally, that our capability outweighs the threat of illegal things coming
10 across the border, whether it's migration, terrorism, drugs.

11 Q Has the operations ongoing in El Paso since your arrival bolstered the
12 operational advantage in the sector?

13 A Say it again, please.

14 Q Do you believe operational advantage has increased since you've arrived at
15 the El Paso Sector?

16 A Yes.

17 Q Okay. And additional resources would only, again, increase your
18 operational advantage in the sector --

19 A Yes.

20 Q -- correct?

21 Chief, you mentioned earlier that working for Border Patrol and being a Border
22 Patrol agent in particular is an inherently dangerous position. Is that right?

23 A Yes.

24 Q Is it fair to say that the agents that serve under you are dedicated to their
25 work?

1 A Yes.

2 Q And is it fair to say that the agents that serve under you strive to secure the
3 border every day?

4 A They do.

5 Q And, given that, you've never given them an order to stop securing the
6 border. Is that right?

7 A Correct.

8 Q And, in your role as chief patrol agent of El Paso, you've never received an
9 order to stop securing the border. Is that right?

10 A Correct.

11 Q You've never received an order to stop securing the border when you were
12 in the Grand Forks Sector. Is that correct?

13 A Correct.

14 Mr. Yim. I'll turn it over to my colleagues.

15 BY MR. EWENCZYK:

16 Q Chief, I believe in an interview you gave in the past few months, you
17 explained that your message to migrants was that they go to a safe place and wait and
18 use the CBP One app, and that, you know, if you don't use the app and you're adjudicated
19 as not having a valid credible fear claim and are not granted asylum, you could be
20 prohibited from coming into the country for 5 years, so there are consequences.

21 Do you remember saying that?

22 A Yes.

23 Q I was just wondering if you could tell us a little bit more about what these
24 consequences are for people who try to -- who try to come into the country without
25 following the proper procedures.

1 A Under expedited removal, they can be flown back to their country of origin,
2 or they could be returned to Mexico, where the Mexican government would transport
3 them further south into Mexico.

4 If they're -- if -- if we prosecute them for 1325, entry without inspection, or if they
5 receive any removal, that that could be -- for the first time of that charge, it would be a
6 5-year ban from legally being able to enter the country, and that that number can grow if
7 they come back again and are arrested again and, you know, 1326 or another charge,
8 where they could be actually banned for longer periods of time, which would prohibit
9 them from legally being able to enter the country.

10 Q And are -- and these are all consequences that migrants who try to come
11 into the United States unlawfully today face. Is that right? May face.

12 A May face, yes.

13 Q And then I just wanted to ask you about -- you mentioned the CBP One app
14 in this interview. And I just wanted to ask whether you agree that technologies or
15 programs like the CBP One app that help digitize and increase the efficiency of the
16 processing system are beneficial to Border Patrol's mission?

17 A Anytime that -- that migrants can be encouraged to go through the port of
18 entry legally instead of crossing in between the ports of entry illegally is beneficial to the
19 Border Patrol and for border security at large.

20 BY MS. NORTHROP:

21 Q Chief, I just had one thing I wanted to follow up on.

22 We've had a bit of discussion here today about checkpoints -- interior checkpoints.
23 And is it fair to say that Border Patrol's use of checkpoints in the interior is part of its
24 defense in depth or layered strategy to securing the border?

25 A Yes.

1 Q And were there Border Patrol interior checkpoints when you joined the
2 Border Patrol?

3 A Yes.

4 Q And were they used then, as they are now, to interdict individuals who
5 are -- who have crossed the border unlawfully or narcotics or other contraband that may
6 evade, whether OFO or Border Patrol, at the line?

7 A Yes.

8 Ms. Northrop. Thank you.

9 Mr. Yim. We'll go off the record.

10 [Whereupon, at 2:16 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
joint with the
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: AARON M. HEITKE

Tuesday, May 9, 2023

Washington, D.C.

The interview in the above matter was held in room H2-176, Ford House Office Building, commencing at 8:58 a.m.

Present: Representatives Bishop and Higgins.

Appearances:

For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

JENNIFER GABB, LEGISLATIVE ASSISTANT,

OFFICE OF REPRESENTATIVE HIGGINS

SLOAN MCDONAGH, COUNSEL

JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT

ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL

SARAH JACKSON, MINORITY COUNSEL

DEVON OMBRES, MINORITY SENIOR COUNSEL

DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

For the COMMITTEE ON HOMELAND SECURITY:

NATASHA EBY, STAFF DIRECTOR, SUBCOMMITTEE ON

BORDER SECURITY AND ENFORCEMENT

ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND

INVESTIGATIONS COUNSEL

SANG YI, DIRECTOR OF INVESTIGATIONS

LISA CANINI, MINORITY DIRECTOR, SUBCOMMITTEE ON

OVERSIGHT, INVESTIGATIONS, AND ACCOUNTABILITY

LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER
BRIANA MARTICORENA, MINORITY STAFF DIRECTOR,
SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT
ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

For the DEPARTMENT OF HOMELAND SECURITY:

STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

For U.S. CUSTOMS AND BORDER PROTECTION:

SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

STEPHANIE MUFFETT, OFFICE OF CHIEF COUNSEL

CHRISTIAN RODRIGUEZ, SUPERVISORY BORDER PATROL AGENT, ADJUTANT TO AARON M.
HEITKE

Mr. Yi. Good morning.

This is a transcribed interview of Aaron M. Heitke. Chairman Comer and Chairman Green have requested this interview to obtain information regarding border security from the chief patrol agent in charge of U.S. Border Patrol operations in the San Diego Sector.

Will the witness please state your name for the record?

Mr. Heitke. Aaron Heitke.

Mr. Yi. On behalf of the Committee on Oversight and Accountability and the Committee on Homeland Security, thank you for appearing today. The committees appreciate your willingness to appear voluntarily.

My name is Sang Yi, and I am the director of investigations with Chairman Green's staff for the majority on the Committee on Homeland Security.

I now ask that the majority and minority members and staff from the committees to please identify themselves.

Mr. Bishop. Dan Bishop for the majority.

Ms. O'Connor. Elizabeth O'Connor, chief counsel, Homeland Security, majority.

Mr. Rust. James Rust, counsel for Chairman Comer on the Committee on Oversight and Accountability.

Mr. McDonagh. Sloan McDonagh, counsel for Chairman Comer on Oversight and Accountability.

Mr. Yim. Daniel Yim, House Oversight Committee, Democratic staff.

Ms. Jackson. Sarah Jackson, counsel, House Oversight Committee, Democratic staff.

Ms. Dennett. Lydia Dennett, special counsel on the Homeland Security Committee.

Ms. Martcorena. Briana Martcorena, subcommittee director for the Border Security and Enforcement Subcommittee on the Committee on Homeland Security for the Democrats.

Ms. Northrop. Alison Northrop, oversight director, Homeland Security Committee, Democratic staff.

Ms. Canini. Lisa Canini, subcommittee director of the Oversight, Investigations, and Accountability Subcommittee, Homeland Security Committee, Democratic staff.

Mr. Ewencyk. Good morning, Chief. Arthur Ewencyk. I'm with the Democratic staff of the Oversight Committee.

Mr. Yi. I also recognize that the witness is accompanied by Department of Homeland Security officials in addition to agency counsels at the table.

Will the additional agency officials please state their names and titles for the record?

Ms. Klisarska. Samantha Klisarska, Office of Congressional Affairs, Customs and Border Protection.

Mr. Rodriguez. Christian Rodriguez, supervisory Border Patrol agent, adjutant to Chief Heitke.

Mr. Yi. Before we begin, I will outline the procedure and guidelines that we'll follow in this interview.

Questioning will proceed in rounds. The majority members or staff will ask questions first for up to 1 hour, and then the minority members or staff will have an opportunity to ask questions for up to 1 hour if they choose. We will go back and forth for six total 1-hour rounds or until there are no more questions.

We will take a short break at the end of each hour. If you would like to take a break at any other time, please let us know. If, however, there is a pending question, I ask that you finish answering the question before we stop to take a break. We will also take a break for lunch after the third hour of questions.

There is an official reporter taking down everything we say to make a written record, so we ask that you give verbal responses to all questions. The reporter cannot record nonverbal answers such as shaking your head, so it is important that you answer each question with an audible, verbal answer.

Do you understand?

Mr. Heitke. Yes.

Mr. Yi. To ensure the court reporter can take a clear record, we will do our best to limit the number of people directing questions to you during any given hour to just those members or staff whose turn it is.

To the extent possible, it is important that we do not talk over one another or to interrupt each other. Please wait until each question is finished before you begin your answer, and we will wait until you finished your response before asking you the next question. That goes for everybody present in today's interview.

Furthermore, the majority members or staff will not ask questions or otherwise interrupt the minority's round of questioning and vice-versa.

I understand the witness is accompanied by agency counsels today. Would counsels please state their names for the record?

Mr. Jonas. Steve Jonas, DHS, Office of General Counsel.

Ms. Muffett. Stephanie Muffett, Customs and Border Protection, Office of Chief Counsel.

Mr. Yi. I also want to confirm that you understand that agency counsel

represents the agency and not you personally. Do you understand?

Mr. Heitke. Yes.

Mr. Yi. Are you choosing to have agency counsel in the room today?

Mr. Heitke. Yes.

Mr. Yi. You are encouraged to freely consult with counsel if you choose. If you need to confer with counsel during the interview, please let us know, and we'll go off the record and stop the clock until you're prepared to continue.

During the interview, we ask that you please answer any questions in the most complete and truthful manner possible. If you have any questions or if you do not understand a question, please let us know.

Do you understand?

Mr. Heitke. Yes.

Mr. Yi. If you do not know the answer to a question or do not remember, it is best not to guess. If there are things you do not know or cannot remember, please say so, and inform us who, to the best of your knowledge, might be able to provide a more complete answer to that question.

If I ask you about conversations or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection. If you recall only a part of a conversation or event, you should give us the best recollection of those events or conversations that you do recall.

Do you understand?

Mr. Heitke. Yes.

Mr. Yi. Although you are here voluntarily and we will not swear you in, you are required by law to answer questions from Congress truthfully, including questions posed

by congressional members or staff during this interview. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements.

Do you understand this obligation to tell the truth today?

Mr. Heitke. Yes.

Mr. Yi. Is there any reason you are unable to provide truthful answers to today's interview?

Mr. Heitke. No.

Mr. Yi. Before we begin, I'd like to explain briefly why we are here today.

As mentioned, the House Committee on Oversight and Accountability and House Committee on Homeland Security are seeking to obtain information regarding border security from the chief patrol agents in charge of U.S. Border Patrol operations in the southwest border sectors.

We are interviewing you today to learn about matters related to border enforcement and your roles, responsibility, experience, and observations. We are not investigating you personally for any personal wrongdoing. This is a fact-finding endeavor.

Are you ready to begin?

Mr. Heitke. Yes.

Mr. Yi. Thank you.

The clock now reads 9:04 a.m., and we will begin our first round of questions.

EXAMINATION

BY MR. YI:

Q Good morning, Chief. Thank you, again, for being here today. We really appreciate your testimony and appreciate your service.

A Thank you.

Q So we're going to start with some very basic questions related to your voluntary participation in today's interview and then learn more about your background and experience.

Have you participated in a congressional transcribed interview before?

A No.

Q Have you ever been a deponent in a congressional deposition?

A No.

Q Have you ever testified in any depositions for legal cases?

A Yes.

Q Can you please explain the approximate dates of those depositions and the nature of those testimonies related to those cases?

A I don't remember the dates. I've been deposed a number of times for personnel issues for legal actions for the agency.

Q What type of legal actions for the agency would that entail?

A Lawsuits. Various lawsuits, whether -- a recent -- a recent case had to do with pay, a change of pay. And so I was deposed in that.

Lawsuits throughout the history of my years. They could be individual lawsuits from vehicle accidents or -- as the chief, I'm named as the head of the sector, and so usually I'm named in specific lawsuits.

If an agent is on duty and is in a vehicle accident, the person involved with that agent is going -- oftentimes sues, and then sometimes I end up being deposed.

Q So most of these depositions were related to personnel matters or accidents relating to people on duty?

A Correct.

Q Okay. Can you please share with us how the department has prepared you for today's transcribed interview and the names of those involved in your preparation from the department?

A I don't remember names. I'm not good with names. But I had a couple of hours of preparation as far as the process that we would be going through today.

Q Who were involved? You don't remember any of the names of the people who helped prepare you for the couple of hours?

A Sam? I remember you.

Mr. Jonas. I'm hurt.

Mr. Heitke. I'm not good with names.

[Laughter.]

BY MR. YI:

Q Was Mr. Jonas present?

A Yes.

Q Okay. Was Ms. Muffett present?

A Yes.

Q Any other names that I may not be aware of that I just named -- in addition to the ones I named here?

A Dan Schroeder was present as well.

Q Okay. And what is Mr. Schroeder's position and title?

A Congressional Affairs. He's with Congressional Affairs. And his title -- I'm not 100 percent sure what his title is. I think it's director or assistant director.

Q Approximately how many people helped you prepare from the department side?

A Five or six.

Q Five or six. So Mr. Schroeder, Mr. Jonas, Ms. Muffett, and two to three more?

A Yes.

Q Were the other two to three individuals from Congressional Affairs as well or from the General Counsel's Office or from other offices in the department?

A A combination of Congressional Affairs, Office of Counsel within Customs and Border Protection, and Office of Counsel within Department of Homeland Security.

Q Were there any officials from Public Affairs or Public Relations there?

A We had -- I had a representative from our headquarters, and I can't remember his name. I think he's an associate chief. I think he's over Public Affairs, potentially.

Q So there was a -- just to clarify -- there was a person from Public Affairs involved in the preparation of your transcribed -- for your transcribed interview today?

A I believe so, but I'm not 100 percent sure as far as if he was exactly Public Affairs. I'm sure he oversees -- I believe he oversees part of our Public Affairs Office.

Q And you don't remember this individual's name?

A I do not.

Q Okay. Approximately how many -- how long were you preparing with these individuals?

A We had three times Zoom calls. Three Zoom calls. Like, about an hour, a little over an hour for each call. An hour and half, I think, 90 minutes.

Q Okay. Were you aware that the chairmen of both committees offered to reduce the operational impact on you by traveling to your sector for this transcribed interview?

A Yes.

Q So they told you that that was an offer available to you?

A That this could be done in San Diego, yes.

Q And whose decision was it to have it done here in Washington, D.C.?

A My headquarters.

Q So CBP headquarters.

Did you have a preference of where this interview would be taking place?

A Yes.

Q Where would that have been?

A In San Diego.

Q Did you express to them that you would like to take the offer of the committee chairmen to do this interview in San Diego?

A Yes.

Q And what was their response to you?

A They would like it to be done in Washington, D.C., as far as precedent goes, to keep the interviews here.

Q So their rationale was because of precedent?

A As far as going to the field, yes. It's historically how they've been done in the past, is out here.

Q Did they offer any other reasons why they would prefer it in Washington, D.C., rather than in San Diego where you preferred and where the chairmen of the two committees preferred?

A No.

Q Okay. Why did you prefer it to happen in San Diego?

A Personal reasons. I have two -- travel is part of my profession, but the more I stay home with my family, the better it is for all of us.

Q And also, for our point of view, we wanted to be very clear with you that we wanted to minimize the interruption to your schedule and operational impacts to your sector by having you come to Washington rather than us coming to you in San Diego.

A Right.

Q But we, again, appreciate your voluntary appearance today.

Mr. Yi. I do want to state for the record that we've had Congressman Clay Higgins join us, who is the subcommittee chairman of the Border Security and Enforcement Subcommittee, who is also joining our Subcommittee on Oversight, Investigations, and Accountability Chairman Dan Bishop.

I believe we also have Democratic counsel who joined.

Mr. Ombres. Devon Ombres.

Mr. Yi. Thank you.

BY MR. YI:

Q Okay, Chief Heitke, moving on to your background a little bit. Can you help us understand a little bit more about your educational history?

A Okay. I went to college at the University of Minnesota Duluth. I received a bachelor's degree in criminology. I went on from college to law school and received a juris doctorate. I passed the bar in 1997, practiced for a short time before I came into Federal law enforcement.

Q What type of law did you practice?

A A little of everything. I was up in Grand Forks, North Dakota. So it's a small town, and so you had to do a little of everything. Mostly family law, but a little bit of criminal, a little bit of contracts.

Q Very good. Thanks.

And for the record, can you please state again your current position with the U.S.

Border Patrol?

A Chief patrol agent, San Diego Sector.

Q And the year you started with the Border Patrol?

A 1998.

Q Okay. Did you have prior law enforcement experience?

A No.

Q Aside from your criminal law practice?

A Right.

Q Why did you seek to first become a Border Patrol agent?

A Because I wanted to come into Federal law enforcement, and the only two agencies that were hiring at the time were the Border Patrol and the U.S. Marshals. And I applied to both, and Border Patrol called first.

Q Is it fair to say that you served also in a variety of roles and in many different offices and sectors since 1998?

A Yes.

Q In 2015, you were named the chief patrol agent in Grand Forks Sector, northern border. What were your roles and responsibilities there?

A As chief patrol agent, I oversee all of the sector operations. So everything that goes on within the Grand Forks Sector at the time. It's eight Midwestern States. So all of the Border Patrol operations there. And then it's a conduit between the field and headquarters.

Q Okay. And then in 2019, you came to the San Diego Sector as a deputy chief patrol agent? Is that correct?

A Correct. Yes.

Q What were your roles and responsibilities as a deputy chief patrol agent?

A It's to do much of the same thing, overseeing operations along with the chief patrol agent. So the chief patrol agent is the number one in command of the sector. And so as the deputy, you assist the chief in oversight of all sector operations.

Q Okay. And when did you become the sector chief?

A Late 2019, early 2020. Let's see. I arrived in November of 2019. So I think 2020.

Q You became sector chief of San Diego in 2020.

And how many total personnel do you supervise? How many agents and how many support personnel? If you could break that down, please.

A About 2,000 agents. And I think we're right around 250, 300 support personnel.

Q And who do you report to as the sector chief?

A I report to the chief of operations, law enforcement division, here in Washington, D.C., Chief David BeMiller.

Q And who does Chief David BeMiller report to?

A The deputy of the United States Border Patrol. And the deputy is Matt Hudak.

Q And who does Mr. Hudak report to?

A Chief Ortiz. Chief Raul Ortiz.

Q What is your communications with the deputy of Border Patrol and the chief of Border Patrol?

A I don't talk to the chief or the deputy daily. Chief Ortiz was out at sector last week. But I have frequent emails and then meetings and generally not quite daily conversations with Chief BeMiller, but weekly.

Q Is it fair to say that among those three individuals, instructions or guidance

or tasks flow down from them to you?

A Yes.

Q Okay. And can you describe to us a little bit about the uniqueness of your sector compared to other southern border sectors?

A Yes. We are unique in many different ways. The first big one is terrain. So San Diego Sector being on the Pacific coast, we have the coast, and then we have the urban area. We have the most urban area of any southwest border sector.

San Diego and Tijuana abut the border there. And so there's close to 3 million people in Tijuana, about 2.5 million people in San Diego. So it's very large metropolitan areas on both sides of the border. And then once we get into the mountains, there's mountains on the border in between San Diego and Tijuana. And then it goes to desert just to the east of that.

And so we have all of those different terrain environments to deal with and the urban environment. And we also are -- we also have the most infrastructure of any southwest border sector as far as barrier goes. Those are the biggest highlights that are different in San Diego.

Q And how many checkpoints do you have, and where are they?

A We have the I -- Interstate 15, Interstate 5, Highway 94, the -- and I-8, Interstate 8. So four checkpoints. Four checkpoints.

Q Okay. And how many processing centers are in your sector?

A We don't have a processing center. Oh, I guess to clarify the question. If we talk about a CPC, the acronym stands for centralized processing center. We don't have one of those in San Diego.

Q Any detention space?

A Yes.

Q How much?

A We have the ability to detain about 2,400 people.

Q What is the approximate capacity? Where are we in capacity right now?

A As of this morning, I believe we are at 130 percent capacity.

Q Okay. I want to talk a little bit about the general trends in your sector as well.

So you arrived in San Diego in February 2020. And right before the COVID lockdown started, from then to then, can you explain a little bit about the trends you've noticed?

A Yes. When I first arrived, we had -- I don't know if -- we had traditional numbers. We would arrest probably around 500 people a day, which is fairly -- and there are seasonal trends as well. More people move in the spring and the fall than in the summer, which varies on weather and work patterns. But traditional numbers.

When COVID hit, we did a very successful campaign on both sides of the border, encouraging people to stay in place to prevent the pandemic from moving around. And our numbers dropped significantly early on in the COVID pandemic, where we had days where we only had 50 or 100 arrests, which is very low for San Diego traditionally. And then the numbers gradually started to rise and have continued to rise since then.

Q Okay. And it doesn't appear like the COVID pandemic impacted the encounter numbers for too long because there was nearly a 1,600 increase in encounters from May 2020 to June 2020. Why do you think this happened?

A Likely a lot of different reasons. I think one of the biggest reasons is that people are only so patient. People waited -- people did listen and wait for a while during COVID, but they are only going to wait so long, and eventually they're going to move.

Q Okay. And then the trend kind of started slowly going upward again from February '21 to March '21 and saw a 37 percent increase. Why do you think that happened?

A I think there's a lot of different reasons as far as why folks move. And a lot of the impacts around the world are the demographic of the individuals that we started to see change.

And because of what is happening in other parts of the world, I would say -- obviously, there's as many different drivers as there are people that are coming here. But the demographic of the people that we saw come started to change, and much of that was from Eastern European countries and North and Central African countries and impacts there, whether it be political or economic.

Q So you mentioned that there's many drivers. What do you mean by that?

A Reasons that migrants come here.

Q What are those types of reasons in your observations?

A As I mentioned, as many as there are people who come. But right now, an enormous amount of people coming from Eastern Europe, for example, and political and economic issues in that part of the world push -- encourage people to come this direction.

Q So in your 25 years of service as a Border Patrol agent, you've seen a lot of different reasons, I'm sure.

A Yes.

Q What types of other reasons exist other than things that happen for political reasons in migrants' home country?

A When I started 25-plus years ago in Arizona, the vast majority of the folks that we saw coming here were coming here to work, were coming to the Arizona, whether the lettuce fields, the asparagus, the produce industry in that part of the world.

And that population did not -- they were not coming here to live -- to become citizens, to stay here. They were coming here to work and go back home. So different drivers there. And vastly, the majority of the folks that were coming then were Mexican nationals.

Q So you have political stability in their home country. You have job opportunities in the United States. And those are the two primary -- are you saying that those are the two primary reasons or drivers you've seen for people crossing the border illegally to enter the United States in your 25 years, or are there more?

A I'm sure there's more. There's many. Those are the two main ones that come out as far as the vast majority of people.

Q Are there any others that you've been aware of that you can share with us today?

A Crime, obviously, in their -- whether it be in their native countries. There is changes. I've been in for five administrations, and each administration there's changes, each administration there's changes in simply the attitude of folks around the world as far as seeing a change and potentially -- a better opportunity potentially. Regardless of what is actually happening, anything that changes, they're going to be hopeful.

Q Okay. I heard a lot of "changes" in your response for the last five administrations. In one of the times you mentioned, you mentioned changes in attitude. Can you clarify what that means?

A It's just a change in the administration. So different. Not necessarily anything specific, but a -- just a change.

Q Okay. In what ways do these change between administrations by attitude that's relevant to aliens crossing or entering the United States illegally?

A I see it more as hopeful. Not necessarily a specific when I came in

versus -- the Clinton administration was the first one, and then on to the Bush administration. Just a change. If there anything -- anything that does change potentially, they're hopeful that --

Q When you say they are hopeful, are you referencing or referring the would-be illegal crosser, or are you -- who are you referencing?

A Okay. Just --

Q What are they hopeful about, and who's hopeful?

A The folks coming here are just -- they want to be able to stay. And if there is a change, they're hopeful they can --

Q They're hopeful that they would be able to stay here after entering the United States illegally?

A Right.

Q And that they would be hopeful that they would be released therefore?

A Right. Yes.

Q Okay. Do you agree that the southern border is currently in crisis?

And I should clarify this. Before I say "do you agree," I should have asked you, do you agree with Chief Ortiz, who testified in a deposition that he believes that the southern border is currently in crisis? Do you agree with Chief Ortiz's statement that the southern border is currently in crisis?

A I'm not familiar with that exact testimony. And I would stick with San Diego as far as -- I wouldn't want to speak to the entire southwest border. I have eyes on San Diego each and every day, and we have a lot of challenges in San Diego.

And without -- San Diego is very busy, and we have an enormous amount of traffic there. As far as specific the -- without going specific to his testimony, because I'm not exactly sure about it, but I would agree that San Diego, specifically, we have a lot of

challenges there. And so yes.

Q What types of challenges?

A Enormous amounts of migrants coming across. Large groups that come in to give up right now, which takes an enormous amount of our resources.

Q Well, Chief Ortiz in that same deposition was asked if there was -- if he would agree that there was an unprecedented number of aliens illegally entering the United States, and he said yes. Would you agree with that testimony as well?

A Yes.

Q Okay. He was also asked that -- whether or not, when President Biden was elected, did the number of aliens trying to illegally enter the United States increase or decrease. He stated that it increased. Would you agree with that testimony as well?

A Yes. Yep. Yeah. I'm sorry. Yes.

Q He was also asked in that same deposition if the crisis that is currently ongoing at the southern border is making the border less safe for Americans and aliens alike. He answered in the affirmative that, yes, that crisis does make Americans and aliens more unsafe. Would you agree with that testimony?

A Yes.

Q Why is it important for the Border Patrol to detain and remove illegal border crossers?

A There needs to be a consequence to the illegal activity, otherwise it won't stop. And when you look at a population that's coming, the only real consequence that we have is to send them back to their home country.

Detention -- there isn't enough detention in our country to detain everybody. And even if there was, it would be short term. Many of these folks come and have traveled for 6 months or a year to get here. A day or two in detention is not a penalty to

them. They're more willing to do that. Fines, obviously, are not going to be effective when the individuals have everything they own with them.

And so the only real consequence we have is to send them back to their home country. And if somebody has traveled from wherever for an entire year and you fly them all the way back to their country, it's a significant penalty.

Q Do you believe these consequences are being employed or deployed, do you suppose? Are people facing these consequences at a rate significant enough to deter them from illegally entering into the United States?

A Not right now.

Q Not right now.

A Not right now.

Q Was there a time when they were facing these consequences at a rate that was more effective at deterring people from entering the United States illegally?

A I would say yes. When the numbers were low enough for us to be able to manage and send back more people, yes.

Q When would that have been in recent times?

A It's been several years.

Q Can you give me an approximate year?

A I would be guessing if I did.

Q Just give me an estimate, and that's fine.

A An approximate timeframe going back maybe to 2017, 2018.

Q Okay.

BY MS. O'CONNOR:

Q Good morning, sir.

A Good morning.

Q In December of 2020, encounters in San Diego were about 8,500. Does that sound about right to you?

A Yes.

Q And then in April of 2021, they rose to about 14,680. Does that sound right?

A Yes.

Q That's a 73 percent increase.

A Yes.

Q Is that a pretty significant increase, you'd say, in your sector?

A Yes.

Q President Biden took office in January in between those two, December of 2020 and April of 2021.

Earlier you mentioned that a change in administrations sometimes gives people hope that they're going to be released into the United States and get to stay. Would you say that that was a big driver in the jump between December of 2020 and April of 2021?

A I wouldn't say that specifically. I don't know how much impacts it all has. There are impacts, many, many different impacts, pushing the individuals to come. Which one specifically was the main? I think the economic and the political unrest are more of the drivers that impact that. But each change in administration also has an impact.

Q Well, the political unrest in some of the countries you're referring to has been pretty consistent for a couple of years, right?

A Yes.

Q And the economic situation has also been pretty consistent for a couple of

years?

A Yes.

Q So what do you think the main driver is, then, in that short timeframe between December of 2020 and April of 2021 where political instability and economic drivers are still consistent, whether good or bad? What is the change?

A As far as -- I wouldn't go with any one specific thing as being the main driver. I think it's a --

Q Based on your training, knowledge, and experience.

A A combination of all of them.

Q Throughout 2021, encounters fluctuated -- and into 2022 -- between about 12,000 to where it hit its peak in July of 2022 to about 16,000.

How did your sector handle those fluctuations?

A We focused on the actual border, the land border. So San Diego Sector has 60 miles of land border and then 900-plus miles of coastline and then our checkpoints and interior operations. We pulled resources out of -- off of the maritime side and then the checkpoint side and focused on the actual physical land border.

Q What kind of impact did it have operationally to have to focus resources away from checkpoints and the water?

A We don't see what's going on in those areas nearly as much and it lessens our impact on particularly those that -- the reason our checkpoints are there is to arrest what we miss on the border at further into the interior. And so we're not able to do that.

Q So what kind of things could you be missing?

A Individuals that made it past us at the border, and then narcotics that made it past as well.

Q During these surges and this fluctuation, did you receive support from Border Patrol headquarters?

A Yes.

Q What kind of support?

A Additional transportation.

Q What did you need the transportation for?

A To move people.

Q Where?

A Throughout the sector to -- we have different stations across the sector and different amounts of detention space, holding space, at each one of those stations.

Q How many stations do you have that have detention space?

A We have detention -- we have limited detention space at all six stations.

Q So if you were seeing more people come through one station you'd have to move them to another station in order to efficiently process them?

A Correct.

Q Were you moving any people outside of your sector for processing?

A No.

Q Did you have to receive people from other sectors to process them?

A Yes.

Q Which sectors?

A Yuma Sector, El Paso Sector, and Rio Grande Valley Sector.

Q Since 2022 into this year -- end of fiscal year 2022, beginning of calendar year 2023 -- numbers in San Diego -- encounter numbers in San Diego have consistently been increasing.

Based on your training, knowledge, and experience, what do you think that reason

is? Or what is the cause for that?

A We've been trying to figure that out. The demographic has changed from mostly folks coming from Mexico and then the Northern Triangle: Honduras, El Salvador, and Guatemala. And it's changed in the last 6 months, 8 months or so to mostly Eastern European and folks from North and Central Africa.

And we've worked with our partners in Mexico as well to see where and why that change is occurring. And as of right now, we don't have a solid reason as to why that demographic has changed so much.

Q What countries in Africa and Eastern Europe are you seeing?

A I have to look at -- Eastern Europe has been -- Uzbekistan, Kyrgyzstan have been the main two. Russia as well.

And as far as Africa goes, Ghana, Ethiopia.

And back to Eastern Europe, Yemen, Turkiye.

Those have been the main nationalities.

Q According to Border Patrol's publicly available data, Colombian encounters in fiscal year '23 have already surpassed total Colombian encounters in fiscal year '22. Do you have any insight as to why that might be?

A No. I'm not sure. We have seen the rise, though, yes.

Q And about 20- -- so far in fiscal year '23, about 20,000 migrants have been listed in Border Patrol's publicly available data as from other countries.

The countries that you described -- Uzbekistan, Kyrgyzstan, Ghana, Ethiopia -- are those the main drivers in that other category?

Mr. Jonas. Do you understand the question?

Mr. Heitke. I'm not sure if I understand the question.

BY MS. O'CONNOR:

Q So Border Patrol -- are you familiar with Border Patrol's publicly available demographic information for encounters?

A Yes. Somewhat.

Q They provide about 20 different countries that people come from, and then there's a category called "other."

A Okay. Yes.

Q And San Diego's encounter data reflects about 20,000 fiscal year '23 year to date of other countries.

And you had mentioned Uzbekistan, Kyrgyzstan, Ghana, Ethiopia. Those countries aren't listed in the regular -- in the list of countries included in the publicly available data. So I'm just wondering if those are likely the countries that make up the 20,000 others that you're encountering.

A Yes. They make up the majority of it, yes.

Q Okay. Do you have any concern with the change in demographic and the countries that they're coming from?

A Yes.

Q What kind of concern do you have?

A Why they're coming. The ability to impact a consequence. In many of the cases, we don't have the ability to send people back to many of those countries. So there's not a consequence that we could implement that would slow that traffic down.

Q Why can't we send people back to some of those countries?

A We don't have flights back to those countries.

Q Why not?

A That, I am not sure of. I don't handle that level at my level.

Q Have we ever had flights back to those countries?

A I do not know. I'm not sure.

Q Do you know if you've ever -- has Border Patrol ever removed people to those countries, or is that an ICE ERO --

A Border Patrol itself doesn't do that. Enforcement or mobile operations does the return flights.

Q Are you aware of any flights that have ever returned to any of those countries?

A I couldn't specifically say that I know for sure.

Q Do entries from these countries cause you any sort of concern regarding national security?

A We have seen a rise in the number of TSDS hits, which is individuals that have a record of potential terrorist ties. And in the last 2 years we've continued to see significantly more.

Q And is that about the same timeframe that you've seen an increase in these other demographics?

A Yes.

Q You mentioned before that when there are fluctuations in encounter numbers in the operational surges, you have to limit resources in important areas like checkpoints.

Does it cause you concern that you've encountered more people from the TSDS from countries from these other demographics and you can't man some of these checkpoints? Do you fear that people are getting in undetected?

A Yes.

Q While relatively small in number, the number of Chinese nationals encountered in San Diego in fiscal '23 year to date has increased over 1,600 percent since

fiscal year '21 and 40 percent since fiscal '22. Do you have any insight as to why that might be?

A I do not know the specific drivers. We have kept a very close eye on it because, yes, we have seen significant increases.

Q And those are largely single adults. Does that cause you concern?

A That specific demographic doesn't cause me concern. The overall situation, yes. But not whether it's single adults versus families.

Q Are the Chinese nationals largely giving themselves up, or are they evading arrest?

A We have seen both. So it's been -- I don't know the exact percentage-wise, but I think we're seeing probably close to even numbers as far as those that are in the groups that are giving up and those that are trying to evade.

Q Is there any particular nationality that has been trying to evade arrest that you've noticed more than others?

A The main nationality that tries to evade arrest is Mexican nationals.

Q Why is that?

A Because they know they'll be removed under Title 42 immediately.

Q So does that imply the people who aren't necessarily evading arrest believe that they will be released and not removed under Title 42 or Title 8?

A Correct.

Q Do any of the points of entry in San Diego use CBP One for appointments that you know of?

A Yes.

Q How do you think that the use of CBP One, if at all, has impacted encounter numbers in your sector?

A It hasn't -- and I'll speak just for the Border Patrol side -- but it hasn't impacted our number of encounters.

Q So in fact, the number of encounters in your sector has gone up even with the use of CBP One?

A Correct.

Q When processing migrants that they do encounter in your sector, do your agents interview them?

A Yes.

Q Do they ask them about their journey and the reasons for coming?

A Yes.

Q Recently in fiscal year '23 where we have seen this increase in numbers, what reason have migrants been giving for coming to the United States?

A Economic and political turmoil and credible fear are the vast majority of the reasons.

Ms. O'Connor. I'll pass to my colleague.

BY MR. RUST:

Q We talked about how the demographics in terms of nationalities have changed during your tenure in San Diego Sector.

Has the type of migrant in terms of family unit or single adult or unaccompanied alien child, have those trends changed since you've been in the San Diego Sector the last few years?

A It has varied. In San Diego Sector, we haven't seen, even in the last number of years, the large amounts of unaccompanied children within San Diego, unlike Texas areas. And the family groups has ebbed and flowed, I guess.

Q So it's varied during your tenure? There hasn't been a clear trend line in

one direction or another?

A Correct.

Q What would you say is the proportion of individuals encountered by your agents in the San Diego Sector who are turning themselves in to Border Patrol agents as opposed to trying to evade arrest?

A Right now, the vast majority are give up in the desert.

Q So they're not fleeing from agents. They're staying put and turning themselves in --

A Correct.

Q -- to Border Patrol agents, the majority.

And you mentioned earlier that 1 to 2 days in a detention facility is not a deterrent.

Do you know what the current average time in custody is for an individual encountered by Border Patrol agents in San Diego Sector that they would spend in a Border Patrol station or other detention facility before being released or turned over to ICE ERO?

A I think the number that I looked at yesterday was about 30 hours time in custody.

Q And then -- so after about 30 hours, those individuals would be released from Border Patrol custody or turned over to ICE ERO to make a custody determination?

A Correct.

Q Does U.S. Border Patrol in San Diego Sector make custody determinations after processing, or do they refer everyone to ICE ERO to make the custody determination?

A We make custody determinations during processing.

Q And do you know what the likelihood that an individual encountered would receive a notice to appear and be released on their recognizance by Border Patrol in the San Diego Sector is currently?

A The percentage as far as number of apprehensions versus the number of releases?

Q Yes, sir.

A I don't know that number off the top of my head.

Q Would you say that the majority of individuals encountered are released with a notice to appear on their recognizance from Border Patrol custody in San Diego Sector currently, or is it less than the majority?

A Right now, I would say it was the majority.

Q You also mentioned that you had seen -- I believe you said you saw an increase in large groups crossing and turning themselves in to Border Patrol over the last few years.

A Yes.

Q Is that correct?

A Yes.

Q Why would smuggling organizations cross such large groups of individuals? Is that a tactic that they're using, or is there some other explanation?

A Both. It is a tactic. So they will send in large groups, 200 or 300 people, to an area, knowing that it's going to take us an enormous amount of resources to bring those folks all out of the border area. And so they'll use that to drain our resources in areas so that they can get other things through in other places.

Q And when you say "resources," are you referring to agents and transportation? And what resources are consumed in responding to these large groups?

A Yes. Agents, transportation, and -- it's the number of agents that are actually available to be on patrol on the line itself.

Q Do these transnational criminal organizations control smuggling operations in the San Diego Sector to a large degree?

A They control the -- they control all of the land on the border on the Mexican side.

Q Would it be difficult if an individual in Mexico wanted to cross illegally in the San Diego Sector for them to do that without the assistance of a human smuggling organization or transnational criminal organization?

A Yes. It would be difficult and dangerous.

Q And why is that?

A The organizations that own those lanes get paid for every thing and person that crosses in that area. So they are afforded a payment for everything that goes through, and they don't want to lose that payment. And so we have run into individuals who have been robbed or beaten when they've tried to make it through without contacting one of the people in charge of that area.

Q Do you know how much an individual would pay a transnational criminal organization to be smuggled into the United States in the San Diego Sector?

A Yes. We have ballpark numbers.

Q What are those numbers?

A It varies. And I think the easiest -- it's a business model that they use.

So on land, right now, to cross on our 60 miles of land border, on average it costs about \$8,000 per person. It's between 8,000 and 12,000 depending on.

On the water, it's generally between \$12,000 and \$20,000 per person.

They also use different ways to manage. So if they have a large group of 200 or

300 people, sometimes they will only have to pay \$400 or \$500 per person because it's quicker and it's easier for them to move those folks in places.

And we have individuals as well that they don't necessarily have direct contact to the smuggling organizations. So they may show up from wherever country they came to Tijuana and talk to people to get a cab ride up to the border and be told, you're going to cross here. For that cab ride, maybe it will cost \$500 or \$600. But it's all part of the organizations that are moving people.

Q So the organizations, the smuggling organizations, control those cab rides as well?

A Yes.

Q Okay. Do the transnational criminal organizations charge extra for individuals who are seeking to evade apprehension entirely, if you know?

A Yes. From what we have gathered from people, depending -- it costs more to go through an area that has a better chance of getting away.

Q Are you concerned about the public safety risk that could be presented by an individual who is paying that premium to evade Border Patrol in terms of prior criminal history, of removal history --

A Yes.

Q -- or other factors?

A Yes.

Q In the San Diego Sector, do you have statistics on your known got-aways for this current fiscal year?

A Current fiscal year? Our year to date, just under 66,000.

Q 66,000 got-aways since October of last year?

A Correct.

Q Do you know how the got-away trends in San Diego have fluctuated since you first came on board?

A They've continued to rise.

Q And what factors do you attribute that rise to?

A Increased traffic on the border itself.

Q How do Border Patrol agents in the San Diego Sector track known got-aways?

A We use everything we can. So it could be a sign. Footprints in the sand. When we have empty boats on the beach, we count life jackets that are left behind. It's by no means an exact science. Sensors and cameras that have picked up groups of individuals that we know weren't apprehended, so we can make counts there.

Q You said it's not an exact science, but would you agree that it's based on actual evidence that someone had crossed illegally?

A Correct. Yes.

Q So would you agree that those known got-away estimates are fairly accurate in the sector?

A I'm not sure I understand the question.

Q Do you believe the 66,000 for this fiscal year is a fairly accurate estimate of the actual approximation of known got-aways in the sector -- of the known got-aways in the sector?

Mr. Jonas. The known got-aways.

Mr. Heitke. Yes. Yes.

BY MR. RUST:

Q You mentioned before that the San Diego Sector has more coverage from the border barrier system than other sectors.

How does the border barrier system assist your agents in securing the border in the San Diego Sector?

A It slows down the people as they come across, and so we have more time to respond and actually make an apprehension.

It also moves people -- it's more difficult to cross through the barriers, and so they move to other areas where the barrier isn't where we can focus resources.

Part of the barriers as well is all-weather roads, so we have better and faster access to those areas.

Q Are there areas of the San Diego Sector where the border barrier system would be beneficial to install for your agents?

A Yes.

Q Do you know approximately what -- how many miles of border barrier system you would want in your sector?

A We have gaps right now in several areas that we want to fill in.

Q Are there currently obstacles to filling in those gaps currently?

A The gaps themselves, we have several in the process of being filled in as far as they're within the -- I think they're funded. So we're waiting on the actual construction phase.

Mr. Rust. Okay. I'd like to see if Mr. Higgins would have any questions for the witness.

[9:58 a.m.]

Mr. Higgins. I do.

Chief, thank you for being here. So God bless you. I see you got a good fresh haircut this morning.

Mr. Heitke. Yes, sir.

Mr. Higgins. Did CBP culture change beginning in early 2021 regarding internal department investigations of use of force? Did frontline agents find themselves increasingly subject to enhanced or unfair or even targeted internal affairs investigations since Secretary Mayorkas has been --

Mr. Heitke. Within the -- the use of force policy remained the same. We had some questions as to -- how it was implemented.

Mr. Higgins. What do you mean by that, "how it was implemented"?

Mr. Heitke. Specifically on the border, the decision was made not to, for example, use force to keep folks from entering the country, to keep the individuals in Mexico.

Mr. Higgins. How about to keep them in detention once they've been detained in the field with one agent and 15 guys, use of force, soft hands, nonlethal?

Did your agents find themselves subject to investigations for trying to handle their business with a dozen or more illegal crossers on their own that they had apprehended? Did they find themselves under enhanced scrutiny for how they dealt with that?

Mr. Heitke. We saw the -- we saw -- we saw in -- a change in -- in some of the -- the application of how -- of how force should or shouldn't be used when making arrests, yes.

Mr. Higgins. Were agents disciplined?

Mr. Heitke. That I don't know for sure. As far as specific cases, I'm not --

Mr. Higgins. Were they reassigned from frontline border operations if they were under investigation for use of force?

Mr. Heitke. If an individual is under investigation, then, yes, they're going to be put on either administrative leave or --

Mr. Higgins. Did that happen increasingly once Secretary Mayorkas was in control?

Mr. Heitke. I don't know the exact numbers. I'm not sure if there was a specific number increase.

Mr. Higgins. Okay. Shifting gears, let's talk about drivers versus magnets. You spent some time talking about worldwide drivers for illegal immigration, immigration period, from other nation-states, war, crime, economic collapse, political upheaval.

Has this been constant throughout the history of man? And, for the last couple hundred years, the United States has had a standing reputation as a land of opportunity. So you've had drivers worldwide, and you've had the United States is reputed to be the land of opportunity worldwide. These are a couple of constants.

So what has changed in 2 years? Why do we have 5 million crossings in 2 years? Why do we have a million criminal runners or gotaways in 2 years? Why are we headed for 3 million illegal crossings another million gotaways this year?

What has changed? The worldwide drivers are the same. America is still the land of opportunity. What has changed in 2 years to give us these numbers?

Mr. Jonas. You can feel free to accept or not accept the Congressman's history lesson here.

Mr. Heitke. As far as -- we still have an enormous amount of drivers across the spectrum. I think one of the biggest -- one of the biggest impacts and changes that we've had is access to social media and phones. And so the individuals react and can

react immediately to every single thing that we do within our operations.

And so, when specific demographics are seen as released, that it notifies the folks coming here that, if that demographic exists, they will be released, and so they find that demographic.

Mr. Higgins. Thank you, Chief. I appreciate your answer, and I appreciate you being here today. That's all I've got.

BY MS. O'CONNOR:

Q Chief, if I may follow up, when you were asked -- you just mentioned that when certain demographics see that they'll be released, they notify people that they'll be released. What demographics are you referring to?

A A good example is family groups. So family groups, when we see individuals that come across, and they have -- it's a family of five, for example, and they -- it's much more difficult to find detention or housing for a family group.

So -- all right. So, for an example, they're released on their own recognizance. Individuals come up and see that. And, if they were single adults, we do see people rent a family. So they will find somebody with children, and they will pay to take those children with them when they come to the border and say that they're their children so that they're more likely to be released.

Q Does Border Patrol try to confirm familial relationship before releasing as a family unit?

A Yes.

Q And what do they do to do that?

A It depends a lot on our resources available. We question. We run any of the -- their prints and pictures to see who they are and if they have -- if we have any records on them. And then we will question them and, depending on the age of the

children, talk to them as well. And depending on how well they have their stories straight and then, if there are significant questions as well or particularly with smaller children, we do have the ability to run DNA tests, which is time-consuming otherwise, but we do have that.

Q How often in San Diego do you see this rent-a-family strategy?

A We were -- we did see it close to weekly for quite a while.

Q Thank you.

Mr. Yi. The time is now 10:04 a.m. We will take a quick break and go off the record.

[Recess.]

Mr. Yim. All right, we'll go on the record. The time is 10:16 a.m.

EXAMINATION

BY MR. YIM:

Q Chief, my name is Daniel Yim. I work for the House Oversight Committee, Democratic staff, and I'll be asking you a few questions this morning.

I'd like to circle back and discuss your background with Border Patrol. When you began your career with Border Patrol in 1998, that was during the Clinton administration, correct?

A Correct.

Q Have there been any interruptions in your service with Border Patrol since you joined in 1998?

A No.

Q So you've served with Border Patrol continuously since 1998, correct?

A Correct.

Q After the Clinton administration, you continued to serve with Border Patrol

during the Bush administration, correct?

A Correct.

Q And, after the Bush administration, you continued to serve with Border Patrol during the Obama administration, correct?

A Correct.

Q After the Obama administration, you continued to serve with Border Patrol during the Trump administration, correct?

A Correct.

Q And then President Biden took office in January 2021. You have continued to serve with Border Patrol under the Biden administration, correct?

A Correct.

Q You mentioned this earlier, but in total you've served with Border Patrol under five different Presidential administrations. Does that sound right?

A Yes.

Q Earlier, you talked a bit about changes in attitudes with each Presidential administration. Would you agree that, under these administrations, you've witnessed shifts in immigration and border policy at times from one administration to another?

A Yes.

Q So, for example, under the Clinton administration, Border Patrol introduced Operation Gatekeeper, which was a measure designed to halt unauthorized crossings at the U.S.-Mexico border.

You would agree that the decision to implement Operation Gatekeeper was a policy decision made by the Clinton administration?

A Yes.

Q And, after the 9/11 attacks, the Bush administration implemented the

National Security Entry-Exit Registration System, and that required individuals from certain countries to undergo additional screenings when traveling to the United States.

You would agree that the implementation of the registration system was an immigration policy made by the Bush administration. Is that right?

A I don't remember specifically. I know it was a policy implementation. If it was specifically immigration or if it was under national security, but --

Q That's fair. But that was a policy decision --

A Yes.

Q -- made by the Bush administration?

A Yes.

Q The Obama administration implemented the Deferred Action for Childhood Arrivals program that was known as the DACA program, which temporarily shielded certain immigrants from deportation, among other things.

You would agree that the implementation of the DACA program was a policy decision made by the Obama administration?

A Yes.

Q Great. President Trump decided to build 450 miles of border wall. And, again, you would agree that this reflected a policy decision by the Trump administration how to approach border security?

A Yes.

Q So, after walking through all that, you would agree that each Presidential administration, immigration and border policies change. Is that fair to say?

A Yes.

Q Now, earlier you mentioned to my Republican colleagues that Chief Ortiz came down to visit the San Diego Sector. Is that right?

A Yes.

Q When did he come down there?

A The last time was last week.

Q How long was he there for?

A A day and a half.

Q And what was he doing down in the San Diego Sector?

A He came down to present a Newton-Azrak award, which is our highest valor award, and to attend the San Diego County Law Enforcement Memorial.

Q Okay. While he was there, did he ask you about operations in the San Diego Sector?

A We briefly discussed it, yes.

Q Are you aware as to whether Chief Ortiz is attending other sectors, going out and visiting other sectors?

A Yes.

Q How often does he visit sectors?

A I would say frequently, but I'm not sure exactly how -- how often, but frequently.

Q How often has he visited the San Diego Sector?

A In -- he's been -- he's at least there probably twice a year.

Q Okay. And most recently, when he was there last week, did he ask you about resources needed in your sector?

A Yes.

Q Did you talk about resources needed in your sector?

A A little bit, yes. Yes.

Q Earlier, my Republican colleagues asked you about your duties and

responsibilities as a chief patrol agent. I'll note that you did not include anything policy-related in your description of your responsibilities.

You would agree that drafting or developing policy is not among your duties as chief patrol agent. Is that fair to say?

A Yes.

Q And you also touched briefly about your preparation for today's transcribed interviews, and you mentioned that you have not participated in a congressional transcribed interview before. Is that correct?

A Correct.

Q Aside from the other Chiefs that have been interviewed in the past month, in your career at Border Patrol, are you aware of Border Patrol Chiefs participating in congressional transcribed interviews aside from these?

A No.

Q Would you agree then that transcribed interviews are not a typical part of your duties as chief patrol agent?

A Yes.

Q And you discussed this briefly, but, in your estimation, how long have you spent preparing for this transcribed interview?

A I'd say probably 6 hours.

Q Six hours, okay. And if you hadn't been preparing for this transcribed interview, how would you have been spending your time as chief patrol agent of the San Diego Sector?

A Oversight of the sector. There's always plenty to do.

Q That's fair to say. I guess, based on that answer, it's fair to say that, had you not spent time preparing for this interview or attending this interview today, you

would have been overseeing operations in the San Diego Sector?

A Correct.

Mr. Yim. I'll pass to my colleague.

BY MS. MARTICORENA:

Q Hi. I'm Brieana Marticorena with the Committee on Homeland Security.

And I'd like to talk a little bit more about the resources in your sector. I know you just mentioned you discussed them with Chief Ortiz last week what you need. And I'll go through a few different ones one by one.

I'd like to start by discussing processing coordinators. Are you aware of Border Patrol processing coordinators?

A Yes.

Q Can you explain what their role is in Border Patrol?

A Yes. Basically, it's a new position. So we're still going through the glitches with anything that's brandnew. But they come in to assist us in basically data entry.

So, when we talk about processing an individual at our station once we pick them up in the field and bring them in, the prints are rolled. Pictures are taken. Their biographical information is entered into the system. And to provide somebody other than an agent to do that, that part of the work.

Q And do you have processing coordinators in your sector?

A Yes.

Q About how many?

A Right off the -- I'm not sure right off the top of my head. I think we -- since they're new, we're getting a lot of them back from the Academy, from their training. So I think we have 40 or so in the field.

Q And you just mentioned they're new. About when did San Diego start

receiving processing coordinators?

A About a year ago.

Q And, in your opinion, has the rollout of this position, these people been helpful to your agents?

A Yes.

Q And has that allowed agents to return to the field, having these processing coordinators in your facilities?

A Yes.

Q And, just to be clear, getting agents back in the field, would you say that's allowed for improved border security operations?

A Yes.

Q Chief, are you aware of the recent announcement that the Department of Defense is going to be sending 1,500 additional troops to the southern border?

A Yes.

Q And my understanding is these 1,500 troops will bring the total military personnel assisting on the southern border to about 4,000. Is that your understanding?

A I'm not sure on the exact numbers, but close, yes.

Q And my understanding of this announcement is these troops will be assisting in administrative tasks and acting in a support role. Is that correct?

A Yes.

Q And would the addition of these troops along the border help your agents get back on the front line?

A Yes.

Q Thank you. And are you aware of the Volunteer Force implemented by the Department of Homeland Security?

A Yes.

Q Can you describe what the Volunteer Force is?

A Basically, everybody within the Department of Homeland Security that wants to volunteer to come down to one of the southern border sectors to help out.

Q And, during your time as chief patrol agent, have you received volunteers from the Volunteer Force?

A Yes.

Q Do you recall when the Volunteer Force -- when the program first began?

A Not exactly, but I'd say a year to 18 months ago.

Q Thank you. My understanding is March 2021. Does that sound correct?

A Yes.

Q Would it be fair to say that the Volunteer Force has been beneficial to your agents and your work in the sector?

A Yes.

Q Chief, would you agree that DHS is making progress in digitizing stages of migrant processing? I'll stop there.

A Yes.

Q Would you say that's making the processing more efficient?

A Yes.

Q And having the processing be more efficient, is that helpful for your agents?

A Yes.

Q I'd like to discuss the CBP One app. I know it was brought up a bit in the last hour. Under that program, my understanding is that it helps vet migrants before they approach the border and before they approach a port of entry. Is that correct?

A Yes.

Q Do you think programs that vet migrants before they present to a CBP officer or a Border Patrol agent are helpful or can be helpful?

A Yes.

Q And then I know you said in the last hour that overall, the CBP One app, you're still seeing increases in your sector despite that. Is that correct?

A Yes.

Q Looking specifically at some of the nationalities the CBP One app is targeting, the Venezuelans, Haitians, Cubans, and Nicaraguans, would you say that there's been a drop in Cubans that Border Patrol has been apprehending in the sector since January?

A I couldn't say for sure, but I don't -- I don't think we've had a drop in Cubans, but I'm not sure.

Q Let me ask about Nicaraguans. Has there been a drop in the number of Nicaraguans since January?

A I'm not sure.

Q The data I have from CBP shows that there was a pretty significant drop from December to March, but it sounds like you might not be tracking.

A I'm not for sure. And the San Diego numbers specifically?

Q Yes, San Diego Sector.

A Yeah. I'm sorry.

Q And what I saw previously was that there weren't a lot of Haitians and Venezuelans in your sector. Does that sound right?

A Correct.

Q Are you aware of the Southwest Border Coordination Center, or SBCC?

A Yes.

Q Can you describe its role or what it does?

A Basically, try to coordinate so many of the moving parts within moving -- moving migrants across the Southwest border and across the country and helping with the coordination with enforcement removal operations and their flights, and overall the coordination with all the different people that are involved in that movement.

Q And would you say having the SBCC has been helpful in your sector in coordinating all those different pieces you just discussed?

A Yes.

Q And then has your sector received soft-sided facilities to provide additional capacity and processing space?

A Yes.

Q How recently were some of those soft-sided facilities stood up?

A We have one, and it was stood up in the last 3 or 4 months.

Q And what's the capacity, approximately?

A 475.

Q Thank you. And I know this was touched on a bit in the last hour, but going back to the landscape and topography of San Diego and how varied it is, I'd like to talk a bit about a few technologies.

Does your sector utilize towers?

A Yes.

Q And, for the autonomous surveillance towers, can you describe what they are and how they operate?

A It's a tower with a camera on top, basically. And the cameras have infrared night vision and can pan 360 degrees, and then they feed the image back to one of our centers. And people watch what's going on on the screen, and they can control that camera from the operations booth.

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Q And would you say these towers, these autonomous surveillance towers, are helpful for your sector?

A Yes.

Q And, since your arrival in the San Diego Sector, has the number of these autonomous surveillance towers employed in your sector increased?

A I believe so, yes.

Q Are you aware of plans to further increase the number of towers in your sector?

A Yes.

Q Does your sector employ the Linear Ground Detection System, LGDS?

A I don't think we have it actually in the ground. I'd have to clarify. Is that the cable that was supposed to go underneath the barrier?

Q Yes.

A We don't actually have it operational.

Q Okay. Are there plans to roll that out in your sector?

A There are plans. I'm not sure exactly where they're at.

Q Okay. So, given that there are some plans, could you describe a little bit more about what the system does? What does this cable do?

A It's designed to give us notice if somebody is trying to cut through the barrier and potentially tunnel under the barrier and, in application, climb over it as well.

Q And do you see that planned rollout of this to be helpful?

A Yes.

Q Does your sector utilize the mobile video surveillance system in addition to the ASTs?

A Yes.

Q Can you describe what that is and how it's different?

A Basically, a camera that is deployed on a vehicle. And so a mast goes up, and so that an agent can bring that wherever they need to and then put that up and run the camera from inside the vehicle.

Q And are some of these systems equipped with radar capabilities?

A Yes.

Q And would you say those towers are also helpful?

A Yes.

Q Do you believe they assist with stopping or impeding cartel activity?

A Yes.

Q And, since your arrival to the San Diego Sector, has the number of these mobile video surveillance systems increased?

A Yes.

Q Are there plans to further increase these towers?

A Yes.

Q Does your sector utilize unmanned aircraft systems?

A Yes.

Q Can you describe a bit about what they do and how they operate?

A Yes. And so we have the SUAS, the small -- small drones. And the agents take those out and deploy them in areas to see what's -- see what's going on.

They can -- they can fly them over remote areas to see if there's any traffic in that area. They can deploy them into potentially violent areas and to see what's going on, both save time and make things safer.

Q So, given your last statement, would you agree that these systems help your agents do their job?

LES

A Yes.

Q And would you agree that they assist with stopping or impeding cartel activity?

A Yes.

Q And since your arrival, has the number of these unmanned aircraft systems increased?

A Yes.

Q And are you aware of any plans to further increase the number of these systems?

A Yes.

Q Does your sector utilize technology to detect cartel tunnel activity?

A Yes.

Q Can you talk a little bit about how these systems operate?

A The -- we test -- San Diego is a test bed, because we have such varying terrain. We bring in -- well, companies ask to come in and test things for us and to see -- whether it would be ground-penetrating radar, that sort of thing, to see if there's anything -- any holes in the ground.

Q Have you found -- have your agents found this technology helpful?

A Yes.

Q And would you say that, since you arrived in the San Diego Sector, there's been an increase in the amount of these systems or the amount of ground cover?

A Yes.

Q Are you aware of plans to further increase the use of these systems in your sector?

A Yes.

Q Do you know about how much is planned to be installed?

A No, I'm not sure.

Q Chief, are you expecting the San Diego Sector to receive and deploy any other technologies, like communication systems or systems to counter drones from the cartels in the coming months?

A We're always working to implement everything we can get, so yes.

Q And I'd like to turn to the most recent funding Congress provided in the fiscal year 2023 omnibus. So, to start, the 2023 omnibus provided funding to add 300 new Border Patrol agents to the workforce, which would be the first to include --- and do you think that these additional agents would be helpful to the Border Patrol to do its job?

A Yes.

Q So are you familiar with the Emergency Food and Shelter Program or CBP's new Shelter and Services Program? It's the funding to help NGOs who receive migrants. Are you familiar with that program?

A Yes. A little bit, yes.

Q So the fiscal year 2023 omnibus provided 800 million for this program, and it is designated for the CBP Shelter and Services Program. There's a little bit still being used by Emergency Food and Shelter Program until CBP's program is stood up.

Could you talk a bit about the role that NGOs play and whether they're important in your sector for Border Patrol to do its job?

A Right. The role that they play is they take the individuals once we release them. And so, once we have processed them, you know, we have to release them. Obviously, we can't -- so, depending on what situation they're in, whether they have financial means or sponsors or family in the United States, those folks have a place to go.

The folks that don't are just in downtown San Diego. And so the NGOs take

them in, set them up with -- potentially in hotel rooms, legal advice, contact information, that sort of thing.

Q And would you say that it's helpful for these organizations to have that capacity to receive migrants both for your agents and for the local community?

A Yes.

Q And is it fair to say that Border Patrol partners with these organizations and works closely to coordinate those releases?

A Yes.

Q And can you talk a little bit about why Border Patrol puts that effort into coordinating with these organizations?

A I think the impact on the community and on the migrants themselves to -- if we have a group of 300 people to release in an afternoon, to just drop them off at a bus station makes it difficult for that community, for that -- and then also for the migrants as well to be dropped off in a community they're unfamiliar with and just left there.

Q Thank you. And then, at a March 2023 Committee on Homeland Security hearing, Chief Ortiz stated, and I'll quote: With the investments this Congress has made into the Border Patrol, CBP as a whole, we have greater situational awareness now than I've ever had, unquote.

Would you agree with that statement for your sector?

A Over time, it changes significantly. Right now, in San Diego, I wouldn't agree that I have, you know, greater than I did pre the numbers. So it really -- it changes very quickly. And so context-wise, right now I wouldn't agree.

Q And would you say that some of the technologies we discussed and tools we discussed are aimed at helping you increase your situational awareness?

A Yes, yes.

Q And then, so we've been talking generally about increases in technology and staffing. Would you agree that rolling back the increase in funding or reducing funding would hurt Border Patrol's ability to do its mission?

A Yes.

Q Would a 22-percent cut in resources affect Border Patrol's ability in the San Diego Sector to secure the border?

A A 22-percent decrease to my budget would impact us negatively, yes.

Q So the Department of Homeland Security estimates that capping the Department's budget at fiscal year 2022 numbers would be about a 22-percent decrease and a reduction of CBP's frontline law enforcement levels by up to 2,400 agents.

In your view, how would losing 2,400 CBP officers and agents across the board hurt border security efforts?

A A reduction is going to have a negative impact.

Q And the Department also estimated that capping their budget at those levels would result in 150,000 pounds of cocaine, nearly 900 pounds of fentanyl, and nearly 2,000 pounds of heroin and 1,700 pounds of methamphetamine not being seized by DHS.

Would you agree that budget cuts would affect your agents' ability to encounter and seize illicit drugs at the border?

A Yes.

Ms. Martcorena. Thank you.

BY MS JACKSON:

Q Hi. I'm Sarah Jackson with House Oversight.

I just wanted to return to human smuggling, which we talked a little bit about last hour. I just wanted to know or clarify, are all of the human smugglers who are moving migrants into your sector, are they all affiliated with or working with cartels?

A Yes.

Q Do you know which cartels?

A It -- it changes. We -- the two main ones in our area have historically been the Sinaloa Cartel and CJNG. Those are the two main ones.

Q But it's correct to say that cartels don't actually control any land on the U.S. side of the border?

A Correct.

Q And do you know if any of the human smugglers are U.S. nationals?

A We do arrest U.S. -- United States citizens smuggling, yes.

Q So one of your colleagues, Chief McGoffin of the Big Bend sector, stated publicly that migrants are being told, quote, "fabrications to entice them to cross the border," and he implied that this is largely the cartels.

Do you agree with that statement?

A I'm not sure I understand what fabrications are.

Q Sure. I'll clarify. So, moving on from what he said specifically, would you agree that cartels are disseminating misinformation to migrants to entice them to cross?

A Yes.

Q Do you know like what kind of misinformation it may be about, the difficulty of crossing or about U.S. law and policies?

A Yeah, I would say all of the above. Often -- oftentimes, they don't explain exactly how difficult or how dangerous a specific crossing method may be, whether it be in the mountains or on the ocean, for that matter. And so they don't -- they don't give the full -- the full story about -- about what's going on.

Q And would you say that they have a financial incentive not to give that full story?

A Yes.

Q So how are the cartels disseminating this misinformation? Is it through social media?

A I think they utilize everything they can. A lot of word of mouth within the border area. And a lot of the folks that are moving there don't have phones or other things, so -- but there is social media and there is word of mouth.

Q And, in terms of word of mouth, is that kind of just people in the communities on the other side of the border kind of -- who are affiliated with cartels misinforming migrants about the nature of that crossing or about U.S. laws?

A Yes.

Ms. Jackson. No further questions. Thank you.

BY MR. OMBRES:

Q Good morning, Chief. My name is Devon Ombres. I'm also with House Oversight.

Forgive me. I'm going to get a little esoteric here, so I hope you'll bear with me.

You discussed some of the identifying factors that drive people to the U.S. often being due to political and economic turmoil. And our Republican colleagues were positing that this has always been a fact of life in the Western Hemisphere and the world and that it really hasn't changed much over the course of time.

So I wanted just to ask you a few general questions about some of these drive factors. Would you agree that over time conditions ebb and flow, they get better, they get worse, and these could be a determining factor as to whether an individual decided to try and enter the U.S.?

A Yes.

Q For instance, you had mentioned that there was a big increase in Ethiopians

being encountered at the border, and you were all trying to, you know, determine why that was.

Are you aware that there has been an ongoing civil war in Ethiopia over the course of the last couple years?

A It sounds familiar.

Q If you're not, like I said, I'm going to get esoteric. So, if you're not aware, I'm not going to hold it against you.

But you would agree that a civil war in a country could be a driving factor to send people away?

A Yes.

Q Okay. And then, you know, there's also been a civil war going on in Yemen, and an embargo was recently lifted. That could be a driver in sending Yemenis out of their country, fair?

A Yes.

Q Venezuelan faced hyperinflation, food and medicine shortages, growing violence and political turmoil. That could be a driver?

A Yes.

Q Just kind of one more question: Generally speaking, are you aware that in the last year there were more than 100 million forced displacements, more than 1 percent of the global population, around the world? And, if you're not --

A I'm not.

Q Okay. Would you say that -- would you agree, that, if we're seeing record global migration around the world, it wouldn't necessarily be surprising to see record global migration in the Western Hemisphere?

A Yes.

Q And so you had also mentioned consequences for removals and there are some difficulties there.

And, again, I know it's not really within the scope of your job to deal with removals. That's more of ICE and other components of Homeland.

But are you aware that there are some countries around the world that are recalcitrant in accepting returns of their citizens?

A Yes.

Q Okay, fair enough. Do you know if any of the countries that are on that list, by chance? Or if not, that's okay.

A I'm not sure.

Q Fair. So, you know, I think one of the countries that is important to note in the Western Hemisphere is Nicaragua. Are you aware that they're only accepting two return flights per month?

A It sounds -- it sounds about right.

Q Yeah. So that would -- you would agree that, if a country is refusing to accept its nationals back, that adds a level of difficulty in trying to figure out how to remove them and enforce those consequences that you were discussing, correct?

A Yes.

Mr. Ombres. Fair. So international diplomacy, not your job, I appreciate you bearing with me. So I don't have any further questions at the moment.

Mr. Heitke. Thank you.

BY MR. EWENCZYK:

Q Hi, Chief. I just wanted to build off of what my colleague was saying. In particular, I was struck by your comments earlier about how families are paying thousands of dollars to the cartels to be smuggled into the United States. Is that right?

A Yes.

Q What you've observed in the San Diego Sector I believe you explained as the cartels control the area in Mexico south of the border, and they control who comes into the United States. Is that right?

A Yes.

Q Through smuggling?

A Yes.

Q So, earlier, when you were talking about -- and I heard you talking about, you know, people giving themselves up in the desert, about rent-a-family schemes, things along those nature, is it fair to assume that the cartels are involved in kind of planning and orchestrating those?

A Yes, yes.

Q And so I assume that -- you know, you talked about the challenges of your job in the San Diego Sector, and I understand that a lot of the challenges come from addressing these cartel strategies and responding to the cartel. Is that right?

A Yes.

Q And, you know, we've been over this, but I just -- would you -- it sounds like you agree that more human power is important to increasing your ability to do your job at the border?

A I'm not sure --

Q Having more people helping Border Patrol is important --

A Yes.

Q -- to helping you do your mission?

A Yes.

Q Things like more agents, more processing coordinators, right?

A Yes.

Q Help from the Southern Border Coordinating Center, from the Volunteer Force, from the Armed Forces, those all help. Is that right?

A Yes.

Q And the help of technology investments, the towers, the tunnel detection systems, the surveillance, the aircraft systems, those help you do your mission at the border, right?

A Yes.

Q As does increasing digitization and the efficiency of processing, right?

A Yes.

Q And you talked about -- you talked about the importance of consequences.

A Yes.

Q So, in making sure that, you know, there are consequences, do you agree that things like increasing detention capacity, increasing the speed of removal of migrants who are deemed not to have a lawful basis to remain, those are all things that are helpful to your mission?

A Yes.

Q Increasing removal flights?

A Yes.

Q Increasing the consequences for those who are ordered removed from the country?

A Yes.

Q And, you know, you explained that economic and political consequences in countries across the world are the main factors pushing migrants toward the United States, right?

A Yes.

Q And you discussed with my colleague how, even though war and economic turmoil globally is a constant, situations in individual countries change across time?

A Yes.

Q Countries get better, or countries get worse, and that explains why there are changes in migration patterns at the U.S. border, right?

A Yes.

Q And so kind of, given that, I assume you would agree with me that working with regional and international partners to expand lawful pathways to migration to address root causes of migration and to step up enforcement are important?

A Yes, yes.

Q And I assume that you also agree with me that working -- that, you know, U.S. law enforcement but also working with foreign partners to combat cartel mis- and disinformation is important?

A Yes.

Q Because the cartels lie to people about the conditions of coming to the United States, about U.S. law and policy. Isn't that right?

A Yes.

BY MS. JACKSON:

Q I'm just going to ask one followup question on that.

So President Biden recently announced that the State Department's diplomatic missions are now broadcasting accurate information about U.S. migration laws across the hemisphere to combat smuggler narratives and misinformation.

Are you aware of that program?

A No.

Q Okay. But do you -- no worries at all. But do you agree that anything that the U.S. Government can put out to kind of combat smuggler disinformation would be helpful in your work?

A Yes, yes.

Ms. Jackson. Thanks.

BY MS. MARTICORENA:

Q Chief, I want to talk a little bit about the end of title 42 and title 8, acknowledging that title 42 is going to lift later this week.

Will your sector be returning to using just title 8 processing?

A Yes.

Q And is it fair to say that title 8 authorities impose criminal consequences on people who enter the U.S. without inspection?

A Yes.

Q Could you detail what some of those consequences are, or explain?

A Under -- under title 8, the easiest example is section 1325, which is the charge for illegal entry into the United States. And so, under that, we can either remove the individual back to their country of origin or hold them for whatever the court determines the period of time is a penalty and then remove them back.

Q And are there any criminal consequences if someone is returned under title 42?

A No.

Q So it's fair to say that title 8 carries a criminal consequence and then title 42 does not?

A Correct.

Q And I know you just covered this a bit, but under title 8 authorities, Border

Patrol and ICE can detain and hold people, correct?

A Correct.

Q And, when migrants are detained, they're screened for their criminal history, whether they're on a terrorist watch list, anything else in their record. Is that correct?

A Yes.

Q And, if someone has a flag, like an outstanding warrant, would they be referred to another law enforcement agency?

A It depends on the flag, whether we would refer them to another agency or we would handle it ourselves.

Q Okay. So let's say, if one someone is wanted for a criminal offense, is it fair to say they're not just released into the United States, there's some followup?

A Correct.

Q Okay. Thank you.

BY MR. EWENCZYK:

Q And I just wanted to return very quickly. My Republican colleagues asked you during their round of questioning about a deposition of Chief Ortiz.

Do you remember those questions?

A Yes.

Q You haven't -- you're not familiar with that deposition, are you?

A No. Correct, I'm not.

Q You haven't read the transcript. You weren't at the deposition. Is that right?

A Correct.

Q So, when my colleague was reading you snippets from that deposition, I take it you were relying on his characterization of that deposition. Is that fair?

A Correct.

Q So you were kind of -- and you don't have any knowledge of the context surrounding any of the statements that were read to you. Is that correct?

A Correct.

Q And is it fair to say that knowing the context in which those statements were made might change the answers you gave on what Chief Ortiz said?

Mr. Jonas. Don't speculate.

Mr. Heitke. Yeah. I'm not sure.

Mr. Ewencyk. Fair enough.

Mr. Yim. All right. We'll go off the record.

[Recess.]

Mr. Yi. Okay. The time is 11:06 a.m. We'll go back on the record.

BY MR. YI:

Q Chief, earlier you were just asked by the Democratic colleagues over there about your job descriptions and if it included drafting policy or not, and you replied in the negative. And we all agree with that, that you're not here to draft policy.

But is it fair to say that, in your quarter century of law enforcement, that you developed an observation or two of what works and what doesn't work?

A As far as how we implement things in the field, yes.

Q And how you implement things in the field, going back to something you testified about earlier and how you've served under five different administrations and they have different attitudes and it provides people, those who seek to enter the interior of the United States illegally, "hope" I think was the word you used, and some of them felt more hopeful that they might be able to stay after gaining entry illegally.

Those -- when we talked about that, you framed it in that, without consequences,

that those types of activities would be encouraged versus discouraged. Who sets those consequences?

A The consequences are set by the -- Washington, D.C., the executive branch, and the judicial branch.

Q And Congress too.

A And Congress, yes.

Q Don't leave us out, you'll hurt my feelings.

So it's the government, right?

A Yes.

Q The White House, executive branch, and Congress. And, as a lawyer, you may appreciate this, but, you know, there have been three Supreme Court holdings that are pretty determinative about congressional oversight authorities.

And, you know, in *Watkins*, you have that Congress has the power to conduct investigations inherent to the legislative process. In *Barenblatt*, the scope and the power of inquiry is defined as penetrating and far-reaching. And, more recently, in *Mazars*, you know, without information, they say -- the holding says that Congress would be shooting in the dark, unable to legislate wisely or effectively.

So I think you would agree that you don't want Congress to shoot in the dark with our policies or our consequences that we may set on immigration policy. Is that correct?

A Correct.

Q Okay. So we appreciate your testimony today to help conduct oversight of the executive branch and the administration's border security policies and how that may affect the security of Americans and also our homeland security.

But I want to go back to these consequences thing. I think the Democratic

colleague also brought up the CBP One app. You mentioned that it helps. It's helpful in processing times. It makes things quicker. Is that accurate?

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

Q Does the CBP One app -- let me rephrase that.

Does the CBP One app make processing times quicker?

A It doesn't impact me within the Border Patrol. So it doesn't -- it doesn't increase Border Patrol processing times. It's field operations only.

Q But it helps them process people quicker?

A Yes.

Q Right? So would you say that is a beneficial consequence or an adverse consequence to someone who may be trying to enter the United States?

A It's beneficial if the -- if the program -- what we want, what I want within the Border Patrol is for all of the individuals who want to come here to go to the port of entry and be metered in legally.

And so, if the process worked overall, I wouldn't see the illegal immigration in between the ports. So, overall, that would be beneficial.

Q So one of the things that our Democratic colleagues listed off very enthusiastically were a series of different features or different types of -- I don't know if I want to call it tactical, so you can correct me if I'm wrong here, but different types of features that may help Border Patrol do its job. And you agreed to all of them, that -- saying that they would all help you.

But at the core of this is something that really dictates why we would even need these features in the first place. For instance, you were asked if having more Border Patrol agents would help you do your job, and you said yes.

Why would we need so many Border Patrol agents if there wasn't any illegal flow

of migrants trying to cross illegally?

A Correct.

Q We wouldn't, right?

A We wouldn't.

Q We wouldn't. So it's these consequences you spoke of earlier that is at the root of this. And I think -- I guess -- one of the things I wanted to point out is, if you were -- if you owned a home and you put in steel bars on your window, you put in a security system, you made sure that your community is well-policed, you put a fence around your house; would those all help prevent or deter intruders in your home?

A Yes.

Q Those are all great features, right? But, if at the same rate you put a huge neon sign saying "come on in, the door's unlocked, anyone can stay," would all those other features mean anything?

A Not necessarily, no.

Q Not necessarily. And I think that would be kind of what we're getting at today is, you had mentioned earlier about the different types of attitudes that different administrations have had and the consequences that they may set that create hope for people that they may be able to come here illegally and still stay versus not. And that's our biggest concern.

And I wonder, you mentioned that -- earlier in the day, we asked you why you became a Border Patrol agent. How does that impact the morale of your rank-and-file agents who are out there wanting to be law enforcement agents, to enforce the law, but feeling sometimes as though that they're operating with one hand tied behind their back or having policies or consequences that are opposite of what they're charged to do?

Mr. Jonas. What are you actually asking, saying? Can you --

Mr. Yi. How does that impact the morale?

Mr. Jonas. How does what impact the morale?

BY MR. YI:

Q You seemed like you were ready to answer that.

A I was going to ask --

Q You don't have to have Steve answer my question. You can answer it.

A We have impacts to morale. The -- as the Border Patrol, the reason I came in and the reason all of our agents came in is for national security and to protect the country. So ultimately is to know everything that comes in; that being the ultimate goal is that we're able to identify and take care of everything that illegally crosses into the country.

When we have enormous amounts of people that we're dealing with, it limits the ability to perform that function. So we are dealing with large groups of people and losing more people that get away.

That has a negative impact on the agents because, yes, it's important to take care of the people that are coming in, but they also know that it limits their ability to perform their ultimate national security mission of those that are really trying to get away. And that has a negative impact on morale.

Q And what limits their ability to do that work, again?

A The enormous amount of people that they're dealing with. So the enormous amount of migrants, say, a group of 500 that give up. So 10 agents are going to be transporting them, processing them, making sure that they're fed and showered and all of that. And so they're not in the field patrolling the border.

Q And it's accurate -- is it accurate to say that the enormous amount of people that are doing the give-ups, that is a more recent phenomenon?

A Yes.

Q Okay. I also wanted to talk about the nongovernmental organizations that are at the border. I know the Democratic colleagues asked about that earlier.

That is also a more recent phenomenon. Is that correct?

A Yes.

Q When did they start showing up?

A I started dealing with the nongovernmental organizations as soon as I arrived in San Diego. The difference between Grand Forks Sector and San Diego Sector is significant, just because of the amount of traffic in those areas and the amount of people that we deal with.

The specific turnovers to the nongovernmental organizations really -- I dealt with them the whole time I was in San Diego but dealt with them much more. As we started to release more and more people into the community, the more and more we dealt with them.

[11:16 a.m.]

BY MR. YI:

Q When you say released people into the community, can you clarify what that means?

A Yes. Those that are not going to be removed or detained, that are going to be released into the country.

Q Okay. And who are these nongovernmental organizations that you're dealing with?

A We have two specific in San Diego Sector, Jewish Family Services and Catholic Charities.

Q Do you personally maintain contact with individuals from those two organizations?

A I do sporadically. I don't do the daily or the weekly. A couple of times a year, I hold meetings with all of our State and local partners, to include the NGOs.

Q Who does do the daily and weeklies?

A The folks that handle the day-to-day movement of people. So I have agents that that is their sole function, is to handle the movement of people.

Q How many people would that -- how many agents is that?

A Oh --

Q A count.

A I'm not sure an exact number. But we have hundreds that do that.

Q So is there a specific point person at the San Diego Sector who deals with the nongovernmental organizations?

A I'd have to check on point to contact. Not that I deal with directly.

Q Okay. Do you know who you've dealt with at these two organizations

you've referenced?

A Specifically, I'd have to check. I'm terrible with names. I know it came up earlier. But I'm terrible with names.

Q You were asked earlier why Border Patrol partners with NGOs, and you said it was good for the community. Was there a directive requiring you or Border Patrol to partner with these NGOs?

A I don't remember a specific directive, that I remember, a specific directive. It's possible, but I don't remember one specifically.

Q So in your best estimate, why -- did you start partnering them naturally, or are you saying that -- do you believe that there was a policy?

Was there a policy before that you don't remember, or you don't remember if there was a policy and you just did this naturally?

A I don't remember if there was a policy or not. We have -- I've always dealt with as many partner groups as I could within the communities I worked in. It makes it easier for us to get information out and to address concerns from the populace.

And so San Diego, specifically, has many different groups that are active in the community. And they want to either say thank you or make a complaint about how we do things. And so having access and communication with all of those groups just helps our relationship and our function within the community.

Q How often do you receive complaints from these groups?

A I'm not sure a number. I don't get them -- I don't receive them directly.

Q Do you know the nature of these complaints?

A It would be necessarily -- specifically, it might be an individual that somebody's trying to find. It may be a family member. It may be somebody who's in detention that they think should be released. It varies a lot.

Q So when they make a complaint, those NGOs make a complaint that they believe someone who's detained should be released, what is the next course of action?

A We look at what it is and what the reasons are for -- if it was, for an example, a detention, generally, there's always a reason for that. And obviously, it depends on who's asking and privacy and that sort of thing about what we can relay back to explain why whatever's happening is actually happening.

Q What are the natures of why? What kind of rationale do they provide that they believe that certain individuals should be released instead of detained when they submit these types of complaints?

A Oftentimes, it's health related. Oftentimes, it's health related.

Q I'm assuming they never complain to you that they believe someone should be detained. Is that correct?

A Correct. Correct.

Q Do you know if these NGOs receive any funding from your sector?

A Not from my sector, no.

Q Just from headquarters?

A I don't know -- I don't know how all that works. It doesn't -- I'm not -- I don't know that information specifically, where and how it goes through.

Q Okay. Do you believe that these NGOs, the way in which they operate, are creating a consequence that makes it less likely for people to enter into the United States illegally or more likely?

A It would be really hard for me to speculate on whether -- on how that -- what that impact specifically is. I have no dealing once they're turned over to the individuals. It does make life -- it is going to make their circumstances easier for those that are released.

Q Okay.

BY MS. O'CONNOR:

Q Brief follow-up on the NGOs.

Jewish Family Services and Catholic Charities, have they been stalwarts in the San Diego Sector, or have they popped up in the last couple of years?

A They've been stalwarts the whole time I've been there. So I believe they've been around for a number of years.

Q I want to ask you some more specific questions about processing and release within your sector.

So when agents encounter illegal aliens out in the field, they detain them and bring in for processing, right?

A Correct.

Q Are there -- is there certain criteria that agents are processing -- well, strike that.

Is there certain criteria used to determine processing outcomes?

A Yes.

Q What is that criteria?

A So right now with Title 42, there's another little -- that Title 42 being an extra, not necessarily does the person have to be brought all the way back in. So they could be returned back to Mexico within 15, 20 minutes.

Q So you don't even bring them back to the processing center?

A Correct.

Q You just expel them?

A Correct.

Q Okay.

A But once they're brought back into the processing center, they are going to be talked to and then prints and pictures. And depending on what they say in that interview, and depending on what comes back on records checks, is going to determine what path they're going to be put into.

Q What information are you seeking in those interviews?

A Basic biographical information and then why they're coming here. If they're coming -- are they claiming refugee status, are they claiming asylee status, are they claiming a credible fear of not being returned back to their country, all of those informations -- all that information.

Obviously, their family status, we go in. Are they part of a family group, do they have other relatives here, that sort of thing.

Q Essentially, biographical information, who they came with, and whether they are afraid to return, those are the big things?

A Yes.

Q You mentioned earlier that as of today, either today or yesterday, you're currently over capacity in the processing centers?

A Correct.

Q Has there been a time in the last 2 years you haven't been over capacity in the processing centers?

A Yes.

Q When was that?

A We've only been over capacity for the last 3 -- 2 weeks, 2 to 3 weeks.

Q When you bring these illegal entrants in to be processed, now that there's processing coordinators, who's doing the interview for all that information that you need to make a determination? Is it the coordinator or are they handed off to an agent?

A The processing coordinators only do the data entry. So they're not really -- they're not doing the specific nationality interview or the -- depending on what claim, that's going to be left to an agent.

Q So everyone that is processed by a processing coordinator is then sent to an agent to be interviewed? Does the processing coordinator make outcome determinations?

A No.

Q So an agent has to make the ultimate determination as to what happens?

A Correct.

BY MR. YI:

Q Following up on the capacity question, when NGO shelters or CBP facilities are over capacity, have there been any directives, especially recently, that have been provided to the sectors about releasing migrants to streets, to bus stops, or gas stations, and other places?

A Yes.

Q When was -- how recently was that decision made?

A It's the how we do it. And as we go, we modify and change things to make it more -- easier and better to do, I guess. The most recent is probably in the last year or so as far as the guidelines on how to -- safe street releases.

Q It's called safe street releases?

A Safe street releases, yeah.

Q And that's been going on for about a year?

A Yes.

Q Who provided that directive?

A It came down from Chief Ortiz.

Q Okay. And what percent of encounters would you say are subject to safe street releases under that guidance and policy in the San Diego Sector?

A Very few. The NGOs have been able to keep up with the vast majority. In the last -- since the beginning of the calendar year, we've only had to do street releases one weekend.

Q Do you anticipate that to increase with the expiration of Title 42?

A Yes.

BY MS. O'CONNOR:

Q Are you familiar with notices to report?

A Yes.

Q Did San Diego Sector issue notices to report in 2021?

A No.

Q Have they ever issued notices to report?

A No.

Q Are you familiar with parole plus ATD?

A Yes.

Q Did San Diego Sector release anybody on parole ATD?

A Yes.

Q What was the criteria for determining whether someone was going to be considered for release on parole plus ATD?

A I'd have to go back and look at the specifics. Family groups and vulnerable populations.

Q What does "vulnerable populations" mean?

A It could be health issues, age. Those are the two that pop up, health conditions, age.

Q Those people were released without notices to appear, correct?

A Correct.

Q Did you send them to ICE ERO for ATD determination after releasing them on parole?

A ICE ERO is in the process of while the parole ATDs are done.

Q So you have ICE ERO in your processing centers?

A Yes.

Q When you were told that you could do parole plus ATD, did you get specific guidance on the procedures?

A Yes.

Q Where did that guidance come from?

A Headquarters.

Q Border Patrol headquarters?

A Yes.

Q Was that written guidance?

A Yes.

Q How does that guidance get disseminated to the agents on the ground?

A It comes down from our headquarters to sector, and we put it out to each of the stations, and then the stations put it out to their shifts. So it comes out written via email, and then it's addressed verbally in the musters as well.

Q People were not required to assert a fear in order to be released on parole, correct?

A Correct.

Q Where was the criteria used in making that determination recorded? Was it recorded?

A In each individual case?

Q Right.

A It would have -- I'm not super familiar with the processing step by step anymore, it has been a while. But it would be recorded in our processing system, where we put their disposition.

Q So does all that criteria turn up in their form I-213?

A They were -- Parole ATD, would. I'm not sure if the actual criteria goes in there though.

Q But you do record that criteria within your system?

A The reason that they were paroled ATD, yes.

Q What is the system called that you record it in?

A E3.

Q Is that your case management system?

A Yes.

Q You can't use parole ATD anymore, right?

A Correct.

Q So when you're processing these illegal entrants, are they being issued notices to appear?

A Yes.

Q If somebody asserts a fear, are they put into expedited removal proceedings?

A No.

Q So you're not utilizing expedited removal?

A We are. We are.

Q How often?

A We -- I think we're doing about 10 or 15 a day.

Q What is the determining factor between whether somebody who asserts a fear is placed in expedited removal proceedings or issued an NTA?

A I'm not sure the exact criteria.

Q Does detention capacity or processing efficiency influence whether that decision is made?

A Yes.

Q Does it take longer to process someone with expedited removal?

A Yes.

Q Because you're required to detain people under expedited removal, correct?

A Correct.

Q When you're releasing -- or, strike that.

When you're processing someone with a notice to appear, is Border Patrol always issuing the notice to appear, or do you send them over to ICE to issue the notice to appear?

A We issue a notice to appear, Border Patrol.

Q If you determine that the person is to be detained after issuing the notice to appear, do you then send them to ICE to make the final custody determination?

A It depends on which part of the -- if -- just within -- are we talking expedited removal process or overall?

Q Notice to appear process.

A Notice to appear.

So notice to appear will be issued, and then it's going to depend on where they go from there. So if they're going to be released, we release them. So that's an NTOR, own recognizance. So we'll release them.

Q If they're going to be detained, you send them to ICE?

A Correct.

Q And then ICE makes the ultimate detention determination?

A Correct.

Q Expedited removal, are you -- if someone is placed in expedited removal proceedings, do you ever parole those people?

A It depends on if the process goes through. So they're going to have their interviews through the process, and sometimes they're not -- they don't fit the criteria to go through the expedited removal. So their disposition will be changed, and so that it's possible that they could be paroled eventually.

Q What do you mean they don't fit the criteria for expedited removal? If somebody asserts fear, then they're sent for a credible fear interview, correct?

A Correct.

Q And are they held in your detention facility while they wait, or are they released?

A They're going to be held.

Q And then, if they're found to have a positive credible fear, what happens?

A Then they're going to be sent back, and their disposition will be changed.

Q You issue them an NTA, and you release them?

A Yes.

Q If they are found to have a negative credible fear and they request a judge to review that credible fear determination, are they held?

A That's going to depend on available space and how long they've been in custody.

Q Are they priorities for being held?

A Yes.

Q Negative credible fear returns are -- negative credible fear reviews are priorities for being held in detention?

A Yes.

Q Since fiscal '21, San Diego Sector has relied very heavily on Title 42. Nearly 66 percent of encounters in fiscal year '22 and 42 percent of encounters in fiscal year '23 have been expelled under Title 42. Does that sound right to you?

A Yes.

Q How do you anticipate San Diego Sector is going to handle processing all of those adults once Title 42 expires on May 11th?

A We'll put them through the Title 8 process. And so with the population that's currently amenable to Title 42, voluntary returns and expedited voluntary returns to Mexico.

Q Do you anticipate that more of those people will start to assert a fear of return because they know that that gives them a chance to stay in the United States?

A It's a possibility.

Q San Diego Sector started using parole plus ATD and Border Patrol border-wide started using notices to report because it was taking too long to process people by issuing them NTAs, right?

A Correct. Correct.

Q Do you anticipate you're going to run into a situation where it takes too long to process people with NTAs?

A That's a possibility.

Q Do you have a contingency plan in place in case that happens?

A We have as many agreements with our partners and working as much space

as we possibly can to prevent it from happening.

Q What agreements and what partners are you referring to?

A Office of Field Operations, the ports of entry, ERO, ICE ERO, and our neighboring sectors.

Q What are the agreements that you're talking about that will help that?

A Field Operations, as long as they can handle it. Right now, they're helping us out with about 150 people a day to help us.

Q They're processing these people?

A Processing them, right. And they have some holding capacity as well at their ports of entry to use if needed to use that.

And then ERO as well to find any available bed space that they can, and to help us if we had the need to put more folks into our soft-side, for example, to help guard those pods and that sort of thing.

Q But ERO has been historically requesting fewer beds. Are you aware of that?

A Yes.

Q Were these resources available to you in '21 and '22 when ATD -- parole plus ATD and notices to report were being implemented?

A The partner?

Q Right.

A Yes.

Q So even considering those partners in fiscal year '21 and '22 when there were surges, you still had to release people without notices to appear because it was taking too long. So do you anticipate that happening again?

A We didn't in San Diego, the notice to reports.

Q But the parole plus ATD, you didn't issue a notice to appear, right?

A Right.

Q Because that was faster?

A Right.

Q And that's why you did it, right?

A Right.

Q So if your extra resources existed then, and they're going to exist now after Title 42, but you still ran into a situation where you needed to process faster than an NTA, do you anticipate running into that type of situation again once Title 42 expires?

A It's possible.

Q And so then what -- is there just not a contingency plan for that to happen or have you been authorized to use some other form of processing?

A We have not been authorized to use other forms of processing.

Q So as of now, you're only allowed to issue NTAs or process through expedited removal?

A Correct.

Q And do you anticipate largely using NTAs because they're quicker than expedited removal?

A Correct. Correct. Yes. Yes.

Q There are reports that over 15,000 Haitians are lined up across -- lined up to cross into McAllen, Texas, once Title 42 expires. Have you seen any sort of indication that there are people waiting to cross into San Diego?

A Yes.

Q What have you seen?

A The demographic of the individuals in the shelters across Mexico in the Baja

has historically been other than Mexican nationals that have used those shelters to stay until they came up to cross.

In the last 4 or 5 weeks that -- 6 weeks -- that demographic has changed to mostly Mexican nationals in those shelters, which is unusual. It suggests, at least, that they are coming up and waiting because we're not seeing them come across the border right now.

Q My colleague mentioned safe street releases. Is that something you do anticipate having to increase if there's increased surge after Title 42?

A Yes.

Q Are you concerned about the expiration of Title 42?

A Yes.

Q What are your concerns?

A My biggest concern is that we get hit all at once, is that the populations that are -- the Mexican national population. We also have a fairly significant Venezuelan population that are sitting still in Tijuana area, and that they all come at once.

Q Have you gotten -- have you received any specific guidance as to what you're supposed to do if you receive a hit all at once?

A Not specific guidance, no.

Q Have you done any sort of tabletop exercises?

A Yes.

Q What do those entail?

A It involves all of us looking at the possibilities. So where the large wave would come from and what we would do in each situation.

If they came to San Ysidro Port of Entry, for example, or if they came through the Tijuana River channels, another area they commonly come, and who has what resources to respond and to handle it. And then where all of those folks would be in the

meantime, what we would do with them until we could find a place to put them.

Q On a scale of 1 to 10, how confident do you feel in the department's plan for handling Title 42 expiration?

A I'd go about an 8.

BY MR. YI:

Q 8 being most confident -- or 10 being most confident?

A About an 8.

Q When you referenced "all of us" for the tabletop exercise, who is "all of us"?

A All of -- and we only have really CBP partners. I would say all of DHS, but DHS doesn't have a very large footprint in San Diego, but CBP does. We have Office of Field Operations, Homeland Security Investigations, Enforcement and Removal Operations, and then us.

Q Who at headquarters have you engaged with regarding the expiration of Title 42?

A Chief BeMiller, Chief Hudak, Chief Ortiz.

Q Anybody else?

A At headquarters? No.

Q Or anybody else in the department aside from people who are in the San Diego Sector?

A No.

BY MS. O'CONNOR:

Q Does Border Patrol in San Diego Sector refer anybody to the U.S. Attorney's Office for prosecution?

A Yes.

Q My colleague asked you earlier about criminal consequences of crossing the

border illegally. You guys aren't referring first-time illegal entrants to the U.S. Attorney's Office, are you?

A Correct. No.

Q What kind of cases do you refer?

A We refer assault cases. Any time there's an assault on one of our employees, those are referred.

We refer a lot of the failure to yield cases because of the danger in that.

We refer criminal -- extensive criminal history, reinstatements of deportation.

Q So you're not even referring every illegal reentry, right, just the people with criminal rap sheets?

A Correct.

Q Is that based on the U.S. Attorney's criteria for accepting cases?

A No.

Q What's that based on?

A Bed space, number of cells that are available to house those folks until they go to their court hearings.

Q But Border Patrol's not housing those people, right? Isn't it BOP?

A Correct.

Q So when you're referring to that bed space, you're referring to Bureau of Prisons?

A Correct.

Q Do you know how many people since January 2021 have been released from CBP custody into the interior of the United States into San Diego Sector?

A Not off the top of my head, no.

Q Do you have an estimate? Are we talking about thousands? Hundreds of

thousands? Millions?

A I would be guessing. I'd say it's going to be thousands.

Ms. O'Connor. Pass to my colleague. No more questions.

Mr. Bishop. I actually have a couple questions. Can I just interject a couple?

My name's Dan Bishop. I'm a member of the committee.

I took interest in the fact that you're a lawyer.

Mr. Heitke. Yes, sir.

Mr. Bishop. Yeah. You know what a leading question is?

Mr. Heitke. Yes.

Mr. Bishop. You've heard a few leading question today.

I don't want to ask you a leading question. You were asked by minority staff about a long series of programs that were made available to you. They talk about processing coordinators, a volunteer force, the CBP One app, towers, soft-sided facilities for processing people, something called the SBCC -- I don't even know what that is -- Linear Ground Detection System, mobile detection, maybe cameras or something with radar features, unmanned air systems, tunnel detection.

You were asked about the fiscal year '23 omnibus appropriations bill providing 300 more Border Patrol agents, emergency food and shelter programs, NGOs, and whether each of them were helpful.

And I think in every case, you said they were helpful. What do you mean by they're being helpful?

Mr. Heitke. With resources. We always are in need of resources and technology. And as it improves, we want to put more of it into our workforce's hands to help with the mission.

Mr. Bishop. What's the mission?

Mr. Heitke. Our national security mission is to keep anything and everything that potentially would harm the United States and its citizens out of the country.

Mr. Bishop. You testified at some point during your questions -- during your testimony here about knowing everything that happens, knowing everything that is coming across the border. And so let me ask for a distinction.

In your mind, is it the mission to know what's coming across the border, whatever that is, or is it to keep certain things from coming across the border?

Mr. Heitke. This could be a combination of both. Ultimately, knowing everything that comes across the border and interdicting it, stopping it, and determining what is the best course of action to do with it, whether it be send it home or seize it.

Mr. Bishop. All of those additional programs or increased programs that you were asked about and I just made reference to, if I understood the tenor of the questioning, the Biden administration has done all of those things. And yet it is true, isn't it, that the levels of illegal migration across the border have continued, have persisted, month after month, basically at historic levels, correct?

Mr. Heitke. Yes.

Mr. Bishop. So all of those things being done has not had the effect of reducing illegal immigration. Fair?

Mr. Heitke. Well, the numbers are continuing to go up, so it hasn't reduced the numbers.

Mr. Bishop. In the course of all your long experience serving in the Border Patrol, have you witnessed changes in policy that, in your opinion, have materially reduced the level of illegal immigration across the border?

Mr. Heitke. In the Gatekeeper early on in my career --

Mr. Bishop. That was during the Clinton administration, I heard one of the

questioners from the minority staff refer to that, Gatekeeper?

Mr. Heitke. Yes.

Mr. Bishop. Was that correct, it was in the Clinton administration?

Mr. Heitke. Yes.

Mr. Bishop. And what did it do?

Mr. Heitke. It put up barrier in San Diego Sector, it was the first actual barrier that went up in San Diego Sector, and put more agents and resources on -- in between San Diego and Tijuana to stop the masses that were coming at the time.

Mr. Bishop. Did it have the effect of doing that?

Mr. Heitke. It did.

Mr. Bishop. So how about the migrant protection protocols in the Trump administration? Did you -- was that done in the San Diego Sector?

Mr. Heitke. It was very limited by the time I arrived there. I was in North Dakota, Grand Forks Sector, for most of that.

Mr. Bishop. Did you have -- so you talked about the Gatekeeper. Let me just ask you this, instead of going directly to migrant protection protocols and your opinion on that. What other measures have you witnessed that materially reduced the amount of illegal immigration?

Mr. Heitke. I don't remember any one specifically outside of Gatekeeper that had an immediate impact.

Mr. Bishop. How about migrant protection protocols? Did that?

Mr. Heitke. From what I saw, not necessarily, no.

Mr. Bishop. So in the course of -- you've been there since 1998. Is that correct?

Mr. Heitke. In the Border Patrol, yes, sir.

Mr. Bishop. In the Border Patrol. Is it your testimony that no policy change other than Gatekeeper in the course of that entire time has materially reduced the amount of illegal immigration otherwise occurring?

Mr. Heitke. Not one that I could specifically point to.

Mr. Bishop. Do you believe there is any such policy change that would materially reduce the amount of illegal immigration?

Mr. Heitke. I'm thankful that it's not my job to do that part of it.

Mr. Bishop. I understand. I understand it's not your job to set the policy. It is your job to report, based on your experience in the field, what measures might be more effective at achieving the mission of reducing illegal immigration, correct?

Mr. Heitke. Correct.

Mr. Bishop. And you have none to report?

Mr. Heitke. The main -- my focus would be to consequences and would be to implementing a consequence and sending people home. I mean, that is the ultimate thing that we have available to us.

Mr. Bishop. All right. And then, now that I think about it, you've testified effectively that -- earlier in your testimony here -- there's got to be a consequence to illegal activity or it will continue and increase.

Is that a fair summation of what you believe --

Mr. Heitke. Yes.

Mr. Bishop. -- what your observation has been from your work experience?

Mr. Heitke. Yes, sir.

Mr. Bishop. And I believe you said you made reference, if I recall correctly, to detention as a consequence, correct? Did you?

Mr. Heitke. What I was referencing, I mentioned that detention itself is not a

real consequence. Regardless of if somebody spends 3 months, 3 weeks in detention, and then are released, it's insignificant.

Mr. Bishop. Okay. And so then going back to the other part of what I think your answer just was, you said people who come illegally have to be sent home --

Mr. Heitke. Yes, sir.

Mr. Bishop. -- in order for there to be a consequence.

Mr. Heitke. Correct.

Mr. Bishop. In the course of the time that you've been in the Border Patrol since 1998, has the United States ever done that, sent people home?

Mr. Heitke. Yes.

Mr. Bishop. Have they -- have we done it in greater or lesser numbers at different times?

Mr. Heitke. The amount of individuals we encounter has steadily grown over the years. And so, comparing numbers to numbers, I'm sure we do it more, just numbers-wise, than we used to.

Mr. Bishop. How about proportion-wise?

Mr. Heitke. I'd be -- I'm afraid I'd be guessing on percentages going back over the years.

Mr. Bishop. Nothing further at this time from me.

BY MR. RUST:

Q We've talked at various points today about technology assisting Border Patrol to achieve its national security and border security mission.

Would you agree that any given piece of technology is just a force multiplier for the Border Patrol agents themselves?

A Yes.

Q So you would agree that, for example, if a sensor identifies someone crossing illegally, it takes an agent to go and make that arrest and then do the processing?

A Correct.

Q Like any law enforcement position, being a Border Patrol agent, I assume you would agree, would carry with it a certain risk profile?

A Yes.

Q Are there unique risks to being a Border Patrol agent in the San Diego Sector above and beyond those experienced by ordinary law enforcement professionals?

A Yes.

Q And what are those?

A The terrain probably being the biggest difference. We deal with the mountains, the desert, and the ocean. So when compared to an officer, a deputy, we're off-road driving in difficult terrain frequently. Also, the sheer amount of people and the number of arrests that a Border Patrol agent conducts each shift is -- far exceeds normal law enforcement.

Q Does that risk profile increase with a higher flow of illegal border crossings?

A Yes.

Q Do your agents routinely encounter narcotics in the field or at checkpoints?

A Yes.

Q In San Diego Sector?

A Yes.

Q In both?

A Yes.

Q What are your narcotic trends in the San Diego Sector currently?

A Hard narcotics is the -- currently methamphetamine, fentanyl are the two

main ones.

Q Do you know approximately how much methamphetamine or fentanyl your agents have seized in the field compared to checkpoints?

A I don't have the breakdown between the actual field and checkpoints.

Q We mentioned before that your sector has four interior checkpoints. Do your agents routinely seize narcotics and interdict illegal immigrants at those checkpoints?

A Yes.

Q Has there been any impact on operations of those checkpoints given the high flow of illegal immigration over the last 2 years since you've been in San Diego Sector?

A Yes.

Q What has that impact been?

A The checkpoints and the interior payment operation have been very, very sporadic.

Q Are you concerned that operations at those checkpoints may again become sporadic when the CDC's order under Title 42 expires?

A They're already shut down.

Q So your checkpoints are currently shut down, the interior checkpoints?

A Yes.

Q So that means agents are not screening individuals for immigration status or narcotics or other criminal activity at those checkpoints currently?

A Correct.

Q You mentioned earlier that your intelligence indicates that there may be a significant number of Mexican nationals who are waiting to cross into the United States

over the next few days, next few weeks. Is that correct?

A Yes.

Q To what extent do you intend to process those individuals, Mexican nationals specifically, for voluntary returns as opposed to other processing outcomes?

A It's going to depend on their history and what they come back with. But people without any -- with any criminal history, it's going to be the majority will be processed for voluntary return.

Q So you believe the majority of Mexican nationals may be processed under voluntary return assuming they don't present with a prior criminal history?

A Correct.

Q We talked about how the risk to agents themselves has increased with the flow. Have assaults on agents in the San Diego Sector increased over the last few years?

A Yes.

Q What types of assaults on agents are you seeing in the San Diego Sector?

A We see everything from just physically combative. We've had agents attacked with boards or other things. And we've -- it's been -- we occasionally have shootings as well, not, thankfully, very frequently.

Q Do you refer all of those cases to the U.S. Attorney's Office for prosecution of assaults on agents?

A Yes.

Q And are they accepting those cases?

A Yes.

Q You testified earlier that there were approximately 66,000 known got-aways since October 1st of this previous calendar year. Is that correct?

A Correct.

Q Are you concerned that the got-away population in San Diego could also include individuals who have derogatory information related to terrorism?

A Yes.

Q Are you concerned that the public safety risk presented by individuals who evade detection by Border Patrol in the San Diego Sector could increase when the CDC order under Title 42 expires?

A Yes.

Q In what ways are you preparing to try to reduce the number of got-aways in the San Diego Sector?

A It kind of goes area by area. But the maritime front, for example, we partner with the Coast Guard and Air and Marine on the water, and requesting that they bring in more support because we're not available there on the beaches anymore, and do even more high profile positions out there to deter, to slow things down.

And as far as the -- on land portions of it, funneling as best we can into areas and having -- trying to maintain as much of a presence as we can in the areas outside of the large give-ups.

We have some areas that are historically -- we see more traffic. It's a little easier to cross. We see more people trying to get away. And trying to maintain as much of a presence there as we can.

Q So you talked about specific problem areas within the San Diego Sector and you're partnering with the Air and Marine Operations for water crossings.

Are you assisted by Border Patrol agents from other sectors to surge to any other problem areas within your sector?

A No.

Q No. Are there areas that are problems for got-aways where a border

barrier system would be helpful were it to be installed?

A Yes.

Q Have you communicated that to CBP headquarters or anyone at DHS specifically regarding the benefit the border barrier system in your sector could bring in those specific areas?

A Not to DHS. Through my chain of command, through Border Patrol.

Q Okay. And Border Patrol agents, would you agree, routinely participate in rescue operations for migrants placed in peril by the smuggling organizations?

A Yes.

Q Do the smuggling organizations in the San Diego Sector intentionally place migrants in peril as a smuggling tactic?

A Yes, I believe they do. Yes.

Q And have rescues in the San Diego Sector increased along with the increase in flow over the last few years?

A Yes.

BY MR. YI:

Q Chief, earlier, when Congressman Bishop asked you about different types of policies and how they may have impacted, you said the only one you could think of was Operation Gatekeeper that helped mitigate the flow of illegal immigrants crossing into the border of the United States.

Is it the policy of this current administration to construct border -- barrier wall systems?

A I don't know if it's the policy specifically.

Q Have they halted -- are you familiar with construction contracts in the San Diego Sector that existed to create a -- further your barrier system?

A I'm familiar with the initial project to put the barrier in within San Diego.

Q How many miles would that have added?

A I think it was a total of 37 or 38.

Q And how many miles were completed?

A I believe about 18?

Q So when did they stop constructing that?

A That was stopped in January of 2021.

Q I believe it's January 19th, 2021.

A There you go.

Q The day before the inauguration of President Joe Biden.

Would you say that if that construction continued, that would help mitigate the entry of people crossing into the interior of the United States illegally in the San Diego Sector?

A More barrier on our border would help us out.

Q Okay. Earlier you also testified that there is a crisis at the southern border -- we established that -- and that after President Biden was elected that the number of aliens trying to enter illegally into the United States increased, and that because of this ongoing crisis, that it is making the southern border more dangerous for Americans and aliens alike.

Are you familiar with the definition of operational control as stated in law through the Secure Fence Act?

A Yes.

Q Do we have operational control?

A I mean, I know I answered in the affirmative. Let me clarify for sure. It's the 2006 definition where we know every single thing that comes across. So under that definition, no, we do not.

Q Have you ever heard the term "operational advantage"?

A I have.

Q From where are you familiar with that term?

A The national strategy.

Q And can you define that term for us?

A No.

Q Well, you're not a definition officer. You're a law enforcement officer. So we'll stick with the law.

Mr. Yi. The time is 12:04 p.m.

Mr. Higgins. I have one question.

Chief, if you're overrun -- I have a number saying that there's 700,000 in the Mexican side of the border from Matamoros to Tijuana stacked up in hotels, I'm told, stacked to the ceiling way beyond capacity. We're estimating 700,000 people stacked

up on the border.

For the San Diego Sector, are there any contingency plans to deal with what happens when you're overwhelmed by waves and waves of illegal humanity? What are you going to do? Have you run scenarios where you close the border?

Mr. Heitke. Yes. Yes.

Mr. Higgins. What were the circumstances called for, for you to actually close the border?

Mr. Heitke. If the -- and it relates specifically to the ports of entry. So if it gets to the point where we're overwhelmed at the port of entry, around the port of entry, the port will close down itself. And that, to clarify, doesn't mean that in between the ports of entry close down.

Mr. Higgins. Yes, sir.

Mr. Heitke. Obviously, they're supposed to be closed down all the time.

The impact of the port of entry closing down, it affects commerce on both sides of the border --

Mr. Higgins. Obviously.

Mr. Heitke. -- and gets more attention to the problems, and generally gets us more support from the Government of Mexico as well.

Mr. Higgins. What would happen when you have in between the points of entry, when your men are dealing with instead of dozens or scores of groups of illegal crossings and runners called got-aways, the criminal runners, what happens when there's thousands?

Mr. Heitke. What we're going to end up having to do is bring them in. And as they gather, they're going to be in large groups, as you mentioned, if it is thousands. And the majority of those, as we're seeing now at least, are giving up. So they will -- we

will deal with them as they --

Mr. Higgins. You have to start a camp until you can get to them?

Mr. Heitke. Yes.

Mr. Yi. The time is 12:07 p.m. We will break for lunch and go off the record.

Thank you.

[Recess.]

[1:04 p.m.]

Mr. Yim. We'll go back on the record. The time is 1:04 p.m.

Chief Heitke, I'd like to discuss operational control and the metrics that Border Patrol uses to measure border security. This came up a bit with your conversation with my Republican colleagues.

I'm going to hand you what will be marked as Minority Exhibit A.

[Heitke Minority Exhibit A

Was marked for identification.]

BY MR. YIM:

Q Do you recognize what I just handed you?

A Yes.

Q And what is this document?

A The Secure Fence Act of 2006, basically highlighting what we would like for security on the border.

Q Okay. I'll have you flip the page to section 2(b). I believe you have that in front of you. Midway down the page, it begins, "OPERATIONAL CONTROL DEFINED." Do you see that?

A Yes.

Q Great. It reads, "OPERATIONAL CONTROL DEFINED. In this section, the term 'operational control' means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."

Chief Heitke, based on your tenure and knowledge of Border Patrol operations, has there been a year during your career where Border Patrol has prevented all unlawful entries into the United States?

A No.

Q And to your knowledge, has Border Patrol ever prevented all unlawful entries into the United States?

A No.

Q Based on your answers there, you would agree then that operational control as defined here in the Secure Fence Act has never been achieved.

A Correct.

Q Outside of the 2006 Secure Fence Act, which we just reviewed here, over the years Border Patrol and the Department of Homeland Security have internally used different metrics to review operational success at the border. Is that correct?

A Yes.

Q I'm handing you now what will be marked as Minority Exhibit B.

[Heitke Minority Exhibit B

Was marked for identification.]

BY MR. YIM:

Q This document is testimony submitted to the House Homeland Security Committee by the Government Accountability Office, or GAO, in 2011. It's titled right here on the front, "Preliminary Observations on Border Control Measures for the Southwest Border."

Now, I'm going to have you turn to first page. It has "GAO Highlights" at the top.

Do you see that?

A Yes.

Q And on the right side of the page, midway down, there's a sentence that begins, "Border Patrol stated -- "

Do you see that sentence?

A Yes.

Q It reads, "Border Patrol stated that operational control does not require its agents to be able to detect and apprehend all illegal entries."

Now, before I ask you any other questions, I'm going to have you turn to page 2 as well. And in the middle of the paragraph on page 2, there's a sentence that begins, "In past years -- "

Do you see that?

A Yes.

Q The sentence here reads, "In past years, DHS reported the number of border miles under effective control -- also referred to as operational control -- defined by DHS as the number of border miles where Border Patrol had the ability to detect, respond, and interdict cross-border illegal activity."

Chief Heitke, you'd agree with me that the definition of effective control that we

just reviewed in this document, also referred to as operational control, is different from the definition in the Secure Fence Act that we reviewed earlier?

A Yes.

Q Chief Heitke, I'm going to hand you another exhibit. This will be marked Minority Exhibit C.

[Heitke Minority Exhibit C

Was marked for identification.]

BY MR. YIM:

Q And this document is the "2020 U.S. Border Patrol Strategy" published in 2019 under the Trump administration.

Now, I'm going to point you to page 7, numbered at the bottom. And the first paragraph there, there's a sentence that begins, "OPCON is the ability -- "

Do you see that?

A Yes.

Q The sentence reads, "OPCON is the ability to perceive and comprehend the operating environment (Situational Awareness), mobilize assets, infrastructure and barriers to prevent criminal activity (Impedance & Denial), and respond to and resolve any illicit cross-border incursions (Response & Resolution)."

Chief, OPCON, as it's used here, is it your understanding that that means operational control?

A Yes.

Q And you'd agree with me that this definition, as Border Patrol defined in this 2020 report, is different from the definition in the 2006 Secure Fence Act, correct?

A Yes.

Q You'd also agree with me that this definition in the 2020 report is different

from the definition given in the 2011 GAO report.

A Yes.

Q Is that right?

A Yes.

Q Chief Heitke, when Chief Ortiz testified before the House Committee on Homeland Security in March, he described operational control as a quote, "measuring stick" of Border Patrol's effectiveness.

Now, we just walked through several exhibits with different descriptions of this so-called measuring stick. We began with Exhibit A, which was the definition of the Secure Fence Act, and then we walked through a series of documents that discussed the internal measurements DHS, CBP, and Border Patrol use.

Based on these exhibits and what we just walked through, you would agree with me that operational control has been an evolving metric internally at Border Patrol. Is that right?

A Yes.

Q And you would agree that operational control has taken on different meanings over the years. Is that right?

A Yes.

Q Based on these definitions, would you agree that Border Patrol has operated under different definitions of operational control than what is listed in the Secure Fence Act?

A Yes.

Q My Republican colleagues touched on operational advantage a bit. And can you refresh my memory here? What is operational advantage?

A I'm afraid I don't remember enough of it to be able to define it.

Q That's fair. It's a long definition.

But what you stated to my colleagues earlier is the definition of operational advantage was released in a recent strategy report. Is that fair to stay?

A Yes.

Q So the 2020-2026 Border Patrol strategy document has this listed in there.

"The first goal of the new plan evolves from gaining operational control to gaining operational advantage. Our collective aim is to match or exceed the capability of the threats we face, as well as improve our ability to anticipate and predict emerging threats. It is crucial that we are able to detect, identify, classify, prioritize, and mitigate threats at the earliest possible moment."

Does that match your recollection of operational advantage?

A Yes.

Q Do you agree that operational advantage is an important part of border security?

A Yes.

Q Why is operational advantage important to border security?

A If we -- we want to be in the best position we can to address the threats coming in. So not only on our border, but overseas and anywhere in the globe that we can influence and have more information on what's coming at us.

Q Great. Throughout your testimony today, we have talked about border security, and I know you have talked about securing the border. You would agree with me there's no defined definition of border security. Is that fair to say?

A Yes.

Q There's nothing in statute defining border security?

A Correct.

Mr. Yim, I'll pass to my colleagues.

[1:12 p.m.]

BY MS. MARTICORENA:

Q I just want to follow up on a few things from the last hour.

So my colleague asked about the CBP One app, specifically if processing people quicker could be seen as a benefit to migrants. I just wanted to clarify. The outcome of the processing isn't dependent on the time it takes, correct?

A Correct.

Q And would you say that whether someone is held in your facilities for a day versus 3 days or 5 days has significant impact on their decisions? Is that a consequence, how long they're held in your facility?

A A consequence to them?

Q To them.

A No.

Q Thank you.

And then on the question of -- the issue of NGOs and the ones you've worked with in your sector, is it fair to say that the two NGOs you mentioned, Jewish Family Services and Catholic Charities, have been operating in San Diego for quite a while?

A Yes.

Q And was your predecessor working with them before you got there?

A Yes.

Q Okay. And, just to remind us, when did you arrive in the San Diego Sector?

A 2019.

Q 2019. So, under the Trump administration. Is that correct?

A Yes.

Q And, throughout your career with Border Patrol, is it fair to say that not

everyone has been detained in anywhere you've worked?

Is it fair to say that there have always been some releases into communities throughout your career with Border Patrol?

A Yes. Yes.

Q And, when people are released, has it been the case that NGOs or other organizations have tried to help migrants throughout your career?

A A lot of it is area-specific.

Q Okay.

A Some of the areas I have worked are very, very remote, and so there aren't any NGOs there. But where we have areas that are large enough, then yes.

Q And it's sometimes the case they have limited capacity. Is that correct?

A Yes.

Q And, when there's limited capacity, there's still people being released.

When there's limited capacity by NGOs, again, throughout your career in these remote areas, people are still released from Border Patrol, even if there's not an NGO there to greet them. Is that correct?

A Correct.

Q Okay. And so would it be fair to say that, when these NGOs or organizations have more capacity, there's less releases to bus stops or gas stations?

A Correct.

Q Okay. And, whether or not someone is released to an NGO or to a bus stop, is it fair to say the processing and vetting is the same?

A Yes.

Q Okay. And I know, in the last hour, we touched a little bit on expedited removal, and you said it takes CBP longer to hold someone for expedited removal. Is

that correct?

A Correct.

Q Would it be fair to say that the consequences imposed under expedited removal are quicker than if they were processed under a different title 8 pathway?

A It's going to vary, I think.

Q Okay. Compared to someone being released into the community -- which is, in your facility, less time -- someone who goes through the title 8 expedited removal process, if they're amenable to it throughout, is that a shorter timeline for them leaving the country?

A Yes. Compared to a release in the -- yes, absolutely.

Q Okay. And then just a bit on title 8.

Just to clarify for the record, title 8 processing is what was being done before the pandemic. Is that correct?

A Correct.

Q And title 42 was put in place because of the pandemic?

A Correct.

Q So is it fair to say that, with the end of title 42 on Thursday, that Border Patrol is planning to go back to the same method of processing that they were using for years before?

A Yes.

Q Okay. And then, under that processing -- I know we touched a bit on vetting before. Is it fair to say you check them against several databases, including the TSDS?

A Yes.

Q And has that always been the case?

A Yes.

Q And, when someone has a hit on the TSDS database or the Terrorist Screening Dataset, what are the next steps for your agents?

A They go through the specific hit -- the information that it says that it provides them. And then, generally, there's a contact from the individual on the hit. Otherwise, they will contact, generally, our local FBI office and refer it to them to see what they want to do with it.

Q And is it fair to say, as part of that process, people who are hit on the TSDS aren't released into communities until that's fully vetted?

A Correct.

Q And, generally, would you say that people who are hit on that dataset are either turned over to a partner like FBI or ICE, and someone else is doing that custody determination?

A Correct.

Q Okay. Thank you.

BY MR. OMBRES:

Q Thanks, Chief. I'd like to piggyback on my colleague and talk a little bit more about title 42 and title 48.

You had a discussion with Mr. Bishop about consequences, and you said that the only real consequence is being sent back home. Fair?

A Yes.

Q Okay. So I just want to clarify because title 42 has been in effect for a couple years now. It's ending on Thursday.

So, under title 42, that provides for the immediate removal of a migrant, but there's no criminal or civil consequences for them upon their removal. Is that correct?

A Correct.

Q Okay. And a person -- if they are removed under title 42, for the vast majority of them, they're simply sent back across the border. Is that about right?

A Correct.

Q Okay. So, under title 42, that person who is removed, they can come right back across the next day if they have the money or the funds to find their way across the border. Is that fair?

A Yes.

Q And then they can get removed again under title 42 that day?

A Yes.

Q And then they can come back?

A Yes.

Q And then they can be removed?

A Yes.

Q And then they can come back?

A Yes.

Q Now, under title 8, if a person is apprehended, the process is longer. It's more involved. There's more adjudications. But there are actual civil and criminal consequences if an individual is removed under title 8. Is that correct?

A Correct.

Q What are those?

A So the charge of 1325 illegal entry is -- it's a misdemeanor. It's a Federal misdemeanor. And, generally, that is not going to be prosecuted until the individual has been returned a number of times in the past.

So maybe they've been returned 20 or 30 times, just as an example. Then,

eventually, they may be prosecuted and then sent back again. And then, if they come back, they're going to be subject to a reinstatement of a deportation, which becomes a felony.

Q Yeah. And then, if they're removed under those titles and they're prosecuted, then I believe they can't return to the country for 5 or 10 years. Is that --

A Depending on which charge and when. But say, if they're actually deported, they can't come back to the country ever --

Q Okay.

A -- without receiving an exception by the --

Q -- fair enough --

A -- Attorney General --

Q So, as we just kind of discussed, under title 42, effectively, a migrant can play jump rope with the border coming back, going forth. But, under title 8, they can face the real consequences of removal and prosecution. Is that fair to say?

A Correct.

Q Okay. I appreciate that.

BY MS. MARTICORENA:

Q Okay. I just wanted to follow up on that quickly.

I know there was some discussion in the last hour about the prosecutions and that the Bureau of Prisons has limited holding space, and that's a factor. Has that been an issue throughout your career with Border Patrol?

A Yes.

Q Okay. Thank you.

BY MR. EWENCZYK:

Q And, under title 8, it's fair to say that there are ways to accelerate the

adjudication process or accelerate the removal process. Isn't that right?

A Yes.

Q So, for example, expedited removal, authorities allow for quicker processing of removal?

A Correct.

Q And, similarly, by having more asylum officers and immigration judges, it's possible to accelerate processing under title 8?

A Yes.

Q I just wanted to come back quickly, also, to what my colleague was asking you about. She and you were talking about how it's always been the case that there are migrants who are released, and how it's always been the case that there are NGOs around to provide assistance to migrants being released. Housing assistance, counseling, other services. Is that right?

A Yes.

Q That was true in previous administrations and the Trump administration, also, right?

A Yes.

Q And you were discussing with her how those NGOs obviously have limited resources, and so sometimes migrants are released, and there isn't an NGO that has the capacity to provide them those extra services. Is that right?

A Right.

Q Now, you were talking earlier about a directive that you received from Chief Ortiz. Is that right? About releasing migrants when NGOs have limited capacity?

A Yes.

Q And so the directive that -- am I correct in understanding that was a directive

you received from Chief Ortiz?

A It's guidelines on how to do it. So yes.

Q So, when you say it's guidelines on how to do it, am I correct in understanding that you received guidelines on the release of migrants when NGOs are over capacity. Is that fair?

A Correct. Yes.

Q And were those guidelines about how to do that in a way that is safe and humane and equitable?

A Yes.

Q And is it fair to say that additional funding, whether it's funding to NGOs to have more capacity or additional funding for additional detention space, could help address -- limit the number of circumstances in which these guidelines are applicable?

Mr. Jonas. Can you rephrase that question?

Mr. Ewencyk. Sure. Let me start that again.

BY MR. EWENCYK:

Q Is it fair to say that increased funding to NGOs would help them have more capacity to provide more assistance to migrants being released?

A Yes.

Q And is it also fair that more funding for more detention capacity would reduce -- would allow you to -- you know, to have more space to detain more migrants if that were necessary under rules and policies?

A Correct.

BY MS. JACKSON:

Q I just want to ask a couple questions about drug interdictions, as we touched on briefly.

I was just wondering if you could shed more light on what happens when Border Patrol arrests someone for attempting to smuggle drugs.

A It depends on -- it depends on the how a lot. We work with all of our partners, so task forces, and our difference between land on who we're working with depends on whether we do prosecution or we turn it over to another agency to take over the prosecution. And, of course, we have an MOU with the DEA, so the bulk of our turnovers are to them for prosecution.

So the load would be interdicted, and we would cease the -- we'll do the surge, test the contraband, see approximately what it is, and then depending on where -- so if it's at a checkpoint, for example -- methamphetamine, the first call is going to go to the DEA. And if the DEA has resources available to come, they will come and take the case over for prosecution. If they don't have the resources available, then we may call his, Homeland Security Investigations, or a State or local agency as well to take the prosecution.

Q And are people ever referred to the U.S. Attorney's Office for prosecution?

A Yes.

Q When would that be, for example?

A We rarely prosecute our own cases. And it's more -- it's not that we don't have the ability or the authority. It's just that it's easier to turn it over to the experts that do it every day, his and DEA being the main ones. But otherwise, yes, we'll present the case to the U.S. Attorney's for prosecution as well.

Q Understood. And to your knowledge, are most of the illicit drug smugglers that you interdict -- are they working for cartels?

A Yes.

Q Do you know whether any of them are U.S. citizens, the smugglers?

A We arrest U.S. citizens smuggling as well, yes.

Q Thank you. No further questions.

BY MR. EWENCZYK:

Q I just had a couple extra questions.

You talked earlier about Operation Gatekeeper. And I think you described how, in your opinion, it was a policy that was effective in reducing illegal immigration. Am I correct?

A Correct.

Q Now, my understanding of Operation Gatekeeper is that it provided for increased border personnel, increased technology for border surveillance, as well as for some border fencing and other infrastructure. Is that right?

A Yes.

Q So is it fair, then, for me to assume that, in your opinion, these kinds of investments in human power for Border Patrol, technology, and infrastructure are important ingredients of an effective Border Patrol strategy?

A Yes.

Q And then, earlier, with my colleagues, you had some back-and-forth about the hope that migrants have when they come to the U.S. border. Do you recall that?

A Yes.

Q And we've also talked about how there's a lot of mis- and disinformation that's propagated by the cartels about U.S. law and policy, about what the journey to the border is like, and so on and so forth. Do you agree?

A Yes.

Q So would you agree that a lot of the hope that migrants come to the border with is actually false hope that is given to them by the cartels?

A I'd say that's a fair assumption, yes.

Mr. Yim. We'll go off the record.

[Recess.]

Mr. Yi. We'll go back on the record. The time is 1:38 p.m.

Mr. Higgins. Thank you, sir.

Chief, again, thank you for being here. Thank you for your candor in the difficult circumstance. We very much appreciate your time.

A great deal of that time has been spent on my Democrat colleagues in an effort to identify particular meaning of operational control versus operational advantage, and so I'd like to visit that.

You had stated in your testimony that, speaking for your own sector, the cartels control the territory on the Mexican side of the border. Do you recall saying that?

Mr. Heitke. Yes.

Mr. Higgins. So that would indicate that -- if you say the cartels control the Mexican side of the border, are you saying that Federal law enforcement controls the American side of the border?

Mr. Heitke. Yes.

Mr. Higgins. Okay. So our border is an imaginary line where the geographical assignment -- you could stand on one foot in the United States and one foot in Mexico, could you not?

Mr. Heitke. Yes.

Mr. Higgins. Okay. So Federal law enforcement -- do we respect the sovereign territory of Mexico?

Mr. Heitke. Yes.

Mr. Higgins. When I say "respect," I mean, do we abide by the laws of it? In

other words, we acknowledge the existence of the sovereignty of Mexico, do we not?

Mr. Heitke. Yes.

Mr. Higgins. Okay. So in your -- the men and women under your command, they don't venture over into Mexico, do they?

Mr. Heitke. Correct. They don't.

Mr. Higgins. Okay. So we operate in Mexico -- I mean, in America, do we not?

Mr. Heitke. Correct.

Mr. Higgins. So the criminal cartels, do they respect the sovereign territory of the United States?

Mr. Heitke. They cross as they want to.

Mr. Higgins. I mean, that's their business model, is to cross into the sovereign territory of the United States.

Mr. Heitke. Correct.

Mr. Higgins. So their business model is directly opposed to our own when it comes to recognition of the border and the sovereignty of our two Nations. Their business model is to traffic human beings and drugs into the sovereign territory of America. Is that correct?

Mr. Heitke. Yes.

Mr. Higgins. Okay. So it's safe to say that we respect the laws of the border in the sovereign territory of Mexico, but the cartels, who control the Mexican side of our southern border, do not respect the sovereign territory of the United States. In fact, their business model is to violate the laws and the sovereign territory of the United States. Is that not just a simple acknowledgment of the truth?

Mr. Heitke. Yes.

Mr. Higgins. Okay. Are you familiar, Chief, with the term "theater of

engagement" as it evolved after Vietnam?

Mr. Heitke. I'm familiar with the term, yes.

Mr. Higgins. So, just to share, theater of engagement is a term that evolved since Vietnam wherein the sovereign border between nations would no longer define our engagement. If we had conflict as a Nation, we would secure the theater of engagement.

And, in that definition, our border territories on both sides of the border -- which, again, you could put one foot in Mexico and the other foot in the United States. But the theater of engagement is larger than the border, is it not?

Mr. Heitke. Yes.

Mr. Higgins. So the Americans that live on the sovereign territory of the United States that live within that theater of engagement where the cartels control the Mexican side of the border and they're in the midst of that theater of engagement, and they do not respect our laws on our territory -- in fact, their design is to defeat our laws on our territory -- the Americans living on American soil, are they not living in the theater of engagement there?

Mr. Heitke. Yes, they are.

Mr. Higgins. So are American lives and families impacted by the cartels' control of the Mexican territory on our southern border?

Mr. Heitke. Yes.

Mr. Higgins. All right. So that's reality, what you and I just discussed. Politicians and staffers in D.C. hanging the hat on one word in the definition of a law -- that's not reality.

The theater of engagement -- I'm going to ask you candidly, Chief. Who controls the theater of engagement out at the southern border?

Mr. Heitke. If you look at the -- we still control the north side for the most part. Do we control every aspect of it? No.

Mr. Higgins. How do you explain 5 million crossings and a million gotaways in 2 years, then? How do you explain the fentanyl crossings and 107,000 Americans dead in 2021 and 108,000 in 2022? If we're controlling the theater of engagement, how are we losing like that?

Mr. Heitke. There are parts that we don't control.

Mr. Higgins. Okay. That's an honest and candid answer. And I yield.

BY MR. YI:

Q The parts we don't control, who would be in control?

A It ebbs and flows, but whoever is moving and smuggling things that we don't want them moving. So generally, a cartel would be, at that time, controlling.

Q So the cartels are controlling those parts of the border is your testimony?

A At periods of time, yes.

BY MS. O'CONNOR:

Q Chief, how would you define success in your sector?

A Overall, success for us would be able to ultimately -- ultimate success would be for me to shut the area down so that we interdicted and resolved everything that came in between the ports of entry. That would be ultimate success.

Q Right now, when you come off of a day or a week, what are you looking at as measures of success?

A So my personal measures of success?

Q The sector. So, if you're looking back on this -- yesterday in the sector or last week in the sector, what are you looking at to determine whether you had a successful week or a successful day?

A I'm looking at the amount of resources we are able to put on the border, the amount of enforcement operations we were able to do versus transportation and care and feeding of migrants. I'm looking at whether we have the resources to get the checkpoints up or not, the number of gotaways that we have in the area, and then processing percentages and efficiencies.

Q Are those the same statistics that Border Patrol Headquarters is looking at for success?

A Yes, I believe so.

Q Do you get pressure from Border Patrol Headquarters on improving any of those statistics?

A No, I don't think I ever get pressure.

Q Are they scrutinizing any statistics more closely than others?

A They pay close attention to the amount of people we have sitting in the field waiting for transportation out. They pay close attention to the number of people we have in custody and the overages of our capacity.

Q When you say the people who are waiting for transport, you mean migrants that are waiting in the field and for how long?

A Correct.

Q Okay. Are there ever suggestions from Border Patrol Headquarters about how to make those numbers better in their view? For instance, are you getting pressure to move people out of detention because people are staying in detention for too long?

A No.

Q Does headquarters ever give you pressure to move people out of detention because you're over capacity?

A No.

Q What kind of feedback do they give you about those numbers?

A To do our best to keep them down.

Q And how do you keep those numbers down when it comes to detention?

A Processing. Making our -- putting as many resources that we can into processing to get the people moved quickly.

Q And by "moved," you mean released from detention?

A Yes.

Q The Homeland Security Office of Inspector General, just last week actually, issued a report about morale within Border Patrol agents. Have you had an opportunity to review that report?

A I haven't reviewed the report.

Q So there's a part of it -- they essentially sent a survey out to Border Patrol agents in the field and asked them some questions. And one of the findings that they made was that unpredictability surrounding major immigration policies has caused uncertainty and anxiety among law enforcement personnel.

Have you heard any of that anxiety from your agents in the field?

A Anxiety as far as --

Q Unpredictability about major immigration policies. So essentially changing policies or implementing policies. Have you heard any anxiety from your agents about unpredictability of policies?

A Not that specific, no.

Q Do you talk to your agents about how they're feeling?

A Yes.

Q How often are you talking to line agents?

A Weekly.

Q Do you think that those agents have a meaningful way to give feedback or voice their concerns about certain policies?

A Policy-specific is an interesting question. They have the opportunity to give feedback in the field, and then there are surveys that are put out to the agents. I'm not exactly sure on policy-specific that I would -- I couldn't specifically talk to policy, but --

Q So there's no agents -- when agents are pulled off the field from enforcement and they're brought in to process, and then they see the majority of the people they're processing released, does that impact their morale?

A Yes.

Q Do they have the ability to -- a meaningful way to provide that feedback about their morale and the impact that these policies are having on their morale to upper-level management?

A Yes. Yes, they have the ability to do that.

Q And do you or someone else within your management team then communicate those concerns up to Border Patrol Headquarters?

A Yes.

Q So you think Border Patrol Headquarters and potentially DHS Headquarters, then, is aware of the concerns of the agents on the ground?

A Border Patrol Headquarters is for sure.

Q My colleagues talked a lot about cartel misinformation, and you agreed that cartels provide misinformation to migrants. What specific misinformation do cartels provide to migrants that impacts the San Diego Sector?

A The duration of the journeys is one of the primary ones, particularly either in our desert or on the water. They let them know that it's a short trip, that it's easy, and they have to just hop over a small mountain and give up. And sometimes it's 5, 6 miles

of very difficult terrain that they don't have the water or they don't have the clothing for.

Also, when it comes to the water side, they say they will be brought up to the beach or a dock and dropped off. Sometimes they're dropped off 200 yards offshore, and we have drownings. So explaining the process is not reality.

Q How do you know about this misinformation? Is it based on interviews of the migrants themselves?

A Correct. Yes.

Q So have you been privy to any of the social media postings or anything that disinformation is being posted on, or is this all based on what the migrants are telling you?

A I don't do any social media. So I stay out of all of that.

Q Sure. It's your intel or whoever --

A But yes. And I'm briefed up on what they're putting out, yes.

Q Okay. Is it misinformation if the -- strike that.

The ultimate goal of these migrants is to get into the United States, right?

A Yes.

Q And to be released and stay here, whether it is to work or be with family?

A Yes.

Q If a cartel tells people -- migrants -- that it's going to be really easy to get here and you'll be released into the United States, and that person comes, and it was really hard to get here, but they were still released into the United States, in your experience, does that person call back to family or community members and let them know how it went?

A Yes.

Q So, even if the cartel is lying about how hard it is to get here, if the person is ultimately released, isn't that only partly misinformation?

A I'm not sure exactly which part.

Q That's okay.

So if -- if it was all a lie. If the cartels said it's going to be really easy to get here and you're going to be released, and a migrant came, and it was a terrible journey, and they got rejected and they got removed to go home, they would tell their family: Don't do it -- right -- because it was hard, because it was all a lie; it was hard, and we took our son home.

Right?

A Right.

Q But, if only part of it was untrue, so they said "it's easy, you'll get in, it was a really hard journey, but I got in," people still might make that journey, right?

A Right.

Q So, if it was all misinformation, why are people still coming?

A It goes back to both sides. But as long as they make it into the United States, that's their ultimate goal. And so, if they've been traveling for a year, they've risked their lives more than once, not just at the border. And so that is their ultimate goal. So it's all worthwhile if they make it here.

Q And so it's all not a lie, right?

A The fact that they can make it here?

Q Right. The piece about being released into the United States is not a lie?

A I mean, in some cases, yes. In some cases, no. It wouldn't be across the board.

Q Okay.

BY MR. YI:

Q Perhaps, I suppose, that the accuracy and the fact that some people who cross into the United States illegally manage to stay after being released -- that truth can be equally as good of an incentive or pull factor as what others referred to as misinformation by the cartels that it's a great and pleasant journey.

A Right.

Q That is accurate?

A Yes.

BY MS. O'CONNOR:

Q Okay. I'm going to move on. I'm going to talk about local community.

You mentioned way -- many hours ago that one of the factors that differentiates San Diego from other sectors is that it's a very urban environment.

What kind of impact has the increased number of migrants over the last 2 years had on the local communities in the San Diego Sector?

A It's hard to judge the -- I have a lot more calls from the local mayors, local city councils, about concern on the numbers. And more calls -- obviously, Southern California has a homeless issue. So there's a lot of attention put there. And so none of the folks there want additional people on the streets to add to that problem. So it has an impact.

Q Has it impacted any of the local health facilities? Any hospitals?

A Yes.

Q In what way?

A The cost of medical treatment that is not reimbursed.

Q What about local schools?

A I don't know anything about the schools. I haven't actually had any

conversations with them.

Q Have you heard anything about property damage for -- property damage on the property of people who live close to the border?

A In San Diego, almost all of it is federally owned. So there is very little anymore within our border area. So most of it -- it's quite a ways north to where -- north of the secondary fencing is where the private property comes in, and we've been able to keep the traffic out of there for the most part. So minimal property damage.

Q What about cartel and gang violence?

A Most of it occurs on the south side within Mexico. But we have seen more -- particularly in the rural areas, we have seen considerably more bandit activity on our side as well.

Q I'm sorry. What kind of activity?

A I'm sorry. Bandit activity.

Q And what is that?

A It's individuals coming up from Mexico and robbing the migrants as they're moving through. And it's a combination of the individual smugglers wanting to make a little extra money. They'll have -- it's coordinated. So they're working together.

But one of the foot guides, for example, will leave for a little while. They'll leave the group and say: I'll be back in a little bit.

Two more individuals will come up and rob them and leave, and then the smuggler will come back and move them on. It's just a way of earning extra money and preying on the remote areas with minimal law enforcement on either side of the border. And most of the migrants have everything they own with them, so they're easy targets.

Q What about cartel and gang violence within the urban community?

Mr. Jonas. What's the question?

Ms. O'Connor. The local impact on the urban community.

Mr. Heitke. It's -- I don't have any solid numbers on that. We see a lot of increases in -- and this is through the local chiefs of police as far as crime rates going up. But they're not linked specifically -- I don't have specific links to whether they're directly related to immigration or not.

BY MS. O'CONNOR:

Q Have you noticed any other abuses by smugglers or cartel members on migrants beyond the bandits?

A We see trafficking. We see, unfortunately, a large amount of assaults. And this is -- it's not just within Mexico, but it's on the entire journey.

It's very common that female migrants are raped during the process. It's also very difficult to be able to get them to talk. Most of them believe it's just part of the payment as they go up. It's unfortunately very regular within the population.

Q Do you try to screen people for being victims of crime?

A We do, yes.

Q What about extortion? Do you see a lot of extortion?

A We see kidnappings particularly on the border area and within Mexico. We don't see -- we don't see them on the United States side. But what we do receive is calls from families that are in the United States. They'll receive calls that a loved one has been kidnapped somewhere in Mexico on their way up, and they'll be called to -- and asked for rent.

Q And there's nothing Border Patrol can do about that, right?

A We help as much as we can. We use our partnerships in Mexico. And, obviously, we deal with -- whether it be the FBI or other organizations on the U.S. side.

But because it's happening in Mexico, we use our connections with the consulate office and the ambassador's office and then our law enforcement partners there to move and let them know what's going on and help them as much as we can.

Q Does Border Patrol have attaches in Mexico?

A We do, yes.

Q Do the cartels exploit stash houses in the United States?

A Yes.

Q Are there many in the San Diego Sector?

A Not that we know of now. As we find them, we'll shut them down.

Q Have you been to a stash house in the San Diego Sector?

A Not in San Diego.

Q You've been to a stash house, though?

A Yes.

Q What are the conditions like in a stash house?

A Bad.

Q What does "bad" mean?

A This goes back to my time in Arizona. But, generally, it's just basically a run-down building. Sometimes it's apartments or trailers or other things. Lots of cockroaches, old furniture. Things are not well-kept.

Q How do cartels use stash houses?

A To keep people at as a staging point until they can be moved further off the border.

Q Are they typically used on the United States side?

A Yes. Well, I wouldn't say typically. They use them on both sides of the border.

Q Are you aware of the strategy of United States citizens purchasing houses on the United States side of the border either for human or drug smuggling?

A Yes. Yes.

Q You spoke earlier about the demographics of the people that are crossing over the San Diego Sector, and you said that there aren't as many unaccompanied children as there are in other sectors, but you do still see quite a number of unaccompanied children. Is that right?

A Yes.

Q What is the average age of the unaccompanied children that you're seeing?

A They span the entire spectrum. So we see them under a year all the way up to 16, 17.

Q The children that are a year or a much younger age, how are they getting there?

A Generally, when you're talking about toddlers and infant-size, generally, they're coming up with a nonrelative or -- generally coming up with a nonrelative or they're coming up with, as I mentioned before, a rental family. And so, if we do find out that this is not their -- these are not their patients, then we can't turn them back over to them, and they become an unaccompanied child.

Q Does Border Patrol confirm the age of an unaccompanied child?

A As best we can.

Q And what strategies do you use to do that?

A Any identification that they have with them. The individuals that were apprehended with them -- to talk to them. And then going back, again, to our partners in Mexico if they have any information.

Q Is there any special screening that's done for unaccompanied children?

A You mean as far as placement, or --

Q Victims of crime, trafficking.

A An unaccompanied child is going to be treated differently. Obviously, we don't -- we're not going to house them with adults. If they don't have a family member with them, they're going to be turned over to protective services and moved down that way. They're not going to be printed and have their picture taken as far as the actual processing portion of it goes.

Q Do you interview them to find out if they were victims of human trafficking, or does that happen with ORR?

A We'll interview them initially, but then that will be turned over to his or ORR.

Q Has it ever appeared to you that any of the trafficking screening has fallen through the cracks, particularly as it applies to UACs, when there are surges in your sector?

A I have had agents bring up that concern that as things -- the busier things get -- and that goes across the board with interviews. The busier you get, the less time you have, the less time you can put into interviews.

Q We were talking earlier about paroling people under parole plus ATD and the factors you were considering in making the release determinations.

Does the same hold true there in that, when there's less time for interviews, there's less time to meaningfully consider all of the factors for processing decisions?

A I'm not sure if I -- I'm not sure I understand.

Q Do you have -- when there is less time -- when things are moving faster and there's surges and so there's less time for interviews, is there also less time to consider all of the different factors that you need to consider for processing decisionmaking? Can agents go as in-depth as they would otherwise like to in order to make a processing

decision?

A I think there's going to be -- as things move faster, there's going to be, you know, more of an opportunity to not go as deep as they could, so.

Q My colleagues talked to you about operational control and presented you with a number of Border Patrol-issued documents about operational control. I just want to turn your attention quickly back to the Secure Fence Act of 2006. It's minority exhibit

A.

The Secure Fence Act requires that the Secretary of Homeland Security takes all actions to achieve and maintain operational control. It's not Border Patrol's responsibility to meet the definition of operational control, right? Based on that statute?

A Based on that statute, correct.

Q So you are a piece of what the Secretary's plan is?

A Correct.

Q And so the Secretary determines the policies that either meet operational control or do not?

A Correct.

Q Veering off into a completely different topic, are there any aerostat -- aerostats in San Diego?

A No.

Q Have there ever been?

A Not to my knowledge, no.

Q I have no further questions.

Ms. O'Connor. I'll pass to my colleague.

BY MR. MCDONAGH:

Q The NGOs have been in the San Diego Sector helping for a long time. They're funded more recently through the Emergency Food and Shelter Program.

Do you know how much money was appropriated for the Emergency Food and Shelter Program in fiscal year 2018?

A No.

Q It's around 120 million.

Fiscal year 2019?

A No.

Q It's about 150 million.

Do you know how much was appropriated in fiscal year 2023?

A No. Somebody told me the other day, but I can't remember.

Q In total, it's around 990 million. Close to a billion dollars.

Is that increase in appropriation a response to the overwhelming flow that we've seen at the southwest border?

A I'm not sure what -- I'm not sure why they did it.

Q If there are more illegal border crossers being released into the interior of the Southwest border, is it likely that NGOs -- that more help from NGOs is going to be necessary?

A Yes.

Q And that they would require more funding?

A Yes.

Q You talked about policy decisions over the past 25 years that you've been an agent. Policies change from administration to administration. We may have touched on some of these issues already, but I want to ask again.

Could policy decisions affect encounter numbers?

A I guess I'd be speculating if I -- I'm not sure. I'm not sure.

Mr. Jonas. Do you want to offer up a policy and see if he knows anything about it?

BY MR. MCDONAGH:

Q Could policy decisions affect encounter numbers?

A I guess an overall policy change -- it's possible, yes.

Q Have encounters increased in the past 2 years?

A Yes.

Q Have you ever seen encounters this high at the Southwest border?

A No.

Q You mentioned that increased encounter numbers affect agents' ability to police the border and to capture those who seek to evade apprehension entirely -- gotaways -- correct?

A Yes.

Q Have gotaways increased in the past 2 years?

A Yes.

Q Are gotaways potentially dangerous from a public safety standpoint?

A Yes.

Q I'm going to turn to your time beginning in San Diego. And as I mentioned, we've already touched on this, but I want to clarify some things.

You started in San Diego as a deputy chief patrol agent in 2019, correct?

A Yes.

Q Was the Migrant Protection Protocol in place during that time at all?

A Yes.

Q Under that program, a migrant encountered between ports of entry who

claims a fear to return to their country would be returned to Mexico during the pendency of their removal proceedings?

A Yes.

Q They weren't released into the United States?

A Correct.

Q During that time, were encounters less than they are now?

A During that timeframe, I believe so, yes.

Q Do you think that one factor that contributed to that lower level of encounters is the fact that illegal entry has that consequence or reality of being returned to Mexico?

A Was MPP an impact?

Q Yeah.

A For San Diego, no. I don't --

Q But, under that program, individuals who illegally crossed the border were not rewarded with release into the country?

A Correct.

Q Let's go back to the start of your career.

You were first assigned to the Yuma Sector in 1998. What were the demographics of illegal border crossers then?

A The vast majority were individuals coming across -- day laborers, for lack of a better -- they would come across and work in the fields for a few weeks and then go back home.

Q So economic migrants?

A Yes.

Q Were they mostly single adult men?

A Yes.

Q Did those individuals try to evade apprehension?

A Yes.

Q Why?

A Because they would be returned to Mexico.

Q We had heard in previous testimony from other Border Patrol agents that most would voluntarily return?

A Correct.

Q Okay. Did you have many give-ups then?

A No.

Q I believe you mentioned that the majority of the migrants coming in San Diego are giving up to Border Patrol today?

A Yes.

Q Do single adults give up?

A Yes.

Q Are they economic migrants, too?

A The majority of them are not, no. Well, I'm thinking --

Mr. Jonas. Just articulate what you're saying.

Mr. Heitke. They're coming as asylees and refugees claims. That's what I was thinking in my head before my mouth opened up. So economic as well, but yes.

BY MR. MCDONAGH:

Q To clarify, they are economic migrants?

A Yes.

Q Is that something that's recently happened where you're having single adults give up to Border Patrol rather than evading?

A Yes. Yes, it's normal.

Q Recent, as in the past couple of years?

A Yes.

Q Why is that change?

A I don't -- I'm not sure.

Q I had one more thing, but I think we just covered it already. Thank you, sir.

I appreciate it.

BY MR. YI:

Q Chief, are there any other observations you'd like to share with us today based on your 25 years of experience on the border?

A Through all the hours, I think I covered it all. Nothing I can think of, I guess.

I appreciate the time.

Q Is there anything that you've been asked or not been asked today that you think would be pertinent to us better understanding the circumstances in your sector?

A Nothing I can think of right now, no.

Q Okay. Is there anybody else you recommend we speak to?

A Throw them under the bus, right?

Q You have to say Steve Jonas' name.

A My counterparts in the Southwest border.

Q The other border chiefs?

A The other chiefs.

Q Okay.

Mr. Rust. Sir, on behalf of Chairman Comer, thank you for appearing to answer all of our questions today. We appreciate it.

Mr. Yi. And, on behalf of Chairman Green, I thank you also for attending today.

voluntarily. I appreciate your time and your service.

Mr. Heitke. Thank you.

Mr. Yi. The time is 2:14 p.m. We'll go off the record.

[Recess.]

[2:23 p.m.]

Mr. Yim. All right. We'll go back on the record. The time is 2:22 p.m.

Chief Heitke, on behalf of the Democratic staff, I want to thank you for your time today. I know it's been a long day. We just have a few additional questions, and you'll be out of here.

BY MR. YIM:

Q Chief, is it fair to say that the agents that serve under you in the San Diego sector strive to secure the border every day?

A Yes.

Q And, drawing on your 25 years of experience with the Border Patrol, is it safe to say that Border Patrol agents are committed to their mission of securing the border, regardless of who's President?

A Correct, yes.

Q Now, in your role as CHIEF PATROL AGENT, you've never personally received an order from Secretary Mayorkas not to secure the border. Is that right?

A Correct.

Q And you've never personally received an order from President Biden not to secure the border?

A Correct.

Q Have you ever told your Border Patrol agents in your sector not to secure the border?

A No.

Q Chief, we've spoken to a couple other sector chiefs in environments just like this, and they informed us that, in their opinion, agents prefer being in the field as opposed to processing individuals.

Would you generally agree with that statement?

A Yes.

Q And would you agree that programs and policies that allow more agents to return to the field improve morale in your sector?

A Yes.

Q And we previously discussed how the addition of processing coordinators have allowed your agents to return to the field, correct?

A Correct.

Q And we discussed the deployment of a total of 4,000 military personnel to the southern border to carry out administrative tasks like processing, correct?

A Correct.

Q And these additional troops will allow some Border Patrol agents to return to the field. Is that right?

A Yes.

Q We discussed the Volunteer Force. These additional volunteers also allow some Border Patrol agents to return to the field. Is that right?

A Yes.

Mr. Yim. I'll leave it there. Chief, thank you again. Oh, I'm sorry.

BY MR. EWENCZYK:

Q Earlier in the transcribed interview, there was a little bit of discussion about the guidance issued by Chief Ortiz regarding safe releases of migrants from CBP custody when there's no NGO space available. Do you remember that?

A [Nonverbal response.]

Q That was guidance from Chief Ortiz, not Secretary Mayorkas, right?

A Correct.

Q And am I correct in understanding that that guidance sets out criteria to make sure that these releases are done only when necessary and are done safely. Is that correct?

A Correct.

Q And this guidance you received, I think you said it was last year?

A Yes.

Q That was an update to existing guidance, right, meaning that wasn't the first time that there had been guidance about these kinds of safe releases, correct?

A Correct.

Mr. Yim. All right, Chief, this time we'll go off the record.

[Whereupon, at 2:26 p.m., the interview was concluded.]

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
JOINT WITH THE
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JOEL MARTINEZ

Thursday, June 1, 2023

Washington, D.C.

The interview in the above matter was held in room H2-176, Ford House Office Building commencing at 8:58 a.m.

Appearances:

For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

SLOAN MCDONAGH, COUNSEL

JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT

WILL SORENSEN, INTERN

ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL

DEVON OMBRES, MINORITY SENIOR COUNSEL

DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

ALEX LLOYD GEORGE, MINORITY LEGAL INTERN

For the COMMITTEE ON HOMELAND SECURITY:

ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND
INVESTIGATIONS COUNSEL

LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR,

SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT

ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

For the DEPARTMENT OF HOMELAND SECURITY:

STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

For U.S. CUSTOMS AND BORDER PROTECTION:

SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

LOUISA SLOCUM, OFFICE OF CHIEF COUNSEL

PETE SALINAS, LAREDO SECTOR BORDER PATROL, ADJUTANT TO JOEL MARTINEZ

Ms. O'Connor. Good morning. This is a transcribed interview of Joel Martinez. Chairman Comer and Chairman Green have requested this interview to obtain information regarding border security from the chief patrol agent in charge of U.S. Border Patrol operations in the Laredo Sector.

Will the witness please state your name for the record?

Mr. Martinez. Joel Martinez.

Ms. O'Connor. On behalf of the Committee on Oversight and Accountability and the Committee on Homeland Security, thank you for being here today. The committees appreciate your willingness to appear voluntarily.

My name is Elizabeth O'Connor. I'm senior counsel with Chairman Green's staff for the majority on the Committee on Homeland Security.

I now ask the majority and minority staff from the committees to please identify themselves.

Mr. Rust. I'm James Rust, counsel for Chairman Comer on the Committee on Oversight and Accountability.

Mr. McDonagh. Sloan McDonagh, counsel for Chairman Comer on the Committee on Oversight and Accountability.

Mr. Yim. Daniel Yim, counsel with House Oversight Committee, minority.

Ms. Dennett. Lydia Dennett, professional staff with Homeland Security Committee, Democrats.

Ms. Northrop. Alison Northrop, Homeland Security Committee, Democrats.

Ms. Martcorena. Briana Martcorena, Homeland Security Committee, Democrats.

Mr. George. Alex Lloyd George on Oversight Committee, Democrats.

Mr. Sorensen. Will Sorensen, intern for Oversight and Accountability, for the majority.

Mr. Ewencyk. Arthur Ewencyk, Oversight Committee, with the Democratic staff.

Mr. Ombres. Devon Ombres, Oversight Committee, Democratic staff.

Ms. O'Connor. I also recognize that the witness is accompanied by Department of Homeland Security officials, in addition to agency counsel at the table.

Would the additional agency officials please state their names and titles for the record?

Ms. Klisarska. Samantha Klisarska, congressional liaison, Customs and Border Protection.

Mr. Salinas. Pete Salinas, Laredo Sector Border Patrol, adjutant to Chief Martinez.

Ms. O'Connor. Before we begin, I'll outline the procedure and guidelines that we'll follow in this interview.

Questioning will proceed in rounds. The majority members or staff will ask questions first for up to 1 hour, and then the minority members or staff will have an opportunity to ask questions for up to 1 hour, if they choose. We will go back and forth for six total 1-hour rounds or until there are no more questions.

We will take a short break at the end of each hour. If you'd like to take a break at any other time, please let us know. If, however, there's a pending question, I ask that you finish answering the question before we stop to take a break. We'll also take a break for lunch after the third hour of questions.

There's an official reporter transcribing everything we say to make a written record, so we ask that you give verbal responses to all questions. The reporter cannot

record nonverbal answers such as shaking your head, so it's important you answer each question with an audible verbal answer. Do you understand?

Mr. Martinez. Yes, ma'am.

Ms. O'Connor. To ensure the court reporter can take a clear record, we'll do our best to limit the number of people directing questions to you during any given hour to just those members or staff whose turn it is.

To the extent possible, it is also important that we do not talk over one another or interrupt each other. Please wait until each question is finished before you begin your answer, and we will wait until you finish your response before asking you the next question. That goes for everybody present at today's interview.

Furthermore, the majority members or staff will not ask questions or otherwise interrupt the minority's round of questioning and vice versa.

I understand the witness is accompanied by agency counsel today. Would counsel please state their names for the record.

Mr. Jonas. Sure. Steve Jonas, DHS OGC.

Ms. Slocum. And Louisa Slocum, CBP Office of Chief Counsel.

Ms. O'Connor. I also want to confirm that you understand that agency counsel represents the agency and not you personally. Do you understand?

Mr. Martinez. I understand.

Ms. O'Connor. And you're choosing to have agency counsel in the room today?

Mr. Martinez. Yes, ma'am.

Ms. O'Connor. You're encouraged to freely consult with counsel if you choose. If you need to confer with counsel during the interview, please let us know and we'll go off the record and stop the clock until you're prepared to continue.

During the interview, we ask that you please answer any questions in the most

complete and truthful manner possible. If you have any questions or if you do not understand a question, please let us know.

Do you understand?

Mr. Martinez. Yes, ma'am.

Ms. O'Connor. If you do not know the answer to a question or do not remember, it is best not to guess. If there are things you do not know or cannot remember, please say so and inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

If I ask about conversations or events in the past and you're unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection.

If you recall only a part of a conversation or event, you should give us the best recollection of those events or conversations that you do recall.

Do you understand?

Mr. Martinez. Yes.

Ms. O'Connor. Although you're here voluntarily and we will not swear you in, you are required by law to answer questions from Congress truthfully, including questions posed by congressional members or staff, during this interview. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements.

Do you understand this obligation to tell the truth today?

Mr. Martinez. I do.

Ms. O'Connor. Is there any reason you're unable to provide truthful answers to today's interview?

Mr. Martinez. No reason.

Ms. O'Connor. Before we begin the interview, I'd like to explain briefly why we are here today. As mentioned, the House Committee on Oversight and Accountability and House Committee on Homeland Security are seeking to obtain information regarding border security from the chief patrol agent in charge of U.S. Border Patrol operations in the Laredo Sector.

We are interviewing you today to learn about your experience with Border Patrol and leadership in Laredo. We are not investigating you personally for any personal wrongdoing. This is a fact-finding endeavor.

Are you ready to begin?

Mr. Martinez. Yes, ma'am.

Ms. O'Connor. The clock now reads 9:03. We'll begin the first round of questions.

EXAMINATION

BY MS. O'CONNOR:

Q First, we're going to start with some general background, some basic questions related to your participation in today's interview.

Have you ever been a deponent in a congressional deposition?

A No.

Q Have you ever participated in another congressional or transcribed interview?

A No.

Q Have you ever testified in any deposition for a different legal case?

A A different legal case?

Q A legal case in civil or criminal court.

A I have.

Q Can you explain the approximate dates of those?

A I've had many of them. I was -- lots of criminal prosecutions and EEO cases and stuff like that, so --

Q So the substance of most of the civil cases was employment?

A Yes.

Q How did you prepare for today's interview?

A How did I prepare? I had three -- two meetings over the phone with the people here and then one in person yesterday.

Q Did you review any documents?

A No.

Q Have you discussed this interview with other chief patrol agents?

A No.

Q Have you discussed this interview with any of your colleagues?

A No.

Q Did you review any -- strike that.

Who was involved in your preparation?

A The people present here today.

Q Just those two?

A Yes.

Mr. Jonas. There were four.

Mr. Martinez. And her. First time I ever meet them, so I'm not familiar with their names yet, so --

BY MS. O'CONNOR:

Q Were you told that there were any topics you're not authorized to talk about?

A Not at all.

Q Were you advised that there are certain words or phrases you cannot say?

A No.

Q So we'll move on to your background. Can you start by describing for us your educational history?

A Sure. I have a bachelor's degree in Homeland Security and Emergency Management. I have postgrad -- I don't have a degree yet, but I was working on it with the Naval -- Naval -- the Naval War College, School of Distant Learning. They're in Fort Worth. Strategy and War, I took a seminar with them. That's the extent.

Q For the record, can you state your current position in Border Patrol?

A I'm the chief patrol agent, Laredo Sector.

Q And you started at Border Patrol in 1992?

A 1992.

Q Did you have any prior law enforcement experience?

A No, ma'am.

Q Why'd you want to be a Border Patrol agent?

A I've always looked up to them. I'm a first-generation American on my mom's side, and she always -- we always looked at them with a lot of respect. And they always looked sharp in uniform, and it's something I looked forward to doing when I grew up, so --

Q Did you grow up near the border? Is that why you're familiar with them?

A I did. I did.

Q And when did you start as chief in Laredo?

A March of this year. I was acting, actually. I just -- I just got the job offer, official job offer yesterday, actually.

Q Congratulations.

A Thank you.

Q And before that, you were a deputy in Rio Grande Valley?

A Yes, ma'am.

Q How long were you there?

A Since January of '21.

Q What were your roles and responsibilities as deputy chief in Rio Grande?

A Pretty much, I was a chief operating officer, for lack of a better word, for -- the chief is the CEO, and the deputy is usually like the COO of the sector.

Q What kind of operations, law enforcement, administrative?

A Law enforcement, administrative, all of the above. I oversaw the divisions. And there's 277 miles of river -- miles of border.

Q How were those roles different from your role as chief?

A So now as chief, I have oversight of my deputy now. And it's a significantly smaller sector. It's 177 miles of river miles. And my AOR, my area of responsibility goes all the way up to Dallas-Fort Worth area.

Q Would you say as deputy chief, you were more familiar with what was happening on the ground than you are as the chief?

A More -- more nuanced, yeah. I guess so, yes. But the chief does know in general what's going on, so --

Q You also served as director for the Alliance to Combat Transnational Threats?

A I did.

Q And when did you do that?

A I did that from 20 -- 2017 to 2019, I believe.

Q Where was that position?

A In Laredo.

Q Were you working for the Laredo Sector or for headquarters?

A Laredo Sector.

Q What were your roles and responsibilities in that position?

A In that position, I oversaw the intelligence unit and I oversaw all our task force officers.

Q Just within Laredo?

A Just within Laredo.

Q Did you work with any intel or task force officers or coordinate with any intel or task force officers from other sectors too?

A We did occasionally, just -- just to be on the same page, basically. But I also -- oh, I also -- part of my responsibility was with the liaison unit, foreign liaison unit, which dealt a lot with the Mexican Government.

Q So did you have a lot of direct involvement with the Mexican Government?

A I did.

Q Was it largely in the context of cartels and transnational criminal organizations?

A Exactly.

Q Would you say that the transnational threats today are similar to the ones that you faced back when you were in Laredo?

A Yes.

Q Who is the director in Laredo now?

A I have an acting director right now, name of Juan Gutierrez.

Q So would you say, based on your training, knowledge, and experience,

that -- would you consider yourself an expert in transnational threats at the southwest border?

A Yeah. I think I know what I'm doing.

Q Has Border Patrol strategy changed, as far as combating transnational threats, from the time that you were the director to your time now as chief?

A I wouldn't say that.

Q What is the general strategy?

A The strategy is to keep bad things and bad people from coming across the border.

Q Before you were director for the Alliance to Combat Transnational Threats, what position did you hold before that?

A I was the agent in charge of the largest station in Laredo, which is Laredo South Station. I had about a hundred men and women in that station.

Q And would it be fair to describe the rest of your experience prior to that as holding various agent positions in different stations and sectors?

A Exactly.

Q When you were named as acting director for Laredo, did you apply for that position?

A I was never acting. I was the director.

Mr. Jonas. Chief, acting chief.

Ms. O'Connor. I'm sorry.

Mr. Martinez. Oh, acting chief?

BY MS. O'CONNOR:

Q Yes. Did you apply for that position?

A No.

Q Who assigned you to that position?

A Raul Ortiz, the chief of the Border Patrol.

Q Did you have to interview?

A No.

Q What are your -- in more particularity, what are your roles and responsibilities now as chief in Laredo?

A Complete oversight of the Laredo Sector, all operations, the whole area of responsibility.

Q What does your day-to-day look like?

A Much like this. A lot of meetings, a lot of -- I deal a lot with the chief counsel as far as tort claims, everything else, disciplinary. I try to get out to the field, but not as often as I'd like to. But it's a lot of liaison with the different agencies, different community partners.

Q How much of your time would you say is dedicated to employment issues?

A Twenty percent.

Q How much --

Mr. Yim. I'm sorry. Could you please speak up just a little?

Mr. Martinez. Sure.

BY MS. O'CONNOR:

Q How much of your time would you say is dedicated to Border Patrol law enforcement operations?

A A good 80 percent because, I mean, the information is constantly flowing. So, I mean, it's about 80 percent from dealing with everything.

Q Are you often briefed on what's happening on the ground?

A Daily.

Q How many total personnel do you supervise?

A Right now, just under 2,000. About 100 -- 1,800 and -- 1,800 law enforcement personnel, uniformed, and then about another 2-, 300 administrative personnel.

Q Is that enough?

A It's never enough.

Q What would be -- what number do you think you would need to efficiently operate in Laredo, effectively operate?

A Effectively? I'd like to see double of that, but --

Q Were you briefed before you took over at the Laredo Sector?

A I was briefed by our local intel department and our division chiefs of the various divisions.

Q What types of topics were you briefed on?

A Just our flow. I had only been gone from there 2 years, because I left there in '21 to go to RGV. So in 2 years, just the whole -- they briefed me on the different traffic, what the cartel down south was doing now and everything else. It's the same cartel, but --

Q Which cartel is that?

A The Cartel del Noreste, Northeast Cartel. They used to be known as the Zetas.

Q What are the big changes that you were briefed on between the time you left Laredo and the time you've come back?

A The leadership of the cartels changed, because we -- actually, our people, Border Patrol led the way with FBI to arrest the cartel head, one of the Trevinos. And so that kind of had the cartel in chaos. So, because of that, the Cartel de Jalisco was trying

to come in and stir things up so -- in fact, right now we have a cartel war going on down there.

Q Does the cartel war ever spill into the United States?

A We haven't seen that happen yet. I get a stray bullet here and there, but we haven't seen it cross over yet.

Q Is there worry or indication that it may?

A There's always worry that that may happen.

Q What other differences were you briefed on besides the cartels themselves from the time that you were in Laredo to the time you've come back?

A That was the major one. The flow remains the same. Laredo has been -- compared to the rest of the southwest border, we're number two in flow. And by number two, I mean the slowest, next to Big Bend. So -- and I attribute that to the cartel.

Q Well, the encounter numbers increased drastically between 2019 and now, right?

A In Laredo? No.

Q When did you leave Laredo?

A In 2019 -- no, 2021.

Q Do you know what month in 2021 you left Laredo?

A January.

Q So in January in Laredo, encounters were about 8,600 -- I'm sorry.

In January 2021, encounters in Laredo were about 8,600 a month. Does that sound about right to you?

A A month? I know we average about 45 to 60 a day, so -- yeah, sounds about right, I think.

Q Well, here, I can show you.

Ms. O'Connor. I'll mark this as Majority 1.

[Martinez Majority Exhibit No. 1
was marked for identification.]

BY MS. O'CONNOR:

Q Do you recognize what that is?

A Yes.

Q So these are the fiscal years on the left.

A Right.

Q And I asked you -- January 2021 shows up in the fiscal year row. So January calendar '21 is 8,633 encounters. Does that look right to you?

A Yes.

Q So then in March of 2022, encounters reached an all-time high of 13,800.

Do you see that? It's the next row up.

A Okay, here. Yes, okay, I see it.

Q So encounters fluctuated while you were gone, right?

A Okay.

Q Did you receive any briefings about the fluctuation in encounters?

A No, not -- not -- not from Laredo.

Q How is the Laredo Sector unique compared to other sectors on the southwest border?

A It's unique in the sense that it's the number one land port, if not -- I know in the Nation, but if not the world, as far as trade. It has four or five ports of entry, two of them dedicated strictly to import/export, the 18-wheelers.

And I also have a 12-mile sliver of Nuevo Leon, the State of Nuevo Leon, who is

also making strides to improve their port of entry to get into the import/export game. That port of entry in particular went from like number 15 or 16 in the Nation to number 2, just under Laredo.

So that in itself I think is what helps keep the migrant flow at bay for us, because I don't think the cartel wants to mess with that, so -- yeah, that's why it's such a unique sector, because to the left and to the right of me are Del Rio and RGV, and they're getting a huge flow, whereas we're not, as you can see by this year's -- this year's number are very low, whereas Del Rio and RGV can't say that. That's what makes us very unique.

Q When you say very low, is that comparatively speaking or --

A Well, compared to RGV and Del Rio.

Q Right. What about the terrain in between ports of entry, how is that unique, or is it?

A It's not very unique. The terrain is -- it's hilly. I mean, not big hills but, you know, it's very thick brush, though. And we have a lot of carrizo cane, which is very invasive. It's like -- kind of like a bamboo, for lack of a better word, and throughout the whole riverbanks. So that's what makes it difficult to work.

Q So you think that also impacts migrants' ability to come in between the ports of entry?

A Yes, ma'am.

Q Laredo Sector has six permanent checkpoints?

A I believe so. We have one Laredo North, one Laredo West. Hebbroville has three. Freer has one. We've got about six in Laredo.

Q Are all of those checkpoints currently active?

A They all are, yes.

Q Do you know whether throughout the fluctuation of encounters in 2021 and

2022, whether any of those checkpoints had to close?

A No, none of them were closed.

Q How many processing centers do you have, if any?

A One.

Q How much detention space is in that processing center?

A I think pre-COVID, it was like 1,000, I think, but ordinarily I think it's about 1,500 maybe.

Q What about your stations, what's the detention space like there?

A I don't have that off the top of my head. I'm sorry.

Q How many stations do you have?

A West, north, south. Sorry. I just moved there.

Q That's all right.

A Seven.

Q Do you have enough detention space for your encounters?

A For my encounters, yes.

Q So you arrived in Laredo in March 2023, right?

A Correct.

Q And based on the CBP publicly available data, between February and March 2023, encounters increased 60 percent. Do you have any -- or, I'm sorry. Between January 2023 and March, encounters increased 60 percent. Do you have any idea why that happened?

Mr. Jonas. Could you just -- just because these are fiscal years and it's a little hard to follow --

Ms. O'Connor. Sure.

Mr. Jonas. -- could you just maybe --

Ms. O'Connor. Speak in the fiscal year?

Mr. Jonas. Yes, maybe speak in the fiscal year and month that you're referring to.

Ms. O'Connor. Sure.

BY MS. O'CONNOR:

Q So in fiscal year '23 January to fiscal year '23 March, encounters increased by 60 percent, from 3,257 to 5,210. Do you have any idea why that number jumped so high?

A I could put -- looking at the time and date, it looks like it might be part of that cyclical trend that we usually see.

Q Have you been seeing cyclical trends in Laredo?

A Throughout the Nation, we see cyclical trends, like after the holidays, yes.

Q This data shows that that increase is driven largely by single adults. Do you have any idea why it would be single adults in Laredo?

A In Laredo, it's always single adults, and the majority are Mexicans. So that doesn't seem out of the ordinary.

Q Do you have any idea why that would be?

A That's just where all the -- everybody from -- that's not from Mexico and everywhere else, they usually cross in Del Rio, RGV, or El Paso for some reason, but not Laredo. I think it's the notoriety that the cartel has there.

Q The notoriety of the cartel in Laredo? What's their notoriety?

A They're very violent.

Q Are they in the business of smuggling migrants?

A Yes.

Q More than narcotics or is it largely narcotics?

A It's largely narcotics, but they dabble in everything.

Q Don't they all dabble in everything?

A Yep. Yes.

Q Did that increase between January and March -- I know you didn't come until March -- but that increase between January fiscal '23 and March fiscal '23 impact operations in Laredo?

A No.

Q Did it have any impact on processing ability?

A No.

Q Are there processing coordinators in Laredo?

A Yes, there are.

Q How many?

A The latest number? I'll have to get back to you. I'm not sure what the latest number -- I know we keep adding, so --

Q I know you weren't in Laredo at the time, but if you know, Laredo hit its peak of encounters in fiscal year '22 March, 13,800, and stayed above 10,000 for the next 3 months and hovered around 10,000 through June fiscal '22.

Do you have any insight as to why there was such a fluctuation during that period?

A I don't, not for Laredo.

Q In preparing for future surges, have you discussed any of the history of surges in Laredo?

A We have. I deal with my -- like, my emergency management for the city, all my counterparts, all the stakeholders weekly. My staff does, at least. And that's a constant. We're always planning ahead. What if, you know. Just preparing for the worst and hoping for the best.

Q Do you feel Laredo is prepared if another surge were to reach 13,000 occurred?

A It was. I mean, yeah, we -- we're ready for a good influx of people.

Q So you mentioned that it's largely Mexicans that travel through Laredo. The data also shows it's a lot of Northern Triangle makes up almost the rest of the encounters. And while the number is relative -- is small in relative numbers, the number of Chinese nationals crossing through Laredo increased over a thousand percent since fiscal '22, I think from about 1 to 42 or something in that range.

Why do you think that that has happened?

A I don't know. I don't know why that's happening, except for maybe they're trying to get away from China. But we saw that trend in RGV as well. I don't remember the numbers in RGV, but we saw a significant increase in Chinese nationals.

Q Are those Chinese nationals evading arrest or giving themselves up?

A In RGV, they were giving themselves up. Laredo, I can't speak to that. I'm not sure if they were caught in smuggling vehicles or if they gave themselves up on the river.

Q Do you know whether in both Laredo and RGV it was largely single adults or family units?

A I believe it was mostly single adults.

Q Does that cause you any concern for national security reasons?

A Every apprehension worries me about national security reasons.

Q Why is that?

A Because we never know, you know, who we'll run into. One minute we're dealing with a child and the next minute we're dealing with an adult. We don't know what their intentions are.

Q But there are certain nationalities that raise more flags for Border Patrol, correct?

A Sure.

Q Switching gears a little bit, do any of the points of entry in Laredo use CBP One for appointments?

A Yes.

Q Do you know if they -- strike that.

Do you think that those numbers have had any impact on the number of people encountered in between ports of entry?

A I'm not sure what --

Mr. Jonas. Yeah, could you ask that question again?

BY MS. O'CONNOR:

Q Do you think that the number of people who have used the CBP One app for appointments at the ports of entry have had any impact on the number of people encountered in between ports of entry?

A Honestly have no idea what the number is that OFO is showing for that.

Q Do you consult with OFO?

A Not about CBP One, but, you know, we do consult, I mean, as far as operations go.

Q Are you familiar with their encounter numbers?

A Not particularly.

Q Would it surprise you that their encounter numbers have nearly tripled this fiscal year from last fiscal year?

A By encounter, you mean people crossing the border?

Q People at the port of entry, right. People seeking admission at the port of

entry.

A No, it doesn't surprise me a bit. That place is blowing up, so --

Q Why do you think that is?

A Because of trade, the MCA, the new NAFTA, so to speak. I think it's attracting a lot more people.

Q Right. But OFO, when they deem someone an encounter, it's someone who's inadmissible at the port of entry, correct?

A I have no idea. I imagine. We have different -- we use different words sometimes, so --

Q So if I were to tell you that an OFO encounter meant someone who was inadmissible at the port of entry, would that make sense to you?

A Sure. Okay.

Q And if OFO's numbers have almost tripled since last fiscal year, would that -- of inadmissible encounters, would that surprise you?

A It wouldn't surprise me. I mean, I don't know what their baseline is, so --

Q Okay. Do you know the recidivism rate in Laredo?

A Not off the top of my head.

Q The total Border Patrol recidivism rate has increased since fiscal year '19. Do you know if that's true for Laredo?

A Recidivism. Is it on here? No.

Q No, it's not on that one. It's not publicly available.

A Usually -- like I say, I have a majority of Mexicans, so usually they'll try again.

So it wouldn't surprise me if it is a little bit on the high side.

Q Do you think it was higher -- strike that.

Do you think that Title 42, the use of Title 42 as a processing mechanism increased

recidivism, the ability to expel and then come back?

A Yeah. It did.

Q When processing migrants at the border, does Border Patrol interview them about why they've come?

A Yes.

Q What is the reason in Laredo that most people give as to why they've come?

A Looking for a better opportunity.

Q A better opportunity in what context?

A Better paying job, getting away from the cartel, because the cartel tends to pick up young men to try to recruit them. So they're trying to get away for safety reasons. Some of the -- that's what some of the men are saying, so --

Q What would you say the main reason is that people give in Laredo for coming over?

A I'd say for better jobs, better pay.

Q What about RGV, what were you seeing there?

A Over there I see a lot of people from all over the world. So majority of it was also looking for a better way of life, get a better job.

Q And you think that was pretty consistent across nationalities?

A Pretty much, yes.

Ms. O'Connor. I'll pass to my colleagues. Thank you.

BY MR. RUST:

Q Do you know what your total holding capacity is for detention space in the Laredo Sector, including the Border Patrol stations and processing centers?

A I'd say around 2,000.

Q Around 2,000?

A Yeah.

Q Has Laredo ever been over capacity since March, the time that you've been there?

A Yes.

Q Do you know how much over capacity they were?

A Not exactly, but when I talk about over capacity, I'm just talking about the soft-sided facility, the processing center.

Stations, they'll use them for isolation if we have to, somebody is sick or what have you. So we try not to tie those up very much. And they're not made for detention space, actually, so -- I have very, very antiquated buildings in Laredo.

Q So would you say that in the Laredo Sector, your goal is to move people to the processing center --

A That's exactly right.

Q -- instead of keeping them in the Border Patrol stations?

A Correct.

Q Do you know what your average time in custody is since you've been in Laredo Sector?

A It'd be less than 72 hours.

Q And do you know what the most common processing outcomes are for individuals after that 72 hours? Are they transferred to ICE for detention? Are they given voluntary returns? Are they issued an NTA and released on recognizance, or ATD, or what are the most common processing outcomes?

A It depends what we have -- the population is, right? So Laredo is, like I said, is in a unique situation. For our flow is mostly Mexican, so they get returned right away. But we do -- we do decompress RGV and Del Rio and El Paso and sometimes even

stations further west.

Q You said the Mexican nationals are returned right away. Is that through voluntary returns or through expedited removal or what process?

A Voluntary returns and -- depends on what their record is, right? I mean, we check everybody's criminal history, so -- to make sure.

Q You mentioned their criminal history would impact how you choose to process Mexican nationals.

A What pathway.

Q Meaning that if someone had a criminal history, they're more likely to be given a formal removal process --

A Exactly.

Q -- or referred for criminal prosecution?

A Right.

Q Does immigration history impact whether you give someone another voluntary return or not? If someone has, for example, many voluntary returns, would they be less likely to be given another voluntary return?

A That's correct.

Q Given the expiration of the CDC's order under Title 42 on May 11th, do you anticipate using voluntary returns more often in the Laredo Sector as a processing outcome?

A For Mexicans?

Q For Mexican nationals.

A If it's applicable, yes.

Q Okay. You also just mentioned that you take decompressions from surrounding sectors. Can you explain what that means?

A So if RGV is getting overwhelmed by a large flow, they usually send us whatever overflow they have, and we'll process them according to whatever pathway they qualify for. And then we -- we -- we process them, then we either -- whatever pathway they go. They either go ERO or they go wherever they go.

Q Is that a fairly routine and common occurrence since the time you've been in Laredo Sector --

A Yes.

Q -- you take additional detainees from surrounding sectors?

A Yes.

Q And is there a particular demographic that you take?

A No.

Q So that would include single adults and family units?

A Say that again.

Q Would that include single adults, family units, other nationalities, or is there a particular demographic that you take to decompress those sectors?

A We take anything, I think.

Q And you mentioned that single adults are the vast majority of encounters in the Laredo Sector. What is the proportion of individuals who turn themselves in to Border Patrol agents versus those who are seeking to evade apprehension entirely?

A In Laredo, it's -- the majority are trying to evade us. And by majority, 60, 70 percent.

Q Does that include all nationalities or is it primarily Mexican nationals?

A Primarily Mexicans.

Q Are you seeing a lot of large groups crossing in Laredo or is it mainly smaller groups of individuals crossing?

A Mainly smaller groups.

Q Does the cartel in Mexico control the smuggling business in Laredo Sector?

A Yes.

Q And which cartel was that, the --

A Noreste.

Q -- Noreste Cartel?

A The Northeast.

Q Do you ever get individuals who cross on their own without the assistance of the human smugglers that are controlled by the cartels, or is that uncommon?

A It's uncommon.

Q Would there be consequences for someone who failed to contract the services of a human smuggler?

A Yes.

Q So the cartels would not like it if they did that on their own?

A Correct.

Q Do you know in Laredo Sector how much the cartel charges an individual to cross illegally in between ports of entry?

A Depends where that person's from.

Q It depends on their nationality?

A How far away they're coming from and --

Q Do you know what the range would be for an individual, how much it would cost to cross with the assistance of the human smugglers?

A For a Mexican from there locally, it could be anything from a thousand to maybe 3,000. But for somebody from China, we've heard it go up to at least -- we've heard it go up to 60,000 a person.

Q 60,000?

A Yeah.

Q So the cost would vary based on nationality, where people are coming from, other logistics?

A Yes.

Q Does the cost vary based on whether an individual seeks to evade apprehension versus whether they intend to turn themselves in to Border Patrol agents?

A Yes, it does.

Q It would be higher if they seek to evade apprehension?

A Yes.

Q Do you know what the current got-away trends are in the Laredo Sector?

A I do. Let me see. I think I have it. Let me see here. FY '23 to date, about 17,000, more or less.

Q 17,000?

A Right, approximately.

Q How does Border Patrol in Laredo Sector calculate the known got-away numbers?

A Good old-fashioned -- if we're on horseback, we'll count the footprints out in the ranchlands. It's very rudimentary. Footprints. If we happen to have a camera in the area and see people crossing on the camera, we'll count those people, and if we don't apprehend them, they're considered got-aways.

Q Do you use any other types of technology, such as sensors or other --

A We do when we have them deployed.

Q So the known got-away numbers would correspond to individuals who have been tracked? It's not -- it's not an estimate, necessarily. They correspond to signals

that Border Patrol agents are collecting?

A Correct.

Q So you believe those got-away numbers are fairly accurate in the Laredo Sector?

A Right. If I can tie it into use of technology or a footprint, yes.

Q Does the Laredo Sector utilize any border barrier system?

A No.

Q You don't have any border barrier systems in the Laredo Sector?

A Nothing.

Q Are there areas of Laredo Sector where you believe a border barrier system would be helpful, or is the terrain conducive to having a border barrier system at all?

A I take any assistance I can have.

Q Was there a border barrier system in RGV when you were stationed there?

A Yes.

Q Was it helpful to Border Patrol agents in achieving their mission of border security?

A It helped.

Q And in what ways was the border barrier system helpful to agents in RGV?

A People tend to follow the path of least resistance, so -- like water current, so --

Q Has the -- you mentioned before there were cyclical highs in the flow of traffic in the Laredo Sector. Does a high flow impact the ability of Border Patrol agents in your sector to reduce the number of known got-aways?

Mr. Jonas. Could you try --

Mr. Martinez. Yeah. Could you repeat that, please?

Mr. Jonas. If you could rephrase, please.

BY MR. RUST:

Q If there's more individuals crossing illegally in between ports of entry at the Laredo Sector, does that make it more difficult for your agents to apprehend as many people as possible?

A Well, they're apprehending -- if they're apprehending people, a large amount of people between the ports of entry, does that mean that they can't get somebody else, is that what you're asking me? I'm sorry.

Q If more agents are arresting -- are arresting more people and then bringing them back to the Border Patrol station for processing --

A Oh, okay.

Q -- before they get out into the field, does that impact their ability to --

A It can, yes.

Q It can. Are you currently working on any plans to increase the apprehension rate of Border Patrol agents in Laredo Sector to reduce the number of got-aways?

A We're always -- I always work on that, yes.

Q Are there any specifics of things that you're doing to reduce the number of got-aways in Laredo Sector that you can detail for us?

A Yes. For one, we're trying to tear up the brush along the riverbanks, all the -- that thick brush I was talking about.

Q The carrizo cane?

A The carrizo cane, exactly. We're trying to clean that up. In fact, we just had a meeting. The city of Laredo votes -- not tonight. I think they voted last night -- to approve their property, the city-owned property to get cleared as well. It

looks like that's on a good track.

So that's what we're trying to do for -- to make our job easier. That's a primary thing that we're -- I think will be a game changer for us.

Q How do the smuggling organizations use the presence of the carrizo cane to evade Border Patrol agents?

A To hide either people or drugs there until the coast is clear.

Q Do you know what the timeline would be for working to clear --

A I couldn't tell you because it just depends on -- can you hear me?

Q The individuals who are seeking to evade apprehension, are you concerned that they can include people with a criminal history or prior criminal history?

A Yes.

Q In your sector, do Border Patrol agents frequently conduct rescues of migrants who have been placed in peril by the smuggling organizations?

A Yes.

Q What do those rescues typically entail?

A On the line, it's usually river rescues, water rescues. At the checkpoints, it's usually people locked in the back of 18-wheelers.

Q They lock the doors of the 18-wheelers?

A Uh-huh.

Q And can that be a deadly situation for the migrants being smuggled?

A It has been in the past.

Q Have those rescues increased since the last time you were in Laredo till you came back in March?

A Well, we did have that one incident in San Antonio where 50 people were found dead in the back of an 18-wheeler. That passed through Laredo. Ever since

then, we haven't had any -- we only had one load since I've been there, one load of human cargo, and that was I think 18 in the back, but we found them in the middle of the night at the checkpoint.

So, if anything, I think it reduced the number. I think that they're scared to put them in the back now.

Q What about the river rescues, have those increased?

A They do, especially after a good hard rain where the river rises a little bit.

And --

Q Are those rescues a result of circumstances or do the transnational criminal organizations ever put migrants in peril intentionally as a tactic to divert resources?

A Both.

Q You've seen both --

A I've seen both.

Q -- in the Laredo Sector?

A Yeah.

Q Do those rescues put agents at risk of harm?

A Yes.

Q Do you ever utilize other law enforcement partners to assist in rescue operations, either on the river or in other locations, in the Laredo Sector?

A On the river, yes. We usually use our Mexican counterparts, the Grupo Beta. They have little rowboats that they'll go out there and help if our boats aren't available.

And on the U.S. side, it just depends where we're at. If we're out in the boonies, out in the middle of nowhere, we'll call the sheriff's department to help us out, or DPS, Texas DPS. At the checkpoint, it's all ours.

Q In the Laredo Sector, are there areas that are very remote and hard to get to with the existing road infrastructure?

A Yes.

Q How does Border Patrol navigate those areas?

A Either on foot or on horseback.

Q Do the smugglers routinely use areas where there are no roads to cross individuals in between ports of entry?

A Yes.

Q You talked about migrants coming for a better opportunity in terms of a better job, a better life, to escape cartel violence, other factors. Would you agree that there are various push-and-pull factors that would influence an individual's decision to cross illegally in between ports of entry in your sector?

A Yes.

Q Do you know or could you describe what those push-and-pull factors are, based on your knowledge and experience?

A Generally speaking you mean or --

Q Yes, sir.

A The majority is economic, right? I mean, they want a better life for their families and they want to get paid dollars. And just various rumors going around from the cartels or from everybody else that, you know, that promise them streets of gold and everything else. And they fall for that sometimes, so --

Q In the Laredo Sector, are there individuals who are processed for a notice to appear who are then released on their recognizance?

A There have been, yes.

Q And where are those releases conducted?

A Where do we release them? We release them to either ERO or we release them to the NGOs.

Q When you say you release someone to ERO, is that for ICE to make a custody determination at that point --

A Exactly.

Q -- whether to release or put someone on ATD?

A Yes.

Q But if they're released to an NGO, you would transport them to a shelter, or where are those people going?

A They have a choice whether they want to go to the bus station, which is right next door to the NGO. So it's usually at the bus stop. And then there's usually people that are -- either they're waiting for them or whatever. But we usually release them to whatever -- some node, some transportation node.

Q Are there NGOs that you routinely work with in the Laredo Sector to ensure safe releases into the community?

A In Laredo, there's two.

Q Have they been there for a long time or are they newer?

A They've been there since as long as I can remember.

Q Do you know what their capacity is to receive individuals from Border Patrol custody?

A Not off the top of my head, no.

Q Do they assist in facilitating transportation from the Laredo Sector to a migrant's ultimate destination?

A No, not from Laredo Sector. Once they -- once they're with them, I have no idea what --

Q Okay. So Border Patrol would release an individual to the bus station or to the NGO, and then after that point they're free to travel around and you wouldn't have insight into what happens after that?

A That's correct.

Q Okay. And you said the average time in custody is 72 hours before an individual would be released or referred to ICE for further detention?

A Correct.

Q Is crossing illegally in between ports of entry in the Laredo Sector dangerous for the migrants?

A Yes.

Q In what ways?

A Again, the water rescues. They have to cross the river, a very treacherous river, for one. And if they cross in an austere place, it could be hours before -- if they do get a medical emergency or get bit by a rattlesnake or whatever, it will take us a long time to get there.

So everything, everything about the border, if it doesn't poke you or stick you, it'll bite you or sting you. So all those dangers are encountered.

Q Do you believe it is important to deter individuals from crossing illegally in between ports of entry in Laredo Sector?

A Yes.

Q And in what ways does Border Patrol seek to deter individuals from crossing illegally?

A So I've done a PSA, a public service announcement, in Spanish, and we've actually played it on the Mexican televisions and everything else, or we ask them to play it, letting them know about the dangers and not to trust the cartels.

Q When did you record the PSA?

A In March.

Q Is that broadcast locally south of the Laredo Sector or is that nationally -- nationally in Mexico?

A Just Laredo.

Q Do you know if that's had any impact on the flow of illegal immigration in the Laredo Sector?

A My ego would say yes, but I don't know. No. Honestly, I hope so. It's in an effort to save lives, so --

Q Does Border Patrol strive to issue a consequence for every illegal entry in the Laredo Sector?

A We do.

Q And what are those consequences?

A Depending on their immigration history. Whatever they're amenable to, we'll apply a consequence.

Q Do you work with the U.S. Attorney's Office in Laredo -- in -- which district in Texas?

A Southern District of Texas.

Q Do you work with the U.S. Attorney's Office in the Southern District of Texas to prosecute immigration violations?

A We do.

Q Are there particular cases that they are more likely to accept than others?

A Yes.

Q And what are those?

A Like first-time -- first-time illegal entry, they just don't prosecute those,

because they don't have the manpower. So it's got to be something more serious. Either reentry after deportation or if they've tried to fight with an agent or they've tried to -- or if -- it's different circumstances, but --

Q So illegal entry with no other aggravating factors is unlikely to be prosecuted?

A That's correct.

Q Illegal reentry after removal is likely to be accepted. Assaults on an agent are accepted.

Do you routinely encounter situations where agents in the field have been assaulted?

A Yes.

Q Have those incidents increased over the last few years or have they stayed about the same?

A I'm going to say that they decreased, because we've cleared the brush area so these guys can't hide anymore. So it's -- I think it's safe to say it's decreased.

Q What types of assaults do your agents face?

A Physical. Just, you know, fists.

Q Would you agree that there's an inherent risk to being a law enforcement officer, especially a Border Patrol agent in the Laredo Sector?

A Yes.

Q Are there unique risks in the Laredo Sector that aren't present in other sectors?

A I wouldn't say unique, no.

Q Does the risk to your agents of assaults or other harm increase with a high flow of illegal immigration or does it stay about the same?

A I think the more people we encounter, the better the chances are that they'll encounter somebody aggressive.

Q We talked before that you have six interior checkpoints and that those have stayed operational throughout the surges. Can you explain why those interior checkpoints are important -- are an important component to achieving the border security mission in Laredo Sector?

A So there's a lot of egress routes, farm roads, interstate -- one interstate highway, and they're all strategically placed leaving the border, so that's why it's so important. Anything that -- it's pretty much our second line of defense, if you will.

Q And what sort of contraband or illegal activity do you frequently encounter at those checkpoints?

A People smuggled in the trunks of cars and in the back of 18-wheelers. People walking around the checkpoints in the brush, in the ranches. People smuggling narcotics, either deep concealment or --

Q Would you say the majority of the narcotics you encounter are at the checkpoints versus in the field?

A I wouldn't say that, no.

Q So you would encounter more narcotics in the field than at the checkpoints?

A Bigger quantities at least, yes.

Q What types of narcotics are your agents encountering currently?

A Mostly marijuana, majority.

Q By weight?

A Right.

Q Do they also encounter cocaine, methamphetamine, fentanyl, or any of those narcotics?

A Yes.

Q Do you know if those -- if narcotics trafficking seizures have increased or decreased in the last few years in the Laredo Sector?

A I have to look at the stats. I'm not sure.

Q Does the high flow and migrant surges impact your agents' ability to ensure that they're interdicting as many narcotics as possible in Laredo Sector?

A I don't have a high flow, so I can't speak to that. But, I mean, yeah, naturally, if they're tied up with a flow, yeah, they're tied up with a flow.

[9:57 a.m.]

BY MR. RUST:

Q In Laredo Sector, do your agents ever encounter individuals in the field who were later found to have serious criminal histories?

A Yes.

Q Does that present a risk to those agents?

A Yes.

Q Is Border Patrol doing anything, such as rolling out technologies or any other mitigation measures, to give agents the ability to identify who those people might be in the field before they come back to a Border Patrol station?

A On the field? Well, we have the ATAK phones now where they can actually take -- do facial recognition. So if somebody -- if an agent suspects somebody, like, maybe this guy is kind of squirrely, they can check on their -- with their handheld device.

Q And that would show criminal history known to --

A It can.

Q -- databases that you have access to?

A It can.

Q Is that facial recognition technology used only if an agent has reason to suspect that someone could present a risk to the officer or is that used on a more routine basis?

A They can use it for whenever they -- they deem appropriate.

Q Do you have to have cell service for those to be operational?

A That would help, yes.

Q Do you have cell service throughout Laredo Sector?

A No.

Q So an agent in a rural area without cell service may not be able to use that functionality?

A That's correct.

Q Do your agents encounter individuals in the field who are later found to have derogatory information related to terrorism?

A We have not.

Q Not in the Laredo Sector?

A No.

Q When you were at RGV, did you -- did your agents encounter individuals in the field who were later found to have derogatory information in terrorist databases?

A I can't think of a specific case.

Q Are you concerned that the got-away population could potentially include serious criminals or people with ties to terrorism?

A Yes.

Q To what extent in Laredo Sector do you utilize temporary details or overtime to achieve your security mission?

A Temporary details, I haven't had anybody detailed in. And overtime, since I've been there, we haven't used overtime to --

Q Do you know if individuals -- or if law enforcement personnel from the Laredo Sector had detailed out to other locations to assist?

A Yes.

Q Are there common locations that they are detailed to or does it vary based on the needs at the time?

A It varies on the needs at the time.

Q Are there particular sectors that need additional assistance?

A Well, most recently RGV, when they had that flow last month or 2 months ago. I have a lot of agents -- since I'm so close to RGV, we have -- I have a number of agents that commute from RGV to Laredo because they work at the outstations like Hebronville or Zapata or something like that, but they live in RGV. So what we did, we just let them stay at their home base and work out of there.

Q Do you know how many agents approximately --

A Last time it was 40.

Q Forty agents. How long did their temporary detail to RGV last?

A About a month.

Q Did losing those 40 agents have any negative impact on your ability to achieve your mission in Laredo Sector?

A Nothing noticeable, I mean, because we still have like, like I said, a low flow, so --

BY MS. O'CONNOR:

Q I can ask a brief followup. You mentioned that there are two NGOs in Laredo that you work with. What are those two NGOs?

A Catholic Charities and the Holding Institute.

Q You said they've been there for as long as you've been in Laredo?

A As long as I can remember, yes.

Q Okay. I think we're out of time.

Mr. Rust. So we'll go off the record.

[Recess.]

Mr. Yim. We'll go on the record. The time is 10:14.

EXAMINATION

BY MR. YIM:

Q Chief, my name is Daniel Yim. I work for the House Oversight Committee, Democratic staff. I'll be asking you a few questions this morning.

I'd like to circle back and discuss your background with Border Patrol. You mentioned you began your career with Border Patrol in 1992. Is that correct?

A That's correct.

Q And that was during the George H.W. Bush administration. Is that correct?

A Right.

Q Great. Since you have joined Border Patrol in 1992, have there been any interruptions in your service?

A No.

Q So you've served continuously with Border Patrol since 1992?

A Correct.

Q So you began your career with the George H.W. Bush administration. You served uninterrupted until present day. After the George H.W. administration, you continued to serve with the Clinton administration. Is that right?

A That's right.

Q Following the Clinton administration, you continued to serve with Border Patrol during the George W. Bush administration. Is that correct?

A Correct.

Q Following the George W. Bush administration, you continued to serve with Border Patrol during the Obama administration, correct?

A Correct.

Q And following the Obama administration, you continued to serve with Border Patrol during the Trump administration, correct?

A Correct.

Q President Biden took office in January of 2021. You continued to serve with Border Patrol, meaning you served under Border Patrol under President Biden. Is that right?

A That's correct.

Q Great. So counting those up, in total, you've served with Border Patrol under six different Presidential administrations, correct?

A Correct.

Q Okay. You've been there a while. You have worked with Border Patrol under six different administrations. You have witnessed shifts in immigration border policy at times from one administration to the next, correct?

A Correct.

Q So, for example, under the Clinton administration, Border Patrol introduced Operation Gatekeeper, which was a measure designed to halt unauthorized crossings at the U.S.-Mexico border. You would agree with me that the decision to implement Operation Gatekeeper was a policy decision by the Clinton administration, correct?

A Policy, right.

Q And after the 9/11 attacks, the George W. Bush administration implemented the National Security Entry-Exit Registration System, which generally required individuals from certain countries to undergo additional screenings when traveling to the United States. Like Operation Gatekeeper, you would agree with me that the decision to implement the National Security Entry-Exit Registration System was a policy decision implemented by George W. Bush, correct?

A Correct. As a policy, right.

Q The Obama administration, under that administration they implemented the Deferred Action for Childhood Arrivals program, also known as DACA, which temporarily

shielded certain immigrants from deportation, among other things. You would agree with me that DACA reflected a change in immigration policy by the administration, correct?

A Change of policy, yeah.

Q The Obama administration, correct?

A Correct.

Q Okay. Now, President Trump, he decided to build a border wall at the southern border. And, again, aside from its efficacy, you'd agree that the decision to build this wall was a policy decision by the Trump administration?

A Correct.

Q And just to recap and go back to where we started, you would agree with me that each administration has different policies that they implement when they come into office?

A That's correct.

Q Okay. Chief, can you remind me when you became acting chief patrol agent for the Laredo Sector?

A March 2023.

Q Okay. And you mentioned that you were offered the position as permanent chief patrol agent of the Laredo Sector yesterday. Is that correct?

A Correct.

Q Did you accept that position?

A Yes.

Q Congratulations.

A Thank you.

Mr. Jonas. You didn't tell me about this.

BY MR. YIM:

Q Did you discuss roles and responsibilities when you were offered this position, the permanent position?

A Not really. I mean, I know what it consists of, so I was already a senior executive, so they just moved me over.

Q Is it -- strike that.

Are your roles and responsibilities as the permanent chief patrol agent of Laredo different from your roles and responsibilities as acting chief patrol agent?

A No, not really.

Q And you discussed those roles and responsibilities with my Republican colleagues earlier. I'll note that the drafting or development of policy was not one of the things you mentioned. Those are not part of your roles as chief patrol agent. Is that correct?

A Correct, that's not.

Q And the drafting and development of policy has never been part of your role as deputy chief patrol agent of Laredo. Is that right?

A Correct, not my role.

Q And it was not included in your role as deputy chief patrol agent of the RGV Sector. Is that correct?

A That's correct.

Q Now, you spoke a little bit about your time at the Alliance to Combat Transnational Threats. Can you remind me how long your tenure was there?

A Oh, 2 years.

Q When did you begin?

A 2017 to 2019, more or less.

Q And you were director. Is that correct?

A That's correct.

Q Were you director throughout those entire 2 years?

A Yes.

Q What were your roles and responsibilities?

A So I oversaw the various task forces, multiagency task forces, our sector intel unit, and our foreign liaison unit as well.

Q The drafting of policy and the development of policy was not part of your roles or responsibilities at the Alliance to Combat Transnational Threats, correct?

A That's correct, it was not.

Q Okay. I'd like to shift gears a little bit and talk about your preparation for this interview.

You spoke to my Republican colleagues and you explained that you have never participated in a congressional transcribed interview prior to this, correct?

A Correct.

Q Are you aware of other chief patrol agents participating in congressional transcribed interviews prior to this year?

A No.

Q So in your tenure with Border Patrol, since 1992, you are not aware of chief patrol agents participating in other transcribed interviews?

A No.

Q Would you agree that transcribed interviews are not a typical part of your duties as chief patrol agent?

A I'd agree.

Q You spoke about this briefly with my colleagues. In your estimation, how

long have you spent preparing for this transcribed interview?

A What do you mean by how long? I mean --

Q How many hours have you spent?

A Okay. One, two -- maybe four. Four or five hours. I don't know, something like that.

Q If you had not been preparing for this transcribed interview, how would you have been spending your time in the Laredo Sector?

A Overseeing the daily operations that I do every day.

Mr. Yim. I'll pass to my colleague.

Ms. Marticorena. Okay. Thank you.

BY MS. MARTICORENA:

Q So I just want to go back and touch on migrant encounters a bit more in the Laredo Sector. And you worked for Border Patrol before the COVID-19 pandemic began, correct?

A Correct.

Q And you worked for Border Patrol in the Laredo Sector before the COVID-19 pandemic began, correct?

A Correct.

Q Thank you. So thinking back to March of 2020 and your previous time in the Laredo Sector, how often would seasonal surges of migrants occur?

A Seasonally.

Q I appreciate that. So would you agree then that periodic surges of migrants at the southern border are pretty common?

A I would agree with that.

Q Okay. And then, have you ever been instructed by CBP or any other

Federal agency or component not to interdict or arrest someone attempting to cross the border --

A Never.

Q -- without documents?

Okay. And then I want to touch a bit on Title 8 and Title 42.

After Title 42 lifted earlier this month, you returned to using just Title 8 authorities to process migrants, correct?

A Correct.

Q And Title 8 authorities impose criminal consequences on people who enter the United States without inspection, correct?

A Correct.

Q And Title 42 does not impose criminal consequences. Is that correct?

A That's correct.

Q Okay. Can you explain what some of the criminal consequences can be under Title 8?

A Reentry after deportation can carry a prison sentence. I don't remember the exact time. But assault on a Federal officer, that's actually 111. But, yeah, that's basically it. I mean, we -- or even illegal entry, 1325, can be -- it would be on their record at least, so --

Q And under Title 8 authorities, Border Patrol agents can detain migrants who attempt to enter the United States, correct?

A Correct.

Q And when a migrant is detained, are they screened for criminal history, for being on the watch list, for anything that might be in their record?

A Yes.

Q Okay. And that's -- everyone is screened, correct?

A Yes.

Q Okay. And I know you touched on this a bit before, so my apologies, but when someone has a flag, say an outstanding warrant, would they be referred to another law enforcement agency?

A They'd be referred to the agency that placed that flag on them, yes.

Q Okay. And if someone is wanted for a criminal offense, is it correct to say they're not just released into the United States?

A That's correct.

Q Okay. And then going back very briefly to the numbers, and Majority Exhibit 1, my colleague asked you about the increase from January to March in 2023. Is it fair, looking at this sheet, that there is an increase in every January to March for the 4 years on here?

A Looks that way, yeah.

Q Thank you. And then just looking at the last number, April of 2023, so from my looking at this sheet, it looks like that is the lowest number of encounters in the Laredo Sector since June of 2020. Is that -- is that your read as well?

Mr. Jonas. From, I'm sorry, fiscal year April?

Ms. Martcorena. So April 2023, the last number on the sheet.

Mr. Jonas. Which is 5340 something.

Ms. Martcorena. Six.

Mr. Jonas. Yeah.

Ms. Martcorena. I'm seeing that the last time the number was lower was June of 2020. Is that correct?

Mr. Jonas. I'm not sure what you're --

Mr. Martinez. April of 2020 is 1,000.

Ms. Slocum. June 2020, so four --

Mr. Martinez. Oh, okay.

Ms. Marticorena. 4,040. And just -- I know this might take a minute. All of the numbers in between that are higher than 5,346. Is that correct?

Mr. Jonas. I'm not -- I'm sorry.

Ms. Slocum. July 2020. It's this. Here, all of '21 --

Ms. Marticorena. Yes.

Ms. Slocum. -- all of '22, all of '23, is what she's looking at. So it's like this, all the numbers in between.

Ms. Marticorena. I apologize.

Mr. Martinez. That's all right.

Ms. Marticorena. I can just --

Ms. Slocum. July fiscal 2020, and then you go all of 2021, all of 2022, and then she's looking at all of 2023.

BY MS. MARTICORENA:

Q Yeah. I'm just asking if every number on there, so like the 7,444 in October of 2022, the 9,373 in October of 2021, kind of every number you're seeing in that middle is above 5,346?

A Yes.

Q Okay. Thank you.

And then I'd like to talk a bit about resources in your sector and the ones you need to secure the border. I'd like to begin by discussing processing coordinators. I know we touched on that a bit before. Can you describe what their role is with Border Patrol?

A Sure. They do a little bit of everything. They -- they do processing, what

their name suggests, everything except serve the legal documents, which is -- can only be done by Border Patrol agents. They'll do hospital watch when they need to, but sometimes they need to be escorted by an agent because they can't carry weapons. They'll do -- if we don't have contractors in place, they'll do the feeding and caring for some of the people that are there, but everything a Border Patrol agent used to do before.

Q Okay. And is it fair to say that there's more processing coordinators now in the sector than when you were last in Laredo?

A Yes.

Q And are you aware of when processing coordinators started to roll out to the field?

A Oh, I want to say 2 years ago, maybe.

Q Okay. And in your professional opinion, have processing coordinators been beneficial to the work of Border Patrol in the Laredo Sector?

A Yes.

Q Okay. And has -- have the processing coordinators helped your agents get back into the field?

A Yes.

Q Okay. And, Chief, are you aware that the Department of Defense recently sent 1,500 troops to the southwest border to help with administrative duties?

A I heard of it, yes.

Q Okay. And in your opinion, having additional personnel to help with administrative duties, do you think that's helpful for Border Patrol?

A It could help, yes.

Q Okay. Thank you.

And then, Chief, are you aware of the volunteer force implemented by the Department of Homeland Security?

A Yes, I'm aware of them.

Q Okay. Can you describe what the volunteer force is?

A It's people that volunteer from different agencies within DHS, be it TSA, be it FEMA, any -- any -- anybody under the flag of DHS, they volunteer to go down to the southern border and help us with our warehouse work, with our feeding and caring for people. They do a lot of stuff. They even help with the laundry contract. Sometimes they'll help out to get people's clothes washed and everything else, so they've been a very good asset for us.

Q And do you have members of the volunteer force in Laredo or have you during your time?

A I have during my time and -- in RGV, yes.

Q Okay. And do you recall when the volunteer force program first began?

A I honestly don't. I don't know exact year.

Q My understanding is it was about March of 2021. Does that sound correct?

A That makes sense.

Q Okay. And I know you just covered this, but is it fair to say that the volunteer force has been beneficial to your work?

A Very much so, yes.

Q Okay. And then do you agree that DHS has made progress during your time in Laredo or from the last time you were in Laredo in digitizing stages of migrant processing?

A Digitizing stages, is that what you said?

Q Or digitizing parts of the process --

A Oh.

Q -- increasing coordination amongst agencies.

A Yes.

Q Okay. And is that helpful in getting agents back to the field, increasing the processing coordination?

A Yes.

Q Okay. And then would you agree that programs that help vet migrants before they approach the border would be helpful in your work?

A Yes.

Q Okay. And are you aware that's part of what the CBP One app does, is it vets migrants who schedule an appointment?

A I'm not aware of the intricacies, but I know it schedules appointments, yes.

Q Okay. Thank you.

And then has your sector received more capacity in soft-sided facilities, on more facilities, since your time you were last in Laredo?

A Yes.

Q Okay. Are you aware of the Southwest Border Coordination Center, or SBCC?

A I'm aware of them, yes.

Q Can you describe what its role is, briefly?

A They coordinate the movement of -- and -- for the whole enterprise of Border Patrol basically, of migrants, follow trends in surges and everything else.

Q Okay. And would you say that their help in coordinating resources to address gaps or reduce pressure has been helpful to Border Patrol's work?

A It's been helpful.

Q So I'd like to discuss some of the technology and assets employed in the Laredo Sector.

Does your sector utilize towers?

A Yes.

Q What types of towers?

A So we have some that have remote video surveillance, we have some that are autonomous towers, and we have what they call relocatable towers.

Q And then can you describe each of those type of towers and what they do and how they differ a little bit?

A Sure. The remote video surveillance towers are a permanent fixture, and they usually have four sets of cameras, two days and two night vision, looking at opposite sides of wherever they're at. But they are stationary, like I said.

Autonomous towers will react to movements within their field of view. So if something moves, a shake or something like that, the camera will go straight to it.

And the relocatable towers, even though they say they're relocatable, they're not very relocatable. They're hard to -- they're tied down and everything else. We have to have environmental studies where we're going to put them, so it's kind of cumbersome. But they also -- they're autonomous to a point to where they -- they can -- they -- they help us wherever we don't usually have those stationary towers. They have camera package as well. Yeah.

And the good thing about those is they link up with each other, so if one of them sees something, the other tower will pick it up and take it. So that's the beauty of those.

Q And since you were last in Laredo, has the number of towers in the sector increased?

A It has. I'm not sure about the number, though, but, yes, it has.

Q Okay. And are you aware of any plans to continue to increase the number of towers in the sector?

A If I have anything to say about it, yes.

Q And then does your sector employ the Linear Ground Detection System?

A No.

Q Okay. Does your sector utilize unmanned aircraft systems?

A Yes.

Q And can you describe a bit of what they are and how they operate?

A So we use the small UAS, sUAS is what they call them, small unmanned drones, for lack of a better word. So we use them, we deploy them. They have night vision as well. And they help with cover areas where we -- agents can't get to or are not conducive to men walking around -- men and women walking around in the brush.

Q Okay. And so would you agree that those are helpful for your agents in either detecting individuals or assisting with stopping cartel activity?

A Yes.

Q And since you were last in Laredo, has the number of these unmanned aircraft systems employed in the Laredo Sector increased?

A Yes.

Q And are you aware of any plans to further increase those numbers?

A Yes.

Q Okay. And then in the Laredo Sector, do you use technology to detect cartel tunnel activity?

A No.

Q Okay. And then in the Laredo Sector, I know we mentioned a bit before the communication systems. What types of communication systems do your agents use?

A They have the ATAK phones, which -- I can't remember the acronym. ATAK is an acronym for something. I just can't remember off the top of my head. I can't remember. And, of course, we use our handheld radios and our vehicle radios to communicate back and forth.

Q And is it fair to say that those -- the number of systems deployed or number of devices has increased since you were last in Laredo?

A Yes, it has.

Q And are there plans to increase that further?

A Yes.

Q Okay. Are you expecting Laredo Sector to receive and deploy any other technology system we haven't discussed or any other system to counter cartel drones, any other type of system?

A We're trying to obtain more zone -- drone mitigation technology, because the cartels use drones a lot, so that's what we're trying to put a stop to.

Q Okay. And then -- yep.

BY MR. YIM:

Q Chief, before we move on, I'd just like to talk about one other piece of technology that may be utilized in the Laredo Sector. Do you all utilize underground sensors?

A Yes.

Q And how do those sensors work?

A They measure the rhythm of the foot -- of footsteps, any ground disturbance.

Q Do you think those are helpful in interdicting migrants or cartel members?

A They have been. I mean, we've been -- we've used them since the

Vietnam-era ground sensors, so, yeah, they've been -- they've been working for us.

Q And since your initial time as deputy chief patrol agent in Laredo to now as chief patrol agent of Laredo, has the number of underground sensors increased?

A I don't know. I can get that information for you, but I'm not sure what the numbers are right now.

Q Okay. Would you say these underground sensors span the entirety of the sector?

A No.

Q Okay.

Mr. Yim. All right. I'll turn it back over.

BY MS. MARTICORENA:

Q Chief, I wanted to talk a little bit about funding.

A About what, I'm sorry?

Q About funding --

A Oh.

Q -- and the recent money that Congress provided to Border Patrol.

So in the fiscal year 2023 omnibus, Congress provided funding for 300 new Border Patrol agents for the workforce, which is the first increase since 2011. Do you believe those additional agents will be helpful for securing the border?

A Any new agents are helpful for the border.

Q Okay. And then the fiscal year 2023 omnibus also provided 800 million for the new CBP Shelter and Services Program, which is aimed at bolstering the capacity of organizations assisting migrants released from CBP custody, like the two NGOs you mentioned in the Laredo Sector.

Can you describe a little bit more about how these NGOs work with Border Patrol

or help ensure that, you know, the communities are not overwhelmed when people are released? How do they help you do your job?

A. So I've always said that Border Patrol stations are no place for children and families. It's a vulnerable population, right. So whenever we do release them, we want to make sure that they're safe, and they help us keep people safe. But apart from that, I don't know what they do with them or what, but --

Q. And would you agree that your agents share that belief that it's helpful when these organizations have capacity to help keep people safe?

A. Anybody that keeps people safe is.

Q. And then we talked a bit about the increase in funding to Border Patrol. Would you agree that rolling back funding for Border Patrol or activities at the border would harm your mission?

A. Yes.

Q. Okay. Thank you.

And then I just wanted to circle back quickly to the numbers, my apologies.

A. That's okay.

Q. I got a bit ahead of myself. I talked about the April 2023 numbers. I meant to say the November 2022, which is FY 2023, to April, just clarifying what we were looking at for that topic.

Mr. Jonas. So could you ask like a complete question so that we can clarify that?

Ms. Martcorena. Sure.

Mr. Jonas. Because I was having a little hard time following the numbers.

Ms. Martcorena. So are the numbers from fiscal year 2023, in November, to April 2023, so the top line, I was asking if those numbers are lower than the numbers -- other numbers you see on the chart since June of 2020?

Mr. Jonas. So you're asking whether there's -- in the earlier numbers there's ever been something as low as --

Mr. Martinez. 3,257.

Mr. Jonas. -- 3,257?

Ms. Martcorena. Yeah.

Mr. Martinez. April of 2020 we had 1,900, but, no, I mean, they're pretty --

BY MS. MARTICORENA:

Q Yep, and I agree with that. I was looking really since June --

A Okay.

Q -- so that 4,000 number of kind of everything in this chart --

A Right.

Q -- after that.

A Okay.

Mr. Jonas. You have to say yes.

Mr. Martinez. Oh, yes. Sorry.

Ms. Martcorena. So, yes, you would agree that those numbers are lower?

Mr. Martinez. Yes.

Ms. Martcorena. Okay. Thank you. I'll turn it to my colleague.

BY MR. EWENCZYK:

Q And so, Chief, just to make sure I understand kind of these numbers. Is it fair to say that what this chart shows is that, starting in June 2020, the numbers go up and that what we're seeing now since November 2022, December 2022, January 2023, through April 2023, is those numbers coming back down?

A That's correct.

Ms. Martcorena. Thank you.

BY MR. OMBRES:

Q Thanks. Chief, my name is Devon Ombres. I'm with Oversight minority. I had a couple questions.

Our majority counterparts were asking you some questions regarding push factors and misinformation, and just hoping to get a little bit of clarity on that, if you'll bear with me.

I think you said that smugglers deliberately provide misinformation to migrants. Is that correct?

A Yes.

Q I think you -- I hadn't heard this in a while, but you said that they tell the -- they tell the migrants that America's streets are paved with gold. Is that fair?

A That's fair.

Q Can you explain a little bit more about some of the misinformation that you're aware of that the cartels are -- and smugglers are providing to migrants to entice crossings?

A Well, number one, they guarantee they're going to get across, right, and just that, that there's high-paying jobs waiting for them and all that.

Q Okay. And they're -- they don't make them aware of any of the repercussions that are -- would be enforced under Title 8 or any of the legal ramifications that occur or the immigration processing that needs to be undertaken?

A No, not at all.

Q Okay. So they're basically flying blind because of misinformation that is being provided by the cartels?

A Usually, yes.

Q Okay. Fair. How do they spread this misinformation, if you're aware?

A Social media is a big vehicle for them.

Q Okay. So they -- our -- our counterparts also mentioned an issue about got-aways, and I think you were relatively clear on some of those issues. But I just want to clarify, because back in 2019, you were quoted in The Daily Signal as saying, In the Rio Grande Valley, if you go down to the riverbanks with our Border Patrol agents, you'll have people walking up to you. That's the opposite of what's happening here. Here, people are trying to get away from us.

Is that an accurate assessment of the state of play in the Laredo Sector in 2019?

A Yes.

Q So what you're saying is there's still people trying to get away and that's kind of standard operating procedure that you've seen in the Laredo Sector over a series of years. It just hasn't occurred in the past 2 years. Is that fair?

A That's fair.

Q Okay. Fair enough. I did have one quick follow-up question about the deployment of towers. You were quoted as saying there's -- that the towers are really popular with the field agents. Quote -- I think it was in January of this year -- "There are no surprises. The agents know exactly what they're walking into. It's a game changer."

Does that still hold true?

A That still holds true.

Q And those towers were really only deployed over the course of the last 2 years?

A The majority of them, yes.

Q Okay. Fair. Does the deployment of these technologies give your agents really significantly improved situational awareness?

A They do. We can see if they have -- if the person that we are encountering

has a weapon on them or not.

Q That's great.

A That's the biggest.

Q And so it really improves your effectiveness and helps your agents do their jobs better?

A It helps, yes.

Q And having these types of things, like, makes them feel better about doing their job and improves morale?

A Sure.

Q Okay.

A Yes.

Q Do you think DHS' plan to deploy about 200 more of these towers along the border is actually going to really help you all do your job and be effective?

A It will.

Q Okay. Thank you, sir.

A Thank you.

BY MS. MARTICORENA:

Q I wanted to circle back to a few topics that were discussed in the last hour.

A Yes, ma'am.

Q So starting with recidivism, is it correct to say that when recidivism is higher or people try to cross the border multiple times, that creates more work for Border Patrol?

A Yes.

Q Okay. And then you talked a little bit about voluntary returns. Have those been used for Mexicans throughout your time with Border Patrol?

A Yes.

Q And has Border Patrol tried to use voluntary return whenever someone is amenable to it, generally, throughout your time with Border Patrol?

A Yes.

Q Okay. And then just in regard to the NGOs and releasing people to NGOs, has that been longstanding throughout your time in Border Patrol that you've coordinated with NGOs to turn someone over to them?

A We have in the past, like I said, vulnerable populations.

Q Vulnerable populations, okay. And when someone is turned over to Border Patrol -- to an NGO, my apologies, is ICE still involved in determining whether they're released on their own recognizance or whether they're fitted with a device?

A If we -- if we get -- if we go to ICE to get a device and have -- once that happens, once that pathway is established, ICE takes over after that, and then -- so we don't -- if they're getting released from our custody, they're released from our custody. That doesn't necessarily mean they have to go to NGO. They go to the NGO if they want to, right. But, yeah, if there's going to be a device placed on them, we don't do it. ICE ERO does it.

Q Okay. And so is it then fair to say that if -- people released from your custody, does ICE weigh in on their case at all, if they're released from your custody to an NGO?

A Yeah, they probably already weighed in on it.

Q Okay. And then you talked a little bit beforehand about how once migrants are released from your custody, Border Patrol doesn't have insight into their future travel.

A Correct.

Q Has that been true throughout your time with Border Patrol?

A That's correct.

Q And just to clarify, when someone's released from your custody, they're still required to appear and report to a court for immigration proceedings, correct?

A As I understand it, they are, yes.

Q Okay. Thank you.

And then just as far as the capacity, like -- sorry. In the last hour, you talked a little bit about whether all cases were prosecuted of people for first-time entry or reentry. Throughout your time in Border Patrol, has the U.S. attorney ever had the capacity to process -- to prosecute everyone?

A No.

Q Okay. And then just touching quickly on drug seizures. Is it fair to say that there are very few incidents of fentanyl seizures in your sector?

A Yes.

Q Okay. And the data I have shows that there actually haven't been any fentanyl seizures this fiscal year. Is that -- does that sound accurate?

A That's correct.

Q Okay. And then looking -- I looked at fentanyl, heroin, and methamphetamine. At least the numbers I'm seeing show that it's been decreasing since 2020. Would you say that's fair?

A Yeah, that's fair.

Q Okay. Thank you.

BY MR. EWENCZYK:

Q Hi, Chief. Arthur Ewencyk. I just wanted to follow up also on a couple points, so apologize for the hodgepodge of questions.

I just wanted to go back to the arrest of the Zeta cartel head that you mentioned

earlier. The Zetas are the cartel that operates south of the border in Mexico at the Laredo Sector. Is that right?

A That's correct. They're headquartered in Nuevo Laredo. And they're not called Zetas anymore, because that name had a bad connotation to it, so they changed their name to the Northeast Cartel. But, yeah, they're headquartered out of Nuevo Laredo.

Q Got it. Well, I'll try to use the updated nomenclature then.

And so this chief that was arrested, this is Juan Gerardo Trevino-Chavez. Is that right?

A That's correct.

Q And his nickname is El Huevo?

A El Huevo, yeah.

Q "The Egg"?

A The Egg.

Q Do you know why he's called The Egg?

A Because of his complexion of his skin, so --

Q Got it.

A And he's round.

Q And he was arrested in March of 2022. Is that right?

A Right.

Q And that was a coordinated effort between the FBI, Border Patrol, various U.S. law enforcement agencies, and Mexican law enforcement. Is that right?

A Mexican military, right.

Q So would you say that that is an example of success -- successful cooperation between the U.S. and Mexico to address issues that have an impact on border security?

A Yes.

Q And so would you say that the arrest of El Huevo in March 2022 dealt a blow to the Northeast Cartel and -- in your sector?

A Yes.

Q So that had a positive effect on border security for the United States. Is that right?

A Yes.

Q Great. I also wanted to ask you, you were asked kind of early on about chiefs and deputy chiefs and their respective responsibilities. It's fair to say, though, that sector chiefs have good knowledge of what's going on in their sectors, right?

A Generally, yes. That'd be great.

Q So when you're here today as a sector chief, you're able to talk with knowledge about what's going on in your sector, right?

A Yes.

Q And then going back to what my Republican colleagues talked about and my colleague also asked you about, when people are released to the custody of NGOs, do you recall that?

A Uh-huh.

Q Is it fair to say -- that's not a new practice. In previous administrations, there was also involve -- NGOs were involved in -- people being released to the custody of NGOs. Is that right?

A That's correct.

Q And when you -- earlier I think someone was saying that, you know, once Border Patrol releases migrants to the NGOs, they are free to travel. Is it fair to say that really what you were talking about there was about the fact that, once they're no longer

in Border Patrol custody, you don't have visibility into what happens to them, is that right, you being Border Patrol?

A That's correct. So also to the point that they don't necessarily have to go to the NGO, they go because they want to. But, you know, once they're released from the Border Patrol custody, they're released from Border Patrol custody. I have no legal authority over them at all.

Q But the court, the immigration court does have authority over them, and they're required to appear in court. They might be required to report. There might be certain conditions that the court places on them, and they would have to obey with all of those conditions. Is that right?

A From what I understand, yes.

Q And then you were also asked a question about got-aways and could there be people with terrorist ties among the got-aways. Do you remember that question?

A I do.

Q Is it fair to say that what you were talking about there is got-aways, by definition, you don't really know who they are because they're people who got away. Is that right?

A That's fair, yes.

Q And is it fair to say that throughout your tenure with Border Patrol, it's always been the case that there are always certain got-aways?

A It is, yes.

Q That's been true across administrations. Is that right?

A Yes.

Q And would you say that, in the Laredo Sector, kind of the percentage of apprehensions has been pretty steady over time?

A Yes.

Q And you were also asked about Chinese nationals that are apprehended at the border. Is it fair to say that the number of Chinese nationals that we're talking about is a fairly small number? Is that right?

A In Laredo?

Q Yeah.

A Yes.

Q And across the southwest border, compared to other nationalities, is it fair to say that the number of Chinese nationals is fairly small?

A I'm not very familiar with the rest of the country. I haven't kept up the with the numbers, but --

Mr. Ewencyk. That's all for me.

Mr. Yim. All right. We'll go off the record.

[Recess.]

Ms. O'Connor. Okay. We can go back on the record.

BY MS. O'CONNOR:

Q Welcome back, Chief.

A Thank you, ma'am.

Q My colleagues just talked a lot about policies through different administrations. In your role in Border Patrol, you don't create policy, right?

A That's correct.

Q But it's Border Patrol's job to implement the policy through different procedures?

A Yes, ma'am.

Q How are those procedures created?

Mr. Jonas. Can you -- I think maybe if you specified an area of procedure, that might help.

Mr. Martinez. Yeah, because, I mean --

BY MS. O'CONNOR:

Q Sure. So you receive guidance on how to implement policy generally, right?

A Right.

Q And where does the guidance normally come from?

A From headquarters, Washington, D.C.

Q Border Patrol headquarters?

A Right.

Q And then who gets it from Border Patrol headquarters?

A I have -- depends what policy it is and where or what, but I imagine the chief of the Border Patrol.

Q Okay. And who do you normally get guidance memorandum from?

A From the chief of operations.

Q Who is that?

A David B. Miller.

Q Does it go to Chief Ortiz first or does it go straight to you?

A No, Chief Ortiz gets it and pushes it down.

Q To you guys?

A To the chief of operations, who's --

Q Got it.

A Yeah.

Q So operations is under Ortiz?

A No. The Border Patrol is under Ortiz. So it's B1 is Ortiz; and then you've got B2, which is his deputy; then you've got B3, who's the chief of operations.

Q Got it. Do the chief patrol agents in the different sectors have any input when headquarters is creating guidance?

A Usually not. I mean, like I said, if it's going to affect our sector in particular for whatever reason, then we will, but, I mean, if it's a national policy, no.

Q Have you ever participated in creating any guidance for a sector that you've worked in?

A No. No.

Q Is one of the main policies of this administration to limit the number of illegal aliens who are in detention with ICE and Border Patrol?

A I couldn't give you an answer. I mean, I've never been told that, so --

Q You don't know if that's a policy that you're implementing?

A If they're what, if they're --

Q To limit the number of illegal aliens in detention with CBP -- or with Border Patrol and ICE.

A Oh, well, for Border Patrol, I could speak for Border Patrol, we always try to keep our numbers minimum because we don't -- we're not -- we're not a detention facility. So we try to get people out as quick as we can.

Q So you try to process people and release them as quick as possible?

A Process people, give them a pathway, whatever the pathway they might be amenable to.

Q What kind of statistics is Border Patrol headquarters looking at for your operations?

A Time in custody and got-aways, apprehensions, things we've always looked

at.

Q What about length of detention?

A Time in custody.

Q Oh, I'm sorry. I meant average daily population.

A Yes.

Q And are they looking at those -- strike that.

So let's talk a little bit about processing pathways --

A Okay.

Q -- in a little more detail. I know we talked about -- we've touched on it kind of briefly in the other questioning rounds.

When agents in Laredo encounter somebody in the field, they arrest them and bring them in for processing, correct?

A Correct.

Q During that processing, what kind of information do the agents or the processing coordinators gather to make a processing outcome?

A Basic biographical information: name, date of birth, country of origin. They use facial recognition technology, criminal checks, immigration checks for any history.

Q And are they required to gather all of this criteria?

A Yes.

Q And how -- is that requirement in writing somewhere?

A I'm sure it is, but -- I couldn't point you to the exact location, but I'm sure it is.

Q But there's guidance that tells them what they're supposed to collect?

A Yeah.

Q How is that information recorded?

A On an I-213, the record of apprehension.

Q So for every person who's encountered in Laredo and processed, there's an I-213 that evaluates all that information?

A Right. And the system of records is E-3, so it'll be in that package.

Q Does the criteria for the processing determination ever change?

A The criteria for processing determination?

Q So, for instance, are you -- are agents in Laredo ever told, we want to consider this nationality for this outcome during this period of time?

A So like in times of natural disasters, let's just pick a country, I don't know, Nicaragua or somewhere, there's a natural disaster, they give them temporary status. Is that what you're talking about?

Q No. So let's use the -- let's use parole, for instance.

A Okay.

Q So is there ever a time or has there ever been a time where you've received guidance that says you should look at Venezuelans -- you should look at parole for Venezuelans?

A Oh, okay.

Q Does the criteria ever change based on nationality?

A It has, yes.

Q In what instances?

A Venezuelans, for one. We have no return agreement with that country because it's a kind of fail state, basically. So where could we send them if the country won't accept them, so --

Q So right now we can't send people back to Venezuela?

A We haven't been able to, no.

Q How long has that been an issue?

A Since the country has failed. I'm not sure when that started, but --

Q Has it been years?

A It's safe to say years.

Q Are you familiar with the notices to report that Border Patrol was issuing?

A Yes.

Q During the time that notices to report were used you were in RGV. Were they using those in RGV?

A I believe they were, yes.

Q Who was being issued those notices to report?

A Off the top of my head, I can't remember.

Q When someone was issued a notice to report, they were not issued a notice to appear, correct?

A From what I understand, yes, you're right.

Q So at that time there actually was no obligation to report to any immigration court, right?

A I'm not sure. That's past our time with them, so --

Q Well, Border Patrol issues NTAs, right?

A We do, yes, through ERO.

Q Well, Border Patrol agents can issue a notice to appear, right?

A Yes.

Q And you guys do -- do Border Patrol agents in Laredo issue notices to appear?

A Yes.

Q And they sign the bottom, right?

A You sign the bottom, right.

Q And there's a court date and time. And there's a requirement on that form that says you have to report to that --

A Correct.

Q -- court date and time, right?

A Uh-huh.

Q And the notices to report did not include a requirement to report to any sort of court date, right?

A I believe you're right, correct.

Q And people who were issued notices to report, were they released straight from Border Patrol?

A Yes.

Q Are you familiar with the Parole Plus ATD program?

A Yes.

Q That was also implemented while you were in RGV.

A Uh-huh.

Q When were you allowed or when was Border Patrol allowed to use Parole Plus ATD in RGV?

A So we turned them over to ERO, and they were the ones that would do the ATD part. So once we -- if it was determined that was the pathway they were going to have, we -- ERO will take it from there. So I'm not sure when they allowed it or when it was put in place, but -- I don't know the exact date, I should say.

Q My question is more how were you -- how was Border Patrol deciding who was going to be given parole and --

A We didn't. It was ERO.

Q Well, you guys did the processing, right?

A We processed.

Q And then you determined that Parole Plus ATD is the appropriate pathway for this person, right?

A Right.

Q And then you transferred them over to ERO custody for the ATD?

A Well, they were there in-house, yes, ERO.

Q Well, sure, in the processing center, right?

A Uh-huh.

Q So how were you making the determination that this person should be on the Parole Plus ATD pathway?

A In some instances, it depended on our detention, our numbers, our -- where that person was from, so --

Q Okay. So parole -- was Parole Plus ATD used largely when there were surges and there was certain capacity issues?

[11:17 a.m.]

Mr. Martinez. Yes, ma'am, it was.

BY MS. O'CONNOR:

Q You're aware that a parole determination requires a case-by-case determination, right?

A Say that again. Sorry.

Q A parole decision requires a case-by-case determination --

A Yes, ma'am.

Q -- correct?

A Yes, ma'am.

Q Were those case-by-case determinations being made in every instance where Parole Plus ATD was used as a processing pathway?

A From my knowledge, I believe so, yes.

Q And were those factors recorded in every I-213 for a person that was issued Parole Plus ATD?

A Yes.

Q Who determined the criteria for when Parole Plus ATD was to be used? Were you getting that from headquarters, or was the sector deciding when to use it?

A No, it wasn't the sector deciding. It was headquarters.

Q The Laredo Sector has relied very heavily in the recent past on Title -- well, the last couple years -- on using Title 42 expulsions. Now that Title 42 expulsions is no longer an option, are you concerned with Border Patrol's ability to process the number of migrants?

A Process a number of migrants?

Q The number of migrants that are crossing right now.

A Not for us. Our flow is pretty constant, so --

Q Has the expiration of Title 42 caused any sort of capacity issues for you?

A No.

Q The people that would normally be processed under Title 42, would you say most of them are now being processed as voluntary returns or are they being issued notices to appear?

A It depends on the demographic, but most of them are -- if they're not Mexican, they can be voluntarily returned, so --

Q Right. So Laredo, we established earlier, is pretty much all adult Mexican --

A Right.

Q -- right? So most of those people would've been expelled under Title 42 before.

A Right.

Q So would you say that the majority of the people that would've otherwise been expelled under Title 42 --

A Oh, okay. I misunderstood your question.

Q That's okay. Most of those people are now being issued notices to appear? Or are they -- or are you using a different pathway for --

A No. If they're Mexicans, they'd go to Title 8, and they would get voluntary returned or -- it depends on their history, of course.

Q Sure. But -- so what's happening right now? Are most of those people being voluntarily returned, or are they being issued NTAs?

A If they're Mexicans, they get returned.

Q And that's what's happening right now --

A If they're Mexicans --

Q -- in Laredo?

A -- and they have nothing pending -- no warrants, no arrests, no immigration history.

Q Is Laredo utilizing expedited removal?

A I have to get back to you on that one. I'm not sure.

Q You don't know if they're using it at all?

A I -- I -- no.

Q So, if Border Patrol in Laredo right now encounters somebody and brings them in for processing and they express a fear of returning to their country, are they just issued an NTA and released?

A Not necessarily released. It just depends what their -- I can't speak for an individual person. I mean, it just depends who they are, where they came from, what they're doing.

Q What are the trends right now?

A I haven't been there in about a month, but let me see.

I can get you the trends. I'm not sure. I don't want to lie to you, so --

Q So you don't now what -- you don't know the current processing outcomes of people in Laredo right now?

A Right now, no, not to date.

Q Would you consider that an important aspect of understanding what's going on within your sector, is understanding the processing outcomes?

A Sure.

Q Particularly with the -- I'll strike that.

Earlier, you mentioned -- sorry, I'm going to switch over a little bit. Earlier, you mentioned that the cartels were providing misinformation --

A Uh-huh.

Q -- to migrants. What kind of misinformation are they providing?

A So they make it sound like it's easy to cross the border, it's easy to find a job, it's easy to make it past Border Patrol. They have it all -- they sound like a travel agency. They make everything look rosy, right, when it's really very dangerous to cross the border and everything else. That's what I meant.

Q What do you think the ultimate goal of the people who are crossing the border is?

A To make entry into the United States and get a job and get paid dollars.

Q So they all want to be released, right?

A Sure.

Q So, regardless of what the cartel tells them about the journey or the path of gold, if these people are released, they're still going to come, right?

A Yes.

Q How else do they find out about information? It's not just the cartel, right? Does their family -- strike that. Family that's already come, do they call back?

A Yes.

Q And they find out from friends and other people who have crossed?

A Yes.

Q And some people and wait in Mexico to see if the people they were with are successful before they cross?

A Yes.

Q Do you think that that has a large influence on whether a person decides to cross into the United States?

A Yes.

Q My colleague earlier asked you briefly about push and pull factors. Would you say that release can be a pull factor for people coming into the United States?

A Yes.

Q Do you think that the current rate of release at the southwest border is an active pull factor for people coming into the United States?

A Yes.

Q Chief Ortiz in the past has described what's gone on at the southwest border the last couple years as a crisis. Would you agree that there's a crisis at the southwest border?

A Speaking for Laredo, I don't have a crisis going on right now, so --

Q What about with your experience in RGV?

A RGV, there was periods of times when we were overwhelmed, but, like, right now, things are normal. They're good.

Q "Normal" in the context of?

A Of everyday workflow life. We have a flow that we can manage, so --

Q In the context of the last 3 years?

A The last 3 years, yeah, we had some -- some --

Q So the number now --

A -- challenges --

Mr. Jonas. Hold on. Why don't you let him finish the answer?

"The last 3 years we had some challenges"?

Mr. Martinez. Some challenges in RGV that were very well known. The flow was such that we could keep up with the population coming at us.

BY MS. O'CONNOR:

Q So the numbers now, you say, are manageable compared to the last couple

of years --

A Oh, yes.

Q -- right?

A Yes.

Q In your career with Border Patrol, have you ever seen encounters at this level by number?

A No.

Q Have you ever seen releases at this level by number?

A No.

Q Are you familiar with the term "operational control"?

A Yes.

Q Are you aware that the Secure Fence Act of 2006 defines "operational control" as not allowing any illegal person or substance over the border? Are you aware of that?

A Yes.

Q Does the Laredo Sector have operational control?

A No.

Q The Northeastern Cartel you earlier described as particularly violent --

A Uh-huh.

Q -- would you say that they're also particularly cruel to the migrants?

A I would.

Q What kind of tactics do they use in their smuggling process?

A For starters, if you go down the river without their permission -- every section of river has a boss that owns that particular part of the river. If you go down there without their permission, they can either beat you or hit you with, like, a paddle,

and they've been known to shoot people, you name it. That's how they -- they rule through intimidation, so that's a very common practice.

The other day, we had two people wash up to our shores, and they had no identification on them, but we're thinking they were migrants that went down there without permission. One of them had his head halfway blown off, and the other one was shot between the eyes.

Q Do you often come across migrants that have experienced assaults, essentially, by the cartel?

A Yes.

Q And you learn that through interviewing the migrants?

A Yes.

Q What are some of the other tactics that they use in their smuggling operation? Do they use stash houses?

A Stash houses, kidnappings. Stash houses on both sides of the border, mind you.

Q Have you ever been in a stash house?

A I have.

Q What is a stash house like?

A It's pretty bad. It's usually a small shack with no running water, no electricity. And in Laredo it gets pretty hot, and so you can imagine the smell inside there. No running water, so they have to use a bucket for their functions. And it gets pretty nasty in there.

Q How long could they leave migrants in a stash house like that?

A It could be hours, it could be days, it could be weeks. It depends on when the coast is clear, when the cartel believes the coast is clear for them to travel up north or

further their travel.

Q Are there ever children in stash houses?

A There have been.

Q Has Border Patrol in Laredo been able to uncover stash houses and rescue people?

A Yes.

Q Does the cartel also use any sort of tagging system? We've seen it in other sectors where they're using the bracelets.

A Not in Laredo.

Q Did you see that in RGV?

A I did.

Q What kind of information was on those bracelets?

A Just, they're color-coded usually. I think the first time they went, it was yellow. The second time, they got -- they were guaranteed three passes until they made it, right? So they paid a certain fee, and it was color-coded. The first time you tried, you got a yellow band. And if they make it through, well, you never see that yellow band again, right? If they get caught, the second time -- they have a ledger of people -- they actually take photos of every migrant, and so they know exactly how many times they've tried crossing, so they know how many times they owe them another try. So the red one, I believe, is the last chance, so --

Q Do all the cartels do that?

A I can't speak for all the cartels. I just know about the one in -- the one in RGV is the Gulf Cartel, which is different from the -- they're at war with the Cartel del Noreste, the Northeast Cartel. So they don't have the same tactics, they don't have the same technology, if you will.

But, yeah, these guys in the Gulf Cartel are the ones that use the bracelets. I haven't seen that in the Northeast.

Q And they use the photos, the Gulf Cartel?

A Well, they all use photos. They all use photos to keep track of the people they're smuggling.

Q You mentioned kidnappings. What does a cartel kidnapping look like, and why do they do it?

A They do it to -- they kidnap usually either family members or, if there's a family unit coming, they'll kidnap one of the -- they'll grab one of the kids and they'll -- just to make sure that they get paid at the end of the day.

Q So they'll hold a child --

A A child or a wife or a sister or a brother, whatever.

Q -- to wait for payment --

A Uh-huh.

Q -- and then release the child after payment?

A Uh-huh.

Q Okay.

Do the cartels ever encourage individuals to create fake family units in order to be released into the United States?

A We saw that in RGV a little bit.

Q What happens with that?

A Usually our agents are pretty good at picking them out. You can tell when there's not a connection there between the parents and the children, so-called children, right? So our agents are usually pretty good about picking that up.

Q How do they do that? Through interviews?

A Interviews, just constant interviews, and seeing how they're -- you can just tell by the way the child reacts to the person that is claiming to be their parents.

Q Do you think, with the surges that RGV experienced, some of those observations or investigations fell through the cracks when it came to, like, rent-a-family?

A Safe assumption to say that, yes.

Q The encounter trends in Laredo, we've gone over, have started to slow down, generally speaking, in fiscal year 2023, but the number of unaccompanied children has actually increased. Do you have any insight as to why that would be?

A No.

Q How does Border Patrol in Laredo process unaccompanied children?

A Depending on their age. Of course, if they're tender-aged, we take -- I wouldn't say we take better care of them, but we have to make sure that they're safe and everything else. We have caretakers in our detention facilities, professional caretakers that that's all they specialize in. I believe they're licensed, State-licensed.

And, then, if it's a vulnerable population, we get HHS and OR immediately involved, let them know what we have, who we have in custody, and then they take it from there.

Q Is there an HHS facility near your Laredo processing center?

A Not near, but -- the closest one is -- gosh, I'd be lying to you if I told you. I'm not sure exactly where it's at.

Q Within a car ride?

A Yeah, but they come to us, so --

Q How do you verify the age of an unaccompanied child?

A We take their word for it. I mean -- yeah. Yeah, we take their word for it. And if they have documentation. A lot of them have information written on their arms

or their clothing, like, a number to call. So we'll call that number, and it's usually a parent or somebody.

Q What about if agents have suspicion that the person is not a child, under 18?

What happens then?

A Well, they'll question further until we find out.

Q Do they often have birth certificates?

A I wouldn't say "often," but some do.

Q When agents are interviewing any migrant, are they looking for signs of gang affiliation?

A We always look for that, yes.

Q What are some of the signs of gang affiliation?

A The distinctive tattoos. Some of them have tattoos that identify their gang.

Q People that don't have a criminal record yet in the United States but may have a criminal record in another country or are members of a gang or a cartel in another country that haven't been in the United States yet, is there any way to know that, other than interviewing them?

A No.

Q So the background checks that are done during processing, they're not going to tell you that, right?

A Right. We only have access to American data.

Q Right. Well, sometimes there will be an INTERPOL notice or something, right?

A Sometimes.

Q But that's an extreme situation?

A Right.

Q The same is true for potential terrorists, right?

A Yes.

Q And you had mentioned earlier that you weren't aware of any person on the terrorist screening data set that had been encountered in Laredo since you've been there. Is that right?

A Yeah, I believe so.

Q And you don't think that any of the encounters in 2022 of people in the terrorist screening data set were in RGV?

A That I can recall, no.

Q Okay.

I am going to pass to my colleague.

BY MR. MCDONAGH:

Q When did you start in RGV?

A 2021, January 2021.

Q Where were you before that?

A Laredo.

Q Laredo? Did you guys ever use the Migrant Protection Protocols in Laredo?

A Yes.

Q Under that program, a migrant encountered between ports of entry who claimed a fear of returning to their country would be returned to Mexico during the pendency of their removal proceedings, correct?

A Correct.

Q They were not released into the United States?

A Correct.

Q During that time, were encounters less than they were during the peak in

2022?

A Yes.

Q Do you think that one factor that contributed to the lower level of encounters was the fact that illegal entry had that consequence?

A Yes.

Q Under that program, individuals were not rewarded with release into the United States.

A They were not released into the United States, right.

Q That was also the case in Title 42, correct?

A Correct.

Q So, under both programs, individuals processed were not allowed to enter and remain in the interior of the country?

A Correct.

Q When you started in 1992, you were in Laredo?

A Yes.

Q What were the demographics back then through the 1990s of illegal border crossers/inadmissible aliens?

A It was still mostly Mexicans back then, from what I remember. And in 1992, it was shortly after, I remember, the El Salvadorian civil war they had. So we were getting a lot of people escaping that and a lot of -- actually, a lot of people that were involved with that bloody civil war in El Salvador, so we were getting a lot of criminals and a lot of bad people. So that was the demographic.

Q And those El Salvadorians, they were processed under Title 8; they weren't allowed to be voluntarily released?

A Yeah. Right. With voluntary return, we can only return them if they're

Mexican because the bridge is right there and we could return them, whereas we don't have a contingent border with El Salvador or any our country except for Canada, right? So that's what voluntary return is used for.

Q Were the El Salvadorians during that time, were they detained during the pendency of their removal proceedings? Or were they released into the interior of the country?

A From what I remember, I think they were detained.

Q You said that 60 to 70 percent, roughly, today are Mexican nationals voluntarily returning.

A Right.

Q Of those other 30 to 40 percent, are they being released into the interior of the country through a pathway?

A Some are. I can't give you an exact number, but, yeah, some are.

Q Can you give a guesstimate of what number are being detained versus those that are released into the interior?

Mr. Jonas. Don't guess.

Mr. Martinez. Yeah.

No, I'd hate to guess on that one, no. I don't want to give you some bad information.

BY MR. MCDONAGH:

Q But those 30 to 40 percent are giving up to Border Patrol?

A No, not in Laredo. In Laredo, they're trying to avoid apprehension.

Q My colleague showed that there's been an increase in the flow of inadmissible aliens and illegal border crossers in recent years at the southwest border generally, both in between ports of entry and at ports of entry.

How does that increased flow affect the community in Laredo and RGV?

Mr. Jonas. I'm actually not sure about the first part of your question --

Mr. McDonagh. Okay.

Mr. Jonas. -- because I think that one document that we've seen is not consistent with what you just said. So maybe you could rephrase the question.

Mr. McDonagh. Sure.

BY MR. MCDONAGH:

Q Do you know the number of encounters total in fiscal year 2019 for Laredo?

A For Laredo?

Q Yeah.

A In 2019? Let me see. Not off the top of my head.

Q CBP.gov shows a little over 38,000 -- to be precise, 38,378 -- encounters total, fiscal year 2019.

A Okay.

Q So, returning back to majority exhibit 1, in 2020, the total is 51,425, correct?

A Correct. That's for the Nation, right?

Q No, this is Laredo.

A Oh, Laredo, okay. Oh, okay. Sorry. Thank you.

Q And 2021, encounter totals at Laredo Sector for fiscal year 2021 were 112,241.

A Okay.

Q Is that higher or lower than the fiscal year 2019, 38,378?

A Higher.

Q Okay. So, back to that question --

A Okay.

Q -- does the increased flow from 2019 through fiscal years 2020, 2021, 2022, does that have an impact on the community?

A Sure. It can, yes.

Q Can you provide some examples of that?

A One that stands out is, if somebody has medical problems when they come across or we catch them, we take them to the emergency room and the hospital. So there's that, right? We're taking up -- we're using emergency rooms and medical facilities that citizens could be using.

Q And can you think of anything else? What are people in the local community saying to you?

A Well, I haven't -- they're worried about us street-releasing, which we never did in Laredo. So they didn't really have anything much to say.

Q Were they concerned in RGV?

A Yeah, I'm sure they were concerned.

Q Did you ever engage with anybody that expressed that concern?

A No. We dealt a lot with the local communities, because RGV is different from Laredo, because Laredo has got one mayor, one sheriff, one county judge, right? As opposed to, RGV's got 10 cities, 10 towns, 10 mayors, 10 -- so every person had a different experience, if you will, with the Border Patrol, so --

Q I know we've touched on this a little bit, but what are some of the tactics of individuals seeking to evade apprehension? You know, you said that most in Laredo are seeking to evade apprehension.

A For one, they run from us. Also, they hide either behind 18-wheelers or they get smuggled in a vehicle. Or they walk around our checkpoints, through the brush.

Q Do they wear camouflage?

A We don't see that very often in south Texas, believe it or not. You see that mostly in Arizona, I think.

Q Is that just an environmental thing or a cartel--

A I guess. I couldn't tell you.

Q Do vehicular pursuits happen?

A They do.

Q Does that endanger the local community?

A Yes, they do.

Q So DHS Office of Inspector General recently released a report entitled "Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees' Health and Morale."

I'd like to submit this to the record as majority exhibit 2.

[Martinez Majority Exhibit No. 2

Was marked for identification.]

BY MR. MCDONAGH:

Q Chief, could you please turn to page 22?

Under the heading, "Unpredictable Immigration Policies Have Impacted Morale," starting at the second sentence, the report reads:

"Since fiscal year 2019, immigration policies have shifted significantly as the United States experienced the COVID-19 pandemic and transitioned from one administration to another. Our interviews and survey comments showed staff frustration and lower morale related to changing policies, especially when the respondents felt the changes were inconsistent with their law enforcement duties. In the view of some law enforcement personnel, these policies have made it difficult for

them to enforce the laws and carry out their mission; one said they feel as if they were doing their job 'with one hand tied behind [their] back.'"

Have you heard these complaints from agents in Laredo?

A I've heard some complaints, but every -- you speak to 20 different agents, you'll get 20 different opinions. Some guys are out there and just love doing their job. They'll go out there and work. But I can't speak for this one person, whoever they interviewed. I mean --

Q But you have heard --

A I've heard some.

Q -- something in that vein --

A Sure.

Q -- from agents?

A That's fair.

Q And in Rio Grande Valley Sector too?

A Yes.

Q Turning to page 23, we're going to look at the penultimate sentence of the second full paragraph, starting with, "As with Title 42."

A Okay.

Q It reads, "As with Title 42, CBP personnel explained the ending" -- the migrant protection protocols -- "MPP would further overwhelm their resources. From the frontline perspective, MPP has helped agents regain operational control of the border and stop migration north."

Was that your experience when MPP was being implemented?

A Yes.

Q We discussed cartel violence south of the border --

A Uh-huh.

Q -- and you'd spoken to that it hasn't -- that cartel war, the turf war that's currently going on, hasn't spilled over into the United States.

Are the cartels or cartel-affiliated individuals active within the United States?

A Yes.

Q That's all I have. Thank you.

BY MR. RUST:

Q Chief --

A Sir.

Q -- do you have preliminary encounter numbers for the month of May of 2023 in the Laredo Sector?

A I do. Let me see here. I think, right now, for this FY, hovering around 35,000.

Q That's for the entire fiscal year?

A Yeah, that's fiscal year. Correct.

Q Fiscal year to date as of today?

A Yes.

Q Do you know what the encounter numbers were during last month, in May?

Mr. Jonas. The math would show 4,000-something.

Mr. Martinez. Yeah. March -- yeah. 5,346 for April.

BY MR. RUST:

Q I won't make you do the math, but we'll do that offline.

A Okay. Thanks.

Q You mentioned that Border Patrol was taking steps to try and mitigate the impact of drones used by the cartels.

A Yes.

Q For what purposes do the cartels use drones in the Laredo Sector?

A In Laredo Sector, they use them for surveillance, countersurveillance on us.

Q So they're tracking Border Patrol agent movements and patterns in order to assist their smuggling operations?

A Exactly. Yes.

Q Do they use the countersurveillance to introduce narcotics as well as individuals?

A Yes, but not by using the drone to carry the payload, but, rather, if they see the coast is clear, then they bring their load across.

Q And what mitigation measures has Border Patrol been able to implement to counteract --

A We have some technology that we utilize, some counter-drone technology, but we don't have enough. And sometimes it's -- the new drones are coming out, we can't always intercept those new technologies.

Q Did the cartels use other tactics to surveil Border Patrol agents on the job?

A They have.

Q What tactics?

A Climbing in a tree with binoculars. Just driving back and forth. You would have people that drive on the U.S. side back and forth, to see where we're at, what we're doing.

Q They have individuals affiliated with cartels working for them on the U.S. --

A Yes.

Q -- side?

A Yes.

Q Can those include U.S. citizens working for the cartels?

A Yes.

Q Does the involvement of cartels in human smuggling operations make the job of a Border Patrol agent more dangerous?

A Yes.

Q Do you frequently encounter human smugglers who are armed in Laredo Sector?

A We have, yes.

Q And we've touched before that the criminal organizations engaged in kidnapping. Do they also extort from family members of migrants who are being detained in these stash houses?

A Yes.

Q How often does that -- is that a routine occurrence or is that a rare occurrence for individuals being smuggled by the cartels?

A I wouldn't called it routine, but it happens frequently, yeah.

Q When we talked a little earlier, you mentioned that you had recorded a public service announcement in Spanish that was played in Mexico.

A Uh-huh.

Q What exactly, if you remember, did the public service announcement say, in English?

A So I mentioned the fact that the cartels are telling you that they can bring you across with no problem. I mean, they consider you a commodity, not a human being, and they will stop at nothing to make money. So you being a commodity, it doesn't matter if something happens to you. So they're gonna lock you in an 18-wheeler; they're gonna walk you through the brush, and if you fall behind because you

sprain your ankle, they're gonna leave you behind to find your own way home.

They have no regard for human life. And I mentioned the fact of the San Antonio 50 that passed away in the back of an 18-wheeler, including two children, and I said, it's not worth it. I believe at the end I said, nothing is worth your life, and crossing the border illegally should not be a death sentence, so please think twice before you cross the border illegally.

Q Do you know when that was published initially?

A Should've been in March, this March -- this past March. When I got there, that was one of the first things I did.

Q And is that still being broadcast currently?

A I don't know if it's still being broadcast.

Q You talked earlier about the need to recruit additional Border Patrol agents. You said that if you could double your workforce you would.

A Yes, sir.

Q What are you doing in the Laredo Sector to recruit talented law enforcement agents?

A We go to different community functions. We've set up a -- we have active recruiters, and that's what they do full-time. We go to the colleges to recruit. We have the national youth (ph) community program, and we participate in that as well. We go to the bull-riding events, and we -- you name it, we try to -- we go to career days at high schools and colleges and everything else, so --

Q Did you participate in those activities at your prior stations as well as Laredo Sector?

A I have. I did a PBR event in Dallas-Fort Worth, the Professional Bull Riders Association.

Q And do you know how long it takes, once you've identified a suitable candidate, to onboard that individual to the Border Patrol?

A At least a year, I believe, is the process.

Q And that's an improvement over what it was maybe a decade ago, correct?

A What even I went through. I think it took me, like, 2 or 3 years to get in.

Q So it's a year to onboard. Does that include training, or is that just to start at the academy?

A That's just to start the academy.

Q How long is the training process at the academy?

A The academy is about 5 months.

Q So from the time you identify a suitable candidate until they are in the field with other law enforcement officers is about a year and a half?

A Yeah, that's safe. That's a safe --

Q What are you doing in the Laredo Sector to ensure that you can retain Border Patrol agents who are already working, to prevent them from going to other law enforcement agencies or leaving the workforce entirely?

A Yeah, so my focus is my leadership team, right? To make sure that they have the -- they can do whatever they have to do to make sure our guys are taken care of -- our guys and gals. You know, even if that includes something as -- cook for them every now and then. Start a fire and throw some burgers on the grill, or do whatever you have to do. So we're always constantly talking to them.

I came from a sector where I had -- before I left RGV, I had two suicides and I had an ATV accident that I had to personally do the knock on the family's door to let them know what happened. So this means a lot to me and I take it personally, because I'll never forget the look on these people's faces that I had to tell. So if I never do that

again for the rest of my career, I'll be happy.

So I tell that story to my agents as well. And I tell them that "I'm here for you. If nobody else will listen to you, I will. Give me a call." And they can all get a hold of me.

So, to me, my agents' resilience is everything to me. Because we have the battle scars of resiliency, and they're not pretty. And they're very fine, so you can tear them away very easy. And every time we have a tragedy in our ranks, it shows. So that's very important to me.

Q The agent suicides and the ATV accident, you mentioned that occurred in --

A In McAllen.

Q In McAllen?

A RGV. Yes. The suicides were 1 week apart, and the ATV was 2 weeks after that.

Q Is Border Patrol implementing measures to assist Border Patrol agents with mental health issues that they may have, to reduce the rate of suicides among the workforce?

A We do. We have a very good clinician program right now. In fact, that's the lady that walked me through at 3:00 in the morning to go knock on the door.

And I remember, she grabbed me, she turned me around, and she goes, "Look at me." She goes, "Do you know what you're going to say?" I go, "I have no idea what I'm going to say." And she was like, "No pressure, but they're going to remember every single word you tell them." She goes, "Don't tell them he passed away. Don't tell them he expired. Just tell them he died." And I'll always remember that.

And those ladies are there for our agents too. They walk around in the musters; they walk around the stations. Our guys actually love them. Because every time the

guys are going to get together, they always go and get them and bring them with them to either be at a barbecue or what have you.

So that program in itself, for me, is worth a lot. And it's helped out our agents a lot to talk, even if it's marital problems or whatever it is, financial. It helps.

Q What is that program called?

A It's a clinician program. We used to have the EAP, right, the Employee Assistance Program? And that was kind of -- I don't know -- it was --

Q Would you characterize EAP as a referral service?

A Yeah, that's exactly what it was. And if you talked to one guy -- if I talked to you today and I call tomorrow for the same problem and she would pick up and she had no idea what I was talking about.

So it was impersonal, as opposed to these clinicians that are there physically with us. And a lot of them are psychologists and everything else. So they're a big help to our agents, and they have a lot more faith in them.

Q Are these employees of Customs and Border Protection?

A Some of them are now, but some of them are also contractors. But that's a program I'd love to see be expanded.

Q Is it being piloted in Laredo, or has it been --

A It's not piloted anymore; we have some permanent in RGV and Laredo. And I think we have some other ones throughout the country; I just can't tell you where, because I don't know. But I know for sure Laredo and RGV both have those.

Ms. O'Connor. Can I just jump in and ask a quick followup?

I know that sometimes for law enforcement mental health can be tricky, because they also don't want to end up in a position where their job can be in jeopardy.

Do you think that these agents trust these clinicians and it's helping?

Mr. Martinez. Yes.

Ms. O'Connor. Okay.

Mr. Martinez. Definitely. Yeah, I know what you're saying, but yeah.

BY MR. RUST:

Q We talked about the Parole Plus ATD program. Do you know how often your agents utilized parole outside of the Parole Plus ATD program to process individuals who've illegally crossed?

A I can't give you an exact number, but it was -- it was quite a bit, yes.

Q It was quite a bit? In RGV or in Laredo?

A I'm only speaking for Laredo. RGV, I mean, yeah, when I was there, we used it. I can't give you an exact number, though.

Q And for those paroles outside of the Parole Plus ATD program, do the agents always document the rationale for the parole in law enforcement databases or the form I-213?

A Yeah, they should. Yes.

Q So the agents would evaluate what the significant public benefit or urgent humanitarian reason is, and that would be documented in those forms for each individual?

A Yes.

Ms. Slocum. Are you taking about parole generally or Parole-ATD?

Mr. McDonagh. Parole generally.

Ms. Slocum. Okay. You said outside of --

Mr. Rust. Outside of the Parole-ATD.

Ms. O'Connor. I think that concludes our round of questioning.

Mr. Martinez. Thank you.

Ms. O'Connor. We can go off the record.

[Recess.]

[1:00 p.m.]

Mr. Yin. Let's go on the record. The time is 1:00 p.m.

Go ahead.

Mr. Jonas. Thanks. So I just want to raise one quick thing that people can ask about and have followup questions about.

I think there may have been some confusion in the last round of questions from the chief as between parole outside of parole with ATD versus notices to appear and the frequency with which one was used versus the other -- I think the latter far more frequent than the former, the parole without ATD.

So, I mean, the chief can give you a quick explanation, and then, you know, each side can dig into it if you'd like.

Mr. Martinez. Basically, the parole, before we used it recently, was used only in extreme humanitarian -- and I think I said it before -- humanitarian instances, right? Like, if a child was sick, had to go to the hospital, we'd parole the parent in or something like that. But that was very rare. It wasn't, like, an everyday thing.

That's one thing I want to clear up.

Mr. Yin. Great. Thank you, Chief.

BY MR. YIN:

Q Chief, I'd like to circle back to operational control and the metrics that Border Patrol uses to measure border security.

My Republican colleagues asked you about operational control. Do you recall that?

A Yes.

Q And they asked you about operational control in regard to the 2006 Secure

Fence Act.

I'm going to hand you what will be marked as minority exhibit A.

[Martinez Minority Exhibit A

Was marked for identification.]

BY MR. YIN:

Q Do you recognize what I just handed you?

A Yes.

Q And what is this?

A It's the Secure Fence Act of 2006.

Q That's correct. This statute was first enacted in 2006 under George W. Bush. You were with Border Patrol at that time.

Now, I'm going to point you to page 2, and there's a highlighted paragraph there that begins, "OPERATIONAL CONTROL DEFINED." Do you see that?

A Yes.

Q Now, this paragraph reads: "OPERATIONAL CONTROL DEFINED. In this section, the term 'operational control' means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."

Chief Martinez, based on your tenure and knowledge of Border Patrol operations throughout your career since 1992, has there been a year during your career where Border Patrol has prevented all unlawful entries into the United States?

A No.

Q And you would agree, then, based on your answer there, as defined by the Secure Fence Act, operational control has never been achieved under any administration?

A Correct.

responses for only 16 percent of CBP and ICE law enforcement personnel to develop its conclusions.

Were you aware of that?

A No.

Q My Republican colleagues pointed you to one statement, made on page 22 of this report, where one agent is quoted as saying they're operating, quote, "with one hand tied behind [their] back."

You answered in response to my colleagues pointing that out that you can't speak for this one agent. Is that correct?

A That's correct.

Q And you also mentioned that, were you to poll 20 different agents about their opinions, you would receive 20 different opinions. Is that right?

A That's correct.

Q In that vein, the DHS Office of Inspector General talks about their methodology in this report, and what they say on page 26 -- I'm just going to read this to you.

Quote, "Our survey was not a statistical survey intended to project our results and generalize across the population." The DHS Office of Inspector General continues, "Throughout the report we are clear that the survey results reflect the individuals' opinions and do not represent the views or experiences of all law enforcement personnel at CBP and ICE."

Were you aware that DHS OIG outlined that in this report?

A No.

Q In another part of the report, the DHS OIG again talks about the methodology they used to come to their conclusions in this report. And on page 32, I

will read you a couple sentences that's listed here.

The report says, quote, "We conducted this performance audit from November 2021 through November 2022 pursuant to the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards, with the exception of data reliability. Specifically, we did not test the accuracy of data associated with the current operating environment at the Southwest border because we did not have access to various systems used by CBP and ICE."

Were you aware that DHS OIG did not test the reliability of the data in this report?

A No.

Q As we discussed earlier, every administration has its own policies on immigration and border enforcement, correct?

A Correct.

Q Is it fair to say that Border Patrol agents are used to dealing with changing administration policies as they carry out their mission?

A Yes.

Q That's part of the job.

A Yes.

Q I'll represent to you that the report goes through various findings that the DHS OIG makes in this relatively narrow survey that they conducted. One of the findings they make is -- strike that.

One of the findings they make says, quote, "CBP and ICE workloads have grown significantly due to factors beyond the Department of Homeland Security's control, namely increasing border encounters and travel volume."

Chief, would you agree that increasing encounters and travel volume are partially a result of violence, political instability, and economic stagnation in migrants' home

countries?

A Yeah, that's been one of the factors.

Q And those are called push factors. Is that right?

A Push, right.

Q President Biden --

Mr. Ombres. And -- I'm sorry -- Chief, just to kind of follow up on that, I think earlier you were talking about kind of the main factors that drive migrants to come to the border. And as I wrote it down, you said that those main factors were economic factors, coming for better economic opportunities in the United States than their home country; safety factors, escaping unsafe conditions in their home country; and misinformation from cartels.

Would you agree that those are kind of the main factors that push migrants to come to the U.S. border?

Mr. Martinez. Yes.

BY MR. YIN:

Q The report notes that detention and processing is preventing Border Patrol agents from carrying out the other duties they were hired for.

Other sector chiefs that we've spoken to have informed us that, in their opinion, agents prefer being in the field as opposed to processing individuals. Would you agree that agents prefer to be in the field?

A Yes, I would.

Q And would you agree that programs and policies that allow more agents to work in the field improve morale in your sector?

A That stands to reason. Yes.

Q Now, we previously discussed how the addition of processing coordinators

have allowed your agents to return to the field, right?

A Correct.

Q And we discussed the deployment of a total of 4,000 military personnel to the southern border to carry out some administrative tasks, like processing. Is that right?

A Right, they get deployed for administrative -- correct.

Q And do troops performing administrative tasks assist your Border Patrol agents in returning to the field?

Mr. Jonas. In Laredo or --

Mr. Yin. In Laredo, yes.

Mr. Martinez. No. In Laredo, we don't have any.

BY MR. YIN:

Q Okay. How about --

A They all went to El Paso, I believe.

Q That's fair.

In your experience with Border Patrol, has the assistance of troops carrying out some administrative tasks, to your knowledge and experience, assisted with Border Patrol agents returning to the field?

A If they're doing jobs that Border Patrol agents were doing before, yes.

Q Great.

We discussed the volunteer force briefly. These additional volunteers allow some Border Patrol agents to return to the field as well. Is that correct?

A That's correct.

Q Now, you talked with my Republican colleagues about the deployment of clinicians to the Laredo Sector. Do you recall that?

A Yes.

Q So DHS submitted a response to this morale report. And, in that response, DHS notes that it's deployed clinicians to several sectors along the southern border to provide healthcare services, critical incident responses, and outreach activities.

You touched on this briefly, again, with my colleagues, but clinicians have been deployed to the Laredo Sector. Is that right?

A Yes.

Q And what services do these clinicians provide?

A Counseling services for our agents. They can also set up appointments for our agents if they wanted more in-depth therapy or what have you. But they're just there to listen. And they're good at it, so --

Q And have these clinicians been beneficial to the health and well-being of the agents in your sector?

A Yes.

Q Do you think they've improved morale in your sector?

A Yes.

Q Are you aware of any programs or efforts to increase recruitment at Border Patrol, generally?

A In general, yes.

Q How about in the Laredo Sector?

A Yes.

Q Can you describe the programs in the Laredo Sector?

A Sure. We have full-time recruiters. That's all they do. And they go to the different -- we're about 2 hours from San Antonio, so they go to San Antonio and the big cities -- 2 hours from San Antonio, about 3 or 4 hours from Houston. So we go to all

these -- whatever community functions are going on out there, any big events, our recruiters are there to spread the word, basically.

Q Okay. And how about social media? Do the recruiters --

A Especially social media, yes. Facebook, Instagram, everything.

Q Okay.

And, to your knowledge, is Border Patrol offering any incentives to increase recruitment?

A I don't know about right now. I know they were, but I haven't been keeping up with it, so --

Q What was your understanding of those prior incentives?

A I know there was a sign-on bonus -- I'm not sure -- depending on your qualifications. I think that's how -- it was based on what you would get.

Q Okay.

I'll turn it over to my colleague.

BY MR. EWENCZYK:

Q I just want to -- on this report, you know, on page 23, for example, the first full paragraph, it says, "Law enforcement personnel expressed frustration over this, explaining that when Title 42 is lifted, the border would be 'flooded.'"

You talked earlier about the situation at the border in your district and RGV. Would you agree that that's not what happened, that, looking at the situation now, the border's not flooded?

A Right now?

Q Yeah.

A I can't speak for RGV. I'm not --

Q Or in Laredo.

proportion. We never whipped anybody. And, regardless of what really happened, it was never really cleared up, and that takes a toll on our agents, right?

We've seen what one human being can do to another, and it's pretty cruel. And I serve alongside some of the most empathetic and humane people in this country, and I'm proud to work with them, because I've seen some of the stuff that they do for other people.

So that's -- and sometimes, you know, we tell them not to focus on media stuff and everything else, but it's human nature, right? Sometimes they do listen to it, so --

A In Laredo? Yeah. No, we're not flooded.

Q And so is it fair to say that this worry that was expressed has not panned out, in your observation?

A In my sector, yes, correct.

Q And you talked earlier about the challenges that Border Patrol officers face, kind of, some of the harrowing scenes that you've come across, you know, watching migrants who are subjected to cruelty and terrible treatment and sometimes death by the cartels.

Are those -- is the challenge of the Border Patrol mission kind of what undergirds some of these morale issues for Border Patrol agents? Is it the fact that your mission is tough that makes it that there are morale issues for Border Patrol agents?

A It could be a factor, yes.

Q That seeing, kind of, the way migrants are treated, I think you described the toll that that takes on someone. Is that fair?

A That's fair.

Q Would you say that that's kind of one of the -- the main factor that hurts morale?

A I wouldn't call it the main factor. It's one of them.

Q What are some of the other factors?

A Just the overall national attitude towards law enforcement. I mean, for a while there, everybody was against us, or it basically seemed that way, including the media. Just the negative portrayals of what we do for a living.

You know -- and like I said earlier, we're all parents. We care about people. We're sons, we're daughters. And that doesn't get portrayed in the media sometimes. The Del Rio thing with the horses, for example, you know, that got blown way out of

[1:18 p.m.]

Mr. Ewencyk. What I didn't hear you talk about is changes in administration policies. That's something that happens from administration to administration. That's not one of the main factors, right?

Mr. Martinez. No. No, it's not.

BY MS. MARTICORENA:

Q Chief, I'd like to talk a little bit more about the end of title 42 and what you've seen in the Laredo Sector --

A Okay.

Q -- since May 11th.

So in the days following the wind-down of title 42, Secretary Mayorkas was quoted as saying, quote: Over the past 2 days, the United States Border Patrol has experienced a 50 percent drop in the number of encounters versus what we were experiencing earlier in the week before title 42 ended at midnight on Thursday -- which was May 11th.

Are you familiar with that statement?

A Vaguely, yes.

Q And then I'll go further and say Mayorkas also said that Border Patrol agents had encountered 6,300 border crossers on Friday, so May 12th, and another 4,200 on Saturday, May 13th, compared with more than 10,000 shortly before title 42's expiration.

Does that sound right?

A Yes.

Q Based on your 30 years of experience with Border Patrol, would you agree that going from 10,000 migrants a day to 6,000 and then 4,000 in the span of less than a week is a pretty remarkable decrease in encounters?

A Yes.

Q Did you experience a drop in encounters in Laredo Sector following the end of title 42?

A No. Our flow kind of remained the same.

Q And have the number of migrants you received from other sectors, so in decompression efforts, has that changed since the end of title 42?

A It has. Right now, Del Rio has seen a slight increase in Hondurans. And we're helping them with that right now, so --

Q So has the number of migrants in your sector, whether they cross in Laredo or elsewhere, is that pretty similar to before title 42? Is it a decrease? Is it an increase?

A I'd say it's a decrease right now.

Q Thank you. And then are you aware that, just days before title 42 terminated earlier this month, the Biden administration finalized a rule to incentivize the use of legal pathways?

A I heard something about that, yes.

Q Can you explain what the rule does?

Mr. Jonas. Don't speculate.

Mr. Martinez. Yeah. If it's a legal pathway, it wouldn't affect us because we don't deal with -- we do everything between the ports of entry, not at the ports of entry.

BY MS. MARTICORENA:

Q Understood. Thank you.

So, Chief, my Republican colleagues surmise that one of the reasons there was a significant increase in migrant encounters in recent years was because the consequences for unlawfully crossing the border were not accurate. And I know we touched on this

before, so my apologies.

To be clear, if an individual was removed under title 42, did they face any legal consequences, either civil or criminal, for entering the country illegally?

A Title 42? No.

Q And, under title 42, an individual could enter the country any number of times, be removed, and not face legal consequences. Is that correct?

A That is correct.

Q So, conversely, under title 8, which has been used for decades, correct?

A Correct.

Q An individual being removed would face a number of consequences, including being barred from reentry to the United States for a couple of years. Is that correct?

A Depending on the situation, yes, that could be correct.

Q So, with the end of title 42 earlier this month, we have returned to exclusively processing individuals under title 8, correct?

A That is correct.

Q Okay. Thank you.

So I wanted to clarify a few -- or follow up on a few things from the previous session.

Chief, is it true that, throughout your career in Border Patrol, that Border Patrol has tried to keep people in custody for as little amount of time as possible?

A Yes.

Q And that's, again, throughout your entire career, correct?

A Yes.

Q And then do you recall we discussed Venezuela very briefly in the last

session?

A Yes.

Q Are you aware that the -- that DHS has made an agreement with Mexico to return Venezuelans there so that they can be subject to title 8?

A Yes.

Q And is that a change from recent years, in being able to deport Venezuelans?

A Yes, it is.

Q And then I wanted to follow up briefly on the kind of processing pathways.

There was some discussion on expedited removal. Is it fair to say that putting someone in expedited removal is mostly under ICE's purview?

A Yes.

Q And then, whether someone goes to ICE detention or gets ATD and a device, is it fair to say that that's determined by ICE?

A Yes.

Q Thank you.

And then, finally, you talked a little bit about the flows you can manage in the Laredo Sector and compared that to the last few years.

Is it fair to say that you have flows you can manage now similar to what you experienced in Laredo in your prior stints in Laredo or that it's manageable in a similar way?

A Yes.

Q Okay, thank you. And then, apologies, one more followup.

When we were discussing MPP in the prior hour, were you speaking about your experience with MPP broadly across the southwest border or primarily of what you saw in Laredo?

A I don't recall what the context of that --

Q You were asked if you found MPP helpful.

A Okay.

Q And you said you did.

A Yes.

Q So I'm asking about your experience with MPP, if you're speaking mostly from experience with Laredo or across the southwest border.

A I can only speak for Laredo and RGV because those two places I served the past 2, 3 years.

Q And you found it helpful?

A Yes.

Q Thank you.

Mr. Yim. Go off the record.

[Recess.]

Ms. O'Connor. We'll go back on the record. The time is 1:34.

BY MS. O'CONNOR:

Q Okay, Chief. So I apologize in advance. I'm doing a little bit of followup, so I may bounce around topics so bear with me.

First off, are you aware that the committee offered to conduct this interview in Laredo, or the committees?

A No.

Q Would you have had a preference of whether we conducted the interview in Laredo or Washington, D.C.?

A Yes.

Q What would your preference have been?

A Laredo.

Q I want to jump to processing pathways just so we can clarify -- clarify everything because it sounded like there was a little bit of confusion.

So I want to just break it down in talking about Laredo before title 42 expired, Laredo now, and your experience in RGV.

A Okay.

Q So, with title 42 expulsions in Laredo prior to the expiration --

A Okay.

Q Laredo was relying on title 42 tremendously, right?

A Yes.

Q About like 90 percent of people were being expelled?

A That's safe, yes.

Q And then Laredo now, obviously, there's no title 42 expulsions, right?

A Right.

Q When you were in RGV, were they utilizing title 42 expulsions?

A Yes.

Q Do you know about the rate they were doing it?

A I don't anymore, no.

Q There were many more family units and children in RGV than Laredo, right?

A Yes.

Q So it probably would have been less --

A Yes.

Q -- utilized?

Okay. Let's move on to the notices to report. So we talked about those earlier. They're not the notices to appear, but these are the ones where the aliens receive a

notice to go report to ERO once they get to their final destination, and they're released, right?

A Right.

Q And those people are released directly from CBP -- or Border Patrol custody, right?

A Right.

Q In Laredo, before the expiration of title 42, they weren't using notices to appear while you were there, right?

A Right.

Q And they're currently not using -- or, I'm sorry, notices to report.

A Report. They used them for -- I think we used them for 24 hours only in March, the notices to report.

Q Okay. In Laredo?

A Right. And then it was -- whatever happened legally. I don't know what happened, but --

Q In March of this year, you used them?

A Yes, 24 hours.

Q For one day?

A Yeah, for one day.

Q Okay. And who told you to do that for that day, do you know?

A I had it come from Headquarters.

Q Would that have come through an email or a phone call?

A Probably a Teams meeting, yeah.

Q Currently in Laredo, after that March day, have you used notices to report?

A No.

Q When you were in RGV, did they use notices to report?

A I don't recall. No, I don't think so.

Q Okay. Parole plus ATD, which is CBP encounters, processes for parole, and then send them to ICE to get their ATD, but no NTA is issued, right?

A I believe so, right.

Q So, before the expiration of title 42, when you first got back to Laredo, were they using parole plus ATD?

A It stands to reason, yes, I think. I'm sorry. I'm not an expert at processing because I don't --

Q That's okay. I'm just trying to clear the record. So, if you don't know, you don't know.

A Because I haven't processed anybody in 20 years.

Mr. Jonas. Don't make the record more confusing. If you know, say it. If you don't, say it.

BY MS. O'CONNOR:

Q So you're not sure if they were using it?

A I'm not sure.

Q Okay. Currently in Laredo, are they using parole plus ATD?

A I don't know.

Q When you were in RGV, were they using parole plus ATD?

A Yes.

Q And earlier you had said that parole plus ATD was largely used because of when there were detention capacity issues?

A Yes.

Q Expedited removal. I think my colleagues mentioned that ICE initiates

expedited removal, but that actually happens with Border Patrol, right?

A Border Patrol, correct.

Q You guys issue the order?

A Yes.

Q Before the expiration of title 42, were you utilizing expedited removal in Laredo?

A Yes.

Q Were credible fear interviews being conducted in Laredo?

A We do, yes.

Q And, if somebody passes a credible fear interview, are they released with notice to appear?

A They're released. I'm not sure of the exact pathway, but yes, they're released.

Q Do they typically stay in Border Patrol custody waiting for that credible fear interview?

A Yes.

Q And is that happening now too after the expiration of title 42, the same thing with expedited removal?

A I believe so, yes.

Q And were you using expedited removal in RGV?

A Yes.

Q Before the expiration of title 42, were you utilizing notices to appear in Laredo?

A I'm not sure.

Q When -- now in Laredo, are you utilizing notices to appear?

A I haven't been there in a while, so I'm not sure.

Q When you were in RGV, were they utilizing notices to appear?

A At certain points, yes.

Q You mentioned before street releases. Does Border Patrol right now ever issue NTAs and then release someone to the street?

A We haven't done any street releases at all.

Q Ever, since you've been there?

A No.

Q Were they doing street releases in RGV?

A No, not while I was there.

Q Are you familiar with the memo that came down from Chief Ortiz the night before title 42 expired regarding street releases?

A Vaguely. Which one was it? I've seen a lot of memos, but --

Q So there was a memo that authorized Border Patrol to issue parole and then release aliens into the street if NGOs were over capacity.

A Yes.

Q And Laredo didn't have to utilize that?

A We did not have to utilize that.

Q Did Laredo see a surge of migrants in the days leading up to the expiration of title 42, like other sectors?

A No.

Q Before the expiration of title 42, did you and Laredo receive any guidance from headquarters or elsewhere on how to prepare for the expiration of title 42?

A The only preparation we were told was -- we didn't expect our flow to increase, so I was just preparing to help other sectors.

Q Did you receive any sort of estimated data estimating potential border crossers into Laredo after the expiration of title 42 that led you to believe that there wouldn't be an increase, or was that internally decided?

A I'm sorry.

Q Yeah, that was unclear.

Did you receive any data from headquarters about anticipated numbers after the expiration of title 42?

A For Laredo, no.

Q So you didn't anticipate an increased number, based on just your local intel?

A Basically, yes.

Q Okay. Since the expiration of title 42, in most sectors, there's been a drop in encounters. Why do you think that has happened?

A I think the Mexican Government is actually helping out as far as working with our government to -- or somebody within DHS to -- either they're giving the alien -- the migrants permission to work in Mexico or something's going on. I'm not exactly sure what exactly it is, but I know we've talked to some of the -- my Mexican counterparts, and they're telling us that they're actually -- they're seeing less people in their -- in their migrant facilities as well, so --

Q So we've also heard that there are less people in the migrant facilities, but that there are actually some areas where migrants are just congregating in the streets.

Do you know if that is happening and why that might happen?

A No, I wouldn't. I haven't seen that in Mexico, so --

Q Other than the actions by the Mexican Government, are there any other reasons why encounters may have dropped --

A I wouldn't know.

Q -- that you can think of?

A No.

Q I'm going to jump again. So we talked briefly about policies before.

Would you say that the perception, migrants' perception of favorable policies would be a pull factor to come to the United States?

A Yes.

Q When President Biden first came into office, he issued a 100-day pause on enforcement and removals. Are you familiar with that? Do you remember that happening?

A Not really.

Q Do you think that issuing a national pause on enforcement and removals could be a policy that's perceived to be favorable for migrants?

A Yes.

Q I'm going to jump again. Earlier, you mentioned that -- you were talking about Venezuela, that we can't send -- we currently don't have any flights back to Venezuela, so we can't send people back there. Is that right?

A Right.

Q Are there other countries right now that we are not able to send people back?

A Nicaragua being one.

Q Are there any others?

A I believe Cuba, and Peru is another one.

Q Are you familiar with the asylum cooperation agreements between DHS and some of the Northern Triangle countries under President Trump?

A I'm not intimately familiar with them, but I've heard of it, yes.

Q Do you think that having the ability to send asylum seekers to other countries to apply for asylum would be helpful for helping to secure our border?

A Yes.

Q When it comes to your outward-facing comments and messaging, are you -- does anybody control what you can or cannot say public-facing?

A No.

Q While you've been in Laredo or RGV, have there been any visits by high-level officials from Homeland Security, such as a Secretary or anyone else from Headquarters?

A Just Raul Ortiz. That's it.

Q The Secretary hasn't come when you've been there?

A Not while I've been there.

Q Have you been there when there have been any Presidential or Vice Presidential visits?

A No.

Q When someone from Headquarters comes, is there any preparation that happens in the sector for that visit?

A No.

Ms. O'Connor. I have no further questions.

BY MR. RUST:

Q I just very quickly wanted to clarify the -- you had mentioned before that parole was very common in RGV, I believe. But what I think you meant to say was that parole plus ATD was very common for a time and that parole -- I just want to make sure I understand correctly -- and that parole was very rare.

A Exactly. Very rare unless there was a humanitarian issue going on or something.

Q In the Laredo Sector currently, have we reverted back to parole for Border Patrol being a very rare occurrence?

A Yes.

Q So it would be -- it's only utilized in exceptional circumstances in Laredo Sector currently?

A That is correct.

Mr. Rust. I don't have anything else.

So, on behalf of Chairman Comer, thank you very much for appearing today to answer all of our questions. We really appreciate that.

Mr. Martinez. It was my honor. Thank you.

Ms. O'Connor. Thank you, sir.

Mr. Martinez. Thank you, ma'am.

Ms. O'Connor. We can go off the record.

[Recess.]

Mr. Yim. We'll go on the record. The time is 1:57.

BY MR. YIM:

Q Chief, earlier you spoke about the men and women that serve with you at the Laredo Sector, and you mentioned that you were proud to serve with the men and women of Border Patrol in the Laredo Sector.

Can you expand a little bit about the men and women that serve with you, why they chose to come to Border Patrol and, you know, what makes you proud to serve with them?

A Sure. And I can speak for both sectors, right, RGV and Laredo. Being there 31 years, I was present when we lost the first female in the line of duty. She was shot to death by a guy. She was ambushed. And she was also a personal friend of

mine.

So that kind of like set -- this was back in 1998. It kind of set the tone for the rest of my career. She died, along with another agent. They were both ambushed. They were both shot and killed. In fact, it happened in my hometown.

And I remember thinking that -- because my dad died the year before. And I remember thinking, man, I'm glad he's dead, because I knew he would be panicking, because it was before cell phones and everything else, right? So nobody knew who died. All we knew is there were two Border Patrol agents on the ground.

And so that kind of set the tone for me, and it kind of got my mind set and, man, our people should always come first, because we never know when our last breath will be, right?

And the same thing for the migrants that we encounter. You know, a lot of people think that we don't care, that we're heartless or whatever. But the opposite is very true. I mean, our guys -- like I've kept saying over and over here, our guys are parents. They're moms, dads, sons and daughters. And the people tend to forget that sometimes because, you know, they're stereotyped into whatever.

But -- but I take it personally when we get attacked. I take it personally when my agents get attacked, because I care about them and because of what I've experienced throughout my career.

You know, I've buried a lot of friends. I had -- two years after that female passed away and her partner, I had to bury two more friends from the same station. They drowned in the Rio Grande River. They jumped -- their boat flipped over and they drowned. And I put both of them in body bags. I was there for that too.

But -- and I've also been there when people get cut up by the train, the migrants get cut up by the train. And I've seen the worst, unfortunately.

So that's how I lead my life now, man, and I never forget the human part of our job. And part of that -- of our job as the humans that do -- that wear the green uniform, and that sometimes is forgotten.

And I want to make sure, it's my goal in life that that never gets forgotten, because they keep doing it over and over. They see the worst in humanity, and they see the best in humanity, and they keep doing it every day and they do it with honor. Do we have some bad apples? Sure. Everybody does. You go to Walmart; you can have one of the Walmart employees shoplifting probably too, but then you have the other guy that's helping out the old ladies down the -- to take their groceries to the car.

So, yeah, that's how -- my agents mean everything to me, and because they're empathetic, because they're very humane and very -- I don't know. I'm running out of adjectives here, but you get it. And so, to me, there's nothing more important than my agents.

Q So you mentioned your agents care and they serve with honor. And so I guess would it be fair to say that the agents who serve under you strive to secure the border every day?

A Yes.

Q And, drawing on your many years of experience with Border Patrol, you know, the things that you've seen that you just outlined, is it safe to say that Border Patrol agents are committed to their mission of securing the border?

A They're very much committed to their mission.

Q And have you ever instructed your agents to stop securing the border?

A No.

Q In your role as chief patrol agent, have you ever received an order from Secretary Mayorkas to stop securing the border?

A No.

Q Have you ever received an order from President Biden to stop securing the border?

A No. I never had an interaction with the President, but --

Q Fair enough. Fair enough.

A Or Mayorkas, for that matter, so --

Mr. Yim. I'll turn to my colleague.

BY MR. EWENCZYK:

Q Just a few questions, Chief.

We were talking in the last round about parole plus ATD, and I just wanted to kind of clarify for the record what that policy was about.

Would you agree with me that parole plus ATD, when it existed, was a program under which migrants were paroled but also had to comply with these alternatives to detention, which included things like GPS tracking, ankle monitoring, monitoring by cell phone, which was there to ensure compliance with release conditions?

A As I understand it, yes.

Q I also wanted to talk a little bit -- we've talked about it throughout this interview, but the things that have been making your job at the border easier and that would continue to make your job easier, to make it easier to fulfill your mission at the border, and so, having heard you, it sounds like one of the things that has helped and would continue to help is having more people at Border Patrol to help with your mission. Is that fair?

A I'll never say no to more help, yes.

Q And help might look like more agents, but also I think you've talked about how processing coordinators have helped, how the professional caretakers and medical

support contractors have helped; data processing contractors have helped.

Is that fair to say, that all those things help you fulfill your mission at the border?

A Yes.

Q And then it sounds like, you know, investments in technology that you've already started to see at the border have been helping with your mission. I think you talked about, you know, the help of drones and towers and phones with facial recognition are all the things that have been deployed at the border and that help you accomplish your mission.

A That is correct.

Q And do things like increasing the efficiency of processing, including using things like the CBP One app, are those all helpful to your mission?

A The improvements in processing help. I'm not sure about the CBP One app. We don't deal with that so -- but everything else, yes.

Q And then you've talked about the importance of consequences. And so would you agree that things like increasing detention capacity, increasing the speed of removal of migrants who are deemed not to be here on a lawful basis are all things that are helpful to you and chiefs in other sectors in conducting your mission at the border?

A Repeat that again, please.

Q Sure. Do you agree that investments in things like increased detention capacity and increasing the speed of removal of migrants who are deemed not to have a lawful basis to remain in the United States I think that are helpful to your mission?

A It helps.

Q And, I mean, you explained that, in Laredo Sector, most of the migrants are from Mexico so can be retained, but for migrants who come from other countries I assume you would agree that increasing removal flights is helpful?

A Very much so, yes.

Q As is increasing the consequences for those who are ordered removed from the country?

A Yes.

Q And, you know, you've discussed -- we discussed earlier how push factors, like economic conditions and safety conditions, are big factors in driving migration. I assume you would agree with me, in light of that, that working with regional and international partners to expand lawful pathways to migration and to address the root causes of migration and step up enforcement in those countries is important?

A It is.

Q And then you were talking a little bit with my Republican colleagues in the last round about NGOs. And is it fair to say that it has always been the case that there are NGOs that have been around to help provide assistance to migrants who are being released, things like housing assistance, counseling, other services. Is that fair?

A That's fair.

Q And I think, as we were discussing, the NGOs obviously have limited resources. And so, you know, you were discussing with my colleagues the situation about -- a situation where a migrant is released but an NGO doesn't have the capacity to take them in. Do you remember discussing that?

A Yes. That you have limitations, right, so --

Q But that's not something you've observed in Laredo?

A I haven't seen it, no.

Q So, to the extent that is happening in other sectors, would you agree that providing more resources to the NGOs, that they have more capacity, would be helpful?

A I can only speak for Laredo. I don't feel comfortable talking about that,

so --

Q And you were discussing earlier a directive that you received from Chief Ortiz about releasing migrants when the NGOs don't have capacity. Do you remember that?

A Yes.

Q And am I correct in understanding that those are just guidelines on how migrants should be released when NGOs are over capacity in a way that is safe and humane?

A Yes.

Q And is it fair to say that those -- that directive that Chief Ortiz released was an update to existing guidance on what to do in those kind of situations?

A Update would be fair, yes.

BY MS. MARTICORENA:

Q I just want to follow up with one question: Throughout your career, have Border Patrol agents always been involved in processing migrants?

A Yes.

Q And is it fair to say that there are parts of processing that a law enforcement agent has to take care of?

A Yes.

Ms. Martcorena. Thank you.

Mr. Yim. Chief, on behalf of the Democratic staff of both committees, we just want to say thank you for your time today.

Mr. Martinez. It's been an honor. Thank you.

Mr. Yim. And we'll go off the record.

[Whereupon, at 2:10 p.m., the interview was concluded.]

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
joint with the
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: SEAN LYNN MCGOFFIN

Tuesday, April 25, 2023

Washington, D.C.

The interview in the above matter was held in room 6480, O'Neill House Office Building, commencing at 8:59 a.m.

Present: Representatives Green and Higgins.

Appearances:

For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

JENNIFER GABB, LEGISLATIVE ASSISTANT,

OFFICE OF REPRESENTATIVE HIGGINS

JAMES MANDOLFO, GENERAL COUNSEL AND CHIEF COUNSEL

FOR INVESTIGATIONS

SLOAN MCDONAGH, COUNSEL

JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT

ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL

SARAH JACKSON, MINORITY COUNSEL

DEVON OMBRES, MINORITY SENIOR COUNSEL

MORGAN SOLOMON, MINORITY RESEARCH ASSISTANT

DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

For the COMMITTEE ON HOMELAND SECURITY:

ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND

INVESTIGATIONS COUNSEL

SANG YI, DIRECTOR OF INVESTIGATIONS

LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

BRIANA MARTICORENA, MINORITY STAFF DIRECTOR,

SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT

ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

For the DEPARTMENT OF HOMELAND SECURITY:

STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

For U.S. CUSTOMS AND BORDER PROTECTION:

IVAN ARREDONDO, ADJUTANT TO SEAN LYNN MCGOFFIN

SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

LOUISA SLOCUM, OFFICE OF CHIEF COUNSEL

Mr. Yi. So we can go on the record, please.

Good morning. This is a transcribed interview of Sean L. McGoffin. Chairman Comer and Chairman Green have requested this interview to obtain information regarding border security from the chief patrol agent in charge of U.S. Border Patrol operations in the Big Bend Sector.

Will the witness please state your name for the record?

Mr. McGoffin. Sean Lynn McGoffin.

Mr. Yi. On behalf of the Committee on the Oversight and Accountability and the Committee on Homeland Security, thank you for appearing today. The committees appreciate your willingness to appear voluntarily.

My name is Sang Yi, and I am the director of investigations with Chairman Green's staff for the majority on the Committee on Homeland Security.

I now will ask the majority and minority members and staff from the committees to please identify themselves.

Chairman Green. I'm Chairman Green. I represent Tennessee 7. And I'm excited to be here.

Mr. McGoffin. Yes, sir.

Mr. Rust. I'm James Rust. I'm a counsel for Chairman Comer on the Committee on Oversight and Accountability.

Mr. Yim. Daniel Yim, deputy chief oversight counsel, House Oversight Committee minority staff.

Ms. Jackson. Sarah Jackson, counsel, minority staff with House Oversight.

Mr. Ewencyk. Arthur Ewencyk. I'm with the Democratic staff of the

Oversight Committee.

Ms. Soloman. Morgan Soloman. I'm a research assistant with the Democratic staff of the House Oversight Committee.

Ms. Marticorena. Briana Marticorena. I'm the Democratic staff director for our Border Security and Enforcement Subcommittee.

Ms. Northrop. Alison Northrop, oversight director for the Democratic staff of the Homeland Security Committee.

Ms. O'Connor. Elizabeth O'Connor, majority senior counsel for House Homeland Security Committee.

Mr. McDonagh. Sloan McDonagh, counsel for Oversight and Accountability.

Mr. Mandolfo. James Mandolfo, general counsel for House Oversight for majority.

Ms. Klisarska. Samantha Klisarska, K-I-i-s-a-r-s-k-a, CBP, Customs and Border Protection.

Mr. Arredondo. Ivan Arredondo. I'm the adjutant to Chief McGoffin.

Mr. Yi. Before we begin, I will outline the procedure and guidelines that we will follow in this interview.

Questioning will proceed in rounds. The majority members or staff will ask questions first for up to 1 hour and then the minority members or staff will have an opportunity to ask questions for up to 1 hour if they choose. We will go back and forth for six total one-hour rounds or until there are no more questions.

We will take a short break at the end of each hour. If you would like to take a break at any other time, please let us know. If, however, there is a pending question, I ask that you finish answering the question before we stop to take a break. We will also take a break for lunch after the third hour of questions.

There is an official reporter taking down everything we say to make a written record, so we ask that you give verbal responses to all questions. The reporter cannot record nonverbal answers, such as shaking your head, so it is important you answer each question with an audible, verbal answer.

Do you understand?

Mr. McGoffin. I do.

Mr. Yi. To ensure the court reporter can take a clear record, we will do our best to limit the number of people directing questions to you during any given hour to just those members or staff whose turn it is. To the extent possible, it is also important that we do not talk over one another or interrupt each other.

Please wait until each question is finished before you begin your answer, and we will wait until you finish your response before asking you the next question. That goes for everybody present at today's interview.

Furthermore, the majority members or staff will not ask questions or otherwise interrupt the minority's round of questioning and vice versa.

I understand the witness is accompanied by agency counsels today. Would counsels please state their names for the record?

Ms. Slocum. Louisa Slocum, CBP Office of Chief Counsel.

Mr. Jonas. Steve Jonas, DHS Office of General Counsel.

Mr. Yi. I want to also confirm that you understand that agency counsel represents the agency and not you personally. Do you understand?

Mr. McGoffin. I do.

Mr. Yi. Are you choosing to have agency counsel in the room today?

Mr. McGoffin. Yes.

Mr. Yi. You are encouraged to freely consult with counsel if you choose. If you

need extended time to confer with counsel during the interview, please let us know, and we will go off the record and stop the clock until you are prepared to continue.

During the interview we ask that you please answer any questions in the most complete and truthful manner possible. If you have any questions or if you do not understand a question, please let us know.

Do you understand?

Mr. McGoffin. I do.

Mr. Yi. If you do not know the answer to a question or do not remember, it is best not to guess. If there are things you do not know or cannot remember, please say so and inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

If I ask about conversations or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection. If you recall only a part of a conversation or event, you should give us the best recollection of those events or conversations that you do recall.

Do you understand?

Mr. McGoffin. I do.

Mr. Yi. Although you are here voluntarily and we will not swear you in, you are required by law to answer questions from Congress truthfully, including questions posed by congressional members or staff during this interview. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements.

Do you understand this obligation to tell the truth today?

Mr. McGoffin. I do.

Mr. Yi. Is there any reason you are unable to provide truthful answers to today's interview?

Mr. McGoffin. No.

Mr. Yi. Before I begin, I will turn it over to Chairman Green.

Chairman Green. So I just wanted to make sure you understood the purpose of this from us. When we were in McAllen, Texas, your boss, Chief Ortiz, was very forthright about the situation at the southern border, in fact, contradicting the Secretary on his testimony to Congress about whether or not operational control actually existed at the border, operational control as defined by the law, by Congress.

And Chief Ortiz was very honest and said, we did not have operational control of our southern border, and went on to say that five of our nine sectors were not under the control of us and implied it was the cartels.

So that obviated a need to talk to each of the sector chiefs. It's just intuitive. And we would be remiss in our duties as Congress not to get to that level of granularity.

So that's the purpose of today, to discuss the situation at the border with you. You are the first up, but our intention is to speak to each of the nine sector chiefs. Again, it just makes sense. You'd do the same if you were in my position.

So I'm going to have both the Oversight folks and our guys do it, as he described the methodology of today. I know today will be a long day for you.

I've given depositions like this many, many times in cases, medical malpractice and things like that. They're long days, but you're a professional and you've been at this for a long time.

Thank you for your service to the country, too, by the way.

Mr. McGoffin. Thank you, sir.

Chairman Green. Deeply appreciate it. Your mission is not an easy one.

So I'm going to turn it over to our teams, and I'll step out. But, again, thank you for being here.

Mr. McGoffin. Yes, sir.

Chairman Green. Thank you for being here. You're an important part of the team.

All right. Thanks.

Mr. McGoffin. Thank you, sir.

Mr. Yi. Thank you, Mr. Chairman.

As Chairman Green explained, we are interviewing you today to learn about matters related to border enforcement and your roles, responsibilities, experience, and observations. We are not investigating you personally or for any personal wrongdoing. This is a fact-finding endeavor.

Are you ready to begin?

Mr. McGoffin. Yes.

Mr. Yi. Thank you.

The clock now reads 9:06 a.m. We will now begin the first round of questions.

EXAMINATION

BY MR. YI:

Q Good morning, Chief McGoffin. We will start with some very basic questions related to your voluntary participation in today's interview and learn more about your background and experience.

Have you participated in a congressional transcribed interview before?

A No.

Q Okay. Have you ever been a deponent in a congressional deposition?

A No.

Q Have you ever testified in a deposition for legal cases?

A I don't believe so. To the best of my recollection, I don't believe so.

Q Okay. Can you please tell me everything you did to prepare for today's transcribed interview and the names and titles of those involved in your preparation?

A I just basically studied what was going on within the Big Bend Sector, got statistics and information from my staff to make sure that I had the best knowledge that I could, that I speak coherently about the great work that is being conducted by the men and women in the United States -- in Big Bend and the United States Border Patrol.

I participated with Ms. Slocum and Mr. Sloan. Did I say that right? Steve.

Mr. Jonas. Jonas.

Mr. McGoffin. Jonas, I'm sorry.

Mr. Jonas. That's okay.

Mr. McGoffin. I'm a little nervous.

Ms. Slocum. You're good.

Mr. McGoffin. And other members. I don't remember all their names.

BY MR. YI:

Q Okay. To begin, I guess, moving on to your background, can you please start by describing your educational history?

A I have a bachelor's in organizational management, and I have a master's in organizational leadership.

Q For the record, can you please state your current position with the U.S. Border Patrol?

A I'm the chief patrol agent for Big Bend Sector.

Q When did you first begin your career with CBP?

A In 1996, September.

Q Have you served in your career uninterrupted with CBP during that time?

A Sorry, say that again?

Q Have you served uninterrupted in your career --

A Yes.

Q -- at CBP that whole time?

Do you have prior law enforcement experience?

A I worked the Department of Corrections in the State of Arizona for two and a half years prior to working with U.S. Border Patrol.

Q Okay. And why did you first seek to become a Border Patrol agent?

A When I got out of the Marine Corps I was looking for opportunities, and while I was going to college I got into law enforcement through the Department of Corrections. I found that I really liked law enforcement and I wanted to pursue a career in it.

I applied for the U.S. Border Patrol and several other police, sheriff's departments and different police organizations. And the Border Patrol was the first one that called me, and I've been with them ever since.

Q And where were you first assigned?

A Tucson, Arizona.

Q And what were your roles and responsibilities?

A In Tucson, I was an agent, started out there as a trainee, an agent, moved up through the ranks to first-line supervisor.

Q And how long were you there?

A Eight and a half years.

Q And then where did you go?

A I went to the U.S. Border Patrol Academy where I was a career development

instructor first-line supervisor.

Q How long were you in that position?

A Ten months.

Q And then where did you go?

A From there I went to Lordsburg, New Mexico, as a field operations supervisor, second-line supervisor, and I was there for two and a half years.

Q And then subsequent to that?

A Then I went to headquarters, Washington, D.C., as assistant chief in the southwest border operations at the time. That's no longer a division anymore. I did that for two and a half years as well. And then from there I went to -- back out to the field, where I was an assistant chief patrol agent at the Laredo Sector.

I did that for roughly a year or so, and then I became a patrol agent in charge at the Freer, Texas, station, and I did that for like another year, roughly year and a half. I don't remember exactly dates there.

Q What year approximately was that?

A So I began on January 2nd, 2011, as assistant chief patrol agent. And I became a patrol agent in charge at the Freer station, I believe it was sometime in 2012. I don't remember the exact date, but 2012.

And then from there, I left there in 2013 to go to headquarters in Washington, D.C., again where I was an associate chief over the policy division. I worked almost exclusively in labor at that time, working on employee labor relations.

Q After that?

A After that I went to Havre, Montana, as a deputy chief patrol agent. And from there I was promoted a chief patrol agent at the Havre sector in Montana as well, before I went to Big Bend Sector in December of 2020, right at the end of December, and

I've been there ever since.

Q December 2020, you said?

A Yeah. And I've been there ever since.

Q Okay. So what are your roles and responsibilities as the sector chief at Big Bend?

A I have oversight of operations and administrative functions within 156 square miles of area, encompassing all the Border Patrol agents and supporting staff do in that area, which encompasses 517 miles of border.

Q And how many personnel do you supervise?

A Roughly about somewhere in the area of 660.

Q Is there -- good morning, sir.

Let the record reflect that Congressman Clay Higgins has joined the interview.

Mr. Higgins. Good morning, ladies and gentlemen.

Mr. McGoffin. Good morning, sir.

Mr. Yi. Mr. Higgins is the chairman of the Subcommittee on Border Security and Enforcement for the House Homeland Security Committee.

Thank you for joining us.

Mr. Higgins. Please continue.

BY MR. YI:

Q Who is the current acting sector chief over at Big Bend, or is there no acting sector chief while you are here in Washington, D.C.?

A It's Matthew Roggow. He's the deputy chief patrol agent normally.

Q And when did he assume his duties as the current acting chief?

A At the end of December 2022.

Q That is when you started your rotation at the Southwest Border

Coordination Center. Is that right?

A That is correct.

Q And what are your roles and responsibilities there?

A Currently assigned as an executive on the border -- you know, executive -- it's really not defined quite yet, but I'm just an executive providing input in discussions between myself and U.S. Border Patrol, what's going on there, while we look to find resources to help all incidents surrounding what's going on on the border currently.

That was our main focus as a coordination center is to look at where we can gain assistance and where we can coordinate to help out to get resources to the border and areas of concern.

Q What other agencies are involved in the coordination center?

A Well, it's all part of DHS, but there are CIS, ICE, ERO, it's Office of Field Operations, U.S. Border Patrol. And there's some other folks that also help out occasionally like op intel folks, budgetary folks that come in on a part-time basis. But everybody there is on a rotational assignment. There's nobody permanent there.

Q Do you engage with policy more so in that role than you would as the sector chief at Big Bend?

A No. We don't have anything to do with policy. We try to find resources and see what we can do to help sectors in their need, to see what we can do to coordinate across DHS and even other government organizations if we need, to try to make sure that we're all looking at, first of all, combining efforts in a common cause to try to help out.

And I think that's the biggest piece that we do, is coordination. I mean, that's our big piece, reaching across lines, helping -- what can we do to help out, what can we

do to functionally assist.

Q So as the senior coordinating official, is your role limited to only dealing with the agency levels in coordination, or do you engage with the headquarters and other more senior levels at the Department?

A To be clear, I'm not the senior coordinating official currently. I was the senior coordinating official in the past for a short duration.

In my roles that I have been there is to work with people in different organizational -- organizations with ICE, ERO, OFO, Border Patrol, everybody talking to make sure that we're looking at do we have the right resources to be able to -- do you have everything that they need, is there something that we can do to assist by going to another -- coordinating across to maybe some other agency to see if they can help or if there's that something we can do, maybe coordinating transportation to make sure that we have the right transportation to help out.

Q What was the time period in which you served as a senior coordinating official?

A From March 1st to April 16th. I'm sorry, wait. February 1st. I apologize.

Q So for approximately two months?

A Yes.

Q This past year?

A Yep, February 1st to April 16th.

Q Is that standard to have such a short duration in that role?

A I'm not quite sure. I mean, it's been -- in the past there's no set timeframe when that was going to be or when it wasn't.

Q Why was your term concluded on April 16th?

A They brought in another SCO, Jennifer Higgins. She's the current SCO.

Q Which agency is Ms. Higgins from?

A She works for CIS.

Q During your time as the SCO, did you engage with other officials at the Department level?

A Yes. I had discussions at the Department level talking about resources, what is needed, what can we do to help out, I mean, yeah.

Q Who at the Department level would you normally engage?

A Well, I'm trying to think of her -- I always mess up her last name, so I apologize if she's listening. The chief of staff, Kristie Canegallo, she was the chief of staff for the Secretary. I talked to her very regularly. I talked to other folks that work on the Secretary's staff from time to time.

I'm trying to think. There's just a myriad of different people that that we worked with. I didn't have like -- I mean, I didn't really like engage in -- I talked more to some than others, I guess I would say, because of where I was at as the SCO.

Q How many members are in the Southwest Border Coordination Center?

A I don't have an exact number or even -- I'm not even sure. I believe there's somewhere in the range -- I think it's a little bit over 50, but I'm -- I mean, that's to the best of my knowledge.

Q Would you say most of the people serving there are fairly senior, such as yourself?

A I don't know the seniority of most the people. If you're talking about in rank, then no.

Q But we're talking about, I guess, the main offices and agencies related to border security and enforcement. And so as the senior coordinating official that position was elevated enough that you would engage with the Secretary's chief of staff

regularly, correct?

A That is correct.

Q Did you ever meet with the Secretary in your duties as the SCO?

A Twice he came to the SBCC to thank all the employees for the great work that they've done. That was the only two times that I've ever met with the Secretary personally.

Q So they were mainly ceremonial, not in terms of substance of policy or engagement on work matters?

A He came to the -- he came to welcome them all. And then while we're in the middle of it we had one of our standard meetings. We kind of did like a tabletop exercise in talking about kind of like just what was going on, what we're looking at, what are the concerns that we need to be looking at.

Q What kind of concerns did you relay to the Secretary in that meeting?

A Just talking about communication, making sure we're communicating externally, just general terms of making sure that we had the right transportation, things of that nature. It wasn't anything specific, more generalistic.

Q Were there things that were generally relayed to him about resource shortages or vulnerable gaps or --

A Stuff that we're looking at as possible gaps. That's what we're trying to do. Is there a gap? Is there something that we're not seeing right? Do we need more analysis on that? What do we do with that? Those are the things that we generally engage in.

Q Do you remember the approximate date of that meeting between February 1st and April 16th of this year?

A So it was like a couple weeks ago, or I think it was on like a -- I'm trying to

think. It was in the month of April. I don't remember the exact date specifically, but it was in the month of April.

Q And who else was in that meeting besides the Secretary from the Department level?

A From the Department level, the chief of staff was there. Who else was there from the Department? It was mostly just like component representation and with some component heads there.

Q In the meeting do you -- because the Secretary was attending a meeting that regularly occurs for the coordination center --

A No, that's not a --

Q It was not a regular meeting?

A Not that he usually engages in. We have a --

Q But the meeting that he had --

A The meeting that I was at that day he was there. We conducted our normal meeting.

Q What is the normal timeframe of these meetings? How often do they occur?

A Daily.

Q These are daily meetings?

A Yeah, but it's not what -- again, not with the Secretary. Let's be clear about that.

Q Correct. He just happened to be at that particular one, right?

A He just happened to be there, and we were holding our meetings. So we hold these meetings -- this meeting every day, and we just talk -- we talk about what's -- what are the things that people need to know? Is there something that we

need to have input on? What are we looking at? That's pretty much what we talk about.

Q During these meetings are statistics and the general landscape on the specific landscapes of different sectors along the southwest border, are those discussed and briefed?

A No. We talk about CBP numbers as a whole. There may be some discussions about numbers in Border Patrol as a whole. But we're talking about -- like when we brief out we talk about CBP. CIS will brief out what they're doing, Border Patrol might say what they're doing. OFO might say what they're doing. You know what I mean? And then there's -- ERO will say what they're doing. It gives everybody an opportunity to hear what they're -- what's going on.

Q When you say what they are doing, in affiliation with CBP?

A Like what's going on. Like how many -- they're asking questions like -- not asking questions. They're just speaking up, like what they believe we should know in the SBCC. So the representatives talk about -- like, for instance, CIS is talking about how many credible fear interviews they're currently able to do at that moment. You know what I mean?

Q Are detentions -- detention numbers, parole numbers, release numbers, encounter numbers, are those discussed as well?

A We talk about encounter numbers. I don't -- we don't really talk about -- too much about parole numbers. You know what I mean? It's more about encounter numbers, what we're facing, holding numbers for ERO, those kind of numbers.

Q How long do these meetings last usually?

A It could be anywhere from 10 minutes to half an hour.

Q What kind of documents are produced from the meeting?

A There's just a briefing that the SBCC does, and it's a PowerPoint.

Q It's a PowerPoint presentation?

A Yes.

Q Who creates that PowerPoint presentation?

A The SBCC.

Q Okay. Is there a particular individual who creates those PowerPoint individual -- PowerPoint presentations?

A I don't -- I don't know. I believe it would reside in the operations. But I'm not for sure. I don't -- so the thing is, where I work at I'm not into the minutia. I have leadership teams that get into the -- that know that more than I do.

Q But when you were the SCO you were responsible for the presentation's accuracy, correct?

A I relied on the team to make sure that we had the information.

Q So I'm asking for who on the team creates these presentations?

A I don't know exactly which one does what. I mean, there's different parts that lead to it. So I think operations is the one that puts part of it together, but they collect the information from different places.

Q Who is the head of operations when you say that office or team?

A I don't know if I should talk about his personal name.

Ms. Slocum. Just to be clear, we're going to refer to anyone to titles for lower-level individuals, not names, to protect their privacy.

Mr. McGoffin. So --

Mr. Yi. Are you advising the witness to not answer?

Mr. Jonas. We're advising the witness, if it's somebody below an SES level, not to identify the person by name but rather by title. And if you have a follow-up, we can

talk about a follow-up at that time.

Mr. Yi. There have been no agreements made by committees to the Department about the use of names based on their pay scale.

Chief McGoffin, are you an SES?

Mr. McGoffin. I am.

Mr. Yi. So -- and is your acting sector chief an SES?

Mr. McGoffin. He's not.

Mr. Yi. His name was included earlier.

Mr. Jonas. Good for you. We're not going to name folks below SES. If you want to talk about it further, we could do it --

Mr. Yi. So are you advising the witness to refuse to answer?

Mr. Jonas. I am, yes.

Mr. Yi. Okay. Please have the record reflect that agency counsel has advised the witness to refuse to answer the question.

Mr. Ewencyk. And just to clarify --

Mr. Yi. Chief McGoffin --

Mr. Ewencyk. -- is the position --

Mr. Yi. Chief McGoffin, are you --

Mr. Ewencyk. -- the agency has taken across administrations?

Mr. Yi. I'm sorry, it is not your turn to speak right now.

BY MR. YI:

Q So, Chief McGoffin, are you refusing to answer the question as well?

A I'm going by my counsel's recommendation.

Q You're going by agency counsel's refusal?

A I am.

Q Okay.

Mr. Jonas. So if you want to find out their role, their position, their title, you're free to do that, and he will answer those questions.

BY MR. YI:

Q What is this person's exact title and operations?

A He's our operations chief in charge of operations and making sure that the -- and when I say operations, there are no operations in the SBCC. It's just about grabbing operational reviews and things of that nature, like if -- you know, like for -- we're talking about in providing forms that are operational like what's going on in the operation as a whole.

Q Is this operations chief affiliated with a particular agency as well?

A I'm trying to think what agency he works for. He is with an agency. He's with CBP. I don't remember like which particular component he works for.

Q Does the operations chief also rotate in and out so that there will be a potentially different person?

A Everything at the SBCC is rotational. All employees are rotational.

Q And they may be as short of a rotation as yours, for two months?

A It could be or it could not be. I'm still at the SBCC.

Q Okay. Going back to the meeting where Secretary Mayorkas attended the SBCC's daily briefing, did he ask any questions during that meeting?

A I believe that he did. I think he asked -- yeah, I believe he asked some questions.

Q Can you please explain the nature of those questions?

A Just on what was being briefed. I don't know -- I don't recall exactly what the question was. But it was about -- we were talking about stuff that we normally do,

and he just started asking questions.

I don't -- like I said, I don't remember exactly what he asked, but he was asking some questions. I think it had more to do like understanding like, hey, this is what's going on and we're talking, you know what I mean, and he was trying to understand that.

Q I'm not exactly certain I follow what you mean. Can you explain a little better what you mean?

A So if you were at a meeting, like if I'm at a meeting and I'm just trying to understand what people are talking about, he was asking general questions about what was being said and what was going on.

But, again, I don't remember the specific questions, just he was engaged with what we were talking about.

Q As the senior coordinating official at that meeting and given the context of your regular communications with the Secretary's chief of staff, is it your observation that Secretary Mayorkas had a clear picture of what was going on in the different sectors?

A In every context that I've been around him, he's aware of what's going on in different sectors. I mean, I don't know about individually, but he knows what's going on.

Q And when we talk about what's going on, are we referring to --

A Well, nationally, like I was just using your term.

Q To clarify that, are we talking about the level of encounters, the release numbers, and increase of drugs crossing the border, and those types of matters?

A Everything that I'm aware of he's engaged in that.

Q But are you confirming that he is aware of the rising numbers?

A I don't know to what level of granularity that he's aware of what's going on, but --

Q I'm not asking you about the specific numbers. I'm asking about are you -- Mr. Jonas. Let him finish his answer.

BY MR. YI:

Q Are you familiar with the rising -- do you believe, in your observation, he's familiar with the rising numbers of these encounters or got-aways or drugs crossing the border?

A I believe that he's aware of what is happening along the border. I don't know to what degree -- I don't know what degree.

But I would -- I would believe -- I do believe, as I've seen him, that he understands the amount of people that are being encountered along the southwest border, or all across the border for that matter, and that he's aware of narcotics along the border as well.

Does that answer your question?

Q Well, when you say what is happening, in your view and in your observation, given your three decades of experience in the Border Patrol, has there been a significant rise in these numbers, these encounters, drug seizures, got-aways?

A Well, I don't have the comparative analysis to look at it, but in my understanding of everything, yes, there has been quite the rise across the board.

BY MR. RUST:

Q Can you talk a little bit about the rise in encounters in Big Bend Sector, when that started?

A Absolutely. To be fair and to be succinct, I love talking about the work that's being done in Big Bend Sector, especially about the men and women who are getting the job done.

When I arrived in 2020, that was the beginning of fiscal year 2021, we had a rise of

encounters all across the border to levels we were actually at a little over 300 percent increase over the previous year for 2021.

We looked at a lot of different factors that were going on. And I think it's important to note when you talk about Big Bend Sector this is an area very remote, very rugged, 517 miles of border. It's not a lot of infrastructure. There's not a lot of towns, not a lot of large populations. This is a very remote, difficult, hot, hot in the summer/cold in the winter terrain.

And so when I first started operating there I was noticing that we were actually having more and more encounters that were going on. So we looked at those encounters, how can we do -- what we can do with those encounters.

And then over the course of the next fiscal year, in 2022, we reduced those encounters by an additional 6,000. And then this year we're reducing them again, and we're roughly 40 percent less than we were this time last year -- or, actually, I'm sorry, roughly 60 percent than this time last year.

Q You said there was a 300 percent increase in 2021. Do you remember when that peaked?

A So it seems to me like when it started going on there's an actual specific timeframe that we looked at. The peak really was in -- is in May of 2021.

Q And how many encounters, if you know, did Big Bend have that month?

A 5,050.

Q And when you have 5,050 encounters, what does that look like in terms of strain on resources in the sector?

A Well, I mean, the resources where we're at, the difficulties, I think the real problem is looking at the where the majority of these entries were and then looking at the resources that were available. So we had to make changes there to make sure that

we could adequately deal with that particular area, and we did so.

I think if you're talking about strained resources, a lot of it has to do with the amount of people that are actually available in the area. We had to change our tactics. We had to be -- we had to take advantage of the terrain and have operational advantage where we didn't have it in the past.

It is very rough terrain, and agents would oftentimes -- they would find an entry and they would track that entry out to wherever it was. And then if it was in the mountains, it would take more people to actually go and make sure that everybody got out safely and then returned back to the station.

So what we looked at is the operational advantage of what we could do to utilize terrain to our advantage to ensure that we were making -- when we were interdicting we were doing so in a manner that let us have the most efficient and effective processes so that we could change that, keeping as many agents on the ground as possible.

Q Was there initially a negative impact to border security of the high flow that peaked in May in the Big Bend Sector?

A What do you mean, like a -- can you give me a little bit better -- more specifics?

Q Given the number of encounters your agents were making, that also requires processing, correct?

A It does.

Q Was there a negative impact to the coverage across Big Bend Sector of having to make these encounters initially and then process those encounters?

A So we made some changes to be -- again, going back to being more efficient and effective in our processes. What we did was we utilized -- instead of every station returning people to their station, we returned people to two individual locations in order

to be more proficient and effective in our processes.

What that allowed us to do is, you know, while we were starting to process high numbers, it allowed us to have less agents actually processing so we could have agents in the field.

If every agent -- if everybody was going back to one individual station in the Big Bend Sector, because of the distance and timeframes for transportation, it would've been much more ineffective because we would've had more people across the sector actually processing, and that was less effective.

So we changed it to have a station in the east and a station in the west, and since that we've changed to another station in the west. And what we did is we took those two locations and that allowed us to be more efficient and effective in our processing capabilities, allowed us to have more agents on the ground.

Q So there was no negative impact to border security from the high flow in the Big Bend Sector?

A I do not believe so, no. I don't think so.

Q Can you -- you talked about there were various factors that contributed to the high flow in the Big Bend Sector. Can you talk about what some of those are based on your law enforcement professional experience or other --

A Well, I can just tell you, we have different cartels operating, we have three different cartels that operate south of our sector. And so they're trying to exploit and look for vulnerabilities, and they try to exploit that.

It's our job to make sure we understand what they're trying to accomplish and how we can better serve that location. What can we do to take the resources that we have and put them into a place where we become more effective, have operational advantage, and then we begin to shape the landscape along the border.

Q But what were the factors that were driving the high flow? Are you saying that the cartels were primarily driving the high flow, or were there other factors that --

A Well, I think they take advantage of areas to smuggle people through. I think it's important for everybody to understand here too that the vast majority of the people that we encounter in Big Bend Sector are trying to evade arrest. They're trying to evade detection. They're not giving up.

Q Why do you think they are trying to evade detection and not giving up to Border Patrol?

A Because this is an area that I think they're concerned that if they're apprehended they're going to be returned or they're going to potentially face some other consequence.

In this area it's just one of those vast areas, not a lot of population, not a lot of general law enforcement in general. So we look at that -- I think they look at that as an opportunity to circumvent detection, as a possible way to do so.

Q Are you able to return or deliver a consequence to the majority of individuals that your agents encounter in the Big Bend Sector?

A Yes, we are able to return or provide some kind of consequence.

Q What is the likelihood of release on recognizance or parole or some other form of release in your sector?

A None.

Q So every individual encountered in Big Bend Sector is detained pending removal or returned?

A Yes. We do not parole anybody in our sector. The only time at any point that we might actually release somebody, if it's a humanitarian reason, and they will be driven to El Paso to be done -- to do so.

Q You said the majority of individuals in your sector are seeking to evade apprehension?

A They are.

Q Are some of those individuals successful at evading apprehension?

A They are.

Q Can you please explain -- are those individuals known as got-aways according to CBP?

A They are.

Q Can you explain what the known got-away numbers look like in the Big Bend Sector?

A Currently or --

Q Currently and over the last few years.

A So I believe they were somewhere in the 12,000 range the last two years, somewhere in that range. Again, currently they are at somewhere in the 6,000 range, as we speak now.

Q And that's 6,000 starting in fiscal year 2023?

A That is correct. That's for got-aways.

Q That's for got-aways. What is the methodology by which your agents measure got-aways in Big Bend Sector?

A Either they were detected through technology and that did not come to a successful resolution, or there are -- like we can do sign cutting, we do things of that nature where we can go out and find the actual footprints along the ground if we can't resolve that. Those are the ones that we know across our AOR in our ability to have operational awareness that we did not resolve.

Q So these known got-aways are not general estimates, they're based on

intelligence collected in the field or based on sensors technology and other information?

A Exactly.

Q Do you believe that the estimates of known got-aways reported from Big Bend Sector are fairly accurate?

A I do. I believe so.

Q Are you concerned about the number of got-aways in Big Bend Sector and the potential public safety risk that known got-aways could present to the public?

A Absolutely. I don't think anybody in law enforcement wouldn't be. I mean, we want to make sure we're doing our job 100 percent of the time ensuring that we're there at every given entry, but, unfortunately, there are times it's just we weren't able to do so.

Q Do you believe that the high flow that Big Bend Sector encountered beginning in 2021 that peaked in May had a negative impact on Border Patrol's ability to reduce the number of got-aways in Big Bend Sector?

A No, because obviously we reduced the entries and got-aways in Big Bend Sector over the course of the last two years. We've been very successful.

Again, it goes back to how we deploy, what we do to operate. We had an area that had a large number of got-aways. It's down to less than 5 percent got-aways today.

We were able to, again, shape the landscape and the operational environment by how we deploy, being successful, and taking -- utilizing operational advantage, making sure that we're being very efficient and effective in our tactics to ensure that we have the most amount of people, agents on the line.

Those are all key things that we're really trying to do. And, again, it does, it shapes the environment and it makes change.

Q You said the majority of individuals encountered in your sector are seeking

to evade apprehension. Is that correct?

A That is correct.

Q Are there individuals that do turn themselves in to Border Patrol agents in your sector?

A Yes.

Q Are there similarities in the demographics of those individuals that turn themselves in to Border Patrol?

A It's kind of changed over the years. I think in '21 and '22 fiscal years we had some family units, and those were primarily giving up in the one area along the border where we have -- there's some -- there's towns on both sides.

But this year so far we've had less than -- as far as I recall, we've had less than 300 people that just give themselves up.

And this time the difference was the first two years that I was talking about was mostly family units, whereas lately this has been just single adults.

Q Single adults?

A Uh-huh.

Q The individuals that you're encountering in the Big Bend Sector, did the majority of those individuals pay cartels for the privilege of crossing and human smuggling services?

A Yes. I mean, you've got to remember, like I said, there's cartel operations south of the border, all across the 517 miles of Big Bend Sector. We're aware of them. We are doing everything we can with intelligence and everything else to be aware of what they're trying to accomplish and what we do. And, again, we've had some success in moving their operations and changing the dynamic and how we can be more successful.

This is a very difficult environment. So we're very aware of that. Because I think it's important for everybody to understand there's a human element on this side of this. You walk across 517 miles of border, it may take you 14 days to get to a road.

And in that process these smugglers, these cartels are leaving people out there to die. They treat them as a commodity and not as a human being. So it's important for us to make sure we understand to the best of our capabilities what they're doing.

Q You mentioned that these cartels treat people as commodities. Do the cartels ever intentionally put migrants in peril as a smuggling tactic?

A Every time they walk across the border they're in peril. They don't understand a lot of times the difficulties of the terrain and the environment that they're in. The cartels are not all forthcoming when it comes to those types of situations.

Q Does Border Patrol in Big Bend Sector regularly engage in rescues of migrants --

A Absolutely.

Q -- placed in peril by the cartels?

A Absolutely.

Q Have those rescues increased or decreased given the high flow --

A In the first year they were up considerably. We've made -- we've done a lot of work in making sure that we get rescue beacons out. We have currently 15 rescue beacons out. We're trying to get 15 more out there. We're getting placards out there that have like to call 911 and give a location. And the vast majority of our rescues now are being done because of 911 calls.

So we have done that, and we've actually reduced that number of deaths considerably. Our rescues last year decreased over 80 percent, and our deaths have currently decreased over 90 percent.

BY MR. YI:

Q If I can ask a clarifying question to James' earlier one about if the cartels use tactics, use smuggling migrants and placing them in peril as a tactic, as a diversion tactic, you confirmed that every time a cartel smuggles migrants they're always placed in peril. But are you familiar with that being used as an active tactic so that it could --

A I can't say --

Q -- saturate in a particular area or to divert resources for the Border Patrol to a certain area so that they can do other illicit things in a different area?

A I really can't speak to the specifics. I don't want to get too in depth in our operations, in what we do and how we react to certain things.

But as I said before, we have snow storms in the wintertime in these canyons, and we have sun and deadly conditions in the summertime. There is no two worse ways to die than to die of those types -- die because of cold or because of heat. And they're terrible. And this is what we deal with on a daily basis.

So when I say they're putting people into peril, it's because when you walk across the border in a very remote location where you have no guarantee of water, you have no guarantee of making it to any location, you have no guarantee of not being injured, and if you do get injured, you're left on the trail because smugglers don't care.

This is what we do in our agency, engage in every day to go out there and save those lives. There's nothing more important than human lives. And our agents, they go out there every day to the best that they possibly can to make sure that we're saving those human lives.

Q And we thank the Border Patrol agents for their work on that, and we agree that smugglers don't care. But just because they don't care about human life doesn't mean they don't do things in a purposeful way.

And my question to you is, this is kind of a yes or no, have you ever heard of this tactic where smugglers use the victims, we will call them, as a diversionary tactic to divert Border Patrol agents to one particular location so that the cartels may engage in other activities in a different area?

A I don't have any specifics that would say that that is actually happening. But I will tell you, I think it's readily a known fact that when human life is on the line Border Patrol is responding.

And I don't think that -- I don't know specifically if they're using that as a tactic, but I'm telling you that when there is a human life in danger that we're going to respond. And if that deviates then I don't think that's something that's not unknown to any of us. We would expect any first responder to go and help out during those timeframes.

Q During your time on the SBCC, have there been any other agencies who have ever briefed on that kind of tactic? Have you ever heard it from them?

A No.

Q Where did you -- where have you become familiar with it?

A Because I've been in the Border Patrol for quite a considerable amount of years. We might have suspected it at times. We might have heard inklings of it. But I've never heard specifically that a cartel tried to send somebody else being hurt. I've never heard that specific thing, if you're asking me that.

BY MR. RUST:

Q How much do individuals who cross in Big Bend, using the smuggling services of cartels, pay to the cartels for the privilege, if you know?

A In some of the intel that I've received it's been as high as \$1,500, oftentimes less than that.

Q And does the cost to cross vary based on whether an individual seeks to evade apprehension or not?

A I don't have any specific information on that, whether it is or not, because the majority are trying to evade.

I would also -- I think it -- from my -- the intel that I've understood, the differences between the cartels also plays into that as well.

Q And you said there were three cartels operating --

A That is correct.

Q -- south of Big Bend Sector?

A That is correct.

Q Do these cartels engage in drug trafficking as well as --

A Yes.

Q -- human smuggling?

What sorts of narcotics does your agency encounter in the field in Big Bend Sector?

A The largest source is marijuana.

Mr. Jonas. Just let him finish the question.

Mr. McGoffin. Oh, I'm sorry. I apologize.

Mr. Jonas. These folks are --

Mr. McGoffin. I apologize. I don't want to get -- I'm sorry. Go ahead.

BY MR. RUST:

Q What is the types of narcotics that your agents encounter in Big Bend?

A It's marijuana.

Q Is marijuana the only type of narcotic that your agents encounter in the field?

A No. No. But it's the vast majority of the narcotics that we see in the Big Bend Sector.

Q And how is marijuana smuggled across the border in Big Bend Sector?

A Well, the majority of it is man pack.

Q Do your agents also encounter methamphetamine or fentanyl?

A Yeah.

Q In the field?

A No.

Q Where do you encounter it if not in the field?

A At checkpoints.

Q At checkpoints?

A Uh-huh.

Q And what types of --

A And I don't want to no because there's a possibility. What I'm saying is, that is not the norm. The majority is encountered at the checkpoints, if that makes sense.

Q Do you assess that the narcotics that you're encountering at the checkpoints were smuggled across the southern border in between ports of entry or at the ports of entry?

A See, it's really hard for us to say a lot of that information, because our one big checkpoint is on I-10, and all of the narcotics and the majority of all the people that we encounter through that checkpoint all come from another sector. It's right at the beginning of my sector. So we very rarely, if any, can determine that whatever we're interdicting at that checkpoint actually came from Big Bend Sector.

Q What forms of fentanyl have your agents encountered in the field or at a checkpoint?

A Usually -- I just saw a seizure that was in pills not too long ago. Most of it that I've seen, again, is in packages or pills.

Q Do your agents also encounter methamphetamine?

A Yes.

Q And what forms of methamphetamine do they encounter?

A I don't recall exactly the way it is. I know when I look at our checkpoint seizures there are methamphetamines seized.

Q Do you know if the individuals you're encountering in Big Bend Sector have gone into debt to pay the cartels to smuggle them into the United States?

A I don't have any personal awareness that they went into debt, but I know that smuggling costs money. And I have seen in the past where there are reports where individuals might be somewhere in the United States and then being asked, their families being asked for more money. I've seen that in intel reports.

Q So when you say their families are being asked for more money, are the migrants being smuggled being held hostage to extract additional money from family members?

A I mean, they're being held in stash houses, is my understanding.

Q What are the conditions like at these stash houses?

A I can't say for sure. I mean, I've never been in one of these stash houses far away from the border or anywhere at any distance. Stash houses, from my time as an agent and things of that nature, were very crowded conditions.

Q But you would confirm that the cartels do extort from the migrants who put themselves --

A I have seen that in intelligence reports, yes.

Q You mentioned earlier that the tactics used in Big Bend Sector by Border Patrol have changed to adapt to the high flow. Can you talk a little bit about what you're doing to mitigate changing tactics by the cartels to stay one step ahead?

A So we're always looking at what is our technology lay down, what is our human capital, how it's laid out, all our agents, where they're at, and what we can do to make adjustments as needed, what we can do to return agents to the border as quickly as we can. Those are all factors in what we constantly do to -- in preparation while we're looking at what's going on across our border area.

Q When you say return agents to the border, what are you referring to? Where are they if not patrolling the border? Do you mean processing --

A It could be in processing or they could be doing transport, or depending on what it is we're always looking for opportunities to be, again -- I mean, that's constantly what we're looking for, is to become efficient and effective in our processes so we can be more effective on the ground.

That's always what we do. Always looking for that opportunity to have operational advantage that gives us the ability to change the landscape as we've done in Big Bend Sector the last two years.

Q To what extent do you use non-law enforcement personnel in Big Bend Sector to conduct tasks to free up Border Patrol agents to engage in more patrolling and

other law enforcement activities?

A Could you define that? Because, I mean, I don't understand the question.

Q Do you use non-law enforcement personnel, such as border processing coordinators --

A Yes.

Q -- or other individuals?

A We have Border Patrol processing coordinators.

Q And when did you start using those?

A Last year, I believe. So we got our first one sometime last year.

Q So in response to the high flow you obtained border processing coordinators?

A We were provided Border Patrol processing coordinators, yes.

Q And can you explain the tasks that those non-law enforcement personnel would perform that would free up a Border Patrol agent to spend more time patrolling the border?

A So they're processing individuals, helping to not only do that, but they might be remote processing, things of that nature, to help us make sure that we're having the data input that we need, reduces the amount of agents that are needed in our processing areas.

And I think we've been very successful with that. We're currently about -- roughly 16 percent of our agents are actually processing as a whole. So that really helps our morale. Our morale is doing well in Big Bend Sector. And, again, a lot of factors with that as well.

Q During the peak in May of 2021, were there many more agents processing as opposed to the 16 percent that are currently engaged in processing?

A I don't know specifically. I don't remember the specifics at that time about the amounts that we're processing. I couldn't give you an accurate answer because, I mean, I don't know for sure. I don't recall for sure.

[9:58 a.m.]

BY MR. RUST:

Q But it would've been more agents processing during the peak in May, given the high flow, than are currently processing now that you've onboarded these border processing coordinators?

A Yes. I can say with some degree of certainty that, yes, we had more agents actually processing at that time. To what degree, I don't know, because I don't have the -- I don't recall the specifics.

Mr. Rust. I'd like to see if Mr. Higgins has any questions that he'd like to ask.

Mr. Higgins. I do if I have time to get to a couple.

Chief, how long have you been chief at Big Bend?

Mr. McGoffin. Since December of 2020, sir.

Mr. Higgins. And in that time you said you met Secretary Mayorkas twice?

Mr. McGoffin. Yes, sir.

Mr. Higgins. In Big Bend?

Mr. McGoffin. No, sir.

Mr. Higgins. Not in Big Bend.

Mr. McGoffin. No, sir.

Mr. Higgins. And he attended one of your daily meetings, you said?

Mr. McGoffin. That was here in Washington, D.C., sir.

Mr. Higgins. That was here in Washington.

Mr. McGoffin. Yes, sir.

Mr. Higgins. So you haven't met with Secretary Mayorkas, have you, in your sector in your time of command?

Mr. McGoffin. No, sir.

Mr. Higgins. You said earlier, you made a statement, said, we're reducing them. We were talking about encounters. Then you said again, we're reducing them again. You indicated you had, essentially, control of the number of encounters that you're reporting.

Mr. McGoffin. I'm just saying --

Mr. Higgins. That was an impressive statement. Could you clarify what you mean by "we're reducing them"? If we're reducing them, can you reduce them to zero?

Mr. McGoffin. I don't know if we can ever get to zero, sir.

Mr. Higgins. Okay. But you say we're reducing them, and you said it again.

Mr. McGoffin. Yes, sir.

Mr. Higgins. So you indicated you have control.

Let me move on.

You indicated the number is around 12,000 -- I think you were talking about just-got-aways. We have numbers. We'll use average numbers, call it 35,000 in the last couple of years.

But you said the vast majority of your encounters, because of the training -- these guys are runners, commonly called "got-aways." They're criminal runners.

You used the term 12,000, and you said the vast majority. But the numbers that we have are roughly 35,000. So which numbers are off, yours or the official encounter numbers?

Mr. McGoffin. Well, the official encounter numbers are 37 -- I believe 37 --

Mr. Higgins. Okay. Well, you said the vast majority of your encounters are not trying to turn themselves in for asylum.

Mr. McGoffin. That is correct.

Mr. Higgins. They're runners.

Mr. McGoffin. That's correct.

Mr. Higgins. And you used a number that said around 12,000.

Mr. McGoffin. For got-aways, sir.

Mr. Higgins. So -- oh, you're talking about known got-aways.

Mr. McGoffin. Yes, sir.

Mr. Higgins. Okay. Not the runners that were captured.

Mr. McGoffin. No, sir. No, sir.

Mr. Higgins. Okay. Okay. That clarifies that for me.

Do you have anti-drone technology in your sector, Chief?

Mr. McGoffin. We currently do not.

Mr. Higgins. Why not?

Mr. McGoffin. That I'm aware of. We may have gotten some.

Mr. Higgins. Are the cartels using drones?

Mr. McGoffin. We've had -- to my knowledge, since I've been there, we had one drone detection.

Mr. Higgins. One drone detected.

Mr. McGoffin. Yes, sir.

Mr. Higgins. You mean seen and videoed?

Mr. McGoffin. No. We did have -- at one time, we had an aerostat there for a short time, and it detected a drone activity. That was one time that I'm aware of.

The problem with drones in our area, sir, is that they are such a large area --

Mr. Higgins. So you don't think that the cartel is using drones in your 570 miles of border? You don't think the cartels are using drones in your sector as scouts?

Mr. McGoffin. I can't say that they're not, sir. What I'm trying to tell you is, the terrain is so vast your drone would die before you could use it to any great capability or

means beyond a limited area of the border.

Mr. Higgins. Okay. So it's your understanding that the cartels are not using drones.

Mr. McGoffin. No, sir --

Mr. Higgins. So, if I show you video --

Mr. McGoffin. -- to my knowledge, they're not.

Mr. Higgins. -- from your sector of drones, dozens of them, over the course of a couple of days, that would surprise you?

Mr. McGoffin. You would, sir. And I would love to see it.

Mr. Higgins. Uh-huh.

How do you identify a lower-level personnel? So you said a lower-level personnel's not going to be identified. So how would you describe -- like, at what point is someone lower level that they're not going to be named?

Mr. Jonas. Someone below SES level.

Mr. Higgins. Okay. Is that on the record, that at a specific rank, that below which they're not going to be identified?

Mr. Jonas. To be clear --

Mr. Higgins. With respect to time --

Mr. Jonas. Hold on. Hold on. Hold on. To be clear, they will not be identified by name.

Mr. Higgins. Yeah, that's what I'm asking.

Mr. Jonas. They can be identified by title, position --

Mr. Higgins. Okay.

Mr. Jonas. -- and relationship to what the chief is doing.

Mr. Higgins. I'm just looking for, you know, a description of how you identify

lower level.

The daily meeting when you say you met the Secretary, and you said that was in D.C. --

Mr. McGoffin. Yes, sir.

Mr. Higgins. -- that was just a daily meeting? You didn't know the Secretary was coming?

Mr. McGoffin. We knew that he was coming that morning, yes, sir.

Mr. Higgins. And there was nothing special prepared for the Secretary?

Mr. McGoffin. Not for that meeting, no, sir. It was a standard meeting.

Mr. Higgins. In your time in service, you've met him twice?

Mr. McGoffin. In my time in service, total government service, I've met him three times.

Mr. Higgins. You met him three times.

Mr. McGoffin. Yes, sir.

Mr. Higgins. Never in your sector.

Mr. McGoffin. No, sir. I met him once when he was the Deputy Secretary quite a few years ago --

Mr. Higgins. Final question, Chief. What's your primary mission?

Mr. McGoffin. To ensure --

Mr. Higgins. If someone asks you what's your primary mission, how would you answer that?

Mr. McGoffin. To ensure the safe and secure border. I mean, that's what we're doing. We're out there trying to secure that border every day.

Mr. Higgins. To ensure a safe and secure border.

Mr. McGoffin. Yes, sir. We're national security. I mean, that's what it is.

Border security is what we do, and national security is a part of that. And so we work very hard to ensure that we do the best we can in those capabilities, sir.

Mr. Higgins. That's all I got.

BY MR. YI:

Q Chief, how were you selected for the rotation at the SBCC?

A I was just given a call, and said, we'd like to -- we'd like you to -- you know, would you come up and do this?

Q Who called you?

A David B. Miller. He's the chief for Law Enforcement Operations Directorate.

Q Okay.

And who attends these daily briefings, aside from the members of the SBCC? Who on the Department level? In that particular one, you said the Secretary and the chief of staff attended. Does the chief of staff, for instance, attend regularly?

A No.

Q Are there any other attendees from the Department level?

A I believe we do have, you know, people that listen in on the Teams portion of the call from there, but -- I'm trying to think. There may be some that are on there that -- but I don't know what part of the staff they work for.

Q Are the Teams calls recorded?

A No.

Q Okay.

A Not to my knowledge.

Q In these meetings, do they talk about new tactics that some of the cartels may be exemplifying? For instance, like, the bracelet system, is that something that

would be discussed in these type of daily briefings at all, or brought up?

A No. I think if they were going to bring up something to that degree, it would be like, hey, how can we find out more about something, or is there an opportunity for us to relay messages to somebody else to makes sure they're aware of it? Again, it's all back to that coordination piece.

Q Are you familiar with the bracelets that I'm talking about?

A I've never seen it in my area of operations.

Q Are you familiar with them, though? Have you heard about these bracelets that are placed on migrants by the cartels?

A I have heard about it.

Q Okay. Have you ever discussed that with anybody at the Department?

A No.

Q Have you ever discussed it with any other Border Patrol agent?

A I can't recall. Maybe. I don't -- I don't know.

Q Okay.

Well, that concludes our first hour. Let's take a short break before we begin the next round. Should we take a 5-minute break? Is that okay?

So we'll come back at 10:10.

[Recess.]

Mr. Yim. Are we good to go? All right.

We'll go on the record, please. The time is 10:15.

Chief McGoffin, thank you for being here today. My name is Daniel Yim. I'm with the House Oversight Committee Democratic staff. And I'll be conducting some questions today at the beginning of this round.

EXAMINATION

BY MR. YIM:

Q Now, I'd like to circle back and discuss your background with U.S. Border Patrol.

You stated on the record that you began with Border Patrol in September 1996. Does that sound right?

A That is correct.

Q And you have worked with U.S. Border Patrol uninterrupted since that time.

A That is correct.

Q Okay.

A Well, to make one clarification, I worked at the U.S. Border Patrol Academy, which at that time transitioned to Office of Training Development within CBP and then you come back. So I was a Border Patrol employee the entire time, just to be clear.

Q That's fair. Thank you. Thank you for that clarification.

And just indulge me while we go through this.

So, when you began your career with Border Patrol in 1996, that was during the Clinton administration. Is that correct?

A That is correct.

Q Great. And, as you mentioned, you served uninterrupted with Border Patrol since that time. So, after the Clinton administration, you served with the Bush administration. Is that right?

A That is correct.

Q And then following the Bush administration, you served with Border Patrol during the Obama administration as well?

A That's correct.

Q And following the Obama administration, you served with Border Patrol

during the Trump administration. Is that correct?

A That is correct.

Q Great. And since President Biden took office in January 2021, you have continued to serve with Border Patrol since that time. Is that correct?

A That is correct.

Q So, in total, just based on what we just went through, you've served with Border Patrol under five different Presidential administrations. Does that sound right?

A Sounds correct.

Q Great.

Now, earlier, my Republican colleagues asked you about your duties and responsibilities as a chief patrol agent, and I believe you mentioned that you primarily handle oversight of operations in the Big Bend Sector. Is that accurate? Is that fair to say?

A Operations and administrative functions throughout the sector.

Q Great. Okay.

And I'll note that you did not include policy in your description of responsibilities. And you actually mentioned this on the record, but to reiterate, nothing in your duties as chief patrol agent for the Big Bend Sector involves policy. Is that correct?

A Not outside of Big Bend Sector. I mean, I look at things inside of the sector sometimes to make sure we have a clear understanding of the policy guidance that we're provided or that it's being adhered to.

Q Okay. You don't have any duties in drafting or creating policy for the Big Bend Sector. Is that fair to say?

A Well, I mean, if there's individual things that are going on inside the sector, you know, I may have some -- I will have input on that.

Q And who would you provide that input to?

A It would be internal to the sector itself.

Q Okay.

All right. I'd like to circle back to the discussion regarding the Southwest Border Coordination Center. And I am going to hand you a document that will be marked as minority exhibit A.

[McGoffin Minority Exhibit A.

Was marked for identification.]

BY MR. YIM:

Q And we'll have copies that will be distributed to everyone else.

All right. And, Chief McGoffin, do you recognize this document?

A It's a document talking about the -- "Southwest Border Security and Preparedness" -- talks about the six pillars for the Secretary.

Q And it's dated April 26, 2022. Is that correct?

A That is correct.

Q And the subject of this memorandum is "DHS Plan for Southwest Border Security and Preparedness." Is that right?

A That's what it says, yes, sir.

Q Great. And, finally, on the "from" line here, we have from Secretary Alejandro Mayorkas. Is that right?

A That is correct.

Q Great.

I'd like to turn your attention to page 9. And, in fact, under the first paragraph, under the header "Border Security Plan," I'm going to point to you the second sentence there. It begins, "In February 2022." Do you see that?

A Yes.

Q The sentence here reads, "In February 2022, DHS formally launched the Southwest Border Coordination Center (SBCC), which is coordinating a whole-of-government response to the anticipated increase in border encounters."

I'm going to skip a line there. I'm going to go to the next paragraph. It begins, "The SBCC has centralized coordination among key government agencies within a single structure to ensure effective, holistic planning and execution. It is staffed by dozens of experienced professionals from across DHS and contains subject matter expert representatives from throughout the federal government."

Chief McGoffin, SBCC was formed in February of 2022. Is that correct?

A That is correct.

Q And that was under Secretary Alejandro Mayorkas. Is that right?

A That is correct.

Q All right. Thank you.

And you touched on this a little bit, but I'd like to dive in a bit more. How does your role at the SBCC differ from your role as chief patrol agent of the Big Bend Sector?

A Could you expand on that? Two different roles.

Q Sure. You spoke a little bit about your role at the Southwest Border Coordination Center, and you mentioned a lot about coordinating resources to different sectors.

A That's correct.

Q Would you be doing that same role as chief patrol agent in the Big Bend Sector?

A Not coordinating. You know, I might coordinate, you know, ask questions about commonalities in intel, stuff like that, but coordinating operation would be

basically what's going on in my sector, making sure I'm coordinating what resources I have.

Q Okay. That's fair.

And in your role at the SBCC, can you expand on what you mean by "coordinating resources"? Are you looking at individual sectors? How are you determining where to send resources?

A Well, we talk to the components. We don't look at individual sectors. Remember, the SBCC has no operational control of any kind. We're just simply coordinating across the components. So, if there's a need within Border Patrol for something, then we grab that need to see if it's viable, plausible, or if there's an availability of some way gaining those resources or just simply not.

Q And, again, you mentioned this earlier on the record, but in your role at SBCC, you are not drafting policy or creating policy. Is that fair to say?

A No, we don't create policy.

Q Good. Thank you.

All right. I'd like to turn to a different subject. And, again, you touched on this briefly, but to clarify, in your 27 years of service at Border Patrol, you have not participated in any transcribed interviews. Is that right?

A I'm trying -- I mean, I had a court case, but I don't know if that was -- I don't remember. You know, like, there was a court case that I was in years and years ago. So I don't remember exactly.

Q That's fair. To clarify, have you ever participated in a congressional transcribed interview?

A No.

Q Great. And would you agree with me that transcribed interviews as

requested by Members of Congress or congressional committees are not typical in your role as chief patrol agent?

A It's my first one.

Q Have you heard of any other chief patrol agents ever participating in a congressional transcribed interview?

A I'm not aware. I mean, nobody's ever told me they have. I don't know whether they have or have not.

Q Okay. That's fair.

And going back, you touched a little bit on your preparation for this transcribed interview. I know you mentioned who you worked with. In your estimation, how long have you spent preparing for this transcribed interview?

A I mean, just guessing -- well, I'm not guessing. I'm trying to count, like, how many times. Like, 4 hours --

Q Okay. That's fair.

A -- potentially working with -- I mean, I'm guessing -- I mean, not guessing, but I'm trying to, like, remember. I don't know. You know, I've got meetings all day long, so it's kind of --

Q And does that include your time reviewing documents and reviewing the latest statistics for the Big Bend Sector?

A No. I spent time at home just making sure I had a good understanding of what's going on in my sector.

Q Okay.

A You know, a lot of the information I know, but --

Q Okay. That's helpful.

Had you not been spending those hours preparing for this transcribed interview,

what duties would you have been performing at the SBCC?

A I would've been talking about coordination efforts across the agency. I would've been seeing what's going -- you know, what's happening with coordination efforts, what would I need to be involved in, to be jumping into.

Q Okay.

I'm going to go back, just briefly, back to your responsibilities at SBCC. And I apologize for jumping around a little bit.

Relating to the coordination of resources, I know you mentioned that you do not necessarily evaluate based on sector, but would you agree that if a sector needs additional resources the SBCC will work to get that sector what they need?

A I think, to be clear, like, we work with the U.S. Border Patrol leadership at headquarters, and we talk to them about what is needed. We don't go down to the sector level to decide who gets -- you know, who does what, what level coordination we're going to do with them. We coordinate with U.S. Border Patrol.

Q Uh-huh. So at a high level with the leadership at U.S. Border Patrol you are ensuring that the agents on the ground have the resources they need from your position at SBCC. Is that fair to say?

A It's fair to say that, you know, we coordinate, and if there's something that we can add value, that we can help the Border Patrol with, then it is helping the men and women along -- you know what I mean? -- on the border.

Q Okay.

All right. I'm going to turn it over to my colleague.

Ms. Jackson. Thanks.

BY MS. JACKSON:

Q So you said earlier that the cartels engage in drug smuggling as well as

human smuggling in Big Bend. Is that correct?

A That's correct.

Q Do Border Patrol agents in Big Bend routinely interdict and arrest these people who are attempting to smuggle illicit drugs?

A Yes.

Q Okay. So what happens when Border Patrol arrests someone? I'm just kind of curious, you know, what the process is. Are they referred to other law enforcement? Are they detained in the long run by Border Patrol?

A You said when we detain somebody?

Q Uh-huh. Like, when they're arrested.

A For narcotics? For what?

Q For narcotics. For drug smuggling.

A When we interdict somebody for narcotics smuggling, we make the arrest, and then we utilize -- you know, depending on the circumstances of the arrest, we will call the DEA, you know, and we'll talk to them and see what their interest is in the particular case. We'll see if there's any deconfliction necessary. Like, if it was already involving some other case that maybe another agency had, we'll make sure we're deconflicting that. And, you know, in some instances, we'll even call the local sheriff's department.

Q Understood.

So the individual people who are arrested for attempting to smuggle drugs, are they working for the cartels?

A Everything that I -- that I'm aware of, yes.

Q That's helpful.

Do you know the citizenship of most of the people that have been arrested in your

sector, if they're U.S. citizens or other nationals, for drug smuggling?

A I don't recall the exact -- you know, the exact amounts of which.

Q Totally understood.

I believe you mentioned earlier that it's rare to interdict fentanyl within your sector. Is that correct?

A Yes.

Q Do you know why it's rare?

A Most of the fentanyl that we've encountered is all through a checkpoint.

You know, that's where it's coming from.

Q Yeah. That's helpful.

And just to clarify, is there a port of entry within the Big Bend Sector?

A There is one normal port of entry, and then there's also a kiosk port of entry.

Q Okay. And at that port of entry, are you seeing fentanyl or meth interdictions there?

A I'm not aware of what they're seeing at the port of entry. You could sit with the Office of Field Operations. I know that they work closely with my intelligence unit.

Q Totally understood.

One last question. I know that drug arrests and interdictions are fairly rare in Big Bend. Do you know how many people, like, on average, monthly are arrested for attempting to drug smuggle?

A I don't have that knowledge off the top of my head.

Q That's okay.

That is it for me.

BY MS. NORTHROP:

Q Chief McGoffin, just a couple quick questions for you.

Earlier, I think in response to a question from one of our Republican colleagues -- and I'm sorry. I'm Alison Northrop. I know I've introduced myself before, but I'm staff of the Democratic staff of the Homeland Security Committee.

So, earlier, in response to a question from one of my colleagues, you said that Border Patrol's mission is to ensure a safe and secure border. Is that correct?

A That is part -- yes, that's part of border security.

Q Would you say that's Border Patrol's main mission?

A Our main mission is border security.

Q Okay.

And so we talked a little bit before about your interactions with Secretary Mayorkas. In your interactions with the Secretary, has he ever ordered you not to secure the border?

A No.

Q Okay.

Can you tell us a little bit about the work that the men and women of the Big Bend Sector do to secure that sector? I know you said earlier you like talking about that, and I'd like to hear more about it.

A Absolutely.

You know, we work -- there's a lot of area that goes along in our area of operations. You know, like I told you, 165,000 square miles along 517 miles of border. So it takes a very unique operational footprint to make sure that we're doing the best job that we possibly can, you know, like I said, ensuring that we are looking at, you know, what is actually coming at us, as far as what type of threats we have, and what is the timeframe that we have to look at those before interdiction, right? We want to be as

effective and efficient as we can.

Some of the locations, you can be, like I said, 14 days from the time you cross the border to walk to a road where you could potentially egress the area. So it's just a wide-open -- canyons, desolate, desert area. It's an extreme environment. In the wintertime, like I said, we have snow. Summertime, we have -- often very hot.

And so, you know, we look at our technology deployments and other aspects of how we lay down our -- you know, the human capital laydown and essentially talking about how agents are deployed to certain areas to make sure that we're being as effective and efficient as possible.

And looking at, you know, everything that's changing. We have some awareness of what's going on in the area -- we have a lot of awareness, what's going on in the area. And, you know, what we're seeing, it allows us to utilize our resources to the best capability possible and placing them in the areas of greatest concern.

Does that help?

Q It does. Thank you.

So would you say that your men and women do that job, are dedicated to that job, regardless of what administration happens to be in the White House?

A Absolutely.

Q Their dedication remains unchanged?

A Absolutely.

Q Thank you.

BY MS. MARTICORENA:

Q Thank you. I'm, again, Briana Marticorena. I'm with the Democratic staff for the Committee on Homeland Security.

And I wanted to circle back to when we were talking about encounters earlier with

my colleagues.

And I'd like to hand you minority exhibit B, which is a printout of the page from CBP of migrant encounters in the Big Bend Sector. I thought it'd be easier to have the numbers in front of us.

A Uh-huh.

[McGoffin Minority Exhibit B.

Was marked for identification.]

BY MS. MARTICORENA:

Q You mentioned that when you started in the Big Bend Sector there was already a rise in encounters. Is that correct?

A Well, you know, when I got there in December, you know, we were starting to see a rise. I don't recall exactly how much of a rise that was, because, as you can see by the numbers that are in front of you, they were not, you know, terribly significant at that time as compared to what we would see later on.

Q And that was December of 2020, correct?

A Yes. I arrived there at the very end of December 2020 and essentially started working full-time at the beginning of January 2020.

Q Thank you.

And just to be clear, what I'm seeing on the chart for December of 2020 is 1,980 encounters. Is that correct?

A I don't see that on the chart.

Q It's in the 2021 line, for fiscal year 2021.

Mr. Jonas. Yeah, those are fiscal year.

Mr. McGoffin. Oh, okay. Okay. Maybe I'm looking at this wrong. I apologize.

BY MS. MARTICORENA:

Q No problem. I make that mistake all the time.

A Okay. Yes. Yes, I got you. So this -- yeah, it's fiscal year. I was looking at the normal year.

So, yes, fiscal year 2021, when I arrived, there was 1,980.

Q Thank you.

A Sorry. I looked at the wrong numbers.

Q Completely understood.

And then, just from what I'm seeing on the chart, it looks like that increase really began in August of 2020, when there were 1,120 encounters. Would you agree with that assessment?

A That's the first time we went over a thousand.

Q Thank you. And, you know, is that before or after the implementation of Title 42?

A That was March of -- I think it was -- I don't remember the exact date. It was March --

Q From my understanding, it was March of 2020 when Title 42 was implemented. Does that sound correct?

A To the best of my knowledge, yes.

Q Thank you.

And I will say, just looking at the chart again, going back to the beginning of the data, which is October of 2020, do you see any number with over a thousand in your sector even before Title 42 was implemented and the COVID-19 pandemic?

A October of 2020, you said?

Q No, October of 2019. My apologies. So the very first number on the

chart.

A 653?

Q Yes.

A Okay.

Q So would it be fair to say that encounters really started to increase once Title 42 was implemented -- or, after Title 42 was implemented in August of 2020, just to be clear?

A I mean, you know, that year, we had 8,628. I think if you go back to the year before, it was 9,000. So, you know, I'm estimating --

Q Okay.

A -- and it seems to me like, yes, there's quite a significant jump in fiscal year 2021.

Q Thank you. I appreciate that.

And then, when I look at the chart again, it shows that the numbers in November of 2022, which would be fiscal year 2023, were very similar to the numbers in November of 2020, and the same for October of the 2 years. Would you say that's pretty accurate?

A November of 2023, fiscal year, to -- what was the other one?

Q November of 2020, which would be fiscal year 2021.

A Yes.

Q Thank you.

And you mentioned earlier that your officers, or your agents -- my apologies -- had taken a fair number of actions to reduce encounters back to that level in 2020.

Can you talk a little bit more about what your agents did to increase border security and, you know, increase the level of encounters?

A Yeah. We, you know, again, looking for that operational advantage,

looking to utilize new training as an advantage to us rather than to the adversary, ensuring that we're efficient and effective in our processes and how we actually make interdictions and move migrants through the process, ensuring the proper technology laydown where available, and, again, shaping the landscape in those particularized areas really helped us to, you know, create differences and turmoil within, you know, the cartel's ability to operate effectively.

Q Thank you.

And then, when I ran the numbers from that chart, it shows that there was a 73-percent decrease from March of 2023 to March of 2021. I'm not expecting you to run the math, but does that look roughly correct?

A Okay. So March of 2023 --

Q 2023 --

A -- to --

Q -- to March of 2021, that that's about a 73-percent decrease.

A I'll take your word for it.

Q Okay. I appreciate that.

In your professional judgment, would you say that some policies that this administration has enacted, like the parole program for Venezuelans, Cubans, Haitians, and Nicaraguans, has also contributed to that decrease? Have your agents found that helpful?

A Not in Big Bend.

Q Not in Big Bend.

A No.

Q Okay. Are you not seeing many encounters with those nationalities in your sector?

A No.

Q Okay.

A The majority of encounters that we have are Mexican nationals, and then after that is Guatemalans.

Q Okay. Thank you.

I'd now like to hand you a sheet which is also a printout from CDC on recidivism rates. That would be minority exhibit C.

[McGoffin Minority Exhibit C.

Was marked for identification.]

BY MS. MARTICORENA:

Q So, for this, the data shows that the recidivism rate increased from 7 percent in 2019 to 26 percent in 2020 and 2027 -- and 27 percent in 2021.

Does this reflect what you've been seeing in the Big Bend Sector?

A This is for the entirety -- what this is in reference to?

Q So that is --

A Can you give me some understanding --

Q Of course.

A -- of the reference?

Q So that is the number CDC publishes on the recidivism rate for the fiscal year for everyone encountered across all sectors of the border.

A It's impossible for me to speculate because I don't have the current numbers within Big Bend with me.

Q Okay.

A I think the operational environment that you're looking at tends to be much different in my area of operation than in any other.

Q Okay. Thank you.

Would you say that, again, those recidivism rates since Title 42 was implemented in May of 2020 -- I mean, March of 2020 -- my apologies -- have you seen more recidivism in your sector since March of 2020, even not talking about specific percentages? More repeat border-crossers?

A I don't want to speculate. I don't have that information in front of me. I apologize.

Q Okay. Thank you.

So, thinking back, then, before March 2020 and the COVID-19 pandemic, would you say that it was common to see seasonal surges of migrants in your sector or other places you've worked throughout your career?

A Seasonal? Is that -- so I'm clear.

Q Seasonal surges. At least what I'm seeing from the data is we see, you know, typically more people in the spring and summer months, less people in the winter. Would you say that's been common throughout your career?

A Yes, I've seen that in my career.

Q Thank you.

And would you say it was common, again, throughout your 27 years with the Border Patrol, to see a surge of migrants after a natural disaster in the hemisphere?

A I can't say that I recall anything related to a natural -- that I'm aware of.

Q Thank you.

Have you seen a surge of migrants following political instability in the hemisphere? Or do you recall any?

A I don't.

You know, I think it's important for you to understand that we're looking at the

surge as it comes and we're trying to figure out how we're going to react and take care of that, you know, and what's going on. So, you know, cause and effect, you know, that's something I'm sure that a lot of people worry about. But we're looking at, how's this going to affect -- what's going on and how it's going to affect my area.

Q I appreciate that. I'll move on then.

So, just talking about protocols and procedures that your agents follow, would you say that all migrants encountered by your agents are vetted to determine whether they pose a national security or public safety threat?

A We run biometric checks on them, and by name, date of birth, everything, you know, we run those normal checks on them to see if there's anything that comes up.

Q Okay. Thank you.

And if someone is determined to pose a national security threat or a public safety threat, what are the next steps for your agents? What happens to those migrants?

A Can you be specific on which one? There's differences in what you just spoke about.

Q We can separate them out then.

So, for national security threats, if an agent is determined -- I mean, if a migrant is determined to pose a national security threat, what are the next steps? Are they, for example --

A As in --

Q -- transferred to ICE? Are they released into communities? Are they released on parole? Like, what is the standard process for someone who is determined to be a national security threat?

A And, again, can you be specific about a national security threat? Everybody's mindset of what a national security threat is -- are you asking me about

terrorism? Are you asking me about --

Q Sure.

A Just so I have a clear understanding.

Q So, if someone is on the Terrorist Screening Data Set, what is the next step for that person?

A Well, we have not had any in Big Bend this year, but what we would do is we would, you know, call our cooperating partners at the FBI to make sure we run the appropriate record checks and see what information they have or how that relates and how that's going to be -- how that person would be looked at or viewed or what their history is or what they want them for, do they want them. All of those things would be done.

Q And if someone was convicted for murder and they were encountered in your sector what would be the next steps for someone like that?

A We would do the same thing. We would call the agency -- are you saying they're convicted or wanted for murder? It's two different steps.

Q I'd be interested to either one, honestly.

A Okay. So wanted for murder, then we would call the appropriate law enforcement entities and see if they will extradite the individual. If they want them, we would turn them over to a local sheriff's department if they could not come right away, and then they would take care of the individual for extradition purposes.

If they have been convicted of murder, then we would go through the normal processes within U.S. Border Patrol. Or if they're, I'm assuming based on what you're describing, an immigrant, therefore, they would be in violation of the law for being here. Normally, if they're convicted for murder, they would be -- already be previously removed. And so we would prosecute them and then send them to the U.S. Marshals

Service.

Q Okay. Thank you.

Would it be fair to say that the categories I just described -- someone who's on the Terrorist Screening Data Set, someone who was convicted for murder or wanted for murder -- that those are not released into communities, that there's another step that happens after they're in Border Patrol custody?

A To be clear, Big Bend Sector does not release anybody into the local communities.

Second of all, yes, we look at anybody with any type of criminal history and we process them accordingly to ensure that they're processed in the right manner.

Q Thank you.

And you mentioned previously you were in the Laredo Sector and a few other sectors. Was that also the case in those sectors, that that's a similar process?

A In every -- I can't speak for sector --

Q Of course.

A -- but the areas I worked in, that is correct.

Q Thank you.

And then I'd like to talk a little bit more about Border Patrol processing.

In your professional opinion, do you believe that additional resources for processing and transportation help Border Patrol officers return to the front lines?

A I don't think any chief along the border would not ask for additional help in those areas.

Q Thank you. And would you say that having additional resources there would help your agents secure the border?

A I think that for Big Bend Sector, I think it would give us more opportunities to

have more law enforcement on the border so that we could ensure we have the right laydown of technology and agents on the ground to, you know, effectuate what the cartels are trying to attempt to do.

Q Thank you.

And you talked a bit about how big your sector is. What are common transportation times in your sector for when an agent encounters a migrant? What does that look like?

A Every area within the sector is so different that the encounter times, depending on where that's at, to where they can be back to the station, is much different. You know, it can be hours and or it can be minutes depending on what location you're talking about.

Q Okay. Thank you.

And looking at unaccompanied children, about how long do they stay in custody in your sector currently?

A The shortest amount of time as possible. All unaccompanied children are taken to El Paso Sector, where they have their facilities and availability to be transferred to HHS at the earliest opportunity.

Q Okay. And so, just to be clear then, there would be no unaccompanied kids staying in Border Patrol facilities in the Big Bend Sector?

A We make sure that we transport them as soon as possible -- or practical, I should say, to El Paso Sector.

Q Okay.

A We have an agreement with El Paso Sector to do so.

Q And do you find it helpful, again, to have the resources to move those children quickly to the El Paso Sector?

A Absolutely.

Q Thank you. And would you say that, compared to 2019, kids are staying in your sector shorter or longer now than in 2019?

A I can't really refer back to 2019 because I don't know those facts. But in my -- since I have been here, shorter.

Q Shorter? Thank you. And can you help us, like, quantify what you mean by "shorter"? Is it an hour? Two? Is it more significant than that? Or do you not have the data to share that?

A I don't the data with me. But, you know, we are doing our absolute best to make sure that we transport individuals to El Paso as soon as practical to get them into HHS custody.

Q Thank you. I appreciate that.

And then I know it was touched on earlier that your sector employs U.S. Border Patrol processing coordinators. Do you also employ contractors to help with the care of families and children?

A No.

Q No contractors? Okay.

A No contractors.

Q Thank you.

And then my understanding is that U.S. Border Patrol processing coordinators, that position is very new. It was very recently created. And at least what I heard is the first class was sent to the field in about 2021. Does that sound right to you?

A I don't remember exactly when, but I would say sometime in that approximation.

Q In your previous post before Big Bend, had you ever seen a Border Patrol

processing coordinator? Had you worked with them before?

A No.

Q Okay. Thank you. And just to clarify, you would say that the roll-out of this position and these people has helped your agents do their job to secure the border?

A Yes.

Q Thank you.

BY MS. NORTHROP:

Q I just have a couple quick questions. And I wonder if we could maybe shift gears just for a minute to take a step back, and I'm interested in what you've seen along the border and the Border Patrol throughout your career and how that might relate to the border and the Border Patrol today.

So I noticed that you said that when you joined the Border Patrol it was in 1996, I think you said, September of '96, and you were initially stationed in Tucson Sector for 8-1/2 years. Is that right?

A That is correct.

Q And it's my understanding of the Tucson Sector -- and some of this may predate your time at Border Patrol, so please correct me if I'm wrong. But in the wake of increased enforcement in San Diego and El Paso, Tucson Sector became the busiest sector in the country likely during the timeframe you were there. Is that right?

A That's a long time ago. So I'm just -- I don't know for sure if it was or was not.

Q Was it particularly busy?

A When I first got there, no.

Q Okay. And during the 8-1/2 years, was there any trends that you recall, as far as what you saw?

A It got busy.

Q Okay. Fair. Thank you. Thank you.

And so what happened in that timeframe, as far as the Border Patrol response, as that sector got very busy?

A Well, in my particular station, you know, we tried to, you know, deploy closer to the border. We tried to -- you know, we tried to get infrastructure -- or, not infrastructure, but technology --

Q Uh-huh.

A -- which we eventually did. And so we were able to, you know, make some differences there, I think. But it was still very busy when I left.

Q Okay. Was there additional technology deployed in that timeframe when you were there?

A For the 8-1/2 years, yes.

Q Okay. And additional agents?

A Oh, yes.

Q Okay. So is it fair to say that, given the increased number of encounters in that sector in that timeframe you were there, Border Patrol responded by bringing additional assets, personnel, et cetera, to be there?

A When I was there, yes, that's correct.

Q Okay. And have you seen any examples of that throughout your career beyond El Paso -- or, pardon me -- beyond Tucson?

A When I was in New Mexico, we were able to get -- again, for the 2-1/2 years I was there, we were able to get more technology and more personnel.

Q Uh-huh.

A That happened there.

When I was in Freer, it was pretty much the same. It never changed when I was there in Freer, Texas.

When I was in Montana, we got to test two ASTs as part of the testing program. And that was all we got. No more manpower, no more -- other than those two opportunities to test the technology.

Q Okay.

Is it fair to say that, as additional resources are brought to bear in one place along the border, smuggling operations and just, you know, migrants shift their tactics and then will cross in new places over time?

A That's what's going on in Big Bend Sector. That is currently what we're experiencing in Big Bend Sector.

Q And that's consistent with what you've seen over your career? From time to time, not always, but from time to time.

A Yeah. And it's just so very different areas, difference, you know -- you know, things have transpired differently. I mean, we're talking about, you know, timeframes where I worked where there was no real infrastructure --

Q Uh-huh.

A -- you know? I've never -- it's always after I leave that everybody gets things on the border sometimes, so --

Q Okay. That's helpful.

So I guess the border is a dynamic environment. Is that fair to say?

A Yes.

Q And Border Patrol responds to that, tries to anticipate, but also responds as necessary as situations change along the border. And you --

A That's what I've done in my career.

Q Okay. Thank you. Thank you. Didn't mean to step on your answer there.

And does that continue today with the Border Patrol and the situation at the border?

A I can't speak for the entirety of the Border Patrol --

Q Okay.

A -- but right now in Big Bend Sector --

Q That's what you see there?

A -- that is what we're doing.

Q Okay. Thank you.

Ms. Marticorena. Thank you.

[McGoffin Minority Exhibit D.

Was marked for identification.]

BY MS. MARTICORENA:

Q So I'm going to hand you minority exhibit -- I think we're on D at this point.

It's the transcript from the field hearing in McAllen, Texas, earlier this year --

A Okay.

Q -- on March 15th. And it's on page 13 --

A Okay.

Q -- for everyone following along.

I wanted to go back to one of the opening comments we heard, talking about Chief Ortiz's testimony.

A Okay.

Q Specifically, he starts and says, "We've seen across the southwest border nine sectors. And out of those nine sectors, four of them have significant resources,

when you think about the double layer fencing" --

Mr. Jonas. I'm sorry. I'm sorry. What page are you on again?

Mr. McGoffin. Thirteen.

Ms. Marticorena. Page 13.

Mr. Jonas. Thirteen.

BY MS. MARTICORENA:

Q -- "when you think about the double layer fencing, some of the surveillance technology, and then the amount of agents we deployed. But in five of those nine southwest border sectors, we have seen an increase in flow. And that has caused a considerable strain on our resources, and really has forced the Border Patrol to move agents and even migrants to some of the other areas."

After a statement from Chairman Green, Chief Ortiz continues, "I will tell you that in certain areas, the cartels control an awful lot on the Southern Border, south of the United States. Our men and women are out there. I just spent the last three days here in south Texas, patrolling with some of our agents, and they're doing a phenomenal job of responding to traffic that's coming across that border. And that plays out across the entire southwest border."

Is that what you're seeing in the transcript as well?

Mr. McGoffin. That's a lot to cover what I'm seeing and what I'm not seeing, right? So he was talking about --

Mr. Jonas. I think she was asking whether that's what's in the transcript.

BY MS. MARTICORENA:

Q Yes, that's correct.

A Oh, my reading. Yes. I'm sorry. I was reading what you were saying, so I apologize.

Q No worries. I was actually going to your next point.

Chief Ortiz testified that the cartels control an awful lot on the southern border south of the United States. Is that what you're seeing in the Big Bend Sector?

A Yes.

Q Would you say that the cartels control a lot on the northern side of the border, in the United States?

A I can't speak for the entirety of the United States, but I can talk about Big Bend Sector --

Q Yes.

A -- and I would tell you, no.

Q Thank you. And why would you say they're not controlling the area in Big Bend Sector? Is that because your agents are out doing their job?

A It's a combination. The agents are out there doing their job. There's ranch lands that out there. I mean, there's no such thing as them really operating significantly on the north side of the border.

You know, again, it goes back to that space and difference and time and perspective. Looking at how far it is from you to cross the border to get to a road. You've got to go through difficult terrain and everything else.

Between ourselves and law enforcement, there's no control --

Q Thank you.

A -- on the north side of the border.

Q And just to clarify that statement, what you're saying is that the cartels have never controlled the land in the United States north of the Mexican border --

A Yes.

Q -- in the Big Bend Sector, to your knowledge.

A To my knowledge, no. To my knowledge, no.

Q Okay. Thank you. Appreciate that.

BY MR. EWENCZYK:

Q I just want to ask a few questions, going back to my colleague who, you know, in your questions with her, you were discussing the increase in migrant encounters that was observed at the Big Bend Sector starting in August 2020 and carrying through to October 2022.

And I just wanted to talk through with you the steps that you took at the Big Bend Sector to address that increase in migrant encounters and get it to reduce. Could you speak through those steps for us?

A Sure.

Again, changed the interdiction processes that we were using, you know, making sure that we become aware of any crossings as soon as possible but interdict them in a place that is favorable to operational advantage, that allow us to, you know, remove those individuals, those migrants, out of the field effectively, efficiently, keeping our agents on the ground as much as possible.

We looked at technology laydown to see if we can make a difference with our technology laydown.

And then we also -- you know, we received some help from the special operations group out of El Paso to come and detail on occasion in specifically targeted areas, along with our agents, and looking at that.

I think we used different operations in the sector to try to get resources to that specific location.

Q I think earlier you also mentioned the creation of border processing coordinators. Did those help to address that increase in migrant encounters by freeing

up Border Patrol agent time?

A I think it did, but in this particular instance you need to understand that, yes, we were able to free up some agents, but remember, we were having two different processing locations. So, in some instances, because, you know, we may not have agents in the processing at all, depending on their area, it would not have made an effect. For areas where it was, yes, it made an effect.

Q And you also talked about intelligence capabilities for understanding how the cartels who were operating south of the border were going to try to approach the border. Did that intelligence help to address and bring down the number of migrant encounters?

A Yes.

Q And so would you say that you have been successful in operating a safe and secure border at the Big Bend Sector?

A You know, I would say that we have operational advantage in Big Bend Sector and we do everything we can to ensure a safe and secure border.

BY MS. MARTICORENA:

Q Okay. So I wanted to talk a little bit about the investments in border security we're seeing right now under the Biden administration and whether you find those helpful in doing your job -- you know, particularly a few of the resources secured by the fiscal year 2023 omnibus funding.

So this bill provided funding for about 300 new Border Patrol agents to join the workforce, which is the first increase since 2011. Do you think these additional agents will be helpful in securing the border?

A I believe anytime we can get additional agents, we would be very happy to have them.

Q Thank you.

So the omnibus provided \$800 million for a new CBP Shelter and Services Program aimed at bolstering the capacity of organizations that assist migrants recently released from CBP custody. And I understand you said that they're not released in your sector.

In your professional experience, in your work with the SBCC, in your work in previous sectors, can you talk a little bit about what role these organizations play and whether Border Patrol partners with these organizations?

A Well, it's my understanding they do, but I don't have any great detail. I have one NGO in my area of operation, who we meet with biweekly, but that due to the distances and timeframes he's really not significantly able to help in our AOR.

So, again, everybody who -- if they're credible fear, they go to El Paso. If they're, you know, unaccompanied minors, they go to El Paso. So, you know, we don't have that capability within Big Bend Sector.

Q Okay.

A Literally, he only has six beds.

Q Okay. Thank you.

And have you heard this discussed in your work at the SBCC, of that coordination with nonprofits, with local organizations, and the role it would play along the border?

A I have.

Q Could you talk, then, a little bit more about what you've heard at the SBCC on whether these organizations are considered important in releasing people from CBP custody?

A Well, I think it's important that they help the migrants themselves. You know, that coordination helps the communities, it helps the migrants. You know what I mean?

But, again, you know, the SSP is -- that's what you're using, right?

Q Yes.

A So that's not currently in effect, to my knowledge. But I think the ability to have NGOs in the communities, helping across the border, and being able to help migrants once they are, you know, through their process, wherever that may be, from everything I understand, is important.

Q Thank you. And I agree; I've heard that SSP is not yet in place. Its predecessor was the Emergency Food and Shelter Program, which would be the humanitarian funding. And money is still flowing through that, to my understanding.

Could you expand a little bit on what you're hearing for why these organizations are important to CBP's work, as well as helping the migrants themselves? Does it help expedite people coming out of CBP custody? Like, what have you heard specifically about how that interacts with what CBP does?

A Well, to my understanding, you know, when the NGOs are able to facilitate helping these individuals -- and, again, I have no firsthand knowledge, because we don't operate in Big Bend. You know, my understanding is, they're there to help. They look to provide opportunities for them to leave border communities and get them to other destinations.

Q Thank you.

A That's my understanding.

Q Thank you. I appreciate that.

And then the omnibus also included \$24.6 million for suicide prevention and workforce wellness efforts, as well as childcare services.

As a sector chief, how important is this funding for the workforce?

A It's extremely important. You know, we're looking at, again, individuals

living in remote locations, having difficulties, you know, trying to get to the supermarket or to, you know, take your family to the movies. You have to travel a long ways. You know, so there's not always the immediate amenities that we commonly see here in Washington, D.C.

And so, you know, having the ability, you know, to -- I think when you look at some of the difficulties, especially in Big Bend, that we face, I think we've done a really good job of improving the morale and making sure that, you know, we're doing what we can.

But any type of benefit towards any resiliency within the U.S. Border Patrol is extremely important, I think, because, you know, I think what's not talked about, what's not seen is the difficulties that agents have, right? I mean, it's never fun when you don't make it in time. It's never fun when you're trying to get somebody out of there, you've done everything you can to get that individual, and they pass away because of the, you know, inability -- because the smugglers just left them behind.

[11:06 a.m.]

BY MS. MARTICORENA:

Q It sounds terrifying.

Could you talk a little bit more about -- you said you took steps to improve morale. Could you talk a little bit more about what steps you've implemented since coming to the Big Bend Sector?

A Absolutely. Employee engagement. Being out there, making sure that when there's a graduation of any kind where my agents are graduating, I try to be there for that.

Because it's important to engage with your agents at all levels to ensure that you're able to listen to what they have to say, to be available, let them know that you're just any other person that's just in charge. You're there to make sure that they're heard, and that when they have frustrations that you're listening to them.

And so I think I've been very successful with that. We had the highest score in the Federal -- the Fed scores last year with the Border Patrol. So, I mean, we've done a lot to do that. Because there's a lot of those differences.

But I think it's also important for everybody here to understand, too, that, remember, everybody within the Border Patrol and Big Bend Sector is trying to evade arrest. And so the agents that are there are doing their absolute best to go out and do that job every day. And that's the job they signed up to do.

And so, because we've been able to reduce the amount of processing, that's become hugely effective. So I think we are doing well in that regard.

But there's never -- just one suicide really erases all of that. And I think -- so resiliency is a huge part, having our peer support teams in place. Because that remote area, it's huge. It's huge. And what it entails for the families, right?

Q Thank you. I really appreciate the good work you've been doing and the efforts you've made.

Would you say those efforts are supported by your leadership, by headquarters, to increase that resilience and support your workforce?

A Yes.

Q Thank you.

And then shifting gears a little bit, we've heard some discussion in Congress about potential cuts to funding. Do you think that cuts to funding, particularly one that might be a 22 percent cut in resources, would hurt your ability to secure the border and hurt the morale of your workforce?

A Well, I really can't speculate on what that effect would be because, as we know, like, whether we get resources or whether we don't get resources is predicated on the decisions of U.S. Border Patrol headquarters. So I can't predict what the outcome would be with that, if that were to happen.

Q Okay.

Mr. Yim. Can I follow up on that, please?

So just to be clear, in your view, would a 22 percent cut in resources hinder your ability to secure the border?

Mr. Jonas. At Big Bend Sector?

Mr. Yim. At Big Bend, that's fair, yes.

Mr. McGoffin. I think it would make it much more difficult. To what degree, I don't know. It would depend on the resource cuts that we're talking about. Is it manpower? Is it technology? What is it? Is it facilities? I mean, there's a lot to that.

So I think for me it's hard to speculate on what that would mean for me until it is

in front of me.

Mr. Ewencyk. But cuts to any of those -- manpower, technologies, facilities -- would hinder your mission. Is that correct?

Mr. McGoffin. I wouldn't say hinder it. I mean, we've had opportunities sometimes where we've had to detail agents from my sector to another sector. We then said: What do we got to do make this manageable and make it work so we can continue to be effective.

So it just depends. There's no real reason. I don't know that I can answer with any degree of certainty on that.

BY MS. MARTICORENA:

Q I just wanted to follow up on that answer.

During your time in Big Bend, to be clear, you have had to detail some of your personnel to either help with processing or to other sectors. Is that correct?

A That is correct.

Q And, in your view, you've still been able to secure the Big Bend Sector, despite having to detail some of your personnel?

A It makes it much more difficult. But, again, it's my job to express to headquarters what the level of risk is by taking in individuals from my sector and then weighing in on the national scale.

So we have still been able to maintain a drop in encounters through our enforcement efforts, but, again, none of those things were long-term, right, it's not long-term.

Q Understood. Thank you.

BY MS. JACKSON:

Q So you said earlier that you were able to reduce the number of got-aways in

your sector to 5 percent. Is that correct?

A To 5 percent? We are not at 5 percent.

Q My apologies.

A I said in a specific targeted area to roughly 5 percent.

Q Okay. Thank you for the clarification.

Do you know which year you were able to achieve that?

A This year.

Q This year. Okay. Fantastic.

What additional resources, in particular, would you need to help lower that number even further?

A Well, I think, like with any sector, we would like to have more employees, more technology. I think those things are all important.

Q Any technology in particular?

A For Big Bend Sector it's really important to have detection capabilities, because then I don't have to have an agent sitting there monitoring an area, working back and forth. I have the detection capabilities to do that.

So it's really any type of technology that we get becomes a force multiplier, because now I can work areas where I don't have those type of capabilities with the limited agents that we have.

Q Thank you.

Mr. Yim. All right. We'll go off the record.

[Recess.]

Mr. Yi. We will go back on the record. The time is 11:21 a.m.

BY MR. YI:

Q Chief McGoffin, I just wanted follow up on some of the questions that you

had received in the last round.

You had mentioned that it's a rarity to interdict fentanyl, and most of them are caught at the ports of entry.

Well, first of all, do you believe that we have a rising problem with fentanyl surges in our country?

A I believe there is more fentanyl in the country, yes.

Q And so is it possible that the fentanyl flow may be occurring between the ports of entry, that flows, and that helps a success rate to explain that rarity of interdiction?

A I can't speak beyond the Big Bend Sector. But in the Big Bend Sector, the majority of all narcotics is marijuana.

Q Is it your testimony that you don't believe that fentanyl flows between the ports of entry in the Big Bend Sector?

A No. I just merely pointed out that the evidence doesn't show that there's a lot of fentanyl coming through between the ports of entry.

Q How would we know that, that there's no fentanyl coming in between the ports of entry?

A I'm not saying that there isn't. I'm just saying that there is no evidence to be found. I have no intelligence reports, no indication by interdictions, things that we're seeing.

Q Okay. And earlier you were also asked if Secretary Mayorkas has ever ordered you to not secure the border, to which you responded no.

Has he ever told you explicitly to secure the border?

A No.

Q No. Okay.

In the Minority's Exhibit A on page 9, about the DHS plan for southwest border security and preparedness, it states that the Secretary "designated a Senior Coordinating Official to oversee the SBCC, who reports directly to me" -- "me" being Secretary Mayorkas.

During your time at SBCC, you testified earlier that you've met the Secretary three times, but only twice as SCO and one time that preceded your time as SCO when Secretary Mayorkas was a Deputy Secretary. So a year before.

A So to set the record straight, once as an SCO, once prior to becoming the SCO while at the SBCC, and once when he was a Dep Secretary years ago when I was here at headquarters.

Q So you met this person to whom you should report directly one time during the time you were the SCO?

A Yes.

Q Is that correct?

A Physically present, yes.

Q Okay. So how often did you provide him information or data, reports, or emails?

A I did not email the Secretary directly.

Q So how often did you have telephone conversations with him during your time as SCO?

A I never talked to him on the phone.

Q So you never emailed him, you never talked to him on the phone, and you've only met him one time while you served as the SCO.

A That's correct.

Q But according to this document that the minority, the Democrats, have put

into the record, it says, "I designated a Senior Coordinating Official to oversee the SBCC, who reports directly to me," the Secretary.

What does that mean to you, if you are supposed to report to him directly but you've met with him one time in your time as SCO, and that was when he dropped in on a meeting?

A When I talked to the Secretary, it was mostly on, like, Teams meetings. Generally in group meetings. And that was most of the times when we were talking about with other group component leaders there to have discussions.

I led a couple of discussions, in which -- trying to get everybody's input from the other -- the other components to be on top on that. That's what I did. I talked to the chief of staff regularly regarding what I was doing at the SBCC when I was the SCO.

Q Okay. I am going to shift gears here for a second and go back to the Minority Exhibit B?

A Okay.

Q If we can pull that up.

The minority counsel referenced the decline in encounters by March timeframes, year over year.

Can you please read for me what the encounters number for March in the Big Bend Sector were in 2020?

A 675.

Q And what were they in 2021 for March?

A 4,500.

Q Would you agree that's a significant increase?

A Yes.

Q That's a 567 percent increase. I assume you'll take my word for it.

A I will take your word for it.

Q Okay. Even now, in 2023, while numbers may be decreasing, is that number in 2023 still larger than the number in 2020?

A It is.

Q Is it still larger -- is the number in 2021 larger than 2020?

A Yes.

Q Is the number in 2022 larger than the number in 2020?

A Yes.

Q Okay. The last question to you in this round is that you were asked about operational control in the Big Bend Sector. You responded that there is operational advantage. What does that mean?

A It places us in the greatest opportunities to be able to interdict, to be as effective and as efficient as possible.

The Big Bend Sector is very unique. It's the only sector that we face these distances and everything else. So we look at where we can place the best use of technology, manpower, what we can do to formulate opportunities for interdicting at the right opportunities. You know what I mean? That's what we're trying to do.

For example, when somebody crosses in, say, another area where there's cities on both sides, which we do face this in one particular area, what I'm saying, you have minutes to seconds to be able to respond to kind of find out and make some interdictions. We have days in a lot of instances.

So to be effective with our resources I may know about a particularized group, but I not may be able to get to them right then. So I interdict the most -- the group that's potentially going to evade detection and get away, and then go back to that group when I possibly can.

So we utilize the terrain and everything else to our advantage. That's operational advantage to be as effective and efficient as possible.

Q And does that advantage always equate to control?

A I mean, it reduces the amount of presence along the border, the entries and encounters along the borders.

Q But does advantage equate control?

A That would depend on your definition of control.

Q What is your definition of control? What is your definition of operational control that you used in your 30 years of law enforcement as a Border Patrol agent?

A I'm pretty -- as was talked about by the Congressman, I was familiar -- Congressman Green mentioned that, what is the law in the Safe and Secure Fence Act. I'm familiar with that.

Q So you are familiar with the law and you are familiar with the definition of operational control.

A In that capacity, yes, I am.

Q So I guess this is a yes-or-no question, much like what my minority counterparts asked you, but I would ask that you answer it in a yes or no.

Do we have operational control?

A In Big Bend Sector?

Q Yes.

A By that definition, no.

Q Okay. Thank you.

BY MS. O'CONNOR:

Q Hello, sir. I'm Elizabeth O'Connor again.

I'm going to talk to you a little bit more about encounters and processing in a little

bit more specificity, especially in fiscal '21 and '22.

So you arrived at the -- close to the beginning of fiscal '21, December of '20, right, in Big Bend?

A I arrived at the very end of December of 2020.

Q Okay. And at that point the trend of monthly encounters started -- was slightly increasing, but hadn't exploded yet, right?

A That's correct.

Q Were you briefed when you first came on about what was going on in the sector?

A Yes.

Q And what kind of information did you receive about the trends in the sector?

A The varying trends of uses of highways to egress from the border area, the checkpoint trends, crossing trends, the cartels that were actually operating south of the border, terrain conditions, and, really importantly, the ranching community that is a part of west Texas and how -- the importance of that, maintaining community relations with those individuals to make sure that we were having the ability to work with them. It helps us as we work along the border.

Q What did you learn about the crossing trends?

A At that particularized time, they were using certain areas that I was seeing more than others. There were areas that were really just weren't being used very at all. And so we looked at those trends when I got there to say: Okay, what are we going to do when we look at these types of crossing trends, and what we going to do to change that?

Q What about the numbers of crossers?

A What do you mean?

Q What did you learn about the trends in the number of crossers? It was starting to increase slowly.

A Yes.

Q Was there any intel or information about where those numbers were expected to go?

A We had intel like where the cartels were exploiting us and where they were funneling some of that traffic to.

Q Were you receiving any information from the current sector leadership, CBP leadership or DHS leadership, about where those migrant crossing numbers were trending?

A When I first arrived where they were happening at? Yes.

Q And what did you learn about where the numbers were trending?

A That they were exploiting vulnerable areas, hard-to-reach areas that were difficult to get to by any means, and that they were utilizing that terrain to their advantage.

Q Okay. So I'm asking about the numbers.

A Okay.

Q So were you receiving information from CBP headquarters or DHS headquarters or leadership currently in the Big Bend Sector when you arrived about where the number of encounters was expected to go upon your arrival?

A I guess I'm not understanding your question.

Q Was there any forecasting about the numbers that are expected to arrive in your sector?

A No, I never got it like this is where they're going to show up, other than what was going on in the sector itself, as far as like, hey, this is where the cartels are trying to

exploit this.

Q So no one from DHS or CBP headquarters said: We've done this forecasting about what we expect to happen as far as the number of migrants to cross. No one ever told you -- gave you any sort of intel about the expected number of migrants that are going to cross?

A In Big Bend Sector, no.

Q Okay. Did they tell you about any sort of expected trend, generally, across the southwest border?

A I mean, I don't recall exactly what was said. I believe that -- I don't recall anything specific what was said by Border Patrol leadership regarding overall trends across the sector.

I know in speaking to CBP leadership about my sector, when I first arrived I was given expectations to get out there and do my absolute best and to look at means and opportunities to change if anything was going on.

Q Okay. So when the numbers of encounters increased by 127 percent from the time you got there in the first three months, you weren't expecting that to happen?

A I mean, you can't sit there and say, like, there is going to be a surge in this particularized area, because the resources -- I mean, the limitations in Big Bend Sector on both sides of the border are so different. There's no communities where people just suddenly show up into this area and say, "Hey, we're going to camp out here for 30 days," and we should know about it. It doesn't transpire in my AOR. They have to be moved there by smugglers deliberately to be able to cross.

And what I was looking at was the numbers being processed -- or that were being -- traversing through these vulnerable areas and why was it. These were remote areas for both sides of the border.

Q So in those first three months, would you say that you were unprepared for that large increase in encounters?

A I wouldn't say we were unprepared.

Q You weren't expecting it, right?

A I think we looked at it and said: Okay, what are we going do? I mean, I wasn't expecting to see the numbers go like that. It never had happened before in the Big Bend Sector.

Q So between, let's say, January of 2021, since that's ostensibly when you started, between January and May is when there was the largest increase, because in May you hit the peak, right?

A That was the highest one -- that was the highest point on record, yes.

Q Right. So in those first five months, what operational changes did you make to handle that flow?

A Like I said before, we looked at trying to take advantage of -- essentially what was going on was, when I got there, was we were looking at things, and I would say, as an example, that agents would find, say, footprints of a group of people. They would follow those footprints, and they would follow them up into the mountains. And then when you're in the mountains, it takes more resources to go up and actually try to extract them from the mountains safely and get everybody out of there correctly.

We started looking at adjustments in how we could interdict in more effective areas so that we could adjust how many -- the help needed to actually extract the individuals and keep agents on the line.

We looked at opportunities to be much more effective and efficient in how we made interdictions, how we did detections, and where we could employ our best capabilities with the agents that we had and the technology that was available to us.

LES?

We also restructured and looked at, okay, what technology do we have in the sector? What will that do to help us in these particularized areas so that we can make a difference in that particular trend?

Q And during those first five months, did you receive any additional personnel to help?

A From -- on occasion. I don't remember the timeframes and which months. But on occasion I did request and ask for, from the Special Operations Group, to come out and assist, and they did on occasion.

But they weren't available the whole time, so we used them in certain instances to work in that area and help us. But, again, it was just when they weren't -- if they were -- they might have been invested in something else. When they were available, we tried to utilize those to help us.

And then we also kind of cross-aligned some of our own resources in the sector to try to help out with that as well.

Q What does that mean?

A So we took people from other areas, to include sector headquarters, and sent them out there to go help.

Q Did you ever receive any agents from other sectors to help?

A Other than the Special Operations Group?

Q Right.

A We did not. Though we did -- we have in the past asked headquarters to send us some additional intelligence agents, so we can make some -- to get a little bit more -- help our intelligence get a little bit more information. But other than that --

Q [Inaudible.]

A We received four for about a month.

Q When was that?

A Within the last couple of months.

Q What calendar month, like right now in 2023?

A Yes.

Q Okay. So in --

A The last couple of months.

Q So in 2021, in this time period I'm asking about, you didn't get intel officers, right?

A No, we did not.

Q Okay. And you just had some occasional help by Special Ops?

A That's correct.

Q Okay. So are you concerned -- or is it your opinion that during that time period when there was a 700 percent increase in encounters year over year, do you think that there were many migrants that you were missing as got-aways?

A I think that's always a concern. But when you said 700 years over the years, can you clarify that, because that's --

Q Sure. So fiscal year 2020 --

A Okay.

Q -- if you look at Minority Exhibit B, fiscal year 2020, May, that's 628 encounters. And then in 2021, that's 5,050.

A I was looking at the fiscal year. That's why I'm just trying to understand, like, the differences.

Q That's okay.

So do you think there was an increase of got-aways during that time period? Because logic would say that you have the same amount of agents but many, many more

encounters. So would you agree that there were likely many more got-aways during that time period?

A Yes, there was more got-aways. Like I said, we had, like, I think -- I gave some approximations around that timeframe. So roughly 12,000 got-aways during that time period.

Q During that year? That was the whole year, though, right?

A The whole year.

Q Okay. And you also said that you think you think year to date this year there's about 6,000 got-aways?

A It's somewhere in that range. I don't know specifically today right now. I don't have that in front of me.

Q So I understand that that's a decrease, but if you look at that compared to the total number of encounters year over year, 6,000 got-aways is almost as many people that you've encountered this year, whereas 12,000 got-aways in 2020 and 2021 is only a fraction of the 32,000 and 37,000 you encountered, respectively. So you really see that as a success?

A Absolutely.

Q Why?

A And I can explain it to you.

Q Sure.

A Because they are no longer operating in the areas that they were operating in before. We've shaped the landscape and pushed them to even more remote areas.

And so right now, over 60 percent of my got-aways are currently occurring in one station that's very remote, and then there's another station that has roughly somewhere in the area of 20 to 30 percent of the other got-aways.

We shape the landscape. We've moved them out. And now we have to adjust. And we're in that process of adjustment, just like we were previously, to make sure that we can get in there and do that.

Look, I'm not proud of the fact that we have this amount of got-aways. I don't think any chief would be. But when you look at the 63 percent, I think it is roughly 60, 63 percent decrease in overall encounters. And you look at the decrease in the actual got-aways, I mean, we are making a difference. It is now time to adjust and readjust like we did in the past.

Q So your most recent focus is now going to be on the got-aways that you have extended into the more remote areas?

A Absolutely.

Q Based on CBP's data, the large majority of your encounters are single adults?

A That's correct.

Q Why do you think that is? Is it the terrain?

A It is terrain. I mean, it is very difficult to traverse these difficult conditions. I'm not saying that it doesn't happen, because we have seen family units. But it's very difficult to struggle with a child when you've got to walk for 14 days. It is very difficult. So I think that plays a part in it, yes.

Q And according to the same data, about 90 percent of encounters in Big Bend are Mexican nationals. The remaining are largely from the Northern Triangle and Venezuela.

We've seen that other sectors encounter all sort of different nationalities. Why do you think it is different in Big Bend? Why are you seeing a variety of nationalities? The same thing --

A Well, I don't know that it equates to the terrain. It might also, I think, have

a lot to do what the cartels largely allow along the southwest border -- I mean the southern border to our south.

But I don't know for sure why that is. I know that Mexican nationals have been by far the largest nationality that we've seen in my time there, averaging anywhere from 90 to 92 percent, roughly. I'm sorry, let's see -- no, I'm sorry. Single adults are 90 to 92 percent. I apologize.

Q So you think that cartels may be controlling the nationality of the people that are coming through your sector?

A Well, you have to remember that it is very remote south of the Big Bend Sector and to get to different locations you have to traverse through smaller roads, smaller little pueblos, different things like that. And so for them to get there they have to go through these different areas and it is much different than it is anywhere else because they're so remote and so unique.

And so the cartels are working south of the border, and so just looking at that, then that could have an effect on who gets to come through that area or who doesn't.

Q You mentioned that there were three main cartels in your sector. Which ones are they?

A So you have the Sinaloa Cartel, La Linea Cartel, and the CDN, formerly known as the Del Noreste.

Q You mentioned before that you were unfamiliar or tangentially familiar with the idea of braceletting migrants by the cartels as they come over the border. Is that correct?

A Yes.

Q You have an intel unit in Big Bend?

A Yes.

Q And do they share intel with the other sectors throughout the southwest border?

A Yes.

Q And do they report that intel to you about what's going on with trends throughout the border?

A They will to my staff.

Q So if that's the significant trend going on in other sectors, is there a reason you wouldn't be familiar with it?

A I don't know how long that the trend has been going on. I haven't been briefed by my intel unit for a few months now, so I don't know exactly. It's not something that's going on in Big Bend, to my knowledge.

Q So you weren't briefed about it before you went to the coordinating counsel?

A I don't recall, no.

Q Do you think that there are other trends that you may just not know about because you haven't been briefed about them?

A I mean, it's possible. I try to get briefed on as much as I can, but it's certainly possible.

Q Do you have the ability to be an effective leader without all of the relevant information, particularly when it comes to intelligence to battle the cartels?

A I think you get as much as information as you can that's happening in your AOR and you utilize it. I think I've made some differences. I think we've seen some progress in the Big Bend Sector.

Q Is it important to understand the trends that are happening in other sectors to be on the lookout for things that may change in yours?

A Sure. Absolutely. So the intel units communicate with that, and then they come back to us. And if they start to see a trend like that, then we will ask them to dive deeper into that information to see how is that affecting us, is it even related to us or not.

Q Okay. I will move on to processing aliens. You've mentioned a couple of times that nobody is released from Big Bend. So I just want to go step by step through what's happening, particularly during 2021 and 2022 when the numbers got really high.

When anyone is encountered at Big Bend, they're brought back to a processing station, correct?

A Yes, one of two.

Q Okay. And have there always been two since you've been there?

A Yes. Right when I first got there, we went to two.

Q Okay.

A It was in the process of moving when I got there.

Q Okay. And what did that processing center -- how are -- is there a policy for how agents are supposed to be making a determination about the outcome of processing for that individual migrant?

A Well, we receive information about processing from immigrants, and then it goes into the assistant chief over that program, and then it goes down to the two locations, and we are making sure that we're adhering to those.

Q Okay. I'm sorry. So you're receiving policy information?

A Right. If there's like a change in how we're going to do some type of processing or a certain way we are supposed to process, we get that information from our -- from headquarters. It usually goes down to the corridors to my sector staff, and then that gets disseminated to there, so to make sure that we're utilizing the right forms

or if there's changes to a form or something like that, to make sure we're processing.

Q So CBP headquarters --

A Border Patrol headquarters.

Q I'm sorry. Border headquarters down to sector chiefs or their staff?

A Their staff.

Q And then it gets relayed down to the line agents?

A To the agents that are working in those centers, yes.

Q Right. Okay. So are there always specific policies in Big Bend about how an individual's processed?

A I believe we have guidance on how to do that at every one. I think the folks that are in charge of those areas all have the current guidance. I don't know it specifically, because where I'm at I'm worried about a myriad of other things and relying upon my staff to make sure that we're in compliance.

Q Okay. And while you were there, do you know in fiscal year '21 how many migrants were expelled under Title 42?

A In which year?

Q Fiscal '21.

A Fiscal year 2021 for Title 42, 34,606. It's in the public record.

Q And how many were paroled?

A We don't do paroles in the Big Bend Sector.

Q So people that are being considered for parole, what happens to them?

A We send them to El Paso Sector so that they can -- if they're asking for parole or they're credible fear, then they're interviewed at those locations and then determined --

Q Those are two different things. So if they're asking for parole or they're

sent to El Paso?

A Well, we send them to El Paso if it's in our -- we can't -- we're not going to parole anybody. So we're either going to Title 42 them or Title 8, generally. So we don't actually, like, process anybody for parole in Big Bend Sector.

Q Okay. So when you make the determination, how do you say this person's eligible or requesting for parole and send them to El Paso?

A Well, if they're -- depending on, like, if they're asking for a credible fear or anything like that, again, we transfer them to El Paso so they can have their credible fear interview.

There's no ERO in Big Bend Sector. There's no CIS close to Big Bend Sector. So we have to relocate most of those individuals.

Q Okay. So I understand that. But what I'm asking is, there's a difference between somebody being paroled and someone requesting a credible fear review. I understand you're sending credible fear reviews to El Paso.

If there are people that are not asserting fear, but you're not -- you don't intend to expel them under Title 42, what happens to those people -- or removed?

A Well, Title 8.

Q You issue them an NTA?

A So, like, yeah, we issue them an NTA and send them to El Paso to either be sent to ERO or to -- we don't go beyond that.

Q So you're not making release determinations.

A No.

Q But you are making determinations about general processing, such as issuing an NTA or expelling under Title 42 or --

A Or reinstatements.

Q -- reinstating --

A Or reinstatements or expedited removals. All of those things.

Q Okay. So is there anybody who gets sent from Big Bend to El Paso that's not issued an NTA and that's being considered for parole?

A I'm not aware. I don't know, ma'am. I really don't know.

Q And then do you remove -- when you expel -- well, strike that.

When you remove people under prior order of removal, is CBP doing the removal since there's no ICE office there?

A We send everybody to El Paso where there is an ICE office or to Del Rio where they have ICE -- they have ERO capacity, is my understanding.

Q When you're expelling people under Title 42, is it the same thing? Is everyone getting shipped to another sector --

A We can Title 42 through the Presidio Port of Entry. But when he look at the -- you got to remember, it's 517 miles of border. It's not in the best interest or it's not guarding the taxpayer dollars if we try to drive them 400 miles away to expel them through a certain port of entry.

We're looking for the best possibilities to expel those individuals through ports of entry that are as close as possible so that we're not overextending our resources, to include our vehicles, our personnel, for an extended amount of time. Again, it goes back to that efficiency and effectiveness.

So we do have one port of entry which we can Title 42 people through, but it does not make sense from a logistical or a resource standpoint to simply use that port all by itself.

Q In fiscal year '21, in September, the Department authorized Big Bend to utilize parole plus ATD. If you're not actually really seeing people on parole, and then

because you don't have the ERO to give them the ATD, what role does Big Bend play in the parole plus ATD decision? Why would it be authorized in your sector?

A I am assuming in the event that we need it. I don't really know, ma'am.

Q So you don't know -- the piece I'm trying to get here is you don't know if you're sending people to other sectors to be considered for parole that haven't asserted a fear. You don't know if there's a group of people that are just being sent for parole.

A I don't, ma'am, I don't. I don't know that -- we're not, to my knowledge, processing anybody for parole of any kind.

Q Okay.

BY MR. RUST:

Q So we talked about how, of the aliens that you encounter in Big Bend Sector, you're able to maintain detention throughout the life cycle of their immigration case or refer them to another sector to handle --

A Or a law enforcement agency.

Q Or those individuals are returned either to Mexico or their country of origin. Do I understand that correctly?

A Well, I mean, I can only -- when we return them ourselves, either through Juarez or through El Paso or through Presidio Port of Entry or over in -- what's the other one -- Del Rio, we physically know when those people have left the country under Title 42.

When we process them to other places when we don't -- we no longer have control of the individuals, when they go to ERO from, say, El Paso Sector, they go into their process. So I can't tell you exactly what --

Q You wouldn't be aware if ERO in El Paso is releasing individuals, you wouldn't have visibility into that --

A No.

Q -- after the transfer has been made.

A No.

Q Has the detention or return policy in Big Bend been in effect the entire time that you've been in Big Bend, or were there times when you were forced to release individuals in Big Bend --

A I'm not aware of any time when they were forced to release, unless from my understanding there might have been very unique circumstances where it was a humanitarian need. But very rare, if any.

Q Do you think it's important as a matter of border security policy to maintain detention on individuals throughout the life cycle of their immigration case?

A For what we are doing, absolutely.

Q And why do you think that's important?

A Well, because, again, we live in very small communities. And so there are no resources of any kind for anybody. If we were to use some of these other processes there's no place for them to leave. There's no places for them to go. And if they're criminal aliens, we want to make sure we maintain that throughout.

There's a lot of pieces to that whole dynamic in Big Bend. It's so big. So remote. Small towns. Very little transportation to or from other than by private vehicle. And so it's just -- and the communities themselves are very -- there's just not a lot there.

Q So there's not a lot of infrastructure to be able to make releases. In addition to that, would you -- what is your opinion of a policy that would release individuals into the community? Do you believe that would incentivize additional people to illegally cross the border with the understanding that they may too be released

into the community?

A I can't say that for certain in Big Bend. I mean, every time we apprehend people I'm sure they're communicating with the folks back home about what's going on and what happened and transpired to them. And so in Big Bend they're not -- I mean, I don't know what they're reporting back home, but we're not releasing anybody.

Q So in Big Bend Sector, an individual whose encountered would be reporting back home, if at all, if they were not released from custody by Big Bend.

A I mean, they could be, but I would hope that they would be talking about the difficulties and how tough it was so they encourage people not to come through that area. It's a very desolate area. I don't know if we'll ever find everybody that's out there, unfortunately.

Q So given the terrain difficulties that we talked about and the dangers presented by these Transnational Criminal Organizations operating south of Big Bend Sector, would you agree that it's important to deter illegal border crossings in your sector and others?

A Absolutely, I mean.

Q Any law enforcement job carries with it an inherent risk. Can you talk about some of the risks that are unique to Border Patrol agents operating in Big Bend Sector?

A Here's the reality of Big Bend Sector. It's so immense. It's so wide-ranging. You can be in areas where you don't have communications. You can be -- the majority -- large portions of the area don't have any cell phone coverage. And you're often asked to work on your own. You go out there and do your job to the best of your capabilities.

Obviously, you face at any time in law enforcement the criminal element and what

that brings and the danger that it brings with that.

But what is really compounded in Big Bend Sector is you may face that element and not be able to have easy access to get out of it. I mean, if you're injured, it may take a couple hours to get you out of some of these areas.

And so walking the rough terrain, you have agents that get injured, fall down, hurt themselves. It's difficult terrain to be in. So we see some of those types of accidents happen.

And it's always my concern. And I talk about this incessantly in my sector, about the need for safety. Make sure you're paying attention. Don't be complacent. Anything can happen.

And we've done our absolute best to do that because, again, it is so dangerous out there in these areas because of not only just the criminal element, but the inability to effectively always communicate when you are in distress.

Q You mentioned previously that the majority of individuals your agents are encountering in Big Bend Sector are seeking to evade apprehension.

Does that ever result in flight from agents after they've tried to initiate an arrest?

A Yes.

Q Does flight from an agent indicate a particular risk profile of an individual that would be elevated in that circumstance?

A Well, I mean, if there's somebody who is going to try to run from you, we don't know what they have at stake. We don't know if it's a criminal record or it's just simply their desire to continue their travel. I mean, we never know. We always treat it as you have to be careful with the individual who is running from you because you don't know what they're going to do and you don't know their background.

Q Do you routinely encounter individuals who have criminal histories or prior

illegal histories in Big Bend Sector?

A We do have some, yes.

Q When your agents are encountering these individuals in the field, at what point in time do they become aware of that criminal history?

A Usually we don't become aware of that criminal history until they get back to the station and we run their biometrics.

Q So from the point of arrest until they're transported back to the station, the agents could continue to be unaware of a criminal history?

A Yes. But each agent evaluates his position differently. Everybody looks at the people that they're encountering. They can call for assistance if they feel like they're worried about something when they can.

And so we look at that individually to see what that is. If there's somebody who was involved running from you, became difficult, then we obviously – the agents have that access to try to get some help if they need it.

Q And has the risk to the Border Patrol agents in your sector increased with increased numbers of encounters and got-aways?

A I don't have the specific numbers, but I think any time you are working in these remote conditions there's always greater risk.

It also goes along with the rescues, and I don't want to undermine that. But the rescues are often difficult. Somebody gets hurt. They're calling for help. They're in very difficult terrain. They're in very difficult circumstances. And we got to go in there and we got to help them.

So getting into there is inherently risky a lot of times, trying to get into these rough conditions. And, again, you don't know when you walk into that situation. You're hoping it's all that it seems when the 911 call goes.

Q Do you know approximately how many rescues your agents have conducted this fiscal year?

A I don't have the number off the top of my head. I know our rescues have gone down as well as our deaths have gone down. It's something we've worked really hard. Getting more rescue beacons out there, getting more placards out there plays a big role.

I think that's helpful because most of our rescues now are done because there's a 911 call. Some are still done by somebody who says: I saw somebody out there needs your help. We go out there.

We also -- I think it's important to note we don't just rescue people from other countries. We rescue U.S. citizens as well. We got a large population that we help the National Park Service with. Big Bend National Park is there. So we work with all our partners to provide whatever we can to assist when somebody's in danger.

Q What tactics do the human smuggling organizations use to enhance an individual's ability to evade detection?

A In Big Bend Sector we see people in camouflage, camouflage backpacks. We see some of that. Walking at night. What they're looking at in our AOR as far as our technology, what they do know, how to evade that, and then what we do to counter that. They use vehicles, hidden compartments in vehicles.

It just depends because, like, hidden in all this wide-open area. And then I also have a checkpoint in I-10. So there's hidden compartments. There's any number of things in vehicles. Trying to circumvent our checkpoints by going around them wherever possible. These are all tactics used by the smugglers to try to evade detection.

Q During your tenure in Big Bend Sector has the checkpoint been operational that entire time, including during the surge?

A The Sierra Blanca checkpoint or all of our checkpoints?

Q Has there been any operational impact to your checkpoints in terms of staffing or keeping them open from the surge that occurred in 2021?

A Not from the surge itself.

Q So there's been no operational -- negative operational impact to your ability to maintain operations of those Border Patrol checkpoints?

A The critical piece is -- well, just recently, we closed the checkpoint while I was here to help and assist. They did close the checkpoint for a couple days in Sierra Blanca, is my understanding. And I think we were helping El Paso a little bit. But it wasn't very long, a very short timeframe.

And then our other checkpoints are we have to have so many resources. So in one particular station's AOR we'll run one checkpoint and then tactically deploy to the other checkpoint. We don't always have the checkpoints up together.

Q How important are those checkpoints to enhancing your ability to secure the border?

A I think they're very important. Patrolling the egression routes is important.

Q Do you frequently encounter individuals who evaded apprehension in the field of these checkpoints?

A I'm trying to understand.

Q Do you encounter individuals who initially evaded apprehension in the field who were then encountered at the interior checkpoints?

A Yes.

Q Have any of those individuals ever been found to have criminal histories?

A I don't know quite off the top of my head. I can't think of an exact time where one was. I am sure that there are people that we apprehend in circumstances

like that that have criminal histories, but I cannot give you an example off the top of my head from one of those that was interdicted at the checkpoint.

Q You've also talked a little bit about the technologies that Border Patrol leverages to increase its ability to detect and then interdict individuals or narcotics coming across the border.

Would you characterize those technologies as force multipliers for your agents, or do they displace the need for law enforcement agents to actually go and make the arrest and do the subsequent processing?

A It really depends on the technology. If we have technology that is autonomous, then, yes, that works out great, there's no agent attached to it. We just find out. We are notified of something going on. That allows us not to have an agent, particularly, patrolling that area or AOR. And we can slide left or right or move to other locations where we have even more coverage. So it does give us force multiplier capabilities.

BY MR. MCDONAGH:

Q Yeah, I'd like to ask a little bit about -- you say you take biometrics when you first encounter illegal border crossers. Those biometrics, do those databases check with systems, law enforcement databases in their country of origin or in foreign countries?

A I'm not aware that they do or don't. I don't know of existing checks outside of what we normally do through our systems. I don't know.

Q Okay. So they could be a criminal abroad, but not a criminal in the United States? They could have a criminal record abroad?

A It's possible.

Q Okay. There's reports that migrants are getting rid of their identification documents before reaching the southwest border. Is there any reason that they would

do that that you can think of?

A I mean, if you're somebody from other than Mexico, the potential is that you could be returned to your country of origin. And we've seen where people claim other countries or claim a country as, say, Mexico rather than the country where they're from so that should they get encountered then we Title 42 them back to Mexico.

Q What kind of processes do you guys have in place to identify fraudulent identification documents?

A Well, we, either our agents and/or intel agents, get involved in the processing to make sure we have a clear understanding are there -- do our agents -- are they able to detect anything that would lead them to believe that the individual is not from the country that they're saying. If we don't have anything in biometrics to show otherwise, we ask those additional questions.

If there is some concern, we might have somebody else come in to help with that interview. And if we cannot make a determination other than what the individual says, then when they get Title 42'd back to Mexico, they go through Mexican immigration. And there are times when Mexican immigration determines that they are not, in fact, from, say, Mexico, and then they get returned to our custody for processing.

Q I want to turn to the use of NGOs. You said you had a biweekly meeting with one NGO in your sector. What is the NGO doing in Big Bend?

A Well, so he's a pastor in one of the churches, and we're keeping him in tune, like, hey, we're talking to him, this is what's going on in our area.

He oftentimes wants to really get involved. But, again, we're not releasing anybody. We're not -- there's no releases going on.

But he's always available. And it's like with any of our community partners, you want to be in constant contact to be able to talk to them and make sure that they know

what's going on.

Because the other piece to that is he's connected to NGOs I'm sure in other locations, and just keeping him aware of what's transpiring.

Q What organization is this gentleman with?

A He's with -- I don't remember the name of it. But he's a pastor, I believe, at the Episcopal church, I believe.

Q Okay. So you guys move several individuals to Del Rio or El Paso for -- they potentially get paroled. So he hypothetically could be in contact with NGOs in Del Rio or El Paso saying, "Hey, they just -- Big Bend is sending X number of migrants, be ready"?

A We don't really talk to him about our numbers that we're sending to and from the sector. That's not what we engage in. It's more about what we're seeing, if there is no need for us to utilize his services at this time, but we continue to tell him. We don't get into any operational numbers of movements of individuals.

Q So the biweekly meeting, is it just him offering again and again, "Hey, I'm here to help"?

A Absolutely, and to make sure that he's aware of what's going on.

We also -- he also brings in a lot of people to come and talk to sector staff so they have a better understanding of what the Border Patrol does, what's going on in our area. It's an educational opportunity. So he coordinates a lot of those visits as well.

Mr. Yi. What is the name of the person at the NGO?

Ms. Slocum. If you know it, you can say it.

Mr. McGoffin. Yeah, I'm just trying to think.

Mr. Yi. Would you commit to providing us his name after the interview?

Mr. McGoffin. Yes.

Mr. Ewencyk. I'm sorry. I just didn't hear. You're asking for the name of the

Episcopal pastor of Big Bend Sector.

Mr. Yi. Yes.

I'll turn it over to Mr. Higgins.

Mr. Higgins. Thank you, sir.

Chief?

Mr. McGoffin. Yes, sir.

Mr. Higgins. You had stated earlier that you haven't received a briefing from your intel people in a couple of months. Did you say that today?

Mr. McGoffin. Yes, sir.

Mr. Higgins. Did I hear you say that correctly?

Mr. McGoffin. Yes, sir.

Mr. Higgins. Why?

Mr. McGoffin. Because I'm in Washington, D.C., sir.

Mr. Higgins. You have telephones, don't you?

Mr. McGoffin. We do have telephones, yes, sir.

Mr. Higgins. So for what reason would a chief, being a chief of only one of nine sectors --

Mr. McGoffin. Yes, sir.

Mr. Higgins. -- across 1,954 miles of our southern border --

Mr. McGoffin. Yes, sir.

Mr. Higgins. -- we have a serious problem at our southern border, intel is important, so why would a chief not have regular communications with his intel people? Legitimate question.

Mr. McGoffin. Absolutely, sir. And to answer your question, it is because the acting chief in the Big Bend Sector is getting regularly briefed by intel agents so he can

make actions on the ground. I'm currently assigned to headquarters, and I'm engrossed in the activities that I'm conducting up here.

Mr. Higgins. So that would explain the two months that you haven't received that briefing.

Mr. McGoffin. Yes, sir.

Mr. Higgins. Okay. In the Big Bend Sector, some things have not changed. The terrain.

Mr. McGoffin. Yes, sir.

Mr. Higgins. The nature of personnel. Potentially the training of personnel. The infrastructure you have. Your vehicles, roads, et cetera.

The budget, DHS budget, has become significantly higher from, say, 2016 levels, going from about a hundred billion to under the -- in the Trump administration it grew all the way to \$195 billion. Now it's down to \$175 billion. But even given that \$20 billion decrease under the Biden administration, it's still \$75 billion higher than it was just 6, 7 years ago.

So American treasure is being heavily invested through the Department of Homeland Security and, obviously, our sovereign border with Mexico is the primary concern of area of threat, shall we say, to our homeland.

So technology, would you agree, is an important part of that, to detect an incoming crossing and then to respond to that crossing and then to effect arrest within the parameters of the law and policy? Technology plays an important role. Would you agree?

Mr. McGoffin. I would agree, sir.

Mr. Higgins. Okay. So from your perspective as the chief, the section chief, what happened to our aerostats? Do you have aerostats operating right now --

Mr. McGoffin. To my knowledge, no, we don't, sir.

Mr. Higgins. When you got to your sector, did you have them?

← Mr. McGoffin. No, sir. But to be fair, there is an aerostat operated by Air and Marine that is in my AOR, has been the entire time. →

Mr. Higgins. Has been the entire time since you've been there?

← Mr. McGoffin. Yes, sir. It's operated by Air and Marine Operations. →

Mr. Higgins. Well, the aerostats I'm referring to belong to DOD, but they were operated -- the technology was received by government agents, Border and DOD, but it would check for deployment for weather and et cetera by private contractors. But that's the same aerostats that you're referring to?

Mr. McGoffin. The aerostats that I was referring to, I don't know what contract they came under. We had them for a very brief time.

Mr. Higgins. I'm talking about the old aerostats, the blimps about the size of half of this room.

← Mr. McGoffin. Well, we have one of those that's run by Air and Marine similar to some of the other ones. It does not give me as a Border Patrol chief any capabilities, if that's what you're asking. Just to make sure I understand. →

Mr. Higgins. Well, aerostats were deployed across the southern border since 2016.

Mr. McGoffin. Yes, sir.

Mr. Higgins. They were recently taken down. We were told in the course of December, January, and February that those orders went out.

I received a message from an agent on January 26th that said, beginning December 31st, ending March 31st, aerostats along the southwestern border began coming down, started in south Texas, reducing the ability to count got-aways and seize

LES² ↓

narcotics. He goes on with his message. This is a whistleblower.

But my understanding is that aerostats have been phased out. And the reason we were given was because of cost. And yet you can see why we would question that, because of the budget has incredibly increased since the time aerostats were deployed. And it's a very effective technology.

You're saying you have one in your sector that's operating.

Mr. McGoffin. We have an aerostat in our sector. I'm just not sure if it's the same type of aerostat that you're talking about, sir.

Mr. Higgins. The only aerostats we have, in 2016, 2017, and 2018, surely you're aware they're run by -- they're DOD assets, they're Army surplus stuff?

Mr. McGoffin. No, this is not the same thing that I'm aware of, sir.

Mr. Higgins. Okay.

Mr. McGoffin. It's not DOD surplus, sir.

Mr. Higgins. Are you familiar with the aerostats that I'm referring to?

Mr. McGoffin. Obviously not to any great detail, sir.

Mr. Higgins. But you're the sector chief?

Mr. McGoffin. I am the sector chief, yes, sir.

Mr. Higgins. Did you expect to be promoted to chief, Chief, in the course of your career? Before you were promoted to chief, were you anticipating that?

[12:16 p.m.]

Mr. McGoffin. No, sir.

Mr. Higgins. Why not?

Mr. McGoffin. I wanted to help. I wanted to be available to help the agents on the ground.

Mr. Higgins. And was it on your career path to be --

Mr. McGoffin. When I was younger, no, sir, it was not.

Mr. Higgins. Every one-star general I've met out of the Pentagon wants his -- he wants one thing in life; he wants a second star. So there's nothing wrong with having aspirations to be promoted to chief.

I'm asking you, were you surprised by that call?

Mr. McGoffin. No, I was not surprised that I was asked to be a chief, no, sir. I had prepared myself to --

Mr. Higgins. Okay.

My final question, very simple: Can you call Secretary Mayorkas directly? If you have to call him, can you call him?

Mr. McGoffin. No, sir. I don't have his number.

Mr. Higgins. Why not?

Mr. McGoffin. I've never had his number, sir.

Mr. Higgins. Is he not accessible to you? You're his chief.

Mr. McGoffin. I can call the chief of staff.

Mr. Higgins. So, if I'm the sheriff, my deputy chief, my captains, my lieutenants on patrol at midnight, they have the sheriff's number. You don't have Secretary Mayorkas's cell phone number?

Mr. McGoffin. No, sir, I do not. I have Chief Ortiz's phone number.

Mr. Higgins. No, I understand. But if Chief Ortiz is not available, you don't have any way to reach Secretary Mayorkas directly?

Mr. McGoffin. No, sir --

Mr. Higgins. It's a legitimate question.

Mr. McGoffin. No, sir, I do not.

Mr. Higgins. Okay. Thank you. That's all I have for this round.

BY MR. YI:

Q I think, to the Congressman's question too, it appears that there are two different types of Tethered Aerostat Radar Systems. Are you familiar with that, sir?

A You know, I'm not as familiar with the technology of the aerostat itself.

I think it's probably public record that there's an aerostat in Big Bend Sector's AOR, near Marfa, Texas. That has been there for quite some time. I don't know the origins of that. But I will tell you this, that I've never really -- I have never received, as a chief, any information from that aerostat that's helped me with border operations.

Q Did you ever ask for information related to the aerostat that may --

A To my understanding --

Q -- provide information to help you --

A Well, to my understanding, though -- I'm sorry. I don't want to cut you off. I apologize. Finish your question.

Q I wanted to make sure that, as the sector chief -- it seems like AMO operates two types of aerostats, the 275-K and the 420-K. Whichever one it is, whatever type of aerostat that is, if you're familiar with the fact that there is one in your sector and you say that you've never used information from it, have you ever asked how to obtain information from it so that it can help your operations in your sector?

A From what I recall talking about that aerostat and what I was told in the past

is that that aerostat is looking at radar signatures along the southwest border for aircraft. That's my understanding of what that is for.

Q And the information related to any illicit aircraft path through your sector would be relevant to you maintaining better security.

A Absolutely. I think it's imperative to understand aircraft along all our borders in case --

Q So why have you never asked them for information related to that?

A Well, the sector staff has asked them. And, to my knowledge, I have never seen, as a sector chief, anything that that aerostat itself has given to me as the chief patrol agent personally. It does not mean it didn't go to my staff, but that -- I have questioned that aerostat for much the same reason. There is an aerostat in my AOR; I want to know what it's doing.

Q What about for drones? Does it track drones?

A I don't know. I can't answer that.

Q Okay.

Mr. Higgins. If I could just interject for the aerostat, just for clarification for everyone's benefit here, the aerostats carry payloads. Whatever payload you put on it, that's the technology that you're deploying. And generally across the southern border, they use high-resolution cameras and they tend to have radar and thermal capabilities for tracking.

So you're talking about layers and types of technology, all of which is not new stuff. This is all basically DOD surplus stuff that can be deployed. There's tethered balloons. It's a mobile unit. You deploy where you want to. It's a tethered balloon. It flies from 500 to 5,000 feet and carries up to 3,000 pounds of payload.

Now, I know this, and I would expect that our sector chiefs would know this.

Mr. Yi. The time is 12:21 p.m. That concludes our third round of questioning.

We will take a break for lunch.

Mr. McGoffin. Do I have -- can I ask a question?

Mr. Jonas. No.

Mr. Yi. Sure. If you'd like to ask a question --

Mr. McGoffin. No? All right. I won't ask my question.

Mr. Yi. -- Chief, you're welcome to.

Mr. Jonas. You may ask me, and then --

Mr. McGoffin. I'll ask you.

Mr. Jonas. -- we'll figure it out.

Ms. Slocum. Yes. Yep. Good idea.

Mr. Yi. Okay. Agency counsel does not want the chief to ask the question at the moment, so we will go off the record and take a break. Thank you.

[Recess.]

[1:21 p.m.]

Ms. Martcorena. I think we're ready to go back on the record.

Are you ready?

Mr. McGoffin. Yes.

Ms. Martcorena. Thank you.

The time is 1:21.

BY MS. MARTICORENA:

Q I'd like to start by asking, are you familiar with the National Association of Counties?

A Yes.

Q Thank you. Do you recall giving a presentation at the National Association of Counties' 2023 legislative conference?

A I did.

Q When was that conference?

A I don't remember that.

Q Approximately. Was it earlier this year?

A It was earlier this year.

Q Okay. And did you give that presentation in your official capacity?

A Yes.

Q I'd like to hand you an article that will be marked as -- I believe it is minority exhibit E, which is a printout of the National Association of Counties' website quoting your presentation there.

[McGoffin Minority Exhibit E.

Was marked for identification.]

BY MS. MARTICORENA:

Q I'd like to draw your attention to the paragraph that begins, "When people." It's on the front of the first page, the very bottom.

A Okay.

Q This paragraph says, "'When people are smuggled -- and there are smugglers on both sides of the border -- they are treated like a commodity, not a human being,' he noted. Misinformation provided by smugglers gives migrants false hope. 'They were telling Venezuelans that buses will be available to take them to Canada.'"

"'It's really about educating these individuals [who want to come to the United States],' he said. 'They're being told fabrications.'"

Are you talking about smugglers here?

A Yes, I believe I was.

Q What kind of smugglers are you referring to?

A Those individuals who are engaged in human trafficking.

Q And can you expand on what you meant by, quote, "They're being told fabrications"?

A They are. I mean, it's a common tactic. The cartels will say things like, "It's easy, it's not that far to go," it's this. They're being told fabrications. And that's, you know, been going on for a long time.

It makes the -- you know, my understanding is, it really makes the smuggled individual much more ready and able to be smuggled.

Q And how have you become aware of these fabrications?

A Just from the interviews that, you know, go on in my sector, or myself, over the years, when you're interviewing an individual that comes into custody.

Q And, in your opinion, why do smugglers give migrants what you called "false hope"?

A Well, because they're telling them that all this -- you know, they're telling them that -- they're trying to make the journey sound so much better than it actually is and what the end result will be, when they really truly don't know. They're putting migrants in very difficult and ugly situations. And, you know, they just simply, you know, are putting them in -- you know, they're making up fabrications on how that journey will go, what's going on with it.

It goes back to what I said here and there. You know, they treat these people like a commodity, not a human being. And you know what? It doesn't matter where you're from in the world, you know; you may have to pay a smuggler to cross a border, but you shouldn't have to pay with your life to be smuggled.

Q And, to your knowledge, how do smugglers spread this misinformation?

A Social media. Through recruiting.

Q Okay.

And I know you touched on it a bit, but could you expand on the role of mis- and disinformation and how it contributes to migrants taking the dangerous journey to the United States?

A Well, I mean, whether it's in their home country, wherever that may be, or whether it's when they arrive at the border, you know, smugglers oftentimes are telling them nonfactual stuff about what will happen, you know, what will happen as a result of them being smuggled, what the trip will look like, it's not dangerous, it's, you know, all of these factors.

Q And would public pronouncements or public comments that the U.S. does not have, quote, "operational control" play into rhetoric by smugglers and others who seek to exploit vulnerable people?

A I really don't know. That's such a high-level question, I can't really tell you.

Q Okay.

I'd like to draw your attention now to the second paragraph.

A Okay. On the same first page?

Q Yes, on the first page.

Quote, "In fact, the Department of Homeland Security 'is engaged in the largest anti-smuggling campaign in history,' said Sean McGoffin, senior coordinating official for the Southwest Border Coordination Center, U.S. Department of Homeland Security."

You are still referring to human smuggling here, correct?

A I am.

Q Can you expand on what this anti-smuggling campaign is doing?

A Well, simply, we're trying to identify more people that are being smuggled and engage in greater populations of prosecutions. You know, as I've said many times and in here as well -- you know what I mean? -- these people are treated poorly by those who choose to exploit them, take their money, their life savings oftentimes, and, you know, try to bring them into the country.

And, you know, we're trying everything we can in my sector and, you know, trying to, you know, push that back, try to prosecute as many individuals as you can. You know, my prosecutions for alien smuggling are up this year. And, you know, we're really trying to press the effort to ensure that we're processing -- or, we're prosecuting where we can.

Q And when did this, quote, "largest anti-smuggling campaign in history" start?

A What do you mean? Like --

Q When did the campaign kick off that you're referring to in the article?

A Well, I'm just saying, since we've been engaged in all of this information, standing from the standpoint of the SCO at that particular time, everything that we're

doing to try to combat smuggling, you know, along the southwest border -- and other areas, too, quite frankly.

Q Okay.

And, then, given your experience with the Border Patrol, how important would you say these anti-smuggling efforts are to securing the border?

A Well, I think they're significant, in that we're trying to do everything we can to make people aware of the dangers for their own safety and health preservation, along with diminishing the cartels, who are making billions of dollars off of these type of smuggling efforts, right? I think, you know, they're exploiting these people.

Q Okay.

I'd now like to turn back to the chart from earlier. I believe it was minority exhibit B. This one, with the total encounters in the Big Bend Sector.

So I'd like to look back at October of 2020, which is in the fiscal year 2021 column. And that's the last month before the Presidential election. Can you read me the number of encounters?

A In October of 2020?

Q Yes.

A 653.

Q So, for fiscal year 2021 October, which would be October 2020.

A Oh, I'm sorry. For October 2021 is 1,500, in '21.

Q And just to be clear, fiscal year October 2021 is October 2020, correct?

A Yes.

Q Okay.

So now I'd like to look at some of the kind of more recent numbers. For March of 2023, is that number higher or lower than October of 2020?

A March in this -- March in FY 2023?

Q Yes, correct.

A Is higher than October of FY 2021. Is that what you're asking me?

Q Yes, I'm asking if it's higher or --

A Yes.

Q -- lower. So, just to be clear, I'm seeing 1,194 in March of 2023 --

A That's correct.

Q -- and 1,521 in October of 2020.

A That is correct.

Q Okay. So March of 2023 is lower or higher?

A March of 2023 is higher than October of 2021. Right? No, I'm sorry. It's lower. I'm sorry. I apologize. I'm messing up the numbers. I apologize.

Q Thank you.

And for February of 2023, is 981, the number of encounters shown in the chart, higher or lower than what you're seeing in October of 2020?

A Okay.

Q Fiscal year 2021.

A Yes. February is lower.

Q Thank you.

And for January, is it higher or lower than October of 2020?

A It's lower.

Q And for December, is it higher or lower -- December of 2022, to be clear, is that higher or lower than October of 2020?

A You said 2022?

Q December 2022, which is in fiscal year 2023.

A Okay. So, yes -- say the month again?

Q December of 2022, is that --

A Okay. Yeah, it is lower than October of fiscal year 2021.

Q Thank you.

And for November of 2020 -- for November of 2022, is that higher or lower than October of 2020?

A November of fiscal year 2022 is --

Q Fiscal year 2023, to be clear. I'm sorry.

A Okay. It is higher than the number in October of fiscal year 2021.

Q And how much higher is it by?

A Two.

Q Okay. And for October of 2022, so fiscal year 2023 --

A Okay.

Q -- is that higher or lower than October of 2020?

A It's lower.

Q Okay.

For September of 2022, which is we're now in fiscal year 2022, is that higher or lower than October of 2020?

A It's lower.

Q And for August of 2022, is that higher or lower than --

A It's lower.

Q -- October of 2020?

And for July of 2022, is that higher or lower than October of 2020?

A It is higher.

Q Yes. And about how much is it higher by?

A A little less than 100.

Q Okay. Thank you.

So would it be fair to say that since August of 2022 numbers have generally been lower than October of 2020 before the Presidential election?

A That they've been lower since before --

Q Since August of 2022 --

A -- since before November of fiscal year 2021? Or, no, wait.

Q I'll repeat.

A This is confusing, so I'm sorry.

Q I'm sorry.

A Can we just stick to fiscal year? That way, it's --

Q Sure.

A Instead of going to the actual date.

Q Sure.

So would it be fair to say that encounters from August of fiscal year 2022 have been lower than the encounters in October of fiscal year 2021, which is the month before the Presidential election?

A Yeah, they've been consistently -- so other than November.

Q Thank you.

And just to be clear, for November, we're talking about two people?

A Two people, yeah.

Q Okay. Thank you.

BY MS. NORTHROP:

Q Okay. Chief, I wanted to turn your attention to minority exhibit F.

[McGoffin Minority Exhibit F.

Was marked for identification.]

BY MS. NORTHROP:

Q Here. It is a copy of the Secure Fence Act.

And, in particular, I'd like you to take a look at the definition of "operational control," which has come up off and on throughout the morning, and wanted to just put into the record that definition and ask you a couple questions about it.

A All right.

Q I'll wait for it to go around.

Thank you.

Okay. So, under the Secure Fence Act, "operational control" is defined as, quote, "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband," unquote.

So what I want to ask you is, to your knowledge, under the Secure Fence Act definition, has operational control ever been achieved?

A No.

Q A followup question to that: Do you think, in your professional opinion as a sector chief and all your experience, 27 or so years, in the Border Patrol, that that is a fair standard to hold your agents to?

A I think this is the law, and it's made by Congress. I don't get to determine whether it's fair or not. I get to follow the laws. I work for the executive branch, so we've got to follow the laws and policies that are provided to us.

Q Okay.

Speaking of policies, are you aware that Border Patrol has used different definitions of "operational control" throughout its history that haven't necessarily aligned

with the Secure Fence Act definition?

A I don't recall any specific ones, you know what I mean? I don't -- we've talked about operational control, but, you know, there's a lot of, you know, other things going on with that, as far as, like, resources and everything else, but --

Q Okay. Okay.

I'd like to take a look -- bear with me for a moment, please.

Okay. Are you familiar with the 2004 National Border Patrol Strategy?

A It's been a while, obviously.

Q Okay. If we could bring that out. And I will label that minority exhibit G.

[McGoffin Minority Exhibit G.

Was marked for identification.]

BY MS. NORTHROP:

Q Okay. So this would be the -- this would be the first national strategy of the Border Patrol under the Department of Homeland Security, correct?

A As far as I know, yeah.

Q Okay. The Department being created in 2003 --

A Yeah.

Q -- this should be the first strategy that was released under the auspices of the Department of Homeland Security.

And, as you can see here, there is a discussion about what is called, quote, the "ambitious goal," unquote, of operational control. And the report defines it as, quote, "the ability to detect, respond, and interdict border penetrations in areas deemed as high priority for threat potential or other national security objectives," unquote.

Mr. Jonas. Where are you again?

Ms. Slocum. Where are you?

Ms. Northrop. Apologies. Let me -- sorry. The "ambitious goal" quote is on page 2, and then "the ability to detect" and afterward is on page 7. So --

Ms. Slocum. Page 2 of the numbered pages or --

Ms. Northrop. Why don't we just go to page 7, "the ability to detect" --

Ms. Slocum. Numbered?

Ms. Northrop. -- under the "National Objectives." Numbered page 7.

Ms. Slocum. Okay.

BY MS. NORTHROP:

Q So are you familiar with that definition?

A I've probably read it a few times over the years, but it's been a while.

Q Of course. And you would agree that that definition differs from the Secure Fence Act definition?

A Do you mind if I just read it real quick?

Q Oh, please. Please.

A This is -- it's unclear. I want to make sure I'm --

Q Yes.

A -- getting to your question.

"The objectives outlined below directly support CBP's mission 'to control U.S. borders to prevent entry into the United States of terrorists and terrorist weapons.'"

That part of it? Or which part are you talking about?

Q So there's a -- it defines "operational control" as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."

A Is this on 7?

Q I think so.

Oh, I'm sorry. My apologies. That was the Secure Fence Act definition. I apologize.

A I understand. I was having a problem with the numbering earlier.

Q Yeah. I thought at first that you were asking about that, and I read the wrong one, so I apologize for that.

So, okay, let's take a step back here.

The Secure Fence Act definition, which I just read, okay? And then comparing that to the definition that is in this 2004 strategy --

A Okay.

Q -- okay? You would agree that they are two different definitions?

A Well, I believe that it says "to control U.S. borders to prevent entry into the United States of terrorists and terrorist weapons" in the top under "National Objectives."

Q Okay.

A As compared to against all unlawful entries to include terrorists, weapons, narcotics, and all these other things, I mean, it's different in the semantics of it, but it does talk about, you know, control of U.S. borders --

Q Okay.

A -- to prevent entry.

Q Okay.

Let's move ahead to the -- pardon me just a moment.

Okay. Let's move ahead to the Border Patrol Strategic Plan from 2012 to 2016.

Are you familiar with that one?

A I'm sure I've read it a time or two.

Q Okay. So we'll get that distributed.

A Thank you.

[McGoffin Minority Exhibit H.

Was marked for identification.]

BY MS. NORTHROP:

Q Okay. Page 4 on this one, please.

A Okay.

Q Okay. So here we see that there, actually, in this report, is no definition of "operational control." As a matter of fact, that phrase doesn't exist anywhere in this document.

But it does talk about, on page 4, quote, "a risk-based approach to securing the border, focusing enhanced capabilities against the highest threats and rapidly responding along the border," unquote.

Can you explain a little bit about what that means in Border Patrol terms and how that principle is used in the Big Bend Sector today?

A Sure. If you have somebody who's crossing, whether it be narcotics, people, or anything else, if they're crossing, and their ability to get to an egress route is 20 miles or if it's, you know, 100 miles, that's the difference. What is the risk? The risk is that that group will possibly get to a location where they could evade detection quicker and must be mitigated quicker than the other one, which we have 100 miles or so to address.

Q Okay.

A So we're looking at risks. And so, what is the greatest risk, and how can we mitigate that risk by first taking this risk out and then going after the other risk?

Q Okay.

Earlier today, you talked about operational advantage. And can you refresh about what that means and how that relates to managing risk today?

A Well, I think the managing risk is -- I think there's not a lot different from managing risk, in the sense that operational advantage is -- it really helps us to shape the landscape of the border rather than letting the adversary do that. So we're looking at ways in which we can, you know, find efficiencies and effectiveness in deployments of technology, people, where we have infrastructure, as well, that gives us the operational advantage to dictate the terms on where the smugglers can operate. And that's what we're trying to do.

And when it comes to that risk, it's the same thing -- how do we look at that risk and where the individuals are crossing. What is the greatest risk? Are they going right into a small town? That might present a greater risk. And the fact that they're embedded in the local community, it may be harder to detect.

Whereas, if I have an opportunity to look at the individuals in a long-term effect due to the distance and terrain, using that to my advantage, that operational advantage, then I have time on my side to make sure that detections are equated in the same way, that I'm going to go after the immediate threat and I'm going to prioritize those threats as much as I can, ensuring that we're really trying to take away the advantage from the smugglers and put it to our advantage, how we interdict people and the efficient manner that we do it.

Q Can you explain why that, what you just described, makes "operational advantage" a useful term, a useful metric, for measuring Border Patrol success at managing the border?

A Well, I think if you have operational advantage, you know, we're looking to drive changes, like I said. You know, we're trying to influence or shape the environment -- you know what I mean? -- you know, by identifying and detecting threats and then, you know, looking at those threats and determining which threats are greater,

prioritizing the threats.

And then, you know, doing that allows us to -- operational advantage in that instance allows us to have a greater effect on how the smugglers use the area and what we do to prevent it.

Q And is that the concept you're referring to when you talked about how, in Big Bend Sector, you had been able to drive down the number of encounters and utilize your assets, your personnel, to respond to the changing situation at the border?

A Yes. So, you know, we had specific areas that were being targeted, and we went into those areas, utilized, you know, deployments and taught our employees how best to interdict individuals to be efficient and effective in our processes so we keep more agents on the ground than doing other duties.

And by so doing and with the technology laydowns and, you know, limited infrastructure that we have, we're able to shape that environment and give the operational advantage to us rather than the smugglers.

Q Thank you.

BY MR. YIM:

Q Chief, if you could indulge me for a second --

A Sure.

Q -- I'd like to go back to exhibit F, which is the Secure Fence Act. Do you have that in front of you?

Okay.

And we touched base briefly about the definition of "operational control" as it's cited in the law here.

A Uh-huh.

Q In response to a question from my colleague, you said that Border Patrol has

never obtained operational control under this definition. Is that right?

A That is correct.

Q And that's based on your 27 years as a Border Patrol agent. Is that right?

A Well, since it was enacted. I would say, before that it's absolutely true as well.

Q Sure. And under five different administrations, I guess, to the extent that it was enacted, Border Patrol has never been able to obtain the standard that is listed in this statute?

A Not in this law, no.

Q Okay.

Could we just go off the record for a second, please?

[Discussion off the record.]

BY MS. NORTHROP:

Q Okay, Chief. Question: So, as chief of the Big Bend Sector --

Mr. Yi. Are we back on the record?

Ms. Northrop. Oh, I apologize. Yes, let's go back on the record. Thank you.

BY MS. NORTHROP:

Q So, as I was saying, as chief of the Big Bend Sector, who do you report to within the Border Patrol structure?

A I report to the chief of law enforcement operations directly in Washington, D.C.

Q And who would that person report to?

A The deputy chief of the Border Patrol.

Q And the deputy chief reports to?

A The chief of the Border Patrol.

Q And the chief reports to?

A The commissioner of Customs and Border Protection.

Q And then the commissioner would report to?

A The deputy -- well, I guess we should go back a step. It would probably be the deputy commissioner, and then the commissioner, and then the Deputy Secretary, and then the Secretary.

Q Okay. Thank you.

A That's my understanding.

Q Thank you.

We'll go off the record. Thank you.

[Recess.]

Mr. Yi. We'll go back on the record. The time is 1:51 p.m.

BY MR. YI:

Q Chief McGoffin, I'm sorry that you had to spend about 10 minutes of questioning there in the last round by Democrat staff where they asked you to read numbers off of a publicly available chart. It seemed to have confused it a little bit.

I just want to clarify something. You've been a Border Patrol agent since 1996. Based on the legal definition that occurred in 2006 in the Secure Fence Act, are we closer or farther away from operational control when we talk about the southwest or southern border from the time that you first entered the Border Patrol versus now?

A I'll be honest with you. When I first entered the Border Patrol, I didn't -- you know, those first couple years, I didn't know what was going on anywhere that wasn't in front of me.

So I think we did have some -- you know, there were, obviously, a lot of things going on through that. You know, as that compares to Big Bend Sector, it's hard to put

that into place. But there are stuff going on in Big Bend Sector like we do there, or then.

To equate that, I think, you know, the difference between then and now is so much -- is so dynamic as compared to just -- it's not an apples-and-oranges type of thing, because now we have more manpower, we have more technology, we have more infrastructure than we've ever had before, and so we're playing on two different ball fields. And so it's much different in the conditions than it was then or now.

Q Okay. Then let's go a little further into the timeline. From 2010 until now, would you say that there is more control and a harmonious border, or would you say that it has declined in that regard and --

A No, I --

Q -- you're seeing more crossings and more drug seizures?

A I don't think that it's declined, because I think, again, we've been given opportunities to have much more infrastructure along the border than we previously have had, which has helped. It's enhanced the ability to, you know, help our manpower not be necessitated in certain areas. We can spread out more.

The technology, I mean, if we look at that from 2010 to now, again, we still have more than we've ever had before at this point in our -- you know, especially in Big Bend, we've been able to receive technology that's been needed for quite some time to be able to effectuate change in our environment.

Q But not just at Big Bend, just along the southern border --

A Uh-huh.

Q -- would you agree that, since 2010 to now, and especially in recent years, that there has been a surge of illegal crossings?

A To be honest with you, there's been a surge ever since I've been in the Border Patrol, you know. I --

Q Okay. Because I guess that was my initial question.

A Yeah.

Q So, since you first became a Border Patrol agent, you're agreeing that there has been a surge of illegal crossings and illegal activity along the border?

A Yes, there has been -- you know, it's --

Q Yes.

A -- just different --

Q Okay. Thank you.

And, also, you had mentioned that the smugglers, that they operate -- there was mention about smuggling on both sides of the border. I think it was in reference to your comments at Naco.

These smugglers, who are these smugglers? Are they cartel members? Is that a fair assumption?

A Not all of them, no. They're American citizens.

Q Are they affiliated with cartels?

A They can be. They could be just somebody trying to make a quick buck. Smugglers, again, whether they're on that side of the border or this side of the border, care little about human life.

Q With whom are most smugglers along the southern border affiliated? Are they independent operators, like, making a quick buck, as you say, or are they mostly engaged with cartel activity?

A I would say that mostly it's cartel activity, but there are people that operate in the sphere of making a quick dollar by just simply helping out.

Q Okay.

I wanted to go back on something really quick. We talked in a previous round

about NGOs and your coordination with NGOs. I believe you mentioned the Episcopal Church.

A Uh-huh.

Q You engaged with this person about twice a week, you said?

A My staff does. I don't.

Q Your staff engages twice a week?

A My staff does.

Q What kind of services do they provide?

A Well, if we have somebody who's in a humanitarian need, like, for instance, you know, where they might've lost a loved one along the way or something to that effect, you know, we might reach out to them, you know, just to give them some type of help with that individual, you know, if that's needed.

If they need -- I mean, they're willing to support if we have to -- if we had to release somebody due to humanitarian reasons for something like that --

Q But you don't release anybody in --

A No, we don't.

Q -- the Big Bend Sector ever.

A We don't. I said --

Q Okay.

A -- except for very rare humane considerations.

Q So do you provide -- do these agencies -- or, sorry, nongovernmental organizations ever provide transportation?

A To the individuals?

Q To any of the encounters that you've had?

A No, not the ones that we have.

Q So how did the encounters go from Big Bend -- and the reason you don't release anybody, to be very clear for the record -- as you reiterated several times, you don't release any of the encounters in Big Bend Sector. They get sent over to El Paso, where they are processed, and at that point they may be eligible for parole or detained or whatnot.

A Yeah, I don't know whatever they do over there in El Paso.

Q You don't know.

A I can't say, like, for certain, like, this is what happened. We process them for --

Q And this is isn't something --

A -- Title 8, Title 42, whatever it is, and we process them and send them to El Paso.

Q And just to be clear, this isn't something that the Southwest Border Coordination Center engages in, in understanding what another sector does after encounters are transported there?

A I don't understand what you're saying. Like, what does that mean?

Q So you work for the -- you are currently stationed at the SBCC.

A Uh-huh. Uh-huh.

Q And they coordinate among different agencies as well.

A Uh-huh.

Q But that doesn't entitle to you -- and as the Big Bends Sector's chief, that doesn't entitle you to any information about what happens to any migrants that you apprehend in the Big Bend Sector when they are transported to El Paso?

A Well, I think what it's fair to say is that, when I'm working at the SBCC, I'm working with headquarters Border Patrol leadership to see what is needed and where to

send someone. We don't reach down beneath headquarters leadership and start, you know, doing things. We have to coordinate with them. That's our coordination mechanism, is to coordinate with them to see what they need --

Q So --

A -- through CBP.

Q So, as the Big Bend Sector chief, you are not aware of what happens to any migrants that are transported from -- apprehended in Big Bend Sector and transported to El Paso?

A I know that they arrive there safely after being processed for one of the pathways that I've told you about, and beyond that, I don't know.

Q How do they get transported there?

A Either by contractor or by individual vans or buses within Big Bend.

Q Who drives the individual vans or buses?

A We have a contract that drives the vans. It's not very -- you know, it's not as widespread in other areas as it is in our area -- I mean, in our area as it is in everybody else's. So, a lot of times, we end up driving the vans as well.

Q Is it one contractor?

A Yes.

Q What is the name of that contractor?

A I don't recall off the top of my head. It's -- I know it. I can get that back to you.

Q You'll commit to providing that information to the committee after this transcribed interview?

A Yeah. Unless there's any record from the --

Q For how long has this contract been enforced?

A I don't recall when that particular contract started. It's been a while.

Q Are any of the NGOs -- for instance, the NGO that is spoken to every 2 weeks or so by your staff in the Big Bend Sector, are they involved in the transport?

A No.

Q Okay.

So, I guess, one last question about the NGO. I'm kind of confused, because in the Big Bend Sector you don't release anyone, you don't parole anyone, because they get transported to El Paso, at which point they may be released or paroled and processed.

A Depending if the processes change.

Q But what does the NGO services do in Big Bend that necessitate such frequent communication with your staff?

A To be honest with you, that is what my staff advised me that they speak to them, you know? I don't have any concrete information that they do. I know that he'll call once in a while to see if we can set up a visit by dignitaries from his church or from visitors from his church to describe what we do on the Border Patrol. It's kind of like an education piece, as I've said before.

But, you know, I have ranchers that call me more than twice a week all the time. Just, they're checking in, seeing how things are going, talking, you know.

Here's the thing that you need to understand about Big Bend: Our community partners are so huge, because they provide us information. You know, it's no different when you're in remote locations on the northern border or the southern border, you only have so many sets of eyes wearing a green uniform looking at the border. You have this opportunity to work with the community, members of your community, to talk about things that are important, such as what's going on, what they're seeing on the border, information, you know, that might be relevant. Not so much in the case of the pastor,

but, you know, it still goes to that community engagement that is vital to very remote communities.

Q Do you know if the NGO is provided any funds from the Customs and Border Protection or DHS?

A To my knowledge, I have no knowledge that he's received any funds.

Q That's not in your purview as the sector chief?

A I just don't have any knowledge. He would have to apply like everybody else, and that doesn't go through us.

Q Okay.

Do you know what the value of the contract is for the transportation company that you were referencing?

A I don't. I don't. I mean, I don't know the value of that contract --

Ms. Slocum. We need to take that back.

Mr. McGoffin. What's that?

Ms. Slocum. I'm not sure if we can -- we need to --

Mr. McGoffin. Yeah, I don't know. I don't know it. I don't know the value.

Mr. Yi. Okay. Can you provide that?

Ms. Slocum. We'll need to consult on whether that's information we can provide to you all.

Mr. Yi. The contract?

Ms. Slocum. The value that you asked.

Mr. Jonas. I think the best thing to do is, if you have some takeaways that you want some information about, provide to those to us, and we'll respond to them in the ordinary course of business.

BY MR. YI:

Q Do you have any oversight role for the contract?

A In Big Bend, we don't have oversight of that contract.

Q Okay.

BY MS. O'CONNOR:

Q We talked a little bit about Title 42 when we talked about the encounter statistics. And based on the numbers that we talked about, Title 42 has been very instrumental in your operations in Big Bend, right?

A That is correct.

Q In fiscal '21, about 87 percent of your encounters were expelled under Title 42, right? Does that sound about right?

A I'd have to go back and look at the actual numbers. In what year did you say?

Q Fiscal '21.

A Fiscal year 2021. How much did you say?

Q About 87 percent of your encounters?

A It's somewhere in that general area --

Q Okay.

A -- let's just say that.

Q In fiscal '22, about 76 percent of your encounters?

A In that general area.

Q And this year to date, about 71 percent of your encounters?

A Somewhere in that general area.

Q And you're aware that Title 42 is set to expire on May 11th?

A I am.

Q Do you have plans in place to accommodate for the expiration of Title 42?

A In reference to what? Like, just in general, as a general practice?

Q Right. How will you be processing these migrants that were otherwise --

A Title 8.

Q -- under Title 42?

A We'll be utilizing Title 8.

Q And will you be transporting them to El Paso?

A Depending on, you know, whether that actually transpires, what happens with that, and where they're at and where they're located, depending on if they need to go to court. Remember, we deal with four different courts in Big Bend Sector, so that's another thing that goes on -- you know what I mean? -- trying to get those to the right places.

Q Which courts are you referring to?

A We have to deal with the Federal court in Alpine itself. Then there's one in El Paso. And then there's one in Del Rio. There's one in Midland.

Q Are you talking about Federal courts or immigration courts?

A Federal courts. Well, I think in -- Federal courts, I think. I don't know.

Q And do you make many referrals for prosecution to the Federal court --

A Yes.

Q -- or to the U.S. attorney?

A Yes, we do.

Q Is that largely for illegal entry, illegal reentry?

A It's changed a little bit. Like, this year, we're down slightly in our 1326, reentry, whereas before, you know, we worked with them to have more of those in the past, to have, you know, greater consequence. You know, but this year we also have more 1324s and 1325s than we had before.

Q Do you see a lot of -- strike that.

How do you think that that's going to impact you operationally, in the sense, does Title 42 take longer to process than just an expulsion under -- or, I'm sorry. I may have misspoke. Does Title 8 take longer to process rather than just expulsion under Title 42?

A It depends on what instance. It can.

And I think what's important to note, though, is, you know, the agents in Big Bend Sector have been doing a lot of different processing throughout this timeframe. They've become much more efficient and effective at their processing.

So I do think that there will be aspects of that that will take more time, but I do think we're much more prepared and efficient than we've ever been before.

Q So do you anticipate any challenges?

A I think there's always going to be challenges when you have to -- if you have to encounter more individuals, I do. But I think, again, we've been able to prepare quite a bit for the different types of processing that's going to be needed, and we've done quite a bit of that.

We still -- even though we did a majority Title 42, we still had some Title 8 processing that was going on, so it's not like it's going to be new or foreign to us. It's just making sure that we do it as efficiently as possible, again, keeping as many agents in the field as we can.

Q What type of challenges do you anticipate?

A I just simply think, you know, the transportation will be challenges. Again, we're talking 517 miles of border. Getting people out of the field and back to a place where we can actually process them oftentimes is a challenge. I think that will probably be something that we'll face. But, as we've done in other instances, we've been able to overcome that by adjusting our operations.

Q Do you have a plan in place for the transport piece of that?

A Yes, we do.

Q What's the plan?

A To continue what we're doing now, utilizing as much of the contractor where we can and utilizing our own resources to process, as we've done all throughout the last 2 years.

Q But if you're currently only transporting about 30 percent of people, give or take, considering there are people that are removed from you and --

A Right, right.

Q -- sent for prosecution, if that number goes way up, if those 70 percent, give or take, are now also going to be transported, don't you think you need additional resources? Or you're just going to see how it goes?

A Well, it would be great to have additional resources. If they're provided to me, I would absolutely take them. I can't make that determination, whether I'm going to get any more resources than everywhere else. I don't think I'm the -- on the southwest border, I have the least amount of encounters, to my knowledge.

And so I think what we're looking at is, how do we best look at the practices, again, like we said before. Instead of taking them all the way back to Ojinaga or Presidio, taking them to the nearest port of entry for VR or for other types of issues, we're saving the taxpayer dollar, we're being efficient in our processes, less time spent transporting. These are things that we take into consideration all the time to ensure that we're having the best process available to us.

And you also have to remember, they're different areas, you know? And Presidio itself is right on the border, much easier to deal with. If we can go back to voluntary returns with the many Mexican nationals that we encounter, that would be

much easier. And, again, it just depends on where that encounter is and what it entails.

Q Were you not allowing voluntary returns? Were you just automatically doing the Title 42?

A We were doing Title 42 everywhere that we could. That was our priority.

Q Do you anticipate an increase in encounter numbers after the expiration of Title 42?

A It's so hard to dictate that in the terrain that we're dealing with. You know, the thing is, you know, intel states that along the border there's all these different populations. We're not seeing that. There's no population level to support something like that on the south side of Big Bend Sector.

Q I know we talked about this before, and you said that you hadn't received it in any way in the past, but you haven't received any sort of guidance from either DHS headquarters or CBP or Border Patrol headquarters about modeling and numbers that they predict will be surging after the expiration of Title 42?

A I mean, as far as we're talking about -- in Big Bend, we don't -- I have not seen any numbers where we're modeling anything for Big Bend Sector.

Q We talked a lot earlier about and we've talked a lot generally about the encounter numbers throughout fiscal 2020 and through 2023.

A Uh-huh.

Q And there was obviously that large increase in fiscal '21 that's slowly been bumping down. In your opinion, what caused that huge increase between, let's say, October 2020 and May of 2021, in fiscal 2021?

A Yeah. I don't know that you can attribute it to any one thing. I mean, access to the cartel, cartels being utilized, recruiting to their -- what they're engaged in oftentimes has a standard, you know. But certainly we saw a surge in our area.

Nothing like other areas saw.

And, again, I think it goes back to that -- you know, there's this whole piece along the south -- I mean, along the south side of Big Bend Sector where, little to no infrastructure across most of that area, not large population levels, you know what I mean?

And so, to try to exploit that, they utilized areas that were basically very remote to get to by anybody else on the south side, other than the cartels, and then remote for us as well. And so we were able to change that dynamic.

Q But those areas always existed, right?

A Uh-huh.

Q Those treacherous areas. But the numbers changed. And the cartels always existed, right?

A Uh-huh.

Q They've been there for a long time. So what do you think, in your opinion, all those things equal, caused that increase?

A Like I told you before, it may be that some of the people that were traversing through that area maybe called home. I don't know. I think we changed that dynamic quite a bit. I think we changed it, you know, to now where they're focusing on a whole other area altogether in my area of responsibility.

And so now we're adjusting to meet that threat because of the fact that, you know, they're trying to exploit areas, and every time we do something to mitigate that, they're going to make adjustments; and so do we.

And I think it's just important to know, like, there was a surge, and then it went down as we continued to combat it, and even though it's going down, we're having a surge in another area, not to the same extent, but we're still having a surge over there,

that we've got to move and make sure that we, you know, get over there and get our operational advantage to a full extent.

Q You said that people would call home. I know we talked about that a little bit before, but --

A Uh-huh.

Q -- what would the calls home say in order to influence more people to come?

A Well, it could be that, this is what I heard from my recruiter. It could be for one of the people that potentially got away. Who knows? I don't have all those answers. But I will tell you that, you know, a lot of times when people call home, they give them the information, and, again, it goes into that recruiting with the cartels, I think, where they're talking about how -- you know, misinformation or giving information.

Q Do you think that any of the -- strike that.

President Biden issued a proclamation when he first came into office. One of the things he did was issue a 100-day pause on enforcement and removal.

Do you think that that proclamation, coupled with any messaging promoting asylees to come to the United States, had anything to do with the increase in numbers in 2021?

A You know, I can't really say. I can't speculate on why people decided all of a sudden to come to Big Bend Sector in that particular area.

And the enforcement and removal operations, that's not something that was going on in Big Bend Sector. You know, we don't have an ERO presence in Big Bend Sector. And so everything that we did we sent to El Paso, like I said before.

Q So you don't think that the general message, that we're not enforcing the law and we won't be removing anybody, had any impact on the number of people coming to the southwest border?

A I don't know about the southwest border, but I don't think it was -- I mean, it's plausible, but I don't believe that -- I can't speculate that it is or is not, based on Big Bend Sector.

Q Well, you discussed earlier that you've been through many an administration, right? And policies change back and forth all of the time, all over the place, correct?

A Uh-huh.

Q And you've seen different policies in action and how they've impacted border operations, right?

A Well, I've seen how different surges have taken place in different areas commensurate with the smuggling abilities of the smugglers.

You know, when I first came in, you know, there was an ask for agents to detail over to Calexico because there was a surge in Calexico. And then there was a surge in Arizona. Well, I was in Arizona, so they asked if we wanted to go to another part of Arizona, you know. And then it was other locations. It was in RGV in the past. It's been in other locations, these different surges that are going on.

And so I don't know what predicated all of those surges. You know, they've happened from time to time, you know? I'm not going to speak for the voice of all the people that decided to come to our Nation. I just know that, you know, the majority of them are looking for a better opportunity.

Q Would you agree that there are pull factors bringing people to the United States?

A I believe there are pull factors.

Q Do you think that release from detention is a pull factor?

A I think it can be a pull factor.

Q And, under this administration, you're familiar with the Border Patrol's use of the notices to report for a period of time?

A We never did those in Big Bend.

Q Are you familiar with the fact that Border Patrol used notices to report?

A I mean, I believe that I have an understanding that there was some type of -- I don't know if it was called a notice to report, but I believe there was something being used.

Q Do you know what the notice to report did?

A To report to ERO facilities, I'm assuming? I believe? I don't know.

Q Are you familiar with Border Patrol using parole-plus-ATD as a means of release?

A I know that it's been authorized to do so, yes.

Q Do you think that those two policies, allowing the release of illegal aliens into the United States without issuing a notice to appear, could act as a pull factor for people to come across the southwest border?

A I think it goes back to what I've said before. I mean, if you call home and tell them this is what happened, I think there's a potential for that.

Q Okay. So you'd agree that, if people come in and they get released, they'll call back home and say, hey, I got released on a --

A I said I agree with the potential for it to be. Whether it is or is not, I'm not in those conversations. So I think it's really important to distinguish that, you know, while we've seen in the past people call home, and, you know, whether they're sending money home, whether they're asking for money, you know, whatever it is, they call home and tell them what's going on.

Q And you don't create the policies, right?

A No.

Q How would you define success for Border Patrol? Would you say that lowering the number of crossings is success? Or would you say fast-processing everyone that gets here is success?

A I think lowering as many people -- lowering the encounters to the greatest degree is a success. That's what I've done in my sector, and I think it has been successful. I think as we continue to try to, you know, reduce that number, I think we're being successful in what we do.

But I think being successful in the Border Patrol goes way beyond that. It's about, you know, the well-being of your employees, what's going on with them, you know, how their morale is.

There's a lot of successes that transpire in the Border Patrol beyond just the simple entrants. You can be successful with people, you can be successful with narcotics, but you really need to be successful with taking care of your people.

Ms. O'Connor. Do you have a followup?

BY MR. YI:

Q So, if lowering the number of encounters is part of a factor in achieving success, do you believe that having the parole-plus-ATD process that we have in place right now in the country, does that help lower the encounter numbers or increase encounter numbers?

A It's my understanding that parole-plus-ATD is not being utilized right now in the United States -- or, in the Border Patrol. Sorry.

Q So, when the government releases encounters, is that going to encourage more encounters or discourage more encounters?

A I can't speculate on whether it does or does not. I think it all goes back to

what I previously already said.

Q You've seen this in your almost 30 years as a Border Patrol agent --

A Uh-huh.

Q -- and you've seen policies change. We're not asking you for your policy position.

A Well --

Q We're asking you for your -- in your expert opinion, in your observations, when there are policies that encourage release, does that seem to correlate with increased encounters, or does it decrease encounters?

A What I'm trying to tell you is, in my experience, either in Big Bend Sector, where we do not release, or when I was in Montana, where we did not release unless it was, again, in extreme circumstances where, you know, humanitarian reasons, and then, you know, my times at headquarters -- we didn't engage in releases when I was at Freer. We didn't engage in releases, to my knowledge, when I was in New Mexico or Texas unless it was for humanitarian reasons.

So I do not have the breadth of experience you're talking about when it comes to releases.

Q In those years that you worked in those sectors --

A Uh-huh.

Q Well, first of all, I'm sorry, to back up, when you were in the Havre Sector, you did not do releases, and that was your lightest station before Big Bend Sector, correct?

A That is correct.

Q Is it also because they moved or you transported any apprehensions to another sector --

A Well, we would transport to --

Q -- for processing?

A -- ERO. And for ERO we actually had the -- we actually had -- at that time, we had ERO in one of our facilities, so it was easy to transport them to the ERO representative. And they did -- you know, they took over custody of the individual.

Q Okay.

In the years where you were involved in sectors where you do not release, not because of the purpose of having to transport them to another sector --

A Uh-huh.

Q -- for their release, but when you were in your sector and you did not release because that was the policy, did that seem to have a deterrence effect on encounters?

A I think -- I mean, it's hard to say, because when we were in Tucson, when I was a young guy in Tucson, you know, apprehensions went from very few where I was working to very high until I left, and that was just ongoing. So it's hard to say in that manner.

Or even when I was in New Mexico, it was -- you know, we had times when it was higher and lower, and, you know, we didn't have releases either at that time. So, you know, it's hard to say whether that had an effect or not.

[2:21 p.m.]

BY MR. YI:

Q In your time as a Border Patrol agent, have you spoken to encounters yourself?

A Have I spoken to them?

Q Through a translator or directly. Or have you ever --

A You mean talking to the people I've encountered?

Q Yes.

A Yes, I've spoken to people I've encountered.

Q Have you ever gotten a sense -- you had mentioned earlier about you think that most of them want to come here because they want a better life. You've also met criminals that also want to come here to do bad things, right?

When you talk to these people -- I'm sorry. Did you --

A Yes, I'm listening to you.

Q No, you nodded your head to [inaudible] talked to criminals as well.

A I'm listening to what you're saying. Like you're talking to these people.

Q Okay. So I just want to make sure that was an affirmative response for the record.

You have talked to criminals, as well --

A I have.

Q -- not just --

A I have.

Q -- noncriminals who say that they want a better life here.

So when you talk to these people, have you ever gotten a sense that the policies of our country --

A Uh-huh.

Q -- on what we do with people we apprehend at the border impacts peoples', like them, their decisions to come across the border or not?

A I think that they consider -- I mean, I'm -- I believe that the people that I've talked to have considered, like, what's going on in that particularized area that they crossed in.

But, again, a lot of them are smugglers. When you talk to criminals, a lot of times when you catch criminals, it's because they are trying to evade arrest and they don't want to be encountered. They're trying to seek the easiest opportunities to go unseen. So is it with a lot of the migrants that I've talked to throughout the years.

Because, again, I've never been in an area where we've had a lot of people giving up. Just never been a scenario in my career where we've had those in those types of areas.

Q Let's go back to the other portion of how you said a factor in defining success. You talked about the well-being of your agents.

A Uh-huh.

Q What is the morale of your agents right now in Big Bend Sector?

A Well, I think it's a mixture of things, I mean, because you have so many different things that are going on, when you have incentives for folks to locate in a couple of the remote locations. We also have opportunities then to receive incentives to stay. That's been a little bit -- it's helped quite a bit because of these remote locations.

But it's often difficult because sometimes their spouses, they don't have employment -- there's not employment opportunities. Maybe there's not childcare opportunities to the greatest degree. You want to go on a date night, you can't go on a date night because it's so far to go on a date night and then come back to your kids. You

just can't do those kind of things. That has always been difficult.

So for me it's all about engaging with the employees. I think it's important to engage with the employees, to be able to talk to them. Anything that happens with the employees, I try to make it important to me. I try to go to all the graduations for the employees when they have them and I can travel to those.

Because they need to understand that the dynamic in Big Bend Sector is that we get new people out of the academy. After they've been there 3 or 4 years and they have that opportunity now to move to another location, they oftentimes do that because they're getting themselves or their families to bigger locations where they have more opportunities outside of work. But we do get some that stay.

But I think the engagement that goes on in my sector is indicative of what we do to help them, listen to them, make sure we're aware of what they have going on in their area.

And so the Federal Employee Viewpoint Survey has Big Bend Sector as the highest sector along the southwest border.

Q That's good to hear. And I understand that being a Border Patrol agent has its challenges, especially on family life.

But professionally speaking, not just in their personal lives and how their job may affect their professional life, but professionally speaking, how do these policies that trickle down from Washington or from headquarters, how do they impact morale of the rank-and-file Border Patrol agents?

A I think that you'll see in Big Bend Sector that there are less -- there's less people, less processing that is going on. So the majority of the agents in Big Bend Sector get to go out, because people are evading arrest, they're evading detection.

And agents are getting to go out and do the job that they hired on to do, and they

do that in Big Bend more so than any other location, I would believe, based on the fact that our encounters and everything that we have going on compared to other places.

Q When you talk to your rank-and-file agents -- which am I correct in assuming that you do?

A Absolutely.

Q When you talk to rank-and-file agents in the sector, do they ever espouse any opinions about national policies and immigration laws to you?

A Well, they'll generally ask me questions. I've been asked a multitude of questions over the years about what's going on, what is headquarters doing, what's happening. I try to answer to the best of my knowledge when the questions come across on what's happening.

Q Can you share with us the general pulse or the sense?

A Like a lot of times -- here's the biggest question agents ask me, like, are we going to get more and newer vehicles? And I'll tell them, like, this is where we're at in that process, having those vehicles be available to them on the field. But I'll tell them, like, what's going on with our vehicle process and how over COVID it was difficult to get the vehicles retrofitted and getting out to them, but they were making every effort to do so.

They'll ask questions about, are we going to get more technology? And I'll give them the information I have about the technology we're trying to get, and, if we have some in the pipeline, we'll get it.

They ask us a lot of questions about what they don't have in Big Bend, and I would say that's probably the biggest questions that they ask for. They were asking about the incentives for a while. We were able to get those for them.

So I think we made some great strides. But we can't always give them the full

answer because I may not know the overall outcome of that.

Q So you're not aware of rank-and-file agents asking or discussing talks about the parole process or the release process or --

A We don't talk about that. Big Bend --

Q -- what might happen after Title 42 expires?

A Well, I think they want to talk to us about -- and I haven't been out at the stations in the last couple months. But with Title 42, we would talk to them, about, hey, this is where we've got to make sure that we're doing everything we can to continue what we've done, making sure we have the discipline to ensure that we're being efficient and effective in those processes where we arrest people, how we transport people, making sure that we're doing all that.

When Title 42 goes away, that's going to be the time we need to make sure we're really on top of what we're doing out there in the field and making sure we have the discipline to hold that.

Q Is it your position that your agents, based on the types of assessments you've just told me about, that your agents in the Big Bend Sector feel satisfied in the support they receive to complete their jobs and that national policy is helping them do their job?

A I can't speak for all of the agents, but I think the Federal Employee Viewpoint Survey is a good place to start with that. I mean --

Q But the viewpoint survey doesn't ask about what their views are on national immigration policy, does it?

A Not that I'm aware of. But it does ask us about when they're interacting with their supervisors or how well the job satisfaction that they have and if they're being supported.

BY MS. O'CONNOR:

Q I just have one more question about operational control.

A Okay.

Q So our colleagues presented you with the Secure Fence Act and asked you about the definition of operational control. Operational control does not fall on Border Patrol alone, correct?

A As far as -- what do you mean?

Q Getting to operational control the way the definition describes it, it's not just Border Patrol's responsibility, right?

A As defined by the law -- I'd have to read it -- I would assume that, like, this is what we do, in the way it's been interpreted to me, to protect entries.

Q Right. So Border Patrol is a piece of it, right?

Mr. Yi. Do you believe there are other agencies or entities or officials who are responsible for helping ensure operational control more than just Border Patrol?

Mr. McGoffin. Well, I believe the Office of Field Operations. But I'd have to review again just to make sure I have the appropriate context.

BY MS. O'CONNOR:

Q Sure. So the Secretary puts -- or the law puts the onus on the Secretary. It's the Secretary's responsibility. So my question is --

A So I would --

Q -- is it just on Border Patrol to implement this?

A No, because it says all unlawful entries, and that could be for aliens. It could be for narcotics. It could be for smuggling.

So I would say that in the instance of anywhere along the border where operations are conducted by different agencies, to some degree, I would think that.

But, again, I'd have to look at the context of the law to make sure I have a clear understanding of that, but I think -- or even get counsel. But it looks to me by Customs and Border Protection. So it would seem to me that would be inclusive of Office of Field Operations.

Q So it's a team effort.

A Yes.

Q Okay.

BY MR. RUST:

Q So we've talked a little bit about -- a little bit today about the role of the chief patrol agent in effectuating policies that are decided by others, laws that Congress passes, policies made by senior political leaders.

Would you agree with that characterization of your role as the chief patrol agent, that you effectuate the policies that are decided on by policymakers?

A Yes.

Q And would you agree that it's important that those policymakers have as much information as possible to make the right decisions about how to craft policies to respond to such a dynamic system as the southern border?

A I think it's important.

Q If the role were reversed and you could advise policymakers based on your law enforcement experience about enforcement tools or other mechanisms to enhance border security, specifically in Big Bend Sector, what recommendations would you make?

A Well, I think there needs to be more infrastructure. Some of the bigger infrastructure that is needed on these locations is access to the border is critical. I think having that availability for us.

But we have to be careful with that because sometimes you have access to the

border ourselves in greater detail. Then it makes it much easier for the, obviously, somebody else to use it as well, specifically those who are our adversaries.

Obviously, technology is always a big piece. And I think no matter what infrastructure technology you have, you still need people to effectuate the rest. That does not stop just because you have technology.

So I think in Big Bend Sector, I mean, if that's what I could say is what I needed, that's definitely what I would ask for.

Q Throughout today you've repeatedly talked about the importance of the people that work under your command, the Border Patrol agents that are there to secure the border.

What impediments do you have in Big Bend to securing a sufficient number of people, people who are adequately trained and able to carry out the job?

A Well, I mean, we're always doing training, always getting brand new people from the academy, having to train them. So we don't have a lot of people putting in for the like, "Hey, I want to go to Big Bend on the next rotation." We don't have a lot of that. So we get a lot of younger people. But that's okay, because along with that, along with them being young comes that vigor of wanting to do the job.

So we get, I think, and my belief is we get a lot of motivated young people trying to get out there and do that job to the best of their capabilities.

Q Are there things that policymakers -- Members of Congress, political leadership -- could be doing to enhance your ability to recruit and attract top talent to Border Patrol in your sector?

A Well, we do. We do a lot of recruiting. We've expanded on that quite a bit. And, again, it goes back to that whole point, right? We did do some incentives. So people are coming here with getting incentives to do so. So that's been helping.

I think we're making strides there. Incentives to stay in some of the remote locations. I think that's helping. So I think we're making great strides that we've never seen before in Big Bend Sector. I think we're doing well. And, again, I think it goes back to the survey.

Q So we talked about -- you mentioned some resources such as infrastructure, technology, the right people to effectuate the mission. Are there policies that you believe could be improved upon to enhance border security in your sector, specifically with the intent of deterring individuals from crossing illegally in between ports of entry?

A Well, I think everything that we could use, again, goes back to that whole infrastructure piece, right, being able to get to the border. And we don't need the same infrastructure that they need everywhere else, because it's so remote and difficult.

But we do need access to those locations so that, again, we take on that operational advantage, making sure that we're doing everything that we can in dictating the terms to the smugglers.

Q Are there particular policies that you believe should be reassessed or evaluated that you believe are maybe well-intentioned but are not helping to effectuate border security missions in the Big Bend Sector?

Ms. Slocum. Just be careful.

Mr. McGoffin. Yeah, I was just going to say simply that I work for the executive branch. I don't get to decide one way or another where policies are or are not. The policies that are given to me, we execute them. And we are going to do the best job that we can to uphold all aspects of what we do and do so in an honorable fashion.

Mr. Rust. Without getting into any deliberative information, I know counsel mentioned that, to the extent you believe that policies should be improved upon, do you deliver that information to your superiors?

Mr. McGoffin. I don't tell them what types of policy we need or don't need. I talk to them about what is needed in the sector, such as infrastructure, personnel, facilities, things like that. That's what we talk to them about.

BY MR. MCDONAGH:

Q I wanted to ask, you talked about releases of migrants in extreme humanitarian circumstances, that those were very rare. How rare are they? How often do you do those releases?

A We haven't done one this year to my knowledge. I don't even know if we did one last year. That's how rare they are.

Q I want to direct your attention to Minority Exhibit B again and look at fiscal year 2021 and May.

A Fiscal year 2021, May. Okay.

Q Is that the highest number of encounters that you've seen at Big Bend?

A That is, for that month, is the highest that I've seen since I've been in Big Bend.

Q Thank you.

During that time did you receive -- let me back up. You mentioned that you talk to ranchers quite often. During that time did you have more people from the community calling in, saying, "Hey, we see these migrants out here, what are we doing?" Was there a -- could you feel it in the sector?

A Well, we go out to community events and talk to the people. It's kind of being proactive to make sure that we're there to answer their questions, what they can do. The sheriff's departments also do that. And so sometimes we meet together.

We communicate with our law enforcement partners specifically for that because we want to make sure that everybody in the community understands, make sure that

you're calling somebody. Call, if there's something you see, something you're worried about, then call us. If something happens to you, let us know.

A lot of times these ranchers are engaged with the agents themselves on the ground because they see them so much and they know who they are and they visit.

And I think the other thing that's important to think about in Big Bend is these ranchers are in the same communities as the agents. They see them at church. They see them at the grocery store. They see them out on their ranch. I mean, they're all invested in protecting those localized communities.

Q What is the biggest concern or complaint that you get from ranchers and other people in the community?

A Broken fences, sometimes broken fences, broken water lines when people are breaking water lines to get access to water. I think those are some of the bigger ones. We've had some were break-ins to houses, things of that nature.

And, again, every time we have that, we get our law enforcement partners involved because we think -- we want to make sure that we have everybody involved who's supposed to be involved in those things.

Q Were there more instances of those kind of calls from citizens, ranchers, people in the local communities during that surge in the summer of 2021?

A I don't think it would be -- just telling you that the ranchers call me all the time when there's a complaint about a broken fence or to complain about something going on at the ranch. They call me all the time.

So there's no spike. I mean, the ranchers talk to us on a regular basis. It may be something simple. It may be, "Hey, I want to talk to you about potentially something I've seen." I mean, it goes on all the time, the communication with the ranchers.

Now, I think during some of the uptick, I think there were a lot more concerns

voiced to, like, the sheriff's department and things of that nature. But I can't be specific to that.

Q Okay. And just one more question. You said that you've got around 17 percent of agents that are processing. Is that accurate?

A About 16 percent.

Q Sixteen percent.

You said that most agents would rather be out in the field doing encounters.

A The majority, not all of them. Some of them like it. But the majority want to be out doing standard Border Patrol work in the field.

Q Have you heard anything from agents in other sectors that are doing more processing than you guys are in Big Bend complaining about doing processing as opposed to more traditional law enforcement?

A Well, I mean, I hear stuff from our agents when they come back, that they've said that there's a lot of people that are stuck processing for a long time.

What we try to do to mitigate that is have rotations through processing so you're not spending extended periods of time, because I think that's more important to making sure that our agents are out there doing those skills that are important in the field.

Q Thank you.

BY MR. YI:

Q A question for you, Chief.

One of the things that makes Big Bend Sector so unique is that there's a large presence of a national park there, Big Bend National Park.

A Yeah.

Q In your time in service in that sector, have you seen or are you familiar with any ecological damage done to the park because of human traffic -- illicit traffic, I guess,

not visitors, but border crossing traffic?

A So we talk to the park quite often about not only that but keeping the integrity of the wild environment, so to speak. And so we talk to the park when they see things that are disruptive or they see something like that.

Fortunately for us, we've been able to push most of that traffic out of the park. We don't have a lot of traffic in the park. And we agents also have to make sure that we're not disrupting while we're out working in those areas as well.

So there is some traffic that goes on out there and the park will -- they'll let us know if something's being disrupted.

Q When traffic occurs in the park, are there tighter regulations on Border Patrol to pursue compared to areas where it's not?

A Well, if this is national security, I mean, that pretty much takes precedence. But what we try to do is make sure that we're not, as we do everywhere -- ranchers, whether it's on the park or it's somebody's ranch, they don't want you driving across their country, across their property, taking out the grass or ruining the landscape. Nobody wants us to do that.

So we try to take the most safe means that is not too invasive, like using horses sometimes or whether it's just walking, and walking up to a different road and meeting somebody there.

Q Are you familiar with any other portions of the Big Bend Sector that include Federal lands along the border side or near the border --

A So there's the park -- I'm sorry.

Q -- near the border where Border Patrol agents' access is limited because of its designation as Federal land?

A So the park is the biggest one. I mean, I'm sure there's other Federal

properties that are north of the border that really don't -- aren't as problematic for traversing as the park is. But there's also a State park next to the Federal park. There's different areas and communities along there as well that we have to be careful of.

I mean, we do our best to ensure that we're not disruptive of the environment because it is not only a national park, but it's something that everybody who lives in the community takes pride on it.

Q Has there ever been a hampering effect on Border Patrol operations because of those restrictions?

A Not since I've been there, no. Well, I would say sometimes we look at other ways of doing stuff. We have to be very careful in how we do something. If you're going to place something in the park and or you're going to do something in the park, you got to be very careful how do you it, make sure it's not disruptive of the scenery, that it's not going to disrupt people, the public being able to go through the park and enjoy their time there.

Q So while I'm certain that cartels do not prepare that second level of thought, is it fair to say that Border Patrol has to have extra considerations in play when doing its work on Federal land?

A I think in the park, yes. I think we always have to in Federal land, right? But in a park, specifically, we do need to be careful because -- but, again, the cartel, if you were trying to walk out of the park, it takes so long to go through the very mountainous, rugged terrain, up-and-down environment, you would have to go through for days, unless you could get through an egress route that's in the park. And we monitor that along with the Park Service pretty heavily to ensure that, and then we also set up our checkpoints to try to mitigate some of that traffic.

Q What about garbage? Because there's been a lot of stories in the news,

especially -- and you've served in Arizona -- where along the border, especially on these lay-up spots where the smugglers use, there's a lot of garbage that accumulates in the borderlands causing pretty significant environmental damage.

Is that something you're familiar with in Big Bend Sector as well?

A Yes, in Big Bend we see areas where a lot of trash is left as a result of those being smuggled or when they're passing through areas and things are getting heavy they start to discard stuff.

The ranchers oftentimes will identify those areas and make sure that we're aware of them because they don't want them doing that on their property. And if we're in that area, I think they're hoping it will dissuade them from traversing through that same area.

Q It really is a shame. I mean, we know that there is that human cost to open borders or lack of border security or increased encounters and illegal crossings, but there's also an environmental impact on that. I'm confirming that you see that on the Big Bend Sector, as well.

A I do.

Mr. Yi. Representative Higgins?

Mr. Higgins. So, Chief, regarding your transport of your people that you picked up in Big Bend, you're clarifying that every illegal immigrant that's apprehended is sent to -- is delivered to El Paso for processing?

Mr. McGoffin. No, sir. We do the processing locally, and then we transport them to El Paso. If we're Title 42'ing them, we may even take them directly to the port in Juarez.

If it goes the opposite way, if it's on our eastern side of the sector, we will take them to Del Rio to send them through the port that way. Or if it's --

Mr. Higgins. Okay. And you use contract drivers and vehicles to --

Mr. McGoffin. We do have some contract drivers and vehicles that are a part of that contract to do that. But we oftentimes use our own vehicles and buses, if necessary, to transport them as well.

Mr. Higgins. Depending on the volume you're dealing with.

Mr. McGoffin. The volume, the location.

Mr. Higgins. The availability.

Mr. McGoffin. Yes, sir.

Mr. Higgins. Because you were saying that you don't deal with parole, that El Paso does.

Mr. McGoffin. Yes, sir.

Mr. Higgins. So all of those individuals, you don't know if they're going to be paroled or not, but they've been delivered to El Paso.

Mr. McGoffin. Right.

Mr. Higgins. So what's the determining factor for you delivering them to El Paso?

Mr. McGoffin. Well, we look at, again, it goes by location where they're apprehended. If it's in the western side of our AOR, we want to transport them to El Paso for final disposition because of the fact -- we'll process them there and then we'll transfer them there for the final disposition, whether it be to send -- turn them over to ERO --

Mr. Higgins. When you say processing, you're meaning division by gender, family unit, et cetera.

Mr. McGoffin. When we take people into custody, sir, yeah, we make sure that -- we have to treat -- find out who's a family unit, who's a single adult, who are the unaccompanied children.

Mr. Higgins. Right. But you're not giving -- you're not handling proceedings that initiate their involvement in our judicial system for removal proceedings or asylum processing or parole?

Mr. McGoffin. We process them for removal proceedings. If that gets changed, it gets changed somewhere else along --

Mr. Higgins. So if you process someone for removal proceedings, you turn over some to ICE, I'm sure, right?

Mr. McGoffin. Yes, sir.

Mr. Higgins. Okay.

Mr. McGoffin. They go to El Paso first.

Mr. Higgins. So the ones that you don't turn over to ICE, that they're removal proceedings, that'd be judicial removal proceedings, what do you do with them?

Mr. McGoffin. Well, currently the way it works is we send anybody who is a prosecution, it depends on the court, and we'll make a determination on which court we have to take them to, either to Alpine, put them into the Marshal Service --

Mr. Higgins. But they don't stay in Big Bend.

Mr. McGoffin. Once that -- one the -- whatever final is done in the court system, they do not stay in Big Bend.

Mr. Higgins. Okay. Moving on, I don't totally understand the procedures of the mass movements to various border facilities outside of this sector, outside of Big Bend, but I'm going to research that.

Regarding the law and operational control, you said earlier that you -- I was asking you did you have communication with Secretary Mayorkas. You said no but that you do have immediate access to Chief Ortiz.

Mr. McGoffin. Yes, sir.

Mr. Higgins. Are you familiar with the chief's testimony before Congress regarding operational control, the lack thereof?

Mr. McGoffin. I --

Mr. Higgins. Did you listen to that or --

Mr. McGoffin. I listened --

Mr. Higgins. -- read up?

Mr. McGoffin. I listened to part of it and I read some of it, but I did not get to read the whole entire think.

Mr. Higgins. Did you see him say that?

Mr. McGoffin. Talk about --

Mr. Higgins. Operational control --

Mr. McGoffin. When asked --

Mr. Higgins. -- across the nine sectors.

Mr. McGoffin. I saw when he was asked about -- the applying to the law. That part I did see.

Mr. Higgins. I believe he said we do not have operational control in five of the nine sectors. I would just ask your opinion on if he was stating that fact based upon the "reasonable man's" perspective, because, obviously, the letter of the law, which is very broadly written -- legislation uses words like "may" and "shall" very purposefully. You may do something, you have discretion, or you shall do something, you have no discretion.

We use words like "some" and "all" very carefully. For instance, if you commit a particular felony you could lose your Second Amendment rights, but not all felonies, some felonies. A felony of violence or sex or drugs, you lose your Second Amendment rights for a period of time after the completion of sentence, but not all.

So when it says prevention of all unlawful entries in the United States, goes on to describe some types of unlawful entries, I would argue that it's saying -- I mean, where should we put this? Some, the prevention of some unlawful entries?

Obviously, the standard, the goal, and the letter of the law would state that all unlawful entries are to be controlled. But that's not to be determined 20 years later as to mean that you're in compliance with the law only if you've prevented 100 percent of all unlawful entries.

So it seems to me that from your perspective as a very experienced law enforcement professional -- and I think you've been very professional today and I thank you for that.

Mr. McGoffin. Thank you, sir.

Mr. Higgins. Isn't it a cop's job to give a solid answer to something like that based upon reality, as opposed to some attorney's interpretation of one word of a statute written 20 years ago?

Mr. McGoffin. I think I've answered that very honestly, sir.

Mr. Higgins. Don't you think Chief Ortiz was honest when he said that we don't have operational control across most of our sectors?

Mr. McGoffin. Yes, sir, I think he has a much broader knowledge than I do.

Mr. Higgins. Thank you. That's all I have for the gentleman. I very much appreciate his testimony today. I don't know if we're concluded or not.

Mr. Rust. Just on behalf of Chairman Comer, I want to say thank you for appearing today. Thank you for your testimony and for answering all of our questions, even the difficult ones. So we appreciate it.

Mr. McGoffin. Thank you.

Mr. Yi. And, likewise, Chairman Green and the Committee on Homeland Security

appreciate your testimony and for your voluntary appearance today.

Mr. McGoffin. Thank you.

Mr. Yi. Thank you.

This will conclude the fifth round of questioning, and we can go off the record at 2:51 p.m.

[Recess.]

Ms. Martcorena. Ready to go on the record.

BY MS. MARTICORENA:

Q I wanted to follow up on a few things that were discussed in the last hour.

First, you mentioned that infrastructure is helpful in the Big Bend Sector. Could you talk a little bit more about what type of infrastructure you find -- you and your agents find particularly helpful?

A So what we have received somewhat in the past, we'd like to see more of, is really the availability to traverse along the border itself in almost every area that we can possibly, because it makes it much easier to get down there and see exactly what's going on and be able to find out more information.

It's oftentimes difficult because, even when you have the infrastructure, it gets washed away sometimes. And so that type of infrastructure is really helpful for us, though, when we have the availability to be as close to the border as possible.

Q And just to clarify, are you talking about roads and lighting?

A Roads.

Q Roads. Okay. Thank you.

Are there any other types of technologies or infrastructures that you find particularly helpful in your sector beyond good roads?

A Well, being able to increase, I think, our availability to communicate. We

have stuff that we worked on to get more communication out there. It makes it much easier to -- reduces the risk to the employees, and we think those things are important.

Other technologies, any type of detection capabilities gives us force multiplier applications that allows us to continue to do more. And as I've always said, any more agents that we can get.

Q Thank you.

And while you've been in the Big Bend Sector, have you seen more communication devices or more of the detection technology deployed in your sector?

A Yes, we have.

Q And would you say it's a significant increase or it's pretty similar to what you started with?

A It's kind of one of those things, like, if you had two and you get four, it's a lot, but not to everybody else.

Q And then you were also asked a bit about transportation.

A Uh-huh.

Q Just for my own awareness, under Title 42 your agents still have to transport individuals. Is that correct?

A Yes, from where they're actually apprehended to and then type of processing, depending on where that's at, and to a location where they can be expelled.

Q Okay. And earlier you mentioned you have one port of entry in your sector. So are they being transported to just that one port of entry or also to other sectors?

A Also to other sectors. And sometimes, if it's just a Title 42 expulsion, we might actually drive them to the port of entry in El Paso and to expel them back into Mexico or same thing in Del Rio.

Q Okay. And then you mentioned that when you were stationed on the northern border everyone there was turned over to ICE and no one was released from Border Patrol into communities.

Is it correct to say that ICE is responsible for the ATD program and not Border Patrol?

A I have no idea.

Q Okay. Is it possible that once people were turned over to ICE that they were processed for parole or ATD and released to the communities?

A They could have been. I don't know.

Q Okay.

And just going back to processing a bit, have Border Patrol agents throughout your career been involved in processing migrants?

A Yes.

Q And is there any component to the processing that has to be done by a law enforcement agent?

A Yes, there's parts of that I believe you have be able to -- you have to have -- I don't know. Can I really talk about that?

Ms. Slocum. That's fine.

Mr. McGoffin. Okay.

Ms. Slocum. Just leave it there, what you just said.

Mr. McGoffin. Yeah, there are parts of it.

MS. MARTICORENA:

Q Okay. And kind of going to that point of just talking about processing, you were asked whether lowered numbers are a success. And they also mentioned processing efficiency.

As we discussed earlier, you mentioned that processing efficiency helps your agents get on the front line. Is that a correct recollection?

A It is.

Q And would you say that having agents back on the line helps deter people from coming or helps secure the border?

A I think it helps us get out there and take care of our operational advantage that we need to have.

Q So would you say that increasing processing is also a success for -- increasing processing efficiency, to be clear, is also a success for your agents?

A I believe that it is. It's less time spent processing.

Q Thank you.

Mr. Yim. Chief McGoffin, I think on behalf of the minority staff, both the Homeland Security Committee and the Oversight Committee, we want to say thank you for your time today. It's been a long day. But we appreciate your willingness to come and give your answers today.

I think I just have one question for you.

Throughout the transcribed interview today you made several commitments to my Republican colleagues to produce information after we leave the transcribed interview today.

Will you commit to also produce that information to the minority staff, both of the Homeland Security Committee and the Oversight Committee?

Mr. Jonas. Just make the request, and we will respond to it appropriately.

Mr. Yim. Okay.

Anything else? All right.

We'll go off the record. Thank you.

[Whereupon, at 3:05 p.m., the interview was concluded.]

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COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
joint with the
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JOHN R. MODLIN

Wednesday, July 26, 2023

Washington, D.C.

The interview in the above matter was held in room 6480, O'Neill House Office
Building, commencing at 8:57 a.m.

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Appearances:

For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

- ANDREW MARTELL, LAW CLERK
- SLOAN MCDONAGH, COUNSEL
- JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT
- ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL
- SARAH JACKSON, MINORITY COUNSEL
- DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

For the COMMITTEE ON HOMELAND SECURITY:

- FINN ARTHUR, RESEARCH ASSISTANT
- CHRISTY KORTOKRAX, COUNSEL
- BRANDON SCHALL, OVERSIGHT AND INVESTIGATIONS COUNSEL
- LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER
- BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR,
SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT
- ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

1 For the DEPARTMENT OF HOMELAND SECURITY:

2

3 STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

4 DANIEL SCHROEDER, DEPUTY DIRECTOR,

5 OFFICE OF CONGRESSIONAL AFFAIRS

6

7

8 For U.S. CUSTOMS AND BORDER PROTECTION:

9

10 SAMUEL CHAVEZ, ADJUTANT TO JOHN R. MODLIN

11 STEPHANIE MUFFETT, OFFICE OF CHIEF COUNSEL

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2 Mr. Rust. We'll go on the record.

3 Good morning. This is a transcribed interview of Chief Patrol Agent John Modlin.

4 Chairman Comer and Chairman Green have requested this interview to obtain
5 information regarding border security from the chief patrol agent in charge of U.S. Border
6 Patrol operations in the Tucson Sector.

7 Would the witness please state his name for the record?

8 Mr. Modlin. John R. Modlin.9 Mr. Rust. On behalf of the Committee on Oversight and Accountability and the
10 Committee on Homeland Security, thank you for appearing today voluntarily.11 My name is James Rust. I'm a counsel for Chairman Comer on the Committee on
12 Oversight and Accountability. I would ask that the majority and minority staff from the
13 committees please identify themselves as well.14 Mr. McDonagh. Sloan McDonagh, counsel for Chairman Comer, Oversight.15 Ms. Kortokrax. Christy Kortokrax, counsel for Chairman Green, House Homeland
16 Security, majority.17 Mr. Schall. Brandon Schall, counsel for Homeland Security, majority.18 Mr. Arthur. Finn Arthur, research assistant, Homeland Security, majority.19 Mr. Martell. Andrew Martell, law clerk for House Oversight, majority.20 Mr. Yim. Daniel Yim, House Oversight, Democratic staff.21 Ms. Jackson. Sarah Jackson, House Oversight, Democratic staff.22 Mr. Ewencyk. Arthur Ewencyk, House Oversight, Democratic staff.23 Ms. Marticorena. Briana Marticorena, House Homeland, Democratic staff.24 Ms. Northrop. Alison Northrop, House Homeland, Democratic staff.25 Ms. Dennett. Lydia Dennett, House Homeland, Democratic staff.

1 Mr. Rust. The witness is also accompanied by Department of Homeland Security
2 officials, in addition to agency counsel at the table. Would the agency officials please
3 state their names and titles for the record?

4 Mr. Schroeder. Daniel Schroeder, deputy director, CBP Office of Congressional
5 Affairs.

6 Mr. Chavez. Samuel Chavez, adjutant to Chief Modlin.

7 Mr. Rust. Before we begin, I will outline the procedure and guidelines that we'll
8 follow for this interview.

9 Questioning will proceed in rounds. The majority members or staff will ask
10 questions first for up to one hour, then the minority members or staff will have the
11 opportunity to ask questions for up to one hour if they choose. We will go back and
12 forth for four total one-hour rounds or until there are no more questions.

13 We will take a short break at the end of the hour. If the witness would like a
14 break at any other time, please let us know. If there is a pending question, I ask that
15 you please finish answering the question before we stop to take a break. We will also
16 take a break for lunch after the third hour of questions, unless everyone is amenable to
17 proceeding.

18 There is an official reporter taking down everything we say to make a written
19 record, so we ask that you give verbal responses to all questions. The reporter cannot
20 record nonverbal answers, such as shaking your head, so it's important to answer each
21 question with an audible, verbal response.

22 Do you understand?

23 Mr. Modlin. Yes, understood.

24 Mr. Rust. To ensure the court reporter can take a clear record, we will do our
25 best to limit the number of people directing questions to you during any given hour to

1 just those staff whose turn it is.

2 To the extent possible, it is also important that we do not talk over one another or
3 interrupt each other. Please wait until each question is finished before you begin your
4 answer, and we will also endeavor to wait until you finish your response before asking
5 you the next question. That goes for everyone present at today's interview.

6 Furthermore, the majority members or staff will not ask questions or otherwise
7 interrupt the minority's round of questions, and vice versa.

8 The witness is accompanied by agency counsel today. Would counsel please
9 state their names for the record?

10 Mr. Jonas. Steve Jonas, DHS Office of General Counsel.

11 Ms. Muffett. Stephanie Muffett, CBP Office of Chief Counsel.

12 Mr. Rust. I also would like to confirm our understanding that agency counsel
13 represents the agency and not you in your personal capacity. Is that accurate?

14 Mr. Modlin. Yes.

15 Mr. Rust. Are you choosing to have agency counsel present today for this
16 interview?

17 Mr. Modlin. Yes.

18 Mr. Rust. You are encouraged to freely consult with counsel if you choose. If
19 you need to confer with counsel during the interview, please let us know, and we will go
20 off the record and stop the clock until you are prepared to continue.

21 During the interview, we ask that you please answer any questions in the most
22 complete and truthful manner possible. If you do not understand a question, please let
23 us know.

24 Do you understand?

25 Mr. Modlin. Yes.

1 Mr. Rust. If you do not know the answer to a question or do not remember, it is
2 best not to guess. If there are things you do not know or cannot remember, please say
3 so and inform us who, to the best of your knowledge, might be able to provide a more
4 complete answer to the question.

5 If we ask about conversations or events in the past and you are unable to recall
6 the exact words or details, please tell us and testify instead to the substance of those
7 conversations or events to the best of your recollection. If you recall only a part of a
8 conversation or event, please tell us and give us the best recollection of those events or
9 conversations that you do recall.

10 Do you understand?

11 Mr. Modlin. Yes.

12 Mr. Rust. You are here voluntarily, and we will not swear you in. However, you
13 are required by law to answer questions from Congress truthfully, including questions
14 posed by congressional Members or staff during this interview. Witnesses who
15 knowingly provide false testimony could be subject to criminal prosecution for perjury or
16 making false statements.

17 Do you understand this obligation to tell the truth today?

18 Mr. Modlin. Yes.

19 Mr. Rust. Is there any reason that you are unable to provide truthful answers to
20 today's questions during the interview?

21 Mr. Modlin. No.

22 Mr. Rust. Before we begin the interview, I would like to explain briefly why we
23 are here today.

24 As mentioned, the House Committee on Oversight and Accountability and House
25 Committee on Homeland Security are seeking to obtain information regarding border

1 security from the chief patrol agents in charge of Border Patrol operations in the
2 southwest border sectors. We are interviewing you today to learn about matters
3 related to border enforcement and your roles, responsibilities, expertise, and
4 observations. We are not investigating you personally for any personal wrongdoing.
5 This is a fact-finding endeavor.

6 Are you ready to begin?

7 Mr. Modlin. Yes, I am.

8 Mr. Rust. Thank you.

9 The clock now reads 9:03. We will now begin the first round of questions.

10 EXAMINATION

11 BY MR. RUST:

12 Q Sir, you previously testified before the House Oversight Committee on
13 February 7th, 2023. Is that correct?

14 A Yes, that's correct.

15 Q You were one of two witnesses at that hearing?

16 A I was.

17 Q And I would like to file as majority exhibit 1 the official transcript of that
18 hearing.

19 [Modlin Majority Exhibit No. 1

20 Was marked for identification.]

21 Mr. Rust. Sir, please feel free at any point to refer back to this transcript if the
22 need arises during today's interview.

23 Mr. Modlin. Absolutely.

24 Mr. Jonas. Can I also just ask that, to the extent that there is follow-up -- I know
25 that you're going to try to avoid duplication, and we would really appreciate that -- to the

1 extent there is a question about a particular piece of testimony from the hearing, I'd ask
2 that you refer him to that portion of the transcript so he's not guessing about what he
3 might have said before.

4 Mr. Rust. Understood.

5 I'd also like to file as majority exhibit 2 the witness bio submitted for John Modlin
6 in connection with that hearing.

7 [Modlin Majority Exhibit No. 2

8 Was marked for identification.]

9 Mr. Modlin. Thank you.

1

2

BY MR. RUST:

3

Q Sir, according to that bio, you began your career with the Border Patrol in

4

1995 in the San Diego Sector. Is that correct?

5

A That is correct.

6

Q Before you joined Border Patrol, did you have any prior law enforcement

7

experience?

8

A I did not.

9

Q And prior to serving as chief patrol agent of the Tucson Sector, you served in

10

various supervisory roles on the northern border, coastal border, and at headquarters.

11

Is that accurate?

12

A That is correct.

13

Q Are you currently a member of the Senior Executive Service?

14

A I am a member of the Senior Executive Service.

15

Q When did you receive your SES designation?

16

A So I think it was 2019, more or less. It might have been late 2018, but I

17

believe 2019.

18

Q And when did you first begin your role as the official chief patrol agent of the

19

Tucson Sector?

20

A That would have been in November of 2021. However, I served 10 months

21

there as the interim chief patrol agent just prior to becoming the chief patrol agent in

22

Tucson.

23

Q Currently, how many personnel are you responsible for in the Tucson

24

Sector?

25

A There's over 3,200 agents and a couple hundred support staff. So maybe

1 3,600 combined.

2 Q In February, you explained to the committee that the vast majority of
3 encounters you were seeing at that time were single adult males attempting to avoid
4 detection. Is that an accurate understanding of the trend in the Tucson Sector in
5 February?

6 A Yes, absolutely.

7 Q Are single adult males evading apprehension still the main demographic that
8 you are encountering in Tucson?

9 A No. No. So recently it has shifted to majority are 50/50 family groups to
10 single adults.

11 Q Do you have any knowledge about why that trend may have changed in the
12 Tucson Sector since February?

13 A Knowledge about the change in the trend?

14 So, yeah. I mean, I think there's different reasons for it. But I do think one of
15 the things that's going on is migration is changing across the southwest border. So in
16 most sectors post-May 11th, most of the sectors are seeing reduced numbers in
17 crossings, and Tucson's crossings have gone up.

18 It appears as though many of the families that would have been crossing a few
19 months ago through Yuma or El Paso or Del Rio are now crossing through the Tucson
20 Sector.

21 Q When you refer to the date May 11th, are you referring to the date that the
22 CDC's order under Title 42 expired?

23 A Yes.

24 Q And is it an accurate understanding of your prior testimony that crossing
25 through the Tucson Sector, given the climate and terrain, is especially dangerous for

1 migrants?

2 A Yes. So, personally, I'm unaware of anywhere on the southwest border
3 that's more dangerous to cross than the Tucson Sector given the terrain and the
4 temperature.

5 Q Given that you're seeing more family units, are you also seeing more
6 migrants put in peril during the crossings?

7 A Yes. So anyone that crosses through the Tucson Sector is in peril. Maybe
8 the only exception would be if they're crossing right where there's city on both sides, like
9 where Nogales is. But outside of that, when they get to the extremes, especially the
10 extreme west desert, incredibly hot, and, of course, just crossing through a mountain
11 terrain is inherently dangerous.

12 Q The family units that you're encountering, are they giving themselves up to
13 Border Patrol agents?

14 A Yes, they are.

15 Q You said that the trend currently is about 50/50 single adult males. Are
16 those single adult males primarily attempting to evade apprehension?

17 A So it is mixed. So there are significant amounts of people that are single
18 adults, primarily males, that are giving up as well, which is something that certainly we
19 didn't see before the last few months when this trend changed.

20 Q Do you know any reason why those single adult males may be giving
21 themselves up to Border Patrol?

22 A Yes. So these are people that believe they have a reason to stay in the
23 United States. They are people that want to be entered into the immigration system
24 and sort of to have their day in front of a judge to plead the reason that they should stay
25 in the United States.

1 Q Do you know what the current gotaways are for this fiscal year in the Tucson
2 Sector?

3 A No, I don't.

4 Q Do you know how Border Patrol agents measure known gotaways in the
5 Tucson Sector?

6 A Yeah. So what we do within the Tucson Sector is one of the things we have
7 is a tremendous amount of situational awareness through technology. So when we are
8 aware that someone crosses the border, so they've entered the country illegally but we
9 cannot apprehend them, then they're considered to be a gotaway.

10 Q So the gotaway statistics that would exist would be fairly accurate?

11 A Yeah. My belief is, certainly in the Tucson Sector because of the amount of
12 situational awareness we have, were accurate.

13 Q In February, you also explained to the committee a tactic used by smuggling
14 organizations called task saturation whereby the transnational criminal organizations
15 send multiple smuggler groups of migrants to overwhelm Border Patrol operations. Is
16 that still a tactic being used currently?

17 A So, yeah, it still exists. It probably -- well, it certainly does not exist in the
18 numbers it did back then when 70 to 85 percent of what we were seeing were single
19 adult males attempting to evade apprehension.

20 Q Do you know the reason why the smuggling organizations would use less
21 task saturation? Is it a function of more turn-ins? Or what would explain that trend?

22 A So, yes. Because we're having such large give-up groups, it's not
23 uncommon now to see a group of 200 to 300 people giving themselves up, and they're
24 doing it in some of the most remote areas.

25 So just like task saturating our agents in the field, it pulls a lot of resources to that

1 area, especially these populations that are in very remote areas, in the heat that they're
2 in out there.

3 So, of course, the humanitarian side of the mission kicks in, and we go out there
4 and sort of triage those groups, figure out who is most vulnerable, and get them out of
5 those areas.

6 But this is, if you haven't seen, it's difficult sometimes I think to recognize, but it
7 can be hours where they're at from the nearest road. So we have to go off road to get
8 to them and take them out one van at a time or vanfuls at a time.

9 So it really pulls all the resources to those areas where the give-up groups are at.

10 Q How frequently are you seeing these large groups of over a hundred people?
11 Is that a daily occurrence? A weekly occurrence?

12 A Daily and often multiple times a day.

13 Q In responding to those large groups, you mentioned the transportation
14 difficulties and them being in remote areas. Is there an operational impact to agents
15 being able to prevent those who are seeking to evade apprehension?

16 A Yes. So once we're aware of one of those large groups and where they're
17 at and the conditions that they're in, then the primary goal becomes the humanitarian
18 mission of, of course, apprehending them, but also making sure that they're not out there
19 in the heat. We try to get them out as soon as possible. So then the border security
20 mission suffers at that point.

21 Q In February, you also explained that encounters had increased over the last 2
22 years. Has that trend continued from February, or have the numbers leveled off?
23 What is the trend that you're currently seeing?

24 A So, interestingly, a couple weeks before the May 11th date, the
25 apprehensions spiked significantly. Shortly after May 11th it sort of plateaued. It had

1 decreased and plateaued and then started to climb again. So year over year we're
2 25 percent currently above where we were this time fiscal year '22.

3 Q Do you know approximately how many encounters Tucson Sector is
4 experiencing each week?

5 A Yes. So this last week, close to 9,000. The week before, 8,200. And that
6 increase of about 9 or 10 percent a week has been common the last few weeks.

7 Q What is your total holding capacity in the Tucson Sector?

8 A 2,349.

9 Q Are you ever over capacity?

10 A Yes, we're currently over capacity.

11 Q When your facilities are over capacity, what do you do to respond to that
12 situation?

13 A So when the facilities are over capacity primarily we need to decompress
14 that. Obviously, it becomes an unsafe condition for the agents that are working, for the
15 contract personnel, the medical personnel, and for the migrants in our custody.

16 So, obviously, a couple ways that we can decompress. Some are to get migrants
17 onto -- into ERO custody, into Enforcement and Removal Operation's custody, or to get
18 them to other sectors that are not as busy as us so that they can process.

19 An example would be, like, last year we took about 55,000 from Yuma because
20 Yuma was so busy and we weren't. This year we are pushing some of these
21 unprocessed migrants to Yuma to be processed, to San Diego, to El Centro, and then out
22 to Texas as well.

23 Q You mentioned that Border Patrol works with Enforcement and Removal
24 Operations, or ERO, to make custody determinations for individuals encountered by
25 Border Patrol. Is that --

1 A So, yeah, just to be clear, so the Border Patrol, we arrest somebody. We
2 determine how we're going to process them. And then we have that -- we refer that
3 person to ERO for custody, and they determine if they have the space to hold them or
4 not.

5 Q We talked a little bit about the terrain and the climate in the Tucson Sector.
6 Are rescues this year, since February, have those continued increasing or have those
7 leveled off? What trend are you seeing with rescues?

8 A Yeah. So rescues have increased significantly. The challenge with
9 rescues -- and, unfortunately, I can only sort of tell you anecdotally what I see day to day.
10 I know that we see a tremendous amount of calls for them.

11 But we've recently, in the last year or so, changed the definition of a rescue. And
12 so that if I was to give you the numbers, it would seem astronomical, and it's not
13 astronomically accurate, but it is significantly increased, especially with the heat we're
14 seeing out there.

15 Q You mentioned a change in the definition of rescues. Can you explain the
16 old definition compared to the new definition?

17 A Sure. So the old definition was basically if we did not intervene then the
18 likelihood of death would be -- there would be a likelihood of death or significant injury.

19 Now it's changed to show, for instance, if we stop a vehicle and there are people
20 in the trunk, they're locked in the trunk and they don't know how to get out of the trunk,
21 or a tractor trailer that has 30 or 40 people in the back of it, again, they can't get out of
22 the tractor trailer, so those would be considered a rescue under the new definition.

23 But I think when I'm talking about a rescue in Tucson Sector, these are incredibly
24 dangerous rescues. These are people that are up in the mountains, often maybe that
25 have fallen. They may have a compound fracture.

1 To get to them and to rescue them I have to have agents in the back of a
2 helicopter that can rope out of the helicopter as the helicopter is up against the side of a
3 mountain. You can imagine it's dangerous for the flight crew. It's dangerous for the
4 agents that are repelling down.

5 And then to get to the migrant and render aid and often put them in a -- put them
6 in a -- I'm forgetting the name of the object, but whatever it is that holds them. And
7 then often the agent will attach themselves to that sort of cage -- not cage, but whatever
8 they're in, kind of that sled that they're in -- and provide aid as they're air-lifted out of
9 there.

10 Or it could be an agent hiking 5,000 or 6,000 feet into the mountains to carry
11 someone down on their back out of the mountain.

12 So incredibly dangerous for the men and women of Tucson Sector and dangerous
13 for the migrants and dangerous for the air crews.

14 Those rescues are significantly up. Again, just can't break the numbers out for
15 you.

16 Q When did that definition change, if you're aware?

17 A So last year sometime.

18 Q Okay.

19 You mentioned the danger to your agents from conducting some of the rescues.
20 Do you have agents who are assaulted in the field by smugglers or migrants?

21 A Yes, we do, unfortunately, face assault.

22 Q Do you know if those have trended up with the migrant surges?

23 A So the last few years they did. This would be starting back in '22. There
24 was a significant uptick. This year it has not. In fact, it's down about 35 percent from
25 this time last year.

1 Q Do you know if that's a function of encountering more family units or some
2 other demographic? Or what would explain the decrease in assaults? Is that a
3 function of prosecution?

4 A It's absolutely a function of the changing in demographics. Family units
5 that are turning themselves in or single adults that are turning themselves in are generally
6 not going to assault an agent. It's the traffic that is trying to avoid apprehension that
7 will fight with agents.

8 Q When an assault against an agent occurs, do you refer those cases for
9 criminal prosecution?

10 A Yes.

11 Q Are those referred to the assistant U.S. attorneys to accept those cases?

12 A Yes, to the U.S. Attorney's Office in Phoenix.

13 Q Do they usually accept those cases for prosecution?

14 A Yes, overwhelmingly they do.

15 Q Do you have interior checkpoints operational in the Tucson Sector?

16 A We do. We have 11 checkpoints in Tucson Sector.

17 Q Are those interior checkpoints helpful to achieving the border security
18 mission by interdicting narcotics and aliens who may have evaded apprehension?

19 A Yes. They're basically the second line of defense, and they are very
20 effective.

21 Q What types of narcotics are you currently encountering in the Tucson
22 Sector?

23 A So most significant, or at least in terms of poundage, the most significant is
24 marijuana. The second-most by pound would be meth, then fentanyl.

25 Q And that's encountered both in the field and at the interior checkpoints?

1 A Yes, that's correct.

2 Q What types of fentanyl have your agents encountered?

3 A Primarily the fentanyl we see is pill form. A year or two ago, it was
4 primarily the powder form, and more currently it's the pill form.

5 Q Do you know when that shifted from powder to pill, approximately?

6 A Yeah. Probably about 18 to 24 months ago.

7 Q Do you know which transnational criminal organizations operate the
8 smuggling routes in the Tucson Sector?

9 A Yeah. So all of them are controlled by the Sinaloa cartel.

10 Q Do you use temporary details or overtime frequently in the Tucson Sector to
11 meet mission demands?

12 A Yes, absolutely.

13 Q Has the temporary details and overtime increased with the migrant surges
14 over the last couple years?

15 A It has.

16 Q Do you have any concern that using temporary details or overtime could
17 negatively impact morale for agents? And if so, how do you mitigate that?

18 A So there's sort of two sides to it. Some agents like the temporary details;
19 certainly like overtime. In the case of overtime, so far it's been voluntary. There has
20 not been any forced overtime.

21 I do recall a few months ago when we were mandating people to Texas to help
22 with the surge there, some of those were not volunteer. Some of those were mandated
23 to go. But for the most part within the sector it's volunteers primarily.

24 We do have some forward operating bases that agents get detailed to for a week
25 or two at a time, and the majority of those are volunteers; some are mandated there.

1 Q Can you describe those forward operating bases? Are those in incredibly
2 remote areas?

3 A Yes, they are in remote areas.

4 I think, to understand it, to contextualize it, one of the challenges that we have is
5 there is a Tohono O'odham Indian reservation in the Tucson's AOR.

6 So it's the size of Rhode Island. It's a significant swath of land. And because we
7 don't have any permanent facilities on there, our closest station is two and a half hours to
8 the border that's on the Nation there.

9 So we have two camps that are located on that land. They are right by the
10 border. So we can send agents there. They can stay for a week or two. And instead
11 of losing 5 hours a day driving to and from the border, they can just step outside the
12 camp and go to work.

13 So it's a camp -- we call it a camp, but it is sort of like trailers that are connected.
14 And so it's a structure down there or a series of structures.

15 Q Do you know what the current processing outcomes are for individuals
16 encountered by your agents?

17 A I need you to explain that a little further.

18 Q Once an individual is encountered by a Border Patrol agent, they're taken in
19 for processing. Is that accurate?

20 A Yes.

21 Q And biographic data is collected and an interview is conducted. Is that
22 accurate?

23 A That's right.

24 Q Based on the information obtained from the agent's evaluation, would the
25 agent then make a decision as to what processing pathway that individual would be

1 selected to go on?

2 A Yes, that's correct.

3 Q Are all individuals who are amenable to removal proceedings referred to ICE
4 for a custody determination in the Tucson Sector or does Border Patrol make some
5 custody determinations independent of ICE?

6 A So every custody determination that I can think of -- there may be a few
7 minor exceptions here or there -- are going to be made in consultation with ICE.

8 So my staff is in contact with ICE constantly. We have some electronic systems
9 that speak back and forth between the organizations and just phone calls and find out
10 how much bed space is available.

11 And then, obviously, we're going to refer the higher priority detention to them to
12 fill those bed spaces. And once there are no bed spaces, then we don't refer more to
13 them.

14 Q Is it common currently in the Tucson Sector to release individuals from
15 Border Patrol custody on their recognizance with the notice to appear in immigration
16 court?

17 A So there are subjects that are served a notice to appear and then released
18 on their own recognizance, yes.

19 Ms. Kortokrax. Thank you, Chief.

20 I would like to make a request to silence our cell phones if we can.

21 So I first want to talk to you about the Secure Fence Act of 2006. Are you
22 familiar with that?

23 Mr. Modlin. Yes.

24 Ms. Kortokrax. Okay, excellent.

25 I would like to introduce as majority exhibit 2 -- 3, I'm sorry -- into the record.

1 [Modlin Majority Exhibit No. 3
2 Was marked for identification.]

3 Mr. Modlin. Thank you.

4 BY MS. KORTOKRAX:

5 Q Now, if I can direct your attention to section 2(b), it provides the definition
6 of operational control.

7 Are you familiar with this definition?

8 A I am familiar with that definition.

9 Q Okay. Based on the language of the legislation, in Tucson, do you believe
10 as sector chief that there is operational control?

11 A Based on this language, in my almost three decades, I've never been in a
12 sector that had operational control.

13 Q If we do not have operational control, is there another entity or group that
14 does have control of our border?

15 A By this definition, no.

16 Q Would you say that the cartels on the Mexican side of the border have
17 power and influence?

18 Mr. Jonas. Where.

19 Mr. Modlin. Do they have power and influence in Mexico?

20 BY MS. KORTOKRAX:

21 Q On the Mexican side of the border.

22 A Yes, absolutely.

23 Q And are you in the Tucson Sector in coordination with the Mexican officials
24 across the border?

25 A Yes, absolutely.

1 Q And in your experience do you have reason to believe, even in just smaller
2 instances or on a larger scale, that the Mexican officials are in coordination with the
3 cartels?

4 A No, I don't.

5 Q Can you tell me what is different today with respect to your collaboration
6 with the Mexican officials in comparison to when you were interim chief in 2020?

7 A Yes. So I believe it's better now than it was then. Recently, with some of
8 the surges, we've had more contact with the Mexican authorities. Our headquarters
9 component speaks at higher levels to the Mexican Government than I do, than I do
10 locally. But I have seen significant efforts by the Mexican Government to help us out.

11 Q Help you out in what way?

12 A So to try to -- so, interestingly, a good example, there's a couple of things
13 that go on.

14 So, one, we do multiple times a week -- in fact, I think Tucson Sector in the last
15 probably 6 months has tripled the amount of mirrored patrols we do. So we patrol on
16 the north side, they patrol on the south side, in coordination.

17 So if you can imagine, moving east and west, if they find what would be a stash
18 house on the south side, basically a place where migrants are being held before they
19 cross, then the Mexican officials can rescue them and return them back to where they
20 went.

21 Of course, if they are Mexican nationals, they can't be rescued by Mexican
22 officials, but if they are, they can be returned. So we see that quite a bit.

23 We're in constant communication with the Mexican Government.

24 Q Do you have any national security concerns with the influence and the
25 power that the cartels have on the border?

1 A So my national security concerns come in with just related to the smuggling,
2 the people that are getting away from us, sort of the unknowns out there.

3 When we make an arrest, we can then vet that person and find out, if they have a
4 criminal history, if there are national security concerns.

5 Of course, anyone that we don't apprehend is of a concern to me.

6 Q Okay.

7 You mentioned human trafficking. When you apprehend individuals attempting
8 to cross the border, or even presenting at the border, during the interviews what is the
9 primary reason that aliens express regarding why they made the journey to the United
10 States?

11 A So it does depend on when it's happening. You can imagine when there's
12 an event in a country, regardless of where that is, that can be a push factor, that can push
13 people here.

14 There can also be pull factors. There was a lot of -- in my testimony back in
15 February, because there was a lot of talk about the surge sort of post the change in
16 administration.

17 And so post the change in administration, a lot of the post-arrest interviews with
18 the migrants, they were saying that they had believed that law and policy in the United
19 States changed when the administration changed. So that was pulling them towards the
20 United States.

21 Of course, economic conditions where they live, violence, things like that, can also
22 push them. So it really just depends on the time that you're asking the question.

23 But it is, in my almost 30 years of experience, it is a very complicated answer to
24 determine why people migrate, and there's always varying reasons.

25 Q In your experience, can policies, based on the administration in power,

1 encourage those pull factors that you mentioned?

2 A So I'll tell you, interesting, it doesn't even take that much sometimes. So it
3 doesn't necessarily take a change in policy.

4 It can be -- I've experienced politicians can say the word "amnesty" enough time
5 and people will migrate. And then when we encounter them and apprehend them,
6 they'll say: I'm here for the amnesty. And it's something that there was no amnesty, it
7 was just talk, because maybe there was a natural disaster in Ecuador or something.

8 So we see things like that quite a bit.

9 Q But on their face, if an administration -- understanding the communication
10 that goes on between the cartels and the human trafficking, and when aliens are released
11 into the interior and there are communications with their families back in their home
12 countries or countries of origin, based on policies on their face, would you say that they
13 can encourage illegal immigration?

14 A So I guess I just don't know if it's -- if I've ever heard of specificity where
15 someone says: I crossed because of the change in this policy.

16 Instead, I think it's a little broader than that. I think they just become aware that
17 they have a sense that someone has told them, hey, it's easier to cross now; or the law
18 has changed; or you'll be treated differently. That's the kind of thing that draws them.

19 But it all starts somewhere, whether it's somebody just saying some words that
20 encourages it or a change in policy that people become aware of.

21 Q And referring back to the interviews, what are you hearing now in post
22 interviews?

23 A So now it's a combination of things. There is still some of the change in
24 administration stuff, the policy and law change, that perception that people have. And
25 some of it is, we're fleeing violence, we're fleeing for economic reasons, or we've heard

1 that we'll be welcomed here or there.

2 And I should say too my experience is also that the way that information is
3 disseminated now is incredibly different.

4 When I started my career, immigration flows took months to change, and now it
5 seemingly can change overnight because people are live streaming themselves crossing
6 the border. They're sending it back to -- their families are seeing it. People in the
7 area they come from see it.

8 So the border, I believe, is a lot less mysterious than it used to be, and crossing the
9 border doesn't have the same -- maybe the same perception to people that it had when I
10 started this in the '90s.

11 Q So based on your extensive experience, you have been in a role or capacity
12 where you have experienced the change in policies and all of that. As a border
13 professional you understand the issues that the men and women of Border Patrol are
14 facing and they experience. Are you involved in the decision-making process when new
15 policies are considered?

16 A Generally, no. As a field chief, no.

17 Q So you were interim chief in the previous administration in 2020, correct?

18 A So I was the chief patrol agent in Miami under the previous administration
19 and then interim chief in the Tucson Sector, yeah, as well.

20 Q Would you say that your consultation in policymaking is the same across
21 both administrations? Or were you consulted in different ways in the previous than you
22 are in the current?

23 A So for me, in the chief patrol agent role, it hasn't changed. I don't know
24 about the headquarters.

25 Q Are you consulted in any way?

1 A So it depends on the policy. An example is our pursuit policy that changed
2 probably about a year ago or so. Some field chiefs were consulted for that. Maybe
3 five or six of them were consulted. I was not. But, generally speaking, for policy, I
4 don't believe there's a lot of consultation with the field.

5 Q So I want to go back to what my colleague was initially speaking to about
6 processing outcomes.

7 So when Border Patrol encounters an illegal alien, they detain them and bring
8 them in for processing, correct?

9 A That's correct.

10 Q And what's the average time in custody for your sector?

11 A So Tucson Sector right now is about 50 -- I think about 53 hours, and that's
12 from the time of apprehension in the field until they leave our custody.

13 Q And can you remind us how their processing outcome is determined? Is
14 there specific criteria that they have to meet? If so, what is that?

15 A Sure. So if someone comes into custody, they're apprehended. They're
16 taken to one of our stations to be processed.

17 When they get there, their biometrics are taken. So their fingerprints are
18 digitally taken, their face. And they're run through the NCIC checks to see if there's any
19 criminal history there, any wants or warrants, things like that.

20 And assuming there's not, assuming they're not going down that pathway -- or if
21 we assume they were, maybe they were previously arrested, aggravated felon, then we
22 would prosecute them and they would be remanded to the Marshals Service until they
23 had a hearing in front of the U.S. attorney.

24 If not, if it was someone that was like a notice to appear, as discussed earlier, we
25 would talk with ICE ERO to determine if there's bed space. If there's bed space, they

1 would be remanded to the custody of ERO. If not, then they would be served an NTA or
2 returned to Mexico.

3 Q You mentioned notices to report earlier. Was Tucson issuing them at the
4 time?

5 A So, to be clear, I mentioned notice to appear, not a notice to report.

6 Q Okay. I'm sorry.

7 A No, it's no problem. And we've never done a notice to report in Tucson.

8 Q Are you familiar with notices to report?

9 A I heard about them, yes.

10 Q Okay.

11 Are you familiar with Parole Plus ATD?

12 A Yes, I am.

13 Q Did Tucson ever use the program?

14 A So Tucson did. If I recall, for about maybe 36 hours, it could have been
15 48 hours, Tucson used the Parole Plus ATD.

16 Q Are they currently using it?

17 A No.

18 Q Based on the decision that came out of the Northern District of Florida or
19 was it struck before?

20 A So there were sort of markers that needed to be met to use Parole Plus ATD.
21 And when that criteria was there, Tucson was meeting them. We made some releases.

22 And then headquarters had issued some direction to stop using the Parole Plus
23 ATD. I don't remember if it was related to a decision in Florida. I just know that we
24 were directed to stop using it.

25 Q Is Tucson still paroling certain aliens?

1 A So certain aliens can be paroled.

2 Parole is fairly uncommon. It's for a humanitarian reason or something someone
3 may be paroled, but it's fairly uncommon.

4 Q Uncommon in Tucson specifically?

5 A Yes. Yeah.

6 Q Can you give us an estimate on how many are paroled each month?

7 A No, but I would be shocked if it was out of the single-digit percentage of the
8 overall numbers. It's small.

9 Q And then are you still using ATD separately from the Parole Plus ATD
10 program?

11 A So ATD is not something that the Border Patrol uses. That's an ERO
12 function.

13 Q But do you know if they are?

14 A Yes. So my understanding is they are.

15 Q So I want to talk a little about issuing NTAs before and after the termination
16 of Title 42.

17 How does Border Patrol determine who should be released on an NTA?

18 A So a lot of it is the -- so when you're talking about Title 42, so, obviously,
19 when Title 42 was in effect, Title 42 was the more preferred pathway for us because -- for
20 a lot of reasons, one of them being, besides the health of the American public, the other
21 part of it was it was a much faster way. And we didn't have to bring these people into
22 our facilities. We could out in the field collect biometrics and send them back.

23 And at that point, as discussed earlier, the vast majority of people in Tucson were
24 single adult males, the vast majority of them being Mexican males. So it was very easy
25 for us to return. So we did a tremendous amount of Title 42 returns in Tucson Sector.

1 People that could not be put into Title 42 -- for instance, countries that Mexico
2 would not take back, and generally that was non-Spanish-speaking countries -- would
3 then be placed into Title 8 proceedings. Or, if they had prior immigration history, they
4 would be put into a Title 8 proceeding.

5 Q When you first arrived in the Tucson Sector was the process the same at that
6 time than it is now, or is it different when issuing an NTA?

7 A I would say, generally speaking, it is the same. Immigration law and
8 certainly what we do is incredibly complex. And so sometimes there are nuances and
9 certain countries are excluded for something for one reason or another. But, generally
10 speaking, the immigration process hasn't changed in the 27 years I've been doing this.

11 Q Is Tucson utilizing expedited removal?

12 A Yes.

13 Q Are you able to estimate the percentage of aliens that are facing expedited
14 removal?

15 A No. But what I can tell you is it is the preferred pathway in Tucson Sector.

16 Q Do the majority of aliens presenting in the Tucson Sector assert a fear of
17 returning to their countries?

18 A I don't know if it's the majority, but it is a large amount.

19 Q Can you estimate for us?

20 A No.

21 Q Over 50?

22 A No, because then it would be the majority. So I'm afraid to answer that
23 because I just don't know. I don't want to tell you something that's not true.

24 Q So are these -- when they do assert a fear, are they detained and referred to
25 USCIS?

1 A So it depends on the person and sort of the demographics. And this is, I
2 think, one of our more significant challenges.

3 So if there's a family and the family asserts fear, generally speaking, ERO does not
4 have the capacity to detain those families until they have a hearing. So generally those
5 will be a notice to appear referred to -- and referred to CIS.

6 Q Talking about those families that present and assert a fear, is Border Patrol
7 able to determine the biological relation of those families?

8 A So we are able to do that if we believe there is some fraud there. So if
9 there is, we have a DNA service on demand that we can use for that.

10 My experience is -- I want to say it was back in 2019 when we saw the first kind of
11 surge of these fraudulent families. Border Patrol detected thousands of them simply
12 through agent observation, agents that would see families, recognize that the familial
13 relationship didn't seem normal to them.

14 It's obviously not something that we're trained in. It's just every agent is
15 somebody's son or somebody's father or wife or daughter or sister. So they just
16 recognize, "Hey, this doesn't seem like a normal family," and then would discover a lot of
17 those fraudulent families.

18 To my knowledge, we don't see very much of that currently.

19 Q Was there an increase before that?

20 A Before the 2019?

21 Q Well, you said you currently are not seeing a high number of those. But
22 was it higher prior to you being promoted to chief or during your interim chief?

23 A Yes. Just to be clear, we're talking about the fraudulent families, right?

24 Q Yes.

25 A So my limited knowledge of them was in 2019 I saw a lot of them, but I was

1 not there in Tucson. I was just aware of it as the chief of Miami. We didn't really deal
2 with it there. But I heard it happening on calls and things, and I saw some stats. But
3 I'm not seeing those same stats now in Tucson. Or it may happen, it may be happening
4 in other places. I'm just unaware of it.

5 Q And when you do find that a family is fraudulent, can you talk about the
6 process of the use of the DNA and if -- are they referred for prosecution in the Phoenix
7 USA's office? Or how does that work?

8 A So in the case if we believe a family is fraudulent, then the first step would
9 just be sort of interviews with everyone in the family to determine -- sometimes that
10 would be the easiest way to determine that someone is fraudulently claiming to be
11 family. They don't know the things they should know about each other.

12 If that didn't work, then, again on demand, we could request DNA testing, wait for
13 the results of that, and then if that's the case, then we have most likely an
14 unaccompanied child at that point that would need to be processed that way and then
15 turned over to Health and Human Services ORR.

16 And then the parent, we would present that person for prosecution to the U.S.
17 Attorney's Office.

18 Q Just the head of the family or --

19 A Yes.

20 Q -- others as well that were in on it?

21 A Well, I guess it would depend on a case-by-case basis. I'm unaware,
22 because in my time in Tucson I'm not aware of this happening and having a fraudulent
23 family there where we had to prosecute somebody.

24 What I'm saying is that based on my experience, that's the process that would
25 take place. We would refer someone to the U.S. Attorney's Office. Whether it be both

1 parents or both people or not, I don't know. I mean, presumably, it would be because
2 they're both involved in the scheme.

3 Q Are you aware of the recent court decision that dropped yesterday from the
4 Northern District of California striking down the Circumvention of Lawful Pathways rule?

5 A Only what I saw on the news this morning literally while I was getting
6 dressed. So I did not pay much attention to it, but I saw some commentary on it.

7 Q So the rule itself, are you familiar with it?

8 A Yes.

9 Q And it has been described as a crackdown on asylum seekers.

10 Do you believe that the rule was effective in deterring asylum seekers?

11 A Do I believe it was effective in deterring legitimate asylum seekers? I don't
12 know that I could answer that question. I don't know how I would know if there was
13 somebody who had a legitimate claim to asylum but didn't enter the United States
14 because of that rule -- didn't enter the United States illegally because of that rule.

15 Q So you didn't get any information in any interviews from your agents or
16 when they were coming in?

17 A No. And my understanding of the rule is that if someone had a legitimate
18 claim and crossed illegally between the ports of entry, that rule wouldn't affect their
19 claim. Anyone in the United States has the -- whether they crossed illegally or whether
20 they're in the United States legally -- has the right to claim asylum.

21 So the rule, as I understood it, did not affect that. What the rule affected was
22 people that had crossed illegally, claimed fear, but didn't have a legitimate fear claim,
23 they would be affected by the rule.

24 Q So do you think with the strike that there may be an increase in numbers?

25 A So experience would say that there could be an increase in claims,

1 absolutely.

2 Ms. Kortokrax. I'm going to pass to my colleague.

3 BY MR. SCHALL:

4 Q Thank you, Chief.

5 I just want to circle back to your background and kind of go through this a little bit
6 more?

7 A Sure.

8 Q Have you ever participated in a congressional transcribed interview?

9 A So not like this. I've testified before Congress twice.

10 Q Okay. And can you tell me about the other two times that you testified
11 before Congress?

12 A Yeah. So the first was in September of 2019. It was -- I may have the
13 name a little bit off -- but it was before the Energy and Commerce Committee, and it was
14 a hearing titled, I think, "The Trump Administration's Cruel Policies Towards Children."
15 And it was mostly looking at family separation, the zero-tolerance policy, things like that.

16 And then -- oh, and then just back in February as well before House Oversight with
17 Chief Chavez from the Rio Grande Valley Sector.

18 Q Great. Thank you.

19 And can you -- excuse me.

20 Have you ever testified in a deposition for a legal case?

21 A Yes.

22 Q And can you explain the approximate date and what those testimonies were
23 about?

24 A So I don't know if I would know dates. But throughout my career in
25 smuggling cases a lot of times there's depositions for that. It might be the material

1 witnesses are being deposed, and then I'm there as an arresting agent or a supervisory
2 agent and have some discussion there in the deposition.

3 Q And so it was related to work --

4 A Yes.

5 Q -- not other personal matters?

6 A No.

7 Q Okay. Thank you.

8 How did you prepare today for the interview?

9 A So preparation today was a couple things. Some stuff on my own, looking
10 through our stats, talking to some people in Tucson Sector about the current state of
11 affairs, generally what I do every day.

12 And then I had, I believe, two video teleconference meetings with our Office of
13 Congressional Affairs, and then two in-person meetings with the Office of Congressional
14 Affairs.

15 Q And can you tell me who the people from Congressional Affairs were that
16 you met with?

17 A Yes. So Dan Schroeder at the end of the table there was involved, I believe,
18 in all four of those meetings.

19 Q Anybody else?

20 A Yeah. So also Tim Goobic. And then just some various people from the
21 Office of Congressional Affairs. But those were the two primary.

22 Q Okay. But you don't remember the others' names?

23 A No, no.

24 Q Did you receive any documents from them?

25 A No.

1 Q Were you told that any topics were off limits or you were not authorized to
2 speak about any topics?

3 A I was not told that.

4 Q What type of preparation was done in those meetings with the
5 congressional officials?

6 Mr. Jonas. Well, in addition to the congressional officials, counsel was present.
7 I was present. Ms. Muffett was present as well.

8 So you can -- so they were privileged meetings. So you can answer that question
9 very generally, but you're not authorized to talk about --

10 Mr. Modlin. Sure.

11 Mr. Jonas. -- the specifics.

12 Mr. Modlin. Yeah.

13 So what I'll say is, having done this three times, it's been the same. It's been the
14 same process for me every time. There is always a discussion about sort of the logistics
15 of it, whether it was how this room will be set up, who everyone is, how it's going to take
16 place. When it was in front of the full committees, how that would work. And then
17 just some sample back and forth.

18 BY MR. SCHALL:

19 Q And so just to confirm, you mentioned that there were no topics that you
20 were told that you were not authorized to speak on. Were there any certain words or
21 phrases that you were told that you could not speak of or speak about?

22 A Absolutely not.

23 Q Have you spoken to any other chief patrol agents about this interview?

24 A No.

25 Q Have you spoken to any of your colleagues about this interview outside of

1 speaking just generally to, I believe you mentioned, your other agents in Tucson about
2 what was going on as normal course of duty?

3 A No, no, nothing specific about this.

4 Q And can you kind of tell me about your background, education background?

5 A Sure. So I graduated high school, went to college, got a bachelor's degree
6 from Stockton University in New Jersey in criminal justice. And since then have
7 completed two master's degrees, one in international relations and one in military art and
8 science.

9 Q And when did you first seek to become a border agent?

10 A It would have been -- I started in 1995, but back then it probably had taken
11 about 2 years to get in. So I would say the early '90s was when I started.

12 Q And can you kind of go through where your career has transitioned? I
13 know before acting director you mentioned that you were in charge of Miami. So can
14 you kind of go back through that?

15 A Sure. So I started in 1995. And I think what's interesting, at least to me, is
16 that there are very -- I don't believe there's another chief in the Border Patrol that has
17 been a chief on the southwest border -- or at least has been assigned permanently to the
18 southwest border, the northern border, the coastal border, and our headquarters.

19 So I started in the southwest border in Chula Vista back in 1995. Dealt with the
20 incredible flow that was going on there. At the time it was unheard of what we were
21 seeing.

22 After September 11th, there was a recognition that the northern border did not
23 have very many agents on it. I think there were about 300 agents assigned to the
24 northern border at that time. So I took a promotion to the northern border to a senior
25 patrol agent, was the name of the position, became a supervisor up there.

1 I worked in the Detroit Sector. And then went from there to headquarters to the
2 strategic planning cell that was looking at problems on the northern and coastal border,
3 and became an assistant chief at headquarters, and then became the patrol agent in
4 charge of our West Palm Beach station, basically like a police chief. Each station covers
5 a certain amount. That one covered a couple counties.

6 From there, went to Miami Sector as an assistant chief. So a little more of an
7 administrative sort of position there with oversight of three of the stations in our tactical
8 unit.

9 Then became the deputy in Miami Sector, then the chief in Miami Sector, then the
10 SES chief in Miami Sector. When I first became chief, it was a GS-15 chief there.
11 Became the SES chief in Miami and then out here to Tucson.

12 And since then, in all that mix, have been detailed all over the country for
13 different reasons, sometimes for 10 months at a time, sometimes for 30 days at a time, to
14 help the agency out in different things.

1 [9:59 a.m.]

2 BY MR. SCHALL:

3 Q And you mentioned that you had a position at headquarters?

4 A Yes.

5 Q What was that position?

6 A So when I was there, I was an assistant chief over strategic planning for the
7 Northern and Coastal Border.

8 Q And what did that job entail?

9 A So generally, what it entailed was, when sectors needed assistance, there
10 may be -- you know, a good example was, there was a significant amount of marijuana
11 smuggling in the Pacific Northwest, and it was being done, it was sling loads under
12 helicopters.

13 So they would ask us, Hey, is there anything you can do at headquarters to help
14 out? So, you know, we would reach out to maybe the Canadian Government, you know,
15 neighboring sectors, and try to come up with a strategy to mitigate whatever threats
16 were being looked at, whether it was the Northern Border or the Coastal Border.

17 Q Okay. And so, that wasn't really a policy position. That was more of an
18 operation, strategic type of role?

19 A That's right. That's right.

20 Q Okay. And when you became chief, do you interview for that position?

21 A Yes. So the chief position -- you're talking about the first time in Miami?

22 Q I was going to say Tucson. I apologize. So let me re-ask the question.

23 When you became chief in Tucson, did you apply for the position? Did you
24 interview for the position? Can you kind of walk me through that process?

25 A Yes. So none of those, I didn't apply or interview for it. So I was the chief

1 in Miami, and they had asked me to come out to Tucson Sector to act as the interim chief.

2 So I came out, I was the interim chief there for 10 months -- and let me walk that
3 back just a little bit.

4 So when I -- when they asked me to come out to Tucson, there was an explanation
5 that Tucson needed some -- that there was a challenge with Tucson Sector's operational
6 discipline, and, you know, so I was sent out to assist with that.

7 There was a chief there at the time, and so as the SES chief for Miami, I left and
8 started to work in Tucson as the deputy chief, and then within -- within a few days, the
9 chief -- the chief that was there left probably within 5 or 6 days of me getting there, and
10 was out on leave, I believe. I didn't have much contact with him when he left -- and
11 then retired. So, you know, almost immediately.

12 So -- so for 10 months I was there acting as the chief, an interim chief, because I
13 was already a chief. And then I went back to Miami after 10 months and then was
14 reassigned probably within a week or two or getting back to Miami. I was reassigned
15 permanently to Tucson.

16 Q And you mentioned that somebody briefed you that there was operational
17 discipline issues. Can you tell me who that was, what other parts were in that briefing,
18 and kind of just tell me a little bit, like, maybe, was that from headquarters and -- like,
19 walk me through that.

20 A Sure. So -- so the call had come from headquarters. I believe it came
21 from the chief of operations at the time which would've been Chief Padilla, and he had
22 spoken to me about it, said there were some concerns about operational discipline there
23 and -- you know, so broadly speaking, you know -- you know, I believe that what
24 headquarters was saying was an increase or a decrease in the effectiveness of
25 Tucson Sector, more got-aways, you know, issues like that, and, you know, a sense, I don't

1 know -- I didn't cover it with any depth, sort of where the sense was coming from, that
2 there was a lack of leadership engagement.

3 Q Okay. Thank you.

4 Mr. Rust. We'll go off the record.

5 [Discussion off the record.]

6 Mr. Yim. We'll go on the record. The time is 10:14 a.m.

7 BY MR. YIM:

8 Q Chief, I'd like to circle back and discuss your preparation for this transcribed
9 interview. You mentioned that you have testified before Congress at a congressional
10 hearing twice. Is that correct?

11 A That is correct.

12 Q But this is the first transcribed interview that you've participated in, correct?

13 A That is correct.

14 Q In the entirety of your career?

15 A Yes.

16 Q Are you aware of any other chief patrol agents prior to this year participating
17 in a congressional transcribed interview?

18 A No, none that I'm aware of.

19 Q Okay. You mentioned a handful of meetings in preparation for this
20 transcribed interview. In your estimation, how long have you spent preparing for this
21 interview today?

22 A In those -- in those hearings, probably 5 hours yesterday, 4 -- yeah, 5 hours
23 yesterday and I think two 1-hours, so about 7 hours.

24 Q In the meetings?

25 A Yes, yes, in the meetings with the Office of Congressional Affairs.

1 Q And, I'm sorry, you said that was 7 hours total?

2 A Yes.

3 Q Okay. Had you not been preparing for this transcribed interview, how
4 would you have been spending your time as chief patrol agent of Tucson Sector?

5 A Well, I would've been down in Tucson doing the duties of the chief patrol
6 agent, so leading those, you know, 36-, 3,700 employees down in Tucson.

7 Q Now, going back when you testified before the Oversight Committee in
8 February of this year, do you recall approximately how long you spent preparing for that
9 hearing?

10 A Yes. It would've been exactly the same amount of time or very, very close
11 to it. I believe there was one or two, probably two video conferences, because
12 Chief Chavez was in -- was in Rio Grande Valley, and I was in Tucson, and, you know, so
13 we connected with OCA that way.

14 And then the day prior, just like yesterday here, a couple -- couple hour meetings
15 with the Office of Congressional Affairs.

16 Q So approximately 7 hours again?

17 A Yeah.

18 Q Now, you've brought -- strike that.

19 You have brought quite a rather robust binder with you today. Did you prepare
20 that binder?

21 A No, no. My staff prepared the binder. I just asked them for certain
22 subjects and -- so that I would have some -- some facts available if there were things that
23 you asked me about.

24 Q Okay. And have you gone through that binder yourself?

25 A I have.

1 Q Okay. My Republican colleagues also asked you about your background
2 with Border Patrol, and you mentioned that you joined Border Patrol in 1995. Is that
3 correct?

4 A That's right.

5 Q And have you served continuously with Border Patrol since 1995?

6 A I have.

7 Q In total, and I believe you testified to this in February, you've served under
8 five different Presidential administrations. Is that correct?

9 A Yes.

10 Q Okay. Would you agree that under each different Presidential
11 administration, you have seen shifts in immigration and border policy at times from one
12 administration to the next?

13 A Yes, I would agree with that.

14 Q I know we just went through this, and you were interim chief in the
15 Tucson Sector for a spell. When did you become appointed chief patrol agent of
16 Tucson Sector?

17 A It would've been November of 2021, early in November, like the 7th or 8th
18 of November.

19 Q I understand former Border Patrol Chief Raul Ortiz is no longer the head of
20 Border Patrol, but during your tenure as chief patrol agent of the Tucson Sector,
21 approximately how many times did you speak with Chief Ortiz?

22 A Probably, gosh, I would say generally two or three -- two or three times a
23 month -- well, yeah. So one-on-one conversations probably two or three times a month.
24 We do have weekly or biweekly video teleconferences as well, where, you know, it's all
25 the chiefs on, the 20 chiefs, and he's on those as well.

1 But those aside, you know, standard sort of, you know, him calling me or me
2 calling him or some communication at a conference or something, probably two or three
3 times a month.

4 Q Did he ever visit the Tucson Sector while he was chief?

5 A Yes, he did.

6 Q How often -- strike that.

7 When did he visit the Tucson Sector?

8 A I don't know.

9 Q Approximately how many times did he visit the Tucson Sector?

10 A So in that, in the time that I was there, since 20-- well, so I was there the 10
11 months prior, and then that, if we're looking at all the time together, probably four or five
12 times.

13 Q Okay. When was the most recent time Chief Ortiz visited Tucson Sector?

14 A Within the last few months.

15 Q Was this pre expiration of Title 42?

16 A I don't recall. Somewhere close to that, though. It may have been slightly
17 before or after.

18 Q And what was the nature of this visit? What was he there for?

19 A So I believe the last visit, I don't believe -- I may not have even had
20 face-to-face contact -- no, I'm sorry. So the very last visit was, we held a chiefs
21 conference in Tucson Sector. So he was there and we did meet face-to-face.

22 I think the time prior to that, he came to Tucson Sector, which was not uncommon
23 for him to come and go to a sector, not spend a lot of time or any time with the command
24 staff there and instead go out to the field, and, you know, just work with the agents, just
25 work traffic in the field with the agents, you know, ride horses with the agents, ride ATVs

1 with the agents, whatever he was doing out in the field.

2 Q Is it fair to say being out in the field gave him a sense of the operational
3 nature of the Tucson Sector?

4 A So, you know, hard to speak to what it gave him the sense of, but I think it, in
5 my opinion, it serves at least two purposes: It shows the agents that he cares about
6 them and he's willing to do what they're doing and wants to understand what it is they're
7 doing and what they're experiencing, and then it certainly does educate him as well about
8 what's going on.

9 Q Now, you mentioned the most recent visit was during a chiefs conference in
10 Tucson, correct?

11 A Yes, that's right.

12 Q And when you met -- strike that.

13 During Chief Ortiz's time in Tucson Sector during that most recent visit, did you
14 discuss resources needed in the Tucson Sector?

15 A Yes.

16 Q Since Chief Ortiz left Border Patrol, Jason Owens has assumed the position of
17 Chief Border Patrol -- of the Chief of Border Patrol. Is that correct?

18 A That is correct.

19 Q Have you had the opportunity to speak with Chief Owens since his
20 appointment to the chief?

21 A I have.

22 Q When was that conversation?

23 A Yesterday. Yesterday was the last conversation we had.

24 Q So you've had multiple conversations?

25 A Yes.

1 Q What was the substance of that conversation yesterday?

2 A So the subject of the conversation yesterday was predominantly about
3 Tucson Sector, what's going on in Tucson Sector. Tucson Sector, you know, sort of
4 metaphorically is the center of the Border Patrol universe right now because of the
5 amount of -- of cross-border illegal activity going on in Tucson Sector, and, yeah, just then
6 family stuff.

7 Q Okay. Are you aware of any plans that Chief Owens has to visit in the
8 Tucson Sector in the near future?

9 A Yes. He mentioned he may be out in August.

10 Q Okay. Now, we spoke a little bit earlier about your duties and
11 responsibilities as a chief patrol agent, and I just want to clarify, you would agree that
12 policy drafting or development is not among your duties as chief patrol agent of the
13 Tucson Sector, correct?

14 A No. The only real time that policy would touch, you know, chief patrol
15 agent would be to review, if they wanted to review, sort of, you know, headquarters, as
16 you can imagine, can sometimes get a little bit away from the field, so they want input
17 into policies.

18 Of course, if there's a sector policy, you know, then I might have some -- well, I
19 would have some visibility on that, but I would not be drafting a sector policy.

20 Q Okay. Chief, you previously testified before the Oversight Committee in
21 February that the Tucson Sector, quote, "has an incredible amount of situational
22 awareness," and I can point you to that statement if you like. It's at the bottom of page
23 11 of the transcript if you'd like to take a look.

24 A I've got it.

25 Q Chief, what is situational awareness?

1 A So for me, situational awareness is knowing what's going on out in the field,
2 you know, whether we are there to see it, you know, sometimes that situational
3 awareness is an agent that sees anything going on, right -- whether it's a group of people
4 crossing the border illegally, it's narcotics smuggling, it's a brush fire, whatever that
5 is -- and then the technology as well.

6 So whether it's our own technology, you know, the camera towers we have out
7 there, it could be UAS's that are flying however high they fly and looking at our small
8 UAS's that the agents are deploying by hand. It could be, you know, ranchers that are
9 calling. All that stuff together is situational awareness.

10 But, you know, in this situation, I'm most likely, you know, speaking about our
11 technology and the technology combined with the Office of Air and Marine and our other
12 law enforcement partners.

13 Q And why do you believe Tucson has, quote, "incredible situational
14 awareness"?

15 A So, you know, I'm going to be off a little bit in the years, but, you know,
16 somewhere around 2009, 2010, 2008, there was the strategic -- or was it the -- it was
17 SBI net, and I can't remember what it stood for, but it was -- it was a push because at that
18 point Tucson Sector, again, was the center of the universe in terms of crossing.

19 And so, there was a lot of investment into technology into Tucson Sector, so, you
20 know, where other places -- you know, Miami is a perfect example, there are no camera
21 towers in Miami Sector. There's no ground detection. There's no ground radar in
22 Miami Sector.

23 So, you know, we have some situational awareness there, but it's mostly based on
24 what our agents can see, you know, source information, things like that, different than
25 cameras that can see for miles.

1 Q May SBI stand for Secure Border Initiative?

2 A Yes.

3 Q Is that your recollection?

4 A Yeah.

5 Q Okay, great.

6 A Sounds right.

7 Mr. Yim. All right. I'll turn it over to my colleague for a moment.

8 BY MS. JACKSON:

9 Q I just want to circle back to narcotics really briefly.

10 A Sure.

11 Q Are the majority of narcotics that you're seeing, are they interdicted at
12 major checkpoints or out in the field?

13 A So I don't have the most up-to-date figures, but I do know when I went to
14 the hearing in February, I had looked at it right before then, and the majority were in the
15 field. It was not much of a majority. It was like 48 percent at the checkpoints, and 52
16 percent -- or at least that was fentanyl. That was not all narcotics but fentanyl, which is
17 what that -- a lot of that hearing was focused on. The majority of fentanyl was being
18 caught in the field.

19 Q At that hearing you mentioned that there was new technology in your sector
20 that may have helped interdict more fentanyl. Have you -- do you agree that new
21 technology has helped with those interdictions?

22 A So, yeah, absolutely. The new technology is always -- is always great. I
23 mean, you know, I'm not aware of technology that necessarily only finds fentanyl, but
24 there are things that nonintrusive inspection technology, basically X-ray technology, you
25 know, so when a vehicle comes to a checkpoint or something, we can, you know -- and

1 we have reason to believe that there's something suspicious in there, we can run the
2 vehicle -- pass the vehicle through the nonintrusive inspection and see it that way.

3 Or, you know, most recently one of the things that have been deployed are these
4 devices that have the ability to put a laser through whatever is in some container and,
5 you know, look at the refraction of the light and then be able to determine what that
6 substance is.

7 So not only does it help identify it, but obviously, it's a great thing for officer
8 safety, that agents aren't opening bags of powder and, you know, being overdosed if it
9 turns out to be powdered fentanyl or something.

10 Q So you would agree that those scanners and that technology is particularly
11 effective?

12 A Yeah. I think -- I think all those -- all those technologies are a good
13 investment, both in detection and officer safety.

14 Q And are you familiar with Operation Four Horsemen?

15 A Yes, very much so.

16 Q Do you think that has been successful at stopping fentanyl smuggling?

17 A So I do. I can tell you that, you know, this time last year, we were at about
18 340 pounds of fentanyl. This time right now, we're at over 725 pounds of fentanyl. So,
19 you know, it's more than 100 percent increase, and Operation Four Horsemen was a big
20 part of that, for sure.

21 Q And turning briefly to human smugglings, you said earlier that cartels are
22 responsible for the majority of human smuggling that you see in your sector. Is that
23 correct?

24 A So -- yeah. So if someone's being smuggled, they're using a criminal
25 organization. So what's interesting about the border certainly that has changed

1 significantly, when I started -- you know, when I started in '95, people could just get to
2 the border and cross on their own.

3 You know, now nobody crosses without paying the cartels. So the cartels, you
4 know, determine when people cross, you know, how many people cross at a time, all of
5 that. It's all -- it's all controlled by them.

6 Q And to your knowledge, do cartels misinform people about what the journey
7 across the border entails in order to entice them to cross?

8 A Absolutely. And what we're seeing in Tucson is the use of social media for
9 that. So there's social media that's blasted out into -- into Mexico and Central and South
10 America that tells them the journey is easy, they're guaranteed to make it, that sort of
11 thing.

12 Q And because of that, they often -- they cross, and then as you've said, the
13 journey is not easy and they are in peril. But would you agree that the cartels have a
14 financial incentive to get them across no matter what?

15 A Yeah, so -- yeah, so the cartels are agnostic as far as, you know, what it is
16 they're crossing, whether it's people or narcotics or, you know, weapons or money. It's
17 just -- to them, it's just a commodity. They have no concern for the safety.

18 You know, we started talking earlier about the dangers in Tucson, and, you know, I
19 don't know your experience with the border, but Tucson is unlike most places. A lot of
20 places people can cross the border, and, you know, sometimes within 200 yards, they're
21 in a metropolitan sort of area that they have access to trolleys, like in San Diego, things
22 like that.

23 Tucson, it can be 4 or 5 days across the desert, you know, when it's 120 degrees
24 out there, that, you know, it's just absolutely, you know, the most dangerous place to
25 cross.

1 Q And you mentioned that there is a slight uptick in recent months in families
2 attempting to cross in Tucson. Do you think that's because cartels are encouraging
3 them to cross there?

4 A So -- yes. So there's a couple of reasons, you know, from what -- from what
5 I understand, is that, you know, when people are making the journey up, there's a couple
6 of points in the -- in the travels where they basically can decide to take routes that will
7 take them sort of northeast to Texas and to New Mexico, or northwest to San Diego
8 and -- or California and Arizona.

9 And some things will be -- you know, if there's -- if there's an understanding that
10 there's violence against migrants in one area, they will tend to shift to another area.

11 If there's certain demographics, if they're just single adults, they're most likely
12 going to be pushed towards -- towards the Tucson area. So, you know, it depends on,
13 they have some, a very minor say in that, but the cartels control the vast majority of who
14 goes where.

15 Q And now that Title 42 is lifted, you're processing migrants using Title 8,
16 correct?

17 A Yes. That would be before and after 42 -- and during 42 as well. But now
18 is -- now is only Title 8.

19 Q And under Title 8 before, during, and now, people face consequences for
20 attempting to cross unlawfully, correct?

21 A So it depends on -- it depends on the demographic. Yes, there's always a
22 consequence of they're being charged with this violation of the Immigration Code. It
23 just -- you know, I think it's a definitional thing about a consequence. If -- if somebody is
24 served a notice to appear and released into the United States, then, you know, certainly,
25 some people would not see that as a consequence as much as if they were to be served,

1 held in detention and then, you know, go to a hearing, and then either be returned or
2 allowed to stay in the United States.

3 Q And then if people are held or if they actually face criminal penalties because
4 of other particularities of their case, do you agree that that is a deterrent for people
5 crossing unlawfully?

6 A Yeah, absolutely. I think, you know, if -- if everyone was held until there
7 was a hearing, that would be a significant deterrent to crossing illegally.

8 Q And do you think the fact that people might face criminal penalties is a
9 deterrent for people attempting to cross?

10 A Yes.

11 Ms. Jackson. I'll pass to you.

12 Ms. Marticoarena. Thank you.

13 BY MS. MARTICORENA:

14 Q Chief, I know we've talked a lot about resources and technology, but I'd like
15 to talk about it a little further if you don't mind.

16 A Sure.

17 Q So you worked for Border Patrol before the COVID-19 pandemic began in
18 March 2020, correct?

19 A I did.

20 Q And thinking back to before March 2020, how often would surges of
21 migrants occur? Was it a common occurrence?

22 A So I wouldn't say common, but, you know, 2019, there was a significant
23 surge, but that -- and that was mostly families and unaccompanied children. I believe
24 before that, 2014 may have been a significant surge in children as well. I think that was
25 generally unaccompanied children.

1 You know, before that, you know, having been on in the years prior to that, having
2 spent my career and a significant amount of time in Miami and Detroit, we didn't really
3 experience the surges that the Southwest Border was experiencing.

4 Q And would you say that numbers tend to change with the seasons?

5 A So, yes. In Tucson, absolutely, and even in other sectors where I worked,
6 you know, like the holiday season, you know, the December time frame was a time when
7 apprehensions tended to be very low.

8 A lot of people that were crossing the border frequently illegally would cross into
9 the United States, work for most of the year, and then go back into Mexico in December,
10 and then come back in, say, January or February.

11 Tucson, because of the incredible amount of heat out there, the summer months
12 tend to be very low. What's happening now that is unheard of, you know, I looked at 10
13 years of data to what the summer months should be, and, you know, so where we're at
14 now in July, you know, should be about -- we should have about 17,000 apprehensions in
15 July, you know, given 10 years of data aggregated.

16 Instead we're at 26,000. So this time of year, the most dangerous time of year, is
17 seeing one of the most significant flows that we've seen.

18 Q Thank you.

19 And then, you know, briefly you've talked about processing coordinators in your
20 testimony in February as well as today. About what percentage of your Border Patrol
21 agents are dedicated to processing activities?

22 A So most recently when I looked at it, it was about 38 percent of the -- the
23 Border Patrol staff in Tucson is -- is doing processing/detention stuff. I think when I
24 testified in February, it was more about 20 percent or so.

25 Q Okay. And just to be clear, Border Patrol staff, do you mean agents?

1 A Yes. Agents, yeah.

2 Q And can you describe what the processing coordinators do in your sector?

3 A Sure. So there's a lot that they do, and I think, you know, to be clear, the
4 processing coordinators are not law enforcement personnel. They're just personnel that
5 are coming to help.

6 You know, the Border Patrol, like -- like every other law enforcement agency I'm
7 aware of, is having a difficult time in recruitment. It's just a difficult time, so -- but one
8 of the areas that we do not have difficulty recruiting in is processing coordinators.

9 You know, so we open these jobs up and a lot of people seem to want to help,
10 want to be part of the mission but not necessarily be in law enforcement. So there are
11 people that come in, and there's a variety of duties they can do.

12 If they are CDL-certified, they can drive buses for us. You know, they can -- they
13 can process, so they will take the basic biographical information from the migrant that's
14 in custody and input that into the system so that agents aren't spending hours doing that
15 stuff.

16 You know, they can do hospital watch for us. You know, if a migrant in our
17 custody needs care that our contract medical support can't do, they can do that as well.

18 So it's a really smart way, in my opinion, of getting -- helping us get more agents
19 back to the field and doing law enforcement duties and having some of the more
20 administrative functions taken by people that are not in, you know, sworn law
21 enforcement.

22 Q And about how many processing coordinators do you have in your sector?

23 A So right now, I have about -- I want to say it's about 120 or so. Yes, I've got
24 about 120 currently there out of about 215 that I'm slated to receive.

25 Q Do you know when you'll be receiving additional processing coordinators?

1 A So I don't know exactly when, but they come in -- they sort of trickle in
2 maybe, you know, 5 -- 5 to 10 a month or so.

3 Q And when did the Tucson Sector first start receiving processing
4 coordinators?

5 A I would say it was about 9 months ago.

6 Q Okay. And just to be clear, in your professional opinion, has the creation of
7 this position and the rollout of processing coordinators been beneficial to your sector?

8 A Yes, I absolutely believe so. In fact, the day before I came out here -- no,
9 sorry, it would've been Friday -- I was in one of our processing centers and spoke to two
10 of them that were there from -- they were -- we borrowed them from Laredo, and they
11 were both CDL-certified, so they were going to drive buses for us, along with their regular
12 duties of, you know, working the property of the migrants, all the things that I discussed
13 prior.

14 Q And without these processing coordinators, you'd have significantly more
15 Border Patrol agents dedicated to processing. Is that correct?

16 A So there would certainly be more Border Patrol agents, you know, assigned
17 to processing, yes. I don't know -- you know, I know it's not a one-to-one swap for sure,
18 you know. I don't know if the Border Patrol's been able to figure out what exactly that
19 ratio is, but -- but it is significant, for sure.

20 Q Thank you.

21 And then, Chief, are you aware that the Department of Defense sent 1,500 troops
22 to the Southern Border to assist with possible migrant surges following the lifting of
23 Title 42?

24 A Yes. Just -- but just the, you know, general awareness of it.

25 Q So none of these troops were sent to the Tucson Sector. Is that correct?

1 A So, you know, I don't know, because we have an RFA with -- with the
2 Department of Defense area. If I remember, it was a tiered system -- yes. So, in
3 fact -- it is coming back to me -- there is some of that -- some of that did come to
4 Tucson Sector. It was sort of, it was done in waves. There was a wave that went
5 to -- to Texas first and then Tucson Sector received, you know, the second wave of that.

6 Q And when was that second wave deployed, approximately?

7 A I might have it. Yeah, it looks like they arrived in early June.

8 Q And can you clarify some of the administrative tasks, or tasks in general, that
9 these troops did in your sector?

10 A So, yeah, there's -- there's sort of warehousing duties. There's, you know,
11 there are data entry, things like that. It's -- it's not -- so they're not out in the field.
12 They don't have contact with the migrants.

13 Q So would you agree that the deployment of these troops was helpful to your
14 sector?

15 A I would agree that it was helpful. It could've been more helpful, you know,
16 had they been -- had they been able to do more. I think, you know, the unique thing
17 about Tucson Sector is that -- is that population that we have that's trying to avoid
18 detection who are all dressed head to toe in camouflage, and the terrain makes it very
19 similar to a lot of places around the world where we often deploy.

20 So it's a good place for DOD personnel to train some -- some of their skills and
21 even other skills like, you know, we have a tremendous fleet of vehicles in Tucson. We
22 put anywhere from 30 to 40 million miles on our fleet every year. You know, so having
23 DOD mechanics, things like that, would serve very well also.

24 So grateful for any assistance, but, you know, knowing how much the DOD can do,
25 there certainly is more that we would have them do if we could.

1 Q And, Chief, are you aware of the volunteer force implemented by the
2 Department of Homeland Security?

3 A So, yes, very aware.

4 Q Can you describe what the volunteer force does?

5 A Yeah. So the volunteer force is a group of volunteers that are
6 civilians -- they're not law enforcement -- that deploy wherever -- wherever they're
7 needed when things happen. And as the name says, it's a voluntary basis.

8 I think the first time I really became aware of them was during Superstorm Sandy.
9 You know, when it hit sort of the New Jersey coast, I remember there was a big push.
10 The volunteer force had existed before that, but I think that was the first time I became
11 aware of sort of what they could do.

12 So they would deploy there and, you know, so it could be a lot of -- a lot of clerical
13 people, it could be people with specialties in logistics, all these things that come together
14 to assist.

15 Q And have you had members of the volunteer force in your sector?

16 A Yes, we have.

17 Q And when did they begin to roll out?

18 A So roll out, you mean come into the sector?

19 Q Come into the sector.

20 A Yes. So, you know, I would say probably within the last few months.

21 Q Okay. And you spoke broadly about some of the roles the volunteer force
22 does. What have they been doing in your sector?

23 A So they are doing very similar things in our sector, so they will help with sort
24 of similar to what the DOD is doing for us there. So some of the warehousing, so they
25 cannot -- they also do not have contact with the migrants.

1 But there's a lot of work that needs to be done in our -- in our facilities. A lot of
2 it is keeping track of supplies, things like that.

3 Q And is it fair to say that the volunteer force has also been beneficial to your
4 agents?

5 A Absolutely.

6 Q And just to summarize, would you say that the volunteer force, the
7 additional DOD employees, and the processing coordinators have all helped return your
8 agents to the field?

9 A Yes, they have all helped.

10 Q And are you aware of the Southwest Border Coordination Center, or the
11 SBCC?

12 A Yes.

13 Q Can you describe what the SBCC is?

14 A Yeah. So as the name suggested, it's basically a coordinating entity. So it
15 exists -- it physically exists at our headquarters here in D.C. in the Reagan Building. And
16 it's made up of currently the senior coordinating officer. So basically the person that's in
17 charge of that, is -- is a woman from CIS, and then the deputy SCO there is with the office
18 of field operations.

19 And then there's structures there that work -- basically if you're familiar with the
20 ICS structure, it's very similar to that, so it's sort of the top of that. And then within it
21 are -- there's a transportation cell, there's a logistics cell, there's a finance cell.

22 And basically it's helping to look at the border and coordinate the border more
23 strategically so that every chief and every DFO, the director of field operations, for OFO,
24 the people that are at the ports of entry, are not necessarily trying to solve every problem
25 by themselves, you know.

1 So they can coordinate, you know, if they're making an ask for, you know, for
2 support from another agency, you know, say that, you know, I can't remember now, it all
3 gets blurry, the timing. But at one point, we had asked the Bureau of Prisons, like, could
4 they give us buses and bus drivers.

5 So this way there's not nine sector chiefs across the Southwest Border all asking
6 the Bureau of Prisons. Instead, you know, we just asked the SBCC, these are our
7 requirements, you know, can you fulfill them, and they do it that way.

8 Within that structure, I am the lead field coordinator for region 9. So FEMA
9 looks at the Southwest Border in two regions: 6, which is Texas and New Mexico, and 9,
10 which is Arizona and California.

11 Q And in your view and your experience with the SBCC, have you found them
12 helpful in coordinating resources or addressing gaps in your sector and in your work with
13 the other sectors?

14 A So there was some use to it. I think there are also some challenges. So it
15 does not have its own budget, so it cannot provide really anything for us, you know. It
16 can help.

17 But the other challenge is that, you know, if we request something through the
18 SBCC at the same time we're requesting it through Border Patrol headquarters, you know,
19 and then, presumably, there's a way that they deconflict that, you know. That would
20 appear to me to be some calories burned that don't need to be burned on one pathway
21 or another, you know.

22 So I think where it is incredibly helpful is those requests, like I'm talking about,
23 especially other agency requests, I think, you know, the structure has helped us
24 significantly, especially interagency, you know, between myself and, for instance, the
25 director of field operations for San Diego, for the office of field operations.

1 You know, it has helped us certainly understand each other's mission a lot more
2 and know what each other's capabilities are. And that goes for the other three sectors
3 that I sort of oversee as the lead field coordinator as well.

4 Q And then earlier you mentioned your holding capacity for the sector. Has
5 that capacity increased during your time in Tucson?

6 A Yes. So it increased twice. So it increased when we erected a soft-sided
7 facility. That increased it by about 500.

8 And then recently, within the last 2 or 3 weeks, we opened what is called the
9 Nogales Processing Center, and that increased capacity by roughly 900 or so.

10 Q And when did planning for the Nogales Processing Center begin,
11 approximately?

12 A So long before -- long before I was there.

13 Q And when was the soft-sided facility deployed?

14 A So the soft-sided facility, I believe I have that here somewhere. No, I don't.
15 But I got there on temporary detail in November of 2020. It would've been April, maybe
16 March or April of 2021.

17 Q And are there any plans to further increase capacity in your sector?

18 A So not -- not that I'm aware of.

19 Q And we talked a bit about capacity again earlier. When you're over
20 capacity, just to be clear, are you using lateral transfers to other sectors?

21 A Yes. So we're using, you know, what we've called lateral transfers of
22 unprocessed migrants. And then we're also transferring processed migrants from our,
23 you know, from our custody, directly into ERO custody to be flown into the interior, to
24 their -- their available beds.

25 Q And in coordinating those lateral transfers, is your sense that there is

1 capacity in other sectors right now to receive those unprocessed migrants?

2 A You're asking, is there capacity to receive them?

3 Q Is there capacity to receive them from your sector?

4 A Yes. Yeah.

5 Q And have you had any challenges with those lateral transfers?

6 A Yes. So you know, everything like that is a challenge, whether it's
7 buses -- you can imagine buses when it's 110, 115 degrees out, that are running
8 constantly between Tucson and Yuma, some buses break down.

9 Airplanes, quite recently we had an airplane that was overfilled with fuel. You
10 know, that becomes a problem. You know, Tucson, very difficult to get planes off the
11 ground when it's 110 degrees out. So that affects -- the weight starts to affect things.
12 So there are just mechanical issues. There are crew issues. So, yes, it's difficult.

13 It's certainly better than -- better than us being over capacity, you know. Better
14 would be -- or optimal would be our custody right into ERO beds, you know, if there were
15 beds waiting, detention space waiting in ERO locally, then that would be the optimal
16 solution.

17 Q Understood.

18 And is your sense that the Department has been trying to employ contractors or
19 the resources needed to help with those lateral transfers?

20 A So I don't know -- I don't think I could speak to whether it's the Department
21 or CBP. You know, for us, it's me reaching up to headquarters, and headquarters
22 through CBP, you know, to -- to get as much assistance as we can.

23 And sometimes that's in the form of contract bus support, which we've
24 recently -- they've recently increased our contract, transportation support, which really is
25 ground transportation.

1 And then -- and then we've requested these flights as well. These are not -- my
2 understanding, these are not contract flights. These are -- you know, ICE has a certain
3 amount of flights -- ICE ERO has a certain amount of flights, and we're using those.

4 Q So just to clarify, would you agree that CBP has been responsive to your
5 requests for these type of assets or assistance?

6 A So in -- in the recent -- in the recent probably month or so, you know, where
7 Tucson has really sort of stood out from the rest of the border in what's going on, I
8 think -- I think CBP has been remarkably agile in their response to this.

9 You know, one of the challenges that we always face on the border, because
10 migration can change rapidly, is, you know, we make requests -- now I'm speaking very
11 broadly, as, you know, from what the SBCC does, and it may be for those -- again, those
12 Bureau of Prison buses, and they're all requested to go to a certain place.

13 That can take months for that process. The buses get there, and then the flow
14 has changed significantly. That becomes problematic for everyone, you know, for the
15 Bureau of Prisons, it becomes problematic for us.

16 In this case, it's really been, in the last month or so, that -- that we have started to
17 make significant requests to our headquarters for, you know, the deployment of more
18 personnel to Tucson, more buses, you know, all of these things, you know, language
19 support, you know, people with some language specialties from some of the countries
20 that we're seeing now. And we are receiving a lot of that help very rapidly.

21 Q Thank you.

22 So I'd like to switch to talking about some of the technology in your sector.

23 A Yeah.

24 Q Does your sector utilize towers?

25 A Yes. You're talking about, like, camera towers, radar towers? Yes.

1 Q And can you describe the types of towers employed in your sector?

2 A Yeah. So primarily they are towers -- I guess there's two types of towers.
3 So there's -- there's towers, sort of the standard towers, with cameras on them that have
4 day and night cameras. A lot of them can see, say, up to 7 miles or so. And each
5 station will have sort of a centralized area where -- where agents and/or, you know, DOD
6 personnel will be in there monitoring these cameras.

7 Some cameras have technology where there's also radar, or at least some sort of
8 change detection where when they recognize there's a change, the camera pans to that
9 immediately, so that the operator can then look at it and determine if it's, you know, if it's
10 something we need to be concerned about or if it's just legitimate. Maybe it's cows
11 moving around or a mountain lion or something like that.

12 Q And would you agree that these towers help your agents have that
13 situational awareness and ability to detect migrants seeking to unlawfully cross the
14 border?

15 A Yes, both of those.

16 Q Are you familiar with autonomous surveillance towers?

17 A Yes. Not -- I would not say I'm, you know, very familiar with it. I know
18 that the Border Patrol started rolling them out, but they were not deployed in
19 Tucson Sector, you know, when this started maybe a year, 18 months or so ago. I could
20 be a little bit off with that.

21 But my understanding is, you know, the towers recognize that there's a change
22 and then sort of analyze it and determine if it's something we need to be concerned
23 about or not.

24 Q Are you aware of any plans to roll out the autonomous surveillance towers in
25 your sector?

1 A Yes. I don't know how many, but we have had those discussions with
2 headquarters.

3 Q Do you believe these towers will be helpful to your agents?

4 A So you know, I think anything that helps agents, you know, if you can
5 imagine this room, one of these rooms, a single agent may be looking at four to six
6 screens of data, you know, at any one time and looking for changes on there.

7 So, one, my opinion, not a great use of a law enforcement person that should be
8 out, you know, putting -- putting -- you know, apprehending people, making -- making the
9 things we want law enforcement personnel to do.

10 You know, I'm also not sure how effective somebody is in hour 7 of that, you
11 know, looking at all those screens. So I am concerned about that.

12 And we have probably nine of those tactical operation centers in Tucson, and if
13 each one is staffed by eight to 10 people a shift, you know, three shifts a day times nine,
14 suddenly that is a lot of people that are not out in the field doing what they should be
15 doing.

16 I don't know that we'll ever get to a point where -- where we have absolute faith
17 that we don't need someone in the Border Patrol in there to -- to look at and recognize
18 what the computer is seeing, but I think in terms of, you know, needing to be able to
19 employ some smart technology in there, some AI that can start to determine when things
20 are threat or not threat, you know, that would be incredibly helpful to us, for sure.

21 Q And does your sector employ the linear ground detection system?

22 A So, yes, limited. It's in some areas, but very limited.

23 Q And can you describe briefly how the LGDS system works, or operates?

24 A Yeah. So it would be -- it would be brief because I'm certainly not -- not
25 that up to speed on it. But I know it detects basically like vibration through the ground.

1 You know, it's buried in the ground, detects vibration.

2 So you know, and it's -- if my understanding of it, if it's correct, is that it sort of
3 recognizes unusual vibration. So it would -- it would detect people cutting the fence,
4 things like that, or cutting the wall system.

5 Q And about how many miles of LGDS are installed?

6 A So there's about 30. Yeah, it says -- yeah, so 23 that are active, and
7 another 30 that we're waiting to turn on. There's some testing that needs to be done.

8 Q And has the amount of LGDS in your sector, has it improved, or do you have
9 more of it during this administration?

10 A So my understanding of the LGDS is that, you know, so Tucson had
11 requested, or was contracted to get 138 miles of the border wall system, and that LGDS
12 was part of that system.

13 I think often people talk about the border wall, and they only mention sort of the
14 30-foot wall, you know, but it was meant to be, obviously, the access road that runs
15 east-west along the border, the stadium lighting, things like that, and the LGDS was
16 supposed to be part of that.

17 So what I don't know is if the LGDS existed when -- when the wall went in under
18 the last administration, so I don't know the answer to that.

19 Q Are you aware of any plans to further expand LGDS in your system --

20 A No, I'm not.

21 Q -- in your area?

22 Okay. Thank you.

23 Does your sector utilize mobile video surveillance systems?

24 A Yes.

25 Q And can you describe these systems?

1 A Yeah. So these are systems, there's -- that predominantly speaking, are
2 basically large truck platforms that are driven up to advantageous points along the
3 border, and then, you know, an agent is inside that vehicle.

4 And, generally speaking, it has, again, the day and night cameras, it has ground
5 radar, so it can, you know, pick up movement in the area, and, you know, the ability to
6 also communicate with the agents and designate areas that agents want to go to, to look
7 at something.

8 Q And would you agree that these systems are helpful in detecting individuals
9 seeking to unlawfully cross the border or stopping or interdicting cartel activity?

10 A Yes, yeah, they're helpful.

11 Q Are you aware of any plans to increase the number of mobile video
12 surveillance systems in the Tucson Sector in the next fiscal year?

13 A No, I'm not.

14 Q Okay. And has there been a rollout of those systems, or an increase in the
15 number of systems during your time in the Tucson Sector?

16 A An increase in number of them coming to Tucson Sector?

17 Q Yes.

18 A Not that I'm aware of, but I will tell you again, this is a -- sometimes it's hard
19 to wrap my head around the size of the operation in Tucson Sector. So if, you know,
20 again, 40 million miles on our vehicles, right? I think there's probably 3,000 vehicles in
21 the fleet in Tucson Sector. So if a few more of anything arrived, I really wouldn't be
22 aware of that, you know.

23 Q And does your sector utilize unmanned aircraft systems?

24 A We utilize small, unmanned aircraft systems. We do, with the Office of Air
25 and Marine -- or Air and Marine Operations, what they're now called, Air and Marine

1 Operations. They do use UAS's in our area, so the big, the large, you know, predator,
2 sort of UAS's that are, you know, flying at the -- like in the commercial airline space.
3 Those are used.

4 And then we have portable, the small, unmanned aircraft systems, which are, like,
5 agent-launched.

6 Q And can you speak a bit to what those small, unmanned aircraft systems are,
7 how they're used in your sector?

8 A Sure. So -- so, you know, they are agent-deployed. It gives -- obviously
9 gives us an advantage from the height because now we can look up and see down.
10 There are some challenges with them, of course, you know, because the airspace in the
11 Tucson Sector, the sector itself sits right on the Davis-Monthan Air Force Base. There's
12 an A-10 wing there and a couple other wings. So there's a lot of air traffic.

13 And then there's 11 other agencies that help provide some level of support to us.
14 So there's a lot of things flying around in the area. So the last thing obviously anybody
15 wants is a collision between a small UAS and a helicopter or something.

16 So, you know, you have one agent is piloting the helicopter, another agent is the
17 observer, and then there's another agent to help deconflict with anything else going on.

18 So it is a little bit personnel intensive, but it does give us the ability to see a lot
19 more than we normally can in certain areas.

20 Q And are you aware of any plans to increase the number of small UAS?

21 A I have not heard any plans to increase them.

22 Q Okay. And then, do you have specific communications systems that you
23 use in your sector?

24 A Yeah. So probably most significantly is, Tucson Sector was the first sector
25 to utilize what is called TAK or, in our case, ATAK, so it's the Android Team Awareness Kit.

1 There's also, like, iTAK, the iPhone version of it, and a WinTAK version.

2 So basically, every agent has a smartphone, and on that phone, when they -- when
3 they log in to TAK, it shows very detailed, almost like, I think it's an AEGIS view, but
4 almost like, imagine a Google Earth view very close to the are they're at.

5 So they can see where every other agent is. Even if they don't know who that
6 agent is, they can click on that, that representation of the agent. They can send them a
7 direct message. They can call them. They can send them picture video, that sort of
8 thing. Gives us a tremendous amount of situational awareness.

9 Also, you know, from a leadership perspective, you know, we can -- if agents need
10 to be rescued very rapidly, we can get to their -- to their positions. You know, we've had
11 agents that have been in significant physical altercations that asked for help and cannot
12 radio coordinates out, but we could find them based on that system and rescue them as
13 well. So just a tremendous system.

14 Q And has the number of these systems increased during your time in the
15 Tucson Sector?

16 A So, no -- well, if it has, I don't think it's -- I don't think it has changed very
17 much. When I got to Tucson Sector, we were already -- well, we were the leading sector
18 in the use of TAK. We were probably already in the 90 percentile as far as the usage of
19 TAK. So if it's increased, very little.

20 I have brought other sector chiefs and personnel to Tucson Sector to see it and
21 promote it. Since then, it has rolled out across the United States, the -- you know, it was
22 a big push from -- from Chief Ortiz to get -- to get TAK rolled out as much as he could.

23 Q So just to be clear, that when you arrived, you had quite a lot of TAK --

24 A Yeah.

25 Q -- in your system, but there's been an increase across the Southwest Border

1 of the use of it?

2 A Yeah.

3 Q And then, I'd like to turn to some of the most recent funding that Congress
4 provided Border Patrol. The fiscal year 2023 Omnibus provided funding for an
5 additional 300 new Border Patrol agents to the workforce, which is the first increase since
6 2011.

7 Do you think these additional agents will be helpful to Border Patrol?

8 A So, yes, any -- any additional agents will be helpful to Border Patrol.

9 Q There's also been some discussions in Congress about cutting resources for
10 Border Patrol, specifically a 22 percent cut.

11 Do you think that would be detrimental to Border Patrol's ability to secure the
12 border?

13 A So, I think any cut to personnel is detrimental. I will tell you, if you don't
14 mind me just, you know, following up on the previous question, you know, the 300.
15 What I will tell you is that, yes, 300 people are -- you know, will help.

16 Tucson Sector is down 1,000 agents from the high point of 4,200 about 10 years
17 ago when the flow was nothing near what it is right now, you know.

18 So 300 is helpful, but as an agency, we need a lot more -- a lot more people than
19 that.

20 Q Understood.

21 And then turning briefly to some of the protocols and procedures that your agents
22 use in the sector, can you, very briefly, describe the protocol for your agents, what they
23 follow when they encounter an undocumented migrant?

24 A Sure. So -- so, you know, a lot of -- and a lot of times it's going to vary,
25 right? If it is someone that is head to toe in camouflage that is running away from them,

1 that is fighting from them -- or fighting them, you know, that arrest will be much different
2 than, say, a give-up group, you know. The first being, you know, that person will
3 obviously be handcuffed and, you know, taken back to the station, charges will be filed,
4 they'll be processed, all that stuff.

5 The -- you know, in the case of these large give-up groups, very often, the agent's
6 first response when they get to where one of these groups are, is to -- is to triage that
7 group, determine, you know, who is the most vulnerable in that group, get those people
8 out of the -- out of the conditions as quickly as possible.

9 And often, it's, you know, sort of prioritizing the most vulnerable of the most
10 vulnerable, you know. It's not -- it's not as if there's, you know, 200 people that are not
11 vulnerable and 20 that are. There's often quite a few in there that are. So, you know,
12 agents make those decisions rapidly.

13 Of course, if there's a need for medical assistance, then agents are all trained in
14 first aid, but we also have close to 300 agents that are also EMTs in our force in Tucson,
15 which is also the largest capability that the Border Patrol has of that. And so, you know,
16 if that's needed, that would be needed.

17 Then once they're in our custody, they're brought into one of our facilities.
18 There is -- they are then -- you know, the biographic stuff is taken, the electronic
19 biometrics, I mean, are taken from them. The checks are run, like I talked about earlier,
20 to see if there's any criminal history.

21 If there is, then they go down that pathway, you know, presented to the U.S.
22 Attorneys Office for prosecution, or if it's an outstanding warrant from some jurisdiction,
23 they would be -- you know, we would contact that jurisdiction, see if they wanted to
24 extradite.

1 [11:08 a.m.]

2 Mr. Modlin. If not, if it's going to be strictly a Title 8 situation, then the agents
3 determine the proper processing pathway based on all the situations, and then process
4 them accordingly and refer to ERO for bed space.

5 BY MS. MARTICORENA:

6 Q And just to be clear, is every migrant who is encountered, do they have their
7 biometrics taken? Are they run against the criminal databases?

8 A So every migrant that is 14 or -- so I'm trying to remember if it's 14 and
9 below or below 14. But children are not run biometrically, but above that there is, and
10 there is a cutoff at 14. I just can't remember if it's 14 and above or 14 and below.

11 Q And everyone who is 14 and above, are they checked against criminal
12 databases?

13 A So, yes. So, yeah, their biometrics are run, and they're checked to see if
14 there is a criminal history.

15 Q And when there is a criminal history, is there always outreach to another
16 agency?

17 I think what I'm asking is, is anyone with a criminal history just released into
18 communities or are there additional steps followed?

19 A So it depends on what that criminal history is. So if it's a significant criminal
20 history and they have been removed before, then they would be prosecuted for re-entry
21 after removal as an agg felon. If it was a minor criminal thing and they would not meet
22 the statute of the agg felon, we would still present them for prosecution as re-entry after
23 removal.

24 Q And I know you touched briefly on it before, but just turning to Title 8
25 authority, is it fair to say that there are options for criminal consequences for everyone

1 encountered under Title 8?

2 A Yes. So, yes, Title 8 has, like, 8 U.S.C. 1325, entering without inspection.
3 So there is consequences for that that are available.

4 Q And can you describe beyond that one what some of these other
5 consequences are?

6 A So I think the most frequent one after that would be the 1326, which would
7 be the re-entry after deportation, that could be either as a felon or not. There are other
8 smuggling charges, but those are generally related to the people that are doing the
9 smuggling. And then there are false claim and things like that. There are other
10 charges as well.

11 Q And is it fair to say that those available criminal consequences differ from
12 Title 42, which didn't have those criminal consequences available?

13 A So, yes, completely. So there were no criminal or immigration
14 consequences to Title 42.

15 Q And then have you ever been instructed by CBP or any other Federal agency
16 not to interdict or arrest a person attempting to cross the border between port of
17 entries?

18 A No.

19 Q And then, under Title 8 authority, Border Patrol agents can detain anyone
20 who attempts to enter the U.S. illegally. Is that correct?

21 A They can.

22 Mr. Yim. We'll go off the record.

23 [Recess.]

24 Mr. Rust. We'll go on the record.

25 BY MS. KORTOKRAX:

1 Q Chief, I want to talk about the nongovernmental organizations in Tucson.

2 Does the Tucson Sector work with NGOs once aliens are processed?

3 A Yes, we do.

4 Q And which ones exactly?

5 A So there's two -- well, there's one in the Tucson area, which is Casa Alitas.
6 It's run by a woman named Teresa Cavendish. And then there's one in Phoenix, which
7 is, I don't want to say a bigger one, but the Phoenix one seems to be more of a centralized
8 area called the IRC. And I don't remember exactly what it stands for. It's something
9 Welcome Center. I know there's no W in IRC, but they call themselves the Welcome
10 Center. But officially it's the IRC, and that's run by a woman named Beth Strano.

11 Q So those are the two most prominent ones?

12 A Yes.

13 Q And how involved are they? How do they assist the aliens? Is it with
14 transportation, care, et cetera?

15 A So my understanding is for the migrants that are -- once they're released
16 from our custody, they would provide them with potentially transportation up to the
17 Phoenix area, help them make travel arrangements, things like that.

18 The local one, the Casa Alitas, I think tries very hard not to overnight people there
19 because of just the difficulties with the cost and personnel, but mostly it's to help them
20 with their onward movement.

21 Q Do you personally meet with these NGOs?

22 A Yes.

23 Q And how often do you meet with them?

24 A So, broadly, I meet with all the NGOs, or at least all the ones that would like
25 to participate, at least quarterly at our sector headquarters. I'm in contact with the IRC.

1 There's weekly telephone calls or VTCs with them, with a whole bunch of stakeholders on
2 those calls. And as the LFC, I'm in contact with quite a few of the NGOs as well.

3 Q Do you have staff that are in contact with them more frequently than you
4 are?

5 A Yeah. So the staff is in contact with them every day, especially with Casa
6 Alitas, the local one.

7 Q And in the meetings that you are involved in, what topics do you speak
8 about?

9 A So usually we talk about the flow. And for us, as much as we can, if we can
10 help them understand the flow that we're dealing with so that they can sort of best utilize
11 their resources, then that's usually the biggest topic of conversation.

12 Sometimes it will be on those calls with the IRC that may go to other topics. Not
13 too long ago there was some concern about turbans in the Yuma Sector. And, again,
14 being the LFC, I sort of was the touch point for all of that where some of the migrants'
15 turbans were not making it to their -- sort of to ERO's custody, or they were being taken
16 away in ERO custody, and that sort of thing was brought up by the IRC.

17 Q And I know you mentioned that you're not involved in the more frequent
18 staff meetings, but are you aware of the topics that they speak about aside from flow?

19 A Yeah. So mostly when those contacts are happening, the multiple times a
20 day contacts, those are -- what I know them to be about are really just about flow and
21 numbers.

22 Q And previously you mentioned pull factors and push factors.
23 Understanding the pull factors, are NGOs and the assistance that they provide to aliens
24 pull factors in your opinion?

25 A So I've never heard a migrant say they were coming because of their

1 awareness of an NGO.

2 Q But knowing what they do for the aliens when they are here, given that they
3 transport them, they provide some level of care to them for their final destination, based
4 on your experience and knowing what a pull factor is, is it reasonable to conclude that it
5 may be one?

6 A So when I look at migrants -- and I think this goes to the use of NGOs and
7 potentially sort of nonsheltered releases, if we have to release people in the street -- I
8 don't believe that anyone that has made the trip through potentially multiple continents,
9 multiple countries, that they are going to get to Tucson and stop because they don't have
10 the support of an NGO or stop because of something else. If their intent is to get to
11 Minnesota, they're going to get to Minnesota.

12 That's my experience with migrants and migration, is that the services of the
13 NGOs, certainly in the Tucson area, prevent the local community from having to deal
14 with, potentially on a daily basis, hundreds of migrants -- hundreds of new
15 migrants -- every day in the streets of Tucson looking for services and things like that.

16 So I don't know that it would be a pull factor to have them there. My belief is
17 that they recognize, after having traveled through some of the most dangerous parts in
18 the world, the Darien Gap and stuff, Tucson is not going to stop them with or without the
19 help of an NGO.

20 Q And I'm glad you mentioned the street releases.

21 Did Tucson participate in any street releases?

22 A Tucson has had a very limited number of street releases. One of the things
23 that has helped us significantly in Tucson not have to have the street releases that there
24 have been in places like El Paso, some of the places in Texas, is the help of Pima County
25 especially and the city of Tucson and those organizations like Casa Alitas.

1 So we've had them. It's been very minimal, especially compared to the numbers
2 we're having.

3 Q And do you know what happened to those that were released to the streets?

4 A So if we do a nonsheltered release like that, then they are taken to, like, a
5 transportation center, like, to the bus center, and released there.

6 Q And are they given any advisals on whether or not to appear at maybe USCIS
7 or elsewhere?

8 A So if they're released on their own recognizance, then they are served with a
9 notice to appear, and then they have the forms that tell them within a certain amount of
10 time you need to report to CIS.

11 Q So if they are ROR'd, they do receive an NTA. Is that what you're saying?

12 A Yes.

13 Q Okay.

14 And I want to then rewind back to what you were talking about regarding
15 prosecutions.

16 You said that for those who are referred to prosecution, they are sent to the
17 Phoenix USA's Office. That's correct?

18 A Well, yeah. So there's like a suboffice in Tucson. But the main -- the U.S.
19 attorney sits in Phoenix, but there's a U.S. Attorney's Office -- Assistant U.S. Attorney's
20 Office in Tucson.

21 Q And are you aware of what crimes the Phoenix AUSA's Office is charging the
22 aliens?

23 A So it would depend on what we present them for. The vast majority are
24 1326. So, yeah, this year almost 3,000 1326. So that's re-entry after removal.

25 Behind that, about 2,200 1325, which is the entry without inspection. And then

1 there's smuggling cases, things like that. Of course, if there's an assault on a Federal
2 agent, different charge.

3 Q Are there any crimes that they are declining to charge?

4 A So, yes. I mean, not wholesale by a certain crime. But, yes, everything we
5 present doesn't get accepted.

6 I think my experience, again, having been in multiple sectors, this U.S. Attorney's
7 Office has a fairly high rate of acceptance. In fact, Tucson Sector prosecutes more than
8 the second and third sector combined. So we're the first.

9 Now, that's certainly not all, just because of flow, because other sectors have
10 been busier than us. But I do believe it has to do with our relationship with the U.S.
11 Attorney's Office, the fact that I have agents that are dedicated to prosecutions and
12 dedicated to working with the U.S. Attorney's Office.

13 Q Can you give us a few examples of the crimes that they decline to charge?

14 A So, yeah. So it can be an assault on an agent, can be declined. So
15 sometimes it doesn't meet the statutory requirements. We believe an agent has been
16 assaulted and then, based on whether it's the precedent set by the Ninth Circuit or by the
17 statute, it just doesn't meet that definition.

18 Sometimes it could be a smuggling case and for some reason it doesn't meet
19 whatever the U.S. attorney's guidelines are. Or the reality is, yes, we're kind of the
20 800-pound gorilla in Tucson area because we are so big and there's so much cross-border
21 activity there.

22 But there's also a lot of other activity the U.S. attorneys are responsible for
23 prosecuting. So they ultimately get to decide how they prioritize what they're going to
24 take. So it may be they may decide that a fentanyl trafficking case is more important
25 than this case. And limited personnel, limited docket space, they can only charge so

1 many things.

2 Q Are you able to tell us what -- like, give us an estimate of what percentage of
3 the prosecution referrals result in conviction?

4 A So, no, I don't believe I have that.

5 I do know that -- I want to say that we set it about -- it's in the 80th percentile of
6 accepted prosecutions. And so realistically that's sort of my metric of success, at least of
7 a successful relationship with the U.S. Attorney's Office.

8 And a lot of other things. Obviously, report writing by agents is incredibly
9 important. There's a whole lot of things that go into making those numbers successful.

10 Ultimately, the successful prosecution rate I don't know. The U.S. Attorney's
11 Office would know that.

12 Q In line with criminal activity, referring back to apprehensions, what
13 databases are you using to compare the criminal histories when you do apprehend
14 somebody who has one?

15 A Yeah. So most significantly, as far as I know, it's been a while since I've dug
16 into the databases we use, is the NCIC, which is the national criminal database. And
17 then, of course, there are checks run through that would indicate if someone was like a
18 TSDS as well.

19 Q Knowing that there is not a general ability to check international databases,
20 is there a way for you to coordinate with, like, Mexico or Central American countries
21 to -- if there is an inclination that an alien may be a criminal, for whatever reason, are you
22 able to then coordinate maybe on an individual level with other countries?

23 A So in my experience we have very infrequently with data. I did see that a
24 lot on the northern border.

25 That's one of those things when it comes to international sharing of information.

1 So sometimes we will find somebody has a record that is an Interpol record, so they show
2 up as an Interpol hit. And it may be somebody that's wanted for a crime in another
3 country, whether it's Europe or Central or South America.

4 But I think when it comes to sharing information with Mexico and the world at
5 large, that's more of a headquarters, CBP/DHS thing to work out. We can't work that
6 out locally.

7 Q I want to circle back to my colleague's questioning about the border wall
8 barrier system.

9 You mentioned you have a barrier system in Tucson, correct?

10 A We do.

11 Q Do you believe that it's a helpful resource for Border Patrol?

12 A So I do believe that. My belief is that very strongly that what I've seen in
13 my career is that we always need that combination of things. You've probably heard me
14 talk quite a bit about technology, infrastructure, and personnel.

15 And so nothing by itself works. The personnel by itself, there will never be
16 enough of us to do this. A border wall system by itself won't work. The technology,
17 you have to have hands -- somebody put hands on somebody.

18 So it is a combination of all those things, but the border wall system certainly
19 works.

20 Q So is it accurate to say, as chief, that you would prefer the Tucson Sector to
21 have the border barrier system rather than not to have it?

22 A Yes. Where we've designated that we needed it, absolutely.

23 Q And does a border wall barrier system help deter aliens from crossing
24 between ports of entry?

25 A So the deterrence is, I think, difficult to measure. I don't know that I could

1 say that definitively.

2 But what I can say is that it certainly gives us the advantage by having a system.
3 It certainly impedes people. It can be used to canalize people to certain areas, to get
4 them to areas where it's easier for us to deal with them -- or keep them, more
5 importantly probably, keep them away from areas that are more difficult for us to deal
6 with them.

7 So it's just hard to know what deters somebody because if we haven't arrested
8 them, I wouldn't know.

9 Q So ultimately you believe the system is effective and it should remain?

10 A Yes.

11 Q I want to turn to the encounter numbers.

12 Are you familiar with the encounter numbers that CBP publishes each month?

13 A I'm familiar that they publish them, yes, but I'm not familiar with what they
14 are.

15 Q So just in your Tucson Sector currently, YTD FY '23, there has been nearly
16 20,000 Indian nationals apprehended versus just over 1,100 in all of FY '22. Does that
17 sound correct to you?

18 A That does sound correct.

19 Q Does that concern you?

20 A So, yes. And what concerns me is the change in the demographics. We
21 talked earlier about -- and it was probably what I was referring to in the February hearing,
22 is that Tucson was very unique because it was predominantly single adult Mexican males.

23 Now we're in these large -- especially in these large groups that we're seeing,
24 we're seeing people from nontraditional countries. So we're seeing quite an uptick in
25 Mauritians. We're seeing Senegal a lot, in recent days a lot of people from Senegal.

1 India, absolutely.

2 So there's a lot of, again, so nontraditional migrants that we're not used to dealing
3 with in that area.

4 Q Speaking about the Indian nationals specifically, do you have an idea of what
5 may have caused this increase?

6 A No, I do not.

7 Q So not so much in comparison to the Indian aliens, but China nationals have
8 also increased in the Tucson Sector. Does that concern you as well?

9 A So, yes, just like all those populations, for a lot of reasons. Yeah, it
10 absolutely concerns me.

11 Q And knowing that you conduct interviews during the encounters and the
12 apprehensions, have any of the Chinese nationals, to your knowledge, given you reason
13 to believe that they are here for nefarious reasons?

14 A None that I recall. I will say that, generally speaking, my experience with
15 Chinese nationals is it is often very hard to detect their reasons. They tend to be very
16 well sort of educated in non-answers and sort of subverting the questioning.

17 Q Do you know if they're prepared by anybody, using the cartels, or if they are
18 getting alleged misinformation from social media, news outlets? Do you have any idea?

19 A So my understanding with the Chinese and having dealt with them quite a
20 bit in other sectors, mostly because seeing Chinese nationals in Tucson is fairly recent and
21 very small numbers compared to other places I've been and seen them, that avoidance
22 and sort of the difficulty in eliciting true information has generally contributed to the
23 smuggling organizations in China that are smuggling them, not so much the ones here.
24 Because when they are smuggled there is often threats against their family members if
25 they divulge information about the smuggling tactics.

1 Q Okay.

2 So based on the data, and in large part the increases over the last few years are
3 pretty significant, is it frustrating for you as the leader of the Tucson Sector when the
4 encounters have kept increasing over a lengthy period of time?

5 A So, yes, absolutely. I think, when I look at '18, '19, and '20, those years
6 were about 60,000 people a year, more or less, within a thousand or two in either
7 direction.

8 And then '21 happened -- or -- yeah, '21 happened, and it jumped to 190,000. So
9 it was three times the previous year, which was absolutely for us shocking in Tucson.

10 And then, thinking it couldn't go higher, it then went to 250,000 last year, and that
11 did not include the 55,000 that we took from Yuma to help them out and the 170,000
12 gotaways recorded last year in that as well. And this year we're on pace to probably hit
13 300,000.

14 So if that's the case, then we'll be five times what we did just in 2020. So that is
15 significant.

16 As the leader, yes, it's troublesome, and I would say it is a little demoralizing,
17 because, obviously, I try to do everything I can to support the men and women of Tucson
18 Sector and to, most importantly, obviously, to achieve the securing the border, to keep
19 the border as secure as I can.

20 And so when we see numbers like this, yes, that is -- I don't remember, I'm sorry,
21 the phrasing of the exact question, but the point is, yes, it is demoralizing to me as the
22 leader of Tucson Sector to experience these numbers we're experiencing.

23 Q And are you given any extra resources to address these increases?

24 A Yes. So in -- and I think I might have stated it a little bit earlier -- so about a
25 month ago or so was really when we started ringing the bell with headquarters to let

1 them know that things were beyond what my capabilities could assist with.

2 So we made some requests. I requested about 50 additional Border Patrol
3 agents and processing coordinators, a mix of them, some people with some language
4 talents, to increase our transportation contract to get more buses and drivers here, things
5 like that.

6 And a lot of that has arrived. So we have received some buses. And so
7 everything is sort of in progress. So we received about half of those agents detailed
8 here with about half more coming. We received about half of the languages that we've
9 asked for. And then the transportation contract has been increased as well.

10 So, as I stated earlier, I've been -- I don't want to -- "presently surprised" isn't the
11 right way to say it, but I've been appreciative of the agility that the organization has
12 shown right now with what I've asked for and what we've got.

13 And, I guess, on top of that too, probably maybe most importantly, is the
14 acceptance of the neighboring sectors and sectors all across the country to accept our
15 lateral transfers.

16 And then also, the northern border has kicked in a tremendous amount of virtual
17 processing too, so where agents on the northern border can sit behind a computer and
18 through sort of VTC technology process some of the migrants in our custody.

19 Q And does removing the agents from the field from other sectors, whether it's
20 northern or other southern sectors as well, increase the likelihood of the number of
21 gotaways?

22 A Does it increase the number of gotaways in Tucson Sector?

23 Q Correct.

24 A I just want to make sure I understand your question.

25 So bringing people from other sectors, does that increase our --

1 Q I'm sorry. Let me rephrase.

2 Does removing agents from other sectors to detail them to Tucson, does that
3 increase the likelihood of gotaways in other sectors?

4 A So what I can tell you is about 6 months maybe to a year ago we were
5 sending about 50 agents at a time out to I believe Del Rio, between Del Rio and RGV, and
6 certainly that affected our level of border security. So I would assume it would have the
7 same impact to other sectors.

8 Q And is that a concern to you?

9 A Yes, absolutely.

10 Q And one final question from me.

11 Did the surges over the last couple of years have an impact on the ability to keep
12 your interior checkpoints operational in Tucson?

13 A So they have. Again, it's sort of day to day. I mean, recently, within the
14 last probably 4 or 5 months, maybe a little longer, we have been able to keep all the
15 checkpoints running.

16 Now I have given the patrol agents in charge, the heads of the individual stations,
17 the authority to pulse and surge their checkpoints as needed, especially in the areas
18 where we're being most affected by the surge, which is really the western side of our area
19 of responsibility. So those three stations that are out there have the ability to pulse and
20 surge based on the needs of the station.

21 Ms. Kortokrax. I'm going to pass to my colleague.

22 Mr. Schall. Thank you.

23 BY MR. SCHALL:

24 Q Chief, you mentioned that you recently reached out to someone at
25 headquarters to request additional stuff. Who at headquarters did you reach out to?

1 A So a couple people, but most directly to the chief of operations. So that
2 would be David BeMiller.

3 Q And is he your normal point of contact?

4 A Yes.

5 Q Do you ever reach out to the Secretary?

6 A No.

7 Q And what type of things do you reach out to David BeMiller or other people
8 at headquarters about?

9 A So I will tell you, sort of my philosophy is that if I need to be reaching out to
10 headquarters, they probably have the wrong person running the sector. So it's rare that
11 I reach out to headquarters for anything.

12 And certainly, given the last year or two, although Tucson was seeing these
13 incredible numbers, knowing what the other sectors were dealing with, I rarely reached
14 out to them for operational -- to say that I need this or I need that.

15 But in these cases, like in these last few months and how much we've been
16 dealing with, then BeMiller is my primary point of contact. He's my -- he would be, sort
17 of in the structure of the Border Patrol headquarters, he would be the one that the chiefs
18 in the field report to directly.

19 Q And so is that who you would receive a new policy or a new guidance from?
20 Would he provide you with that information? Or how would you get new policies or
21 guidelines?

22 A Yeah. So most often it would come that way.

23 If it's something that is very specific, like if it is going to be about maybe a labor,
24 an employee relations thing, it may come from someone else at headquarters. But for
25 the most part, operational guidance and policy would come through BeMiller.

1 Q And just to confirm, you aren't asked about providing input on policy and
2 guidance generally?

3 A So, yeah, generally not. Sometimes, if it is going to be something that
4 is -- again, I think the pursuit policy is one of the most recent ones that sticks with me
5 because field chiefs were asked sort of what impact is this going to have in your areas of
6 operation.

7 Q You mentioned that Tucson is unique, and I believe you mentioned that a lot
8 of the rescues are very dangerous and require, I'll say, the men and women to be very
9 focused. And so that's got to put a lot of strain on them. Is that fair to say?

10 A Yes. What I can tell you -- I'm glad you brought it up -- is in my career I've
11 never worked in a place that had as many rescues as Tucson did.

12 When I started in San Diego, of course the weather is much more moderate there.
13 Detroit, literally no rescues. And Miami, when there's rescues, they're generally at sea,
14 and it's the Coast Guard involved.

15 Here is the first time I've seen this magnitude of the ability of our men and women
16 and their commitment to perform this border security mission, which is obviously
17 incredibly challenging and dangerous in its own, and then at any moment switch to that
18 humanitarian mission and be able to rescue whoever is out there that needs rescuing.

19 Obviously, most often it is people that have crossed the border illegally. From
20 time to time it will be a U.S. citizen that's out there that's injured as well or needs help or
21 needs to be rescued.

22 So, yeah, it's an amazing thing to see a workforce that has the ability to flip on a
23 dime like that.

24 Q And I'm guessing that also puts a strain and causes morale issues as well
25 being in that type of situation so frequently. Is that fair?

1 A So I think it's sort of a double-sided thing.

2 So I believe for the people that are doing the rescues, the majority of the rescues,
3 like BORSTAR, those are all volunteers. I would suspect if you were to talk to BORSTAR
4 agents, they would tell you they live for that. They live to go out and rescue people and
5 potentially risk their lives doing that.

6 I think that the challenge is when agents are performing duties that they don't feel
7 are part of the border security mission, that's where it becomes potentially a morale
8 issue.

9 I believe most agents would say that the humanitarian part, when it comes to a
10 rescue like that, like an emergency rescue, they absolutely would say they're patrolling
11 the border, that's happening on the border, that's my responsibility to deal with.

12 It's the other stuff, the detention stuff, the care and feeding, that sort of thing,
13 that agents generally have the feelings about that is detrimental to morale.

14 Q And I believe you said 38 percent of agents in Tucson are currently dealing
15 with detention?

16 A Yes. Yes. So that was a figure I looked at about a week ago. I imagine
17 it's still about the same.

18 Q Sure.

19 And I wanted to circle back. I believe you mentioned the high number of agents
20 was 4,200. In what year was that?

21 A Yeah. So I believe that was 2010. So we are down about a thousand
22 agents in Tucson Sector from that time.

23 Q And based upon the increased number of illegal immigrants who have
24 crossed, what number would you say would be needed for Border Patrol agents in
25 Tucson?

1 A So I would be comfortable back at around that 4,200 mark. Certainly, with
2 what we're dealing with now, that would seem appropriate.

3 Q And that's agents, not support staff as well?

4 A That's agents, yeah.

5 Q Okay.

6 I did want to ask one or two final questions before I hand it over to my colleague.

7 Do you have any outward-facing social media accounts in Tucson?

8 A Yeah. Significant.

9 So we have three. We have Twitter, Instagram, and Facebook, which I would
10 sort of selfishly plug and recommend everyone follow because I do think it does help to
11 understand what's going on on the border when you see it day by day.

12 We do, I think, a tremendous job of publishing as many of the rescues as we can.
13 Often there is a video accompanied with it. And to see someone, to see an agent slung
14 under the bottom of a helicopter on a rope lifting a migrant off of a mountain is pretty
15 tremendous. Or seeing an agent carry a migrant down off the mountain on their back.
16 Or when we arrest aggravated felons, I post their pictures, their names, and what the
17 crime was.

18 So I think it's all important to understand the totality of what goes on on the
19 border.

20 Q And so who runs that account?

21 A So I have a stratcom, so a strategic communications shop that runs that,
22 that's overseen by a Border Patrol agent.

23 Q And have you ever been asked to or required to take down any post or any
24 content or told not to post any specific type of content?

25 A So I don't remember ever being asked to take anything down. I do know

1 that once in a while there is some guidance that will go out about posts.

2 I can tell you that I suspect if you were to talk to our headquarters, what they
3 would tell you is that Tucson Sector is sort of a model that everyone should follow for
4 social media. I can't think of a time that they've said, hey, this post is inappropriate.

5 Q And so does the guidance say anything about what you're not allowed to
6 post?

7 A There is certainly nothing -- I mean, blurring migrants' faces, things like that,
8 yes. Again, if it's someone that has a conviction in the United States, then I firmly stand
9 by that it's public record and we will show their faces.

10 But children, obviously, we don't show them, or blur their faces, things like that.
11 But nothing where someone has said don't show an image of this or don't show an image
12 of that.

13 And then just whatever the normal sort of standards would be. We don't show
14 people that are bloody or things like that.

15 Q Sure. Thank you.

16 Mr. Schall. I'll pass it along to my colleague.

17 Mr. Modlin. Absolutely.

18 BY MR. MCDONAGH:

19 Q So we might have hit on this already, but is it fair to say that all individuals
20 who illegally cross the southwest border must go through the cartels?

21 A At least in the Tucson Sector, absolutely everyone does. No one does
22 without. We have experienced when people try to, and we've seen them beaten for
23 trying to cross without paying the fees.

24 Q Do they ever murder these people that try to cross without fees?

25 A I don't have any knowledge of that.

1 Q So what is the difference between human trafficking and human smuggling?

2 A So, yeah. And there is a distinction and certainly a lot of people use them
3 interchangeably.

4 But smuggling is when someone pays to enter the country illegally. So they
5 know what they're doing. They're just paying \$10,000, \$7,000 to be smuggled into the
6 United States.

7 Trafficking is where there is a victim that's being brought to the United States
8 under false pretenses. So you might see it with an Eastern European woman who thinks
9 she's coming to be a maid, but she's going to be sex trafficked and forced into
10 prostitution. That's sort of a classic example of that.

11 Q What other circumstances are individuals trafficked into?

12 A So there is forced labor. There is the sex trade. They can be forced into, I
13 guess, indentured servitude. So those sorts of things.

14 Q How common is that?

15 A So what we see, it's not common. So the Border Patrol obviously deals
16 with everybody that crosses. ICE and the FBI really handle the trafficking part when it is
17 somebody that's a victim of that. So I don't have numbers or a percentage for what it is
18 in Tucson, but predominantly what we deal with is smuggling versus trafficking.

19 Q So you guys determine or have a reason to be suspicious that perhaps an
20 individual is being trafficked rather than smuggled, and you refer that individual to ICE or
21 the FBI?

22 A Yeah, that's exactly how it is.

23 And my belief is, my understanding is, a lot of times the trafficking victims are
24 here, are entering the country with permission. They might be on a short-term visa or
25 something now. But that's part of the trafficking scheme, where they're entering with

1 false documents, something like that.

2 Q But then it also occurs with illegal border crossings?

3 A Yes. Yeah.

4 Q Are gotaways a public safety concern?

5 A So I think gotaways are a public safety concern, but, as we discussed, I
6 believe we discussed earlier also potentially a national security concern as well.

7 Q Is it possible that some of these gotaways have ties to the cartels?

8 A Yes. Certainly they could.

9 Q You said that the cartels control northern Mexico, south of the border,
10 correct?

11 A Yes.

12 Q Is it possible that the cartels have individuals active within the United States?

13 A Yes.

14 Q Do you live within the Tucson Sector?

15 A Do I live in that area?

16 Q In the sector, yeah.

17 A Yes.

18 Q Do you engage with local communities in the sector?

19 A Professionally?

20 Q Within your role as chief of Tucson.

21 A Yes. Sure, sure.

22 Q Have individuals within the community that you've spoken to expressed
23 concerns regarding the high flow of illegal border crossers?

24 A Yeah. So it may come up at a meeting. Sometimes it comes up just as I'm
25 going to grab lunch or something. If I'm out in an area and outside my vehicle where

1 people feel comfortable approaching me, then, yeah, there's generally conversations, and
2 sometimes they are concerned.

3 Mostly -- the expression mostly is gratitude for what the men and women are
4 doing. That's what I see the most.

5 Q Of those concerns, when people are comfortable, they come up to you, what
6 is the most common concern that you hear?

7 A The most common concern is generally about just the numbers of people.
8 And there is a lot of sort of almost commiserating, almost a bit of, hey, we really feel bad
9 for what you're up against here, but we have your support.

10 And then, if they -- I think most people don't recognize certainly that I'm the chief.
11 But if they do, sometimes people will notice the stars, and then certainly if they are prior
12 DOD, I think they recognize that, hey, this is somebody that's in charge. Then they
13 generally will ask me to express their support to the agents in the field.

14 Q What kind of effects have you seen in the community from this increased
15 flow?

16 A So, in my experience, I think very little effect in terms of I'm unaware of, like,
17 an increase in crime.

18 So one of the things that I remember when I started my career in San Diego and
19 we were dealing with that tremendous flow there, there was a lot of property crime.
20 There was a lot of people breaking fences, breaking into houses, stealing food, whatever,
21 stealing bicycles, stealing cars. That level of crime I don't see in the local communities.

22 But, again, those -- my belief is that the vast majority of people are not spending
23 any significant amount of time in Tucson or in the neighboring area. Most of the people
24 that cross the border, when they get to wherever they're going to be picked up, they're
25 taken to places like Phoenix. So it may be something that's more predominant in an

1 area like Phoenix than it is in Tucson.

2 Q You also mentioned the role of social media, of information. You
3 mentioned that illegal border crossers FaceTime family abroad.

4 Do you have any insight into what they're communicating abroad?

5 A No. I really don't know what it is they're communicating. But what I do
6 know is that there's certainly -- again, there's not the air of mystery to the border that
7 there used to be, because people can leave their country and then, however long it takes
8 them, a couple weeks, to get here, and then they're inside the United States, and then
9 they're in Kansas City, or they're, wherever their destination is, they're there, and they're
10 in communication with their families.

11 Q So the assumption is that they got released?

12 A The assumption is, yes, they're somewhere in the United States.

13 Q On notices to appear -- and we touched on this -- or Parole Plus ATD, which
14 was only briefly used in your sector, migrants are released into the interior of the country
15 rather than -- pardon me -- while they await the outcome of their immigration
16 proceedings?

17 A Yes.

18 Q Do you consider release into the interior to be a pull factor?

19 A So I think, most importantly, what I would say, because, again, I think there's
20 a lot of pull factors, I think optimally, other than the rare occasion where you have
21 someone with a crazy medical condition, everyone should be detained. And that, to me,
22 is the most obvious way to not encourage illegal migration, is everyone's held until they
23 have a hearing.

24 And I think sometimes people misconstrue a little bit about the Border Patrol.
25 But we don't grant benefits. We don't deny benefits. It's not part of what we do.

1 We have this very tiny piece in the beginning of someone's entire spectrum of
2 immigration, which might last 10 years.

3 If they are held until there is a hearing, then a decision can be made, and then
4 they're not in the interior of the United States without authorization to work and all those
5 things. And if they do have -- if they are found to be amenable to some award, then
6 they have that and then they can work. And if not, they're returned.

7 And then I think that's the answer to this, is you need to detain people until a
8 hearing.

9 Q So, in fiscal year 2022, most were being released on their own recognizance
10 via NTAs?

11 A Most were.

12 Q Is it likely -- we talked about detention -- that migrants who are detained
13 would not be communicating a similar message to those who are released back home,
14 that I was released into the interior?

15 A Yeah. So I think it's significant. And I think just prior to this -- or the start
16 of it -- maybe the prior question asked about social media. And recently, again, maybe
17 another shameless plug for the social media, but I released a video on the flight line of us
18 loading migrants onto a plane to be sent to another location to then be returned or at
19 least into ICE custody.

20 And that, to me, is a message. There is a message there, just like everything else
21 can potentially be a message.

22 I talked earlier about somebody talking about asylum can create a pull.
23 Hopefully, that kind of thing is also sending a message as well, that, yes, don't come
24 because, one, you're going to risk your life unnecessarily; and, two, you're going to be
25 returned.

1 Q You started in Tucson sometime in 2020, correct?

2 A Yeah. As the interim, yeah.

3 Q Were the migrant protection protocols in effect at any point during your
4 tenure?

5 A So I believe they were in effect; however, they were not in effect in Tucson.

6 Q But you're aware of the program?

7 A Yes.

8 Q Under that program, a migrant encounter between ports of entry who
9 claimed a fear of returning to their country would be returned to Mexico during the
10 pendency of their removal proceedings?

11 A Yes, that's my understanding. Generally, I know there are exceptions to
12 that, but generally that was the idea.

13 Q Do you think that that was a greater consequence than release into the
14 interior of the United States?

15 A So, again, I never worked with the program, so I don't really know. I don't
16 know the efficacy of it. I know it certainly sends a different message, but I don't know
17 with any clarity if it had a deterrent effect or not.

18 Q The message being that an individual would not be released into the United
19 States if they were encountered in between ports of entry under that program?

20 A Yes.

21 Q That would be the same with Title 42, correct?

22 Mr. Jonas. What do you mean?

23 BY MR. MCDONAGH:

24 Q I mean an individual encountered -- when Title 42 was in effect, an individual
25 encountered between the ports of entry would be returned, would be expelled under

1 that program, rather than released into the interior of the country.

2 A So, ultimately -- well, in the beginning, yes, they're both returned to Mexico.
3 The MPP program, if I understood it correctly, there was a lot of cross-border movement.
4 The person would come for hearings and then go back and back and forth.

5 So the difference being, obviously, with Title 42 they're expelled from the United
6 States with the intent, at least the government's intent, not to have them come back into
7 the United States.

8 Q Under both programs, they were not released into the interior of the United
9 States?

10 A No.

11 Q Have agents expressed to you that they feel that release into the United
12 States is an inadequate consequence?

13 A Yes.

14 Q Can you provide some examples of that?

15 A So I see it meeting with agents. Sometimes they do express that. They do
16 express that they get frustrated with releases.

17 Q Do they express an alternative that they think would be better?

18 A So most agents would express that detention is the better solution.

19 Q I want to talk a little bit about your role as lead coordinator. I might have
20 missed this in the last hour, so I apologize if it's redundant, but when did you start as lead
21 coordinator?

22 A So I actually started as the deputy lead field coordinator. And I want to
23 say -- this is a rough estimate -- but I want to say that was about 2 years ago or so when
24 the SBCC structure went into effect.

25 Q Is that mostly engaging with other agencies, such as FEMA, or does it -- is

1 DHS headquarters involved in that?

2 A So DHS headquarters not very much that I can think of. The vast majority
3 of that is coordinating with -- a good example, like when we started, when this started,
4 and Yuma was really the hot spot, we were looking at ways to get migrants out of Yuma.

5 Yuma, if you've ever been there, does not have a tremendous amount of
6 infrastructure. So we were looking at things like can Amtrak help, can Greyhound help,
7 not for free certainly, but are there bus routes that they can use, can they increase bus
8 routes, things like that.

9 So there was stakeholder engagement. There's community engagement when
10 we were doing some of the nonsheltered releases. So there was sort of a standardized
11 protocol to let the affected communities know we were going to be doing those things.

12 Oh, so I would say probably, if I had to guess, within the last year or so I became
13 the lead field coordinator.

14 Q Just a quick aside. What was the response of the communities that were
15 told that there were going to be releases?

16 A So I haven't encountered a community yet that was glad to hear that.
17 There's always some consternation from the communities. There's always concern.

18 One of the -- I think one of the advantages to that system, to the lead field
19 coordinator system and the SBCC, is that we have spent a tremendous amount of time
20 educating these communities and reaching out to the chiefs of police, the sheriffs, the
21 county emergency managers, the city emergency managers, and have tried to find the
22 ways to most mitigate the consequences of releases.

23 What we certainly don't want to do is sort of a tremendous amount of upheaval in
24 a community because we've now released 200 people at the bus station simultaneously.
25 So can we do that differently? Are there different places?

1 And then, of course, to let the community leaders be aware that this is going to
2 happen, to let the police departments be aware that it's going to happen, so they can
3 have a response as well.

4 Q And that's in your role as lead coordinator?

5 A Yeah, and, of course, as the chief of Tucson Sector.

6 Q Do you guys follow up with those communities after these releases occur?

7 A Yes. So we notify 24 hours in advance. Once we see that we're trending
8 in that direction, we notify 24 hours in advance and say we believe this is going to happen
9 tomorrow about this time, roughly this amount of people, roughly this demographic.

10 Then that morning we will contact them again and say either yes or no, it's going
11 to happen or it didn't. And then at the end of the day, we make a third contact and say
12 this is what we did, we released this many people in this area.

13 Q But beyond that?

14 A Well, beyond that it's the typical I talk to the chief of police from Tucson a
15 couple times a month or whatever else. I mean, we have these talks all the time about
16 it.

17 But for a specific incident, it's those three contacts, and they're made by people
18 on the staff. I don't make them myself.

19 Q How often do you guys meet in relation to your role as lead coordinator?

20 A So I meet with the SBCC, I believe it's at least three times a week virtually,
21 and with the other sector chiefs, with the directors of field operations, as necessary.

22 Q Going back to the chief of police of Tucson, has he expressed -- what has
23 he -- what are the concerns that he expresses? You said that it's met with -- I can't
24 remember the --

25 A Consternation.

1 Q Yeah, consternation.

2 A Yeah. So not from him.

3 So law enforcement recognizes law enforcement and recognizes that ultimately I
4 don't have the authority to hold people just for the sake of holding people. At some
5 point something has to be done. It's unsafe for my officers. It's unsafe for the
6 migrants. He recognizes that.

7 I'm sure he would wish it would happen somewhere else, as they all do. But it's
8 that type of coordination and that ability to be able to just call each other on our cell
9 phones and talk it through that makes it as less impactful as possible.

10 Q I believe that's all I have. Thank you, sir.

11 A You bet.

12 BY MS. KORTOKRAX:

13 Q I have a couple follow-ups, if you don't mind.

14 I think you mentioned very early on that those who used to cross in other sectors
15 are now crossing in Tucson. Did I get that correct?

16 A So the demographics, yes. What I'm saying is, obviously, I have no
17 knowledge if the people that were crossing somewhere cross now. But since I've been
18 in Tucson, really Tucson stood out as the sector that had -- was 85 percent single adults,
19 very few family units, very few unaccompanied children. We had them, and
20 unaccompanied children are always a significant challenge, but not in the numbers the
21 other sectors were dealing with.

22 And not -- even the unaccompanied children -- ours are generally 16- and
23 17-year-old, predominantly Guatemalan citizens -- where you've all seen the pictures and
24 videos of 18-month-old left by the side of the river with a phone number on their shoe.
25 Like, we don't deal with that in Tucson. That's generally not -- not to say we haven't had

1 a few of those, but not at the numbers they have been receiving elsewhere.

2 This flow of nontraditional migrants was what Yuma was dealing with a year ago, a
3 lot of Chinese, a lot of, again, sort of nontraditional migrants. Not Mexico, not Northern
4 Triangle, just the rest of the world, basically.

5 Now we are seeing that here. It's not uncommon for one of these large groups
6 to be made up of 12 to 15 different nationalities.

7 Q And do you have any inclination why they would change their routes to
8 come through Tucson rather than Yuma or any other previous sector that those
9 nationalities are accustomed to entering?

10 A So I think, as I was talking about earlier, sometimes there are instances
11 where there is known to be a lot of cartel violence. Sometimes it's just infighting.

12 Sometimes it's cartel violence against migrants. There was, sort of famously, I
13 think, 60 migrants or so that were all killed south of Texas somewhere because they
14 wouldn't transport narcotics across the border a couple years ago.

15 Maybe it's migrants that die in a tractor trailer or something that push people in a
16 different direction.

17 But ultimately I think that the key is it's the smuggling organizations determine
18 where people cross.

19 My feeling about -- which I think is maybe the larger part of the question -- about
20 why it's happening, not so much in Tucson, but for me I think the more important
21 question is, why is it happening in our west desert and not, say, through Nogales, which
22 would be a very -- a more -- a safer place to push people through, would be an area
23 where there is structure on the other side, where it would be easier for smugglers to pick
24 them up from there because there's paved roads, it's not hours from the closest road, is
25 because the recognition that when these groups are out there, especially in our farthest

1 west desert, the vast majority of our resources then have to go out and deal with that
2 situation, which leaves the border more vulnerable in other places. That, obviously, is
3 more advantageous to the smuggling organizations.

4 Q So I want to go back to your -- what you were talking about with the bigger
5 groups of aliens, the give-ups, the 200 to 300 groups that you were referring to earlier.

6 Why do you believe that they're giving themselves up rather than attempting to
7 cross in between POEs?

8 A Yes. So they are -- they're giving up because they believe they're going to
9 stay in the United States. If not, they would be, like everyone else in Tucson, dressed
10 head to toe in camouflage, running as fast as they could, staying up in the mountains or in
11 the valleys to avoid detection by our system.

12 Q And is this a change within the last two and a half years, or between
13 administrations, however -- what period of time you want to choose?

14 A Yes. So it is certainly a change in Tucson Sector. Again, probably
15 within -- so when I look over all Tucson Sector, the single adult population is still
16 70 percent, but that's the entire fiscal year to date. I know that yesterday, the day
17 before, the day before, the day before it was 50/50 family units. The problem is that
18 number, that percentage, is not going to change overnight.

19 But, again, it was about 85 percent when I got here. So that is a significant -- a
20 15 percent drop is significant. But the reality is what we've been dealing with the last
21 month or two has been 50/50 percent of families from single adults. So the shift has
22 come very quickly.

23 If we go back to when I first got here, again, Tucson stood by itself in that it was an
24 anomaly of single adults. But my belief is it was that way because when the smuggling
25 organizations recognized that someone is trying to avoid apprehension, Tucson is a good

1 place to do that because of the terrain, because of how dangerous it is, because of how
2 difficult it is to work. As difficult as it is for them to cross, it's that difficult for us to work
3 in as well.

4 So if you are trying not to be caught, this is a good place -- if you're, especially, a
5 single adult male that's healthy, that can make that journey.

1 [12:20 p.m.]

2 BY MS. KORTOKRAX:

3 Q Okay. And you talked a little bit about MPP and how it wasn't utilized in
4 Tucson. Do you know why it wasn't utilized?

5 A No, I do not.

6 Q And do you believe that it should've been?

7 A So, you know, I was the chief of Miami when MPP took place, so I don't
8 know what Tucson was dealing with then or the numbers, so I wouldn't know.

9 Ms. Kortokrax. Okay. I promise that's all I have.

10 Mr. Schall. And I just have a few follow-up questions.

11 BY MR. SCHALL:

12 Q During processing, I believe you said there is a criteria for determining who is
13 considered for humanitarian or significant public benefit parole. Is that correct?

14 A So -- yes, yeah.

15 Q And what was that criteria?

16 A So, I think most often, it is someone that has a significant -- there's a
17 significant medical condition that would require somebody -- somebody to be paroled.

18 Q And who determines that criteria?

19 A So the agent would be the first one to recognize it. I do believe that by
20 policy, it would have to be at least a second- or third-line supervisor. Usually it's going
21 to be someone at the, like, the patrol-agent-in-charge level,
22 deputy-patrol-agent-in-charge level.

23 Q And are determinations that aliens should be granted parole documented in
24 the DHS system of records?

25 A So, yeah, they're documented in the -- during the processing, so on form

1 I-213, it would be -- it would be listed there.

2 Q And is it always documented? Has there ever been a case where it
3 wouldn't be documented?

4 A I can't say there's never been a case, but, yes, it should be documented on
5 there. I can't imagine -- you know, there's -- there's three and four levels of review on
6 every -- on every case that an agent does. So it would be hard for me to imagine that a
7 parole, especially because they are so rare -- excuse me -- would make it through without
8 proper documentation.

9 Mr. Schall. I think that's all I have. Thank you.

10 Mr. Modlin. You're welcome.

11 Mr. Rust. Sir, on behalf Chairman Comer, thank you for appearing today and
12 answering all our questions. We appreciate it.

13 Mr. Modlin. You're very welcome.

14 Mr. Schall. On behalf of Chairman Green, thank you very much, sir.

15 Mr. Modlin. You're welcome.

16 Mr. Rust. We'll go off the record.

17 [Discussion off the record.]

18 Mr. Yim. All right. We'll go back on the record. The time is 12:32 p.m.

19 BY MR. YIM:

20 Q Chief, my colleagues and I are going to ask you a few follow-up questions, so
21 we may be bouncing around a little bit.

22 A Sure.

23 Q So I apologize in advance.

24 A No worries.

25 Q Chief, we talked about push and pull factors, and during your time with my

1 Republican colleagues, you mentioned that you have conducted interviews with some
2 migrants following their apprehensions, correct?

3 A Yes.

4 Q And you mentioned that some migrants conveyed to you that they believed
5 laws had changed from the Trump to the Biden administration, correct?

6 A That's correct.

7 Q And in fact, you testified in February that the law governing immigration and
8 border apprehensions did not change from 2020 to 2021. Is that correct?

9 A That's correct.

10 Q And the law -- strike that.

11 And the law had remained the same since that time until the expiration of Title 42,
12 correct?

13 A Yes.

14 Q Since the expiration of Title 42, Title 8 has been in effect and governs how
15 encounters at the border are dealt with, correct?

16 A Yes, it does.

17 Q And as you mentioned earlier today, Title 8 carries civil and criminal
18 consequences that Title 42 did not, correct?

19 A That's correct.

20 Q This notion that the migrants held that you spoke about, that you heard
21 during your interviews, was a misconception. Is that correct?

22 A Yes.

23 Q Do you believe that was a misconception placed by the cartels?

24 A So I don't know where -- I don't know where the misconception comes to
25 place, and what I should say is that, you know, there are, you know, misconception, yes,

1 in terms of the law changing. You know, as you know, certain policies did change, you
2 know, when the administration changed, but I'm not aware that -- of anyone mentioning
3 those policies by name.

4 Q Are you aware of cartels providing misinformation to migrants to incentivize
5 them to come to the border?

6 A Yes. So the -- you know, I think earlier we were talking about some of
7 the -- some of the social media stuff that works, you know, and this is probably the
8 easiest place for us to see that misinformation where, you know, the message goes out,
9 and it says, you know, Easy to cross, you know, I'll make your dreams come true, this
10 much money, that sort of thing, you know, things that obviously can't be promised with
11 any guarantee, but they are, you know, on the message.

12 Q And the cartels profit from this information that they spread. Is that fair to
13 say?

14 A The cartels profit from whatever they move across the border, whether it's
15 people or narcotics or anything else.

16 Q And one means to lure people to cross the border is this misinformation that
17 they spread. Is that fair to say?

18 A So, yeah, I think, you know, what I was saying earlier is that the cartel
19 doesn't care about the person, just as it does not care about who consumes the fentanyl
20 or whatever else it's moving across the border. It's just, you know, it -- it lives for profit.
21 That's why they exist, you know, to make money. So, yes, if misinformation benefits the
22 cartel, then the cartel will use misinformation.

23 Q I'm going to shift gears a little bit. We spoke about the United States
24 Attorney's Office decision to prosecute cases that you refer to them. And for clarity, the
25 U.S. Attorney's Office does prosecute assaults on agents and smuggling cases, correct?

1 A Yes.

2 Q The U.S. Attorney's Office just does not prosecute all the cases that you refer
3 to them. Is that correct?

4 A That is correct.

5 Q Chief, other chief patrol agents have stated to this committee that, in their
6 respective opinions, their agents prefer operating in the field as opposed to processing
7 individuals. Would you agree with that statement?

8 A Yes, I would agree that, you know, that the overwhelming majority of agents
9 want to be out in the field. That's why they became Border Patrol agents.

10 Q Would you agree that efforts and programs that allow agents to return to
11 the field are beneficial to morale?

12 A I do. So, you know, we talked about the processing coordinators earlier,
13 you know, requests for assistance that are -- that are realized, you know, that anything
14 that brings agents back to the field where they can perform border security mission is -- is
15 advantageous for their morale.

16 Q Chief, do you recall speaking to a media outlet called AZcentral in early May
17 of this year?

18 A Not specifically, but I speak to a lot of --

19 Q Okay, fair enough.

20 A -- outlets.

21 Q I'm going to hand you a news report published by AZcentral, titled,
22 Border Patrol as prepared as it can be for border restrictions end, Tucson chief says, and
23 we'll mark this as minority exhibit A.

24 [Minority Exhibit No. A

25 Was marked for identification.]

1 BY MR. YIM:

2 Q And, Chief, please take your time to read this.

3 A Uh-huh.

4 Yes, I remember this, this exact meeting.

5 Q So, Chief, you were quoted here in this article as saying that the
6 Tucson Sector was incredibly well-prepared for the end of Title 42. Why did you make
7 that statement?

8 A So there's a couple reasons, and so to put it into perspective, this was at
9 a -- actually at a time when we were -- we had a sort of joint meeting of the Border Patrol
10 Air and Marine OFO and some -- some rescue groups that work in Tucson, to warn
11 migrants about the dangers of crossing through the area because of the coming heat and
12 the terrain out there.

13 And, you know, one of the things I spoke to -- and I don't know if it came up in
14 here, I'd have to read the whole thing, but, was that when you think back to Title 42 and
15 when it started and when it stopped, there were probably at least, you know, I think a
16 conservative estimate, probably at least four or five times that we were sort of told, Hey,
17 it's going away, it's going to go away on this date, and then it didn't. And it, you know, it
18 was extended for another month or 2 or 3.

19 And all of those -- all of those sort of precursors to that, all those times that we
20 thought it was going to happen, of course, got us poised and got sort of an accounting of
21 all of our capabilities and what was happening.

22 I do -- you know, glancing through here, I did -- I did recognize that we really don't
23 know what's coming at us. There was some uncertainty about what we'd have to deal
24 with, but we were as ready as we were going to be, especially with that structure,
25 recognizing that if, you know, Yuma became overwhelmed, we would support Yuma to

1 the best of our ability. If San Diego became overwhelmed, we would support that way.

2 Q Okay. I'm going to have you turn to page 3 which is the back page of this
3 article. There is a paragraph at the top of the page that begins, "despite the challenges.
4 Do you see that?

5 A I do.

6 Q It reads, "Despite the challenges, Modlin maintained that Border Patrol is
7 ready for the end of border restriction because of the, quote, 'incredible relationships'
8 that the agency has built with Arizona counties, municipalities, and nongovernmental
9 organizations."

10 Chief, why are these relationships so important?

11 A So they're important for -- for many reasons. Certainly the surge that we're
12 dealing with now is, you know, is what we're talking about here, but, you know, as a chief,
13 certainly in my career as a Border Patrol agent, I've always recognized how important it is
14 to be in contact with the community, because, you know, I've worked in communities
15 where the relationship is not great, you know.

16 Tucson was a very good relationship when I got there, overall, generally speaking.
17 There were a few agencies that weren't, that needed a little more -- a little more, you
18 know, finessing than others.

19 However, you know, from Title 42, and even before that when we were -- when
20 we were seeing the incredible surge when I first got there, you know, we recognized the
21 need to -- to reach out to these organizations and communities because we did believe
22 that non-sheltered releases were going to be taking place.

23 So what I did not want to do as the chief of Tucson Sector, is significantly
24 negatively impact these communities without trying everything possible to mitigate as
25 much of that impact as I could.

1 So that -- so a lot of the relationships were, I wouldn't say borne of that because,
2 you know, they existed in some state, but I did everything I could to sort of, you know,
3 improve those relationships.

4 Q So you mentioned specifically here nongovernmental organizations.

5 A Uh-huh.

6 Q What role do these NGOs play in this relationship that you're discussing?

7 A So -- so there's a lot. When I talk about nongovernmental
8 organizations -- and, again, remember this is in the context of dealing with, you know,
9 heat. That's what this whole thing was about, not so much about the surge, but, of
10 course, you can imagine, people wanted to ask about Title 42. This probably fell close to
11 when there was, you know, a potential lifting of it.

12 So, you know, some of these NGOs are migrant aid groups. You know, there are
13 aid groups that are out there in the desert that provide, you know, water to migrants,
14 provide aid to migrants. There are groups out there that rescue migrants.

15 So, yeah, all of that is important to us, that, and as we discussed earlier, groups
16 like Casa Alitas, that, you know, are able to assist those migrants that ERO does not have
17 the capacity to hold, to further move them into the United States so they don't become
18 an issue with the local communities.

19 Q Moving to the next sentence, it reads, Border Patrol and other agencies have
20 also surged resources to the sector, including transportation assets, Modlin added.

21 Can you expand on that a little bit? What other resources, from what other
22 agencies are you mentioning?

23 A Yeah. So, you know, a lot of -- so at the time -- this may be -- this may be
24 the same time as Bureau of Prisons had moved buses to the border. You know,
25 Pima County had -- had -- was helping us with buses as well.

1 I believe, you know, I'm not sure exactly how close it was to this, but at some
2 point, Senator Kelly had also worked to get some buses to move migrants out of the Ajo
3 area. So, you know, there were transportation assets being moved there to help them.

4 Q Okay. Were there any other assets beyond transportation that were
5 provided to you?

6 A So at this point in time, I don't remember if there were things outside of
7 transportation. I think during this time, we were still providing agents to the Texas
8 sectors for the overflow there.

9 Q Okay. I'm going to shift gears once again, and I'd like to turn to the agents
10 who serve under you in the Tucson Sector. You mentioned this earlier, but is it fair to
11 say that the agents that work for you are dedicated to their work?

12 A Again, I don't know that I -- I've never met a more dedicated workforce. I
13 mean, the reality is, and it's not -- I don't mean this -- you know, sometimes people say
14 things very lightly. You know, Tucson Sector has lost 19 agents in the line of duty, which
15 is a tremendous amount, since 1924, four since I've been there, in the short period of
16 time that I've been there.

17 You know, every 2 or 3 weeks, you know, I swear in a new group of agents, and I
18 make sure that they look at, you know, the video wall that has all the information about
19 the agents. They can see the agents' funerals, things like that.

20 The reason I bring that up is because they come into this understanding that, you
21 know, they have to be willing to potentially give their lives to rescue migrants, to secure
22 the country, you know, to perform this incredibly vital national security mission that we
23 have.

24 So, yeah, I think they're incredibly dedicated. I've seen -- you know, off duty, we
25 recently had an agent who, you know, had responded to a car wreck on his way to work

1 and, you know, had pulled 3 or 4 people out of a burning vehicle.

2 And then as ammunition in the vehicle started to discharge, he then laid across
3 the severely injured people to shield them from the ammunition, and then had to use dirt
4 to put out a grass fire that had started, and then drag them up the embankment. So,
5 you know, that is what the agents do, whether they're on duty or not. So, yeah,
6 incredibly dedicated and willing to, you know, risk personal injury or death for this
7 mission.

8 Q I'm glad you brought that up. And in your testimony before the House
9 Oversight Committee in February, you mentioned the importance of -- strike that.

10 You mentioned the importance of resiliency, correct?

11 A Uh-huh.

12 Q You would agree with me that programs implemented to promote resiliency
13 among Border Patrol agents is a benefit to your workforce?

14 A So this -- yeah, this is a workforce that is challenged, for sure. Even in the
15 best conditions, you know, agents work in a place like Tucson where I don't know that
16 most people can fathom hiking 8,000 feet and then back down, you know, in incredibly
17 rough terrain, or just being out there in the sun, as intense as the Tucson sun is, for an
18 entire shift, let alone, you know, 50 hours a week, and doing what they're doing, and
19 seeing, you know, incredible, you know, incredible amounts of -- of suffering, you know,
20 people that -- people that have been significantly injured.

21 They encounter death, they certainly encounter, you know, people that have
22 expired in the desert because of the sun and the elements, you know, so, yeah, any
23 resiliency effort is -- is greatly appreciated, you know, and Tucson Sector has a very robust
24 set of agents that are peer support, they're trained to support their fellow agents, and
25 then chaplaincy as well. So a bunch of agents that are trained to help with spiritual

1 issues as well.

2 Q So given the seemingly unique personality that it takes to be a Border Patrol
3 agent, you've never instructed your agents to not secure the border, correct?

4 A No.

5 Q Have you ever received an order from Secretary Mayorkas to not secure the
6 border?

7 A I never have.

8 Q Have you ever received an order from CBP headquarters to not secure the
9 border?

10 A No.

11 Mr. Yim. Okay. I'll turn it over to my colleague.

12 Ms. Marticoarena. Thank you. I also am going to bounce around a little bit to
13 follow up.

14 BY MS. MARTICORENA:

15 Q During the course of your career with Border Patrol, has Border Patrol, or
16 ICE, to your knowledge, ever had the capacity to hold everyone who's been detained or
17 encountered?

18 A So, you know, I don't know. The reason I say that is because I do
19 remember, you know, a time when it seemed like we were in -- there might've been a
20 time when there was some mandatory detention, but it didn't last very long. I don't
21 know. I certainly know it doesn't exist now.

22 Q And about how long ago was that period, do you recall?

23 A So I remember a short period of time, it was when I was in Detroit sector.
24 So maybe in 2002 to 2008, somewhere in there, but it was very short-lived. And I can't
25 even -- I can't even guarantee that that was border-wide, but I just remember in

1 Detroit Sector, we were -- we were going mandatory detention for a while.

2 Q So it's fair to say in the last 10 years, then, there has never been a time in the
3 last 10 years where everyone encountered on the Southwest Border was detained by
4 Border Patrol and then ICE?

5 A Not that I'm aware of.

6 Q Okay. And then during that course of time, let's say over the last 10 years,
7 has Border Patrol used releases into communities, release on their own recognizance, has
8 that been occurring throughout your career?

9 A So, you know, in my experience, in -- before I got to Tucson, my last 10 years
10 was in -- was in Miami, and we did not release into the communities. So ICE ERO took
11 all of our -- all of our detainees.

12 Q Okay. And then throughout your time with Border Patrol, have you been
13 using Notices to Appear?

14 A Yes. So NTAs since I've been in for nearly 28 years.

15 Q Thank you.

16 And is it your understanding that Border Patrol has seen give-up groups prior to
17 this administration even if they weren't common in the Tucson Sector?

18 A So, yes. I believe that, you know, the timing, so 2019, and that surge of
19 families across the border, my recollection -- again, I was not in -- on the
20 Southwest Border, I was in Miami, but my recollection is, those groups were giving up.

21 Q And would it be fair to say that over the course of your career, that
22 traditionally, families are more likely to give themselves up to Border Patrol -- family
23 groups?

24 A So in my experience, it has changed. In my experience, you know, starting
25 in -- in San Diego, it was not uncommon to see, you know, families running. You know, I

1 don't know if you're familiar with it, if you travel to San Diego, there's signs on the side of
2 the highway that have like a father, a mother, and a child running, you know, because
3 that was seen. We would see people running across the freeway. So those families
4 were trying to avoid detection.

5 The vast majority of those were Mexican families, and, you know, I believe
6 because they recognized that if apprehended, they were going to be returned to Mexico.

7 Q And so, when would you say that change occurred, where Border Patrol
8 started to see people give themselves up?

9 A So I think -- and for some reason, 2014 sticks with me, but, you know, I think
10 2014 was the first time we saw the surge of unaccompanied children. And, you know,
11 my understanding of that -- again, not being in a sector that dealt with it -- I believe those
12 children were basically turning up, they were just showing up near the border.

13 And then since then, I've certainly seen, you know, from afar, you know,
14 give -- groups giving up, groups crossing en masse, you know, the 15,000 Haitians or so
15 that crossed through Del Rio just giving up en masse.

16 Q And then earlier you talked a bit about some of the databases that you used
17 to check migrants against. I believe you mentioned NCIC, and checking if someone is on
18 the TSCS.

19 A Uh-huh.

20 Q Do your agents also have access to INTERPOL?

21 A So, I don't know if there's a specific database that INTERPOL uses, but when
22 somebody, when they hit on our systems through NCIC, if there is an INTERPOL watch for
23 that person, it shows up in our checks.

24 Q Okay. So it's fair to say that at least some international data about criminal
25 activity Border Patrol has access to?

1 A Yes. My experience is only through those INTERPOL hits, which are
2 fairly -- fairly uncommon.

3 Q And then I wanted to follow-up a bit on your work with nongovernmental
4 organizations. How long has Border Patrol, to your understanding, been working with
5 the NGOs in the Tucson Sector?

6 A So, you know, I can't say. I don't know if they were before I got there. I
7 do know that there was some familiarity. I do know that there was certainly good
8 relations between -- well, between some of the nongovernmental organizations, but the
9 one that I mentioned in particular, Casa Alitas, you know, I know there was contact there.
10 It could not be -- it could not have been what it is now.

11 Q But it's fair to say some --

12 A Yes.

13 Q -- relationship?

14 A And a good relationship existed before you got there?

15 A Yeah, I would agree with that.

16 Q Okay. And do your agents find it helpful when these organizations have
17 capacity to receive migrants from Border Patrol?

18 A Helpful? So I think that I probably need to maybe clarify. So the -- you
19 know, for an agent, you know, I would suspect, you know, being an agent myself, you
20 know, yes, it's preferable as to having a street release in Tucson where someone is not,
21 you know, not getting support. That is less desirable than somebody getting support
22 and leaving Tucson and not -- not being there.

23 A So to that degree, I would say yes. But I think, you know, as discussed earlier,
24 every agent would rather see people detained until they had a hearing.

25 Q Understood.

1 And when you talk with the local communities, is your sense that they find it
2 helpful to have NGOs with capacity to receive migrants versus releasing people to the
3 street?

4 A So I don't know to what degree the local communities are aware of what the
5 NGOs do. Certainly, you know, I know that the local communities do not want people
6 released into their community.

7 When I first got to Tucson, we had, you know, a few releases to an NGO that took
8 place in Gila Bend, and it became national news because the -- you know, the mayor of
9 Gila Bend was very upset with that. They -- I think it might've been 12 people that left
10 one of our vans and got into a van with the NGOs there. But, you know, that sort of
11 response, and I've seen similar response in, you know, San Diego County, and other
12 places when there are releases.

13 Q Okay. And then earlier when you stated that cartels controlled some
14 territory, you were referring to territory south of the border in Mexico, correct, and not
15 the United States?

16 A Yes. So they certainly do not control the -- the land north of the border. I
17 think as somebody mentioned earlier, there certainly are people related to the cartel that
18 are operating inside the United States. I think that's widely recognized.

19 But the land south -- or north of the border, where my agents work, is certainly
20 not controlled by the cartel.

21 Q Okay. And are your agents encountering any Americans smuggling drugs?

22 A Did you say smuggling trucks?

23 Q Smuggling drugs.

24 A Oh.

25 Q I apologize.

1 A Yes. So -- yes. So, you know, at our checkpoints we encounter that, you
2 know, we encounter it on vehicle stops.

3 Q Okay. So would you think that it's fair to say that there are some
4 Americans either active with the cartels or with cartel connections?

5 A Yes.

6 Q Okay. And then, lastly, I wanted to ask you about hiring efforts in your
7 sector, recruitment efforts. Can you talk a little bit about what's happening there?

8 A Sure. So, you know, as I stated earlier, recruitment and retention has been
9 an incredible challenge for us, you know. So Tucson Sector, when you look at the -- you
10 know, I talked about the high-water mark, you know. That was, you know, a while back.
11 And so, some of that is, you know, since then, we've declined.

12 Now, you know, when we recruit, we don't recruit for Tucson Sector. We're
13 recruiting nationally. So we have partnered, you know, there's a local indoor, like, an
14 arena football team that we've partnered with, so we have banners up there. You
15 know, agents go out to military bases, they go out to colleges, they go all over the place
16 to recruit.

17 We, on our social media, you know, if I had to guess, I don't know, I think
18 Facebook we probably have 130,000 followers or something, you know, and a significant
19 amount on Twitter and Instagram as well. We post on there all the time, you know, that
20 we're hiring.

21 And whether it's agent positions or the Border Patrol processing coordinators, we
22 push that out as much as we can.

23 Q So is it fair to say that CBP and DHS is taking the challenge of hiring
24 Border Patrol agents seriously, that they're putting significant resources towards it?

25 A So I think we do. I think the challenge is, as always, that there's

1 limited -- limited amounts of money, and certainly, I don't know, you know, I'm not very
2 familiar with the budgeting at the headquarters level.

3 But I do know it is a challenge for us, you know, like, you know, partnering with
4 that arena football team, we had to do that -- headquarters had to pay for that. We did
5 not have local funds enough to pay for that, you know.

6 And then when we're done, when the season is over, we'll analyze that and see if
7 it was worth it and push further, you know.

8 Q Okay. So given that, would it then be fair to say that headquarters has
9 been supportive of recruitment efforts?

10 A So, yes, yeah.

11 Q Thank you.

12 Ms. Marticoarena. That's all I have.

13 Mr. Yim. We'll go off the record.

14 [Whereupon, at 12:59 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

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5 COMMITTEE ON HOMELAND SECURITY,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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12 INTERVIEW OF: MARK A. MORGAN

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Monday, January 22, 2024

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Washington, D.C.

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The interview in the above matter was held in room 176, Ford
22 House Office Building, commencing at 9:24 a.m.

1 Appearances:

2

3

4

5 For the COMMITTEE ON HOMELAND SECURITY:

6

7 FINN ARTHUR, RESEARCH ASSISTANT

8 NATASHA EBY, STAFF DIRECTOR, SUBCOMMITTEE ON BORDER SECURITY AND
9 ENFORCEMENT

10 ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND INVESTIGATIONS COUNSEL

11 BRANDON SCHALL, OVERSIGHT AND INVESTIGATIONS COUNSEL

12 WILLIAM TURTON, PROFESSIONAL STAFF MEMBER

13 TREVOR WHETSTONE, DEPUTY GENERAL COUNSEL

14 SANG YI, DIRECTOR OF INVESTIGATIONS

15 LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

16 BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR,

17

18

19 For MARK A. MORGAN:

20

21 MIKE HOWELL

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23

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1 Mr. Yi. We'll go on the record.

2 All right. Good morning. This is the transcribed
3 interview of Mark A. Morgan. Chairman Green requested this
4 interview to obtain information related to Secretary Alejandro
5 Mayorkas' handling of the border crisis from January 2021 to
6 present day.

7 Will the witness please state your name for the record?

8 Mr. Morgan. Mark Alan Morgan, M-o-r-g-a-n.

9 Mr. Yi. On behalf of the Committee on Homeland Security,
10 thank you for appearing today. The committee appreciates your
11 willingness to appear voluntarily.

12 My name is Sang Yi, and I am the director of investigations
13 with Chairman Green's staff for the majority on the Homeland
14 Security Committee.

15 I now ask that the majority and minority staff on the
16 committees to please identify themselves.

17 Mr. Schall. Brandon Schall, counsel for the majority.

18 Ms. Eby. Natasha Eby, staff director, Border Security
19 Enforcement Subcommittee, majority.

20 Mr. Turton. William Turton, professional staff member,
21 Homeland Security, majority.

22 Ms. Marticorena. Briana Marticorena, Democratic staff.

23 Ms. Dennett. Lydia Dennett, professional staff on the
24 Democratic side.

25 Mr. Yi. Before we begin, I will outline the procedures and

1 guidelines that we will follow in this interview.

2 The Federal Rules of Civil Procedure do not apply to any
3 of the committee's investigative activities, including
4 transcribed interviews.

5 Questioning will proceed in rounds. The majority members
6 or staff will ask questions first for up to 1 hour, and then the
7 minority members or staff will have an opportunity to ask
8 questions for up to 1 hour if they choose. The majority members
9 or staff will then ask questions for up to one half hour, and
10 then the minority members or staff will have an opportunity to
11 ask questions for up to one half hour if they choose.

12 Per agreement with the witness, the total length of
13 questions for this interview will be up to 3 hours. And we'll
14 take a short break at the end of each section. If you would like
15 to take a break at any other time, please let us know. If,
16 however, there is a pending question, I ask that you finish
17 answering the question before we stop to take a break.

18 There's an official reporter taking down everything we say
19 to make a written record, so we ask that you give a verbal response
20 to all questions. The reporter cannot record nonverbal answers
21 such as shaking your head, so it is important you answer each
22 question with an audible, verbal answer. Do you understand?

23 Mr. Morgan. Yes.

24 Mr. Yi. To understand the court reporter -- strike that.
25 To ensure the court reporter can take a clear record, we

1 will do our best to limit the number of people directing questions
2 to you during any given hour to just those members or staff whose
3 turn it is. To the extent possible, it is also important that
4 we do not talk over one another or interrupt each other. Please
5 wait until each question is finished before you begin your
6 answer, and we will wait until you finish your response before
7 asking you the next question. That goes for everybody present
8 at today's interview. Furthermore, the majority members or
9 staff will not ask questions or otherwise interrupt the
10 minority's round of questioning, and vice versa.

11 I understand the witness is accompanied by counsel today.
12 Would counsel please state their name for the record?

13 Mr. Howell. Mike Howell.

14 Mr. Yi. You are encouraged to freely consult with counsel
15 if you choose. If you need to confer with counsel during the
16 interview, please let us know. We will go off the record and
17 stop the clock until you are prepared to continue.

18 During the interview, we ask that you please answer any
19 questions in the most complete and truthful manner possible. If
20 you have any questions or if you do not understand a question,
21 please let us know. Do you understand?

22 Mr. Morgan. Yes.

23 Mr. Yi. If you do not know the answer to a question or do
24 not remember it, it is best not to guess. If there are things
25 you do not know or cannot remember, please say so and inform us

1 who, to the best of your knowledge, might be able to provide a
2 more complete answer to the question. If I ask about
3 conversations or events in the past and you are unable to recall
4 the exact words or details, you should testify to the substance
5 of those conversations or events to the best of your
6 recollection. If you recall only a part of a conversation or
7 event, you should give us the best recollection of those events
8 or conversations that you do recall. Do you understand?

9 Mr. Morgan. Yes.

10 Mr. Yi. This interview is unclassified. If any question
11 calls for information that you know to be classified, please
12 state for that -- for the record, as well as the level and reason
13 for the classification. Once you make such a clarification,
14 please respond with as much unclassified information as you are
15 able.

16 This interview is conducted without prejudice to any future
17 discussions with the committee, and we reserve the right to
18 request Mr. Morgan's participation in future interviews or to
19 compel his or her testimony.

20 Although you are here voluntarily and we will not swear you
21 in, you are required by law to answer questions from Congress
22 truthfully, including questions posed by congressional members
23 or staff during the interview. Witnesses who knowingly provide
24 false testimony could be subject to criminal prosecution for
25 perjury or for making false statements.

1 Do you understand this obligation to tell the truth today?

2 Mr. Morgan. Yes.

3 Mr. Yi. Witnesses who knowingly and willfully provide
4 false testimony could be subject to criminal prosecution and
5 imprisonment for up to 5 years. Do you understand?

6 Mr. Morgan. Yes.

7 Mr. Yi. Is there any reason you're unable to provide
8 truthful answers to today's interview?

9 Mr. Morgan. No.

10 Mr. Yi. Before we begin, I would like to explain briefly
11 why we are here today.

12 Throughout the last year, the House Committee on Homeland
13 Security conducted investigations into the crisis at the
14 southwest border. The committee held numerous hearings with
15 border security experts and crime victims, conducted transcribed
16 interviews of U.S. Border Patrol chief patrol agents stationed
17 along the southwest board, and sent the Department many requests
18 for documents and information. Despite the committee's efforts
19 to obtain relevant documents and information from the Department
20 relating to the illegal immigration at the southwest border, the
21 Department continues to obstruct these efforts. Therefore, the
22 committee is left with many unanswered questions about the crisis
23 at the border.

24 Given Secretary Mayorkas' and his department's lack of
25 transparency, we are seeking your expertise and observations to

1 help address the committee's questions related to Secretary
2 Mayorkas' handling of the border crisis during his time as
3 Secretary.

4 We are not investigating you personally for any personal
5 wrongdoing. This is a fact-finding endeavor.

6 I also understand that the witness has an opening statement
7 he would like to make.

8 Mr. Morgan. That's correct.

9 Mr. Yi. I welcome the witness to introduce his remarks at
10 this moment.

11 Mr. Morgan. Thank you.

12 The premise of how the Biden administration and Secretary
13 Mayorkas describes the intentional, self-inflicted, unmitigated
14 chaos and lawlessness at our Nation's borders is intentionally
15 misleading. It's framed simply as a, quote, "immigration"
16 issue, and they talk in terms of needing, quote, "immigration
17 reform."

18 Through all of the rhetoric, false narratives, and lies the
19 clear and distinct lines between legal and illegal immigration
20 have been intentionally blurred. The impact on our capacity to
21 secure our borders and protect our safety and national security
22 all but dismissed. The exponential expansion of human suffering
23 at the hands of the ruthless cartels all but ignored. Lost in
24 this knowing, willful, and misleading narrative is the truth.
25 Our Nation's compassion has been hijacked for political gain and

1 the pursuit of misguided ideology. The reality of what's
2 happening at our borders and its impact to our Nation hidden from
3 the American people.

4 It's an orchestrated effort to cover up and deflect how they
5 obliterated effective policies, made a mockery of the rule of
6 law, and cast aside not only enumerated duties contained within
7 the Constitution, but it's founding principles. They have
8 force-fed the premise that illegal immigration is a justified
9 exception to the rule of law. They call us anti-immigrant or
10 racist if we support policies that serve to deter or apply
11 consequences to those who have violated the law by
12 intentionally -- by the intentional act of illegally entering
13 into our sovereign land. They want the American people to forego
14 common sense and believe that illegal immigration has no downside
15 or the negative impact to our country or ability to secure our
16 border is nothing more than a partisan myth. It's a dangerous,
17 perverse, and deadly lie which Secretary Mayorkas has willfully
18 perpetrated upon the American people for the past 3 years.

19 From day one, the Biden administration immediately began
20 to dismantle the network of tools, authorities, and policies we
21 had in place. It was an intentional effort to take the most
22 secure border we had ever achieved in modern history and
23 intentionally unsecure it. Proven and effective border
24 security strategies were abandoned and replaced with enhanced
25 welcoming strategies. Any semblance of enforcement,

1 deterrence, and consequences fell by the wayside. The
2 predictable result was a crushing volume of illegal immigration
3 from 180 different countries. Border security personnel became
4 overwhelmed, forced off the front lines of our Nation's borders,
5 away from their enforcement and national security duties as they
6 were relegated to performing the duties of a Federal travel
7 agency, ceding large areas of operational control to the hands
8 of the cartels. Enabling them to increase their success rate
9 of drugs, criminals, and potential national security threats
10 pouring into the country. It's simple math. Fewer agents and
11 officers on the line results in an increased volume of bad things
12 and bad people getting through.

13 The one constant for the past 3 years is the man who has
14 served as the administration's chief architect of their
15 catastrophic open border policies, Secretary Mayorkas, a man who
16 is unbashful and defiantly transformed his position from a
17 bipartisan protector of our Nation's homeland to nothing more
18 than a front man to peddle disinformation and lies on behalf of
19 the administration.

20 Secretary Mayorkas continues to opine our borders are
21 closed. With more than 8 million total nationwide encounters
22 and nearly 1.8 million known got-aways in the past 36 months,
23 there is no objectionably rational, intellectually honest person
24 who would continue to assert such a claim, let alone the Secretary
25 of the Department of Homeland Security. He uses his position's

1 influence to alter the facts, downplay the severity of the
2 crisis, and convince the American people everything is under
3 control. He knows it's a lie.

4 He has provided intentional false testimony while under
5 oath when being questioned by congressional members. When
6 confronted with the statutory meaning of operational control
7 contained within the 2000 Secure Fence Act, which clearly defines
8 the term in part as, quote, the prevention of all unlawful entries
9 in the United States, including entries by terrorists and
10 narcotics, Secretary Mayorkas affirmed he, in fact, had
11 operational control of our borders. At the very moment the
12 question was asked, Secretary Mayorkas knew CBP had confirmed
13 the detection of hundreds of thousands of known got-aways; that
14 among the got-aways are untold numbers of criminal aliens,
15 including rapists, pedophiles, murderers, and gang members; as
16 well as potential national security threats. He knows that for
17 every pound of narcotics seized, potentially tenfold gets by us,
18 killing more than 100,000 Americans in a 12-month period. Even
19 when his own chief of the United States Border Patrol admitted
20 under oath we, in fact, did not have operational control of our
21 borders, Secretary Mayorkas continued his regularly scheduled
22 Sunday talk show circuit and claimed our borders were secure.
23 And he did so to intentionally mislead the American people.


24 He's eroded the public's trust in our government as he's
25 refused to enforce the laws enacted by Congress and shown

1 contempt for our Nation's judicial branch. He has willfully
2 violated mandatory screening, removal, and detention
3 requirements; openly, unabashedly bragged about how his policies
4 prevent an alien's illegal status to be used as the basis for
5 removal; enacted mass parole operations in contradiction of the
6 statute's clear intent; and used the umbrella of organizational
7 priorities to forbid agencies from fulfilling their statutory
8 enforcement mandates. All of these actions were implemented by
9 the stroke of Secretary Mayorkas' pen.

10 Secretary Mayorkas continues to push a massive
11 disinformation campaign regarding the realities of human
12 suffering and tragedies thrust upon those who have heard his call
13 to action to come. As the numbers of illegal migration continues
14 to expand, so do the number of young women, children being
15 sexually assaulted, those being forced into a life of
16 trafficking, and those who have died.

17 In the past 36 months, approximately 2,000 dead migrants
18 have been discovered along our border by CBP. This doesn't
19 include those who died in Mexico or the Darien Gap along the
20 dangerous trek to our borders. 400,000 unaccompanied minors
21 have made the decision to self-separate from their families, many
22 experiencing unimaginable acts of violence on the journey. Yet
23 Mayorkas tells us in his response that he has developed a safe,
24 orderly, and humane system, a lie intent to distort and cover
25 up the horrific brutality endured by the very migrants his

1 policies have encouraged to put themselves in harm's way. As
2 long as the cartels exist and our own weak ambiguous policy
3 provides them with the opportunity for exploitation, there will
4 be no humanity.

5 Secretary Mayorkas ignored our warnings, dismissed career
6 border security experts, abandoned his oath, lied to the American
7 people and Congress, cast aside the rule of law and the
8 Constitution, and betrayed the public's trust in our system of
9 government. His legacy will be one of deception,
10 misinformation, and the man who oversaw the worst border security
11 crisis in our lifetime.  Through incompetence or driven by
12 ideology is of no moment.

13 We agree impeachment was not designed to settle political
14 scores or policy differences. It's reserved for holding public
15 officials accountable when they violate the law, abuse the power
16 of the office, abandon their oath, and are dishonest with the
17 American people and Congress. Secretary Mayorkas is a proven
18 liar who has repeatedly refused to enforce the law and
19 intentionally unleashed a wave of death and suffering while
20 jeopardizing every aspect of our country's safety, health, and
21 national security.

22 The American people deserves a Secretary of Homeland
23 Security that will be beholden to the oath of office, the rule
24 of law, and the Constitution, rather than a self-serving
25 political agenda or personal ideology. How many more Americans

1 and migrants have to die before we say enough is enough?

2 That's the end of my statement.

3 Mr. Yi. Thank you, Mr. Morgan.

4 We will now begin our first round of questions. The clock
5 reads 9:38 a.m.

6 EXAMINATION

7 BY MR. YI:

8 Q Mr. Morgan, again, we appreciate you being here. And
9 thank you for your very passionate opening statement. You
10 clearly have not only a lot of feelings and observations and
11 experience in this area, but you also have a lot of professional
12 expertise, and that's why we have you here today.

13 Just to begin, can you briefly describe to us your
14 employment history?

15 A Sure. I enlisted in the United States Marine Corps when
16 I was 19 years old. I served approximately 10 years, both
17 Active Duty and Reserve, as an enlisted member and commissioned
18 officer in the United States Marine Corps.

19 I served as a deputy sheriff in the reserves of Platte
20 County, Missouri. I also served as a police officer for the Los
21 Angeles Police Department. I served over 20 years in the
22 Federal Bureau of Investigation. I was chief of the United
23 States Border Patrol, and I ended my government career as the
24 acting -- well, I was also acting director of ICE before then.
25 I was selected to become the acting commissioner of Customs and

1 Border Protection.

2 I have an undergraduate degree in engineering and a juris
3 doctorate degree from the University of Missouri.

4 Q Well, it sounds like your national security and your law
5 enforcement background are pretty stellar. And thank you for
6 your years of service --

7 A Thank you.

8 Q -- to your State, local and Federal levels here.

9 A Thank you.

10 Q Given your law enforcement background and your
11 professional background, do you still have -- do you still work
12 in the homeland security arena?

13 A Yes, I do, although I want to make it very clear I'm here
14 in my individual capacity today. But since the transition to
15 the Biden administration and as a political position, those
16 transition, and since then, I've been a visiting fellow with The
17 Heritage Foundation under their Center of Immigration and Border
18 Security, as well as I own my own -- I'm the principal in Justice
19 Strategic Consulting, which provides assistance and guidance
20 with respect to national security and law enforcement matters.

21 Q Okay. Do these roles require you to stay updated on
22 current homeland security issues, specifically on border
23 security and immigration?

24 A Absolutely.

25 Q And how do you stay updated on these issues?

1 A A variety of ways. One is, as I said, as being a
2 visiting fellow with The Heritage Foundation, I'm actively
3 involved in all things related to national security and border
4 security through that affiliation with The Heritage Foundation.
5 Also, that allows access to other think tanks within Washington,
6 D.C., who are also part of the border security effort.

7 I also have a variety of former and current colleagues that
8 I talk to on a regular basis. For example, the former acting
9 ICE director, Tom Homan; a former chief of the United States
10 Border Patrol, Rodney Scott. We are probably -- much to their
11 chagrin, probably we're communicated on a daily basis.

12 In addition to that, I still have a host of former colleagues
13 and current individuals that work in this field, specifically
14 in the border security field, both with ICE and Customs and Border
15 Protection.

16 Q And for the current employees that you -- or current
17 people who work in ICE or CBP fields, can you describe some of
18 their types of positions? You don't have to name them.

19 A Yeah, yeah. So I want to be a little cautious because
20 I do have a sincere concern that this administration, should they
21 find out that I am talking to current employees, that there would
22 be some form of retaliation. So I do want to be very general
23 in that. But I'm comfortable saying that, yes, so I talk to both
24 retired personnel in the Federal Government as well as those that
25 are still serving actively in CBP and United States Border

1 Patrol. And it covers the gamut, you know, from line agents to
2 those that hold supervisory positions. In fact, there's
3 probably a couple of individuals that I talk to almost on a daily
4 basis with respect to this.

5 Q It sounds like you have, obviously, a stellar reputation
6 and background in your previous work, and now you currently are
7 up to date --

8 A Yeah.

9 Q -- not only because of your research and public
10 information, but also from inside information as well.

11 A Correct. And that's very important. I think both of
12 those apply.

13 In addition to that, you know, I'll mention the National
14 Border Patrol Council. I still talk to many of those individuals
15 who, as you know, their council is a very unique type of, quote,
16 union, in the fact that they are still active Border Patrol agents
17 while they still belong to the National Border Patrol Council.
18 And so they have a very unique perspective, and I'm communicating
19 with them on a regular basis.

20 Q Great. So moving on to that transition between the
21 Trump to Biden administration, did you learn in that time period
22 of any policies that President Biden or Secretary Mayorkas
23 intended to implement related to border security and immigration
24 enforcement?

25 A Yes. And it actually started during the 2020 campaign

1 and before. It's public knowledge and public information -- I
2 mean, there were several things that were said by multiple
3 candidates, but specifically Candidate Biden, during the 2020
4 election.

5 Now, I'll mention just a few. And this doesn't incorporate
6 all of them, but this came from President -- Candidate Biden
7 himself. When I become President, quote, I will not build one
8 more foot of wall. It was called immoral and ineffective.
9 Although I want to -- I think it's important to note that the
10 2000 Secure Fence Act, which in part mandated that wall be built,
11 in fact, it ended up leading to 634 miles of wall being built,
12 then-Senator Biden voted for that act. I just want to put that
13 out there.

14 But then during the campaign, he also said that he was going
15 to immediately end the Migrant Protection Protocol, commonly
16 referred to as the Remain in Mexico, called it dangerous and,
17 quote, inhumane.

18 There was a very -- I refer to it as an infamous Democratic
19 Presidential debate when the question was asked to all the
20 candidates, Would they support healthcare with respect to
21 illegal aliens? And the candidates, including then-Candidate
22 Biden, almost threw their arms out of their socket. They
23 couldn't -- trying to be the first one to raise their hand,
24 unanimously saying that they would, in fact, provide healthcare
25 to illegal aliens.

1 During that campaign, there was numerous promises that he
2 would find a pathway for amnesty for those living in the country
3 illegally, really focused on the expansion of DACA as well. And,
4 of course, they openly talked about ending Title 42.

5 That's just, I think, a small subset that clearly indicated
6 that any -- the network of tools and authorities that we had
7 developed -- the effective network of tools and authorities we
8 developed under President Trump, that Candidate Biden was
9 hellbent on making sure that anything that we had implemented
10 under President Trump that he was going to destroy and dismantle,
11 and he made it very clear during the campaign.

12 Q Now, given your law enforcement and border security and
13 immigration expertise, were you or any other of your colleagues
14 that also are in those fields provided a meaningful opportunity
15 to provide input on those areas to either incoming Secretary
16 Mayorkas or immediately Secretary Mayorkas at the time?

17 A Yes, yes. In fact, I'll even go back. I believe it was
18 in October of 2020 when the campaign -- obviously, by then Biden
19 was the nominee for the Democratic Party. I was at the border
20 and there was a press gaggle that was there. And there were some
21 questions being asked, and they asked a very similar question.
22 They just asked about, hey, you know, because then-Candidate
23 Biden had been saying all those issues that he was going to do
24 that I just enumerated, and I was asked, What do you think the
25 results are going to be? And I had to be very careful, because

1 as a government employee, I have to comply with the Hatch Acts,
2 right. So I clearly said -- and I remember this because I
3 believe exactly what I said in October of 2020 has happened. I
4 said that if any Presidential candidate on either side,
5 Republican or Democrat, enacts the policies that Candidate Biden
6 said he's going to enact if he becomes President, it will cause
7 a catastrophic chaos and lawlessness on our border. In fact,
8 the reason why I remember distinctly, I actually used the word
9 "invasion." And I think that's exactly what's happened.

10 You look now in the past 36 months, 8 million total
11 nationwide encounters, near 1.8 million known got-aways, yeah,
12 I think we're clearly in a definition of invasion.

13 But then after that, what happens is -- and you guys know
14 this well -- whenever there's a transition in administrations,
15 the incoming administration sets forth a transition team, right.
16 And so the Biden administration was no different. It followed
17 the standard procedures. It's a very formal process. They
18 request meetings, you know, from -- at the department level, at
19 the component level. It's a very formal -- in fact, who's going
20 to be there, what's going to be presenting? There's questions
21 that are produced ahead of time, and there's written responses,
22 and then there's also in-person briefings.

23 And that transition was no different than transitions I've
24 been in before. Again, I've served in this government for
25 40 years, six administrations, both Republican and Democrat.

1 So as the commissioner of CBP, I don't personally
2 participate in those briefings but subordinate leaders do. And
3 so, of course, I directed, you know, full cooperation with that.
4 We would have discussions on what was going to be presented.
5 And, of course, for me, I wanted to make sure that what was going
6 to be presented to the transition team was those network of tools,
7 authorities, and policies that we had implemented, what they
8 were, why we did that, and just how effective they were. And
9 the team did just that.

10 What I would receive is back-briefs from those transition
11 briefings from the principals that were involved. And I believe
12 we probably -- within the Department of Homeland Security, I
13 believe somewhere in excess of 200 briefings were presented to
14 the Presidential Biden transition team. And the overwhelming
15 majority of those briefings were specifically on border
16 security.

17 Q During the -- when you received those back-briefs, did
18 they ever mention anything about the transitions teams or
19 Secretary Mayorkas' -- or incoming Secretary Mayorkas'
20 reception to those, to that information?

21 A So I don't recall specifically if anything was briefed
22 to me what was said from the transition team to Secretary
23 Mayorkas. But here's what was briefed to me that I recall is
24 that I actually had somewhat a positive feeling at first, because
25 what was being briefed to me was, as they went through the

1 importance of the policies, like, for example, the Migrant
2 Protection Protocol, which I think is one of the probably most
3 effective policies that we instituted, they methodically went
4 down what led us to instituting that program, and they went
5 methodically through just how effective that program was. They
6 presented data that showed how effective the program was and the
7 end result that it ended catch and release. That's just one
8 example.

9 But they would go through methodically on each one of that
10 network of tools, authorities, and policies. They would provide
11 the data, and then they would discuss what law was used that
12 justified the use of that policy and, again, the result and how
13 effective it was.

14 And what was back-briefed to me from the transition team
15 was that they were, quote -- this is where I remember -- very
16 receptive to the data and the presentations that were being
17 presented. And I remember something along the lines, Hey, I
18 asked, so do they get it? Do they get it? And the response was,
19 yeah, we think they get it.

20 So that actually gave me some hope that the transition team
21 got it. Now, clearly, because of the actions of this
22 administration, that didn't happen. Somewhere between the
23 transition team and it got to Secretary Mayorkas and the White
24 House, that obviously mindset was lost.

25 Q And in your opening statement, you used the word

1 "intentional" repeatedly.

2 A Yes.

3 Q And it seems like with intentional, it goes hand in hand
4 with willful. And the concern is that Secretary Mayorkas is
5 willfully and intentionally violating or completely ignoring
6 great alternatives or great viable means to reduce illegal
7 immigration and mass illegal immigration into our country.

8 I really think it's important to talk about the Immigration
9 and Nationality Act. In particular, under INA section
10 235(b)(2)(C), instead of detaining applicants for admission at
11 the border, immigration officials may send them back to a
12 contiguous country, as you're aware, which in our case means
13 Mexico.

14 And you're familiar with that statute, as you indicated.

15 A Yes, that's very much so.

16 Q Yeah. And so you mentioned that at first you were, I
17 guess, pleased that you thought that they were going to be very
18 receptive to understanding that the MPP was going to be very
19 successful. But in June 2021, Secretary Mayorkas issued his
20 first memo terminating MPP.

21 And I guess for me I would like to understand, what do you
22 think happened or why do you think that -- if you had a positive
23 view in the beginning of their receptiveness, so all this
24 information that was provided by experts, nonpartisan, career
25 government experts with statistics and data and analysis, why

1 they would go ahead and do that?

2 A So you -- I'm glad I just wrote this down. I should have
3 mentioned this before, and I'm glad you said this. I think this
4 is a very important element of those transition briefings. They
5 were provided by career law enforcement personnel. I mean,
6 there's a reason why political appointees are kind of, you know,
7 intentionally not leading that, right, for obvious reasons.
8 These briefings and the data provided was done by experienced
9 career personnel.

10 In fact, the chief of the Border Patrol at the time, Rodney
11 Scott -- I believe he had somewhere in excess of 26, 27 years
12 in the United States Border Patrol -- participated in several
13 of those briefings, just to give you the caliber of people that
14 were in the briefings.

15 Here's why I say this. Because, again, of the -- and there
16 were a lot. We probably don't have time to talk about all of
17 them, all the network of tools, authorities, and policies we had
18 in place. But I often said that the Migrant Protection Protocol
19 was probably single-handedly the most effective policy that we
20 enacted because it targeted one of the key incentives. And that
21 was release, right. We've all heard the terminology "catch and
22 release."

23 That was a big problem. Because we know that as long
24 as -- if an individual illegally enters our border and then after
25 being encountered or after being apprehended they're released

1 in the United States, that acts as a magnet. That's one of the
2 most powerful incentives we have. And we saw that.

3 Up until 2019, May of 2019, when we had, you know, a
4 considerable number of illegal aliens come to our border, mostly
5 families and unaccompanied minors, clearly, we had to do
6 something to deincentivize. We had to end catch and release.

7 And so the Migrant Protection Protocol allowed us, under
8 section 235(b)(2)(C), it allowed us to -- those individuals that
9 came to our border that claimed asylum, we could have them wait
10 in a contiguous country, Mexico, while they are going through
11 their immigration proceedings.

12 And there's two important key aspects to that. One, that
13 enabled us to effectively end catch and release. We
14 deincentivized one of the most powerful incentives for someone
15 to come and illegally enter our border, and that is being released
16 into the United States. The Migrant Protection Protocol
17 deincentivized and cut off that incentive. We effectively ended
18 catch and release.

19 And this is very important. We made that crystal clear to
20 the Biden transition team. We told them that if you end the
21 Migrant Protection Protocol, you will then effectively be
22 reinstating catch and release, and that will sound like a beacon
23 out to the entire world that now is the time to come. And the
24 transition team was told that. They were showed data that
25 supported that.

1 As the commissioner, I was out there publicly saying that
2 again and again as much as I could. I was screaming it from the
3 mountaintop. If you end policies like the Migrant Protection
4 Protocol, that you will cause a degree of chaos at the border
5 that will pale in comparison of anything that we've seen in
6 history. And that's exactly what's happened.

7 Q All right. Thank you.

8 And I'm going to move to another portion of the INA.
9 Section 235(b)(2)(C), instead of detaining applicants for
10 admission at the border, immigration officials may send them back
11 to a contiguous country. That's what we were talking about.

12 A Yep.

13 Q So in part that statute reads that in case of an alien
14 who is an applicant for admission, if the examining immigration
15 officer determines that an alien seeking admission is not clearly
16 and beyond a doubt entitled to be admitted, the alien
17 shall -- emphasis on their shall -- be detained for a proceeding
18 under section 240.

19 Perhaps an obvious question, but for the record, has DHS
20 ever utilized this part of the statute?

21 A Yeah. As far as the mandatory detention part, yeah.
22 So --

23 Q Was it effective?

24 A No, they're not. They're -- the
25 wholesale -- 235 -- and I want to make sure. So 235, it's got

1 a mandatory detention provision in that, right. So if someone
2 comes, illegally enters the border, or actually as an
3 inadmissible and comes in a port of entry, section 235 is very
4 clear that there's a mandatory detention requirement. That's
5 not being done by this administration.

6 Q So has it been done in the past?

7 A Yes.

8 Q And was it effective when it was done in the past?

9 A Absolutely, because --

10 Q Okay.

11 A -- a couple of things happened.

12 Q I just wanted to clarify for the record, because I think
13 you may have misunderstood a question earlier when you answered
14 in the negative earlier.

15 A Okay.

16 Q But to be very clear, when this section, the 235, was
17 used and utilized by previous administrations, in your expertise
18 and your 40 years in government, was it effective?

19 A Yes. And a couple of things happened. Again, it's all
20 about the release part of catch and release, right. And that
21 happens -- it can be prevented in two ways, right. You can
22 either use a program like the Migrant Protection Protocol, where
23 you remove them to a contiguous country while they're waiting
24 for their asylum process to go through in the United States, so
25 effectively you're not releasing them into the United States,

1 and/or you can comply with the law that requires mandatory
2 detention. And so the issue there is, again, they're not being
3 released.

4 And so under the Trump administration when I was the
5 commissioner, we applied that multilayered strategy to actually
6 deincentivize -- again, one of the strong incentives is that we
7 utilize both the 235 provisions to remove people to contiguous
8 country while waiting for their process and detain those in the
9 United States while they are going through their asylum process.
10 Both of those strategies together effectively is what ended catch
11 and release.

12 And we also provided them the data. So by February of 2020,
13 for example, we had reduced illegal immigration by 85 percent,
14 85 percent.

15 And one real quick -- so MPP is an example too. So they
16 used to say, Well, Commissioner, you've only enrolled about
17 60,000 or so in the Migrant Protection Protocol, so how effective
18 is it? And I would smile, and I would say, Extremely effective.
19 Because the message we sent was you're not going to be released,
20 so 500,000 less came. It did exactly as it was intended.

21 One of the essential aspects is, well, of the Migrant
22 Protection Protocol and complying with the detention mandate of
23 235 is it also acts as a strong deterrence, right. They don't
24 come. If they know they're not going to be released, they're
25 not going to come. Instead of our borders being the first line

1 of defense, we should have a system of policies that pushes our
2 borders out. And so our borders should really be our last line
3 of defense, and that's exactly the strategy that we implemented
4 under the Trump administration, and the Biden administration on
5 day one started to dismantle that strategy.

6 Q So you have a very clear -- rooted in your expertise in
7 border security -- clear view that section 235 helps protect our
8 border?

9 A 100 --

10 Q Is Secretary Mayorkas utilizing these statutes?

11 A No. One, it absolutely does assist us to secure our
12 border and reduce illegal immigration. And the second part of
13 your question, no, Secretary Mayorkas is not enforcing the law
14 with respect to either one of those.

15 Q Okay. I'm going to move on to parole as well.

16 So under section 212(d)(5), the Secretary in his
17 discretion, will -- I'll just read in part this statute.

18 "In his discretion" -- it says Attorney General, but we all
19 know that the Attorney General here in this context means the
20 Secretary of Homeland Security now.

21 "In his discretion can parole into the United States
22 temporarily under such conditions as he may prescribe, only on
23 a case-by-case basis, for urgent humanitarian reasons or
24 significant public benefit, any alien applying for admission to
25 the United States, but such parole of such alien shall not be

1 regarded as an admission of the alien. And when the purposes
2 of such parole shall, in the opinion of the Attorney
3 General" -- also known as the Homeland Security Secretary at this
4 point --

5 A Right.

6 Q -- "have been served, the alien shall forthwith return
7 or be returned to the custody from which he was paroled and,
8 thereafter, his case shall continue to be dealt with in the same
9 manner as that of any other applicant for admission to the United
10 States."

11 What type of situations, based on your understanding,
12 warrant a release from mandatory detention on parole?

13 A It's pretty straightforward. I can give you a couple
14 of clear examples on both sides. So, again, you read the
15 statute. There's actually three elements to it, and they're all
16 three very important. The first one, though, that sometimes
17 gets lost is case by case. That's literally what the framers
18 of the parole statute intended for that to be. So that's the
19 first thing.

20 The second thing, so let's take significant public benefit.
21 It would be, like, we want to bring somebody in that's going to
22 be a material witness in a, you know, significant, large-scale
23 criminal investigation. When I was the FBI Special Agent in
24 Charge of El Paso Division, I remember distinctly it was
25 extremely challenging to work with ICE to get authorization. In

1 fact, we had somebody that we wanted that was a witness living
2 in Mexico to come across to do just that. It was difficult.

3 There's a couple of aspects to this that also I think
4 sometimes get lost is it's also meant to be temporary. It's not
5 meant to be permanent. In fact, then there's an additional
6 responsibility to the entity asking for this individual to be
7 paroled in. There comes with it an inherent responsibility to
8 track and know where that individual is with respect to that.

9 The second part of it, the humanitarian need, is, you know,
10 someone may be in the need of acute medical intervention that's
11 not available in their homeland. But, again, those are supposed
12 to be determined on a case-by-case basis.

13 Q So we're going to do a little bit of a lightning round --

14 A Sure.

15 Q -- and kind of go with a yes or no here and then give
16 me some context afterwards.

17 A Yeah.

18 Q So we interviewed -- the committee interviewed nine
19 chief Border Patrol agents, the ones along the southwest border.
20 And we were told in their testimony that they were told to grant
21 parole to large groups when detention was over capacity.

22 Based on your understanding of the statute, is being over
23 detention capacity an appropriate reason to --

24 A No.

25 Q Okay. On the same interviews, the chief Border Patrol

1 agents told us and testified to this committee in transcribed
2 interviews that they were told to grant parole to large groups
3 based simply on demographics, country of origin, or family units.

4 Based on your understanding of the statute, are
5 demographics alone an appropriate reason to grant parole?

6 A No.

7 Q Okay. So, again, these are things that were told to
8 these chief Border Patrol agents under this administration under
9 Secretary Mayorkas.

10 So as far as you are aware, was Secretary Mayorkas ever
11 briefed on these consequences of mass parole?

12 A Absolutely. Keep in mind, Secretary Mayorkas used to
13 be the deputy secretary of DHS under the Obama administration.
14 He was the deputy to Secretary Jeh Johnson. At the time, I was
15 chief of the United States Border Patrol. So there is, without
16 any hesitancy from me, that this man knows this law and he knows
17 what he's doing is unlawfully.

18 Q He seems like a pretty intelligent attorney himself,
19 so --

20 A Great point, right.

21 Q I would hope that he would understand the law there.

22 A Yeah.

23 Q So he's also created -- Secretary Mayorkas has created
24 categorical parole programs making parole available to certain
25 demographics, as we discussed, and he prefers -- that **categoric**

1 parole for certain demographics that he prefers before those
2 people even arrive at the ports of entry.

3 And based on your understanding, are these programs an
4 appropriate use of discretionary parole?

5 A Absolutely not. And I can give you -- I know you want
6 to do a lightning, but I can give you a couple examples.

7 Q Please.

8 A So, you know, Operation Allies Welcome, so that was
9 really the first large scale. 73,000 Afghan evacuees in the wake
10 of the chaotic abandonment of Afghanistan. Rather than
11 relocating to a safe third country or avail himself of many more
12 options, again, he did this en masse use of parole.

13 The second thing was Uniting for Ukraine. Over 100,000
14 came. Again, en masse paroles. You said before, demographics
15 or your country of origin is not a case by case. It's not
16 authorized by law.

17 And then what we called the CHNV, Cuba, Haiti, Nicaragua,
18 and Venezuela. He systematically then started applying en masse
19 parole to those countries, and that was about 30 -- I believe
20 he authorized up to 30,000 per month. So in a 12-month period,
21 that would equate to 360,000 aliens that he would unlawfully use
22 parole; again, not applying the three-step process of
23 case-by-case basis, for significant public benefit, or urgent
24 humanitarian reason.

25 Q All right. I want to move on to expedited removal.

1 So under INA section 235(b)(1), immigration officials must
2 detain arriving aliens subject to expedited removal until they
3 are either removed or their asylum application is decided by an
4 immigration judge.

5 Are you familiar with that statute?

6 A Yes.

7 Q Based on your experience under Secretary Mayorkas, is
8 the U.S. Border Patrol effectively utilizing expedited removal?

9 A No. In fact, there's a recent report -- and I can't
10 remember where the report came -- that said that they're only
11 using expedited removal in 13 percent of the cases of which they
12 could. In fact, last week I believe it was, Secretary Mayorkas
13 admitted he's releasing approximately 85 percent of those coming
14 to the borders, whether they come to the POE or illegally in
15 between the POEs.

16 In December alone, they were averaging releasing between
17 5,000 to 6,000 aliens being released in the U.S. every day, and
18 that's just along the southwest border.

19 The former chief of the Border Patrol under congressional
20 testimony said that their law enforcement and national security
21 mission has effectively been transformed to that of one of a
22 processing enterprise. All of the data, the reports, everything
23 I'm learning from those that are on the front lines and those
24 that are leading those on the front lines is that the mandate
25 is clear, process -- apprehend, process, and release as fast as

1 humanly possible.

2 Q Okay. Let me move on to touch a little bit about the
3 push and pull factors. You're familiar with these terms?

4 A Yes.

5 Q Okay. And I know in your opening statement you
6 mentioned a lot of things that I would call pull factors. And
7 can you -- you mentioned about then-Candidate Biden for
8 President, his campaign stumps about offering healthcare to
9 illegal aliens or ending Title 42 and DACA.

10 Can you describe some of the pull factors that you see are
11 created under Secretary Mayorkas' Homeland Security Department
12 and some of the actions that he has done that you believe are
13 pull factors or contributing to pull factors?

14 A Yes. I think there are five elements that anyone
15 wanting to come to the United States want. They want to be able
16 to illegally enter the border and be released. They want to be
17 free from deportation. They want to be able to work in the United
18 States illegally, send money home, and bring family members here.

19 Under this administration, all five of those things are
20 happening. Those are the five incentives. And you notice one
21 thing that's not in there? Citizenship. Right now, those
22 coming to our country today, if you say, We're going to give you
23 these five things but you'll never have citizenship, they will
24 say, No problem. I'm good.

25 And that's exactly what's happening. That's -- the Biden

1 administration has unleashed what -- I call them incentives or
2 pull factors, right. Those are the five things they want, and
3 this administration has given them all five.

4 So who wouldn't come, right? And you've got to remember,
5 the overwhelming majority of those, this
6 administration -- Secretary Mayorkas knows they are economic
7 migrants. He knows for a fact that the overwhelming majority,
8 the data shows that they're economic migrants and they do not
9 qualify for valid asylum. Yet he is still refusing to enforce
10 the law. He's incentivizing by giving all five of those things.
11 And he's doing that by not enforcing the law. And then he opines
12 why -- he wonders why we've had the highest degree of illegal
13 immigration in our Nation's history, by the way, since we've been
14 keeping data since 1924.

15 Q Well, Secretary Mayorkas also made some statements
16 about push factors too. And one of the push factors he's put
17 out there as why the number of illegal immigrants are coming to
18 our southwest border is climate change.

19 Do you think climate change is driving illegal immigration
20 to our southwest border?

21 A You know, every time that question gets asked, I
22 really -- I have to try hard not to laugh out loud. It's absurd.
23 It's just patently absurd. And I think the majority of American
24 people, those that are intellectually honest, know that that's
25 an absurd statement.

1 And let me give you an example -- and I think this applies
2 to just about every one of the, quote, push factors -- is that
3 the moment that President Biden took over and Secretary Mayorkas
4 took over from this position, did the climate change? Where did
5 the climate change, right? If you look at the Northern Triangle
6 countries and the countries where the majority of illegal aliens
7 are coming from, I promise you the climate didn't change on the
8 first day that President Biden took oath of office.

9 But what he did was -- and Secretary Mayorkas assisted him
10 greatly -- was to dismantle every effective tool and authority
11 we had in place, and he systematically started to refuse to
12 enforce the law. And he sent a message to the entire world that
13 now is the time to come. That's what happened. So climate, no,
14 has nothing to do with any of the push factors.

15 Q And notwithstanding your views on climate change --

16 A Right.

17 Q -- because that's not why we're here today --

18 A Right.

19 Q -- but what was the first year that you worked in the
20 Federal Government in the border security space?

21 A 2000 -- I would say -- well, I would actually say
22 probably -- that's -- I would actually have to say I'd probably
23 have to go back to 2005 when I was in the FBI and I was supervising
24 an MS-13 Hispanic gang task force. That was really where I first
25 started learning about border security and the impact to our

1 countries.

2 Q Climate change, again, notwithstanding anyone's views
3 on climate change --

4 A Correct.

5 Q -- has been a topic of discussion in this town and the
6 country or globally for more than two decades.

7 A Correct.

8 Q During your time when you were working in the border
9 security space, even two decades ago when you first started in
10 that area, did anyone ever say that climate change is clearly
11 pushing illegal immigration? Because illegal immigration was
12 going on back then too.

13 A Right, right. So that's a great question. I've
14 actually never looked at it in that way before.

15 Q So it never occurred to you because it wasn't a topic
16 of discussion?

17 A Great point. No, I agree. In fact, I'll go back to
18 when I was chief of the United States Border Patrol under
19 then-Deputy Secretary Mayorkas never mentioned climate change,
20 never.

21 Q So Secretary Mayorkas did not care about climate change
22 when he was deputy secretary?

23 A Never mentioned it, never mentioned it.

24 Q He wasn't concerned about climate change for that -- the
25 current flux of illegal immigration, the countries from which

1 they were coming?

2 A I'm comfortable to say that, because the deputy
3 secretary, if he was concerned about something, he said it. It
4 was never mentioned, not a single meeting.

5 Q Well, it's very curious why all of a sudden that's become
6 a push factor now.

7 A And, again, I think your point is important.
8 Regardless where anybody stands on climate change, look at the
9 facts. So the day that President Biden took over, in the first
10 12 months where we had 1.9 million total nationwide encounters,
11 the most in our Nation's history, the climate changed in
12 12 months in these countries? It doesn't make sense. It's
13 absurd.

14 Q Okay. So I guess that's kind of one of the issues that
15 this Congress has pointed out consistently about Secretary
16 Mayorkas. It's about his truthfulness. And in your opening
17 statement, you mentioned -- you use a word that he's -- the term
18 "false testimony," I believe, multiple times and, again, with
19 the word "intentional."

20 So I want to ask you something about some of the statements
21 that Secretary Mayorkas has said. And given your expertise in
22 this arena, I want to hear your take. But to start, what does
23 it mean for you to have a secure southwest border?

24 A So I think that you have to go back to the law and the
25 definition, right. And so I think that the 2000 Secure Fence

1 Act really is the kind of defining statutory term. It's really
2 the first time -- it's the only statute that really defines what
3 a secure border is. And through that they define operational
4 control, right. And they defined operational control, the
5 Secretary shall, right, prevent the entry of all illegal aliens,
6 terrorists, contraband, et cetera. And so the 2000 Secure Fence
7 Act is very clear that is the litmus test.

8 Now, whether you think that is aspirational or not, whether
9 you think that's obtainable or not, as the commissioner, for
10 example, or the Secretary, your personal beliefs are irrelevant.
11 That's the law. And that's why, even under the Trump
12 administration, we've chosen our words very carefully. We've
13 said we achieved the most secure border we've ever had. Was it
14 100 percent secure? No, but we were trying.

15 Q Okay. And I guess I'll save my Democratic colleagues
16 this portion of their questions because I'm sure they'll ask.
17 Has any Cabinet or has any administration ever achieved
18 operational control under the Secure Fence Act?

19 A No.

20 Q Okay. But as you mentioned, it's aspirational. And
21 how many Secretaries have we had since the passage of the Secure
22 Fence Act?

23 A Several.

24 Q Several. I think we've already had about seven, right?

25 A Yep, that sounds right.

1 Q Not including the actings. We're not sure exactly how
2 to count them.

3 A Yeah, it's hard to add that up.

4 Q But during that time, did any of those
5 Secretaries -- and you were working in that field the whole
6 time -- have they ever claimed they had operational control?

7 A No. And nobody ever -- not only no, but no Secretary
8 did I ever hear chastise the 2000 Secure Fence Act as being
9 aspirational, as being unattainable, right. It was
10 aspirational for a reason. It came after 9/11, the worst
11 terrorist attack this country has ever seen against our homeland.
12 So, hell yeah, a lot was aspirational. Good. It needed to be,
13 because that should be our goal. Our goal should be to achieve
14 operational control as it's defined, meaning that not a single
15 illegal alien comes in, not a single drug comes in, not a single
16 terrorist comes in. Aspirational or not, they did a damn good
17 job. It should be aspirational, because that should be our goal
18 to protect this country.

19 Yet this Secretary, he views that -- because he sees it as
20 aspirational, he views that as a mere advisory opinion, right.
21 He can reformat. His definition -- and I'm paraphrasing. I
22 believe he said this under oath -- was that his definition of
23 a secure border is maximizing the limited resources he has to
24 the maximum benefit.

25 Q And I think his redefining of that term is an interesting

1 tact because he doesn't make laws.

2 A Correct.

3 Q But the other portion of this to us is, again, maybe to
4 other Secretaries, his predecessors, never complained about that
5 law. They just tried to do their best that they can to achieve
6 that law or effectuate that law. For him, you're -- the
7 difference is that he has breached our trust by testifying under
8 oath that he has satisfied that law when it's clear the evidence
9 has not?

10 A Absolute -- I completely agree. It's twofold, right.
11 One, he's -- I'll go a step further. It's not just
12 misinformation. He's lying. In my opinion, in my expert
13 opinion, he has lied to Congress and he's lied to the American
14 people. And then when he got caught in the lie, he tries to
15 rewrite the 2000 Secure Fence Act's definition of operational
16 control. Secretary doesn't have that authority, right. First
17 of all, he abandoned his oath to the American people by lying
18 to Congress and them, and then he's also abusing his authority
19 by rewriting congressional law.

20 I mean, during congressional testimony, when he was
21 asked -- and I still remember it. I think the first time it was
22 Representative Chip Roy. He had the 2000 Secure Fence Act blown
23 up on big sheets of cardboard, and he had the definition, and
24 he read the definition to Secretary Mayorkas, which said, You
25 shall prevent the entry of all illegal aliens. Secretary

1 Mayorkas quickly said, Yes, we have operational control. The
2 border is secure.

3 At that time, at that moment, he knew that hundreds and
4 hundreds of thousands of illegal aliens that we call known
5 got-aways had made their way -- evaded apprehension and made it
6 into the border. I mean, it's a blatant lie.

7 Q So we think that there is a breach of trust here to
8 Congress in official testimony. There's also been a breach of
9 trust in many other ways; one to, we believe, the morale of the
10 workforce at DHS. In particular, in 2021 in Del Rio Sector,
11 there was an alleged whipping of migrants from Border Patrol on
12 horseback.

13 Are you familiar with that news story or cycle?

14 A Unfortunately, I'm very familiar with that, yes.

15 Q So in the immediate aftermath of the accusations,
16 President Biden and Secretary Mayorkas, they implied that Border
17 Patrol agents had done something wrong. They said that they were
18 going to be punished, they were going to get reviewed. And then
19 later we found out -- the whole world knew -- that Secretary
20 Mayorkas had been told that the whipping action never happened
21 and it wasn't whipping. It was -- I guess some of the
22 journalistic photographic interpretation's there as well in
23 play.

24 But you were the commissioner of Customs and Border
25 Protection. What do you think was the effect on the morale of

1 the Border Patrol agents, not just the ones who are obviously
2 being accused of wrongdoing wrongfully, but also the entirety
3 of the Border Patrol?

4 A Just when I think morale couldn't go lower, it did
5 because of that incident. And I think it's very important to
6 highlight that The Heritage Foundation through a FOIA request
7 found out that about 2 hours before Secretary Mayorkas went to
8 the White House press briefing room and addressed the entire
9 Nation about this incident, it was clear that it was a lie. Yet
10 he went out in the White House press briefing room and continued
11 to pedal the lie and the false narrative that these agents had,
12 in fact, whipped the illegal aliens. And he knew it was a lie.

13 I've been there at the White House press briefing room.
14 I've given press conferences to the entire Nation. And with
15 that -- and I'm a pretty confident guy. But when you do that,
16 the enormity of that, when you're standing there in the White
17 House press briefing room, it's hard. And why? Because you
18 know that every word that you're saying is going out to the entire
19 United States of America.

20 With that comes an immense responsibility to be honest,
21 truthful, factual, accurate. Secretary Mayorkas violated every
22 one of those principles. He not only used his influence as the
23 Secretary of DHS but also the White House bully pulpit to
24 **perpetrate** a lie to the very men and women that he oversees.

25 So to say that it had a devastating impact to the morale

1 across the United States Border Patrol would be an
2 understatement. It's why the first time in history -- no other
3 Secretary, however many Secretaries we've had -- during a muster
4 when he was down on the border, there was a Border Patrol agent
5 that actually turned his back on the Secretary. That's never
6 happened in the history of the United States Border Patrol.

1 [10:24 a.m.]

2 BY MR. YI:

3 Q Well, likewise. The other week, there was a story about
4 three migrants who drowned in the Rio Grande. And they were
5 trying to cross near the Eagle Pass, Eagle Pass, Texas. And the
6 administration and DHS, they initially claimed that Texas
7 authorities refused to allow border patrol agents access to save
8 these migrants. And later it was confirmed that Texas
9 authorities were very cooperative, and that migrants had
10 actually drowned on the Mexican side of the river, right?

11 So just curious with again, why would Secretary Mayorkas
12 and his Department have an incentive to mislead the public on
13 that? Why would they spread that mis-information or
14 disinformation?

15 A Because it is clear they're trying to distract from
16 their own culpability and creating the worst border security
17 disaster in our lifetime. Our entire border is riddled with
18 lawlessness and chaos. And they're clearly trying to distract
19 from their own accountability with that.

20 And keep in mind -- so and I want to make very clear, any
21 human being that dies is one too many. But what I find so
22 hypocritical of this administration and specifically Secretary
23 Mayorkas mayor -- not only did he allow that lie to
24 continue -- and where is he? If I was the Secretary, I would
25 be out right now in the White House bullet point. I would be

1 correcting that, right. I would be making sure the American
2 people knew the truth. But guess also what he doesn't say in
3 the past 36 months? While he's trying to blame Texas for this
4 one single death -- and, again, one is too many -- in the past
5 36 months, CBP, they've encountered almost 2,000 dead migrants
6 at the border. Have you ever heard Secretary Mayorkas talk about
7 that? I haven't.

8 And that doesn't include the dead migrants in Mexico that
9 we'll never know about, or the dead migrants that died in the
10 Garing gap making the journey. Because Secretary Mayorkas'
11 policies told them, if you get to our border, it's worth it. Risk
12 everything. Risk your life. Risk your safety. Risk your
13 well-being. Because my policies promise you that if you get to
14 our border, you're going to be released.

15 Q That's right.

16 A But you never hear him mention or take an accountability
17 for that.

18 Q So I guess the way that you create these **pool** factors
19 can impact people's lives. The language one uses can impact
20 people's lives in many different ways as we've discussed. Have
21 you ever heard of Secretary Mayorkas referring to all of those
22 coming to the border as asylees?

23 A Yes.

24 Q Are they asylees?

25 A No. This is another very important question that shows

1 his intentional efforts to violate the law. Again, I'll go back.
2 This is a man who served, you know, in the Department of Justice
3 for a very long time. This is a man that served as the deputy
4 Secretary of DHS.

5 He knows that the overwhelming majority of migrants coming
6 to our borders are economic migrants, meaning they do not qualify
7 for a asylum, meaning they are not asylum seekers. They are
8 economic migrants.

9 And the data, year after year, decade after decade shows
10 that's the case. Yet, he intentionally creates policies that
11 allows and provides those incentives for people that he knows
12 are not asylum seekers, yet, he still refers to them as asylum
13 seekers, knowing full well that the overwhelming majority are
14 economic migrants.

15 Q And at the same time, we've heard Secretary Mayorkas say
16 multiple -- on multiple occasions that all apprehended aliens
17 that have no legal basis to remain in the United States are
18 swiftly removed. Based on your knowledge of border and your
19 interior enforcement, is that true?

20 A Absolutely false. In fact, we'll go a step further.
21 His new terminology, I think he's come up the last past year is
22 everyone coming across is put in enforcement removal
23 proceedings. Right? Again, this is an intentional effort by
24 the Secretary to mislead the American people. It sounds really
25 good, right? When you say enforcement removal proceedings.

1 Right? You think, oh, wait, what we are actually enforcing the
2 law.

3 They're actually being removed. That's a lie. He's
4 releasing them. And we know, we know. In fact, I have the data
5 that says that when -- and this is own reporting that shows that
6 when illegal aliens who are detained, 97 percent of them are
7 removed when they're detained.

8 And when they're not detained, 82 percent end up remaining
9 in the United States. So this Secretary knows, right, that hes
10 misleading the American people, he releasing them in the United
11 States knowing that 82 percent of them will never be released.
12 And he also knows that they're economic migrants.

13 Q Okay. We have about 9 minutes left in this round. And
14 I know our subsequent round will be fairly short because it is
15 about -- I think we agreed to 15 minutes and 30 minutes. So I
16 am going to kind of just leave this part open to you.

17 A Sure.

18 Q And then we'll come back to some other things that I
19 would like to discuss in this second round. But is there
20 anything else? I mean, you shared a lot so far, but is there
21 anything else in your expertise and in your professional
22 background as the Commissioner of CBP and all of your decades
23 called of service in law enforcement and border security, is
24 there anything else that you think that the committee needs to
25 know, for the record, in regards to Secretary Mayorkas' handling

1 of the border?

2 A Yes, so a couple things, and I know the Civil Rules of
3 Procedure don't apply, but I would I am going to go ahead and
4 make a formal request that the Heritage Foundation, they provided
5 a special report port called the case for impeachment of
6 Alejandro Nicolas Mayorkas, Secretary Mayorkas, Secretary of
7 Homeland Security. I just request that this would be entered
8 as part of the record. And I would highly suggest that both
9 Republicans and Democrats read this document. And I want to read
10 real quick just a quick, from page 5 of this document. Because
11 there is a lot of question about what impeachment is, right? And
12 so page 5 of the document. I'll just read briefly.

13 The obvious question is whether the phrase high crimes and
14 misdemeanors within the meaning of the Constitution is limited
15 to criminal offenses. According to the official legal opinions
16 of the United States Department of Justice Office of Legal
17 Counsel, the answer to that question is resounding no. The
18 constitutional phrase is a term of art that must be construed,
19 quote, "not according to modern usage, but according to what the
20 Framers meant when they adopted it. From the English
21 experience, the Framers understood that impeachable misconduct
22 is not defined or constrained by, quote, "common law or statutory
23 derelictions or crimes. This view of the Justice Department has
24 been confirmed by the House of Representatives in the impeachment
25 of three presidents: President Richard Nixon, Bill Clinton, and

1 Donald Trump."

2 Sorry, I just want to highlight that. And then the other
3 thing that I would say is that -- and that's where I started off
4 in my statement -- is that what open border advocates, what this
5 administration, what Secretary Mayorkas has tried to do is lie
6 to the American people and provide them with a false narrative
7 that what's happening in our borders is about immigration. It's
8 not. It's about illegal immigration. Those are two separate
9 things. But what this administration has tried to do, what
10 Secretary Mayorkas has tried to do is erase the term "illegal."
11 You can see **je** doesn't apply the law. The law, when it comes
12 to illegal immigration is very clear.

13 The mandates are very clear. He refuses to enforce the law.
14 He refuses to apply any strategy of deterrence or consequences
15 to those that are illegally entering. I want to make it very
16 clear, I support legal immigration, but these are two separate
17 things. And one other thing I want to make very clear is that
18 then also push the false narrative, but illegal immigration has
19 no downside. There is no negative impact to our country with
20 respect to illegal immigration. It's a lie. Illegal
21 immigration. And especially when you have millions. In
22 December, 300 and -- I think it's going to be close to 340,000
23 total nationwide encounters. There's Jeh Johnson, the former
24 Secretary under a Democrat-led White House, said that a thousand
25 a day is a bad day.

1 A couple thousand over that, our system is overwhelmed. We
2 are so far past that right now. And so what happens is, when
3 you have the throw of illegal immigration, when is a violation
4 of rule of law, it's a violation of INA, up to a year in prison,
5 and a thousand-dollar fine, there are zero consequences.

6 If you illegally enter our country, nothing happens. The
7 vast majority are released in the United States. In fact,
8 they're rewarded after they're released. And so what happens
9 is that the limited resources that we have on the front lines
10 of our nations, they're pulled off the front lines. They're
11 pulled away from the law enforcement and the national security
12 mission. They're relegated to really becoming a Federal travel
13 agency to facilitate the catch and release policies of Secretary
14 Mayorkas.

15 And when that happens, when they're no longer there, the
16 border goes wide open, un-patrolled, un-manned. Over the past
17 3 years, we have literally handed large areas of operational
18 control for the cartels for them to exploit. And what happens
19 when they do that? Drugs, criminals, and national security
20 threats are pouring in every single day.

21 Almost 1.8 million known gotaways. Untold numbers of
22 murderers, rapists, pedophiles, aggravated felons, and gang
23 members are entering our country every single day. Untold
24 numbers of national security threats. It's not a matter in and
25 when a national security threat enters our country, they're

1 already here.

2 I mean, I can give you an example. We actually have an
3 organization in the United States called AVIAC, American
4 Citizens Who Are Victims of Illegal Aliens. We actually have
5 an organization in the country that came together because their
6 family members died at the hand of illegal aliens.

7 So I think it is important to understand that we are talking
8 about illegal immigration, not legal immigration. I don't know
9 of a single colleague of mine that is for strong border security
10 that is isn't for stronger legal immigration. But this is about
11 illegal immigration.

12 And illegal immigration is not a victimless crime. It
13 drives our border to be less secure and allows the cartels to
14 exploit that to push drugs, criminals, and national security
15 threats into our country.

16 Q Well, thank you for sharing your expertise. And we
17 really think this is particularly interesting because you have
18 a little background as well. And you mentioned kind of the
19 constitutional background of what high crimes and misdemeanors
20 may mean.

21 And it will be interesting to know, actually, in this
22 commentary on the Constitution of the United States, Justice
23 Story, Justice Story who was nominated by President James
24 Madison, the Founder, or the father of the Constitution rather,
25 he once wrote, about impeachment. That the offenses to which



1 the power of impeachment has been and is ordinarily applied as
2 a remedy are of a political character.

3 Not that crimes are a strictly legal character fall within
4 the scope of the power. For as we shall presently see, treason,
5 bribery, and other high crimes and misdemeanors are expressly
6 within it, but that it has more enlarged operation. And reaches
7 what our aptly termed political offenses growing out of personal
8 misconduct or gross neglect or usurpation or habitual disregard
9 of the public interest in the discharge of the duties of political
10 office." I think what's really interesting because today what
11 we discussed, though, are actually violations, willful refusals
12 to follow the law.

13 We talked about multiple different portions of the INA.
14 And then on top of that there is other parts where he is
15 completely -- has conducted misconduct or habitual disregard of
16 public interest whether by lie or misrepresentations or all the
17 things he just mentioned, all the national security concerns that
18 we have. So in that sense, there is an abuse of power here.

19 And, you know, interestingly enough, I guess in the Trump
20 impeachment, even though what the narrow view of high crimes and
21 misdemeanors, the President has not been convicted of any crimes
22 that he was impeached under two articles. One of which was abuse
23 of power, and the second is obstruction of Congress, which is
24 a novel argument there.

25 But this has been very interesting, and I really appreciate

1 your time. And we are going to stop right here. The time is
2 10:37 a.m., and we'll go off the record?

3 [Discussion off the record.]

4 Ms. Marticorena. We can go on the record at 10:49. Mr.
5 Morgan, we wanted to ask you a few questions about topics you
6 discussed in the last hour. So to start, there was some
7 discussion about parole programs and the legality of those
8 programs. During the Trump administration --

9 Mr. Howell. Objection. We are here to talk today about
10 the Biden administration. Your question says during the Trump
11 administration.

12 Ms. Marticorena. Can I finish my question?

13 Mr. Howell. Sure, but I'm curious as to how you get the
14 question that's clearly at the end of the Trump administration,
15 but go ahead.

16 Ms. Marticorena. During the Trump administration, the
17 Cuban Family Reunification Parole Program exists. Isn't that
18 correct.

19 Mr. Howell. Objection. This is for the proceedings of
20 impeachment against Secretary Mayorkas. You are asking about
21 the Trump administration.

22 Ms. Marticorena. Understood. The point of the question
23 or why we are asking it is this is one of the programs that that
24 Mr. Morgan defined as illegal under the Secretary Mayorkas, under
25 the Biden administration. It existed previously. This is a

1 fact. We were simply asking him to comment on that.

2 Mr. Howell. Objection. You were asking about the Trump
3 administration. These are proceedings for the impeachment of
4 Alejandro Mayorkas.

5 BY MS. MARTICORENA:

6 Q Okay. Let me rephrase the question. Mr. Morgan, in
7 your view, is the Cuban Family Reunification Parole Program
8 illegal?

9 A You know, I'm not familiar with the details of that
10 program.

11 Q It is a program that allows people to apply for parole
12 based on a demographic. And as with other parole programs under
13 this administration, cases are considered on a case-by-case
14 basis. Is your view that this program that allows people to
15 apply based on demographics illegal?

16 Mr. Howell. Objection. You just asked him the same
17 question twice in a row.

18 Mr. Morgan. Yeah, I'm not familiar with the specifics of
19 that program. I'd have to get spun up on the details before I
20 can provide an answer to that.

21 Ms. Marticoarena. So just for clarification, you are
22 comfortable commenting on uniting for Ukraine, which allows
23 people to apply for parole due to demographics, and saying that
24 program should be illegal?

25 Mr. Howell. Objection. You're asking about his feelings

1 right now. We're here to talk about the impeachment of Secretary
2 Mayorkas?

3 Ms. Marticoarena. He just commented on the last hour on
4 uniting for Ukraine. I'm asking him about his testimony.

5 Mr. Howell. You're asking him -- you said -- can you
6 repeat the question, please? I believe "feeling" was used.

7 BY MS. MARTICORENA:

8 Q Okay. I will rephrase. Do you believe the United for
9 Ukraine Program, which allows people to apply for parole based
10 on a demographic, and then their cases are considered on a
11 case-by-case basis, do you believe that program is illegal?

12 A So my understanding of the program is based purely on
13 demographics. I'm unaware of any follow-on case by case aspect
14 of that program. So based on what I know the program, I think
15 it's an unlawful use of the parole statute.

16 Q And you have not had direct involvement in the Uniting
17 for Ukraine Program. Is that correct?

18 A That's correct.

19 Q And you have not served in this administration. Is that
20 correct?

21 A That's correct.

22 Q Going to the Haitian Family Reunification Parole
23 Program, which again allows people to apply for parole based on
24 a demographic on a case-by-case basis, similar to the Uniting
25 for Ukraine Program, do you believe that program is unlawful?

1 Mr. Howell. Just a moment.

2 Mr. Morgan. So if the program follows the statutory
3 requirements, and it's done on a case-by-case basis for a
4 significant public benefit parole or humanitarian need, then
5 that would be a lawful application of the statute.

6 Ms. Marticorena. Okay. So if uniting for Ukraine is done
7 on a case-by-case basis for significant public benefit, would
8 your belief or view be that the program could be lawful?

9 Mr. Howell. That's a hypothetical right there. You're
10 asking for his belief based on a hypothetical future occurrence.

11 Ms. Marticorena. No, I am asking based on how the program
12 is defined by this administration that they say that each case
13 is considered on a case-by-case basis --

14 Mr. Howell. Right.

15 Ms. Marticorena. -- for a significant public benefit?

16 Mr. Howell. So you're asking the witness if the opposite
17 of what is happening were to be happening, would he review it
18 in that instance to be lawful? That's a complex question right
19 there.

20 Ms. Marticorena. No, I'm saying that is the
21 administration's description of the program.

22 Mr. Howell. Right, which is opposite of reality, yeah.

23 Mr. Morgan. So my understanding of the way that that
24 program is being implemented is in violation of the parole
25 statute. My understanding of the way they're implementing the

1 program is not on a case-by-case basis for a significant public
2 benefit parole or humanitarian need. And that's my
3 understanding.

4 BY MS. MARTICORENA:

5 Q And what direct knowledge of the program do you have?

6 A I've seen what they're actually doing, and I've seen the
7 data of those that they're paroling in. It is impossible. It
8 is impossible on -- just on a Cuba, Venezuelan, Nicaragua,
9 Haitian program -- 30,000. It's impossible to do a case by case,
10 thorough vetting prior to them being released in the United
11 States, which is a requirement of the statute.

12 Q And have you ever worked for you USCIS?

13 A I have not worked for USCIS.

14 Q So are --

15 A I have worked with them. And I -- Joe Edlow, the former
16 director of the USCIS is a gentleman and colleague that I am in
17 constant and regular contact with and seek his direct guidance
18 on these types of statutes.

19 Q Understood. So I'd like to read you a quote from a July
20 12th, 2019, hearing which --

21 Mr. Howell. Objection. We are here to talk about the
22 impeachment of Mayorkas. That 2019 letter is scoped to 2020 and
23 after.

24 Ms. Marticorena. I still plan to read the quote and ask
25 a question.

1 Mr. Howell. Go ahead.

2 BY MS. MARTICORENA:

3 Q So the 2019 hearing with Mr. Thomas Coleman, the former
4 acting director of ICE at the time. He said, quote, "ICE has
5 never had enough detention bench." End of quote.

6 And I am going to read a quote from testimony you gave to
7 the Senate in July 30th, 2019. Senator Carper asked you, "Is
8 it reasonable to think that ICE could detain every undocumented
9 immigrant through this country, through their removal
10 proceedings. Are there other programs like alternatives to
11 detention that are less costly and could be expanded for
12 noncriminal immigrants?" You replied, and I quote, "So I do not
13 think it is reasonable to say that every single individual that
14 is here illegally, would ICE be able to detain." No, I do not
15 think that is realistic." End quote.

16 So my question is, as you just testified in the last hour,
17 that there was no catch and release under the Trump
18 administration. Your testimony from the time says there was not
19 space to detain everyone. Can you please clarify your comments?

20 A I can answer that. Let me answer part of it. I want
21 to clarify. I did not say that there was never catch and release
22 under the Trump administration. What I said is our network of
23 tools, authorities, and policies effectively ended catch and
24 release by February of 2020. But --

25 Mr. Howell. Yeah, go ahead. I was just going to point out

1 that obviously that question was widely out of scope. And so
2 to the extent you wish to answer, please go ahead. But let's
3 agree to the terms that Mr. Morgan has volunteered to come in
4 voluntarily and not exceed the scope. We just spent a couple
5 of minutes of everyone's time reading something that was clearly
6 out of scope.

7 Mr. Morgan. Yeah, you know, could you read my answer,
8 though, to the 2019 deposition, or that hearing, please.

9 BY MS. MARTICORENA:

10 Q Sure.

11 A Please.

12 Q So you said, I quote, "So I do not think it is reasonable
13 to say that every single individual that is here illegally would
14 ICE be able to detain? No, I do not think that is realistic."

15 A Okay. So actually I'll answer that. To the best of my
16 recollection, because that was, what, almost 5 years ago, right?
17 That's why I asked you for you to reread it to me. So to detain
18 everyone here illegally, that's just not those coming across.
19 That's everyone that is here in a country illegally.

20 So there's millions and millions of individuals that are
21 here illegally. So for us to think that we can detain millions
22 and millions at the same time, no. That's not realistic. But
23 that's not what's happening right now under the Biden
24 administration at the direction of Secretary Mayorkas.

25 And the past 3 years, they have through congressional

1 language at Secretary Mayorkas' request, he has consistently
2 year after year requested less funding for detention. He has
3 reduced the detention beds available.

4 When I was acting ICE director for a short period of time,
5 we had 55,000 detention beds, I believe. That number now is
6 around 30,000. And even the detention beds that are available,
7 Secretary Mayorkas is not fully utilize them. There are
8 actually open detention beds that taxpayers are funding for that
9 Secretary Mayorkas is not using.

10 So you can't actually actively create a crisis, and then
11 say, hey, it's not our fault. And so that's actually what's
12 happening right now. And I'll go back -- and part of that again,
13 I'll go back to that -- when those that are entering illegally
14 now, that's what we have to do. We have to stop the bleeding
15 now.

16 And DHS, Secretary Mayorkas own DHS says that when you
17 detain individuals that have illegally entered, not everyone is
18 here illegally, but when you detain those that are currently
19 illegally entering now, that they have removed 97 percent of the
20 time.

21 And when you do not, when you release them, whether it's
22 ATD or otherwise, 82 percent do not get removed because they flee
23 apprehension.

24 Q Okay. I would now like to read another quote. I will
25 ask you at the end if you would like to answer the question.

1 A Sure.

2 Q Quote, "Families are coming to our border now in
3 addition to push factors. They know that the Department of
4 Homeland Security must release them quickly generally within 20
5 days, and that they will be allowed to stay in the United States
6 indefinitely while awaiting inevitably protracted immigration
7 court proceedings.

8 Along with important push factors, which include high
9 levels of insecurity, limited economic opportunity, and weak
10 governance in many parts of Central America, this perception
11 about our immigration system incentivizes migrants to put their
12 lives in the hands of smugglers and make the dangerous north to
13 our Southwest border.

14 We see the cost of these pull and push factors every day,
15 and profits delivered by Transnational Criminal Organizations,
16 and the lives lost along the journey, and then the flight of
17 generations of youth from countries of the Northern Triangle."
18 That was a quote from your testimony in the Senate Committee on
19 Homeland Security Government Affairs on July 30th, 2019.

20 Is it your belief that these push and pull factors, as you
21 called them, no longer exist today?

22 A No, I think everything I said in there is accurate. But
23 what's important there is that the floor settlement
24 agreement -- again, what I said earlier is the greatest, the
25 greatest pull factor, right, are those create an incentive for

1 migrants to come to the country illegally.

2 And what I said in that statement was with respect to
3 families, which was a direct result of a horrific lower court
4 judicial activist decision with respect to families. And that
5 says that families can only be detained for 20 days. That's it.

6 Well, it was a congressional testimony over and over again
7 from career experts that said, there's no way to get through the
8 immigration proceedings within 20 days. So Judge G knew
9 essentially that what she was doing was mandating the Federal
10 Government to release families that illegally entered the
11 country.

12 And that in part is what caused the crisis level numbers
13 of families and unexpected minors to come to our borders
14 illegally because he they knew they were going released. Okay.
15 And so what's important, that is the pull factor. That is a huge
16 part of catch and release is that because of for settlement
17 agreement that both said unaccompanied minors and families, even
18 if they come to our border illegally in violation of the law,
19 are going to be released into the interior of the country.

20 And so what we saw was we had to close down that incentive.
21 We had to end catch and release. And that is why we look to the
22 law and implemented the migrant protection protocol to close that
23 loophole so we are no longer releasing families and unaccompanied
24 minors in the United States. And by February of 2020, we had
25 reduced illegal flow of unaccompanied minors and families by

1 85 percent, because we had taken away that incentive that I
2 mentioned in 2019.

3 And the other part of that quote that you read, talking about
4 the push factors, right? Some of those still are there. But
5 here's what's important, and here's what's lost to the American
6 people. And here is where Secretary Mayorkas is lying to the
7 American people. Because the omission of the material fact is
8 the same thing as a lie.

9 And in my statement, those things that I've talked about
10 are not valid asylum claims, right? The valid asylum, you
11 can't -- it's not valid if you're just fleeing general violence
12 in your home country. That's not a valid asylum claim.

13 Economic conditions are not a valid asylum claim. We never
14 talk about that. Secretary Mayorkas lied to the American people
15 again and again because he's not honest. Those conditions
16 existed. They still exist in many countries throughout the
17 United States.

18 You could say the same thing about Washington, D.C.,
19 Chicago, and Los Angeles about general violence that's going.
20 Those are not a valid asylum claim. The valid asylum claim is
21 that you specifically, personally are the victim of
22 state-sponsored persecution because of your involvement in the
23 protected class.

24 General violence from your home country or economic
25 downturn is not a valid asylum claim, and Secretary Mayorkas

1 knows it. And he knows the overwhelming majority of those coming
2 are economic migrants and do not qualify for asylum, but yet he's
3 reinstated catch and release, and that is why they're coming.

4 Q I'd like to change tracks a little bit. Can you please
5 discuss how -- when you first were -- when the possibility of
6 a transcribed interview was first raised, do you know how you
7 prepared for this interview?

8 Mr. Howell. Objection. We're not going to get into his
9 preparation for his interview. Attorney-client privilege is a
10 very, you know, highly respected privilege, and we don't want
11 to get into his preparation or discussions he and I may have had.

12 Ms. Marticorena. Outside your preparations with your
13 lawyer, can you talk about how you prepared for this interview?

14 Mr. Howell. We're here today to talk about impeachment of
15 Secretary Mayorkas. You're asking how he prepared for this
16 interview. That's wildly out of scope, just like the previous
17 questions. Can we just agree to what we already agreed to and
18 see that through?

19 Ms. Marticorena. So can you answer if you have discussed
20 this interview with anyone other than your lawyer?

21 Mr. Howell. Again, wildly out of scope. We stay -- we
22 agreed to come here voluntarily -- everyone here is very, very
23 busy -- to talk about the impeachment of Alejandro Mayorkas.
24 You're asking Mark Morgan how he prepared to meet with you today
25 and not talking about impeachment of Secretary Mayorkas. Let's

1 stay on task.

2 Ms. Marticorena. So just to be clear, you are refusing to
3 answer that question?

4 Mr. Howell. I am advising my client to obey by the rules
5 that you already agreed to. And I'm asking you to stay within
6 the parameters of our agreement.

7 Ms. Marticorena. Mr. Morgan, can you please share with the
8 committee whether you have been involved in any campaign activity
9 since you left the Federal Government?

10 Mr. Howell. Widely out of scope. Now this is becoming a
11 badgering series of questions. We're here to talk about the
12 impeachment of Alejandro Mayorkas.

13 Ms. Marticorena. I am asking questions that inform our
14 understanding of his background and his views for his testimony
15 he has been giving here today.

16 Mr. Howell. You're asking about political campaigns here
17 in the Ford Office Building of the House of Representatives.
18 You're asking about political campaigns.

19 Ms. Marticorena. I'm asking if he has been involved in any
20 campaign-related activity for any candidate since he left
21 office.

22 Mr. Howell. And I'm asking you to obey your agreement, just
23 instilled in the letter that you sent over, and we agreed to.
24 If you you'd like to go off record and send another letter, we
25 can discuss the parameters of new testimony.

1 But today we're here in the midst of a historic border crisis
2 to talk about the impeachment of Alejandro Mayorkas, not about
3 political campaigns. Put the politics aside. Let's talk about
4 Alejandro Mayorkas?

5 Ms. Marticorena. So just for the record, you are advising
6 your client not to comment on any other activities that have
7 happened that he has been involved with since Secretary Mayorkas
8 became the Secretary of DHS?

9 Mr. Howell. For the record, and let me be abundantly clear,
10 if I have not already, I am advising my client, and you at this
11 point, to stick to the agreement that we already arrived at, which
12 is clearly delineated in the invitation you sent to Mark Morgan.

13 Ms. Marticorena. I did not sent that invitation, just to
14 be clear.

15 Mr. Howell. Well, we're here under the auspices of that
16 invitation from the Committee on Homeland Security.

17 Mr. Yi. For clarification, the invitation was sent by
18 Chairman Green to whom the committee reports. So the committee
19 did send the invitation. It is Chairman Green's work. I do want
20 to clarify that Briena did not send the invitation.

21 Mr. Howell. Okay. Well, if we're here under invitation,
22 if this is an authorized person to take testimony, then perhaps
23 we should stop this interview.

24 Ms. Marticorena. I have more questions.

25 Mr. Howell. Are you authorized to take his testimony?

1 Ms. Marticorena. I am authorized to be here and ask
2 questions.

3 Mr. Howell. Well, we're here under the invitation. You
4 just told me you did not send the invitation. If we're in some
5 rogue interview, I would like to know.

6 Ms. Marticorena. We are not in a rogue interview. I am
7 clarifying that I had nothing to do with writing a letter or
8 sending invitation. Transcribed interviews involve both the
9 Democratic and Republican staff.

10 Mr. Howell. So you're saying you are not governed by the
11 letter that we're here under?

12 Ms. Marticorena. No, I'm not saying that at all. I am
13 simply asking questions, and if you refuse to answer them, we're
14 noting that for the record.

15 Mr. Howell. Note away.

16 BY MS. MARTICORENA:

17 Q Okay. All right. So I'd like to read a few comments
18 you made on the April 19th hearing for the Senate Committee on
19 Homeland Security and Government Affairs. If you do not wish
20 to answer a question afterwards, please tell us you do not wish
21 to answer the question.

22 First, quote, "Unequivocally, we need more technology. We
23 need more technology at the ports. We need more technology in
24 between the ports. Absolutely."

25 Second quote, "The technology that we need, there is a whole

1 list of technology we need. We need fixed and mobile
2 surveillance. We need better surveillance. We need updated
3 surveillance. We need a capability to have that surveillance
4 be interconnected from sector to sector.

5 The list goes on and on. You can use more drones. All this
6 stuff that has been talked about, right, all that technology is
7 absolutely needed. Hands down at the ports and in between the
8 ports."

9 Next quote, "You still need some barrier equipment not sea
10 to shining sea. There is not an expert on the border who will
11 tell you that this is what you need. You need more personnel."
12 End quote.

13 The next quote is, "We need technology and a lot of it. We
14 need personnel where it makes sense. It makes sense in between
15 the ports and at the ports." And then last quote, "We must
16 continue to invest in border security, including additional
17 infrastructure, technology, and personnel where it makes sense?"

18 Is it still your view today that more personnel and more
19 technology is helpful for border security?

20 A Yes, absolutely, 100 percent. Every one of those
21 quotes you read to me were true and accurate then, and they remain
22 true and accurate now. But here's what's very important.

23 It's not a one or the other proposition. Right. What we
24 utilize -- and here's what's frustrating for me, and I appreciate
25 legal counsel here, whenever you do -- I've given multiple

1 congressional hearings, I've have done multiple op-eds, I have
2 done thousands of interviews, and when you pluck one statement
3 out of, you know, a four-hour hearing, you lose a lot of context.
4 Because I'm almost sure -- and I'd have to read the
5 transcript -- but in that I went on to say, though, and I talked
6 about multi-layered strategy.

7 A multi-layered strategy that actually really began under
8 the Clinton administration in full, and has being used by the
9 United States Border Patrol ever since. And the multi-layer
10 strategy is infrastructure, technology, and personnel.
11 Absolutely hands down.

12 Anywhere along our southern border or northern border or
13 coastal border where we can lay down that multi-layer strategy
14 of infrastructure, technology, and personnel, every single of
15 major success improves. And that's absolutely true then, and
16 it is absolutely true now.

17 But here's the issue. It is not one or the other. It
18 doesn't mean that if you have all the technology, but if you have
19 weak, ambiguous policies that acts as incentives, and beacon of
20 light for the entire world to come, that technology means
21 nothing. That technology will just help you better observe as
22 you catch and release. And that's what we have under Secretary
23 Mayorkas.

24 Not only that, on day one, this Secretary has said again
25 and again in congressional testimony, in public on the Sunday

1 talk show, that that multi-layer strategy that you quoted that
2 I said multiple times in congressional hearings, which, oh, by
3 the way, I was not challenged then. But every single word from
4 Secretary Mayorkas since then has been to dismantle that tried
5 and true proven multi-layered strategy. He said again and again
6 that walls are ineffective. That we don't need walls. It's a
7 lie.

8 There is not a single Border Patrol agent that says that
9 walls are not a part of the multi-layered strategy of
10 infrastructure, technology, and personnel. I've also said in
11 congressional testimony and otherwise, the U.S. Border Patrol
12 agents, if you had to choose between like an access road or a
13 physical wall, a lot of them would choose that access road. But
14 I also said if you give the complete context under the Trump
15 administration, they didn't have to when I was Commissioner
16 because we gave all of that to them. That strategy included all
17 of that.

18 We didn't pick and choose elements of that proven
19 multi-layered strategy of infrastructure, technology, and
20 personnel. But at the end of the day, I've also said since then,
21 if you went into other congressional testimony, the thousands
22 of media interviews that I have done, what I have also said is
23 you can put a hundred thousand Border Patrol agents on the border,
24 but if your policies force their agents to catch and release,
25 you will not have security, you will just incentivize more

1 illegal immigration, which is exactly what's going on under
2 Secretary Mayorkas.

3 So you could have a wall from sea to shining sea, even though
4 it's not needed, but you could have that. But if you open up
5 the gates of the wall and allow illegal aliens to come in, it's
6 worthless. If you continue to release illegal aliens, all the
7 infrastructure that you have, all the technology is worthless.
8 You could have been the best fixed and mobile technology out
9 there. You could see illegal aliens coming for 20 miles. But
10 when they get to the border, if you release them into the United
11 States, that technology is useless.

12 Q So, Mr. Morgan, I am now going to read from a transcript
13 from a hearing from the Senate Committee on Homeland Security
14 and Government Affairs on November 30th, 2016. Again, if you
15 would like to not answer the question, you are welcome to tell
16 us that.

17 Mr. Howell. Would you be able to provide us with these
18 quotes? We're taking your word for them as you read from your
19 MacBook, but you're introduce a series of pieces of evidence.
20 So we have no way to validate these quotes to look at them in
21 their fuller context.

22 Ms. Marticorena. I would be happy to provide a copy of the
23 transcript. Can you pass these two down? So for the record,
24 this is Document 1, exhibit 1. For this hearing, I just handed
25 you a few pages from -- can you verify that you testified at the

1 Senate?

2 Mr. Morgan. I don't.

3 Mr. Howell. Objection. Sorry, Mark. But this is 2000,
4 what year, 16? This is a record for this interview as being out
5 of scope. We're 4 years now out of scope. So I will be
6 instructing the witness to remain in scope for the interview.

7 Ms. Marticorena. Understood. I plan to continue my
8 question. And if he doesn't wish to answer, he is welcome to
9 say that. Okay.

10 I'd like to create from the hearing transcript, which is
11 page 14. On page 14, you testified, "First of all, I think
12 comprehensive immigration form is definitely needed, and we
13 fully support that. You just alluded to a couple of examples
14 of that.

15 So I think that is one thing that we can do as part of CIR
16 to take a look at those policies where it makes sense and try
17 to have good facilitated discussions." To the extent that you
18 are aware, since you made those comments in 2016, has Congress
19 passed comprehensive immigration reform?

20 Mr. Howell. You're asking him about whether Congress
21 passed comprehensive immigration reform. We're here at a
22 transcribed interview for the impeachment of Alejandro Mayorkas.

23 Mark, perhaps if you wish to discuss the topic at hand, we
24 can help counsel here understand why Mayorkas needs to be
25 impeached?

1 Mr. Morgan. Yeah, I mean, I'm still wondering when you're
2 going to ask me a question about Secretary Mayorkas and his
3 unlawful use of many of his authorities, his unwillingness to
4 enforce the law, and his direct actions that led to the worst
5 border security crisis in our lifetime.

6 What I will say is I really do believe that I would need
7 to read the entirety of my transcript. That is now, what, almost
8 8 years old? I would have to review that entire testimony to
9 refresh my recollection to be able to provide context to what
10 I said and, quite frankly, what else was said in there as well.

11 What I will say, though, is again within the scope is yes,
12 H.R. 2, the Border Security Act, the strongest piece of border
13 security legislation that's ever been passed in any chamber in
14 the United States Congress, in my opinion, in the history of our
15 country was passed in the House of Representatives. And it went
16 over to the Senate side where the Democrats have sat on it refused
17 to push it forward.

18 So there has been a substantial piece of border security
19 legislation that's been passed that would force Secretary
20 Mayorkas to actually end his abuses of authority and make him
21 actually uphold his oath to not only his position as Secretary,
22 but the Constitution of the United States.

23 It would force the Secretary to stop unlawful use of mass
24 parole; stop force -- end catch and release; stop -- at least
25 stop the bleeding of the lawlessness, chaos at our border. So

1 yes, a piece of border security legislation has been passed?

2 Mr. Howell. I also note that the evidence or that the
3 transcripts you provided to the witness is incomplete. I'm
4 looking at a cover page, a table of contents, and pages 13, 14,
5 and nothing else. I don't know if Chairman Green's staff has
6 any rules for the introduction of these types of exhibits, but
7 there is no way that we can speak to --

8 Mr. Morgan. And you know what, I'm comfortable adding one
9 more thing too. So remember, I was fairly new as chief of the
10 United States Border Patrol, and the use the comprehensive
11 immigration reform was a term of art that I later learned had
12 varying degrees of definition. It depends on which side of the
13 political aisle that you sat on.

14 Later, as a chief, when that was brought to my attention,
15 I actually sent an email as a chief to all, I think it was around
16 20,000 Border Patrol agents clarifying my position on what I
17 meant by that statement, in which I outlined basically what I've
18 been saying today.

19 BY MS. MARTICORENA:

20 Q Okay. Let's talk about the present day then. You just
21 mentioned H.R. 2. Are you aware that the Senate on a bipartisan
22 basis is working with the White House and DHS to negotiate
23 legislation that would help secure the border?

24 A I have not seen any context or language or any details
25 setting forth that language so.

1 Q Have you heard from the news that this is happening?

2 A I am not going to speculate on something or talk about
3 something that I haven't actually seen as a formal proposed piece
4 of legislation.

5 Mr. Howell. And if counsel's able to tie this here -- what
6 we are here for today which is testimony about the impeachment
7 of Alejandro Mayorkas, you are asking Mark Morgan his views on
8 potential hypothetical, but we are here to talk about
9 impeachment.

10 Ms. Marticorena. Just to clarify, I did not ask his views
11 on the fact that negotiations were ongoing; just if he was aware.

12 Mr. Howell. Okay. I think we need a view to be aware of
13 the semantics?

14 Mr. Morgan. Yes, but I am aware that negotiations are
15 ongoing.

16 BY MS. MARTICORENA:

17 Q Is it your view that legislation could be helpful to
18 secure the border?

19 A I think H.R. 2 sets out a pathway that will reverse
20 course in that open border disastrous policies set forth by
21 Secretary Mayorkas. That has created an unprecedented level of
22 chaos and lawlessness on our borders to force him to reverse
23 course on those policies, to force him to actually enforce the
24 law and stop abusing his power. If there is a piece of
25 legislation that passed that does that, yes, it will be effective

1 to secure our borders.

2 Q Are you concerned, as we look at the possibility of
3 legislation, that House Republicans refuse to either enter into
4 negotiations with the White House and DHS?

5 Mr. Howell. Objection. We were so out of the scope of what
6 this interview was agreed to cover, which is impeachment of
7 Alejandro Mayorkas.

8 You're again asking the witness for his political views of
9 about what he feels about Republicans and White House and
10 negotiations that we don't even know anything about. Text
11 hasn't been introduced.

12 So let's get back to what we already agreed to, if you mind,
13 that is impeachment of Alejandro Mayorkas?

14 Mr. Morgan. And what I will say, again, while negotiations
15 are still going on in the Capitol, this administration, Secretary
16 Mayorkas doesn't need that to happen to start implementing
17 effective changes.

18 Right now, with the stroke of Secretary Mayorkas' pen, he
19 can reinstate the micro protection protocol. He could reinstate
20 the asylum cooperative agreements, to save third countries. We
21 have all three Northern Triangle countries that he ended.

22 He could also retract his memo where he has restricted ICE
23 from doing their statutory mandated mission to apprehend and
24 detain criminal illegal aliens and removing them from this
25 country. He could increase his detention space.

1 He could make sure that 287 (g) is fully utilized throughout
2 this country, and that we're once again cooperating with local
3 law enforcement to remove criminal illegal aliens.

4 I can keep going on this law a long time. All of that could
5 come from this administration and from the pen of Secretary
6 Mayorkas without Congress taking one act. The networking tools
7 and authority we had in place and that I just mentioned came not
8 from Congress. That came from policy within DHS and the White
9 House.

10 BY MS. MARTICORENA:

11 Q Let's talk about the asylum cooperative agreement very
12 quickly. Are you aware that the ACA, as they are commonly
13 referred to, were paused in March 2020 because of the COVID-19
14 pandemic? Nobody was sent abroad under the ACA between
15 March 2020 and when the Biden administration came into office?

16 A So that's false. We have to clarify that. And, again,
17 I would have to refresh my recollection and look at the data,
18 but it's important. What we were doing fell under Title 42, just
19 like the migrant protection protocol. Right.

20 So we were flying individuals back to their home country
21 under Title 42. It may or may not have been under the ACAs, just
22 like we were moving people and not under the migrant protection
23 protocol, but we were doing it under Title 42.

24 So it's a very distinct difference. Trust me, I was on
25 phone calls on a daily basis. We were repatriating people back

1 to their home countries on a daily basis under Title 42.

2 Q Understood. And I did not mean to imply that Title 42
3 was not being used?

4 A Well, what I thought you implied, though, was we were
5 not removing people to their home countries simply because we
6 weren't using the authority under the ACAs, rather we were using
7 the authority under Title 42 to achieve the same result in the
8 end.

9 And, again, I would have to refresh my memory because even
10 during that time period, if I recall correctly, we were still
11 using the ACAs and the migrant protection protocols to a certain
12 degree. But I'd have to refresh my recollection. But at the
13 end of the day, we have Title 42.

14 So the same result was being achieved, meaning we were not
15 catching and releasing people in the United States, which again,
16 which was a significant incentive for illegal immigration.

17 Q Are you aware that of the three asylum cooperative
18 agreements with Guatemala, Honduras, and El Salvador, the ones
19 in Honduras and El Salvador were never implemented?

20 A What I'm also aware of is on day one, Secretary Mayorkas
21 ended the ACAs. So again, we're here about Secretary Mayorkas.
22 And the ACAs we had with Guatemala was an extremely effective
23 tool. It was an extremely effective messaging tool which went
24 to a significant part of our multi-layered strategy, and on the
25 front end of it being deterrence. So the ACAs that we had with

1 Guatemala was extremely effective.

2 And part of that strategy was the ACAs were a rolling star.
3 We would start with Guatemala, get that up and running, make sure
4 that we work out all the challenges and issues with them, and
5 then roll that out to the other countries. So all three Northern
6 Triangle countries had, in fact, signed ACAs. And Guatemala,
7 again, we were well under way with its implementation, and it
8 was widely successful in my opinion. And, again, on day one,
9 Secretary Mayorkas was part of ending all three of those asylum
10 cooperative agreements.

11 Q Are you aware of approximately how many people were sent
12 to Guatemala under ICA?

13 A I can't recall. I get asked this question a lot,
14 though. I also get asked this question with respect to the micro
15 protection protocol. In fact, I remember one time a reporter
16 was asking me, thinking they were going to make a really good
17 point. They said, well, Commissioner, you've only enrolled
18 about 60,000 illegal aliens in the migrant protection protocol.
19 That seems like a drop in the bucket. Yeah so it was widely
20 successful.

21 And so the numbers aren't -- I don't recall the numbers
22 being significantly high of those that we enrolled in the ACA
23 with Guatemala. And I think that it shows two things: One, it
24 shows that we were very intentful and methodical on how we
25 implemented it, and we are not going to overburden Guatemala.

1 That we are going to make sure that they have adequate resources
2 to be able to be effectually implement it in an effective manner.

3 The asylum cooperative agreement. I actually traveled as
4 commissioner to Guatemala. I saw their setup. I saw buses of
5 illegal aliens that we had repatriated back to Guatemala. I saw
6 the process. It was effective, efficient, humane, and
7 efficiently run. It had the assistance of USAID, the Department
8 of State, and Customs and Border Protection. And I saw that
9 firsthand.

10 But here's what's really important about both of those
11 programs. Again, it goes to the deterrence. It's not just
12 about how many were enrolling in the program, it's the message
13 that we sent. Again, through the ACAs and the migrant protection
14 protocol, we sent an incredible message to the entire world:
15 You're not going to be released. It's not happening.

16 Catch and release is done. We removed the largest
17 incentive for illegal immigration that was present, and that was
18 done a lot by Bill this case right before the settlement agreement
19 and bad legislation with TBPR. But at the end of the day, what
20 happened, is we told the world, you're not going to be released.

21 So what happened? I don't know, 500, 600,000 less came.
22 So it's not just about how many we enrolled in the program, it's
23 about the impact on deterrence that we had. And from that
24 perspective, both of those programs were widely successful in
25 the deterrence element.

1 Q So when we started talking about the ACAs, you mentioned
2 that most of the deterrence at the end of your time was people
3 being removed under Title 42. Is that correct?

4 A No, oh, no. No. So that's false. By February
5 of 2020, because of the network of tools and authorities we had
6 in place, because of the ACAs, and the migrant protection
7 protocol, again, the programs the Secretary Mayorkas ended, is
8 that we had reduced illegal immigration by 85 percent February
9 of 2020. We didn't institute Title 42 until March. So we had
10 already been widely successful.

11 And that's what I mean. I feel like you are insinuating
12 that Title 42 is what led to the deterrence, and that's simply
13 not true. It was the ACA and the MPP as well as a whole host
14 of authorities and policies that we had in place, including the
15 wall also acts as a huge deterrent. I can't tell you how many
16 illegal aliens who we interviewed, and they walked up to the
17 30-foot tall wall with a 5-foot ant- and said, yeah, I'm not even
18 trying it.

19 And so it was that multi-layered strategy of both resources
20 and policies that we had in place that again by February of 2020
21 prior to implementation of Title 42, we were likely successful
22 in deterring or reducing the flow of illegal immigration.

23 And every single one of the things I just mentioned
24 Secretary Mayorkas assisted in ending.

25 Q So what I was trying to ask, and I'll clarify is in

1 December of 2020, January 2021, at the end of the Trump
2 administration, was the primary tool being used then to remove
3 people and to deter Title 42?

4 A No, Title 42 was not an immigration law. It's not a more
5 security tool. It's a public health school. Title 42 was
6 solely designed to the prevent the further introduction and
7 spread of COVID-19 in the United States from outside the country.

8 While we were pushing vaccines, and while we were having
9 vaccines available, we had countries, like Haiti, for example,
10 that I had to look at the data, but less than 1 percent had been
11 vaccinated. Vaccines weren't even available to a lot of the
12 countries that were illegally entering, especially our southern
13 border.

14 So, no, Title 42 was meant to prevent the further spread
15 of a deadly infectious disease that was killing a lot of people
16 in this country and around the world. That's what Title 42 was
17 designed to do.

18 Q Understood. The majority of people who are being
19 removed from the border at the time, was that under Title 42 or
20 Title 18?

21 A Title 42.

22 Q Okay.

23 A Which by the way Secretary Mayorkas from day one has
24 argued to end and, in fact, did end. And from day one, Secretary
25 Mayorkas, because, again, that's what this deposition is about.

1 Secretary Mayorkas saw it go back. Title 42 immediately
2 he carved out demographics from the implementation of Title 42.
3 Immediately, he started carving out for unaccompanied minors.
4 And it was unfathomable to me.

5 I wish you would have pulled up quotes from my thousand media
6 hits at that time when I was talking about, where we knew the
7 majority of unaccompanied minors coming to the border are 15 to
8 17.

9 And every medical opinion, including Dr. Fauci said that
10 a 17 year old can carry COVID just as easily as an adult. But
11 Secretary Mayorkas on day one started a carve-out for
12 unaccompanied minors and allowing them in as an exception to
13 Title 42. On what planet did that make sense? I was outraged.
14 This Secretary was intentionally and knowingly jeopardizing the
15 public health of this entire country by immediately informing
16 a carve-out for unaccompanied minors that can carry COVID just
17 as well as an adult.

18 And then, he started to do the same intermittently for
19 families.

1 [11:36 a.m.]

2 Ms. Marticorena. And under Title 42, my understanding is
3 that Mexico limited the number of people they would take back
4 into Mexico, people who were expelled directly into Mexico, to
5 basically their shelter capacity.

6 Are you aware of that limitation?

7 Mr. Morgan. Is there a question about Secretary Mayorkas
8 here?

9 Mr. Howell. That was -- if you could even rephrase that
10 question, I think it was about whether you had a belief. You
11 said "to my understanding," and then ended with "are you aware
12 of that?" I'm not sure he's aware of your beliefs.

13 Ms. Marticorena. I'll rephrase.

14 My understanding of some of the limitations on Title 42 were
15 that, like most things with bilateral countries, there's a
16 negotiation, and Mexico limited the number of people that DHS
17 could expel into Mexico.

18 Is it your understanding that that was a limitation?

19 Mr. Howell. If that's too complex of a question, feel free
20 to just speak to the issue we're here today to talk about, which
21 is the impeachment of Alejandro Mayorkas. I think she was asking
22 you about her understanding, but --

23 Mr. Morgan. Yeah. I'm a little confused at -- there
24 seems to be no questions about Secretary Mayorkas, and that's
25 what we're here for. So, look, at the end of the day, all's I

1 know is that Secretary Mayorkas on day one implemented a carveout
2 for unaccompanied minors, intermittently did it for families,
3 and actively fought to end Title 42. And they were eventually
4 successful.

5 And when Title 42 ended under Secretary Mayorkas' support
6 and direction, illegal immigration continued to exponentially
7 increase and, in my opinion, continued to jeopardize the public
8 health of this country.

9 That's my answer.

10 BY MS. DENNETT:

11 Q Hi. My name is Lydia Dennett.

12 A Hi.

13 Q In your opening statement you talked about pulling away
14 Border Patrol agents from the frontline and how that makes the
15 border less secure.

16 I assume you still agree with that statement?

17 A It was my own statement. I sure do.

18 Q Yes. And you can refuse to answer this question, of
19 course, but I would like to ask about the Customs and Border
20 Protection deployments in May and June of 2020 to Washington,
21 D.C. and Portland, Oregon, for the widespread protests that were
22 happening at the time.

23 Do you recall that deployment?

24 Mr. Howell. Objection. This is, as stated, clearly out
25 of scope. You're asking about things that happened during the

1 Trump administration, during the most secure border in American
2 history. We're here today to talk about the most unsecure border
3 in American history and the impeachment of Alejandro Mayorkas.

4 If you have a question on Mayorkas, the witness would be
5 glad to answer it, you know, under the understanding that that's
6 what we're here today to talk about on a voluntary basis.

7 Ms. Dennett. So, no, you do not want to answer?

8 Mr. Howell. Mark, she is asking now if you want to answer
9 the question. I believe we just discussed here that we're going
10 to stay within the scope of this interview, which is the
11 impeachment of Alejandro Mayorkas, not discussing the Trump
12 administration and the most secure border in American history.

13 Ms. Dennett. Okay. That's fine.

14 Ms. Marticorena. I think we can go off the record. It's
15 11:40?

16 [Discussion off the record.]

17 Mr. Yi. The time is 11:41 a.m. We'll go back on the
18 record.

19 BY MR. YI:

20 Q So, Mr. Morgan, I do want to point out my minority
21 colleagues referred to a lot of your previous statements which
22 were outside the scope of our invitation from Chairman Green here
23 that we're going to focus on, specifically a time period of
24 January 2021 to present.

25 Obviously, your previous knowledge of things comes into

1 play in that that's what informs your testimony today. I will
2 say that the things that our minority colleagues were
3 referencing, as I was looking it up as they were asking these
4 questions that were outside the scope, you have been pretty
5 steadfast in what you have stood for and what you have said. I'll
6 say I looked up an article from NBC.

7 On March 8, 2022, just a couple of years ago, you said, "We
8 know the majority of unaccompanied minors coming across are 15
9 to 17 years old. We knew the science says that they can carry
10 COVID-19 just as much," end quote. These things existed too.

11 I also wanted to address one quick thing about the minority
12 entered into the record a hearing transcript -- or sorry -- a
13 very curtailed snippet of a hearing transcript, one, two -- two
14 pages of the transcript, a table of contents, and the cover of
15 a hearing that was held on November 30, 2016. The title of the
16 hearing was "Initial Observations of the New Leadership at the
17 U.S. Border Patrol."

18 Was Secretary Mayorkas part of the new leadership at the
19 U.S. Border Patrol on November 30, 2016?

20 A No. I mean, he was already there. I mean, he was the
21 deputy secretary of DHS. So he wasn't new leadership at Border
22 Patrol. I was.

23 Q Okay. I do want to point out in that same snippet that
24 the minority counterparts here entered into the record they
25 started randomly on page 13 and then included 13 and 14. And

1 on page 14 they highlighted one sentence of your response to a
2 question that's not fully published in this document that was
3 entered into the record.

4 So I will go back just to clarify for the record that on
5 page 12, Chairman Johnson asked: "So if we would go back to the
6 process of expedited removal with humanity, bring these kids and
7 send them right back to Guatemala, Honduras, or El Salvador, we
8 would dramatically reduce the incentive, and my guess is we would
9 draw dramatically -- we would dramatically reduce the flow.
10 Would you agree with that?"

11 And, Mr. Morgan, you responded, quote, "Yes, sir. And that
12 is why I was using the Mexican example because we used that same
13 concept and, again, from 2006 we went from 90 percent to
14 36 percent. We reduced that, quote/unquote, pull factor by
15 instituting a system of consequences and expedited removal."

16 Just to go on a little bit more, Chairman Johnson then said
17 to, I guess, then deputy chief of Border Patrol, Deputy Chief
18 Provost --

19 A Provost, Carla Provost.

20 Q And said, "Deputy Chief Provost, I do not know whether
21 you were involved, but we had a surge from Brazil, and Secretary
22 Michael Chertoff at the time had expedited removal, and the surge
23 ended. Is that not correct?"

24 And Ms. Provost responded, "Yes. So in 2005, we did have
25 a surge from Brazil. We had received the authority to conduct

1 expedited removal starting the year prior. We did start
2 utilizing that. And when we delivered the consequence of the
3 expedited removal and then actually the physical removal to
4 Brazil, the numbers did decrease."

5 Now, of course, none of those portions were incorporated
6 into the record earlier for what was placed into the record by
7 the minority counterparts. But I wanted to get to this because
8 maybe the minority brings up an excellent point.

9 These authorities for expedited removal that existed when
10 this hearing took place on November 30, 2016 and Mr. Mayorkas
11 was still an employee of the Department of Homeland Security,
12 do those authorities still exist today? Would they still be
13 available for Secretary Mayorkas should he choose to use them?

14 A Absolutely. And, by the way, I appreciate you adding
15 context to the hand-selected statement that they pulled out.
16 That was my point was without seeing the entire transcript of
17 the hearing and putting it into context, you can develop
18 different meanings, intentionally or not. So I appreciate that.

19 But, yes, expedited removal existed prior to that, and it
20 exists today.

21 Mr. Yi. Okay. Thank you.

22 I'm going to pass to my colleague.

23 Ms. O'Connor. Thank you.

24 BY MS. O'CONNOR:

25 Q Mr. Morgan, I just wanted to note also my colleagues

1 mentioned a single parole program that may or may not have been
2 in existence during the Trump administration and may or may not
3 be in existence today. I just want to note for the record that
4 Executive Order 13767 issued by President Trump on 2017 said,
5 among many other things, "It is the policy of the executive branch
6 to end the abuse of parole and asylum provisions currently used
7 to prevent the lawful removal of removable aliens.

8 Additionally, the Secretary of Homeland Security shall
9 immediately take all appropriate action to ensure that the parole
10 and asylum provisions of Federal immigration law are not
11 illegally exploited to prevent the removal of otherwise
12 removable aliens?"

13 A And so I appreciate you bringing that up as well. And
14 so that -- you know, it helps me -- think about it this way. When
15 I was commissioner, that was clear to me, right. That was the
16 intent, the goal, and the strategy of the Department of Homeland
17 Security, as well as the White House, was to ensure that we were
18 not using parole inconsistent with what the statute requires.

19 Q I want to switch gears a little bit and talk to you about
20 the national security implications of the border under Secretary
21 Mayorkas.

22 Secretary Mayorkas ensures us that every alien that DHS
23 encounters is screened and vetted, including the Afghans that
24 you discussed in the Operation Allies Welcome that was talked
25 about earlier today.

1 What are the limits of the screening and vetting that Border
2 Patrol does on these individuals that are brought over?

3 A Yes, I really appreciate that question because I think
4 that's one of the many lies that Secretary Mayorkas perpetrates
5 on the American people that is extremely frustrating for me. If
6 you think about it for a second, I would say you don't have to
7 be a border security expert to realize that that's just an
8 unadulterated lie.

9 We receive people -- we've encountered people from 180
10 different countries in the past 36 months. Many of these
11 countries we have zero diplomatic relationships with. Many of
12 these countries we know sponsor, facilitate, and harbor
13 terrorism.

14 Let me just give you an example. Cuba, for example, do you
15 really think when we encounter a Cuban national, military age,
16 single, adult male that we're working with Cuba to get his
17 biographical information from the government of Cuba? Do you
18 think Cuba is working with us diligently to let us know whether
19 he was just recently released from prison or he's a known murderer
20 or a gang member? Of course not. It's not happening. It's a
21 lie.

22 Every time Secretary Mayorkas says that these individuals
23 we're encountering are vetted, it's a lie. Here's the base that
24 happens. We do a database check against U.S. database checks
25 and specifically NCIC for wants and warrants. That's generally

1 the extent of what we can do before we're releasing them. And
2 even those countries that we have diplomatic relationships
3 with -- let's take Guatemala. Our diplomatic relations are okay
4 with Guatemala, but their ability, their database, their systems
5 are woefully inadequate.

6 Even when they want to, they don't have the capacity to
7 actually provide us the detailed biographical data that we would
8 need on the individual. Yet this administration continues to
9 catch and release them and lie to the American people that they're
10 being vetted.

11 I'll give you another example. Lebanon. We have
12 encountered people -- I mean, it's so frustrating. Russia
13 Syria, Yemen, Afghanistan, Russia, Lebanon, the list goes on and
14 on, right. Do you think that if we encounter, which we do, a
15 single adult Lebanese male of military age, do you think that
16 during the interview we say, Hold on a second. Let's reach out
17 to the Lebanese government, and we just want to make sure that
18 you're -- I don't know -- not a member of Hezbollah. Just stand
19 by. I mean, do you think the Lebanese government is going to
20 just go, Oh, no, no. That individual, he's a known Hezbollah
21 member. You should not allow -- no. That doesn't happen.
22 It's a lie.

23 And that's what's so frustrating. I mean, talk about
24 impeachment of Secretary Mayorkas. Just the fact that he
25 continues to mislead and lie to Congress and the American people

1 on that action alone should be enough to impeach this man. He
2 knows every single time that he says, We're vetting them, he knows
3 he's intentionally omitting a material fact, which is the same
4 thing as a lie, which that fact is.

5 We have no capacity to 100 percent vet the individuals that
6 we're encountering and releasing in the United States.

7 And one last thing, the Afghan refugees that we allowed in,
8 the OIG report actually countered Secretary Mayorkas. When he
9 said they were being vetted, the OIG report said that, in fact,
10 was not happening.

11 Q This may seem obvious now, but based on our limitations
12 on screening and vetting, what kind of impact does that have on
13 our national security?

14 A Yeah. No, it's enough -- it should be obvious, but,
15 unfortunately, it's not because a lot of American people are
16 being misled. Think about this. So right now -- because, in
17 large part, Secretary Mayorkas' policies and his lack of
18 enforcing law and abusing his power and his oath and et cetera
19 as we've discussed is that we've had 1.8 million known got-aways,
20 close to that, in the last 36 months, 1.8, 180 different
21 countries.

22 Many of those countries we know sponsor, harbor, and
23 facilitate terrorism. And we know that illegal aliens that come
24 from those countries -- we call them SIAs, Special Interest
25 Aliens. In the past 36 months, we have encountered tens of

1 thousands of individuals that we call Special Interest Aliens
2 again that come from countries that sponsor, harbor, and
3 facilitate terrorism.

4 Yet when we encounter them, we have no capacity to actually
5 verify whether they are, in fact, a known -- a threat to the
6 United States because they fall outside the terrorist screening
7 database. And just because an individual is not in the terrorist
8 screening database doesn't mean they're not a terrorist. It
9 just means they haven't dipped their toe in the water enough to
10 get on our intelligence radar.

11 And so not only have we apprehended, encountered tens of
12 thousands of Special Interest Aliens that we have no derogatory
13 information but we know came from those countries. But as well
14 as that, we've encountered at an unprecedented level -- I think
15 the number now in excess of some 400 illegal aliens, those that
16 have illegally entered. That doesn't even mention those on the
17 terrorist screening database or ports of entry, both the southern
18 and northern border, but over 400 that illegally enter.

19 Now go back to the 1.8 million known got-aways. It's not
20 a matter of if a potential national security threat enters our
21 country. In my expert opinion, it's already here. It's just
22 common sense. If we have 1.8 million known got-aways, we've
23 encountered tens of thousands of Special Interest Aliens, we've
24 encountered over 400 aliens on the FBI's terrorist screening
25 database, which means we have specific derogatory information

1 on that individual's involvement in terrorist activities or
2 themselves as a known or suspected terrorist, yeah, it's a
3 national security threat.

4 Q On its publicly available data website, CBP notes that
5 the amount of encounters in the terrorist screening data set only
6 account for about, in recent years, .0081 percent of all
7 encounters.

8 Does that percentage reflect a low terrorist threat level?

9 A I hear that too. And, look, it's so frustrating. How
10 many terrorists does it take to pull off the largest terrorist
11 attack on our homeland soil in our Nation's history, right? So
12 no. I mean, look at the terrorist attacks. Look at the marathon
13 bombing in Boston. How many terrorists did it take there? Two.

14 So, no, the percentage of those coming across is an absurd
15 comment to make by this administration and Secretary Mayorkas.
16 And he governs what goes into that system, right. He's the
17 Secretary. So he knows the information -- or he should be held
18 accountable for that information, and he's actually trying to
19 downplay the significance of the national security threat.

20 What he should be saying is over 400 illegal aliens on the
21 FBI's terrorist screening database and untold numbers of Special
22 Interest Aliens coming to our border represents a clear and
23 present national security danger, and we have to reverse course
24 on our policies. You don't hear that from him.

25 Q When CBP leadership and intel learn about the national

1 security issues and evaluate all of these national security
2 issues, do they brief the Secretary on those issues?

3 A Constantly, constantly. I mean, when I was there and
4 when he was deputy secretary, I'd see there could be no
5 difference. You get a daily intelligence report, a daily.

6 And not only that, think about congressional testimony from
7 the FBI director, from the United States intelligence community.
8 I think the last testimony of the FBI director when he was asked
9 about the national security threat, he said it's the highest it's
10 been in years. And he says he sees red blinking lights every
11 single day.

12 The FBI, our intelligence community, and components within
13 DHS have all said that what's happening at our border and the
14 exploitation and the flow of illegal immigration absolutely
15 poses a national security threat to this country. They're all
16 on record. Yet this Secretary tells the American people that
17 our borders are secure and there's nothing to see here.

18 Q On top of the screening and vetting, the chief Border
19 Patrol agents we interviewed told us that as a backstop agents
20 also have the opportunity to interview individuals to find out
21 some of their background.

22 Under Secretary Mayorkas, are Border Patrol officials able
23 to conduct meaningful interviews?

24 A Absolutely not. This is a critically important
25 question. This is one that the former chief of Border Patrol,

1 Rodney Scott, really hits constantly, and he's spot on on this.
2 Right now, again, as former Chief Raul Ortiz said in
3 congressional testimony, he says that the law enforcement and
4 national security mission of Border Patrol has been transformed
5 to one of being a processing enterprise, quote, processing
6 enterprise. I believe Secretary Mayorkas has used that
7 processing enterprise as well again and again.

8 From all the data and information that I see, the mandate
9 is clear: Process and release as fast as possible. Facilities
10 are dangerously overcrowded. They're focused on what we call
11 TIC, time in custody. They just want to process and get the
12 illegal aliens out of their custody, release in the United States
13 as fast as possible.

14 And, of course, when that happens, things don't get done.
15 And one of the things that do not get done is a thorough, extensive
16 interview of every single illegal alien that comes by.

17 And I'll give you just one example. What we saw
18 previously -- and it's out there on the record -- is fake
19 families, right. That's where an individual will buy, rent a
20 child to form a fake family because, again, we have really bad
21 laws. And the Flores settlement agreement says, again, that if
22 you're family, they can't detain you, so they're released in the
23 United States. And when Secretary Mayorkas ended the Migrant
24 Protection Protocol, they reinstated the catch and release for
25 families.

1 And so there is no doubt in my mind that there are fake
2 families, that minors are being bought, rented, sold to form fake
3 families, and they're entering this country every single day.
4 But this administration, they stopped the robust effort that we
5 have, whether it's rapid DNA or through interviews, to determine
6 and identify fake families. In fact, I would say the
7 majority -- the information that I was briefed was the majority
8 of the fake families we identified was just done through good,
9 old-fashion investigative interviews that were done to form
10 that.

11 In addition to that, we also get -- through those
12 interviews, we can identify criminals, gang members, murderers,
13 rapists, pedophiles that will not show up on an NCIC warrant check
14 in the United States because they committed those crimes in their
15 home country. Those are not being done to the degree that they
16 should, and that's why, again, we say that currently this policy
17 by Secretary Mayorkas is jeopardizing our Nation's safety and
18 national security.

19 Q For cartel tactics such as ones that put migrants in
20 danger, like the children that are bought and sold for these fake
21 families, do immigration officials brief the Secretary on those
22 issues as well?

23 A Constantly.

24 Q Throughout this interview you've noted that the
25 Secretary is briefed on every issue regarding border security,

1 and it appears that not many things have changed during his
2 tenure. If he's not listening to experienced law enforcement
3 officials and their opinion on what's going on, who does
4 Secretary Mayorkas listen to?

5 A NGOs and political appointees. I've talked to my
6 former colleague -- he's still my colleague -- former Chief
7 Rodney Scott who brings a very unique perspective that I don't
8 have in that he was -- he served under the previous
9 administration, but he also served under the O'Brien [sic]
10 administration.

11 I've had countless conversations with him, as well as other
12 sources that are currently in Customs and Border Protection and
13 DHS, that have routinely said that career officials are regularly
14 cut out of the decision-making process, that they aren't invited
15 to key critical policy decision meetings.

16 And that even when their advice is sought, most of the time,
17 my understanding, they provide it, generally unwanted or not
18 asked for, it's holistically ignored.

19 Ms. O'Connor. I think I'll pass to my colleague.

20 BY MR. YI:

21 Q Well, Mr. Morgan, the committee really appreciates your
22 testimony today and your willingness to appear voluntarily. The
23 chairman extends his gratitude to you for your service and
24 today's testimony.

25 And I'll end with three questions for you, and they'll be

1 pretty clear because based on everything we've discussed in our
2 rounds of questions here, I think you've answered a lot of them
3 that indicate as such, but I want to hear it straight from you.

4 A Sure.

5 Q In your expert opinion, based on your decades of
6 professional experience and background in the border security
7 and law enforcement fields and the evidence available to you,
8 do you believe Secretary Mayorkas has willfully and systemically
9 refused to follow the law?

10 A Unequivocally, yes.

11 Q In your expert opinion, based on your professional
12 experience in government and background in the border security
13 field and the evidence available to you, do you believe Secretary
14 Mayorkas has abused his power vested in him as Secretary?

15 A Unequivocally, yes.

16 Q In your expert opinion, based on your professional
17 experience and background in the border security field and the
18 evidence available to you, do you believe that impeachment
19 against Secretary Mayorkas is appropriate, justified, and
20 necessary?

21 A Unequivocally, yes.

22 Mr. Yi. Thank you for your testimony.

23 The time is 12:02 p.m.

24 We'll go off the record, and that concludes our end.

25 [Recess.]

1 Ms. Marticorena. We can go back on the record.

2 The time is 12:05.

3 BY MS. Marticorena:

4 Q I would like to start with clarification for the record.

5 Have you worked for Secretary Mayorkas in this
6 administration?

7 A No.

8 Q So just to be clear, is it the position of you and your
9 lawyer that questions related to your direct experience while
10 you were in DHS are outside the scope of this interview?

11 Mr. Howell. So our understanding of the letter is what's
12 in the text of the letter. Obviously, Mr. Morgan has answered
13 some questions drawing on his previous experience to inform his
14 views on the necessity of impeaching Secretary Mayorkas, and so
15 we've been very patient with you.

16 I think he has, you know, elaborated quite a bit drawing
17 from that experience. But the prime object for today's
18 testimony is the impeachment of Alejandro Mayorkas.

19 Ms. Marticorena. Understood.

20 My question again is we are trying to understand the full
21 context of your experience, your views, and your activities. Is
22 your view that those questions, outside direct questions on
23 Secretary Mayorkas, are outside the scope of this particular
24 investigation and your invitation and, thus, not something you
25 need to answer?

1 Mr. Howell. Same answer.

2 Ms. Marticorena. All right. So I would like to ask about
3 some comments from 2019. And, again, if you refuse to answer,
4 you're welcome to say so. We are trying to understand a full
5 view of your perspectives and views coming into this discussion.

6 Mr. Morgan, in December 2019, did you participate in an
7 Immigration Newsmaker interview with the Center for Immigration
8 Studies?

9 Mr. Morgan. I have no recollection of that interview.
10 Again, I -- over the past few years, I've probably participated
11 in hundreds and hundreds, if not over a thousand, interviews.

12 Mr. Howell. I would note that 2019 is clearly outside the
13 scope of the invitation.

14 Ms. Marticorena. Understood. And he's welcome not to
15 answer the questions.

16 I am going to hand you a copy of exhibit 2 for the record.
17 Do we not have more copies?

18 Ms. Dennett. I can make more copies.

19 Ms. Marticorena. I will hold this until we come back and
20 make more copies.

21 Mr. Howell. If it's from 2019, you don't need to make us
22 a copy. It's out of scope. We aren't going to look at it.

23 Ms. Marticorena. Understood.

24 Okay. So I would like to ask then -- okay. Mr. Morgan,
25 I'm going to read you a statement you made on the Tucker Carlson

1 show on January 14, 2019. And, again, if you choose not to
2 answer the question, you're welcome to say so.

3 I've been to a detention -- so start with, quote, "I've been
4 to detention facilities where I've walked up to these individuals
5 that are so-called minors, 17 or under. I've looked at them,
6 and I've looked in their eyes, Tucker, and I've said that this
7 is a soon to be MS-13 gang member. It's unequivocal," end quote.

8 What about their eyes led you to believe that specific
9 individuals would become gang members?

10 Mr. Howell. Objection. That's out of scope. 2019 is the
11 year you said?

12 Ms. Marticoarena. Yes.

13 Mr. Howell. Okay. That's clearly out of scope.

14 Ms. Marticoarena. Do you still believe you have that skill?

15 Mr. Howell. You don't -- perhaps you could help educate
16 the committee as to the necessity of impeachment as opposed to
17 views.

18 Mr. Morgan. That question is offensive for the record?

19 BY MS. Marticoarena:

20 Q So it's offensive to ask you about your own comments --

21 A Your tone is offensive and your -- is offensive. Yes,
22 that's my answer.

23 Q I'm sorry you feel that way. I do not intend to be
24 offensive.

25 A So you say.

1 Q Okay. Earlier --

2 A You know, just the fact that -- so in 2019, the
3 background, so I was chief of the United States Border Patrol
4 in 2019 under a Democratic-led White House, President Obama.
5 The deputy secretary of DHS was Secretary Mayorkas. The Vice
6 President was Vice President Biden. I served over 20 years in
7 the FBI.

8 A part of that I supervised the MS-13 Gang gang task force
9 in southern California which was called the flagship and the
10 epicenter of MS-13 for the United States at the time. I was the
11 Special Agent in Charge of the FBI's El Paso Division, the only
12 division of the FBI that's actually physically located on the
13 United States-Mexico border.

14 I was the assistant acting commissioner of the Customs and
15 Border Protection's Office of Professional Responsibility, then
16 called internal affairs. And, again, I was chief of the United
17 States Border Patrol and Commissioner of Customs and Border
18 Protection. That's how I've gained my experience to formulate
19 my opinions.

20 Q Understood.

21 Just to clarify, the quote was from 2019, which is when
22 President Trump was in office?

23 A Yeah. I explained that, right.

24 Q I believe you said that President Obama was in office,
25 which is why I made the clarification. I apologize --

1 A No. I was going through when I was chief. I was chief
2 of the United States Border Patrol under President Obama.

3 Q Understood.

4 A Earlier during this interview you stated that no other
5 Secretary has said the border is secure. Is that correct?

6 A To the best of my recollection.

7 Q Mr. Howell. Yeah. If you're referring to testimony given
8 today, we have a court reporter here. We could pull up the record
9 if you would like to see if it's in the record.

10 A Ms. Marticorena. Let me rephrase. I don't believe we need
11 to go back that far.

12 BY MS. Marticorena:

13 Q Is it your belief today, based on your recollection,
14 that no other Secretary has said the border is secure?

15 A My recollection, intent of a statement like that, is
16 that I do not know of any Secretary that when asked
17 directly -- according to the 2000 Secure Fence Act, which states
18 in part "The Secretary shall prevent the entry of all illegal
19 aliens, narcotics, terrorists," et cetera, I do not know of a
20 Secretary when asked, per the definition of the 2000 Secure Fence
21 Act, is the border secure, do you have operational control, I
22 don't know of any other Secretary, except Secretary Mayorkas,
23 that has answered in the affirmative to that phrasing of the
24 question.

25 Q Okay. I would like to read you a quote from January 12,

1 2021. And if you'd like to not answer the question, you are
2 welcome to do so.

3 This is a quote from a press release by President Trump at
4 the 45th mile of new border wall. Quote, "We inherited a
5 dangerously lawless border. The people that work here are
6 unbelievably brave. I've seen what they have to endure, what
7 they have to go through. They're tough, they're strong, and
8 they're great patriots, great Americans. We fixed it, and we
9 secured it."

10 Do you agree with that statement?

11 A Again, the question that you asked previously before you
12 go into that is a very important specific difference. If you're
13 talking about a politician, right, a President that's generally
14 making a general statement, right, versus you're under oath and
15 you ask a specific question about a specific statute, and you're
16 read the definition of that statute, and you say that even after
17 the 2000 Secure -- definitions for the Secure Fence Act
18 definition has been read to you, and you still say under oath
19 that you have operational control and the border is secure, that
20 is a lie.

21 To say generally the border is secure, you'll have to ask
22 the President exactly what he meant by that. I can't get inside
23 his head. But what I can tell you, though, is what I have said,
24 and I will continue to say, is we had the most secure border in
25 our Nation's history.

1 To me you're playing semantics. To me what really counts
2 is when you hold public office and you're under oath and you're
3 shown the definition, and you still lie to the American people,
4 that brings you into a whole other world of abusing your authority
5 and lying to the American people.

6 Q So I would like to ask about impeachment.

7 Mr. Morgan, I'm going to read from a December 20, 2022, Hill
8 article that you coauthored. Quote, "The first order of
9 business is to impeach Homeland Security Secretary Alejandro
10 Mayorkas," end quote. On Secretary Mayorkas you further quote,
11 quote, "He has refused to take any responsibility for his role
12 in this crisis or shown willingness to rethink policies that got
13 us here. If he disagreed with his boss's directives, he should
14 have resigned. The last 18 months have been clear that he's
15 fully on board with these ruinous policies. He must be
16 impeached," end quote.

17 You note in that article that Secretary Mayorkas was
18 following his boss's directives. Would you agree that if
19 Secretary Mayorkas were to leave office through impeachment
20 before President Biden leaves office, President Biden would have
21 the power to appoint an acting Secretary of Homeland Security
22 of his choosing?

23 A So, first of all, the Secretary was not just following
24 the directives of the President. I've held a position in this
25 government. I oversaw the largest Federal law enforcement of

1 the United States, over 60,000 people, a \$13 billion budget. I
2 also worked for a President.

3 And what I can tell you is the President sets out the general
4 strategy and goals with the direction that he wants the country
5 to go, and then he asks, whether it's department heads or
6 component heads, to help facilitate that. But each Cabinet
7 level, and even as a component head of CBP, I had wide discretion
8 and immense authority to enact policies and directives at the
9 stroke of my pen without any coordination with the President of
10 the United States. It came at the end of my pen, just like
11 Secretary Mayorkas.

12 So to suggest that Secretary Mayorkas is just following
13 orders is just blatantly a distortion of the authority, the
14 immense authority any Cabinet level official has. Secretary
15 Mayorkas drafted the memo that restricted ICE's authority to
16 carry out the statutory mandated mission. That came at the end
17 of Secretary Mayorkas' pen.

18 Secretary Mayorkas has ended the Migrant Protection
19 Protocols. Secretary Mayorkas has refused to enforce the law.
20 Secretary Mayorkas is the one that has said that being here in
21 the country illegally, in and of itself, is not enough to remove
22 you. That is simply against the law. I could keep going on of
23 the direction that came directly from Secretary Mayorkas.

24 So, yes, he should be impeached because he has willfully
25 and continuously violated the law, abused his authority,

1 abdicated his oath of office as the Secretary, and he's lied to
2 the American people and Congress again and again and again. So
3 I stand behind that statement.

4 Q Okay. Do you believe that if Secretary Mayorkas were
5 to be impeached the President could choose someone or would
6 choose someone who was fully on board with his own policies and
7 likely to follow the President's directives?

8 A Again, I've been there, and I'm telling you right now
9 what the American people deserve from a public official,
10 especially the Cabinet level or component level, I don't give
11 a crap what the President's directives are. There's no
12 directive that's acceptable for any Cabinet level official,
13 component level leader to violate the law. There is no
14 presidential strategy that makes that acceptable. And as a
15 Cabinet level official or component official, you have a
16 fiduciary duty to your oath, to the Constitution, to every
17 citizen of this country to stand up and say, No, that is blatantly
18 an unlawful order.

19 And what you're asking me to do will create chaos and
20 lawlessness at our border and jeopardize every aspect of our
21 Nation's safety, health, and national security.

22 The American people deserve a Secretary of Homeland
23 Security that puts his or her fiduciary duties to do just that,
24 to protect our homeland above any presidential political agenda
25 or ideology. Secretary Mayorkas has abdicated that oath and

1 abdicated that responsibility.

2 He has willfully and intentionally carried out orders and
3 policies at the end of his pen that have added to the lawlessness
4 and chaos at our border.

5 So, yeah, so if Secretary Mayorkas is impeached, which he
6 should be, can he bring in somebody else that is going to agree
7 with his general policies and guidelines? Sure, of course.
8 That's the way the process works. But I hope Congress will do
9 a better job to make sure that the new Secretary, though, will
10 not violate the law and erode the public's trust and the United
11 States Government and cause lawlessness and chaos at our border,
12 jeopardizing our safety and national security in doing so.

13 And the last thing I'll say, the American people, they
14 deserve for our public officials to be held accountable. I don't
15 give a crap who gets replaced at the end. That's down the road.
16 We can have that discussion. Congress can do their job during
17 congressional confirmation process.

18 But the American people, they need to see public officials
19 who do everything that Secretary Mayorkas has done to violate
20 the law, abuse his authority, abdicate his constitutional
21 responsibility, the American people need to see our political
22 leaders hold those people accountable, and that's exactly what's
23 being done right now.

24 Q So I would like to go back to the Center for Immigration
25 Studies. Again, you're welcome to not answer the question.

1 [Morgan Exhibit No. 2
2 was marked for identification.]

3 BY MS. Marticorena:

4 Q The exhibit I just handed you is just the announcement
5 of your participation in Immigration Newsmaker video. It's
6 called "A Conversation with U.S. Customs and Border Protection
7 Acting Commissioner, Mark Morgan."

8 Do you recall participating in this interview?

9 A What year is that?

10 Q 2019 --

11 Mr. Howell. Yeah, let me jump in here.

12 Ms. Marticorena. 2019.

13 Mr. Howell. We returned the exhibit as it's out of scope.
14 I'm not sure if you checked the date, but it's 2019, so we don't
15 need to enter that -- or check it out.

16 After a brief flip-through too, I'll not that it includes
17 some YouTube links, and there's just empty kind of screen
18 captions there.

19 Ms. Marticorena. Understood.

20 I was simply asking if you recalled participating in this
21 interview, not the content of the interview?

22 Mr. Howell. It's out of scope. So let's move on to the
23 next question about perhaps the impeachment of Mayorkas.

24 Ms. Marticorena. Are you aware that the Southern Poverty
25 Center considers the Center for Immigration Studies a hate group

1 for its repeated circulation of White nationalism anti-Semitic
2 writers in its weekly newsletter?

3 Mr. Howell. Again, that's out of scope.

4 You're free to answer, but we're here to talk about Mayorkas
5 and not the Southern Poverty Law Center, as much as we'd like
6 to discuss that infamous dark money group.

7 Mr. Morgan. Okay. I'm aware of their accusation, which
8 is completely ridiculous.

9 BY MS. Marticorena:

10 Q Could you clarify why you believe it's ridiculous?

11 A Because it's not true.

12 Q Do you have any questions?

13 Ms. Dennett. No.

14 Ms. Marticorena. Okay. We can go off the record.

15 [Whereupon, at 12:26 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
joint with the
COMMITTEE ON HOMELAND SECURITY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JASON D. OWENS

Friday, May 5, 2023

Washington, D.C.

The interview in the above matter was held in room H2-176, Ford House Office Building, commencing at 9:02 a.m.

Appearances:

For the COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY:

SLOAN MCDONAGH, COUNSEL

JAMES RUST, CHIEF COUNSEL FOR OVERSIGHT

ARTHUR EWENCZYK, MINORITY CHIEF COUNSEL

SARAH JACKSON, MINORITY COUNSEL

DEVON OMBRES, MINORITY SENIOR COUNSEL

JOSEPH ROMERO, MINORITY FELLOW

DANIEL YIM, MINORITY DEPUTY CHIEF OVERSIGHT COUNSEL

For the COMMITTEE ON HOMELAND SECURITY:

NATASHA EBY, STAFF DIRECTOR, SUBCOMMITTEE ON BORDER SECURITY AND
ENFORCEMENT

ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND INVESTIGATIONS COUNSEL

JAMES REYNOLDS, GAO DETAILEE

SANG YI, DIRECTOR OF INVESTIGATIONS

LISA CANINI, MINORITY DIRECTOR, SUBCOMMITTEE ON OVERSIGHT, INVESTIGATIONS,
AND ACCOUNTABILITY

LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR, SUBCOMMITTEE ON BORDER
SECURITY AND ENFORCEMENT

ALISON NORTHROP, MINORITY OVERSIGHT DIRECTOR

For the DEPARTMENT OF HOMELAND SECURITY:

STEPHEN JONAS, SENIOR ADVISOR TO THE GENERAL COUNSEL

For U.S. CUSTOMS AND BORDER PROTECTION:

DAVID JOY, ADJUTANT TO JASON D. OWENS

SAMANTHA KLISARSKA, CONGRESSIONAL LIAISON SPECIALIST

STEPHANIE MUFFETT, OFFICE OF CHIEF COUNSEL

Mr. Yi. Good morning. This is a transcribed interview of Jason D. Owens. Chairman Comer and Chairman Green have requested this interview to obtain information regarding border security from the chief patrol agent in charge of U.S. Border Patrol operations in the Del Rio Sector.

Will the witness please state your name for the record?

Mr. Owens. Jason D. Owens.

Mr. Yi. On behalf of the Committee on Oversight and Accountability and the Committee on Homeland Security, thank you for appearing today. The committees appreciate your willingness to appear voluntarily.

My name is Sang Yi, and I am the director of investigations with Chairman Green's staff for the majority on the Committee on Homeland Security.

I will now ask the majority and minority colleagues from the committees to please identify themselves as well.

Ms. O'Connor. Elizabeth O'Connor, senior counsel, Committee on Homeland Security, majority.

Mr. Rust. James Rust, counsel for Chairman Comer on the Committee on Oversight and Accountability.

Mr. McDonagh. Sloan McDonogh, counsel for Chairman Comer on Oversight and Accountability.

Mr. Reynolds. Jim Reynolds on the majority staff for the Committee on Homeland Security.

Ms. Eby. Good morning. Natasha Eby. I'm the subcommittee staff director of the Border Security and Enforcement Subcommittee, majority.

Mr. Yim. Daniel Yim, House Oversight Committee, Democratic side.

Ms. Jackson. Sarah Jackson, counsel, House Oversight, Democratic staff.

Mr. Romero. Joseph Romero, House Oversight, Democratic staff.

Ms. Dennett. Lydia Dennett, House Homeland, Democratic staff.

Ms. Martcorena. Briana Martcorena, House Homeland. I'm the subcommittee director for the minority for the Border Security and Enforcement Subcommittee.

Ms. Northrop. Alison Northrop, oversight director, minority staff, Homeland Security Committee.

Mr. Ewencyk. Arthur Ewencyk, Oversight, Democratic staff.

Mr. Ombres. Devon Ombres, Oversight, Democratic staff.

Ms. Canini. Lisa Canini, director of the Oversight and Investigations Subcommittee for House Homeland, Democrat.

Mr. Yi. I also recognize that the witness is accompanied by Department of Homeland Security officials in addition to agency counsels at the table. Will those additional agency officials please state their names and titles for the record?

Mr. Joy. David Joy, adjutant to Chief Owens.

Ms. Klisarska. Samantha Klisarska, counsel for Border Protection, Office of Congressional Affairs.

Mr. Yi. Before we begin, I will outline the procedure and guidelines that we will follow in this interview.

Questioning will proceed in rounds. The majority members or staff will ask questions first for up to one hour, and then the minority members or staff will have an opportunity to ask questions for up to one hour if they choose. We will go back and forth for six total one-hour rounds or until there are no more questions.

We will take a short break at the end of each hour. If you would like to take a

break at any other time, please let us know. If, however, there is a pending question, I will ask that you finish answering the question before we stop to take a break. We will also take a break for lunch after the third hour of questions.

There is an official reporter taking down everything we say to make a written record, so we ask that you give verbal responses to all questions. The reporter cannot record nonverbal answers, such as shaking your head, so it is important you answer each question with an audible, verbal answer.

Do you understand?

Mr. Owens. I do.

Mr. Yi. To ensure the court reporter can take a clear record, we will do our best to limit the number of people directing questions to you during any given hour to just those members or staff whose turn it is.

To the extent possible, it is important that we do not talk over one another or interrupt each other. Please wait until each question is finished before you begin your answer, and we will wait until you finish your response before asking you the next question. That goes for everybody present at today's interview.

Furthermore, the majority members or staff will not ask questions or otherwise interrupt the minority's round of questioning and vice versa.

I understand the witness is accompanied by agency counsels today. Would counsels please state their names for the record?

Mr. Jonas. Steve Jonas, DHS Office of General Counsel.

Ms. Muffett. Stephanie Muffett, CBP Office of Chief Counsel.

Mr. Yi. I also want to confirm that you understand that agency counsel represents the agency and not you personally.

Do you understand?

Mr. Owens. I do.

Mr. Yi. Are you choosing to have agency counsel in the room today?

Mr. Owens. I am.

Mr. Yi. You are encouraged to freely consult with counsel if you choose. If you need to confer with counsel during the interview, please let us know, and we will go off the record and stop the clock until you are prepared to continue.

During the interview, we ask that you please answer any questions in the most complete and truthful manner possible. If you have any questions or if you do not understand a question, please let us know.

Do you understand?

Mr. Owens. I do.

Mr. Yi. If you do not know the answer to a question or do not remember, it is best not to guess. If there are things you do not know or cannot remember, please say so and inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

If I ask about conversations or events in the past and you're unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection. If you recall only a part of that conversation or event, you should give us the best recollection of those events or those conversations that you do recall.

Do you understand?

Mr. Owens. Yes.

Mr. Yi. Although you are here voluntarily and we will not swear you in, you are required by law to answer questions from Congress truthfully, including questions posed by congressional members or staff during this interview. Witnesses who knowingly

provide false testimony could be subject to criminal prosecution for perjury or for making false statements.

Do you understand this obligation to tell the truth today?

Mr. Owens. I do.

Mr. Yi. Is there any reason you are unable to provide truthful answers to today's interview?

Mr. Owens. No.

Mr. Yi. Before we begin the interview, I would like to explain briefly why we are here today.

As mentioned, the House Committee on Oversight and Accountability and House Committee on Homeland Security are seeking to obtain information regarding border security from the chief patrol agents in charge of U.S. Border Patrol operations in the southwest border sectors.

We are interviewing you today to learn about matters related to border enforcement and your roles, responsibilities, experience, and observations. We are not investigating you personally for any personal wrongdoing. This is a fact-finding endeavor.

Are you ready to begin?

Mr. Owens. Yes.

Mr. Yi. Thank you.

The clock now reads 9:09 a.m. We will now begin the first round of questions.

EXAMINATION

BY MR. YI:

Q So we will start with some very basic questions related to your voluntary participation in today's interview, and then learn more about your background and

experience.

So, first of all, good morning.

A Good morning.

Q Thank you for being here.

Have you ever participated in a congressional transcribed interview?

A No.

Q Have you ever been a deponent in a congressional deposition?

A No.

Q Have you ever testified in any deposition for legal cases?

A Yes.

Q Can you please explain the approximate dates of when those depositions took place and the nature of your testimonies related to the legal cases?

A So just over the course of my career, whether for cases that I was involved with prosecuting somebody for a violation of law or for administrative issues with MSPB and arbitrations with the local bargaining unit.

Mr. Yim. I'm sorry, Sang.

Chief, could you just speak up in future answers?

Mr. Owens. Sure. I'll do my best. Sorry about that.

BY MR. YI:

Q Could you repeat that last portion, please?

A Arbitration hearings for FLRA matters in connection with the local bargaining unit.

Q Can you please tell us everything you did to prepare for today's transcribed interview and the names and titles of those involved in your preparation?

A The personnel that were involved are going to be the ones that are sitting

with me today. And it would be meetings with them preparing for the question and answer sessions that we're going to have and gathering the facts and data that we believe that you might be interested in.

Q So when you say the people who are with you today, Mr. Jonas and Ms. Muffett?

A Yes.

Q There was nobody else involved in the preparation --

A There were, but I can't recall their names. I can get them for you.

Q Approximately how many people?

A Eight?

Mr. Jonas. Probably about -- well, eight maybe, maybe a few more than that.

Mr. Owens. Right.

BY MR. YI:

Q Did the preparation occur in Washington, D.C., or in your border sector?

A So we had one preparation session when I was on the road en route to D.C., and then one yesterday here in D.C.

Q Did any executive branch officials express to you at any point that the committees repeatedly offered to travel to your sector to conduct this interview to minimize any operational impacts on your official duties or your schedule?

A Yes.

Q Were there any particular matters that were explained to you about this transcribed interview and how to respond to those?

Mr. Jonas. Could you rephrase the question? You could be calling for privileged advice. And I'm sure you're not intentionally doing that, but maybe you can rephrase your question to avoid that.

BY MR. YI:

Q Are there any particular subject areas that you were advised to focus on during your interview?

A No. It was Del Rio specific and just answer truthfully.

Q Were there any particular areas in which you were advised not to discuss during your interview?

A I was only given advice to be careful with law enforcement-sensitive information, as we always are.

Q Moving on to your background, can you please start by describing your educational history?

A I have a master's degree in accounting from Shorter University. I have a master's degree in national security strategy from the National War College. I have leadership certificates from American University and the Robert H. Smith School of Business.

Q It's an impressive educational background, Chief.

When did you first begin your career with CBP?

A In 1996.

Q Okay. And for the record, can you please state your current position with the U.S. Border Patrol?

A I'm the chief patrol agent in command of the Del Rio Sector.

Q Did you have any prior law enforcement experience?

A No.

Q Why did you first seek to become a Border Patrol agent?

A I knew I wanted to get into law enforcement. I was going to college at the time for criminal justice, and I had a friend that saw an advertisement for the Border

Patrol. In Oklahoma, that was a rare thing. I had never even heard of the Border Patrol. And this was before internet. So the pictures of people on snowmobiles and horses and motorcycles and the like, that sounded right up my alley. And so I applied, and here I am today.

Q Well, we're glad you're here, and thank you for your service.

Is it fair to say that you've served in a variety of roles in many different offices and sectors?

A I think that's fair, yes.

Q In 2012, were you the patrol agent in charge of special operations in McAllen?

A I was.

Q What were your roles and responsibilities in that position?

A So, for the special operations detachment of the RGV Sector, I was in command of the local Border Patrol Tactical Unit teams; the Border Patrol Search, Trauma, and Rescue teams; the Mobile Response Teams; and the EMT program.

Q In 2013, were you the patrol agent in charge of intelligence in McAllen?

A As acting patrol agent in charge, yes.

Q What were your roles and responsibilities in that position?

A I had oversight of the sector communications, all of the enforcement analyst specialists, the confidential human source, the local intelligence agents that were assigned to the different stations throughout the sector, and all of the investigations that pertained to intel for RGV Sector.

Q In 2015, were you the division chief of law enforcement operations in Laredo?

A Yes.

Q And what were your roles and responsibilities in that position?

A I had oversight of all law enforcement operations for the Laredo Sector, which was every station and all the target enforcement action. Essentially anything that involved arresting people or a law enforcement operation in the field fell under me.

Q In 2020, you started as chief patrol agent at the Border Patrol Academy at FLETC. Is that correct?

A Yes.

Q What were your roles and responsibilities in that position?

A So in command of the U.S. Border Patrol Academy, I had training for -- or responsibility for all training and -- basic and advanced training for Border Patrol agent personnel and Border Patrol processing coordinator personnel.

Q And how long were you there?

A About 18 months.

Q So when did you first begin serving as chief of Del Rio Sector?

A In November of 2021.

Q And what are your roles and responsibilities as the sector chief?

A I have oversight of all operational and administrative operations for the sector. So anything that involves law enforcement under U.S. Border Patrol authority, anything that involves, on the program side -- the detention, the recruitment, the training, the finance and acquisitions, contracting workforce management, fleet facilities and property -- all of those things fall under my purview as the chief patrol agent.

Q And how many personnel do you supervise? Can you break them out between agents and support personnel, please?

A So we have just over 2,000 personnel in the Del Rio Sector. About 1,700 is what the TO is for uniformed Border Patrol agent personnel. The rest would be what

we call professional staff, and that's inclusive of all the areas that I mentioned, plus dispatchers, intel analysts, and Border Patrol processing coordinator personnel.

Q Moving on to the Del Rio Sector, how is the Del Rio Sector unique compared to other southern border sectors? You've served in many other areas and you've had a lot of different jobs. Can you help us explain --

A Sure.

Q -- or understand better?

A So what we like to say is that, if you've seen one Border Patrol sector, you've seen one Border Patrol sector. So every sector is unique. They all have their own challenges. The environments are different.

And the example that I like to give is most people that haven't been to the border, whenever you think of what the border looks like, you think of this flat area with a long straight line and it has a fence or some type of a marker.

That is absolutely not the case in south Texas, and Del Rio is no exception to that rule. We have an entire border that consists of a riverine and water environment. The Rio Grande River is our border, and it is surrounded by dense vegetation, remote terrain.

The river itself varies from sector to sector. So, for us, it is a legitimate flowing, dangerous river with strong currents that people die in each and every year.

If you were to go up the river just a little ways to El Paso, you would find a dry creek bed, it literally changes that much, and the river twists and turns such that there are moments when you can be standing on the river and looking east or west or north into Mexico, depending on how it turns.

The environment in general consists of mostly large ranches, ranch lands. It's, as I said before, very remote with extreme temperatures.

Everything that is in this terrain is meant to poke, bite, poison. It's a very

unforgiving terrain. And we don't have a lot of infrastructure that provides access to much of the areas along our border.

The border area for the Del Rio Sector is 242 linear miles. We have about 53,000 square miles, over 47 different counties in Texas. We have eight Border Patrol stations, six checkpoints. We also have the special operations detachment and the sector intelligence unit, and then of course the sector command staff.

Q And how many processing centers are there?

A We have one soft-side facility that we designate as the central processing center. When the need arises, we'll also designate the Del Rio Station as another central processing center.

We divide the sector, especially when it's especially busy, between a north and south corridor, and so the southern corridor consists of Eagle Pass North, Eagle Pass South Station, Carrizo Springs, and Brackettville. They would primarily utilize the soft-side facility that we designated as Firefly because of its address.

And the northern cog stations -- Comstock, Del Rio Station -- would use the Del Rio Station if the need arises. But, for the most part, our primary is that soft-side facility just outside of Eagle Pass that we refer to as Firefly.

Q Okay. And how much detention space is there? Where are those located?

A So I have a total detention capacity in the Del Rio Sector right now of 1,850, and a thousand is designated at the soft-side facility, Firefly. The remaining is distributed out among the different stations throughout the sector.

Q What would you describe the detention capacity currently for the 18 -- about 1,850? How much of it is full, and how much of it is usually vacant?

A As I looked this morning, we were sitting at over 2,000 in custody.

Q So over capacity?

A Uh-huh.

[Phone ringing.]

Mr. Owens. It wasn't me, I promise.

Mr. Jonas. Sorry. Apologies.

Mr. Owens. There's always one in every bunch.

Mr. Yi. We'll wait for Mr. Jonas.

Ms. O'Connor. We'll make sure this gets in the record, too.

Mr. Yi. I don't know how to transcribe rings, Steve.

Mr. Jonas. I have that on a timer, so when things get uncomfortable, I get a phone call from my daughter.

Sorry about that.

Mr. Yi. Okay.

BY MR. YI:

Q Going back, so you're over capacity in these detention spaces. What are the encounter general trends that you've noticed that. You were at the academy in probably FY '21. But in this last FY, you've seen the trend, I assume.

Can you explain a little bit more about what you've observed in terms of encounters at your sector?

A Sure. So obviously we're very busy, and that seems to be -- we're not the exception to the rule. And I can tell you that most of last year I think Del Rio Sector led the Nation day to day in terms of apprehensions. At the end of the fiscal year, we finished off FY '22 with just over 480,000 apprehensions and right around 200,000 known got-aways. That was the first year that we had surpassed the Rio Grande Valley Sector for the most apprehensions in the year.

The year before that, we had about 260,000 apprehensions, so it was a substantial increase from fiscal year '21. In fiscal year '21, it was busier than the previous 9 fiscal years combined for the Del Rio Sector.

So far this year, we're on pace to at least match what last year's numbers were. This year so far, it has been the Rio Grande Valley Sector, El Paso Sector, and Tucson Sector that have been, on a day-to-day basis, busier than we are.

That's leading up to May 11th, and we don't know what's going to happen after that.

Q From your observations, just generally speaking, although none of your roles and responsibilities necessarily include policy, just from your personal experience and firsthand observations, what can we attribute these increasing numbers toward?

A So I think the traffic comes to Del Rio Sector in large part because of the message that is transmitted among the migrant population.

When you have folks that make the trip and they come across, they're in communication with the folks that are back in their home country or their families who may also be thinking about making that journey.

And if they perceive it to be safer or more expedient, they give recommendations. And they do that by phone. They do that on social media outlets.

The smugglers themselves also help direct where the traffic goes, and they can send a false message that it's safe or it's easy.

A lot of times the smugglers, they're in contact with the migrants, and so the migrants can be more inclined to listen to what they say over the advice that we give on the news and in social media. My experience has been that that's been predominantly what has dictated where the migrants choose to cross.

Q What about any misinterpretation of U.S. laws? Have you ever gotten a

sense that, while cartels may lie to potential customers, do you believe that migrants who are making this cross or ones who communicate with each other to encourage others to do some more crossings might have a misunderstanding of our U.S. laws?

A I think the smugglers and the transnational criminal organizations, they -- make no mistake about it, that is our adversary. That is the ones that we are faced against every single day. And the migrants themselves are looked upon as simply a product to make money off of in terms of how the smugglers see it.

They are going to use every single advantage that they can to try and make more money or to defeat us in the process of doing that, and that includes false messaging, that includes spreading lies about what the journey entails and what these migrants will face.

So they are not above spreading false information about what they will encounter once they cross the border.

Q Does the Del Rio Sector receive migrants from other sectors that are apprehended or encountered and then transferred over?

A So we refer to that as lateral decompressions. So last year, my answer would have been no, because other sectors were taking lateral decompression movements from us because we were the ones that were extremely busy.

I mentioned that I have a -- my full TO is about 1,700 agents, and we caught more than the Rio Grande Valley Sector and the Tucson Sector, who each respectively have more than twice the agents that I have on staff. So in that situation, I needed the support. I was not giving the support to these other sectors.

This year, so far, that logistical line has turned around, and we have been receiving lateral decompression movements from both El Paso and the Rio Grande Valley Sector, so that, if they're catching over 2,000 a day and I'm only catching 700, I'll take some of those migrants and help them process so that it helps them not be in an overcapacity state.

Q Are there other sectors from which you receive lateral decompressions than El Paso and RGV?

A So far this year, that's the only ones that we've received buses from.

Q Have you ever received one from El Paso or Big Bend Sector?

A Not to my knowledge. Not saying we haven't, but I can't think of any.

Q Are you familiar with any sectors not releasing encounters?

A Not releasing?

Q Afterwards. Or paroling.

A So what any Border Patrol sector is going to do is, of course, implement the appropriate pathway and then turn them over to ICE ERO.

What happens to them from there is ICE ERO's responsibility. And so Border Patrol, unless it is a dire situation, will not release directly without going to ICE first.

Q But you are aware as sector chief in your sector what happens in generally the trends of the encounters that you turn over to ICE ERO.

A Most of them go to the NGOs, and the NGOs will facilitate the migrants' travel plans to wherever that's going to be while they await for their immigration hearing.

Q But are you familiar with any particular sectors that may be in the southwest border who may take encounters to ICE ERO and all of them get detained?

A No. I think I pick up what you're saying.

So ICE ERO does not have sufficient holding space or bed space for all of the migrants that we're turning over to them. And so where that's the case, they may not be detained for long periods of time. They may be either released on their own recognizance, having been given an NTA, or paroled while they wait for their court date.

Is that what you're asking?

Q Yes.

A Okay.

Q So, in your sector, what would you say is the percentage of parolees from those you encountered?

A So last year it was a large percentage. A large portion of them were being given parole and then given that alternative to detention. ATD is what we call it. That's where they're affixed with a device, like an ankle bracelet, or given a cell phone. And ICE would then turn them over to NGOs for them to travel to wherever they were going to go while they await their hearing.

Last year, for us, I would say the vast majority of the migrants that we encountered were processed under that parole pathway. This year it has changed, and the majority of them are going to be given a notice to appear.

Q When you say vast majority, what does that mean?

A I would say at least half. And I'll have the general counsel get you the exact numbers if you want them. But it was the majority.

Q But are you familiar with any sector along the southern border that has had a zero percent rate of those ATDs?

A I don't know the sector that has had a zero percent. I can't speak for them. I don't track what the other sectors do. I can tell you that ours is definitely not zero percent.

Q Okay. So when these ATD numbers are greater, do you believe that those numbers or that knowledge also gets fed into that population of migrants who might want to cross illegally?

And you had mentioned that there is a lot of communication in between migrants who then say maybe the journey is safer than it really is, or maybe it's not as perilous, or maybe I'll be paroled and it won't be a big deal?

A So I believe that the migrants communicate the entirety of their experience to their friends and family back home, and that would include what their experience was with whatever processing pathway they were put into.

Q Do you believe that processing pathway, especially related to ATD, could help encourage more crossing?

A It's tough to say what encourages somebody to make this journey. It's not as simple as a processing pathway. The situation varies for each migrant. Some of them are fleeing terrible conditions, some of them for economic reasons. Some of them are exploiting the situation that we have along the border.

It's tough to say that there is any one thing that is -- that's prompting it now. Could it contribute? Absolutely, but I'm hesitant --

Q That's my question, is does it contribute? Because earlier, while it's not a simple matter, you did mention that the cartels send a lot of misinformation to these would-be smuggling victims or crossers.

But in the same sense, when you say that they all communicate with each other, is it within your observation or general understanding that it's very feasible that they would also see numbers like the ATD numbers and realize this is a great processing pathway for me to get in?

A So I don't know if they're seeing ATD numbers. I hope they're not privy to that information. But I can tell you that, yeah, if the general perception is that it's easy, that would logically prompt somebody to be more inclined to make that decision.

Q That's a great point, that it's the general perception sometimes that's more important than even the numbers themselves. So even if there are a vast majority of ATDs and it's just over 51 percent, a little over half, then, at that point, the perception could exist that this is an easy processing pathway.

A And I would say that's probably obviously a false perception, because we don't know what the end result for those folks that have been entering that pathway will be. There may be a lot of them that will not be found amenable and will not be allowed to stay here and will ultimately be removed. That's that false narrative that the smugglers can perpetuate that's problematic for us.

Q I suppose that's the important portion of this, is whether you say it's a perceived view or not, the fact that the view exists is an impetus for this travel. So, for instance, right now, you're looking upon the expiration of Title 42 in just a few days or I guess less than a week.

The administration has activated military members to come and assist at the border. Are you familiar with that?

A I've heard about it on the news. I have yet to see anything official about what that will entail.

Q Has anyone relayed to you about the plan at all?

A No.

Q So you're only aware of this deployment via public news?

A Correct. There has been nothing official transmitted to the sectors that I know of.

Q So do you have any reason to doubt that this is the administration's plan?

A No. No.

Q I suppose that, in some ways, this public news, this perception now that you and I are operating under as well, could reasonably get to people who want to cross, thinking they know that the United States is ready for a surge.

What type of message does that send to a would-be crosser?

A I can't speculate on what the message may be perceived by somebody else.

Q But do you think that they would be communicating about those types of things? You seem to be familiar with what they communicate about on other matters, so --

Mr. Jonas. Can you be a little more precise about what it is you think is being communicated or miscommunicated?

BY MR. YI:

Q I guess my point is, if there are military members being deployed to the border because the administration is preparing for a surge of crossing -- and I guess is that a fair assumption, that there is going to be a surge of crossings after Title 42 expires? You're a border sector chief. I would love to hear what you think about that.

A So I already think that we're busy. And do I think the possibility exists that we could get busier after May 11th, when Title 42 goes away? Sure, it's possible.

And even if it doesn't, the folks that we are processing right now under Title 42 that we're already catching on a day-to-day basis will no longer be amenable under Title 42, because it won't exist.

So right off the bat, the number of people that we have to process under Title 8 will effectively add that number to it. So we will be busier just by virtue of the fact that Title 42 goes away, even if there is not a surge.

Q Because of one less processing possibility?

A Correct.

Q But why do you think that there is a possibility that you will get busier at the expiration of Title 42? Only because of the fact that -- the overreliance or extra reliance on Title 8?

A So there is a multitude of factors.

So, first off -- and I think this needs to be said -- Title 42 as a public health

ordinance, is something that we've been given authority to do because of the pandemic. When the pandemic is over, then Title 42 needs to go away. I don't think you'll talk to any Border Patrol agent that thinks otherwise.

We have been using Title 8 for decades, and we assume that's going to be the case going into the future, and we've always been able to function under Title 8. So I believe that we can still do the job using Title 8 even in the absence of Title 42.

The pathways that are available, the time that it takes to process an individual, that is going to impact how busy we are, because that requires more manpower, and that manpower is pulled out of the field to do.

The messaging that goes to the migrants that are thinking about making that journey, if they have a false perception that now that Title 42 has expired that somehow it is okay to cross, or somehow that it's going to be -- they can just be -- they can walk in with no consequence, could that prompt a surge? Sure. We just don't know. We won't know until May 11th hits what that's going to be.

Q So what are you doing in preparation for that possibility?

A So we had a lot of lessons learned, especially in the Del Rio Sector, from last year. And I do feel like we are in a much better situation than we were this time last year.

For example, we have additional processing coordinators that are on staff. We have taken a look at the processing pathway, the NTA pathway, and we have done our best to streamline that. Our partners, our NGO partners, ICE ERO, they have been doing what they can to expand their capacity.

Having lived through that experience last year, it's put us in a better spot this year. So I would say the answer is taking those lessons learned over the past year and trying to correct those gaps and deficiencies that we saw in our process is probably first and

foremost.

Q What is the level of coordination and planning or guidance you've received from headquarters or through any conduits from headquarters about preparing for the expiration of Title 42?

A Exactly what I just covered. The expectation is that we are doing exercises and tabletops with our community partners, with our law enforcement partners, that we are going through our entire process and how we are configured so that we're leveraging those best practices and we are in the best possible situation with what we have to be able to function as best we can.

Q Who is providing you those requirements?

A Which requirements?

Q To do these tabletops and these exercises and to do the preplanning?

A Well, the communication that we get -- so my chain of command comes from the Law Enforcement Operations Directorate, which is up at headquarters, Washington, D.C. That, in turn, answers to the deputy chief of the Border Patrol and the chief of the Border Patrol.

Q And so those -- and those people's names, again, are?

A The names of the Law Enforcement Operations Directorate?

Q Yes.

A So you have David B. Miller is the chief of the Law Enforcement Operations Directorate; you have Matthew Hudak is the deputy chief of the Border Patrol; and Raul Ortiz, who is the chief.

Q Did those -- have those individuals -- I'm sorry. To clarify, none of those individuals have told you anything about potential military deployments along the southwest border?

A Potential deployment is always -- they will have discussions about it. But in terms of official notifications and this is what's going to happen, no.

Q Okay. What is the daily interaction between you and anybody in headquarters through those folks?

A Daily, not so much. As a sector, if we're able to function and we don't need to use any headquarters bandwidth, they have 19 other sectors that they're engaged with, and there is always something going on. So it's not always daily, but whenever it's needed, it's there.

Q Have you ever met Secretary Mayorkas?

A Yes.

Q How many times?

A Twice.

Q What were the circumstances of your meeting?

A The first time, he -- talked to him about -- in the wake of the Robb Elementary shooting. He called to offer his support and sympathies given what we had just gone through.

The second time, he came down for an operational brief of the Del Rio Sector.

Q And, to clarify, what years were those?

A That would have been last year? Yeah, 2022.

Q Both cases?

A Uh-huh.

BY MS. O'CONNOR:

Q Good morning, sir.

There have always been economic reasons for migrants to come over the southwest border, right?

A Uh-huh.

Q And there has always been political instability in some of the central and southern American countries, right?

A Yes.

Q Have you, in all of your experience, ever seen the amount of people released as they are right now -- released into the United States?

A The United States? No. I can tell you that -- when I first started, it -- I started in California. It was in the '90s. And we were catching in the Calexico Station, for example, anywhere from sometimes 500 to 600 people per shift. And we were a much smaller organization and we only had a few thousand agents along the southwest border.

And most of who we were catching at that time were single adult people from Mexico who were coming over for economic reasons. And they had the voluntary return option available, and most of them would elect that voluntary return, because they would simply go back and they would try again until they actually made it through.

Exceptionally busy then, we weren't releasing people into the United States, but we were absolutely minimal processing and turning them back in to Mexico knowing they were going to turn right around and cross again.

Throughout the time that I've been in the service, I have seen times where we have had -- well, times have been busier than others. 2014 is another example of that, when we had the unaccompanied children and the family units that were coming across.

Q If I can just stop you. My question is, have you seen the number of people released as fiscal 2022 through fiscal 2023?

A And under the circumstances that exist right now, which are different than any other that I've encountered, there are more people probably that are being released

on their own recognizance to await their immigration hearing than I have seen in my career.

Q And what about people released on parole without NTAs?

A Compared to other years?

Q Yes.

A More this year than -- or more last year than in any other year, yes.

Q So what is different now? If the economic, political instability has always been the same and there have always been people coming here for those reasons, what is the difference now that drives all these people to come here?

A I don't know. There is a multitude of reasons that cause somebody to make that decision to make that trip. I don't know that political instability and economic reasons are the same as they were 20 years ago. I do know those are contributing factors.

I know that there are other factors. COVID is one, and the perception that the United States is the place that they want to be. I cannot speak for the reasons that people choose to make that journey.

Q Based on your training, knowledge, and experience, and your experience with other policies, do you believe that any of the current administration's policies regarding detention and release are contributing to the increase in the number of migrants coming to the southwest border?

A My job is not to make policy or to evaluate it. I've worked for five different administrations on both sides of the aisle, and whatever the parameters are set in the executive branch are the parameters that we operate under.

Q I'm not asking you to judge the policy. I'm just asking you whether, in your expert opinion, you think that the policy is having an impact on the number of migrants

coming across the southwest border?

A I can't say.

Q You have no opinion?

A I have no opinion.

Q Okay.

BY MR. YI:

Q Have you seen policies change and, as a result or even maybe not as a direct result, but seeing encounters increase or decrease based on American policy?

A So the first part of your question, I have seen policies change, of course. Having been here for five different administrations, of course they change. And, depending on the situation, when the policy changes, things may be busy, or they may not.

Q Do you believe policies impact or have an impact on the number of migrants wanting to cross or --

A They could, but I can't speak for the migrants. I can't speak for why they're making the -- you have to understand that we have apprehended people from, just in the Del Rio Sector alone, more than 80 different countries. And the reasons why these folks choose to make the journey are so vastly different. I'm not going to get political and try and say that there is one single reason for why somebody makes the journey.

Of course I have my personal opinions. I'm here talking to you as the chief patrol agent from the United States Border Patrol. I cannot tell, I cannot speak for all the migrant population and why they choose to make the trip into the country.

Q We're not asking you to speak for any migrant. And, for the rest of this interview, I promise you that that is a standing statement. We're not asking you to speak on behalf of any migrant.

Mr. Jonas. Well, you are asking --

BY MR. YI:

Q What we are asking you is that, in your 27 years in the field out on the border, knowing how the encounters have happened, under five different Presidential administrations, different laws and different policies, have you seen fluctuations based on policy? That's what we're asking you.

A That's the part I can't --

Q Because there are certain policies that perhaps you might think of in your own head that says, what you may know, that would change things, that would do things.

When we talk to Border Patrol agents who are rank and file, they tell us things, even lower-level policy in their own sectors or in their stations, we changed this policy and we've seen improvement in our ability to work or our ability to succeed.

For you, you're higher up than the rank and file at a station. So we're asking you, based on your experience of those five administrations, have you seen policy impact numbers of encounters?

A So what I'm telling you again is I have seen policies change, and I have seen the numbers change. To try and say that that is singular -- one is singularly responsible for the other, I am not going to say, because I don't know.

I do know that they could have an impact, but I am not a policymaker. And I may be at this level. There are people at even higher levels that I don't presume to know what they know any more than the rank and file should presume to know what I know.

BY MS. O'CONNOR:

Q So do your agents on the ground interview migrants after they're detained?

A Yes.

Q And do they ask them why they're coming to the United States?

A As part of it, they'll ask how they made the trip and who they were in contact with. Mostly it revolves around trying to find out the pipeline, the smuggling organization, so that we can go after them.

Q What have you noticed in Del Rio is the reason that most migrants are giving for coming to the United States?

A A large number of folks that are coming are going to be either for economic reasons or because they're escaping the conditions of their country. For example, Venezuela, Cuba, Nicaragua, they're fleeing what they perceive to be an oppressive government, or they're coming and looking for a better way of life.

Q For the Venezuelans, we've heard stories that Venezuelans who have lived safely in other countries have come to the southwest border and claimed that they have -- need asylum from the Venezuelan Government and that they've ditched their documents on the way there.

Does Border Patrol have any sort of process in place to identify these people or figure out if these people are actually coming from Venezuela or other countries?

A So anybody that we take into custody, there is an intake process, and part of that processing, almost immediately when they get to the processing center, is to start their biometric collection -- fingerprints, photos -- and they start doing the background checks, hitting those off of the different databases here in the country.

They also use the National Targeting Center here in D.C. to leverage other databases, to include those in other countries where we have the appropriate diplomatic relations. And they also do the interviews.

Those are the ways that we're always going to use to try and determine if a person has any kind of background that's of concern or if what they're telling us is true.

Q But none of those background checks will tell you where somebody lived

before unless they had some sort of criminal history or there's some sort of U.S. intel on that person, right?

A So to the extent we have, again, diplomatic relations where we can talk to the countries where these folks are coming from, we may be able to ascertain that that's where they live or have been.

Q I'm going to ask you a couple of questions a little more specific about some of the encounters that you've had.

In February of 2022 to March 2022, encounters jumped from nearly 31,000 in February to about 41,000 in March. That was one of the largest increases that Del Rio has seen in the past 3 fiscal years.

Do you know what may have caused that jump?

A So what I was talking about earlier, when you have temperature extremes, there have been -- number one, there's seasonal patterns that you can identify throughout history where migration is higher or lower in a given year. We also have other factors that come into play, and I'll give you an example.

With the Rio Grande, we have Lake Amistad, which is a huge water reservoir. That is to the west of us. And we have the Falcon Lake, which is to the east of us, down river.

For the past several months or couple months, there has been a massive release from Amistad to Falcon Lake to repay a water debt, and that created a much more substantial barrier. And that, what we believe, slowed the flow of migrant traffic during that time period.

Q When was that?

A I'm sorry?

Q When was that?

A When was the release?

Q Yeah.

A That's been going for the past couple months. I think last week or the week before is when they finally slowed the flow. And so we're already starting to see more crossings in the Del Rio Sector. Where we used to average 700 or 800 per day over the last couple months, when I woke up this morning, we apprehended almost 1,300.

Q Okay. But what about back to February to March 2022? Was there anything, any type of incident like that or something specific that would have caused such a large jump?

A Possibly. I'd have to look back and see. I obviously can't remember back in --

Q How has your sector been able to handle or has it been able to handle the constant increase in numbers of encounters throughout fiscal '22 and into '23, but for the last couple months, as you said?

A How have we been able to handle it?

Q Right.

A It's just I have an amazing team. I have an amazing group of people, that they work day and night.

I can tell you, I talked about how we are about half the strength of the Rio Grande Valley Sector and the El Paso Sector, respectively, and we were able to manage the same or higher volume because they figured out how to process, they figured out how to do the logistics of transport in the best possible way. And that set us up better than, I'd say, a lot of the other sectors along the southwest border.

That said, there will come a time or there could come a time where we will be

busier than what we can handle. Last year, we had times where we were over capacity most of the week. If we have an 1,850 capacity, there were times when we were in excess of 2,200, 2,300. And it took a lot to decompress.

I'll give you an example. For Tucson, the Rio Grande Valley, San Diego, those are all connected with thriving metropolises. They have a vast infrastructure and transportation network.

The Del Rio Sector, we have the city of Del Rio and the city of Eagle Pass that are the biggest in that sector. Eagle Pass has about 40,000 people and Del Rio has about 35,000 people. Where some cities boast a Greyhound bus station and an airport, in Del Rio, we have a Stripes gas station where the Greyhound stops a couple times a day.

So if we're talking about migrants spending the night at the airport or at the bus station in San Antonio, what that means for us is we would have people spending the night in the parking lot of a gas station in the one main street that is the city of -- or the town of Del Rio.

Q Did you get agents detailed into your sector to help with or have you had other agents from other sectors detailed to you to help?

A Yes. So we had people detailed in, and we call that TDY, temporary duty. So they're being detailed away from their permanent station. And that, of course, comes at the expense of what they're supposed to be doing at their station.

Q Have you gotten anyone from the northern border?

A We did.

Q How many do you think you got from the northern border?

A It varied from month to month. But I think at our highest, maybe 75 at a time. I mean --

Q Are you getting -- oh, I'm sorry.

A Go ahead.

Q Are you getting details from other Federal agencies, like HSI or Federal Air Marshals?

A So we did. There was a period of time when we had what they call the DHS Volunteer Workforce, and so that would be people from TSA, from Federal Protective Service, from a multitude of other entities to come down and help out with the processing effort.

And even if they couldn't process the case itself, they could help out with security. They could help out with the care and feeding. In some cases, for example, BOP could help with the transportation from location to location.

All of that helped us when we were at our busiest, because that afforded us the opportunity to let the agents get back out to the field and do their job, which is the primary goal. I have to be clear about that. That is the mission of the U.S. Border Patrol, and everything that we are doing is in the name of trying to make that happen, have our agents out there, catching the bad actors and the bad things that are coming across that would seek to do this country and our way of life harm.

Q According to CBP's publicly available data from fiscal '21 to now, about 35 to 40 percent of encounters have been Mexican and Honduran nationals, but then the other nationalities really fluctuate. Do you know why other nationalities would fluctuate throughout the fiscal years?

A Again, I'm assuming it would depend on the situation that they're coming from. I think that is accurate for us as well. If you look at what we're holding in custody right now, the majority is -- come from the country of Venezuela and Colombia.

However, that doesn't represent the majority of the people that we are catching on a daily basis. We have a large number of people from Mexico that we're still

catching, but they're amenable right now to Title 42, and so they don't count among our detained population because they're immediately expelled.

Q The data also suggests that in fiscal years '22 and '23 over 9,000 encounters were classified as other nationalities. What are those other nationalities? And are there any that are in the area of national security concern?

A I'm not familiar with the number that you are giving, but you might be referring to special interest migrants that come from countries that are listed on a DOJ list, and the Department of Homeland Security has a list.

And those are countries that are identified to potentially be of greater concern based on -- or, rather, the migrants are of special concern based on their travel patterns, their contacts, in some cases the countries that they come from.

Q Have you seen any of those in Del Rio?

A We have -- we don't see a lot compared to our overall numbers, but we do have them. Let me see here if I can --

Q I'll just move on.

We did notice, too, that the number of Chinese nationals, while small comparatively in number, have increased by 220 percent from last year.

Do you have any understanding as to why that might be?

A I don't. I know that the Rio Grande Valley has been the one that's experienced the greatest number of Chinese nationals crossing through their AOR. We have seen some, but it's not significant compared to what the Rio Grande Valley has seen.

Q Well, the percentage increase is relatively significant, but I understand the number itself is not. Does it cause you any concern -- does that increase cause any concern?

A Even without the increase, people coming from the PRC would be of concern

to me. That's always going to be a group that we look at more closely and work with our partners, with FBI, to make sure they don't pose a threat. So, even without an increase, that particular population is always going to be of concern.

Ms. O'Connor. Okay. I'll pass it on to my colleague.

BY MR. RUST:

Q You mentioned earlier that there is not a lot of infrastructure or access in the Del Rio Sector. Can you elaborate on that a little bit? Are you talking about roads? Or what other infrastructure?

A I am. So predominantly, yeah. So the Del Rio -- city of Del Rio has an airport, and it just lost service from American Airlines, so we have no commercial airlines flying out of there now.

We have basically three or four major roadways that leave into and out of the area. The largest towns that we have, as I said before, is Eagle Pass and Del Rio, and each of those have less than 50,000 people.

They're small towns, and they're surrounded by extensive ranch lands that, in some cases, they measure their ranches in thousands of acres. And on those ranches they don't have a lot of roads. And, particularly closer to the border you get, there is not a lot of roadways that afford us the lateral access movement to be able to respond to and interdict the traffic that we detect.

Q What do your agents do to overcome the difficulties presented by that lack of infrastructure and roads in the Del Rio Sector specifically?

A So everything revolves around supporting that agent. That's the primary research that we have to do the border security mission. Everything else is a force multiplier.

And so we start off with the detection capabilities. They give us the situational

awareness along the most remote areas of the border. So we have detection capabilities that are deployed along especially these remote areas that let us know if there is traffic coming across.

The next piece we're going to look at is the infrastructure and the equipment that we use to be able to respond to and interdict that traffic. Where there are not roads, we have all-terrain vehicles. We have our horse patrol. We have, in some cases, we have air assets that -- and, in some cases, the agents are on foot, and they're moving and laying in on the traffic to interdict it when it gets there.

Whenever we're talking about private property, we're at the behest of our partners, the land owners, as to what we're able to do on a day-to-day basis on their lands. And so maintaining that communication and coordination with them is also paramount. So that outreach is pivotal as well.

Those are the predominant things that we've used to overcome those challenges that you're talking about.

[10:00 a.m.]

BY MR. RUST:

Q Would you say the majority of individuals encountered by Border Patrol agents in the Del Rio Sector are voluntarily turning themselves in to Border Patrol agents upon encounter or are they actively trying to evade apprehension?

A So last year, I would say that predominantly they were turning themselves in. If you followed the news, you saw that we had a lot of what we call large groups. Large groups are at least a hundred individuals crossing the river at the same time. And sometimes those large groups got in excess of 500 people in the Del Rio Sector.

They would cross. They would find the nearest Border Patrol agent or they would just wait for us to arrive so that we could begin the intake and processing.

When that happens, that's a massive logistical lift to begin intake and actually transport those individuals to a processing center. It forces us to collapse our operations, our border security operations, down even further to address what's right there in front of us.

Remembering that everything is controlled by the transnational criminal organizations and the smugglers, who do you think is causing that? They are there causing those groups to cross. Why? Because they are going to take advantage of that where they can.

Again, I go back to that is the major concern for us, is the border security mission. And our true adversary, the smugglers, while we're tied up with this humanitarian effort, what are they doing around the bend that we can't be there to respond to? Is that where they're crossing dangerous narcotics? Is that where they're crossing convicted felons? That is what keeps us up at night.

We're always going to be there for that humanitarian mission, seeing people in the worst of conditions and try and help where we can. But make no mistake about it, we take care of this in front of us so that we can get back out there and do this job as quickly as we can.

Q So you would say that the transnational criminal organizations are crossing these large groups in order perhaps to cross criminal aliens who are paying them additional money to evade apprehension or narcotics and overwhelm Border Patrol agents?

A So our Sector Intelligence Unit estimates that the weekly revenue for illicit human smuggling in our sector alone, the Del Rio Sector alone, is in excess of \$30 million a week.

So while they may use that as a tactic to deter us or to distract us, they're still making money off of it. And while they're doing that, by the way, they can be over here doing something that is impactful to our border security mission, which, as I said before, there is still money to be made in narcotics and crossing the folks that do want to evade capture because they have something to hide. It's a win-win for the smugglers.

Q Would you say that an individual who wants to cross in between ports of entry can do that without the assistance of a smuggling organization affiliated with transnational criminal organizations?

A It would be difficult. It's dangerous, both dangerous and difficult.

Number one, imagine coming from here and traveling down to the southern border of Mexico and trying to understand the language and the terrain and all the things, the nuances that go in that area. You're going to need somebody to guide you. Most of them will not feel comfortable. And it is extremely dangerous, the remoteness of the terrain and the river, as I said before.

The safety issue also extends to these transnational criminal organizations and these smugglers keep a death grip on anything that comes across the border illicitly, because they want their cut. They want their money. And so they're going to do things to dissuade individuals from doing what you're saying, crossing on their own, to include violent tactics against them.

Q Do you know how much the aliens you encounter in the Del Rio Sector have paid to these transnational criminal organizations to smuggle them into the United States?

A So we have estimates. And it depends on where they come from. It depends on if they're a family unit. It depends on if they're a single adult.

So we have a breakdown, based on interviews that our intelligence unit has conducted, but, as I said, the total estimated revenue for just human smuggling in our sector alone, one of nine sectors, is in excess of \$30 million a week.

If you do the math -- and coming from Oklahoma, I'm not the best at it -- but that's nearly \$1.5 billion a year. That's a massive enterprise.

Q And that's solely human smuggling revenue, that doesn't include drug revenue or any other revenue?

A Correct.

Q You mentioned there were 200,000 known got-aways in Del Rio fiscal year 2022. Do you know what the got-away estimate is for fiscal 2023 so far?

A So far, I believe it's in excess of 113,000 this year.

Q And how does U.S. Border Patrol in Del Rio Sector measure known got-aways?

A So we talked about the detection capabilities. So any time we are able to detect an illicit crossing and we are not able to respond to and interdict that same

crossing, that's what we term to be a got-away.

And, again, it's important to remember that's what we know about. That's the ones that we know, because we have either seen or detected, either through our camera technology, our sensor technology, or good old-fashioned sign cutting, following tracks that our agents still do today.

If they're not able to bring that to a disposition where they're able to either verify the person was taken into custody or they turned back and went back to Mexico, that would be a got-away.

Q Do you believe those known got-away estimates are fairly accurate, given the detection capabilities of U.S. Border Patrol agents in the Del Rio Sector?

A For what we know, yes. But it is the tip of the iceberg theory. There's what we don't know, and that's -- I always get asked to guesstimate that, and it would just be that. I don't know what I don't know.

Q Does the high flow that the Del Rio Sector is currently experiencing have an impact on Border Patrol's ability to reduce the number of known got-aways coming into the sector?

A Absolutely.

Q And in what ways?

A As I said before, if my men and women are stuck in a humanitarian effort of processing these folks, they cannot be in two places at once. They cannot be out on patrol. And where I need them out on patrol is to not only account for those got-aways but to reduce them, where possible.

Everything revolves, as I said before, around having those men and women on the ground doing the job. Everything else is just a force multiplier.

If I can't have them out on patrol, it makes no -- it means nothing to have the

roads. It means nothing to have physical barrier. It means nothing to have technology. I need them out doing the job that they were hired to do. And where they're doing something else, they cannot be there.

Q Are you concerned that individuals who are evading apprehension entirely could present an elevated risk of a public safety threat, such as a criminal -- prior criminal history or a prior removal history?

A So here's my concern. If a person is willing to put themselves into harm's way crossing through very remote, very dangerous conditions to evade capture, you have to ask yourself why. What makes them willing to take that risk? That's of concern to me.

What's also of concern to me is I don't know who that individual is. I don't know where they came from. I don't know what their intention is. I don't know what they brought with them. That unknown represents a risk, a threat. It's of great concern to anybody that wears this uniform.

Q Are you aware of whether the transnational criminal organizations are charging a premium to individuals to guarantee or increase the likelihood that they will be able to evade apprehension by Border Patrol agents?

A It wouldn't surprise me. They look at their operations like a business venture. And so do they have tiers for what they charge? That wouldn't surprise me at all.

We already know that they charge based on where the person comes from and what their situation is. So they very easily could do what you're saying.

BY MR. YI:

Q I just want to clarify one thing you mentioned.

I understand the cartels are making a lot of money doing smuggling and that you

called it a win-win for them.

But, to clarify, is it an active tactic to saturate a particular area by the cartels through smuggling to divert Border Patrol resources to certain areas while they conduct other illicit activities?

A Yes.

Q It is an active tactic?

A Yes.

Q Thank you.

BY MS. O'CONNOR:

Q Is it an active tactic also to put migrants in peril, put them in situations where Border Patrol has to come rescue them?

A 100 percent. We have seen that time and time again. We have seen where they will abandon the migrants. And the migrants call 911 when they have a phone, and they're calling us. And they know that we're going to be the ones -- we're the only ones out there.

They do that for a reason. They don't care about the lives of the migrants, they don't care if they live or die, only the impact that that call has so that they can do who knows what.

Q Do you think that that's a tactic across the southwest border, or do you think it's very specific to Del Rio?

A No, I believe it's used anywhere and everywhere they can get away with it.

Q Which cartels are active in Del Rio?

A Del Rio? So we've been very blessed where we don't have a large cartel presence that we know about compared to other sectors to our right and left. But we do have along the southwest border, particularly in south Texas, the Jalisco Cartel, the

Gulf Cartel, the groups that have splintered off from what was formerly known as the Zetas.

The important thing to remember about the transnational organizations is it is not one big group like we used to think about. We have what we call splinter factions. And you may have a group that is responsible for transport. You may have another group that is responsible for stash house operations. You may have another group that is responsible for guiding them across the border.

And the migrants are treated like cattle and sold from one group to the other. And where you used to see the groups, the smuggling organizations concentrate on either human smuggling or narcotics, now they cross the lines.

They work for different cartels, different organizations, smuggling different things, whatever makes them the most money.

So it's not one particular group. It's a network. It's a --

[Phone ringing.]

Q You can finish your answer.

A It's a business enterprise that they've created.

And they also are able to silo themselves off so that if one group is captured or taken down by us, they have limited information to give on the other groups.

Q Okay. Thank you.

Mr. Yi. This concludes our first round of questions, and we'll take a short break before our next round. And we will go off the record at 10:10 a.m.

[Recess.]

Mr. Yim. We'll go on the record. The time is 10:20.

EXAMINATION

BY MR. YIM:

Q Good morning, Chief Owens. My name is Daniel Yim. I'm with the House Oversight Committee, Democratic staff. I'll be asking you a few questions at the beginning of this round.

So I'd like to circle back and discuss your background with Border Patrol.

You mentioned you've been there for 27 years. Is that correct?

A Yes.

Q You started in 1996, correct?

A Correct.

Q And when you started in 1996, just so we can walk through the different administrations, that was under the Clinton administration? Does that sound right?

A Correct.

Q And you continued to serve with Border Patrol, and that was under the Bush administration as well? Is that right?

A Yes.

Q And then after the Bush administration, you continued to serve with Border Patrol, and that was the Obama administration. Is that right?

A Yes.

Q Following the Obama administration, you continued to serve with Border Patrol. That was under the Trump administration?

A Are you trying to make me feel old?

[Laughter.]

Yes.

Q Is that correct?

A It is.

Q Great. Thank you.

And finally, President Biden took office in January in 2021, and you've been with Border Patrol since then. Is that right?

A Yes.

Q Great.

So in total, as you mentioned earlier, you've served under five different Presidential administrations. Does that sound right?

A Correct, yes.

Q Great.

You mentioned during questioning from my Republican colleagues that policies change under different administrations. And I guess I'd like to walk through some of those with you just to make sure that we set the foundation there.

So, for example, under the Clinton administration, when you first joined Border Patrol, the Clinton administration instituted something called Operation Gatekeeper. Are you familiar with that?

A I am.

Q Just for the record, it was a measure designed to halt unauthorized crossing at the U.S.-Mexico border. And the merits of this policy aside, you'd agree that this was simply a policy instituted by the Clinton administration?

A So let me caveat this by saying, in 1996, I was a junior agent on the ground.

Q Sure.

A So policy never really entered my mind. I was going out and patrolling every day and catching what I could. That's what Border Patrol agents do.

So I was part of it, Gatekeeper, Hold the Line, Operation Rio Grande. And I'm familiar with, at the tactical level, what we were tasked with doing. But to ask about the policies, I'm not that old.

[Laughter.]

Q Fair enough. And thank you for that.

And I guess to clarify, the decision to implement Operation Gatekeeper, that was a Presidential administration decision?

A I believe so. That's correct.

Q And I guess we'll walk through these. After the 9/11 attacks, the Bush administration implemented something called the National Security Entry-Exit Registration System. Do you recall that?

A I don't.

Q Okay. So generally that was a system that required individuals from certain countries to undergo additional screenings before entering the United States. And like we talked about with the Operation Gatekeeper, the decision to implement this registration system, that was a policy decision. Is that right?

A It sounds right.

Q And, similarly, under the Obama administration, that administration implemented the Deferred Action for Childhood Arrivals program, the DACA program. Are you familiar with that program?

A I am.

Q And, again, the decision to implement this policy was a Presidential administration decision. Is that right?

A Yes.

Q Okay. Great.

Then finally, under President Trump, he decided to build 450 miles of border wall. And you'd agree that building this wall was a policy decision made at the Presidential level. Is that right?

A Yes.

Q Okay. Great.

So just to circle back and start -- and bring it back to where we started, you would agree that each administration has their own immigration and border security policies that they change?

A Absolutely.

Q Great.

You've touched on this briefly, but who is your current direct report? Who's your current supervisor?

A So I, like every Chief Patrol Agent, reports to the Chief of Law Enforcement Operations, which is here in Washington, D.C. We refer to that person as B3. He reports to the Deputy Chief of the Border Patrol, B2. And he reports to the Chief of the Border Patrol, B1.

Q Okay. And how often do you have conversations with the Chief of Border Patrol, Mr. Ortiz?

A So regular conversations, simply because he's a personal friend.

Q Okay. Do you often talk about operations in your sector?

A From time to time, but not without going through the chain of command.

Mr. Yim. Okay. Great.

I'll turn it over to my colleague.

BY MS. JACKSON:

Q Good morning.

I wanted to circle back to the time spent preparing for this interview.

So in your own estimation, how long would you say that you spent preparing for this today?

A Maybe 8 hours.

Q Okay. And is it safe to say that transcribed interviews generally are not a typical part of your duties as Chief Patrol Agent?

A Definitely.

Q So if you hadn't been preparing for this interview today, how would you have been spending your time as Chief Patrol Agent?

A I would have been back at my sector doing the duties of the Chief Patrol Agent.

Q Thanks.

BY MS. NORTHROP:

Q Chief, I'd like to talk to you a little bit about the resources you employ and the resources you need to secure the border in Del Rio.

And I'd like to start by talking about processing coordinators. I know that was touched on a little bit in the last hour.

Can you describe what their role is in Border Patrol in your sector?

A Sure. So one of the issues that we have when it comes to a large influx of people crossing is the processing requirement. And so we have been taking a look at anything and everything that can be done by someone other than a Border Patrol agent, with the specific intent of putting those Border Patrol agents back out to the field.

The processing coordinator position was created to help fill at least some of those gaps. And so they will be assigned to the different processing locations throughout a sector specifically to do those duties that don't require a law enforcement official to do.

Q Okay. Thank you.

And just to clarify there, are there some processing duties that a law enforcement official does have to do?

A Yes.

Q Okay. And when did the Border Patrol processing coordinators start rolling out to your sector?

A So we actually did the first class while I was the chief of the Academy. So that would have been, I believe it was 2020, maybe 2021. So they would have started rolling out probably 8 weeks after that.

Q At least my recollection was that graduation was January 2021.

A That sounds right, yeah.

Q And about how many of these processing coordinators are in Del Rio now?

A So we had a TO for 200. And if we don't have that number on staff right now, we're building towards it.

Q And would you say that these processing coordinators have helped fill that intent of getting Border Patrol agents back into the field?

A Absolutely. Anything and everything is going to help.

Q Thank you.

And then another sector chief informed us that Border Patrol agents really want to be in the field and doing that job. Would you agree with that statement?

A I would agree with that, yes.

Q Okay. And let me move on to something else.

We touched on this again a bit earlier on the number of agents and professional staff in your sector. Do you recall whether that number has gone up or decreased since you started in the Del Rio Sector?

A So because of the addition of processing coordinators, that number has gone up. We started off, obviously, we didn't have any processing coordinators as part of our TO.

Q Okay. Thank you.

So I'd like to discuss the CBP One app. Are you familiar with the app?

A Only -- yes, I'm familiar with it, but I'm not going to be able to speak to it on a knowledgeable or expert level.

Q Okay. I appreciate that.

So the CBP One app, my understanding, is it's getting migrants to put in for an appointment at a port of entry for processing. Is that in line with your understanding?

A Yes.

Q Okay. Do you know when that app was introduced?

A I don't.

Q Okay. Would you agree that having a pathway for migrants to schedule an appointment at a port of entry is generally helpful for orderly processing?

A Sure. I think it's about -- again, we talk about two different things that are important for us, and that's the capacity and then the consequence application.

Anything that's going to help reduce the flow of migrants coming across the border is logically going to reduce the workload on my agents and then allow them to get back out on patrol.

Q And so in the fall of 2022, the administration created a program for parole pathway for Venezuelans to use the app and apply for parole to come into the country. Are you generally familiar with that?

A Yes.

Q Would you say that the number of Venezuelans you're seeing in your sector dropped after that pathway was introduced?

A So I know that there was a period of time when the number of Venezuelans did drop. Again, talking about when we were talking to your Republican colleagues, I

hesitate to attribute it to anything, any one thing.

Q Okay. And, again, understanding we're not attributing it to any one thing, that app was expanded in January to Cuba, Haiti, and Nicaragua.

Have you seen a drop, for whatever reason, since January of those nationalities?

A Yes.

Q Okay. Thank you.

So I'd like to talk a little bit about the technology and assets in the Del Rio Sector.

Do you utilize Autonomous Surveillance Towers, or ASTs?

A Yes.

Q Could you tell us a little bit about what these are?

A Generally speaking, they assist our agents, again, serving as force multipliers by enhancing our detection capabilities along the border. And we use smart technology that enables the computers to help identify potential illicit traffic so that we don't always have to have a human with eyes on the camera.

Q And since your arrival, have you received more ASTs or more of this technology?

A Yes.

Q Are you aware of plans to continue to increase the ASTs in your sector?

A Yes.

Q Does your sector utilize remote video surveillance systems as well?

A Yes.

Q Can you, again, describe a bit how these operate?

A So that goes back a few more years. It's a little bit more dated, the concepts. That's actually having the remote cameras on towers positioned at points along the border that are operated in a control center by a person. And when they

observe traffic, they call it out to our agents by radio and the agents respond.

Q And do your agents find these helpful in addition to the ASTs?

A Yes.

Q And since your arrival in Del Rio, have you received more of these -- of this technology?

A More and/or updates to existing technology.

Q And are there plans to continue to update or roll out more of this technology in the sector?

A Yes.

Q Thank you.

Does your sector utilize unmanned aircraft systems?

A Yes.

Q Again, can you talk a little bit about what these are?

A It's basically drones. Most of them are the small, smaller versions where our agents can actually pilot them themselves. And it's a way for our personnel to give air support to themselves, to be able to achieve an altitude and to detect threats or traffic in areas that they're working.

Q So just for the record, would you agree that these are helpful for your agents?

A Yes.

Q And have you received more of these UAS systems since arriving in Del Rio?

A Yes.

Q And are there plans to increase that number further in Del Rio?

A I think so, yeah.

Q And are you expecting the Del Rio Sector to receive and deploy any other

technology systems, like communication systems, in the coming months?

A We're always asking for it.

Q And can you talk a little bit about why these communication systems are so important for your agents?

A Communication systems? Absolutely. So that's -- I talked a little bit about the remote areas that our agents work as a matter of safety as much as it is efficiency for our agents.

A lot of these areas don't have cell phone coverage. It's hard to imagine that there's still areas in the country that don't. But we have -- we work in areas that don't have cell phone coverage. A lot of these areas didn't have effective radio communications coverage.

And so that ability to ensure that no matter where they are in the area they have communications with someone helps to ensure their safety. It also helps them to be able to do their job better. It's a force multiplier as much as anything else.

Q Can you explain that for your agents so we understand about what's the need for those communication systems? Is there a percentage of your agents who don't have them or anything you can speak to there?

A So there's a rollout where we're working to ensure that every single agent has a phone with -- we call it a TAK device, where -- Tactical Awareness Kit I believe is the acronym for it -- that helps them identify where their partners are, where they are, and where potential traffic is.

Things like that, technology like that, can be a game-changer for any law enforcement or military organization because it helps give them the advantage over the adversary that they're out there against.

Q Thank you.

And just to clarify. So that plan to give every agent one of these devices, that's underway?

A That's underway.

Q So I'd like to turn to the most recent funding that Congress provided to Border Patrol.

So the 2023 omnibus, which passed in December, provided funding for 300 new Border Patrol agents in the workforce, which is the first increase since 2011.

Do you think these additional agents will be helpful in the role -- in the job of securing the border?

A Absolutely. We always need more agents.

Q Are you familiar with the CBP Shelter and Services Program or the Emergency Food and Shelter Program-Humanitarian, which is the DHS funding to organizations that help migrants once they leave Border Patrol custody?

A At a vague level, yes, I'm familiar.

Q Do you find that program and NGOs having capacity in your sector to receive migrants, do you find that helpful?

A Right now it's necessary, because they are another link in the chain of that process.

If ICE ERO does not have the capacity to hold the migrants that we turn over to them and they end up sending them to the NGOs, if the NGOs don't have capacity to facilitate the migrants traveling to points beyond, then we end up in a situation I was talking about before where I've got a little town that has hundreds if not thousands of migrants sleeping in parking lots and roaming the streets.

That's not good for the migrants, that's not good for the community, and it's not safe for us either.

Q So last year we provided about 800 million for this program. In your professional opinion, do you think that money will be helpful for these NGOs to build capacity?

A So I don't want to speak for the NGOs or their capacity.

Q Okay. Understood. Do you -- let me rephrase that a bit. Do you think that that money could help Border Patrol with what you just described, of making sure that migrants aren't sleeping in parking lots?

A Anything that's going to ensure that we are able to have a throughput to move migrants out of our custody so that our men and women can get back on a patrol is something that's going to be helpful.

Q So the fiscal year 2023 omnibus also included 24.6 million for suicide prevention and workforce wellness efforts and childcare. As a sector chief, how important do you find this funding?

A For me, this is something that's extremely important. Del-Rio Sector has gone through a lot in the past 2 years. And if you look at where we started when I first joined -- we're talking about not that long ago, back in the nineties -- where we didn't really have much in the way of resiliency but we touted ourselves as a family.

And these are the types of things that show an investment, that make this more than just a place to show up for work. And they also encourage longevity in our workforce because we're there for them whenever they're in times of need.

So this is a great program. This is something that I'm 100 percent behind and I think we need to continue building as well.

Q Thank you.

And then at our March 2023 hearing for the Committee on Homeland Security, Chief Ortiz stated, quote: "With the investments that this Congress has made into the

Border Patrol, CBP as a whole, we have greater situational awareness now than I've ever had," unquote.

Do you agree with that statement?

A I'm not privy to the specific conversation, and I know that's just probably a piece of -- so I'll speak for the Del Rio Sector.

Because we have gotten more detection capability, because we have, as you said, more on the way, we've got the additional processing coordinators, we are in a better situation than we were in years past.

Q Thank you.

And I want to touch on one more thing on the processing coordinators, processing in general. Throughout your time in Border Patrol, have Border Patrol agents been involved in the processing?

A Yes.

Q So we've been talking about kind of these increases in funding and the resources. Would you agree that a decrease in funding would harm your ability to conduct your mission to secure the border?

A It's hard to say no to that.

[Laughter.]

Q So one thing being discussed in Congress -- and I'm not trying to ask a political question -- is a 22 percent cut in resources for Border Patrol. Do you think that would be harmful for your agents and the mission?

A Again -- and I don't want to speak on politics or policy. I'll just keep it at I'm never going to be an advocate for my sector losing money, and I'm never going to be an advocate for the Border Patrol losing money.

Q Understood. Thank you.

And the Department of Homeland Security estimates that a 22 percent decrease in resources would result in a decrease of 2,400 agents across CBP. Do you think that would be harmful?

A We need more than the 19,855 that we currently have. We need, as I believe the Chief has stated, at least 22,000 agents.

Q Thank you.

BY MR. YIM:

Q So, Chief, I just want to circle back briefly.

We talked a little bit about the processing coordinators. I do want to talk about your staffing numbers there, but I want to move away from the processing coordinators in particular.

So do you recall the number of Border Patrol agents and professional staff that you had when you first arrived to Del Rio?

A So 1,700 agents was the TO, and I believe it was on the order of 150 to 170 professional staff.

Q Great.

And just for clarity, you arrived at the Del Rio Sector November of 2021. Is that right?

A Correct.

Q So since arriving there and since that 1,700 number that you quoted us, has the number of agents at the Del Rio Sector increased?

A No.

Q It hasn't?

A No.

Q Okay. And how about the number of professional staff?

A Because of the processing coordinators, yes.

Q And are you aware of any initiatives or resources that have been implemented recently to drive up the number of agents that are coming to Border Patrol, recruitment efforts?

A I know that our recruiting efforts are always ongoing and that there's always an effort to -- as the chief of the Academy, certainly that was first and foremost on my mind. But there is a continuous effort to try and bring aboard new Border Patrol agents.

Q You talked a little bit about the CBP One app and how it helps reduce the flow of migrants at the border and that that is helpful because it frees up agent time, right?

A Uh-huh.

Q You agree with me?

A Yes.

Q And I just wanted to kind of ask you generally whether you agree that programs that help that migrant before they approach the border and allow them to enter lawfully helps reduce unlawful entries to the border?

A If they don't have to -- if they have another pathway available to them and they -- that keeps them from entering the country illegally, then yes.

Q And that's helpful to your mission, correct?

A From a standpoint that it reduces what I'm faced with dealing with so that I can focus on border security, yes.

Q And we've talked about the resources that you've received, the additional human power and processing coordinators, the additional technology that my colleague talked about. That also is all helpful to your mission at the border. Is that correct?

A Of course.

BY MS. MARTICORENA:

Q I just wanted to talk a little bit about Title 8. I know we touched on that in the last hour.

So just to clarify, after Title 42 ends on May 11th, your sector will go back to exclusively using Title 8. Is that correct?

A Correct.

Q And Title 8 authorities impose criminal consequences on people who enter the United States, without exception. Is that correct?

A Yes.

Q Could you explain what some of those consequences are?

A So the three main consequences that fall under Title 8 are USC 1325, 1326, and then 1324. One deals with entering the country illegally in the first place. The other is a smuggling charge for those that are bringing people into the country illegally or contraband. And 1326 is a felony charge for somebody who has reentered the country illegally after being removed.

Q And do you know what the penalties are for those? Are you familiar with that?

A It varies from judge to judge, depending on what they -- a lot of times it can be time served. If it's more egregious, it can be several years.

Q And under Title 8 authorities, Border Patrol agents can still detain migrants who attempt to enter the United States illegally. Is that correct?

A Yes.

Q And when migrants are detained, you mentioned before they're screened, for example, for criminal history.

When there's a flag, like an outstanding warrant, would they be referred to

another law enforcement agency?

A Yes.

Q And if someone is wanted for a criminal offense, they're not just released into the United States. Is that correct?

A No. If they have anything in their background that is of concern, we work to -- with our investigative partners and our local law enforcement partners and, if needs be, they are turned over to them for action before they return to the immigration process, or they remain in the immigration process and they're removed back to their country of origin.

Q Okay. Thank you.

BY MR. EWENCZYK:

Q You talked a little bit earlier about foreign countries and the role that they play in this process. So, for example, you talked about countries with whom we have diplomatic relations that help get information about people you encounter at the border. Is that right?

A Yes.

Q And then you mentioned also that there are a lot of push factors for migrants that concern the political instability or security conditions or economic conditions in their home country. Is that right?

A There's a multitude of factors, push and pull, that can affect the migrant flow into this country.

Q And so the conditions in home countries is one of those factors that drives migration?

A Sure.

Q So would you agree with me then that efforts to engage with those foreign

countries to help expand lawful pathways for entry into the United States, that help address the root causes of migration that we've discussed, and that step up enforcement cooperation with those countries, that that kind of engagement with those foreign countries is helpful to your mission at the border here?

A There's always benefit in engaging with our foreign counterparts across a multitude of issues, and that is just one.

BY MS. NORTHROP:

Q Chief, just I wanted to ask you a quick question following up on some of the conversation about staffing levels in your sector and specifically hiring.

And I was wondering what kind of initiatives you're doing within your sector to attract new people to Border Patrol, to get more agents in the pipeline and maybe eventually to your sector.

I noticed that there have been some hiring incentives and some hiring type events. Can you speak to those a little bit and what you're doing in Del Rio?

A So the Del Rio Sector participates with the national-level programs that you're talking about. And that includes attending recruiting events, job fairs. Again, we have a lot of small communities, so our recruitment pool probably doesn't come from the local area so much.

But attracting people by going to these events is one thing. And then enticing them to be willing to come to places like Del Rio and other points along the border with these incentives that you refer to, that's been the ongoing efforts, to try and increase the candidate pool that ultimately goes to the Academy and then ends up in the field with us.

Q And can you speak, to the extent you're aware, about what those incentives might be that Border Patrol is offering?

A So I believe they have a hiring bonus basically for signing on, that at least

some of the candidates have available to them. I don't know what the conditions are or the amounts.

Q And then would you say it's fair that there's a pretty aggressive social media push and other kinds of events that Border Patrol has, bull riding events, other things, to try and touch various communities that might have populations that are interested in joining the Border Patrol and making it a career?

A So we do leverage our social media accounts, and not just for public awareness but also for things like the recruiting initiatives.

Ms. Northrop. Thank you.

Mr. Yim. All right. We'll go off the record.

[Recess.]

Mr. Yi. We'll go back on the record at 10:56 a.m.

BY MR. YI:

Q Chief Owens, what's a favorite part of your job?

A Oh, that's tough to drill down on.

So everybody gets into the job to be part of something bigger, to serve your country. As much as that is getting to be a part of this team that I'm a part of. The men and women that I get to associate with, that's become my most cherished part of the job.

Q Being a part of something bigger?

A Uh-huh.

Q To help in our national defense and provide homeland security?

A Yes.

Q What's the least favorite part of your job, or what gets frustrating about your job?

A Transcribed interviews with Congress.

[Laughter.]

Mr. Jonas. You could see that one coming a mile away.

Mr. Owens. That's a softball. Come on.

No. Unfortunately, the higher up you promote, there's good and bad that comes with that. The bad is I don't get to go out and do the job that I initially signed on to do. I get to do things like this.

And it's good because I get a chance to meet other folks and participate in something at a higher level. But it does get monotonous whenever you're somebody like me that -- you're a Navy guy you just said. You want to be out there doing the job, the mission of the Border Patrol.

BY MR. YI:

Q Okay. What do you think is a frustrating part of people who are more on the rank-and-file levels too? And you have served in that capacity as well.

A Yes.

So for them -- again, we talked about this whenever you asked about Operation Gatekeeper or they asked about it in the nineties. I was aware that it existed, but I'm there on the ground doing the job that I was hired to do.

And the frustration is, if I'm not able to do that job, if I'm not able to go out there and do the thing that I signed on for, I believe that's still today what the rank and file would find the most frustrating.

Q So you said you had mentioned that there are 242 miles of border in your sector, and you mentioned the number of uniformed personnel out there. And all of these people, I assume, or a good portion of them, have similar views as you about why they wanted to be a part of this Border Patrol and why they wanted to put that uniform

on and do this job.

But there's no way that that number of people could possibly cover all that border 200 -- or 365 days of the year, 24/7. Is that accurate?

A That's a great point, and I think that needs to be addressed.

When I say 1,700, invariably when I talk to my law enforcement partners, we're usually the biggest agency in the room. And it sounds like a big number until you take into account it is 242 miles 365 days a year, 24 hours a day, 7 days a week.

It generally takes, the formula is, about five personnel to occupy one position 24/7, 365. In addition to that, you have where you have to man the checkpoints, six checkpoints throughout the sector.

We have boat patrols. We have horse patrols. We have our intelligence unit. Those are all part of that 1,700 number that I referred to. So it's not all of those 1,700 are actually out on the line on patrol all the time.

Q And I suppose that may be why my Democrat counterparts asked you a lot about infrastructure.

Do you think that -- obviously, we agree that infrastructure is important and it's not just about manpower -- but do you think that a border barrier system helps you in your work?

A So any kind of infrastructure -- and we'll talk about the barrier right now as an example -- used in the right way in the right location is a force multiplier. There are other areas where I would prefer other types of force multipliers.

But a physical barrier generally for us is most helpful in areas where we have what we call short vanishing points. And that is where an individual can approach, cross the border, and disappear quickly. That physical barrier extends the amount of time that I and my team have to respond to and interdict, and it increases the certainty of arrest.

In areas where that's true, a physical barrier is very helpful. In areas where that's not -- out in the middle of the desert, for example -- then I would probably tell you that I would prefer to have better technology and response capabilities.

Q I'm not asking you where the short vanishing points are, but I am asking you, where there are short vanishing points, are there barrier wall systems?

A No.

Q Not at all?

A In some places, but not all.

Q In some places, okay. So right now, approximately how many miles of border wall is in the Del Rio Sector?

A Is it two? Two.

Q About 2 miles?

A Uh-huh.

Q Okay. So on January 19th, 2021, there was supposed to be more constructed. Are you familiar with that?

A I am.

Q However, only 0.4 miles were completed.

Does that impede or help your work as a Border Patrol agent --

A Does --

Q -- to defend the border?

A Does what?

Q Only having that 0.4 miles of barrier system?

A I mean, I guess the additional 0.4 is helpful to a point. But are there areas where I could use more physical barrier? Sure.

Q So it would be helpful if the remaining portions of the original contracted 4

miles would be constructed?

A Yes.

BY MR. MCDONAGH:

Q I want to talk about demographics.

What are the demographics of the migrants that are encountered in the Del Rio Sector?

A Predominantly from Mexico, which are amenable to Title 42, Central and South America. We've caught people from, like I said before, so far this fiscal year more than 80 different countries. Last fiscal year, I believe it was more than 115 different countries year to date.

But, by far, the vast majority come from Mexico, Central and South America.

Q You said in 2014 that most were family units. Has that changed?

A So at the time -- I was assigned to the Rio Grande Valley sector then. So in the Del Rio Sector, we see the majority of our traffic as single adults. And of those single adults, mostly are male.

Q You said in the nineties Mexican nationals apprehended would voluntarily return to attempt to cross again. They sought to evade apprehension?

A Initially. When they would cross, they would try and get away. And if they didn't, we caught them, they had the option of seeking an immigration hearing or taking a voluntary return back to Mexico.

It was more expedient for them to do it, to take the VR as we call it, voluntary return, so that they could immediately try again. And sometimes we would catch the same person two and three times in a shift.

Q Why wouldn't they just turn themselves in?

A Because they wanted to get away.

Q Is it a relatively recent phenomenon that single adult men are turning themselves in to Border Patrol custody rather than evading apprehension?

A It's not something that I encountered regularly up until just a couple years ago.

Q Why are they turning themselves in?

A I think they believe that they're going to be processed and given a notice to appear so that they can await their immigration hearing in the United States.

Q And during that time, they're able to live and work in the United States?

A So they're -- whether or not they're actually allowed to work, I think that depends on the individual. And you'd have to talk to CIS about that or ICE. But, yes, they are allowed generally to remain in the country.

Q My Democrat colleagues made the point that policies change from administration to administration. Could recent policy changes explain that phenomenon?

A Again, I'm not going to comment on policies and what the potential implications are. That's not my job.

Q That's all I have.

BY MS. O'CONNOR:

Q I have a quick follow-up on the border barrier.

So the contracts that were in place that were stopped January 19th, 2021, that also included not just a wall but also infrastructure to go along with the wall, correct?

A Yes.

Q Would that infrastructure also have been helpful to you?

A So I think that's a great point. When we, the Border Patrol, would talk about wall, it was everything that came with that. That was the infrastructure. That

was the better communications, the better detection capability.

All those things, as I've said before, are force multipliers to my men and women that are out on patrol, and not having them is not helpful to us.

Q And those projects were also stopped, the infrastructure projects were stopped in January 2021, right?

A Yes.

Q Okay. I'm going to talk a little bit about processing in a little more detail. When agents encounter an alien in the -- in between ports of entry, they bring them in to process, correct?

A Uh-huh.

Q And are there certain criteria that they are supposed to follow in determining the processing outcome?

A Are you talking about like the vetting and background checks, or what are we talking about?

Q No. Determining what the outcome is going to be, who is going to be issued an NTA, who is going to be issued Parole Plus ATD when that was happening, who is going to be issued notices to report.

Is there some sort of guidance or policy that they follow in order to make that determination, who's getting what?

A So any time you apprehend anybody, they go into the initial intake, and the biometrics and the background and the interview starts. And depending on where that person is from and what their situation is, what their background says, will determine what pathway they enter into.

Q Okay. So where they're from, their circumstances, those are factors that are considered, right?

A Yes.

Q So is there any sort of guidance that says you should be specifically considering these factors when making the processing determination?

A Well, I think that's just our process. That's what's been done for as long as I can remember.

Q Okay. So let's take notices to report, for instance. Were they still using notices to report in Del Rio when you got there?

A No.

Q Okay. What about Parole Plus ATD?

A Yes.

Q Were there criteria that your agents were using in order to determine who was going to be considered for Parole Plus ATD?

A Yes. And that criteria changed at various times. So I'm not exactly sure what the criteria were. I can find out for you. But yes.

Q When the criteria was changed, how was that change communicated to the sector? Does it come from headquarters to you and then you give it to the --

A Yes.

Q -- agents on the line?

A Yes.

Q So it comes from Border Patrol headquarters?

A Yes.

Q To you directly?

A Yes. Well, to --

Q Your office?

A -- to my staff, yeah.

Q And then your staff communicates it down to the field.

A Disseminate it down to the stations, yes.

Q Okay. Was there ever a time when Parole Plus ATD criteria was based on alien nationality?

A I don't know if that was the exclusive criteria, but it was at times at least part of the determination.

Q So some nationalities were considered for Parole Plus ATD, another may not have been?

A Correct.

Q Then when making the determination for processing outcome, are the factors that the agents are considering recorded anywhere?

A Probably on their paperwork, the 213 or the GOE-66 (ph). That's probably where they would capture, as part of their narrative, the information they had and what they were using to determine whether or not they were going to be charged or what pathway they were entered into.

Q Are agents required to keep that record?

A It's in our systems, yes.

Q The determination?

A The narrative, yeah.

Q Right. So what I'm saying, though, within the narrative, the I-213, are agents required to document the factors that they considered for processing outcomes?

A Yes. Those are called the articulable facts.

Q Okay. Your sector is no longer using Parole Plus ATD, right?

A No.

Q Are you issuing everybody -- strike that.

' The people who are not reinstates or being referred to prosecution, are any of those people being considered for parole or is everybody being issued an NTA at this point?

A The predominant pathway that we're using by far right now is the Notice to Appear pathway.

Q Is anybody being considered for parole?

A There might be sporadic cases here and there, but generally no.

Q I'm going to jump back to the Parole Plus ATD.

In order to be considered for Parole Plus ATD, did somebody have to assert a claim of fear of return to their country?

A I don't believe that was a requirement, at least not all the time.

Q Is your sector currently using expedited removal as a processing outcome?

A No.

Q Why not?

A We're not one of the sectors that have been designated.

You're talking about for the expedited removal, credible fear?

Q Correct.

A There's designated sectors right now that are doing that. Del Rio Sector is not one of them.

Q So you're not allowed to use expedited removal?

A We are allowed to use that pathway. But I think what you're talking about, it's kind of a pilot program. That's --

Q I don't know -- what pilot program are you referring to?

A There's an expedited removal program where they're doing the credible fear interviews. We're not part of that. We're not one of those sectors. We do have that

as an option, but by and large we're not using it. We're using the Notice to Appear.

Q So are you talking about where they're bringing immigration -- extra immigration judges and extra asylum officers --

A Yes.

Q -- to do the cred fear and the asylum right then and there?

A Yes.

Q Okay. So because you're not part of that pilot program, you're also not utilizing expedited removal. Is that what you're saying?

A Not generally. We do have that. It's always available. But it tends to not be an expedient pathway compared to even the NTAs. So we would prefer to use the NTA.

Q So the decision of whether to use expedited removal or NTA right now is based on efficiency?

A In part, yes.

Q And so do you think then when Title 42 expires and there's a potential for increase in migrants, the priority will be processing efficiency rather than expedited removal?

A The priority is always going to be whatever we can do to get back to the border security mission. And so if we are not able to move 2,000 people that we're catching a day through our system, we have 2,000 more coming the next day.

That can lead to overcrowding. That can lead to collapsing down operations more. It creates a safety concern in those processing centers just for the migrants, for our men and women. And so the efficiency of the process has to be a factor.

Q Do you have the green light to reimplement Notices to Report if crowding gets too heavy in the detention center -- or in your detention space or processing

centers?

A Notice to Report? No.

Q Correct. So you're required to issue an NTA if you're not --

A An NTA.

Q Okay. Are you -- is Border Patrol, after they're issuing the NTAs, are they then transferring everybody to ICE, or are they releasing aliens to NGOs or just out on the street?

A So right now we're releasing everybody to ICE ERO, who is then turning them over to the NGOs.

Q Was that the same process when you first arrived in Del Rio?

A It was, but we would use not just the NTA pathway. That's when we were also using the Parole ATD. But the same end result. We turned them over to ICE ERO, who would then hand them over to the NGOs.

Q So no one was leaving Border Patrol custody straight to an NGO or to the street?

A Not in the Del Rio Sector.

Q Do you process any aliens that have been encountered in other sectors that they've sent over to you, processing them?

A We just started doing that when RGV and El Paso started getting busy. So I'd say within the last month or so we started receiving lateral decompression buses from those two sectors.

Q Just from RGV and El Paso?

A Yes.

Q Do many of the aliens that are encountered in Del Rio assert a fear of returning home?

A I don't -- I'll have to check the exact stats, but I don't believe that represents a large number of the folks that we're encountering.

Q So why then are you issuing NTAs and not just using expedited removal for those people?

A The time it takes to do the expedited removal and the time it takes to hold them, we don't have the capacity to hold them ourselves. And as I said before, we have a large number coming behind us.

Q Is that a direction that you've received from above, or is that a decision that you make at the sector level?

A That's a decision we make, every sector makes, to try and manage the flow that we're seeing.

Q So you haven't been told by anybody to favor NTAs over expedited removal?

A No. But generally speaking our plan has been to prioritize the NTAs, because that's the best pathway we can have to get as much information as we can about the individual, make sure that they're not a threat, and try and make sure that they do have that immigration hearing, and ultimately, if they don't have a right to remain here, are removed.

The expedited removal would force us to actually hold people in custody for longer periods of time, and we just don't have the space.

Q Do you get pressure from either Border Patrol headquarters or DHS headquarters to move people through and not hold them?

A Not necessarily from headquarters, but there's pressure for all the reasons that I talked about earlier. It's trying to get agents back out to the field to catch the bad actors, trying to ensure that it's safe conditions for the men and women in the process centers and the migrants. Those are where the pressure points come from.

Q Is anyone -- is anybody analyzing your time in custody numbers? Do you have to send them up to headquarters at any point?

A We have a dashboard, that I check it several times a day, and I'm sure headquarters does too.

Q Okay. Does Border Patrol in Del Rio refer anyone to prosecution to the local U.S. Attorney's Office for --

A Yes.

Q For what?

Mr. Jonas. Let her finish her question. Just let her finish.

BY MS. O'CONNOR:

Q What do they refer for prosecutions for?

A So the AUSAs and even the judges are partners in this just as much as anybody else. And they have limited bandwidth as well. So we have to try and get the most bang for our buck whenever we refer people for prosecution.

So a lot of times that would be somebody that has been charged with smuggling. It may be somebody that was charged with assaulting our agents. It may be somebody that has a criminal background. So we'll do an enhanced charge of 1325 or 1326.

We use that, that bandwidth, to the greatest effect possible because, if not, we'll overwhelm the AUSA offices and the judges with the flow that we're seeing.

Q Are you referring anybody for illegal entry?

A Depending on the circumstances. As I said, if they have a violent background or if they're somebody that warrants further consideration, we will refer them for prosecution and to be held under that charge.

Q Does the U.S. Attorney's Office send you criteria for people that they will or will not consider for certain charges, or are you making that determination and then they

say yes or no?

A It's a collaborative effort. They'll set thresholds based, again, on the bandwidth that they have.

Q Do they put those thresholds in writing?

A I don't know. They work with my prosecutions department. I'm sure they probably do. But a lot of that is just -- it's daily communication with our prosecutions office.

Q Since January 2021, do you know how many people have been released from Del Rio Sector into the interior of the United States?

A No. I know how many -- I know that we release them to ICE ERO, and what happens beyond that I don't track.

Q Do you know how many people you have referred for parole to ICE ERO?

A I can get the information for you.

Ms. O'Connor. I'll pass to my colleague.

BY MR. RUST:

Q What is your current average time that an individual who's encountered by Border Patrol agents in Del Rio would spend in U.S. Border Patrol custody specifically before being referred to ICE ERO with an NTA?

A So the average time in custody, as I looked at it this morning, we were just under the 72 hours. That's across the entire population that we have in our custody.

It takes between an hour and an hour and 15 minutes, on average, to process an individual under the NTA pathway. And from there, it just depends on how long it takes for ICE ERO to be able to take them from us.

So once we get them processed, once our part is done, it's a matter of waiting on ICE to be able to take them because of their limitations.

Q And is it an accurate understanding of what we talked about earlier that the encounters after processing in Del Rio Sector who are issued a Notice to Appear are all referred to ICE ERO to make a custody determination?

A Correct.

Q So U.S. Border Patrol is not currently releasing aliens processed for an NTA on OREC themselves. That decision is made by ICE ERO?

A Correct. In the Del Rio Sector, we have not done that yet.

[11:17 a.m.]

BY MR. RUST:

Q Okay. And you don't have any knowledge about the likelihood that an individual who is referred to ICE ERO would ultimately be released on their own recognizance?

A No, I'm not going to speak for ICE.

Q Okay. We touched at various points on the various factors, push and pull, that contribute to the high flow of migrants crossing in between ports of entry across the Southwest border but in particular in the Del Rio Sector.

Can you elaborate on what the various push-and-pull factors are that contribute to the flow of illegal immigration in the United States?

A Maybe the same thing that I had covered before. I mean, do you want me to say them again?

Q Yes. I mean, what are the factors, in your opinion?

A I mean, there's -- I feel like you're asking the same question over again.

You've got the -- you know, it can be the conditions in the country that they're leaving. Sometimes they're fleeing horrible conditions. Sometimes they're coming across for economic reasons. They may have family members up here. Some of them have just -- they have that American Dream, and if they think they can come into the country and realize that American Dream. It depends on the individual.

And you have, you know, hundreds of thousands, if not more than a million, people coming across. It's hard to pinpoint one specific push-or-pull factor. But, obviously, we all know in the room that there are a multitude that exist.

Q So there's various factors that contribute. Not one sole factor would

determine an individual's decision to come to the United States?

A I believe so, yes.

Q Would you agree that a significant likelihood of release into the United States after a short stay in custody would incentivize someone to try to illegally cross into the United States?

A So what I will tell you is this: I think that if there is no consequence for an action, there's no deterrence for a person to not commit that action.

Q Do you believe that it is important to deter individuals from crossing the border illegally in between ports of entry in the Del Rio Sector?

A I believe it's important to deter any individual from violating our laws.

Q You talked earlier about the importance of men and women in the U.S. Border Patrol and having the right individuals in place through staffing and recruitment to carry out Border Patrol's mission. Like any law enforcement officers, there's inherent risk factors that go into that job. Can you talk about some of the unique risk factors that Border Patrol agents experience in Del Rio Sector?

A Absolutely. So -- because I have this discussion with new trainees every time they come into the agency.

The Border Patrol is very different than almost any other law enforcement organization that you're going to talk to. The reason why is our adversary is not generally petty criminals. They are cartels and smuggling organizations that have a vast capability and zero scruples.

We ask these men and women to work in some of the most austere conditions in the country, if not on the planet. Very remote. Very extreme conditions. Very extreme temperatures. When they go out on patrol, a lot of the time, their backup may not know exactly where they are, and if they do, they may be several minutes away.

Whenever they go out on an encounter, a lot of times, they are vastly outnumbered. And people that they encounter are a mix of good people simply coming and looking for a better way of life or bad actors that would do them or the communities harm. And they have to exercise judgment and treat everybody accordingly in a split-second notice.

It's hard to find any other organization that replicates those conditions. The things that we ask of these men and women, we don't ask of too many people in the first responder profession. And, as a result, the things that they go through, the things that they see, the scrutiny that they are under, is also very rare.

And the example I use is when folks find themselves in these conditions, when they're abandoned by a smuggler in the desert, our men and women are the ones that put themselves in harm's way to go rescue them. When somebody is drowning in the river, it's our men and women that are putting themselves in harm's way and pulling them out. It's our men and women that are doing CPR on women, children, and sometimes failing, recovering lifeless bodies from the inside of locked trains, locked tractor-trailers. My men and women are finding people that have been sexually assaulted, extorted. My men and women are the only ones that know firsthand what the consequences and tolls of this problem is on the humanitarian side and on the border security side. It's very impactful. And that's something that is intangible and you cannot really quantify in terms of describing what it's like to be a Border Patrol agent.

My goal -- I talked about the monotonies of this position as opposed to being the guy that used to go out on patrol. My goal is I get to try and make everybody see those men and women through my eyes. I see -- get everybody to see my family through my eyes because I see what they do every single day: 3,000 rescues in my sector alone last year. 3,000 people owe their lives to a Border Patrol agent. 256 people we lost.

When I say "we lost," we were the ones that had to see that. We were the ones that had to find them. We were the ones that suffered those scars that, when you close your eyes at night, you see. When you go home and you hug your kid because you had a bad day, you still wake up, you put this uniform on, and you go back out there and do that job again.

That's what it means to be a Border Patrol agent, and I don't think that's something that gets captured or thought about enough.

BY MR. YI:

Q How often do you talk to the rank-and-file agent?

A Frequently.

Q Frequently.

And you consider understanding and also maintaining their morale as part of your job as a chief patrol agent?

A As best I can, yeah.

Q Okay. Do you feel as though you have a good pulse on their morale and what they're feeling? You just gave us a pretty impassioned explanation about what you hope that others see and understand about your agents. So do you feel you have a good pulse on what they're feeling about their jobs?

A As much as a chief can, yes.

Q Have you ever heard that frustration that some agents are doing their job with one hand tied behind their back?

A Frustration whenever --

Q Have you heard that before?

A One hand tied behind their back?

Q Have you ever heard of a frustration expressed by agents that they felt as if

they were doing their job with one hand tied behind their back?

A I've heard that expression used, yes.

Q For Border Patrol agents?

A Yeah.

Q Why is that? Why would they say something like that?

A It goes back to what I was talking about earlier. If they're confronted with this humanitarian crisis, and they know what's going on on the border security front, and they're seeing these deplorable situations that I talked about -- 3,000 rescues but 256 deaths -- that's frustrating because you want to try and -- you want to try and rescue everybody you can.

And you're doing this while knowing that there are bad actors that are exploiting the situation. Of course that's frustrating. Of course that's making you feel like you can't get out there and do the job that you want to do.

Q So you believe that, when you've heard that phrase or understood that sentiment from your agents, that the tie that ties their hand behind their back is the humanitarian crisis?

A Yes.

Q Is that your testimony?

A It's having to deal with the humanitarian crisis and also having this going on, not being able to handle everything that's confronting them.

Q Are you familiar with this Office of Inspector General report from the Department of Homeland Security titled "Intensifying Conditions At the Southwest Border Are Negatively Impacting CBP and ICE Employees' Health and Morale"?

A No.

Q This was made public -- this was made public this morning. It's dated May

3rd. And I want to read to you a portion of it where it talks about that phrase that I read you earlier about how agents were feeling as though they were doing their job with one hand tied behind their back.

And this paragraph specifically states that: Unpredictability surrounding major immigration policies have caused uncertainty and additional anxiety among law enforcement personnel.

It goes on to say in part that: Our interviews and survey comments showed staff frustration and lower morale related to changing policies, especially when the respondents felt the changes were inconsistent with their law enforcement duties.

You have about 1,700 uniformed officers, and you talk to them pretty frequently. Can you help put a little bit more color on what the inspector general found in their interviews and survey comments that they received from Border Patrol agents about changing policies?

Mr. Jonas. You're asking him about a report he hasn't read and he hasn't --

Mr. Yi. No, I'm asking him about --

BY MR. YI:

Q Well, first of all, I guess, do you disagree with these statements that the inspector general have written?

A I'm not going to disagree with the report. I mean, if they're publishing their findings, it's not my job to --

Q So these findings, if you don't disagree with them, then can you help us understand what kind of changing policies that might be existing that would create this unpredictability and uncertainty and additional anxiety among law enforcement personnel who feel that their changes were inconsistent with their law enforcement duties? What are those changes? You're a law enforcement officer. I mean, you

weren't interviewed for this, but what's your response to that?

A I don't know what policies that they're referring to. I mean, there's a multitude out there, and I'm not --

Q I think for the purposes of this question --

Mr. Jones. Did --

Mr. Yi. -- policies that the Democrats might have mentioned earlier because they talked through all the policies, and you agreed that those were all policies that changed throughout different administrations.

Mr. Jonas. Did you have a further answer before he cut you off?

Mr. Owens. No, that was okay.

It just so you're talking about, you know, overtime Operation Gatekeeper. You're talking about, you know, the Obama period DACA program. Those are all policies, and I'm sure they do have impacts, and those are the parameters given in the administration that we are charged with operating under as members of the executive branch.

I'm not going to speak to what impacts they may have on the migration flow and patterns. I can tell you about the Del Rio Sector and what we're seeing and the men and women that I talk to, and I have addressed what my communications with them -- the frustrations that they talked about with me.

BY MR. YI:

Q So this is a pretty simple "yes" or "no" question. You've noticed changing policies, correct?

A Yes.

Q Are there, in your view, changing policies that were -- to quote from this inspector general report -- that were inconsistent with your law enforcement duties?

A No.

Q So you do not share the sentiment of the respondents that were providing responses to this inspector general's audit?

A I have not had any policy that I have found to be inconsistent with my duties as a Border Patrol agent.

Q You've never heard that from any other Border Patrol agent either?

A I can answer the question 20 times. It's never going to change. I talked to my guys, and the information that I told you is what they told me.

Q That they felt like they were doing their jobs with one hand tied behind their back, but that that tie is related to the humanitarian crisis, not to changing policies that were inconsistent with their law enforcement duties?

A When we're on the ground, we're not talking policy. When we're on the ground, we're talking about what's in front of us. We're talking about the things that we need to be able to do the job. We're talking about the additional manpower. We're talking about the additional technology, infrastructure.

Those are the things that, whenever I talk to the musters and my men and women, that they ask me for. And those are the things that -- that's the world that we live in. We don't live in a policymaking world inside the Beltway. We live in the here and now, dealing with the crisis that's in front of us.

Q But, when policies work well, it also impacts operations. And, when operations work well, Border Patrol agents have a better chance of succeeding in their mission. Would you agree with that statement?

A Sure.

Q Okay. Do you believe -- and you still have to be familiar with some law, even though you're not a policymaker. Is that correct?

A Yep.

Q Do you believe that we have operational control as defined by the law in the Del Rio Sector?

A There has never been a time in my 27-year career where I have been satisfied with the level of control we've had on our border.

Q I'm not asking about your satisfaction, Chief. With all due respect, I'm asking you, by the law, which you're familiar with, do we have operational control at the Del Rio Sector?

A There has never been a time in my career as a Border Patrol agent, as a border security expert, where I would say I have been satisfied with the situation on the border. The adversary has always had the advantage.

Q Have you heard the phrase "operational advantage" before?

A Uh-huh.

Q Where does that phrase come from?

A It comes from our Border Patrol strategy, and it talks about whether or not we have the advantage or our adversary does. Creating a situation where we have an operational advantage helps ensure that our men and women are able to do the job well and safely. That's what we're seeking to achieve as best we can with the resources and manpower that we have available.

Q Who created that strategy in which the term "operational advantage" --

A It was created under Chief Ortiz.

Q When was that strategy created?

A It would have been a couple years ago.

Q And so, before that, have you ever heard the phrase "operational advantage" being used?

A No.

Q Okay. For the preparation of this transcribed interview, was operational advantage discussed?

Mr. Jonas. You can answer that question generally. Don't get into any specifics.

Mr. Owens. Yes.

Mr. Yi. In what ways were you preparing to discuss operational advantage for this interview?

Mr. Jonas. Can you rephrase that question? I'm not sure what you're actually asking. And I'm concerned that you're asking for him to reveal communications that might be privileged.

Mr. Yi. Is there something about "operational advantage," the term, and how one witness might have learned about it that is privileged?

Mr. Jonas. Well, he actually testified how he learned about it in talking about the Border Patrol strategy and Chief Ortiz. So he has actually answered that question.

I think you're asking him to put on the record communications that would remain in a privileged setting. And I'm suggesting to you that you rephrase your question so you can avoid that problem.

BY MR. YI:

Q Has operational advantage been an answer that was recommended for you to respond to any committee questions about whether or not there is operational control?

A No.

Q Okay. Did operational advantage, in your preparation, come up as a consideration of how you should respond to the question of whether or not there is

operational control?

A No.

Q Okay. Okay. And just to clarify for the record -- because I believe both times you stated that you were not satisfied personally -- I'm asking again.

By law, is there operational control at the Del Rio Sector?

A When you say "by law" --

Mr. Jonas. Are you talking about the Secure Fence Act? Is that what you're asking about?

Mr. Yi. Yes.

Mr. Jonas. Are you familiar with the Secure Fence Act definition of operational control?

Mr. Owens. I know that it exists, but no. If you want to read it to me --

BY MR. YI:

Q Have you -- we mentioned before that you speak with Chief Ortiz often. Is that correct?

A Uh-huh. Yes.

Q Yes.

Have you heard about his testimony where he spoke before the Congress --

A Yes.

Q -- stating that we do not have operational control in five of our nine sectors in the southwest border?

A Yes.

Q Do you agree with that assessment?

A For Del Rio Sector specifically, I agree with his assessment.

Q Okay. Thank you.

BY MS. O'CONNOR:

Q I have a couple questions about -- kind of shifting here -- unaccompanied children. In fiscal 2023, encounters of unaccompanied children in Del Rio have gone up 50 percent since this time last year. Do you have an opinion as to why that might be?

A The demographics change from sector to sector. And at different times, we've seen higher demographics, whether it be single adults or families or whether it's from one country or another. I can't explain why those specific changes -- why they choose to go to RGV instead of us or why they reverse course. At least some of it has to do with the smuggling pipeline and who's controlling where they go.

Q Do you know where most of the children are -- the nationality of most of the children?

A In the Del Rio -- no, I don't have that information readily available.

Q How do agents confirm the ages of people who are -- who say that they are under 18?

A So, similar to whenever they do the background checks on anybody that we take into custody, if we apprehend that family unit, we do the same thing. We start the intake. We do the biometrics when we can, if they're not, you know, tender age children. And we start the background checks with the databases that we have available to us.

And then, working through the National Targeting Center, we do the interviews of the folks that are associated with that group and try our best to determine if that is actually a family unit. And, if the child is alone, the interviews that we have with them -- working with our consulates in these other countries to try and find out who they are, where they're coming from, and if they have any family members in the area.

Q Does that consulate verification happen for every child?

A Yes.

Q So, when the sector gets really busy and -- you know, back when they were doing patrol plus ATD, there just wasn't time to process with NTAs -- was every child then also being confirmed through the consulate --

A Yes. To the extent that we could, yes. That remains -- no matter how busy we are, the safety and well-being of the child had to always come first.

Q Okay. So the unaccompanied children aren't falling through the cracks regardless of who else may be -- they're not falling through the cracks in Del Rio?

A I'm not saying that it hasn't happened, but to the best of our ability, we try to make sure it does not happen.

Q Okay. Do the UACs go directly from Border Patrol custody to ORR, or do they go to ICE first?

A They always go to ICE first.

Q Does Border Patrol transfer them directly to ICE?

A No. A lot of times, we'll have ICE onsite. And so it would be a paper transfer. And then ORR would actually take physical custody.

Q At the Firefly site, the ORR is onsite, right?

A Yes.

Q You mentioned before that when migrants go to ICE and then potentially to NGO, if NGO doesn't have enough room, then they may end up -- I think you said the gas station or the mart that's right there because there's not a big community.

What other impacts do -- on the local community does the high number of migrants have? For instance, is there property damage? Economic issues? Are the hospitals being overrun? Or what kind of other local community impacts are there?

A So one of the things that we're seeing with our landowner partners at the

ranches, their complaints are the environmental impacts of the massive amounts of clothing and trash that are left behind by the flow that we're seeing. The damage that gets done to the riverbanks with the landings. We're talking about hundreds of people coming across. It does leave a mark.

When they get transferred and turned over to NGOs, if they don't facilitate the travel out of the communities, then, yes, it enhances the burden that -- the entire infrastructure, the city. Hospitals is one. You know, if they have access to hotel rooms, they take up the hotel rooms. They can be sleeping in the streets. They can be, you know, at the gas stations waiting on the bus with no place else to go. It is impactful on especially smaller communities. But I think we've even seen its impact on the larger cities as well.

Q Who does the cleanup when there's all these environmental issues? The trash in the riverbanks. Who's doing that cleanup?

A Well, at least to some extent, we do. We'll go out there and help the landowners where we can clean up the trash. A lot of times, the landowners themselves may contract. In some cases, the municipalities will help out. But it's an ongoing effort. It's something that, as part of our partnership and collaboration with the landowners, we try and help out where we can.

Q Does the sector rely heavily on the NGOs, then?

A Right now, as part of that process to make sure that they move out of our custody, they have become necessary.

Q Which NGOs are particularly active in your sector?

A We have two. We have one in Del Rio and one in Eagle Pass. In Eagle Pass, we have Mission: Border Hope. And in Del Rio, it is Val Verde --

Mr. Joy. Humanitarian center.

Mr. Owens. Val Verde County Humanitarian Center. I think that's what it is.

But the Mission: Border Hope in Eagle Pass is the one that takes the majority of the migrants from ICE ERO. There's a small contingent of Catholic Charities that has kind of a satellite location based out of San Antonio. But those are the two main ones that we have in our sector.

BY MS. O'CONNOR:

Q Have they been there for a long time in that -- have they made their presence in the last 2 years, or have they been in the area for a decade, and they're just now really stepping up?

A I don't know. I know as long as I've been here -- I've been in Del Rio Sector -- they've been there.

Mr. Yi. Can you provide the name -- the exact name of the strategy you referenced earlier from where you learned the term "operational advantage"?

Mr. Owens. It's the -- is it 2020 -- I forget the years, but --

Mr. Jonas. 2022.

Mr. Owens. The 2022 Border Patrol Strategic Plan.

BY MR. RUST:

Q Do your agents routinely encounter narcotics in the field or at the Border Patrol -- or the six checkpoints that you mentioned?

A Routinely? So we do encounter narcotics mostly at the checkpoints. It's not been as prevalent in the Del Rio Sector as it has been in other sectors.

Q And what types of narcotics are you encountering when you encounter them?

A So it ranges from fentanyl to methamphetamine, heroin, cocaine, and in still some cases, marijuana.

Q And would you agree that having interior checkpoints operational is important to the border security mission to interdict narcotics?

A So they are immigration checkpoints, but they do have the result of also helping to interdict narcotics.

Q To your knowledge, was there any impact on operations at those checkpoints from the high flow over the last couple of years?

A So thankfully in the Del Rio Sector, we were fortunate where -- we try our best not to shut down the checkpoints, and we try our best not to shut down the Border Patrol for the rescue operations and the deterrent value.

The checkpoints -- we made it through that last influx without having to shut down the checkpoints. It was a concern. We didn't want to do that because having them there denies access to that egress route to our adversary, which is the smugglers, the narcotic smugglers and the human smugglers. If we're not there, they will use those egress routes and be even more effective than they are now.

Q You mentioned earlier one of the risks that your agents encounter in the field with limited cell service -- maybe their backup is several minutes away -- is encountering individuals and not knowing whether that individual presents a public safety risk to themselves.

Is Border Patrol doing anything to push out into the field the ability to identify whether that person is a risk earlier in the process as opposed to waiting until they are transported back to a Border Patrol station for processing when the background check is run?

A So part of the -- I mentioned that tact gear, the tactical awareness kit. Part of that capability that we're trying to enhance is the ability to begin the intake and record checks out in the field before they get to the processing centers. Anything and

everything like that we can do to help the agent know sooner who they're dealing with is an enhancement to their safety. As I said before, when you're dealing with dozens, if not more, people, being able to rapidly control the situation and know who you're dealing with is paramount to that agent's safety.

Q And, in a situation like that, are we talking about potentially one agent encountering a large group of migrants on their own?

A Sometimes, yes.

Q Do your agents ever encounter individuals who are later found to have derogatory information related to terrorism?

A It has happened, yes.

Q Are you concerned that the gotaway population in the Del Rio Sector could include serious criminals or individuals who might be terrorists?

A So that's the concern of just the gotaways in general. As I said before, you don't know who they are, where they come from, what their intent is, what they're bringing with them. And it could range from very minimal to very severe. We just don't know. And so, because of that, of course it's a concern.

BY MR. MCDONAGH:

Q Can the gotaway numbers be attributed to the increased flow at the Southwest border?

A So, by virtue of the fact that I don't have as many agents out on patrol because they're addressing that flow, then it can provoke the gotaway numbers to be higher because we're not out there. If we were out there, it stands reason we might be able to apprehend more of them.

At the same time, because we're not out there and as great a number, we might be missing some of the gotaways and not know as many as are actually getting away.

Q We talked about the cartels using large groups of migrants to distract and open up points of entry across the border to smuggle, you know, nefarious -- potentially nefarious individuals, narcotics, et cetera. What other tactics do gotaways themselves as individuals use to evade apprehension?

A So they'll use a multitude. They'll try and cross in the areas, obviously, where they think we're not or that nobody is going to see them. They'll leverage their own GPS devices. In some cases, the smugglers even use drones. They'll hide themselves in compartments in vehicles. They use our rail system to hide in the rail cars to try and get further into the interior.

So there's a multitude of tactics that they'll use. And it gets as basic as, you know, when they cross the border and they know that there's areas where we're trying to follow footprints, something as simple as putting carpet on the shoes or walking backwards or using branches to brush out. It starts from the second they cross. They're trying to throw us off or trying to make it where we can't tell if they crossed. And then they're using every possible tactic to try and evade being captured by us.

Q Do they wear camouflage?

A Sometimes, yes.

Q You mentioned they use trains. I saw a report that there was a recent -- I don't know if "disaster" is the right word -- but tragedy on a train. Could you speak to that?

A So unfortunately -- and that happened in the Del Rio Sector, too, if it's the same one you're talking about.

The smugglers will lock the migrants inside these transport cars, and so they can't get out. And there's no air-conditioning. Very little -- only food and water that they take with them. And these rail systems run through, again, very remote areas, and they

may be locked in there for days in very extreme temperatures and bad conditions.

And this is one of those cases where the worst happened. We had several individuals -- I think it was 14, if I'm not mistaken, and at least 2 of them succumbed to the environmental exposures. And we had several of them that had to be taken to the hospital.

It's a monument to the callousness of these smugglers. They would not put themselves or their family in that situation, yet, without hesitation, they put the migrants there.

Q Why were those migrants put in that situation when there is currently an incentive to -- if you don't have a criminal background or something that would be a red flag, why were those ones not just turning themselves into Border Patrol?

A Anytime somebody chooses to evade capture, as I said before, you have to ask yourself why, and is that individual a cause of greater concern? What do they have to hide that they're willing to go through such lengths to try and evade capture?

Those are the ones that -- especially if they are among the gotaways -- that keep us up at night. Those are the ones that potentially have something to hide. They choose not to take the path of least resistance in favor of something that not only is more difficult but puts them into danger. The possibility does exist that there's a reason for that.

Q Where does that train run where that incident occurred?

A So, up by Uvalde into Knippa, and I believe it goes upwards to --

Mr. Owens. Is it San Antonio?

Mr. Joy. San Antonio.

Mr. Owens. Where?

Mr. Joy. San Antonio.

Mr. Owens. Up to San Antonio --

BY MR. MCDONAGH:

Q So there's not cross-border train tracks?

A In that particular area, no. Now, all of that rail system does have ties down to the border area.

Q So they get on the train south of the border and ride that as a stowaway?

A Some.

Q Okay.

A Some could. Some will cross first and then get put on the trains later on down the path.

Mr. McDonagh. That's all I have for now. Thank you.

BY MS. O'CONNOR:

Q It wasn't always, like -- well, it wasn't always that people turned themselves in, right?

A No. There's -- for the majority of my career, I was chasing people that had crossed the border illegally. The phenomenon of having folks turn themselves in, it's happened, but not at the levels that I have been seeing in the last couple years.

Q And before it wasn't necessarily people were trying to evade because there was a reason to evade. It was: We're evading because we just don't want to get caught because we'll probably get sent home. Right?

A For the people that we caught, I can say that's probably true. The ones that got away, I can't speak to. I don't know.

Q I have a quick question about the aerostat systems. Do you have those in Del Rio?

A No.



Q Have you ever?

A We did have one for a short time.

Q When?

A It was last year.

Q Was that one by AMO, or was that one of the DOD?

Mr. Owens. It was one of the DOD ones, right?

Mr. Joy. It was one of the DOD.

Mr. Owens. Yeah.

BY MS. O'CONNOR:

Q Was that helpful in your --

A Yes.

Q How did it help?

A So it's a detection device that uses altitude to its advantage. As you know, it's basically a balloon with a camera tailored on the bottom that has detection technology that helps us see things that we wouldn't otherwise be able to see and gives us a greater amount of time to respond to and interdict that traffic. If it can see things coming at us from miles away, that gives us more preparation time. So, in terms of detection capability, it was really, really good.

Q Does it help you in remote areas that your agents can't necessarily be in person to monitor?

A It does. It has what we call a viewshed of several miles depending on what aerostat system you're talking about. And any camera system is going to afford to that as long as it can achieve altitude. Given the environment that we're working in, it has -- most of our environment is ranch lands and scrub brush, and it obstructs your view the closer down to the ground that you are.

Q Do you know this as your position as a chief, or have you also come across these in other roles?

A In other roles.

Q Do you also know it due to your position as the chief in Del Rio?

A Yes.

Q You mentioned that cartels use drones. Are they actively using drones in Del Rio?

A They could be. We don't have as much of a problem with that right now as, say, in Rio Grande Valley Sector and a couple others. But we don't know what we don't know.

Q Is the aerostat helpful in detecting drones?

A The aerostat is helpful in detecting any cross-border incursion traffic.

Q Including -- so would that also help with getaway numbers, too?

A Yes.

Q Okay. And when was that last in commission in Del Rio?

A It went out of commission last year. I don't know the month, but at some point last year.

Q Was that also something that the cartels would try to, I guess, strategize against because they could see it in the sky and they knew what it was doing?

A So, when I was the patrol agent in charge of the Rio Grande City station, I had two of those aerostats. And I can tell you from experience then, they had scouts that would watch the aerostat, and the traffic changed entirely whether the aerostat was up or down.

Q What about in Del Rio, was there any noticeable difference in scouts or cartel activity when the aerostat was up and down?

A I'd have to ask the patrol agents in charge.

Q Okay. What other strategies are available to Border Patrol that can help dictate cartel movement and strategy?

A In addition to the conventional law enforcement efforts that we're talking about -- and this is the agents out on patrol -- we have a very robust targeted enforcement effort where we work hand in hand with our investigative partners to actually disrupt, degrade, and dismantle those networks and those pipelines that are the smugglers.

So the ability to go after them and deliver a consequence for being involved in that smuggling enterprise is huge, as much as being able to actually interdict the flow that they're responsible for.

Q What are the consequences that are typically used against the smugglers?

A When we're able to leverage a multitude of agencies, we're able to bring several different authorities and consequences. At the end of the day, whether we charge them with 8 U.S.C. 1324 and they go to jail for that, or whether they go to jail for a State charge or a local charge, or whether they go to jail for tax evasion or money laundering, it doesn't matter as long as they are taken out of action and they are sent to jail because that's what's disrupting that pipeline and reducing the flow as a result. The ability to work hand in hand with those partner agencies and those investigative efforts is critical.

Q And this happens north of the border within the United States that you guys are doing this, right?

A It does, yes.

Q Because the cartels operate within the United States, too? Not just south of the border?

A I think if you asked the FBI, they would probably tell you yes.

Mr. Yi. That concludes the third round. We'll go off the record at 11:56 a.m.

[Recess.]

[12:59 p.m.]

Mr. Yim. We'll go on the record. The time is 1 p.m.

Chief Owens, I'd like to circle back to operational control and some of the metrics that Border Patrol uses to measure border security.

I am handing you what will be marked as minority exhibit A.

[Owens Minority Exhibit No. A
Was marked for identification.]

BY MR. YIM:

Q And this is the statute that my Republican colleagues asked you about. This is the Secure Fence Act of 202 -- 6, and if you flip to the first page for me, about midway down, you'll see -- I'm pointing to a section that starts "B, operational control defined." Do you see that?

A Yes.

Q And what this reads is: In this section, the term "operational control" means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

I'll represent to you that, when Chief Ortiz testified before the House Homeland Committee in March, he was asked to give his assessment of operational control based on this definition here. And I know, again, my Republican colleagues reviewed that with you.

Now, based on this definition here, and just to go over what you previously testified here today, do you believe that Border Patrol has ever had operational control during your time as an agent with Border Patrol?

A No.

Q Great. Thank you. All right.

Mr. Yim. Chief, I'm going to turn to a new document. I'm handing you what will be marked as minority exhibit B.

[Owens Minority Exhibit No. B

Was marked for identification.]

BY MR. YIM:

Q So this document is testimony submitted to the House Homeland Security Committee by the Government Accountability Office, GAO, in 2011. You can see here on the front page, it's titled "Preliminary Observations on Border Patrol Measures for the Southwest Border."

Now, I've tabbed them for you, but I'll point you to the first page, just right behind the title page. And at the top, you'll see "GAO highlights." Do you see that?

A Yes.

Q Great. And then I'll point you to the right of the page. About midway through, there's a sentence that starts "Border Patrol stated." Do you see that?

A I do.

Q And what it says here is: Border Patrol stated that operational control does not require its agents to be able to detect and apprehend all illegal entries.

And I'm going to point you to another sentence here, and this is also tabbed. We'll turn to numbered page 2 at the bottom. And, in the middle of the paragraph you see here, there's a sentence that begins "In past years." Do you see that?

A Yes.

Q And what it reads here, it says: In past years, DHS reported the number of border miles under effective control, also referred to as operational control, defined by

DHS as the number of border miles where Border Patrol had the ability to detect, respond, and interdict cross-border illegal activity.

Now, just to go back to our first exhibit, the Secure Fence Act, you would agree with me that what we just read here in exhibit B differs from what is in the Secure Fence Act. Is that fair to say?

A Yes.

Q Great.

Mr. Yim. Now, we'll go through one more document. I'm going to hand you what is marked as minority exhibit C.

[Owens Minority Exhibit No. C

Was marked for identification.]

BY MR. YIM:

Q All right. So this document is the 2020 U.S. Border Patrol Strategy published in September of 2019. And, if you recall, that was under the Trump administration.

Now, I'm going to point you to the first tab I have there that is on page 7. And right in the first paragraph, there's a sentence that says "Op con is the ability to perceive."

Do you see that?

A Yes.

Q So what it reads here is: Op con is the ability to perceive and comprehend the operating environment (situational awareness), mobilize assets, infrastructure, and barriers to prevent criminal activity (impedance and denial), and respond to and resolve any illicit border incursions (response and resolution).

And "op con" as it's referred here, is that your understanding that that's operational control?

A Yes.

Q Great. And this definition -- so exhibit C is different than exhibit B. Is that right? This definition that we see in the 2020 strategy report is different from the 2011 GAO testimony that we just looked at?

A To a large degree, yes. It still has the respond to -- detect, respond to, and interdict, but it's a little bit of a variance.

Q Sure. So it's changed a little bit. Is that fair to say?

A Yes.

Q Okay. Great.

So I think -- you know, what I'm getting at here is, based on these exhibits -- we looked at the Secure Fence Act. We looked at the 2011 GAO testimony. And then we're looking at the 2020 strategy report. It's fair to say that operational control and the definition of operational control has been an evolving metric at Border Patrol. Is that fair to say?

A Yes, it is.

Q Great. And, I guess, just based on these exhibits that we've looked at, you would agree that operational control has taken on different meanings over the years. Is that fair to say?

A Yes.

Q Great. I'd like to go back. My Republican colleagues touched on operational advantage a little bit. And, you know, you talked about how there's been a recent shift within Border Patrol to -- working to achieve operational advantage. Can you define for me again your understanding of operational advantage?

A It's making sure that the men and women that are out on patrol -- the units in the United States Border Patrol has the advantage in the operational environment over

the adversary that it faces. And that can be achieved by making sure you have the capacity to detect, respond to, and interdict the traffic that's out there. The illicit traffic.

Q Great. And, I guess, you would agree that operational advantage is an important part of border security. Is that fair to say?

A Both for border security and for the safety of my men and women.

Q Sure. Of course. Fair enough.

Why is it useful -- why is operational advantage useful in furthering Border Patrol's mission in securing the border?

A If we have the advantage in the operational environment, then the very nature of that would give us a greater likelihood of being successful at our mission.

Q Okay. I guess my final question here is, would you agree that operational advantage reflects a practical, on-the-ground approach to Border Patrol's mission in achieving border security?

A Yeah.

Mr. Yim. Yeah. Great. That's all I have. I'll turn it over to my colleague.

Ms. Jackson. Thank you.

BY MS. JACKSON:

Q I wanted to just return to narcotics very briefly. I just wanted to clarify that most of the illicit drug interdictions that Border Patrol is doing in your sector, those are occurring at the six checkpoints you mentioned. Is that correct?

A That is correct, yes.

Q Okay. And then the majority of illicit drug smugglers operating in your sector, are they working for the cartels?

A Everybody that is bringing illicit traffic across the border in some form or fashion is connected to or working for the larger cartels.

Q Understood. And do you know whether the majority of these smugglers are U.S. citizens?

A That would be tough to say. There's what we catch and what we don't know.

Q Totally understood. Just talking about the cartels more broadly, from what you see on the ground, would you say it's true that cartels misinform migrants about whether the border is open?

A Yes.

Q Are you able to kind of elaborate on kind of what you may have heard a little bit more, like, in terms of if the journey is easy or kind of what kind of misinformation do you --

A So I think that -- kind of what I had talked about earlier -- they are going to employ any tactic they can to entice people to make that journey because it means more money for them. And that can include giving a false narrative about what the journey entails for the migrants, when in fact we know that, from the moment they leave their house, they are in harm's way.

As soon as they are in the hands of any type of smuggling network -- even making the journey through Mexico, not having a place to sleep and oftentimes not having food. It doesn't just begin -- the danger does not just begin when they cross the border here. It begins as soon as they walk off of their front doorstep.

For us in Del Rio, for example -- and I alluded to this earlier -- crossing the river, we have people that drown every year because it is a legitimate and dangerous river. And I talked about the environment that we operate in and how remote and austere and extreme the conditions are. I talked about some of the tactics that they use, the stash houses, the tractor-trailers, the trains. And, whenever they get to their ultimate

destination, if they've been extorted for more money, how they can find themselves indentured and paying off that debt for years to come doing unspeakable things. The smugglers most certainly are not telling them about all of those perils that are involved along the way.

Q That's helpful. And do you find that they are misinforming migrants about U.S. immigration law or policy?

A I don't know that they're even talking to them about that. I don't know that that's even on the radar of the migrants. They're coming for their own reasons, and whether or not that has to do with what our country's policy is or not, I couldn't tell you.

Q So it sounds like they just have a financial incentive to kind of misinform migrants?

A The smugglers?

Q Yes.

A For the smugglers, everything they do is about making money and maintaining control.

Q Great.

BY MS. MARTICORENA:

Q Chief, I just wanted to follow up quickly on one point from the last hour. You were asked about whether or not it's a pretty new phenomenon for people to turn themselves into Border Patrol, and you mentioned that you've been seeing it in the last few years. Is this something you saw in 2019 as well?

A Sometimes.

Q Okay.

A It's not new that you have somebody turn themselves in. It depends on the individual's circumstances. Certainly it's not the first time we've had somebody claim

asylum. But the quantity that we're seeing is what I was referring to has changed over the past couple years.

Q Okay. And, just to clarify, this was also a phenomenon -- or was this a phenomenon that Border Patrol saw in 2014 with the unaccompanied children?

A Yes.

Q Okay. And, as far as the people who are turning themselves in now, is it mostly families? Children? Is it particular nationalities like Venezuelans or Cubans? Could you talk a little bit more about that?

A Sure. So that is something that truly varies from sector to sector. So, for Del Rio sector, we mainly, right now, have been seeing single adults who are mostly male. And, for the most part, they're coming from the Central American and South American countries, Venezuela and Colombia being a large demographic.

Q Okay. Thank you.

BY MR. EWENCZYK:

Q I just had a couple questions for you.

One is, in the previous hour of questioning, my Republican colleagues were reading to you from an inspector general's report. You still have never seen or read that report. Am I correct?

A No.

Q And so my colleagues asked you whether you disagreed with the findings. Am I correct in understanding that what you meant is you neither agree nor disagree with the findings because you have no basis?

A I can't comment on something that I don't know anything about or haven't had a chance to look into.

Q I also wanted to return to the question of one of my colleagues about the

disinformation that cartels propagate in the migrant population. And I just wanted to clarify what you said.

I understand that what you were saying is that a lot of -- what migrants know or believe they know about the journey about what to expect when they reach the United States, et cetera, comes from what they are told by the drug-smuggling operations and cartels. Is that fair?

A Sure.

Q And my Republican colleagues were kind of asking you questions about resources at the border, and I think I understood you to say that what's important to you to do your job at Border Patrol in terms of resources is in part having better communications, better detection capabilities. Is that fair?

A Yes.

Q And you were speaking earlier about how you've received -- you've been receiving certain technological assets and certain other types of assets that have helped you with that mission. Is that fair?

A It is, yes.

Q And so, when my Republican colleagues were talking to you about the wall or the balloon, the aerostat --

A Aerostat.

Q Those are just two examples of some of the technologies and resources that Border Patrol uses to do its mission at the border. Is that fair?

A Yes.

Q There are many others?

A Yes.

Q Including many that you have been receiving?

A Yes.

Mr. Yim. We'll go off the record.

[Recess.]

[1:23 p.m.]

Mr. Yi. Go on the record. The time is 1:23 p.m.

BY MR. YI:

Q Chief, I wanted to clarify a few things that some of the Democrat colleagues mentioned in their round of questioning here. They pointed to this GAO testimony before Congress that they have marked as exhibit B.

Do you know who wrote this?

A I would assume GAO.

Q The GAO. And, when the Democratic colleagues over there pointed out the definition of "operational control" in this testimony, I believe you read that Border Patrol stated that operational control, et cetera, et cetera.

A Uh-huh.

Q When you go to exhibit C, it was the Border Patrol strategy of 2020 on the minority exhibit.

Who wrote this document?

A Border Patrol.

Q Border Patrol. Does the Border Patrol write law?

A No.

Q No. So the minority entered into the exhibit, exhibit A here. This is the Secure Fence Act.

Do you know who wrote this?

A Congress.

Q Okay. Congress makes law, right?

A Yep.

Q These definitions that are placed into the record here from DHS' definitions, do you enforce definitions, or do you enforce law?

A We enforce law.

Q Okay. Thank you.

I want to switch topics real quick about tactics and others -- and intelligence.

Are you familiar with migrants who are illegally crossing being equipped with bracelets, different colored bracelets?

A Yes.

Q Okay. What do those bracelets do?

A So they -- the smugglers will use things like bracelets or a marking on the hands of the migrants as a way to categorize them, basically treating them like cattle. You know, this group came from this smuggling organization, or they're being sold to this other smuggling organization. It's a way for them to keep track of who they have and where they're going.

Q Now, how do you know that?

A Through interviews with the migrants after we've found bracelets or after we've found markings on their wrist.

Q And, when you found that out, who did you report that to?

A Well, so, whenever the interviews are done by the sector intelligence units, they'll generate reports that go up through the intelligence community and through the law enforcement community.

Q Does the B2 end up finding out about that, or B3?

A I would think ultimately, yes.

Q Do you think they receive reports and intelligence reports or any analysis reports regarding these bracelets?

A They certainly would have it available to them.

Q And would the B1 also be familiar with them, then?

A He would have the ability to be. I can't say if he is or not, but I would think so.

Q Have you ever -- well, have you ever talked to him about these --

A Not about the bracelets or the markings. That's -- no, we haven't had occasion to discuss that particular piece.

Q So these types of intelligence reports are available to people more senior --

A Sure.

Q -- in the Department.

How senior would one have to be before they never heard of these types of reports?

A So they -- like, of course, you know, it's tough to say. It's based on a need to know, if somebody has access to law enforcement-sensitive information, or if it's classified at a higher level. So, most times, somebody that is senior to me in my chain of command would have that need to know.

Q They would mostly have that need to know?

A Uh-huh.

Q So I suppose one of the questions here is, is there any reason why a senior-level person in the Department would not review such intelligence?

A I'm sure there could be. It's -- you know, there -- you think about the volume of information that they're exposed to on a day-to-day basis, and it could become a question of bandwidth, if they don't have a need to know. Those are two reasons I could probably think of.

Q So these types of tactics -- is that fair to qualify this as a tactic?

A Tactics, uh-huh.

Q Tactics of the cartel, who clearly have a lot of control over things going on on the border. Would you agree?

A Uh-huh. Yes.

Q They -- these types of tactics are important for people in the administration, in the government, in the agency, to know. What level of importance does it have to carry before someone like the Secretary would know?

A So I'm -- that's for them to decide. I can tell you, as somebody at my level, it's important. But I -- I hesitate to speak for people that are higher than me in the chain of command as to what is appropriate. I'm not going to speak for them. They make that determination.

Q Has -- are you familiar with any of these bracelet-type tactics being discussed in public media?

A Yes.

Q Have you ever discussed them in public media?

A If I have during interviews, possibly. I don't remember.

Q What is the process in which you're permitted to engage in public media?

A So, when it comes to local media, we're generally able to do interviews, and of course we have our social media platforms. Typically, the national media outlets, they restrict it to the chief of the Border Patrol or higher.

Q And, when you engage -- when you mentioned social media, what kind of social media platforms do you use?

A We have a sector Facebook page. We have a Twitter account and an Instagram account. All sectors have this, and it's -- the chief that's in charge of that sector will have their picture and their name associated with it. Whenever that person

leaves and a new chief comes in, they replace that picture and the name. But they're sector accounts.

Q And this sector account bearing your face and your name, does that mean that you also have to sign off or approve on anything posted on these sector accounts?

A Everything is my responsibility, yes.

Q And what is the process of what is permitted to be put on these accounts or not published on these accounts?

A So there is a social media policy that CBP has, and I have a strategic communications branch who, among other things, deal with our social media accounts. And that's pretty typical for most Border Patrol sectors.

So you'll have a person that's designated to create a post based on incidents that have happened or things that are happening around the sector. They'll submit it up through their chain of command to -- for review and edit, where it ultimately makes its way to me, and I give the final approval for it to be posted.

Q And, in that social media policy, which, just to clarify, is that policy provided by CBP, or DHS?

A I believe CBP. It's Office of Public Affairs.

Q Is that a policy that's often updated?

A I don't know that it's often updated. I believe we just received in the last year sometime the latest update to it.

Q So, after you approve the sector post and it gets published, there is no other review after you. Is that correct?

A Not typically. Unless it's a -- if it's a high-level event or something with national significance, we'll often defer so that the national level can post it or make a press release out of it. Another option may be, if it's something that's tied to an

investigation with one of our partners, if they ask us not to post it, we may defer to them as well to maintain the integrity of the investigation.

Q Have you ever had anything posted when you've approved and it's been published and then been instructed to remove the posting?

A I have not been instructed to remove, that I can think of, any post. But I have -- I have been instructed to refrain from doing posts like it in the future.

Q So you have never had a deleted tweet from your sector?

A I can't, off the top of my head, recall any. I'm not saying there wasn't, but I -- off the top of my head, I don't -- I can't remember any.

Ms. O'Connor. You done?

BY MS. O'CONNOR:

Q What was the post that you were told that you weren't allowed to post one similar?

A They wanted us to refrain from posting where pictures of unaccompanied children were involved because it -- they were afraid that it exposed those children to exploitation.

Q I'm going to switch gears and talk a little bit -- a little more granularity about the procedures that you use to implement some of the policies. Since you've been in Del Rio, we spoke a little bit about the chain of -- how the policies come down, Border Patrol headquarters to your staff to the agents themselves.

A Uh-huh.

Q How are the agents informed, though? Are they -- is it a muster, and everybody is told about this is what we're doing today with these -- you know, this nationality, or with this policy, or does everyone get an email? How is -- how are these things specifically relayed to the agents on the ground?

A So it's a typical hierarchical structure. So you have the sector chain of command, the sector staff, and it goes down to the station chain of command. So it would go from -- when we receive it from headquarters, the division chief of operations would disseminate it out to the different stations, to the patrol agents in charge, who in turn would disseminate it down to the watch commanders and the supervisors and ultimately to the agents on the ground.

It can be done electronically by email. It could be done with -- in written form, sent down to the stations. It can be done verbally or some combination thereof.

Q Have you ever encountered a situation where procedures were given orally and you ran into almost a telephone situation where maybe some of the stations weren't necessarily implementing things consistently because people were told different things?

A Sure.

Q Do you have an example of when that would happen?

A Just last year, in the chaos of -- you know, of the flow that we were seeing, you know, the very definition of chaos is things happen out of your control. So did we -- did we have miscommunications where one station was clear on something and another station wasn't, that got corrected in short order? Sure. Specifically, I can't come up with any sitting here right now, but I'm sure there were.

Q I want to talk a little bit more about the Parole+ ATD program. I know we spoke a little bit about it already. And you were utilizing that throughout all of fiscal year 2022, correct, while you were there?

A For the most part, yes.

Q And what -- what factors did the sector take into consideration to use Parole+ ATD?

A So, if we were able to determine that the person did not pose a threat and

that they -- there was no other pathway that would be better for them to be processed under, processing somebody for parole requires about half the time that processing some -- that does processing somebody under NTA. So the flow that we were seeing, the capacities that we had, the capacities of our partners down the chain in the system, and what best fit the migrant at the time, those are some of the factors that we used to make that determination.

Q Were you ever instructed to consider detention capacity or encounter numbers in determining whether you were going to utilize Parole+ ATD?

A I don't -- I wasn't ever instructed per se, but I have a capacity limitation. If I -- if I'm -- if I'm told that my facilities can hold 1,850 people, if I go beyond that capacity, that creates a hazard for the migrants that are being held, and it creates a hazard for the men and women that are staffing it. So that, in and of itself, is a reason to look for an expedient path to move people through.

Q And the people processed under Parole ATD were not issued notices to appear, right?

A Correct. That's -- it's an entirely separate pathway, and just at a high level, it takes less time, because they don't receive their charging documents until they get to the ICE district where they're going to be hearing their case whereas, as an NTA, they get all that paperwork upfront. That's why it takes longer to do the processing.

Q And they also do not necessarily have to assert a fear of returning to their country, right?

A For parole?

Q Right.

A It's not a necessary requirement.

Q And, when you were using Parole+ ATD during fiscal year 2022, were those

people also being transferred to ICE ERO first, or were they being release straight from Border Patrol?

A Always transferred -- it's actually ICE that affixed the alternative to detention.

Q Right.

A So they would always be handed over to ICE first, even if it was just on the paper at the same facility, before they were actually turned over to the NGOs or sent someplace else.

Q Were there people being paroled without ATD?

A No. So, if there was exigent circumstances where there was connectivity issues, for example, at one of the stations where they couldn't sync up the devices, there may be short periods of time where that was utilized, but it was because we couldn't get the devices affixed for whatever reason, or maybe they didn't have enough devices.

Q ERO?

A ERO.

Q Okay. You're familiar with immigration laws as far as they're related to enforcement -- detention, removal, apprehension?

A Uh-huh.

Q And you're aware that -- are you familiar with section 235(b) of the Immigration and Nationality Act --

A You'd have to read it to me.

Q -- that talked about expedited removal?

A You'd have to read it to me. I --

Q Do you think that you've been exposed to that in any of your training?

A Yes. Yep. Not enough to be able to quote it.

Q That's okay. I can't quote it either. Used to it.

All right.

Ms. O'Connor. I'll show you what I'm marking as majority A, and this is 8 U.S. Code, section 1225, which is INA section 235. Sorry.

[Owens Majority Exhibit No. A

Was marked for identification.]

BY MS. O'CONNOR:

Q I'll just point your attention to subsection B, subparagraph I, where it says: If an immigration officer determines an alien who is arriving in United States or described in clause 3, the officer shall order the alien removed from United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 2(a) or a fear of persecution.

So, if the people who you were considering for parole under Parole+ ATD were not asserting a fear of persecution, why were you releasing them?

A There was not the bed space for -- with an ICE ERO to hold them until their immigration hearing.

Q So would you agree that you were not complying with section 235, subsection B, of the INA when you were releasing people under Parole+ ATD?

A As I read this right now, if there were individuals that were processed for parole and were not claiming fear or asylum, then yes.

Q Did -- was that a decision that was made at a sector level, or were you told to do that?

A So the pathway was made available to us by our headquarters.

Q Are you familiar with the statute that authorizes the use of parole?

A Yes.

Q Okay. So it's section 212 of the Immigration and Nationality Act. Do you think that you've read that at some point in your training?

A Yes.

Q All right.

Ms. O'Connor. I'm going to show you what's -- I'm sorry. I think it's section 330 -- 212. I'm showing you what's been marked as majority's -- majority exhibit B. I'm going to draw your attention to page 17, paragraph 5.

[Owens Majority Exhibit No. B

Was marked for identification.]

BY MS. O'CONNOR:

Q Do you see that, paragraph 5?

A Yes.

Q So that paragraph is the Secretary's parole authority, and it says: The Secretary may prescribe -- in his discretion -- I guess I should start at the beginning, huh -- that: Attorney General may accept, as provided under subparagraph B, under section 214, in his discretion, parole in the United States temporarily under such conditions as he may prescribe, only on a case-by-case basis for urgent humanitarian reasons or significant public benefit, any alien applying for admission to the United States.

Were you considering each person who was granted parole under Parole+ ATD on a case-by-case basis?

A Well, as much as we could given the flow that we were experiencing, yes.

Q What does that mean, as much as you could? What are the factors that --

A Well --

Q -- you were considering?

A -- we take everybody into custody individually. We process them

individually. We interview them individually. So they're not treated as -- not treated in bulk by us.

But, if I understand what you're -- what you're talking about, it was not sporadic because we had this influx of many of them coming in whereas, if you read this, it probably gives the impression that it was just done -- it should normally just be done sporadically.

Q Well, the statute says it should be done specifically on a case-by-case basis for humanitarian or -- humanitarian reasons or significant public benefit.

So I'm asking what specific factors in each case were agents considering when determining whether they should grant parole under this provision?

A So I think we've said several times that this is a very -- very definitely is a humanitarian issue that we're dealing with, with so many people coming across the border and the conditions that they're finding themselves in. I've talked about the deaths. I've talked about the dangers. And everybody that we take into custody is done on a case-by-case, individual basis, even if it's thousands a day.

Q So I'm asking what factors are being considered in that case-by-case determination.

A Well, the conditions that the person is in the country under, where they're from, what are the reasons for coming, when they crossed, what is their background, what is their criminal history. All of those things come into play.

Q What do you mean the conditions they're in when they get there? You mean like physical condition?

A Yeah. Were they in the hands of a smuggler? Did we take them out of a stash house? You know, were they assaulted? Did they enter the country illegally? Did they present themselves at a port of entry? All of those things come into play.

Even though it may be obvious, they are considerations that will dictate how that person is processed.

Q And we talked about this a little bit earlier, and so I just want to confirm that each of these factors, then, is recorded in the form I-213 when the agent is making this determination about whether they should parole?

A Yeah. In the narrative, it would be captured. Among other things in the 213, as you probably know, it talks about where they entered. It talks about -- you know, the narrative will discuss how they were encountered and under what circumstances, where those articulable facts are given by the arresting agent. That's what's captured in the 213 in an effort to answer the questions as to what pathway they were entered into and why.

Q Was anybody presumptively considered for Parole+ ATD?

A Presumptively?

Q Family units, or a mother that came with three children, were those people presumptively considered for parole rather than an NTA or expedited removal?

A No. They -- and --

Mr. Jonas. I'm sorry. Because they were a family unit? Is that what you're saying, or who are you talking about?

Ms. O'Connor. Yes. Presumptively, the family unit.

Mr. Jonas. The family unit itself. Okay.

Mr. Owens. So, no, because I don't even think we -- we don't automatically assume that they're a family unit. We talked about before how we have to research their background, do the interviews, and determine if they are who they say they are, if they are, in fact, a family unit. So nobody is presumed to be one thing or the other. It's only after we do the backgrounds and the interviews that we're able to define what

the best possible pathway is.

Q Did everybody who is released on Parole+ ATD provide contact information, an address and phone number for how -- for where they would be when they're released from custody?

A Yes. In fact, we have data entry specialists that -- at the soft side facility that their entire day's work involves verifying the addresses given and the information given so that we can verify that it is valid. We did have instances where the smugglers were trying to exploit that and use the same address over and over again. That's a tactic that they would use. So we had to employ these specialists to go through there and verify that the address being given was a good one.

Q How are they verifying it? Are they just googling it, making sure it exists?

A Making sure it exists.

Q So we don't know that it's actually a house that they're going to live in.

They just -- it's an address?

A I suppose that's possible, yeah.

Q Okay. The -- you're familiar with the recent January 2023 -- the Cuban, Haitian, Nicaraguan, Venezuelan parole program that was put in place?

A Yes.

Q And those people only from those nationalities are eligible to sign up for parole through CBP 1, correct, for that program?

A I believe so, yes.

Q In Del Rio -- in January 2023, Del Rio saw -- I'm sorry. Sorry -- about 3,500 Cuban encounters. Does that sound about right to you?

A Sure.

Q And, in February of 2023, that fell by 97 percent, and there were 79 Cuban

encounters in between ports of entry. Does that sound about right?

A Yes.

Q And, in December 2023, for the Nicaraguans, Del Rio saw about 8,000 encounters in between ports of entry. Does that sound about right?

A Sure.

Ms. Muffett. If you could clarify. I thought you said December 2023.

Ms. O'Connor. Okay.

Mr. Jonas. December 2022?

Ms. O'Connor. I'm sorry. The cycle of 2023, December.

BY MS. O'CONNOR:

Q And then, in February of fiscal 2023 -- encounters there, Del Rio saw 74 encounters of Nicaraguans through the ports of entry. Does that sound right?

A Sure.

Q So a decrease of about 94 percent?

A Uh-huh.

Q Would you attribute the fewer encounters of Cubans and Nicaraguans between the ports of entry to the CHNV program that was pushing them to the ports of entry?

A Potentially. That is one possibility.

Q What would the other possibilities be, do you think?

A If they were shifted to another sector. For example, instead of crossing in the Del Rio Sector, they chose to cross in El Paso. I'm not saying that it's not. Same thing I've been saying all along. I hesitate to attribute any action to one specific thing, but it is definitely a possibility.

Q Have you seen that happen in the past, where such a huge, huge group of a

particular nationality will move to a different sector?

A Yes.

Q Can you give me an example when that had to happen -- when that's happened?

A The Venezuelans, they were crossing in large quantities in Del Rio Sector, and they shifted over to El Paso. And, if you remember, sometime early this year, we ceased being the busiest sector, and it went to El Paso, largely because a lot of the Venezuelan demographic shifted over to El Paso.

Q Do you think that that has to do with cartel tactics, or something else?

A It could. Again, this is -- so that is one tactic. If they perceive it to be better for them, they can make -- if they can make more money. If word of mouth -- and I did see one social media post by one of the migrants talking to other migrants on social media about how much safer the river appeared in the El Paso area as opposed to Del Rio.

So word of mouth, smugglers giving false information, there is a multitude of things that could cause the migrant patterns to shift. And, in fact, we've -- I've certainly seen that over the course of my career. I talked about in the 1990s, when it was San Diego. In the 2000s, Tucson was extremely busy. For the last 10 years or so, it's been the Rio Grande Valley, and then it shifted over to us in El Paso.

There always seems to a focal point or two or three focal points along the border that are getting the most traffic, and they do shift over time.

Q So word of mouth can definitely be another reason?

A Absolutely.

Q Has Del Rio encountered any criminals this fiscal year, fiscal 2023?

A Yes.

Q Do you know how many?

A I do. I was prepared for you to ask. Let me pull it up here. Criminal arrests, fiscal year to date 2023, 621.

Q Are those people that have been convicted of a crime within the United States, or anywhere?

A It could be anywhere.

Q Is it all convictions?

A If they have a criminal background, so yes, they would have convictions.

Q Even if they -- what if they had a rap sheet in the United States with just arrests? Would that be considered a criminal alien if you encountered them?

A It depends on what the arrest was. If it was something felony conviction, then that's typically what we would use to categorize them. If they had a DUI or traffic violations, they would probably not be categorized as criminal -- criminal --

Mr. Jonas. I think she's asking if they were charged but not convicted.

Ms. O'Connor. Right.

Mr. Owens. No. For us, the conviction is what's necessary to be considered a criminal.

Ms. O'Connor. Okay.

BY MS. O'CONNOR:

Q And, if -- have you encountered any individuals who appear on the Terrorist Screening Data Set?

A Yes.

Q How many?

A For the Del Rio Sector, I believe it's 13, but let me -- this fiscal year, let me double check.

Mr. Owens. Will you pull up that sheet so we can double check it?

Mr. Joy. Yeah.

Mr. Owens. He's going to find out for sure right now.

BY MS. O'CONNOR:

Q Of the criminals and the individuals on the Terrorist Screening Data Set, how many have been released into the United States? Do you know?

A If they have -- if they're on the Terrorist Screening Database and if there is -- if the FBI determines that they pose a threat, they are not released. If -- if they are criminals and they are determined to still represent a threat, they are held and -- held by ICE until they are actually removed to their country. So none should be released unless those things can be determined.

Q So you work with the FBI when you come across somebody who has been flagged on the Terrorist Screening Data Set?

A We're part of the Joint Terrorism Task Force, so anytime we encounter somebody that's of concern that's flagged through that initial intake procedure and background, we alert the FBI, and we begin that more extensive, indepth dive into their background to include the interviews.

Q You mentioned earlier that not -- or few of the encounters within the Del Rio Sector are asserting a fear of returning to their country. Is that correct?

A It's not all of them. I don't know the exact number right now. I can find that out, but --

Q Would you say it's the majority of them, or not?

A I don't believe it is in the Del Rio Sector. That may be different in others, but I don't believe it's been the case here yet.

Q When those people do assert fear, are they issued an NTA, or are they -- do

they go through the expedited removal proceeding with a credible fear interview?

A If they -- if they do claim fear, they should be set up for the expedited removal so they can have that credible fear interview.

Q Is that what's happening right now, because earlier you said you guys weren't using the expedited removal right now?

A So we are -- let me -- so we were using expedited removal, but it's not -- we weren't part of that pilot program where they we had the actual --

Q Okay.

A -- interviewers on site with us.

Q Okay. But you are using expedited removal in some circumstances?

A It is a path that's available, yes.

Q When you are using -- when you do pursue expedited removal and individuals are set up for their credible fear interview, are you detaining them while they wait for their interview?

A That would be determined by ICE. So they'll -- again, they'll be turned over to ICE to either be held or to be released until their interview.

Q Okay. So someone comes to -- someone is encountered by Border Patrol. They bring them up for processing, and they say: I'm afraid to return to my country. You turn them over to ICE?

A Correct. We're --

Q Or you fill out the order for expedited removal, and then you turn them over to ICE for their credible fear interview?

A Correct. We're not a detention agency at all, so everything that's going to involve detention is going to be turned over to ICE or to one of our other law enforcement partners.

Q But Border Patrol does the order itself before you send item over to ICE, or you just send them straight over?

A No. We'll start the processing, start that order. I don't believe we -- we had that -- I believe we have that done before we actually turn it over to them.

Q Okay.

A Yeah.

Mr. Joy. It's 13.

Mr. Owens. It is 13 for the TSDS.

Ms. O'Connor. Oh, TSDS? Thank you for confirming.

BY MS. O'CONNOR:

Q What is the Border Patrol's ultimate mission?

A Keep bad things and bad people from coming in this country to do it, its people, and its way of life harm.

Q Would you be effectively implementing your mission by preventing entries into the United States or processing people as fast as you can through the process?

A The primary job of the Border Patrol is to stop illicit cross-border traffic between the ports of entry. That's, in a perfect world, all we should be dedicated to doing.

To have that happen, there has to be the pathway for the migrants that want to come here legitimately other than between the ports of entry. Because that hasn't been happening, because there has been such an influx of migrants wanting to come into this country, it has forced the Border Patrol to deal with that humanitarian issue in lieu of or at the expense of the border security mission.

Q Are you familiar with the asylum cooperation agreements that the Department signed with El Salvador, Guatemala, and Honduras during the Trump

administration?

A Not really. As I say, I know they exist, but I -- I can't give you specifics on them.

Q Based on your training and experience, would the ability to send asylum seekers to other countries to apply for protection help secure the United States borders?

A It would mean that those asylum seekers would not need to come to the United States to be safe. That would be good for the migrants, and it certainly would lessen the flow that the Border Patrol is facing.

Q What is the current vehicle pursuit policy in your sector?

A It's the same as the -- it's the U.S. Border Patrol vehicle pursuit policy.

Q And what is that?

A I don't understand.

Q What is the policy for pursuit for vehicles?

A You have to be more specific. When?

Q When can Border Patrol officers pursue a fleeing vehicle?

A If there is a commission of a crime and apprehending that individual -- the risk associated with apprehending that individual is less than letting them get away to the public.

Q Has that policy changed recently?

A So it's in the process of changing. It's -- if I -- if you're referring to the new pursuit policy that's coming out, the implementation, I believe, has been postponed until at least June 1st. So we're still operating under the old policy right now.

Q Do you -- are you familiar with the new policy?

A Yes.

Q How would it -- what would it change regarding what Border Patrol does

now?

A It's a bit more restrictive on -- under what conditions we're able to continue a pursuit.

Q What kind of restrictions?

A It would take into account the factors, the -- whether the road conditions, the visibility, the density of the population, and if -- if everything is not conducive to the pursuit, we're expected to terminate and not pursue any further.

Q Are those factors that you already considered?

A They're always factors that we consider, yeah.

Q So -- so what about this policy, then, would change vehicle pursuits? If those were factors that you've always considered, regardless of whether it was written in a policy --

A Yeah.

Q -- is there something else within this policy that would change pursuits?

A I need that -- I'd need to sit down and have that pursuits policy in front of me to be able to talk --

Q All right.

A -- about specifics.

Q Okay. You spoke a little bit about cartels providing misinformation to migrants and that being one of the reasons that some of these migrants will come. For instance, the cartels may say: It's not that hard. It's a safe pathway. You'll get right in.

Do you think that the -- what the cartels are saying to these people is misinformation if the number of people continue to come?

A I absolutely think that it's misinformation, because I don't believe somebody

would willingly go to their death. If -- if they knew that that was that great of a danger, I find it hard to believe somebody would put themselves in that situation.

And then motivations for the smugglers giving that information is to entice people so that they can make money. I don't know that they actually believe that the journey is safe. I don't know that they believe that these folks are going to be treated humanely, especially when they're the ones that are putting them in the stash houses, when they're the ones that are locking them in the trunks of cars or the back of tractor-trailers.

I believe that is very much disinformation, because I don't believe they're telling the migrants that this is what they're going to do to them whenever they're in their custody. I also don't believe that they're going to tell the migrants that: Hey, when you get to the stash house, we're going to extort you for more money, and we're going to keep you there against your will for 2 weeks, or we're going to sexually assault the women that are in our custody. That is very definitely misinformation.

Q But if it was all a lie, why would people keep coming? Wouldn't people get -- get hip to the fact that they're lying to us?

A Again, it goes back to what prompts a person to want to make that journey. I think this is where it varies from person to person. If they believe they're fleeing terrible conditions that are even worse than what they may possibly face, or if they -- the chance of realizing the American Dream that they -- that has been built up, they may decide it's worth the risk. I can't speak for what specific motivations each individual has, but we've talked about some today. And, depending on the individual, it could be one or a multitude of them.

Ms. O'Connor. Okay. I'll pass the clock.

Do you have any questions?

Mr. McDonagh. Yeah.

BY MR. MCDONAGH:

Q Is it easier or harder to maintain operational advantage or operational control during times where migrant flow is high?

A It's more difficult.

Q To go back on the line of disinformation questioning, is it disinformation that individuals that turn themselves in to Border Patrol have a good chance of ultimately being released into the interior of the country?

A So the disinformation there is that they're released and can live out their lives in the United States without consequence. The part that we don't know about is, when they have their immigration hearing, are they going to be determined to be removable and sent back to their country of origin? That's the part that still has to play out.

Q Who was President in 2014?

A Boy, you just put me on the spot. It was Obama, right? Okay.

Q So we were talking earlier about single adult men encounters, family unit encounters, and the comparison of -- had you ever seen people -- migrants just giving themselves up to Border Patrol? It happened in 2014. Do you know how many family units were encountered in fiscal year 2014?

A Not off the top of my head, no.

Q It's a little over 68,000.

A Uh-huh.

Q Do you know how many family units were encountered in fiscal year 2022?

A No.

Q Over 480,000. Is that an increase, or a decrease?

A It's an increase. Thank you for the easy math.

Mr. McDonagh. I'm all set.

Mr. Owens. Okay.

BY MR. YI:

Q Chief, you mentioned earlier about how you found out the cartels are using a bracelet system through interviewing encounters.

A Uh-huh.

Q Once you found that out, what is the process for information sharing across other sectors so that other sectors may be aware of the type of information or intelligence that you had gathered in your --

A So this is where the sector intelligence units would generate documents, reports that would be disseminated out to the other sector intelligence units and up to headquarters for them to see. And that's any new trend or changes to trends that we're seeing. That's how it's typically shared across the -- across the agency.

Q And the colored bracelet systems that the cartels used would be considered a new trend?

A When it was new, yes.

Q When it was new.

A Yeah.

Q So would that also mean that other sectors would have access to that information along the southwest border?

A Yes.

Q Including Big Bend Sector?

A Yes.

Q And the chief patrol agent there would also have access to that information, then?

A He would, yes.

Q Okay. In preparation for today's interview, did anybody ever discourage you from expressing your opinions on border enforcement policies?

A No. Absolutely not.

Q In your 27 years, you've seen policies --

A Uh-huh.

Q -- a variety of them. You've stated that you served under multiple administrations.

A Uh-huh.

Q Have there been policies that you believe work better than others?

A So you're asking for my opinion personally, and -- and, while I do have opinions, talking to you as the chief patrol agent of the Del Rio Sector, I am not going to give opinions on any policies of any administration that I have worked under, because I'm in an official capacity.

Q If you -- being someone on the front lines there, if there were certain policies you could enact that would improve the border security's -- border security's -- the accomplishment of border security in the Border Patrol's mission, which types of policies would you prefer?

A Any policy that increases my capacity to deal with the border security mission and ensures a consequence on those that we're trying to take into custody for a violation of law -- any policy that promotes those two things, one or both of those things would probably be something that I would be interested in looking at.

BY MS. O'CONNOR:

Q We talked about earlier migrants that evade arrest, and you've seen a lot of people giving up these days, but there are still many that evade arrest and for a reason.

When your agents encounter those people, if they do catch them, do they often resist arrest?

A Sometimes.

Q Does it end up in assaults on agents?

A It has.

Q Do you know how many assaults there have been so far this year?

A I'll tell you right now. Fiscal year to date in the Del Rio Sector, we have had 25 agent assaults.

Q Do you know if that number has gone up since 2019?

A In 2019, for all of 2019, we had 43 agent assaults in the Del Rio Sector. And last fiscal year, we had 62.

Q What would qualify a situation to be an assault on an agent?

A You want some examples?

Q Sure. Well, I guess if someone was shoved, would you qualify that as an assault on an agent, or does it -- does it need to require some sort of injury? Is there -- I guess what's the minimum limitation?

A Typically injury or at least an attempt to injure the agent. Somebody trying to evade capture, running away, unfortunately that's -- that's fairly common in the Border Patrol, so we don't classify most of those as assault. But where a migrant will take a swing at an agent or throw a rock at them or kick them, try to run them over with a vehicle, those are the types of situations where, even if there wasn't an injury to the agent, there was an honest attempt at injuring him or her that would be a case where we'd consider assault charges.

Q Do you ever refer those to -- for prosecution?

A Yes.

Q Have the U.S. Attorney's Office accepted any of those?

A They have.

Q Do agents ever end up in a situation where -- well, that's a very bad question.

In this last fiscal year, have any of your agents been in situations where they've been confronted with any sort of weapon?

A We have encountered several weapons this year when taking down smuggling loads or seizing vehicles at the checkpoint, absolutely.

Q Recovering weapons?

A Recovering weapons, or they've actually had weapons on their person whenever we've arrested them, so yes.

Q And are those typically cases that you would refer to -- for prosecution?

A Yes.

Q Do agents typically need to use force in those types of situations?

A Not always. Sometimes they may have a weapon on them, but they didn't make an attempt to use it, so the agent didn't need to use force to effect the arrest.

Q What about during assaults on agents? Do those typically end up in use of force, too?

A Yes.

Q Do you have a use-of-force review team or someone that reviews all uses of force?

A Yes.

Q Who is that? Is there a name?

A So we have the Office of Professional Responsibility. I think that's what you're referring to. That's a CBP office. That's kind of like our internal affairs. And

we have teams -- the Use of Force Investigation Team, UFITs, use of force -- they're local teams that actually go over nondeadly uses of force to determine if they were -- if they were justified or in accordance with policy or not.

And then we have the higher level Use of Force Review Board that actually reviews where a use of deadly force was involved. But all that falls under the purview of the Office of Professional Responsibility.

Q Has the use of -- has agents' use of force increased in any way since you've started in Del Rio?

A You'd have to ask for those stats, but I'm sure OPR has them. I don't know if they have increased since I started over times past.

Q Okay.

Ms. O'Connor. I think that's all I have.

Do you guys have any additional questions? Do you have any additional questions?

Mr. Yi. No. We'll go off the --

Mr. Rust. Before we go off the record, just on behalf of Chairman Comer, I want to thank you for coming in today to answer all of our questions, even the difficult ones. We appreciate it.

Mr. Yi. Likewise, Chairman Green also thanks you, and appreciate your voluntary appearance today.

Mr. Owens. Okay.

Mr. Yi. We'll go off the record at 2:09 p.m.

Mr. Owens. Thank you.

[Recess.]

Mr. Ewencyk. We can go back on the record.

BY MR. EWENCZYK:

Q Chief, I just wanted to go back to a few points -- discrete points that you discussed with my Republican colleagues. There were a lot of questions about the bracelets that cartels use as part of their smuggling operation.

A Uh-huh.

Q Do you agree that the use of bracelets is one among many tactics that cartels use as part of their human smuggling operation?

A Absolutely.

Q And then there was a discussion about CBP's update to the emergency driving and vehicular pursuits directive. Do you remember that exchange?

A Yes.

Q And my understanding from CBP about this is that this change to policy does not prohibit pursuits. Instead, it's a framework for weighing the risks of conducting such pursuits, such as the danger they present to the public against the law enforcement benefit or need.

Do you have any reason to disagree with that characterization?

A No.

BY MR. OMBRES:

Q Good afternoon, sir. For the benefit of yourself and the court reporter, I'm Devon Ombres.

Can you just briefly -- this is going back 3 hours -- remind me of your educational background, because I'm pretty sure you're the most educated person in this room at this point?

A I doubt it, no.

Q You've got a couple master's degrees.

A Yeah. I have a master's in accounting from Shorter University, and I have a master's degree in national security strategy from National War College. And then I have the leadership program certificates from American University and Robert H. Smith School of Business.

Q Okay. You have more postgraduate degrees than most of us, I think. And you also have the good fortune of not being a lawyer like all of us.

A No.

Q So I just want to -- I have a couple of questions, because our colleagues went over a number of lines in the Immigration and Naturalization Act. But, just to confirm, you're not a lawyer, not a judge?

A Correct.

Q All right. And sorry. I lost my question.

They had you opine on the legality of CBP policies based upon the readings of a few lines, correct?

A Yes.

Q Do you feel comfortable opining on the legality of CBP policies, not being a lawyer, just reading a few lines of various statutes?

A No. I don't feel -- if I don't have familiarity with the specific area of law they're talking about and I'm just reading an excerpt that's taken in that one context, I don't feel comfortable opining about the entirety of that particular piece of legislation.

Q Fair enough. And the CBP policies that may flow down, you don't feel comfortable in determining whether those are legal or illegal based upon the reading of one or two lines of a statute?

A I'll go further. That's not even my job as a chief patrol agent. I'm not into policy.

Mr. Ombres. Okay. Thank you, sir.

Mr. Yim. Chief Owens, I think on behalf of the Democratic staff of the House Oversight Committee and the House Homeland Security Committee, we want to say thank you for your time. We appreciate you coming here to speak with us today.

And, with that, we'll go off the record.

[Whereupon, at 2:23 p.m., the interview was concluded.]

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5 COMMITTEE ON HOMELAND SECURITY,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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12 INTERVIEW OF: RODNEY S. SCOTT

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16 Monday, January 22, 2024

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18 Washington, D.C.

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21 The interview in the above matter was held in Room H2-176
22 Ford House Office Building, commencing at 12:44 p.m.

1 Appearances:

2

3

4

5 For the COMMITTEE ON HOMELAND SECURITY:

6 FINN ARTHUR, RESEARCH ASSISTANT

7 NATASHA EBY, STAFF DIRECTOR, SUBCOMMITTEE ON

8 BORDER SECURITY AND ENFORCEMENT

9 ELIZABETH O'CONNOR, SENIOR OVERSIGHT AND

10 INVESTIGATIONS COUNSEL

11 BRANDON SCHALL, OVERSIGHT AND

12 INVESTIGATIONS COUNSEL

13 WILLIAM TURTON, PROFESSIONAL STAFF MEMBER

14 TREVOR WHETSTONE, DEPUTY GENERAL COUNSEL

15 SANG YI, DIRECTOR OF INVESTIGATIONS

16 LYDIA DENNETT, MINORITY PROFESSIONAL STAFF MEMBER

17 BRIEANA MARTICORENA, MINORITY STAFF DIRECTOR.

18

19 For RODNEY S. SCOTT:

20 MIKE HOWELL, ESQ.

21

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23

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25

1 Mr. Yi. We can go on the record.

2 Good afternoon. This is the transcribed interview of
3 Rodney S. Scott. Chairman Green requested this interview to
4 obtain information related to Secretary Alejandro Mayorkas'
5 handling of the border crisis from January 2021 to present day.
6 Will the witness please state your name for the record.

7 Mr. Scott. Rodney Shane Scott.

8 Mr. Yi. On behalf of the Committee on Homeland Security,
9 thank you for appearing today. The committee appreciates your
10 willingness to appear voluntarily. My name is Sang Yi, and I
11 am the director of investigations with Chairman Green's staff
12 with the majority on the Committee on Homeland Security.

13 I now ask that the majority and minority staff from the
14 committees to please identify themselves.

15 Ms. O'Connor. Elizabeth O'Connor for the majority.

16 Mr. Schall. Brandon Schall, counsel for the majority,

17 Mr. Turton. William Turton, professional staff member,
18 majority.

19 Mr. Arthur. Finn Arthur, majority.

20 Ms. Marticoarena. Brieanne Marticoarena, Democratic staff.

21 Ms. Dennett. Lydia Dennett, Democratic staff.

22 Mr. Yi. Before we begin, I will outline the procedures and
23 guidelines that we will follow in this. The Federal Rules of
24 Civil Procedure do not apply to any of the committee's
25 investigative activities, including transcribed interviews.

1 The questioning will proceed in rounds. The majority members
2 or staff will ask questions first for up to one hour, and then
3 the minority members or staff will have an opportunity to ask
4 questions for up to one hour if they choose. The majority
5 members or staff will then ask questions for up to one half hour,
6 and then the minority members or staff will have an opportunity
7 to ask questions for up to one half hour if they choose. Per
8 agreement with the witness, the total length of the questions
9 for this interview will be up to 3 hours.

10 We'll take a short break at the end of each round. If you'd
11 like to take a break at any other time, please let us know. If,
12 however, there is a pending question, I ask that you finish
13 answering the question before we stop to take a break.

14 There is an official reporter taking down everything we say
15 to make a written record. So we ask that you give verbal
16 responses to all questions. The reporter cannot record
17 nonverbal responses or answers, such as shaking your head. So
18 it is important you answer each question with an audible, verbal
19 answer. Do you understand?

20 Mr. Scott. Yes, I do.

21 Mr. Yi. To ensure the court reporter can make a clear
22 record, we will do our best to limit the number of people
23 directing questions to you during any given hour to just those
24 Members or staff whose turn it is. To the extent possible, it
25 is also important that we do not talk over one another or

1 interrupt each other. Please wait until each question is
2 finished before you begin your answer, and we will wait until
3 you finish your response before asking you the next question.
4 That goes for everybody present at today's interview.

5 Furthermore, the majority members or staff will not ask
6 questions or otherwise interrupt the minority's round of
7 questioning and vice versa. I understand the witness is
8 accompanied by counsel today. Would counsel please state his
9 name for the record.

10 Mr. Howell. Mike Howell.

11 Mr. Yi. You are encouraged to freely consult with counsel
12 if you choose. If you need to confer with counsel during the
13 interview, please let us know. We can go off the record and stop
14 the clock until you're prepared to continue. During the
15 interview, we will ask that you please answer any questions in
16 the most complete and truthful manner possible. If you have any
17 questions, or if you do not understand the question, please let
18 us know. Do you understand?

19 Mr. Scott. Yes, I do.

20 Mr. Yi. If you do not know the answer to a question or do
21 not remember, it is best not to guess. If there are things you
22 do not know or cannot remember, please say so and inform us to
23 who, to the best of your knowledge, might be able to provide a
24 complete answer to the question. If I ask you about
25 conversations or events in the past and you are unable to recall

1 the exact words or details, you should testify to the substance
2 of those conversations or events to the best of your
3 recollection. If you recall only a part of a conversation or
4 event, you should give us the best recollection of those events
5 or conversations that you do recall. Do you understand?

6 Mr. Scott. Yes, I do.

7 Mr. Yi. This interview is unclassified. If any question
8 calls for information that you know to be classified, please
9 state that for the record, as well as the level of and reason
10 for the classification. Once you make such a clarification,
11 please respond with as much unclassified information as you are
12 able. This interview is conducted without prejudice to any
13 future discussions with the committee, and we reserve the right
14 to request Mr. Scott's participation in future interviews or to
15 compel his testimony.

16 Although, you are here voluntarily, and we will not swear
17 you in, you are required by law to answer questions from Congress
18 truthfully, including questions posed by Congressional Members
19 or staff during this interview. Witnesses who knowingly provide
20 false testimony could be subject to a criminal prosecution for
21 perjury for making false statements. Do you understand this
22 obligation to tell the truth today?

23 Mr. Scott. Yes. I do.

24 Mr. Yi. Witnesses who knowingly and willfully provide
25 false testimony could be subject to criminal prosecution

1 imprisonment for up to 5 years. Do you understand?

2 Mr. Scott. Yes, I do.

3 Mr. Yi. Is there any reason you are unable to provide
4 truthful answers to today's interview?

5 Mr. Scott. No.

6 Mr. Yi. Before we begin the interview, I would like to
7 explain briefly why we are here today. Throughout the last year,
8 the House Committee on Homeland Security conducted
9 investigations into the crisis at the Southwest border. The
10 committee held numerous hearings of the border security experts
11 and crime victims; conducted transcribed interviews of U.S.
12 Border Patrol chief agents stationed along the Southwest border;
13 and sent the Department many requests for documents and
14 information. Despite the committee's efforts to obtain
15 relevant documents and information from the department relating
16 to illegal immigration at the Southwest border, the Department
17 continues to obstruct those efforts. Therefore, the committee
18 is left with many unanswered questions about the crisis at the
19 border. Given Secretary Mayorkas' and his Department's lack of
20 transparency, we are seeking your expertise and observations to
21 help address the committee's questions related to Secretary
22 Mayorkas' handling of the border crisis during his time as
23 Secretary.

24 I also understand that the witness has an opening statement,
25 and I welcome you to make that at this time.

1 Mr. Scott. Thank you. As stated, my name is Rodney Scott.
2 I served more than 29 years as a U.S. Border Patrol agent. I
3 had the honor of serving as the Chief for the United States Border
4 Patrol within Customs and Border Protection from February 2nd,
5 2020, to August 14th, 2021. My tenure as Chief spanned both
6 Presidential administrations of Donald Trump, as well as Joe
7 Biden. And I honorably retired on August 14th, 2021. As the
8 Chief, I was the highest ranking official within U.S. Border
9 Patrol responsible for executing the missions at the Department
10 of Homeland Security, Customs and Border Protection, and U.S.
11 Border Patrol. The U.S. Border Patrol is the primary Federal
12 law enforcement organization responsible for preventing the
13 entry of terrorists and their weapons and preventing the illicit
14 trafficking of people and contraband between ports of entry.
15 And as Chief, I was responsible for all administration and
16 operations of Border Patrol, including the development and
17 implementation of nationwide policies. Previous congressional
18 testimony of several witnesses to include myself **is** clearly
19 established that the Biden administration to include the
20 official transition teams and Secretary Mayorkas, were advised
21 by career border security experts that removing physical and
22 policy obstacles intended to deter illegal immigration would
23 result in a loss of control of our international borders.
24 Secretary Mayorkas chose to ignore these stark warnings and
25 implemented a series of decisions that directly resulted in the

1 massive illegal immigration and the associated crime, death, and
2 general chaos that we are experiencing today.

3 This is not a policy debate as Secretary Mayorkas and his
4 defenders would lead you to believe. Policy is simply how law
5 is enforced. The decisions made by Secretary Mayorkas have been
6 informed and intentional decisions with the stated objective of
7 finding ways to allow more aliens into the U.S. I assert that
8 Secretary Mayorkas and his subordinate political appointees have
9 and continue to intentionally conspire to undermine the security
10 of the American people, as well as the letter and the intent of
11 congressionally enacted U.S. law.

12 I assert that critical decisions made by Secretary Mayorkas
13 were affected with full knowledge and intentional disregard for
14 the law, including the legal requirement of 8 U.S.C. 1103(a)(5),
15 which states in part that the Secretary shall have the power and
16 duty to control and guard the boundaries and borders of United
17 States against illegal entry of aliens, as well as a total
18 disregard for public law, 109-367, which is commonly referred
19 to as a Secure **Defense** Act of 2006, which mandates that the
20 Secretary take all actions that the Secretary deems necessary
21 and appropriate to achieve and maintain operational control over
22 the entire international land and the maritime borders of the
23 United States.

24 Controlling who and what enters our national home is a
25 critical aspect of national security. Secretary Mayorkas

1 accepted this responsibility when he accepted this position and
2 swore an oath to uphold the duties of the Office of the Secretary
3 of Homeland Security.

4 In direct contradiction to these legal requirements, I
5 assert that Secretary Mayorkas made critical decisions with the
6 full knowledge that his decisions would result in a significant
7 influx of illegal aliens entering the U.S. in violation of 8
8 U.S.C. 1325.

9 Furthermore, that this influx would result in a significant
10 degradation of border security, which would directly increase
11 national risk to illegal entry of significant number of aliens
12 to transnational criminal schemes that include child
13 trafficking, narcotics smuggling, as well as the infiltration
14 by terrorists and adversary nation state actors.

15 During my professional conversations and interactions with
16 Secretary Mayorkas while I was still Chief, he made it very clear
17 that he fully understood that decreasing deterrence and
18 consequences for illegal entry, and increasing the release of
19 aliens that had entered the U.S. illegally, with unquestionably
20 result in an increase in illegal immigration to the U.S., that
21 in his words at that time, would be unsustainable.

22 Beyond a general understanding, though, I recall several
23 specific incidences that support my assertions. The first was
24 during the conference call that the Secretary Mayorkas held with
25 DHS leadership following his confirmation. The second was a

1 face-to-face conversation that we had in El Paso, Texas, just
2 before the two of us met with a group of local law enforcement
3 leaders. The third was during a virtual meeting about border
4 wall construction projects, and the presidentially mandated
5 60-day policy and assessment.

6 In addition to our general question conversation about the
7 operational benefits associated with the technology-enhanced
8 physical border wall, border barrier, the Impoundment Act of 1974
9 was specifically addressed, acknowledged. Subordinate
10 politically appointed staff in the meeting basically told
11 Secretary Mayorkas they would find a way to work around that.

12 Additionally, Secretary Mayorkas repeatedly stated that on
13 national television that they have a plan or acting on a plan,
14 and that their plan will be successful. This adding evidence
15 that his decisions are informed and intentional.

16 I assert that Secretary Mayorkas has knowingly and
17 intentionally misled Congress and the American people by
18 providing blatantly false information and by providing select
19 data points while intentionally omitting critical interrelated
20 data points.

21 For example, in March 2021, after receiving countless data
22 reports that documented an increasing number of illegal aliens
23 and a rapidly increased number of known gotaways, Secretary
24 Mayorkas appeared on several Sunday news programs and
25 unequivocally stated that the border was closed and that the

1 border was secure. On the next day, I asked Lise Clavel, the
2 CBP chief of staff, who, at the time, was my primary conduit to
3 communicate with Secretary Mayorkas, what that extremely
4 inaccurate statement was based on. She responded that they
5 thought I would like hearing him say that. I informed her that
6 the statement was not accurate, and that it needed to be
7 corrected. Despite the fact and overwhelming evidence to the
8 contrary, Secretary Mayorkas continues to mislead America and
9 state that our border is secure.

10 In testimony to Congress, Secretary Mayorkas stated that
11 he was not aware of a cartel-smuggling tactic, whereby they used
12 illegal immigrants to overwhelmingly distract law enforcement
13 so they can smuggle other aliens or narcotics in more easily.

14 Even though this tactic is commonly known, I had provided
15 the Secretary with a written explanation of how the cartels used
16 this specific tactic to shape border -- to shape the border and
17 facilitate the smuggling of higher threat people and goods.
18 This explanation was provided via government email while I was
19 still serving as Chief of the Border Patrol.

20 Again, in 2021, Secretary Mayorkas stated publicly that
21 undocumented noncitizens were being tested for COVID-19 and
22 vaccinated prior to release, when, in fact, that was not
23 occurring. Furthermore, the Federal Government had no
24 authority or mechanism for ensuring that it did even occur. Many
25 aliens were being transported to nongovernmental organizations

1 that could offer these services after the alien was released.
2 However, these NGOs lacked any authority to mandate a COVID-19
3 test or vaccine, nor could they force the alien to even enter
4 their facility. By law, once an alien is processed and release
5 from DHS custody, they're basically free to go anywhere that they
6 wish. Secretary Mayorkas omitted this critical information.

7 Again, in 2021, I was granted listen-only access to a
8 conference call hosted by Assistant Secretary David Shahoulian.
9 Assistant Secretary Shahoulian reported directly to Secretary
10 Mayorkas. During this call, Assistant Secretary Shahoulian
11 informed Congressman Tony Gonzales of Texas that all the aliens
12 being released in the area that the Congressman represented were
13 being COVID tested, and/or being released only in the
14 alternatives to the detention program, which include
15 ankle-bracelet tracking. This was not true. I instructed the
16 Chief patrol agent in the sector being discussed to make sure
17 that the Congressman was properly informed.

18 I assert that Secretary Mayorkas knowingly put Americans
19 at risk when he violated the CDC, the disease -- I'm sorry, the
20 Center for Disease Control directive that instructed CBP to expel
21 appropriate aliens under Title 42 authority when he ordered CBP
22 to exempt unaccompanied minors without any medical
23 justification.

24 Based on my experience, knowledge, and previous briefings
25 from CDC, I believe that this decision was arbitrary and lacked

1 any factual or evidentiary basis. Furthermore, based on
2 previous briefings provided by CDC, as well as exposure modeling
3 conducted by CBP, I believe that this arbitrary decision,
4 compounded by public statements made by the Secretary,
5 significantly increased the risk introducing COVID-19 into the
6 U.S. population.

7 This arbitrary decision questionably placed CBP and Health
8 and Human Services personnel, as well as the unaccompanied alien
9 children themselves, at an increased risk of spreading or
10 contracting COVID-19.

11 Under Secretary Mayorkas' direction, I watched border
12 security gains that were made over three decades of vanish, and
13 the safety of our border security and our Nation collapse. With
14 each border security- and immigration-related decision that
15 Secretary Mayorkas implemented, the volume of illegal aliens has
16 increased, overwhelmed Border Patrol, and effectively
17 transferred control of our Southwest border to the Mexican drug
18 cartels. I look forward to your questions.

19

EXAMINATION

20

BY MR. YI:

21

22

23

24

25

Q Thank you, Mr. Scott. I just want to -- in my preamble
as well here that we are not investigating you personally for
any personal wrongdoing, and that this is fact-finding endeavor.
So are you ready to begin your line of questioning?

A Yes, sir.

1 Q Thank you. The clock now reads 1 o'clock, and we will
2 begin the first round of questions.

3 So, Mr. Scott, you went through some of your history and
4 your background there in your opening statement. Can you
5 briefly describe to us -- obviously you were the Chief of the
6 Border Patrol, but also your own employment history in your
7 background?

8 A It's probably easiest to start with Border Patrol.
9 When I started in 1992, prior to the Border Patrol, I was a
10 part-time commercial pilot. But the Border Patrol was my first
11 real career, long-term career job. I joined the Border Patrol,
12 though, planning on being a pilot in the Border Patrol. However,
13 I went a different route. I went the management route. But in
14 1992, I started in San Diego, California, Imperial Beach Station.
15 I served as a frontline agent for about 4 years before being
16 promoted to a senior patrol agent. Still front line. I did that
17 for one year. And then I was selected as a supervisory Border
18 Patrol agent at the Chula Vista station, which is still based
19 in San Diego.

20 After one year of being a first-line supervisor in Chula
21 Vista, I was selected to be a supervisor in Nogales, Arizona area
22 Tucson sector. The reason that is important is if you look back
23 in history, basically Border Patrol strategy really started in
24 San Diego. And we were systematically improving border security
25 in San Diego, and now Arizona had become the focal point. There

1 was a significant increase in staff in Arizona to kind of
2 replicate what we had done in San Diego.

3 I spent a little over 4 years as the first-line supervisor
4 in Nogales, and then was promoted to a field operation
5 supervisor. So basically, it's a second-line supervisor. I
6 was doing that when 9/11 hit. And shortly after, well, about
7 a year after 9/11, but when DHS was formed on paper, I was still
8 a field operation supervisor in Nogales, Arizona, but I was asked
9 to take a detail to headquarters Custom and Border Protection,
10 and worked on anti-terrorism issues and interagency coordination
11 issues directly for the Commissioner, and was ultimately, about
12 a year later, hired into that position an assistant Chief. I
13 spent approximately 5 years in a few different positions in D.C.,
14 but that entire time, in part of the Commissioner's office
15 working on anti-terrorism and interagency coordination issues.
16 I think that's three different titles. I transferred back out
17 of that. I became an assistant Chief in San Diego in 2008, San
18 Diego sector. And then I became the commander of the Brown Field
19 Station in 2009.

20 Again, I was asked to serve in an acting capacity for a while
21 as the Deputy Chief in San Diego. And then I think it was like
22 2012, I was actually selected for that position.

23 The next position after that, I was the Chief for the El
24 Centro sector. I ended up going back to San Diego as the Chief
25 for San Diego sector, and then, ultimately, was selected as the

1 Border Patrol Chief, national Chief in February of 2020.

2 Q Well, thank you. And thank you for your service. And
3 perhaps I should have asked you what you have not done in the
4 Border Patrol. A swifter way to ask that question. So it
5 appears, is it accurate to say that you served in the Border
6 Patrol under five different Presidential administrations?

7 A Correct. I think -- I was in leadership position in
8 five. I believe it covered actually six.

9 Q Okay.

10 A I'd have to go back and look at the dates, but --

11 Q And during that time in your service, did you ever
12 receive any awards or achievements for your work in law
13 enforcement?

14 A Minimal to be honest with you. The best awards I got
15 was being promoted constantly. I got a few sector awards for
16 specific events, but no national awards other than getting
17 promoted.

18 Q And during those five or six Presidential
19 administrations, the White House has switched between Democrats
20 and Republicans, and would you say it's fair that you were
21 promoted under both types of political parties or Presidential
22 administrations regardless of what political party was holding
23 the White House?

24 A Yes.

25 Q So you're a career employee whose work was not impacted

1 by political and partisan politics?

2 A Correct. Until 2021.

3 Q That's right. Because you were nominated. So I want
4 to kind of go back to some of the things that we are here to discuss
5 Secretary Mayorkas' handling of the border crisis. You
6 mentioned that --

7 A Can I do a point of clarification? At the very end
8 there, you said because you were nominated.

9 Q Oh, I'm sorry.

10 A I just want to remind people, the Chief of the Border
11 Patrol is a career position. It is not a political position.
12 It never was. You promote into it.

13 Q Thank you. I appreciate the clarification. You were
14 a career employee your entire career?

15 A Yes.

16 Q Thank you for the catch. You mentioned how you've had
17 a series of conversations directly with Secretary Mayorkas. And
18 in your opening statement you mentioned a lot of term
19 "intentional." And I think you said something like that there
20 was an intentional disregard for certain laws. An
21 intentional -- indicating that you also knew that his particular
22 actions one way would adversely impact border security.

23 When you gave him these briefings, or when you talked to
24 him, were you aware of other law enforcement officials also
25 explaining to him that the possible detriment of making a policy

1 choice in a certain way that would harm our border security?

2 A Yes, so a couple of ways. So throughout the transition,
3 not only did I assign -- as the Chief of the Border Patrol, I
4 wasn't always given the briefs, my staff was as well. But we
5 were not the only ones, but we communicate within DHS. So I was
6 familiar with briefings that ICE was giving. I was familiar with
7 the other DHS components. I was also familiar with some of the
8 briefings that the outgoing administration was given to the
9 transition teams. For clarification, though, those were the
10 transition teams. So it didn't always -- it wasn't always,
11 Secretary Mayorkas wasn't always in those meetings. So the
12 reason that I'm so aggressive with the term "intentional" goes
13 beyond that.

14 So I look at the Secretary's experience. I was in the field
15 when he was part of DHS under the Obama administration, but I
16 knew him, I knew his name, I knew the role he had within DHS and
17 his experience. So I look at that. You would know, but I go
18 beyond that as well.

19 The very first conversation we had with the senior
20 leadership of DHS when he was confirmed was a conference call
21 late in the evening. I don't remember the exact time or day.
22 But I do, very distinctively, remember walking away from that
23 conversation with a sense of hope. Because he said everything
24 on that call that you would expect from a DHS leader; that he
25 understands the border; he's been part of DHS before; he

1 understands we need consequences to be able to control the flow.
2 And again, I'm paraphrasing the conversation. But I walked away
3 from that honestly thinking he was going to be a very good
4 Secretary. It alleviated some of the fears that we've had
5 because of things we hear on TV, things we were hearing through
6 the campaign about what they wanted to do on the border. But
7 it also left me with a very high level of confidence that he was
8 competent.

9 And I don't know how to put that into specific words. You
10 would have to do this hour, two-hour conversation. But he said
11 enough things about consequences, he said enough things about
12 his time as the Deputy -- acting, or as the Deputy Secretary
13 before, his time as a U.S. Attorney in California, that led me
14 to believe he understood law and order. He understood unique
15 consequences to prevent criminal activity, or whatever you're
16 trying to prevent, from happening. And that he understood the
17 border and the immigration dynamics on the border. And I really
18 thought he was going to fight for us to continue with our strategy
19 of actually, through deterrence, slowing down the flow so that
20 we could secure the border.

21 Q That's very telling. And I appreciate your testimony
22 on that. Now you had mentioned that was a conference call with
23 DHS leadership. Was that during the transition period that you
24 were talking about?

25 A No, that was right after he was confirmed, and he was

1 introducing ourselves -- he was introducing himself to us.
2 Again, just based on my experience, I believe those calls are
3 actually recorded by the DHS National Operation Center. They're
4 the ones that usually set up those calls. I don't know what their
5 retention time period is for those, but I know they're recorded.

6 Q And can you explain a little bit more about what he said
7 in that conference call that made you -- made you have some of
8 the conclusions you have made in your opening statement about
9 his willful and intentional disregard for the law?

10 A So, again, it was based on knowledge and understanding
11 of how things worked. I am not going to be able to give you a
12 quote, per se.

13 Q Sure.

14 A But he introduced himself to us. And, again, I wasn't
15 the only one with all the details. ICE was on the call. CIS
16 was on the call. But he explained that -- you know, I have been
17 here. I have been to DHS before. I'm happy to be back. I
18 understand that there may be some skepticism. I remember him
19 saying something like that. Again, I'm paraphrasing. But he
20 gave all of us -- because we even talked about it. When I say,
21 "we," some of the leadership talked about it afterwards. Like,
22 Wow that was actually really -- kind of an uplifting call. Like,
23 he understands that they can't do -- the administration can't
24 do some of the things they were talking about in the campaign
25 of literally walking away from MPP, for example, or walking away

1 from some of these proposals that there have to be consequences.
2 We actually had conversations afterwards that we were confident
3 he was going to fight for us; that border security is not a
4 negative you have to have, and you have to be able to control
5 illegal immigration. If you're going to be releasing people
6 into the U.S., that's going to create more of a draw. That entire
7 context of the conversation is why -- that's the foundation, if
8 you will, that I'm not talking to somebody that doesn't
9 understand what they're doing. Because, again, I don't want to
10 keep rambling, but I have had conversations with some political
11 appointees that just came in that didn't have that baseline. So
12 you are going back and having to explain, you know, border
13 security 101 consequences to being able to slow down criminal
14 activity, that kind of stuff. But Secretary Mayorkas laid it
15 all out and made it very clear that he knew what he was getting
16 into. He understood the border dynamics, and that he understood
17 that there needed to be consequences to slow down the flow, or
18 the flow was just going to continue to increase. Because we had
19 already seen an increase.

20 Q So to clarify you were still Chief of the Border Patrol
21 in June of 2021. Is that correct?

22 A Correct.

23 Q So Secretary Mayorkas issued its first memo terminating
24 migrant protection protocols, MPP, as you mentioned. Based on
25 your -- on that conference call, where a lot of your law

1 enforcement officials were walking away, you said "uplifted,"
2 because you thought that the Secretary understood the
3 consequences and the values of certain tools available to help
4 curb illegal immigration. In June of 2021, when he terminated
5 the MPP, what was your reaction? How did you feel about that?

6 A Sad, but not surprised, because there is -- time has
7 gone by. And we very quickly learned that there were two
8 Secretary Mayorkases. There was the one that would tell you
9 basically what he knew you wanted to hear on the conference call,
10 or even when he went out to musters and he would talk to agents
11 about knowing there had to be consequences, knowing this is not
12 sustainable.

13 And then there would be the policy decisions that come out
14 where it would be totally different. Let me give you another
15 example. He talked earlier on about working together, and
16 you're all valuable. Great people. I even had an email from
17 him by the way, telling me what a great job I was doing just before
18 they told me that I was no longer to be in that position.

19 So back and forth having two different perspectives, we were
20 already getting used to it. But another one was he talked about,
21 I want this to be a team. I value your experience. I want to
22 keep you included. However, we were never -- when I say "we,"
23 senior leadership of CBP, or even a Border Patrol, especially
24 myself personally, we would get edicts or direction via email,
25 or through the chief of staff that just told us we're going to

1 implement this new policy. There's no discussion whatsoever.
2 So we -- by June, we were already used to hearing one thing and
3 seeing something else. And then it's just D.C. So back chatter
4 was they hated MPP. That was part of the campaign that they
5 wanted to get rid of MPP. We had advocated that you need it.
6 It works. Like it literally slowed down the flow. And by the
7 way, this isn't just about immigration where we remind everybody,
8 this is about border security. I need my agents to be able to
9 patrol the border to even know what's coming in. MPP allows them
10 to do that because it dramatically reduces the flow.

11 If the flow comes back, we are not going to have enough
12 agents to actually patrol the border. Because at the same
13 time -- by the way, as you know, the wall construction was shut
14 down, so that left gaping holes in our enforcement, places we
15 had barrier before, now we didn't have a barrier. Your question
16 was specifically, how did it make you feel? And it made us feel
17 deflated. The exact opposite of that first call, but by now,
18 we are starting to get a little bit numb to it by June because
19 it was so repetitive.

20 Q So in those 5 months, it's fair to say that a lot of the
21 Border Patrol agents, actually their morale may have declined?

22 A Correct. Dramatically. Especially if the leadership
23 positions, they really knew what was going on.

24 Q Do you think that as the leader of Border Patrol, do you
25 think a lot of agents felt betrayed by Mayorkas; like their trust

1 was betrayed by him?

2 A So, I know for a fact that they believed and felt like
3 it was being betrayed. Because as Chief of the Border Patrol,
4 and we talked about, like, the deigned-out tangible stuff. I
5 had to run all of the administration functions. I had to run
6 all the operations. But people forget, I also had a leadership
7 team that was sitting on the wall, or sitting behind the TV
8 screen, or whatever, in a lot of these calls, and they would hear
9 the same thing. I would have to pump them up and try to give
10 them hope, and keep their morale going, because that's a trickle
11 effect all the way down to the agents. The agents aren't going
12 to see the impacts of these policies for a few days or weeks or
13 months.

14 I was spending countless hours trying to keep senior
15 leadership from just retiring early, trying to remind them that,
16 Hey, our job is to educate; to give them the information so that
17 all decisions are informed; you can't control a decision; we've
18 dealt with bad decisions before. That was day in and day out,
19 even at the national level, not just the field level. And the
20 morale was tanked.

21 Q Quickly, you mentioned that there was another
22 conversation that you had with Secretary Mayorkas face to face
23 in El Paso, Texas. Can you explain a little bit more in detail
24 about the nature of that conversation?

25 A Sure. So it was very quick conversation, but

1 basically, we are meeting with a group of sheriffs, Chiefs and
2 sheriffs, but primarily the sheriffs from the Southwest border
3 in El Paso. I had got there in advance, so I was meeting the
4 Secretary at the venue to give him a really quick rundown and
5 brief before we walked in. As -- I can still visualize it right
6 now. Basically he walks through the doors. It's like a
7 gymnasium area. I meet him and say, Hi. I start to talking
8 about the sheriffs and what's going on. Because they were
9 already starting to see a significant influx through their areas.
10 It wasn't manned, especially the UACs that were starting to
11 increase. And almost kind of blowing it off, he was like, Yeah,
12 yeah, yeah, yeah, yeah, I know.

13 So they're -- just like all law enforcement, they want me
14 to acknowledge, you know, there is consequences. And without
15 consequences, crime's going to continue to get worse, illegal
16 traffic is going to get worse. And then he kind of rambled. And
17 he's, like, they want to keep MPP. Some of the political things
18 going on. But he walked through kind of everything I was going
19 to brief him on and remind him, but he acknowledged it before
20 I even had to. Which, again, reminded me, basically because he
21 was U.S. Attorney, that he fully understands without a
22 consequence, there is no way to deter a crime. And that was a
23 key part of it. And that's why, again, right then, I was like,
24 Oh, okay.

25 So the way he presented it to me, I thought he was going

1 to go in and have like a pretty good conversation with them. At
2 one point in the meeting -- I am trying to remember which sheriff
3 it was, but I don't remember the name. I think it might have
4 been -- it doesn't matter.

5 One of the sheriffs was challenging him on some of the
6 policies. And he basically said something to the extent of, I
7 am in a tight position. I'm looking at these issues, but I have
8 this administration. And I walked away from it again knowing
9 that he fully understood that the decisions that they were making
10 at the time -- call them what you want, policy decisions,
11 enforcement decisions were making the problem worse.

12 Q Okay.

13 A But he explained it is like he's in a tough spot, not
14 that he's a Secretary and is responsible for it.

15 Q What about the virtual meeting about the border barrier.
16 Can you explain a little bit more about that conversation.

17 A Sure. So I'll have to back up again for that. So the
18 last witness -- actually I'll give a little bit credit for this.
19 When President Biden won the election, we knew that that's a new
20 Presidential administration, so we started preparing even before
21 the transition teams came through. So the wall was always a
22 really critical, political fire bed, if you will. Based on that,
23 we knew we were going to have to answer a bunch of questions.
24 So we built a database, if you will. We staffed, we tasked border
25 security to basically build out an easy-to-navigate database

1 that would show where the requirements for every single one of
2 the border wall projects came through, where was it today? Like
3 any -- we basically, we call it red-teaming. We got they guys
4 together and basically said what questions, if you haven't been
5 involved in this would you want, would you ask? And we tried
6 to build this database to answer all those questions in advance.

7 This was before the Presidential transition actually took
8 place, just so we would have that the information ready for them
9 and try to take some of the politics out of it and be able to
10 show that these were Border Patrol requirements, this is what
11 it's based on, this is the value added. And then it even got
12 into the construction phases. This is where it is in the
13 construction phase. This is appropriated funds. This is the
14 DOD emergency funds, and lined the whole thing out so any
15 decisionmaker, no matter what position they were coming from,
16 would, to the best of our ability, have every piece of information
17 they knew. So as you know, Presidential transition takes place,
18 executive order comes out to do the 60-day, quote, unquote,
19 "evaluation," which involved a pause of the border wall
20 construction. We've got a lot of contractors that basically had
21 contracts that we were happy to pay. So time was of the essence.

22 So basically, we had that all set up, and this was one of
23 the briefings that were giving the Secretary on here's this whole
24 database. You can go through it any time you want, but we are
25 walking through these different projects. Because it is also

1 as you remember, or I think you remember, that executive order
2 had carveouts. So it had a 60-day mandate for the entire, like,
3 wall projects, but it also said the Secretary had very specific
4 authority for anything that was life, safety, or he deemed
5 urgent. That we can continue working on those projects.

6 So this was one of those first briefings -- I know it wasn't
7 the first one, but one of them were we were lining out. Here
8 are the projects that we say are life safety. And the most of
9 the stuff that I was saying was life safety at the time, for
10 example, was El Paso sector, literally had a section of wall that
11 was standing up with some braces. But we were getting complaints
12 from the community because when it was windy, it would just start
13 shifting. It was a 30-foot high wall there. It had no concrete
14 or anything. And we weren't allowed to do anything with that.

15 So it was projects like that. We were briefing him on going
16 through the entire process. He actually -- I've noted, it's
17 kind of funny. I wasn't originally supposed to be in this
18 meeting. Staff kept removing me from the invitation to the
19 meeting, even. And then luckily the acting commissioner of
20 Customs and Border Protection invited me to a meeting anyway.
21 So we're at Ronald Reagan building, but it's on a big VTC screen.
22 We were walking through -- let me answer your question real quick
23 then -- sorry I'm dragging it out.

24 Secretary Mayorkas actually called me out, and asked me,
25 Hey, so these projects we're talking about, how does that affect

1 operations? Is this important? Is this not important? And I
2 actually took that as a pretty good sign. And I explained, Yeah,
3 they're very important. This is where the requirements came
4 from. This is the life safety issues. But there was some people
5 that were adamant, no wall was going to be built whatsoever. But
6 then we talked about -- and this is the important part -- we
7 talked about funding.

8 So the DOD projects -- and this was part of the briefing.
9 This is why we broke them out. That was emergency funding that
10 the President could pull, to my understanding. I'm not a lawyer.
11 I'm not a appropriations expert. But my understanding was
12 President pulled it from other places, he could put it back. But
13 there were significant projects that were congressionally
14 appropriated by law.

15 Those under the Impoundment Act, the executive branch was
16 mandated to keep pushing forward. That was briefed out. That's
17 the reason we explained all this. When we were briefing that
18 out, it was acknowledged. It was a Border Patrol staff named
19 Ntina Cooper that was briefing out and explaining the aspects
20 of the Impoundment Control Act, and these projects fall under
21 that. And basically -- I don't remember who the political
22 appointee was, because there was some people on the screen.
23 There's some people in the room. Basically was like, Yeah, yeah,
24 we'll work around that. We'll find just a tiny thing we can do
25 to make it look like we're doing something when we're not.

1 That's why I allege the conspiracy part of it.

2 But now, we literally have an administration that is
3 intentionally, like, having a workgroup meeting to figure out
4 how to get around a law. I had never experienced that in my
5 30-year career. There was always different policy aspects on
6 how you implement a law, but I had never been on a team that was
7 literally trying to figure out how to circumvent the law.

8 Q Why do you think the staff was trying to take you off
9 that meeting invitation?

10 A Because probably the same reason I basically had a
11 target on my head from day one. I have always just advocated
12 for border security. And when asked -- I was told this later,
13 by the way -- when asked does the border wall work, I answered
14 it very honestly from strictly a border patroller's perspective.
15 And I said, Yes, it works. We're the ones who designed it.
16 We've been proving this out over like 30 years. The last
17 administration just pushed it harder than anybody else had ever
18 done before. But every administration before had supported it
19 and done it.

20 But I was seen as a wall supporter. Therefore, my opinion
21 was not really wanted on what wall project should we or should
22 we not have because my argument was if you go down into that
23 database, one of the very foundational pieces of it is what was
24 the requirement? And there was never any President, there was
25 never any political person, it was always a Border Patrol Chief

1 that did an assessment that said I need a barrier in this area
2 because of this. I don't think they wanted that info.

3 Q So suffice it to say, is it accurate that based upon your
4 firsthand observations and your conversations, direct
5 conversations with Secretary Mayorkas, that Secretary Mayorkas
6 knew and had knowledge that his actions would result in weaker
7 enforcement at the border?

8 A Unquestionably, yes.

9 Q Do you believe that he knows what the terms push and pull
10 factors are?

11 A Yes.

12 Q He's familiar with those terms?

13 A Yes.

14 Q Have you had those conversations or been in the room with
15 him or heard him mention those terms before?

16 A In general conversations, yes. I can't give you a
17 specific date I have heard him use them, but in context of the
18 border, it is yes. It's a normal thing that we talked about,
19 even during the Obama administration.

20 Q So do you believe then, therefore, that he knew his
21 actions, or his decisions, would bolster what we call pull
22 factors?

23 A Yes.

24 Q Let me move on really quickly. I'm sorry I didn't do
25 this before. I have to establish something for the record. Do

1 you still work in the homeland security/law enforcement field?

2 A Not really, no.

3 Q Do you still engage in, I guess, following the homeland
4 security or law enforcement news arena?

5 A Yes, I do. And I still provide my expert opinion when
6 asked. So I'm involved in the bigger arena, but I'm just no
7 longer law enforcement. I'm no longer part of the Federal
8 Government.

9 Q Right. I actually clarified. When I meant in the
10 homeland security law enforcement field, I meant outside the
11 government obviously?

12 A Yes. So I provide services as a border security and
13 immigration specialist, immigration aspect of it really on how
14 it affects border security, not on some of the other economic
15 and broader aspects of immigration.

16 Q Understood. So in that role, especially since your
17 current profession, does that require you to keep updated or
18 current on homeland security issues, specifically for border
19 security and immigration?

20 A Yes.

21 Q And how do you stay updated on those issues?

22 A Many ways. One is just media and news. Two is that I
23 still have a very robust network of friends and colleagues. A
24 lot of -- I was told transparency. A lot of people in CB -- well,
25 in DHS, not just CBP, ICE personnel, CBP personnel, they're

1 frustrated; shared their frustrations with me; kind of keep me
2 up to speed on what's going on. And I have, as you know,
3 interacted with congressional staff based on my experience as
4 well.

5 Q Okay. So is it fair to say that you have relationships
6 with current officials at DHS?

7 A Yes.

8 Q And you could talk to them about homeland security and
9 immigration issues?

10 A Nothing classified, but yes, in general context.

11 Q My last question for you, and sorry to jump around here
12 again, but something you said earlier kind of struck me about
13 your interactions with Secretary Mayorkas, or his interaction
14 with other law enforcement officials. It sounds to me -- and
15 please correct me if I'm wrong -- but based on what you were
16 saying, it seems like you would accept input, but that input would
17 really go nowhere. And that input would come out somewhere for
18 him to say things that you had mentioned, I think your words were,
19 what people wanted to hear.

20 But then you would see an action that's completely
21 different. Where do you think, then, he was actually getting
22 information to make those decisions? It wasn't that he could
23 hear law enforcement officials say, Please don't do this, because
24 that will increase the bad consequences for us. This will make
25 the border more porous, or it will help surge illegal

1 immigration. He was not thinking hopefully. Well, because Mr.
2 Scott said that, I will do the exact opposite. He must have
3 gotten it from somewhere. I know you said you were cut out of
4 some meetings, or they tried to keep you out of meetings. But
5 what is your assumption? You were there the whole time, and
6 you've been through so many different Presidential
7 administrations. Where would he get this information? Where
8 would he inform his policy that he did choose to enact?

9 A So I don't want to speculate, so I'll give some
10 perspective. I can't say where he gets all of this information.
11 However, in interacting with the political appointees that they
12 were brought in, people like Dave Shahoulian, people like Lise
13 Clavel, who was the chief of staff, people like Blas Neto, who
14 was part of the transition team, and then came in as a policy
15 advisor. I believe them, and they all advocated for open border,
16 increase -- reduce the deterrence, increase the amount of people
17 coming into the United States. And especially Lise Clavel,
18 because as chief of staff, she was managing the public messaging
19 of CBP. They refused to let us speak publicly about any threats
20 associated with the border, any criminal threats or anything like
21 that.

22 I believe that is actually documented in an email between
23 Deputy Chief Raul Ortiz and Lise Clavel as well, before a press
24 conference that we were trying to do when I was still the Chief.

25 Q Was Secretary Mayorkas able to put an end to that type

1 of behavior or support that type of behavior?

2 A Yes, he would be the tone setter. So they all report
3 directly to him. And then he used them, or they used their own
4 position to insulate the Secretary a little bit. So there were
5 very few meetings face to face with Secretary Mayorkas. A lot
6 of it was through -- and again, in their defense, a little bit
7 of it was COVID, but everybody else was still having BTCs, direct
8 engagement.

9 The Secretary said he was going to have all this direct
10 engagement. Let me back up again, a perfect example. The first
11 conference call he said that week he was going to go to the border.
12 He was going to meet with people at the border. He was also going
13 to meet with us, and he wanted this to be a team effort. None
14 of that ever happened.

15 And then, we're hearing the same thing. The chief of staff
16 came in, and she basically said, hey, my kids are in a private
17 school. I can't go to the border because if I do I'll have to
18 pull them out of private school for 2 weeks. So no one would
19 actually go to the border. Then we would have these
20 conversations with the political staff. And then we were banned
21 from having any conversation about enforcement or anything about
22 deterrence. We're not allowed to talk about slowing down the
23 flow or deterrence. I believe that is likely getting his
24 feedback, but it goes beyond that. Again, one of the edicts,
25 and then you can take this back to emails from Lise Clavel to

1 the staff of the CBP, and Blas Neto. The Secretary himself was
2 having high-level conversations about an ongoing lawsuit that
3 ACLU was the lead-in with UACs being exempt from Title 42. But
4 instead of having staff or something, like my understanding was
5 the Secretary was having those conversations and debates himself
6 late at night. And then we would just get told the next day what
7 we were doing. So I believe the guidance he was getting was
8 beyond just the political appointees we had, and he was being
9 influenced by other organizations who advocated for open
10 borders, to be quite honest.

11 Q And these other organizations that advocate for open
12 borders or include --

13 A NGOs. We commonly refer to them as nongovernmental
14 organizations, yes. And then in this specific conversation
15 about allowing more people into the U.S. that wouldn't normally
16 be allowed in was an agreement with ACLU because they were
17 involved in one of the lawsuits against DHS at the time.

18 Q I will pass to my colleague.

19 BY MS. O'CONNOR:

20 Q I just have one brief follow-up on my colleague's
21 questions. You mentioned a little bit, but the political
22 appointees and their ideas, you said that they were pushing open
23 borders. What kind of specific changes or policies were they
24 suggesting as far as open borders is concerned?

25 A So early on, there was a push to look at ways that we

1 could expand parole. And my experience on parole was very much
2 the legal perspective. It has to be individual case-by-case
3 determination. There has to be a benefit to the government or
4 an immediate humanitarian need. So we would explain that out.
5 And they were like, That's not what we're talking about. I need
6 you to look at ways that we can use -- we can use parole to allow
7 people to come to the United States.

8 One of the flashpoints was, early on, you might remember
9 a new term in the Border Patrol under this administration called
10 the "notice to report." That did not -- total transparency
11 again -- that did not come from administration staff. That came
12 from career government personnel. But I'll get to the parole
13 piece in a minute. What happened was I was on a border trip down
14 to south Texas, and I had agents basically challenging me saying
15 that the flow has gotten so bad that we're not out in the field
16 anymore. We're stuck inside process. And there's only one or
17 two of us out in the field at a time, maybe three.

18 But then another group comes across because the cartel
19 scripts it to overwhelm us. And then we hear fully automatic
20 weapons fire going off to our left or right. And we know that
21 they're smuggling drugs over here. What are you going to do,
22 Chief, to get more agents out in the field? Well, I'm having
23 conversations just to try to slow down the flow at the national
24 level. Those are all being shut off. The Biden administration
25 had already decided that family groups and UACs, people that need

1 these certain demographics, they are going to get released. We
2 were not going to detain them. They are going to be released.
3 It takes about an hour to 2 hours per individual to process them.
4 So we basically came up with a system that was used years and
5 years and years ago when there was only about 1,000 more patrol
6 agents. We called notice to report.

7 And basically, we told the agents prioritizing the safety
8 of the security of the United States, Trump's immigration
9 processing. We can come back and get immigration processing
10 anytime once you deem someone's not a threat. If so, we put out
11 a memo that if when these criteria take place, basically it means
12 agents are being overwhelmed. We're losing the security of the
13 border. They were allowed to not do the immigration processing
14 on this very tight select group of people. And they would give
15 them a notice to report. We ran their fingerprints. We
16 documented the interaction. But we didn't set them up for a
17 court date or anything else. We just told them to go to report
18 to an ICE office. That's the notice to report.

19 This administration freaked out over that, but for the wrong
20 reasons. It wasn't anything to do about border security,
21 because we were maintaining the border security. I was told -- I
22 believe it was by Lise Clavel, that they got serious pushback
23 from NGOs because these people were no longer legalized. That
24 was a big difference.

25 Under the notice-to-report program, the Border Patrol did

1 not give them any documents or anything to make them legal. So
2 if and when at any point in time the Border Patrol was not
3 overwhelmed, we could actually still arrest them, process them,
4 and then deport them, if the administration would let us do it.

5 This administration wanted them paroled in so that they
6 could then get benefits, and because -- and I didn't think about
7 it at the time -- they were already planning on giving additional
8 funding to the nongovernmental organizations to help with
9 shelter and services. But if those nongovernmental
10 organizations provided any shelter and services assistance to
11 an illegal alien, that's a felony.

12 So their reason for wanting the parole expanded
13 dramatically was so that the shelter and the NGOs could actually
14 help these people without -- give them money, give them planet
15 tickets, all things you're seeing done today, legally; because
16 if they were to stay under an NTR, it would have been illegal
17 to help that person get any farther into the United States. But
18 that's -- that's a long-winded answer, but expanding that parole
19 was one of the big issues.

20 The other issue was basically looking at -- they didn't talk
21 about the CBP One app specifically when I was still Chief. I
22 think it was behind the scenes a little bit. They talked about
23 ways to basically identify people farther out, and then bring
24 them in through these illegal pathways that weren't -- and we
25 briefed out, like where in the INA does it say you can do that?

1 Like if you're actually going out recruiting people to come to
2 the border without documents, that's actually a violation of 8
3 U.S.C. 1324.

4 We are having these conversations, but it fell on deaf ears.
5 Their focus was basically find a way to bring more people into
6 the country. And there was never any conversation whatsoever
7 about America, protect America, impact America. Those were not
8 allowed.

9 Q So were these similar -- you mentioned earlier about the
10 border wall meetings, try to circumvent the law almost with some
11 of these meetings about parole and later on, not bringing people
12 in, were there more conversations that struck you as trying to
13 circumvent legal requirements as opposed to following the law?

14 A That is exactly how I felt. And I'll qualify feeling
15 because I am not an attorney. But the issues that we raised,
16 for example, when they were talking about the parole and people
17 and others, that definition feels like it fits the refugee
18 program better than it does anything else, because they're not
19 in the U.S. The asylum, for example. If you're going to parole
20 in somebody knowingly that is already here, and
21 claim -- traditionally, it's somebody that shows up at the port
22 of entry and gets a medical issue, or it's somebody that we need
23 their testimony, or we need them to show us something for intel
24 value or how to take out a bigger smuggler, this was nothing like
25 that. This was like preplanning.

1 I'm, like, this feels like it's circumventing the entire
2 refugee program of the United States. Like, you're undermining
3 the intent of Congress. Those are policy decisions, Chief
4 Scott. You don't have anything to do with that. You're here
5 to do your operations or whatever, but we weren't allowed to chime
6 in. But no, it felt very much like I spent 30 years of my career,
7 and this is how I don't want to speak for them -- but this is
8 what was conveyed to me by a lot of my staff. They spent their
9 entire career finding out how to -- working on how to slow down
10 the flow, secure the border. Not because it was negative to
11 anybody, but just so that as a country, we wouldn't be able to
12 pick and choose. We would know who was coming into our country
13 consistent with Federal law. And then now, we were being
14 basically told, like, How can we find loopholes, How can we find
15 workarounds so that we don't have border security so that more
16 people can actually come in and stay? And that was the tone the
17 entire time that I was Chief under the Biden administration.

18 Q Okay. I want to talk to you a little bit about some of
19 the statutory requirements. During your time with Border
20 Patrol, were you required to have a working knowledge of
21 immigration law?

22 A Yes.

23 Q Do you still have a working knowledge of immigration
24 law?

25 A Working knowledge, yes. And I'll caveat that. I'm not

1 a legal expert on all the little nuances, but in general, yes.
2 And part of the Border Patrol Academy is immigration law, and
3 we would go through refreshers.

4 Q Understood. Because Border Patrol, they're not all
5 attorneys, they're just -- but they do have to know the law
6 because they're enforcing it?

7 A Correct.

8 Q Are you familiar with the detention requirements at the
9 border?

10 A Yes.

11 Q Under INA Section 235(b)2(a), immigration officials
12 must obtain all applicants for admission at the border either
13 in between or at the port of the entry. I will read you,
14 specifically, the language. In general, subject to my
15 exceptions, in the case of an alien who's applicant for
16 admission, an examining immigration officer determines that an
17 alien seeking admission is not clearly and beyond a doubt,
18 entitled to be admitted, the alien shall be detained for
19 proceeding under Section 240. Are you familiar with that
20 statute?

21 A I am familiar with it.

22 Q Based on your work under Secretary Mayorkas and your
23 understanding of Secretary Mayorkas' current policies, is DHS
24 even attempting to detain all applicants at the border?

25 A No.

1 Q In that same statute under 235(b)2(c), you have touched
2 on this authority talking about MPP, but instead of detaining
3 applicants for admission at the border, immigration officials
4 can also return them to a contiguous country, for our purposes,
5 Mexico. Are you familiar with that part of the statute?

6 A Yes.

7 Q And DHS was -- or Border Patrol was utilizing that part
8 of the statute to implement MPP, right?

9 A That's correct.

10 Q And you testified earlier that that was an effective
11 plan for border security using MPP?

12 A That was an effective tool we were using that combined
13 with other tools was dramatically reducing the cross border
14 illegal flow, yes.

15 Q And based on your work under Secretary Mayorkas and your
16 understanding of his current policy, is Border Patrol utilizing
17 the statute now?

18 A Yes, but not effectively in any way, shape, or form.
19 Once the courts -- they terminated. They wanted to terminate.
20 That's public record. They stated that many times. Once the
21 courts ordered it reinstated, they changed the policies and
22 programs and created a bunch of carveouts. My understanding,
23 I could be exaggerating, but as one Chief told me, it's like an
24 80-page document of exceptions now. And that basically killed
25 the program. So they're using it from a very, very technical

1 standpoint. But they're not effectively using it.

2 And I would argue that backs up our earlier conversation
3 about intent, on how I get around having to deal with the courts?
4 How do I get around dealing with the law said, as opposed to
5 actually trying to secure the border as required by law.

6 Q So based on those two statutes, there's a third option
7 that Border Patrol has which we've discussed a little bit under
8 INA Section 212(d)(5), the Secretary, in his discretion, may,
9 with some exceptions, grant temporary parole to the United States
10 on a case-by-case basis, for urgent humanitarian reasons or
11 significant public benefit, any aliens who are applying for
12 admission. You're familiar with that statute, right?

13 A Yes.

14 Q Based on our -- we interviewed Chief patrol agents of
15 all the sectors along the Southwest border. And based on our
16 interviews, we know they were told to grant parole to large groups
17 when detention was over capacity. Based on your understanding
18 of the parole statute or parole exemption, is being over
19 detention capacity an appropriate reason to use parole?

20 A No.

21 Q Based on those same interviews with Chief Patrol agents,
22 they told us that they were supposed to grant parole to large
23 groups based simply on that group's demographics, such as a
24 country of origin, or whether they're one family unit. Based
25 on your understanding, is your demographics alone an appropriate

1 reason to grant parole?

2 A No, it violates the case-by-case individual
3 requirement.

4 Q As far as you know, has Secretary Mayorkas -- well,
5 strike that.

6 Secretary Mayorkas also created the categorical parole
7 programs, making parole available to certain demographics that
8 he prefers. Before those people even arrive at the ports of
9 entry which you talked about, the politicals are trying to figure
10 out a way to offer parole to people outside of the country. But
11 based on your understanding of the statute as you explained, do
12 you believe now that those programs are appropriate use of the
13 discretionary parole?

14 A I don't believe that they're proper use of the
15 discretionary parole, no.

16 Q Are you familiar with expedited removal?

17 A Yes.

18 Q Under INA Section 235(b)(1), immigration officials must
19 detain an arriving alien subject to a safe removal until they're
20 either removed, or their final application is decided by an
21 immigration judge. Are you familiar with that statute?

1 [12:44 p.m.]

2 Mr. Scott. Yes.

3 BY MS. O'CONNOR:

4 Q Based on your experience under Secretary Mayorkas and
5 your knowledge of what his policies are now, is Border Patrol
6 effectively utilizing expedited removal?

7 A No.

8 Q Is U.S. Border Patrol detaining all arriving aliens?

9 A No.

10 Ms. O'Connor. I'll pass to my colleague.

11 BY MR. YI:

12 Q Mr. Scott, what does it mean for you to have the
13 southwest border be secure?

14 A To me -- so it's a vague definition, but, to me, security
15 starts with knowledge. So -- and I've been consistent that, to
16 have any definition of operational security, it implies that you
17 know what is crossing the border, so that requires the actual
18 ability or capability. So that, as Chief, that's what we were
19 building towards.

20 I've never at any time in my career, nor did I ever hear
21 anyone in my career prior to Secretary Mayorkas, make a statement
22 that the border is secure. Every statement I've ever said is,
23 the border was getting more and more secure, because Border
24 Patrol had an operational strategy that's been refined over
25 years -- but I was still implementing it when I was there -- that

1 we were building out technology, personnel, and infrastructure
2 so that we would, first and foremost, have a high level of
3 confidence that we knew what was crossing the border and then
4 could make informed decisions about responding.

5 So, at the lowest level, I believe that is what a secure
6 border is, is having a high level of --

7 [Loud noise outside room.]

8 Mr. Scott. Do you want to check on that?

9 Mr. Yi. I don't -- we haven't seen any alerts from the
10 Capitol Police, so --

11 Mr. Scott. -- having a high level of confidence that we
12 know what's crossing the border and we can make informed
13 decisions about responding.

14 The high end of a secure border would be basically the Secure
15 Fence Act, that nothing crosses. That's like saying there's
16 never going to be any crime anywhere, so I just think that's an
17 unrealistic metric, if you will. But it's a great aspirational
18 goal. And it should be the aspirational goal. But, just like
19 any city, you work towards having a manageable level of activity.

20 BY MR. YI:

21 Q And you mentioned when my colleague asked you earlier,
22 in your previous positions and even currently now, you have an
23 operational understanding of different immigration-related laws
24 and border-security-related laws, the Secure Fence Act included,
25 I assume. Is --

1 A Yes.

2 Q -- that correct?

3 A Yes.

4 Q So Secretary Mayorkas has said that we have operational
5 control as defined under the Secure Fence Act. Is that an
6 accurate statement?

7 A That is a completely inaccurate statement.

8 Q Okay. Are you familiar that he has said that before?

9 A Yes. I saw him say that in Congress.

10 Q Okay.

11 So, in your opinion, outside of the definition of the Secure
12 Fence Act, is the border secure under Secretary Mayorkas?

13 A No.

14 Q Okay.

15 So it's not secure in your testimony under your general
16 understanding of what is secure or not. It's not secure under
17 the operational -- you don't have operational control under the
18 Secure Fence Act. But he has repeated multiple times that -- are
19 you familiar that he has repeated multiple times that we have
20 operational control under the Secure Fence Act and that the
21 border is secure generally?

22 A Not only am I familiar -- yes, I am familiar -- but,
23 going back to my earlier testimony, the first time he said that
24 on the Sunday talk shows caught me so off guard I brought it up
25 to the chief of staff the next day.

1 Because they also wanted Border Patrol personnel to say
2 that. Like, whatever the Secretary says, those kind of become
3 your talking points. And I made it very clear that under my
4 command no Border Patrol agent, no chief in the field would ever
5 say the border was secure, because it's not true. When it is
6 true, we'll say it.

7 But I had that conversation with Lise Clavel and pushed that
8 up. And -- but the Secretary -- and, again, she was my direct
9 conduit to the Secretary -- he continues to say that the border
10 is secure; he just changes the definition of it all the time.

11 Q Is it your testimony that Secretary Mayorkas and his
12 front office were trying to compel your Border Patrol agents to
13 promulgate a lie?

14 A Yes.

15 Q And all of your Border Patrol agents are career
16 government officials?

17 A Correct.

18 Q Now, Secretary Mayorkas has also said that all
19 apprehended aliens who have no legal basis to remain in the United
20 States are swiftly removed.

21 Based on your knowledge of the border and interior
22 enforcement, is that true?

23 A No.

24 Q Secretary Mayorkas also said that he ensures that every
25 alien that DHS encounters is screened and vetted, including the

1 Afghans brought over during the evacuation and those applying
2 for parole under one of his parole programs.

3 What are the limits of this screening and vetting process?

4 A It's extremely limited. And this is another area I'm
5 very critical of the Secretary, not because of the letter of the
6 law of what he says but what he omits. And my training as a law
7 enforcement agent is, omitting critical, important facts is
8 basically the same as lying.

9 The Secretary knows that when U.S. Border Patrol agents run
10 those records checks, or ICE or anybody else, on foreign
11 nationals, primarily it is only checking -- well, it is only
12 checking U.S. databases really, but it's primarily only criminal
13 offenses that have happened in the U.S.

14 On a limited basis, we will get information from, like,
15 INTERPOL or we'll have a connectivity to another nation, but we
16 don't have direct plug-ins to other nations' criminal databases.
17 And many of the nations these people are coming from, we know
18 for a fact, don't even have good criminal database records
19 systems to pull from.

20 And, a lot of times, we have no idea even who the person
21 is. So the fingerprints, that's valid, but they can make up any
22 name they want.

23 In the perfect world, if an agent has any suspicion, then
24 that agent has the ability to work through the State Department
25 or the consulate's office, go to that country, ask a bunch of

1 more questions. But when you're handling over a thousand
2 arrests a day, let alone 10,000, the agents don't have time to
3 do any of that.

4 This has all been briefed to the Secretary. He knows that
5 vetting is a joke. It's literally a check-the-box. It's only
6 people that have been in the U.S., committed a crime, and either
7 left on their own or been deported. And we have no idea what
8 any of these people did anywhere else in the world.

9 And with a very, very, very limited, rudimentary knowledge
10 of how trafficking organizations work, you can go get false
11 documents to create any new name you want before you cross the
12 border. That's why most, not all -- again, common knowledge -- a
13 lot of the aliens ditch all their identity documents before they
14 cross the border. Right at the border, they'll get rid of them
15 so they can create whatever identity they want the minute they
16 cross, and it's harder to actually identify what country they're
17 really from.

18 Q So --

19 A The Secretary knows all of that.

20 Q So, when the Secretary and his Department has claimed
21 that every alien that's encountered is screened and vetted, one
22 could argue that they have been, but, based on your testimony
23 today, in a practical sense, it's not a very meaningful
24 interview. And --

25 A In a technical sense, it's accurate, but people have to

1 understand it's being bounced off of an empty database.

2 Q Okay.

3 A It's not meaningful.

4 Q So, because it's not meaningful, what are the
5 consequences of that?

6 A The consequences are, a significant portion of the
7 people that are being released into the United States today by
8 this administration, we don't really know who they are. We have
9 no idea what their intent is. They haven't gone through a
10 thorough interview because we simply don't have time. We don't
11 know what risk they pose to the country.

12 Q Does the Secretary know that these interviews cannot be
13 meaningful, the way that they're conducted?

14 A Yes.

15 Q Does the Secretary know, in your view, that these
16 consequences exist for us not knowing?

17 A From my view, yes. And if you look at just his
18 professional experience on his own published bio, that he was
19 a U.S. attorney, he prosecuted criminal cases, and then he
20 actually was in DHS for years -- he was the Deputy before he was
21 the Secretary -- there's no way you could convince me that he
22 doesn't fully understand all this.

23 Q Okay.

24 A You'd have to be so incompetent. And he's not
25 incompetent. He is not a dumb person.

1 Q And Secretary Mayorkas also often refers to those coming
2 to our southwest border as "asylees." Are these individuals
3 actually asylees, every individual?

4 A I agree, that's another intentional misrepresentation
5 of the truth.

6 There are a significant number of people that come to the
7 southwest border now and, after being coached by either NGOs or
8 the cartels themselves -- even a smaller fraction, literally they
9 come up with it on their own -- will try to claim asylum or claim
10 fear.

11 However, if you -- and I would refer you back to CBP's
12 statistics, because they're just facts and evidence and you could
13 get real numbers of this. The vast majority of the people that
14 are being released today don't even make a clear claim. There's
15 just -- they use the excuse that there's no detention capacity
16 and that you can't -- if they're not from Mexico, you can't get
17 them back immediately. They end up getting released.

18 So the asylees, if you will -- or, even if you believe that
19 they were credible claims, which most of them are not, that is
20 still a small portion of the total illegal aliens crossing the
21 border. They're not all asylum seekers.

22 Q Are you familiar with the incident in 2021 where Border
23 Patrol agents were accused of whipping Haitian migrants in the
24 Del Rio sector?

25 A Yes.

1 Q In the immediate aftermath of the accusations, both
2 President Biden and Secretary Mayorkas implied that the Border
3 Patrol agents had done something wrong. We later found out that
4 Secretary Mayorkas made those public statements after having
5 been told that the whipping never actually occurred.

6 Are you familiar with, based on your conversations with any
7 line agents or people in the field, what that lie had -- what
8 kind of impact it had on morale?

9 A Yes. So there was two phases.

10 Just general, in morale, it was definitely a kick in the
11 teeth.

12 But even worse than what you saw on national television,
13 all of those agents that were there and had any allegation against
14 them got removed from their enforcement duties and got put on
15 what we call administrative duties. The entire Border Patrol
16 knew that immediately.

17 So, while they're still, quote/unquote, "employed," that
18 is a -- it's very demoralizing to the agents, and, in most cases,
19 it affects their overtime pay.

20 So they basically were being disciplined for about a year
21 as this thing drug out, even though it was made very, very clear
22 very quickly, from what I understand, even from the photographer,
23 that what was being alleged didn't take place.

24 Q So you were a Border Patrol agent for almost 30 years,
25 right? Is that --

1 A Correct.

2 Q -- correct?

3 A Yes.

4 Q When you were talking about Secretary Mayorkas lying to
5 the Congress and to the American public about whether or not the
6 border is secure -- or, you testified that he's made false
7 statements about swiftly removing aliens who have no basis to
8 remain. You testified that he's misrepresented who is an asylee
9 and who is not. You testified about how he's handled other lies
10 or misrepresented things like the whipping incident, the
11 so-called whipping incident.

12 Why? Why do you think -- you've been around for 29 years
13 as a Border Patrol agent. Have you ever had a Secretary who
14 behaves like this? And if you haven't, why would Secretary
15 Mayorkas do all this? Why make these misrepresentations? Why
16 lie?

17 A So, no, we haven't. And I can't speculate on the why.
18 I've been asked this by tons of people, both agents
19 internally -- "what do I think" I can get to, but I can't answer
20 the "why," because that would be getting into his head. I don't
21 know.

22 But what I do know is, over my career, through different
23 Presidential administrations, to include the Obama
24 administration, we had Secretaries that had different priorities
25 and focuses, that they would rather have us focus on just, say,

1 you know, a sect of criminal aliens, but we were never told, to
2 my knowledge, "Just don't do your job."

3 I've never, ever saw a Secretary -- I never questioned a
4 Secretary's integrity; put it that way. Jeh Johnson, I never
5 questioned that guy's integrity. Even the Actings with the
6 Trump administration, I never questioned their integrity. I
7 might've argued with them about a policy thing, but that's like
8 a -- that's a red line in law enforcement, because you go into
9 court, you testify on everything else, so everybody knows, above
10 all, you just gotta tell the truth.

11 And, then, in some of these cases, it's just dumbfounding.
12 Like, why would you even try to say the border's secure when every
13 single piece of evidence, by any definition you could ever come
14 up with, it doesn't meet it?

15 I can't answer the "why." There's got to be a political
16 or some other agenda.

17 I think that's what he's been told to -- now, you said, what
18 do I think? I think that's what he was told to say by his boss,
19 and it's more important for him to be the Secretary than it is
20 to have integrity.

21 Q And you think that's a breach of his duties?

22 A It's a direct breach of his duties. He swore an
23 oath -- when I started, he swore an oath to do everything he could
24 to protect the borders of the United States. That's the
25 foundational bottom line of his role as Secretary of Homeland

1 Security. He's not even doing that.

2 He's literally, at the least, allowing and, at the most,
3 encouraging his staff to have meetings of how to work around the
4 law, how to get around immigration law, how to get around
5 appropriations law, and don't build what Congress paid for.

6 They literally had a meeting -- if we drag this out long
7 enough, we'll just -- pardon my language, but this was the term
8 they used -- we'll just piss the money away slowly, so, then,
9 if another administration comes in, there won't be any money left
10 to do the wall anyway.

11 Those are the types of conversations that were taking place
12 when I was Chief. Somebody has to be guiding that. Or the other
13 theory is, it's just a complete different world view than anybody
14 that I've ever dealt with before. So it's either guidance from
15 above or a complete different world view.

16 Q Is it fair to say, though, in order to effectuate that
17 different perspective or world view, from whoever the guidance
18 is coming, there has to be some sort of willful and systemic
19 disregard for the laws in place? Because the laws in place,
20 hopefully, help effectuate better border security.

21 A Correct. And, again, I'm not the constitutional
22 lawyer, but, whether you like them or not, the laws in place were
23 put in place by our constitutional government because of how the
24 government works. They were voted on, and they were passed.
25 And just because you don't like them doesn't mean you get to

1 circumvent them. That's how other banana republics work, not
2 the United States.

3 But, unfortunately, that's what I saw when I was Chief in
4 this administration, and I think that's what you continue to see
5 today.

6 I challenge anybody to find one single statement that
7 anybody -- that Secretary Mayorkas has ever talked about
8 protecting America, slowing down the influx of people that we
9 have no idea who they are.

10 He wouldn't even let us talk about known got-aways. We
11 talked earlier about the ones we're vetting, but the Border
12 Patrol saw, like, 1.8 million people cross the border and could
13 not respond to them. But what we do know about them is, they
14 didn't wait to get caught. They paid extra to be in the second
15 wave. They paid the cartel to let them be in the second wave
16 of people after Border Patrol was overwhelmed so that they could
17 make it into the United States without putting their fingerprints
18 on a scanner.

19 Secretary Mayorkas knows that. Have you ever heard him
20 talk about that in Congress and what we're doing about it?

21 That was my number-one priority I used to give the agents
22 all the time. We may not know everything, but we need to be smart
23 about how we respond. And if we know that there's a higher threat
24 to our right or left, we need to figure out how to take out that
25 higher threat, because our job is to protect America. Those

1 conversations don't take place anymore.

2 Mr. Yi. I appreciate it.

3 The time is 1:59 p.m., and that'll conclude our first hour
4 of questions.

5 Mr. Scott. Thank you.

6 Mr. Yi. We'll go off the record.

7 [Recess.]

8 Ms. Marticoarena. We can go on the record. It's 2:14.

9 EXAMINATION

10 BY MS. MARTICORENA:

11 Q So, Mr. Scott, I'd like to start by asking if you could
12 share how you prepared for this interview today.

13 Mr. Howell. Objection real quick. We're not going to get
14 into any sort of attorney-client privilege that relates to his
15 preparation here.

16 Ms. Marticoarena. Understood.

17 I'm asking broadly, so not just your preparation with your
18 attorney.

19 Mr. Howell. Don't feel the need to answer anything about
20 how you prepared for this interview.

21 Mr. Scott. I can still answer very briefly.

22 I didn't really need any preparation, because I just came
23 to answer questions. So my prep was literally just getting some
24 thoughts together on my opening statement, and that was it.

25 Ms. Marticoarena. Did you speak with anyone outside your

1 lawyer in preparing for this interview today?

2 Mr. Howell. You don't need to get into any conversations
3 you had for the preparation.

4 We're here to talk about the impeachment of Mayorkas, not
5 his preparation for this discussion.

6 Ms. Marticorena. Understood.

7 Just so you're aware, we are not bound by the agreements
8 you made with committee Republicans regarding this interview.
9 We were not privy to them and those discussions.

10 So, as this is a voluntary interview, you're welcome to
11 decline to answer any questions, but the declination will speak
12 for itself.

13 Mr. Howell. Okay.

14 Counsel, the Democratic staff is saying that they are not
15 bound by the committee's invitation for the witness today. Is
16 that accurate? Is that the committee's understanding, that
17 they're unbound by the committee's invitation?

18 Ms. O'Connor. The committee's invitation outlines the
19 bounds of the interview.

20 Mr. Howell. Okay.

21 Those are the bounds that we're appearing here today under,
22 and we will stick to the bounds that are agreed to with the
23 committee staff. And you are a committee staffer, so we imply
24 that agreement to cover you as well.

25 Ms. Marticorena. Again, that can be your understanding,

1 but our understanding of transcribed interviews is, we were not
2 privy to any negotiations or discussions; we had no role in
3 writing the letter.

4 So we will ask the questions we intend to ask, and, as this
5 is voluntary, you are welcome to decline to answer.

6 Mr. Scott. Sidebar?

7 Mr. Howell. We're -- yeah, sidebar. Just one second.

8 Ms. Marticorena. We can go off the record while they're
9 discussing.

10 [Discussion off the record.]

11 Ms. Marticorena. We can go back on the record.

12 So I will ask the question again of, other than your counsel,
13 did you speak with anyone in preparation for this interview
14 today?

15 Mr. Howell. The same objection I stated before will cover
16 that as well.

17 Ms. Marticorena. So, to be clear, you decline to answer?

18 Mr. Howell. I'm advising my client to stay within the
19 bounds of our agreement.

20 Ms. Marticorena. Okay.

21 Mr. Scott. So, taking my lawyer's advice, I'm going to stay
22 within the bounds of the agreement.

23 But I am going to answer this specific question, that -- and
24 it's no, other than I had, actually, a family member help
25 proofread for grammar my intro statement. But I did not seek

1 advice, counsel, or have other conversations beyond the
2 conversations I have every single day with various people about
3 border security in general.

4 Ms. Marticorena. Understood.

5 And are you aware that Mr. Mark Morgan and Mr. Tom Homan
6 are also sitting for transcribed interviews with the committee
7 this week?

8 Mr. Scott. Yes, I am aware.

9 Ms. Marticorena. Have you had any conversations with Mr.
10 Morgan or Mr. Homan regarding this interview?

11 Mr. Howell. Objection. We're here to talk about the
12 impeachment of Alejandro Mayorkas, not Mark Morgan and Tom Homan.

13 Ms. Marticorena. I was simply asking if he had any
14 conversations in preparation for this interview.

15 Mr. Howell. Correct. And I was objecting to that as
16 clearly being outside the scope of this interview.

17 Ms. Marticorena. So, again, for the record, you're
18 recommending that your client decline to answer. Is that
19 correct?

20 Mr. Howell. I'm recommending that my client stays within
21 the bounds of our agreement to be here today.

22 Mr. Scott. I'll decline to answer.

23 Ms. Marticorena. Thank you.

24 Okay. I'd like to confirm that -- well, strike that.

25 Have you met Mr. Morgan or Mr. Homan previously, before

1 today?

2 Mr. Howell. Objection, for the same reason as previously
3 stated. We're here to talk about the impeachment of Alejandro
4 Mayorkas, and we'd be happy to answer any questions you may have
5 about that.

6 Ms. Marticorena. So, for the record, you decline to
7 answer?

8 Mr. Howell. I'm instructing my client to -- same answer
9 as before -- stay within the bounds of our agreement, and I'm
10 asking you to please respect that agreement as well.

11 Ms. Marticorena. Okay.

12 Can you share with the committee the last time you
13 communicated in any form with Mr. Morgan or Mr. Homan?

14 Mr. Howell. Same objection as before. This is getting
15 repetitive now.

16 Ms. Marticorena. So, Mr. Scott, are you associated with
17 The Heritage Foundation?

18 Mr. Howell. Same objection as before. That's outside the
19 scope of this interview. We're here to talk about the
20 impeachment of Alejandro Mayorkas, not The Heritage Foundation.

21 Ms. Marticorena. So do you decline to answer whether you
22 have any affiliations with The Heritage Foundation?

23 Mr. Scott. I'm going to follow my lawyer's advice.

24 Mr. Howell. Yeah.

25 Ms. Marticorena. Okay.

1 Are you aware that yourself, Mr. Homan, and Mr. Morgan all
2 share the same counsel for these transcribed interviews?

3 Mr. Scott. Yes.

4 Ms. Marticorena. Aside from this interview today, have you
5 been involved in House Republicans' investigation of Secretary
6 Mayorkas? If so, how?

7 Mr. Scott. Yes. I've testified on two different
8 occasions before Congress.

9 Ms. Marticorena. And when did you first start speaking to
10 Republican staff about Secretary Mayorkas, and what did you
11 discuss?

12 Mr. Howell. Objection.

13 You don't have to get into any confidential, you know,
14 meetings that you had, but feel free to speak to any sort of public
15 things that are out there in the record.

16 Mr. Scott. Sure.

17 So, shortly after I retired, based on concerns that I had,
18 things that I had seen as Chief, I wrote a bipartisan letter to
19 both -- to the Oversight Committee of the Senate and the House,
20 as well as the Homeland Security Committees, directed to both
21 Democrats and Republicans, not partisan, outlining those
22 concerns.

23 Primarily, Republican staff reached out for more input and
24 asked for my opinion. The reason I'm pausing, I'm trying to
25 think of the name. There was a staff member from one Democratic

1 congressional Member that reached out to me. I offered to meet
2 with him and have any conversations they would like further.
3 That never took place.

4 Forward a few months, then the House actually reached out
5 to me and asked me if I was willing to come in and testify. And
6 then I did.

7 Ms. Marticorena. Okay. When did you first receive
8 outreach or discussion from committee staff about appearing for
9 a transcribed interview?

10 Mr. Howell. Objection. We don't need to get into how he
11 came to be here or any advice that went into preparing for or,
12 you know, scheduling this interview. We're here to talk about
13 the impeachment of Alejandro Mayorkas.

14 BY MS. MARTICORENA:

15 Q Just for the record, do you decline to answer the
16 question?

17 A I don't remember a specific date. I've had
18 conversations since I retired, so I don't remember the specific
19 event. Sorry.

20 Q Other than your counsel, have you spoken to anyone at
21 The Heritage Foundation about the impeachment inquiry? If so,
22 who and when?

23 A No.

24 Can I -- not specifically. So I don't want to mislead.
25 Like, I've had conversations. There's teleconference calls,

1 not specifically about the impeachment, just about border
2 security in general and the current functions. But not specific
3 to impeachment, no.

4 Q Understood.

5 Are you aware of The Heritage Foundation's involvement in
6 the Republicans' investigation of Secretary Mayorkas?

7 Mr. Howell. Objection to scope again. We're here to talk
8 about the impeachment of Mayorkas, not investigating The
9 Heritage Foundation.

10 So, if you have questions about this historic border crisis
11 and Mayorkas's handling of it, the witness would be happy to
12 answer those.

13 Ms. Marticoarena. He's welcome to decline to answer our
14 question.

15 Mr. Scott. I'll decline, based on counsel's advice.

16 BY MS. MARTICORENA:

17 Q Have you volunteered or worked with the Trump campaign
18 in any capacity during the Biden administration?

19 A No.

20 Q Okay. Have you volunteered or worked with any other
21 campaign in any capacity during the Biden administration?

22 A I have provided my opinion on border security and what
23 works and what does not work to several different candidates that
24 asked for that input. That's it, yeah.

25 Q During our transcribed interviews with chief patrol

1 agents along the southwest border, they expressed the sentiment
2 that additional personnel and technology would be helpful with
3 securing the border.

4 Do you share that view?

5 A In a larger context, I would share that view.

6 And I'm very familiar with what the chiefs advocate for,
7 because they advocated it when I was the Chief of the Border
8 Patrol to me. And it's very clear that those alone do not solve
9 the border problem. And they literally -- it's a combination
10 of multiple factors; it's never been simply personnel and
11 technology.

12 Q Do you believe that legislation is required to help
13 secure our border?

14 A I believe legislation would be beneficial. As the
15 Chief of the Border Patrol, we had outlined some key issues with,
16 like, the Flores agreement, some asylum loopholes that would add
17 value and make it easier to secure the border.

18 But, again, it's a tool in a bigger toolbox, and legislation
19 is the way to go, but there were also other things that Border
20 Patrol had been working on for years under the Border Patrol
21 Strategy. And we showed during the last
22 administration -- again, I was not a political; I was a
23 career -- but programs that we came up with as career government
24 employees dramatically reduced the cross-border illegal flow,
25 which dramatically enhanced border security, without the

1 legislation, but it was not 100 percent.

2 Q During the last hour, there was some discussion about
3 parole programs. Are you familiar with the Cuban Family
4 Reunification Parole Program?

5 A I'm familiar with it. I did not have to manage that,
6 so I do not have all the details -- the intricate details of it.

7 Q For background, the Cuban Family Reunification Parole
8 Program was created in 2007 under the Bush administration. It's
9 a parole program that allows individuals to apply for parole
10 based on demographics as well as a few other factors.

11 Do you believe that this program, given that
12 description -- and people are considered on a case-by-case
13 basis, like other parole programs -- do you believe this program
14 to be unlawful?

15 A Based on my knowledge of the parole statute, I
16 believe -- again, I wasn't partisan, so -- I believe that that
17 violates the intent of the parole statute, that it's supposed
18 to be an individual, case-by-case basis, for humanitarian
19 reasons or national security reasons. And I don't think that
20 meets either of those criterion.

21 Q So I will note for the record that this program existed
22 during the Trump administration and there was never an attempt
23 to end the program during the Trump administration.

24 So I'd like to confirm that you were the head of Border
25 Patrol in March 2021. Is that correct?

1 A Correct.

2 Q Okay.

3 So I'd like to discuss the notices to report, which were
4 also touched on in the last hour.

5 So we're going to have exhibit 1.

6 [Scott Exhibit No. 1
7 was marked for identification.]

8 BY MS. MARTICORENA:

9 Q All right. It does not seem like all the pages are here,
10 so I'm going to apologize. We'll get a copy later. And if you
11 don't feel comfortable answering a question, we can go back once
12 the full document is printed. My apologies for that.

13 A Okay.

14 Q So, according to GAO, in March 2021 -- actually, I
15 believe I am the only one who does not have the full report, so
16 you might have it.

17 So it should be on page 2.

18 A Okay.

19 Q So this is according to GAO. "In March 2021, Border
20 Patrol initiated the Notice to Report (NTR) process, whereby
21 agents released family unit members into the U.S. without first
22 issuing them a Notice to Appear. Agents gave them instructions
23 to report, at a later date, to a U.S. Immigration and Customs
24 Enforcement field office to receive a Notice to Appear or other
25 appropriate charging document."

1 Is that your understanding as well?

2 A Except "into" is misleading. We released them, and
3 they were in the U.S., but we were not releasing them as the,
4 like, parole statute applies to releasing them. We were not
5 legalizing them in any way, shape, or form.

6 Other than that, I'm -- yeah. Yes.

7 Q So, just to clarify that statement for me, people who
8 went through the NTR process were not given formal papers but
9 were allowed to continue into the United States without parole
10 to go to their final destination and check in with ICE. Is that
11 correct?

12 A In theory, yes. And, again, I'll -- it's very
13 technical -- not to continue in; to go to the closest ICE office.
14 It ended up, by application or by just reality of how things
15 worked, going to their destination, but that wasn't the intent.

16 The intent of the program was very consistent with Secretary
17 Mayorkas's guidance at the time, that we focus on the highest
18 threats that we could focus on. One of the criteria before the
19 agents could ever do an NTR was not just family units; one of
20 the criteria was they had to be overwhelmed, and they knew that
21 there were other threats going on in the area that posed a higher
22 risk.

23 Therefore, instead of doing the administrative -- and they
24 already had to be fingerprinted, records checks -- very limited,
25 but it's all they had -- they just were told to focus on the

1 highest threats in the area instead of the immigration
2 processing.

3 Q Okay.

4 So I'd like to go to page 14. And it should say, "Border
5 Patrol developed and implemented the NTR process...in 2021 as
6 an exercise of prosecutorial discretion."

7 "Senior Border Patrol headquarters" --

8 A Can I ask where you're reading?

9 Oh, right. Never mind. Go ahead. I'm sorry. I found
10 it.

11 Q "Senior Border Patrol headquarters officials stated
12 that they developed and implemented the NTR process over the
13 course of a few days in March 2021.... In seeking to address
14 concerns with crowded facilities and increasing time in custody
15 in the Rio Grande Valley sector, officials stated they developed
16 guidance and procedures for the NTR process with little advance
17 planning or outreach to Border Patrol sectors or ERO...offices."

18 Does that match your recollection?

19 A No. And the reason that I state that is, the terms
20 "overcrowded facilities" and "time in custody" were terms that
21 were adopted -- they're terms that are always used, but those
22 interviews took place after I retired as Chief.

23 The reason that we implemented this program was because of
24 border security and agent safety. I had agents coming to me and
25 telling me that they literally did not feel safe in the field

1 because there weren't enough agents out. And they could hear
2 complete fire fights between cartel less than 100 yards,
3 200 yards south of them in Mexico, and they wanted to know what
4 we were doing about it.

5 The massive flow I couldn't do anything about. The
6 administration wouldn't let us slow that down. They mandated
7 we were releasing the family units. So this was the best of the
8 worst options that we had.

9 But it wasn't about the time in custody, and it was not about
10 the overcrowded detention facilities. It was about Americans'
11 and officer safety.

12 Q And were you involved in the development of the NTR
13 process?

14 A Yes.

15 Q Okay. What was your role?

16 A I was the Chief. I made the decision at the end.

17 Q Okay. And is GAO correct when it states that the NTR
18 initiative was developed over the course of a few days by Border
19 Patrol officials?

20 A More like a few weeks.

21 Q Okay.

22 So this should be pages 15 to 16. "Border Patrol officials
23 in the Rio Grande Valley sector" -- and this is a quote -- "told
24 [GAO] they did not participate in any planning for the new NTR
25 process, and also did not receive advance notice from

1 headquarters before they were instructed to implement the NTR
2 process. Specifically, officials in the Rio Grande Valley
3 sector stated that they received guidance from headquarters on
4 March 20, 2021, and began implementing the process the next day."

5 It goes on to say that, "Similarly, senior ERO headquarters
6 officials told [GAO] that Border Patrol did not consult with ERO
7 in developing the NTR process, and also did not provide advance
8 notice before implementation of the NTR process. Senior Border
9 Patrol headquarters officials stated that they did not consult
10 with Border Patrol sectors or ERO headquarters or field office
11 officials in advance because of the limited time they had to
12 develop and implement the process."

13 Does that match your recollection?

14 A Somewhat misleading. The ERO part, yes. The Border
15 Patrol part, no, because, as part of my staff, we had assistant
16 chiefs responsible for each one of the sectors, and we had
17 liaisons at sector. I'm not going to discount whoever stated
18 that there was no coordination with the sector whatsoever,
19 because there's no name, but I do refute that there was no
20 coordination at all.

21 However, because it was an officer safety and Americans'
22 safety issue, there was a significant sense of urgency to get
23 this pushed out and to get it done.

24 Q And just to be clear for the record, there was not
25 coordination with ERO?

1 A There was no coordination with ERO, to my knowledge.

2 Q Okay.

3 And, then, "... senior ERO headquarters officials stated
4 they became concerned with Border Patrol" -- or, excuse
5 me -- "became concerned that Border Patrol had not obtained
6 complete and valid destination addresses for many family units
7 processed with an NTR."

8 "Border Patrol and ERO officials told us they became
9 concerned that only a small proportion of family units released
10 with NTRs were reporting to field offices, as required."

11 Does that match your understanding of what happened?

12 A That is one aspect. Not exactly. To what end state?
13 Are you just saying that that was one issue that was raised? Or
14 are you saying -- like, I don't understand where the question
15 is going.

16 Q Were you concerned that the reporting indicates, from
17 GAO, that only a small proportion of family units were reporting
18 to field offices for the ERO?

19 A So Border Patrol's mission, clearly stated, clearly
20 funded for, is to secure the border of the United States, try
21 to make sure we know who and what is coming into the country.
22 That's number one, is patrol the border. The immigration
23 processing of it is just, like, an administrative function, but
24 that's ERO's primary responsibility.

25 Based on my experience, 30 years of experience, people lie

1 about the destination they're going to, and once they're released
2 into the United States, less than 6 percent are ever actually
3 deported, even if they're ordered deported.

4 So, no, that was not my biggest concern at the time. My
5 biggest concern at the time was, how do I get Border Patrol agents
6 back on the line so that I can actually interdict the fentanyl,
7 the cocaine, and the criminal aliens that are paying more to be
8 in the second wave to get into the United States? Because they
9 pose a high risk.

10 No matter what the Border Patrol did at this point, the Biden
11 administration had already decided these people were being
12 released into the United States. Whether they actually had an
13 NTA or a specific address -- there was no way to validate
14 that -- was very low on my priorities.

15 Q So, just to clarify, are you stating that whether or not
16 people were released into communities was low on your priority
17 list at the time --

18 A That is not what I said at all. I said the Biden
19 administration already decided they were being released, so
20 whether they had an NTA or not was irrelevant, and whether they
21 gave me an address that I had no way of verifying was not high
22 on my priority list.

23 Q Okay.

24 Ms. Marticoarena. Do you have any questions?

25 Ms. Dennett. No.

1 Ms. Marticorena. I think we can go off the record.

2 [Recess.]

3 Ms. O'Connor. All right. It's 2:40. We'll go back on the
4 record.

5 BY MS. O'CONNOR:

6 Q I have just a couple questions about some of the
7 consequences of what's going on at the border. I want to start
8 with some national security issues.

9 I guess, first, generally, is immigration policy the same
10 as border security?

11 A No.

12 Q How are they different?

13 A So they're confused quite often.

14 Border security is simply knowing and being able to control
15 who and what enters our country and, in the context of the United
16 States' border security, consistent with law. So Border Patrol,
17 Customs and Border Protection, none of them make it up, right?
18 You just look at the congressionally enacted laws. But the
19 foundation of all immigration law and all customs law is the
20 ability to actually enforce that law by being able to control
21 who and what comes into the country.

22 So, basically, they're interrelated, but the border
23 security is simply the control. The immigration law,
24 immigration policy is the "who is allowed" once you actually can
25 control it, and then the customs laws is the "what you allow in."

1 But all that is irrelevant without a baseline ability to control
2 it, and that's border security.

3 Q Between fiscal '21 and fiscal '23, CBP encounters of
4 Chinese nationals has increased over 5,000 percent, from 450 in
5 '21 to over 24,000 in '23. The vast majority of those encounters
6 are single adults.

7 Do those numbers cause you any concern for national
8 security?

9 A They cause me a significant concern for national
10 security.

11 Q Why?

12 A The numbers only tell part of the story. So, from
13 30 years of experience in the Border Patrol, there's a few things
14 that take place.

15 One is, especially as Chief now, when you understand the
16 implications of dominoes, anytime that the Border Patrol starts
17 arresting people that don't speak Spanish, strictly from a
18 functional standpoint, it significantly increases the amount of
19 time agents have to spend with that individual, because we have
20 to go get AT&T translator services. The time it takes to get
21 that person on the phone, say something, have the translator
22 translate it into their language, that means that agent is off
23 the line longer.

24 To simply process somebody that speaks Spanish -- because
25 Border Patrol agents are taught to speak Spanish -- on average,

1 it's about an hour -- and that's not even transport time -- that
2 it takes an agent to process a normal immigration case, say, for
3 240 or something like that, like a proceeding, NTA. That agent's
4 out of the field for that entire -- like, an hour, per person.

5 So, when you see those numbers of people that don't speak
6 English, all of a sudden that worries me a lot. Because I know
7 the cartel, again, based on my experience, the cartel knows all
8 of this, and they systematically script the amount of people and
9 the types of people that cross the border to wipe out law
10 enforcement resources so that they can bring in whatever it is
11 that they want in the second wave.

12 The other reason it concerns me greatly is, as you come up
13 through the Border Patrol, not exactly like DOD but a little bit,
14 you get exposed to all kinds of different intelligence and you
15 get exposed to different training.

16 So, first and foremost -- and I'm not going to get into all
17 this, but -- when DHS was formed, I got pulled out of Border
18 Patrol. I was still a Border Patrol agent, but I got assigned
19 to work anti-terrorism issues and national security issues for
20 about 5 years, working with every three-letter agency. I was
21 in the Pentagon a lot; I was out at NCTC a lot. And it opened
22 my eyes to a lot of border security threats that are not the
23 traditional immigration threats you hear in the media.

24 On top of that, I've been, just as Chief -- actually, just
25 before I became Chief, I went through the military's CAPSTONE

1 program. And, again, I can't get into all that. A lot of those
2 are classified briefings. But that whole program is meant to
3 train one-star generals, basically people who become flag
4 officers, in the worldwide threats and what the U.S. Government
5 can kind of bring to bear to help address those threats. And
6 a big focus was about the Chinese threat and about the strategic
7 plan China has worldwide, about the Belt and Road Initiative,
8 and really what a threat China is to the United States, regardless
9 of how much we smile and share technology, willingly or not.

10 So all of that, combined -- just simply the operational
11 impacts of non-English-speaking, and the fact that I know that
12 we now have a nation-state threat, and I am seeing massive numbers
13 of what we would refer to as fighting-age males coming across
14 by themselves, leveraging this border chaos -- worries me
15 tremendously.

16 And then what else worries me is, because of all of that,
17 we're leaving hundreds and hundreds of miles of border open right
18 now and still documenting almost 1.8 million illegal entries
19 that got away.

20 So all that, combined, worries me greatly. That's why I
21 keep my very first letter to both sides of the Congress when I
22 retired, saying, hey, not specific to the Chinese, but there are
23 some serious threats here that are not economic migration that
24 we need to take seriously.

25 Q Along those same lines, last week, the House Judiciary

1 Committee released a staff report with a lot of statistics about
2 border crossers. And some of the countries that they listed that
3 CBP had encountered aliens from were Turkiye, Egypt, Pakistan,
4 Kyrgyzstan, Iran, Syria, Iraq, and Yemen.

5 Do you have similar kind of national security concerns as
6 to -- similar to what you've just expressed?

7 A Yeah, very, very similar to what I expressed.

8 And names of certain countries, whether we like it or not,
9 bring up additional levels of concern based on their past, based
10 on their history, whether they support terrorism, whether they
11 do or don't like America, what their general population is.
12 Yeah, it worries me. It worries me greatly.

13 And along with all the other operational issues I talked
14 to you about, the less that specific language -- and we forget,
15 too, dialect -- is used, the harder it is to find a translator,
16 the longer it keeps agents out of the field, and, just as
17 meaningful, the interview is a joke. So, when you're using an
18 AT&T operator to try to interview somebody, you don't have the
19 same body language that an investigator is trained to be able
20 to detect deception.

21 Plus, now the agents are completely overwhelmed; they don't
22 really have the time anyway to do anything except the basic. So
23 we don't have -- and China would be the same -- we don't have
24 good information from these countries about their criminal
25 records.

1 And, then, even if we did, we're naive to think that we know
2 who hates America and is trying to come here to do us harm and
3 who is really, truly trying to, you know, come across for economic
4 reasons or whatever else.

5 That's all mixed in there.

6 But, right now, we're not doing anything. They're just
7 pouring across, and they're being released, because we can't get
8 rid of them quickly.

9 Q According to the CBP publicly available statistics, at
10 the southwest border in fiscal '23, they encountered 169 people
11 in the terrorist screening data set in between ports of entry
12 and 80 at the ports of entry.

13 How likely is it that those are the only terrorist-related
14 migrants that are coming across our border?

15 A Anybody that thinks those are the only
16 terrorist-related migrants coming across our border is naive,
17 for some of the reasons that I just stated.

18 And I'm going to have to go professional experience. This
19 is my opinion, but it's not just made up. This is my opinion
20 based on all of my time during anti-terrorism issues and my time
21 as a Border Patrol agent.

22 After 9/11, we -- the threat on 9/11 -- sorry, I'm backing
23 up a little bit. The threat on 9/11 was ports of entry. So we
24 really ramped up at the ports of entry and have continued to
25 really tighten down, share information, make sure, if you come

1 to a port and you lay your hands on a scanner, that if the U.S.
2 Government -- anyone in the U.S. Government has information on
3 you that you're a threat, it's going to get to the CBP officers.
4 That didn't necessarily take place before 9/11.

5 But as I was sitting in all those meetings and briefings,
6 there was also a realization -- and it was very spoken; I'm sure
7 there's documentation everywhere for this -- that as we made it
8 harder to exploit the loopholes to come into the country legally,
9 the threats to our country, both terrorist and criminal, would
10 move in between the ports of entry, and that the terrorist
11 organizations, just like the cartels, would move to identify what
12 we commonly refer to as "clean skins." They would even recruit
13 and, like, foster people that didn't have a criminal record so
14 that they could get in and do harm.

15 So how I look at the border is all based on that experience,
16 all that training that I got, all that stuff I got exposed to.

17 And then now I'm watching -- and I also know how the cartels
18 work. They push some group across to begin with. They don't
19 care if they get caught or not. You usually get about three
20 tries. But -- so that they can get the second group across.

21 And it varies. So sometimes that first group that gets
22 caught, they don't necessarily know they're sacrificial lambs,
23 and if they get away, no one cares. But the cartel focuses on
24 a few things. They focus on the person that they're giving the
25 third opportunity to come across for the same amount, because

1 that's simply business. If your people that you're smuggling
2 don't make it in, no one else comes to hire you. So they always
3 make sure that on the third attempt that person is in a second
4 wave and they're going to get away.

5 But anybody willing to show up to the plate initially that
6 even thinks that the U.S. Government might have information that
7 they're a threat to the U.S. is going to pay more to be in the
8 second wave. Those are the got-aways. That worries me even
9 more.

10 Q On its website, the same website with the publicly
11 available statistics, CBP notes that TSDS encounters only
12 account for about .0081 percent of all encounters.

13 Does that percentage reflect a low terrorist threat level?

14 A It only took 19 people to carry off 9/11. It would've
15 been 20, but one very alert customs guy caught one coming through
16 Florida. Nineteen.

17 You can make numbers -- that's a bad thing about numbers;
18 you can make them say whatever you want. I think any threat to
19 the United States that we could potentially stop is a threat that
20 we should stop.

21 Q I want to talk a little bit about the cartels. Other
22 than simply making more money by crossing more people over the
23 border, what other advantages do transnational criminal
24 organizations and cartels gain from moving massive numbers of
25 people across the border?

1 A Complete ability to pick and choose what comes into the
2 United States.

3 And let me explain that. Again, from my experience, making
4 money off of illegal immigration and even the massive illegal
5 immigration that is happening today is secondary. That is not
6 their primary function. That is not what they built their
7 business model off. They built their business model and they
8 sustain it off of narcotics smuggling and other higher-threat
9 stuff that makes lots of money. They want to make a lot of money
10 fast.

11 People cause problems. And there's a lot of experience
12 with this too. People talk; narcotics don't. That's why San
13 Diego, for example, traditionally, the really expensive,
14 sophisticated tunnels were used for narcotics, not people.

15 But what this administra- -- but what the cartels have
16 always done -- and, again, don't give them more credit than they
17 deserve, but give them credit. Go back to junior high, and kids
18 trying to rip off a local store for candy did the same exact
19 technique. They would have one or two kids distract the shop
20 owner while the other kids grabbed something off the shelf and
21 ran.

22 The cartel have always used illegal aliens for that.
23 They'll push a group of illegal aliens across, knowing where the
24 Border Patrol agents are, because they monitor the border all
25 day. Every day, they monitor our stations. They'll predict

1 what will the response be from Border Patrol, and they'll try
2 to make sure they push over enough to basically get Border Patrol
3 completely overwhelmed, leaving miles and miles of
4 border -- sometimes just a mile, sometimes hundreds of miles,
5 depending on what they want -- wide open so they can smuggle
6 through any commodity that they want.

7 That's the real threat.

8 And I'll challenge you, just to put it into perspective,
9 think about it from -- put yourself in a migrant's shoes for just
10 a minute. If you were literally trying to come to the United
11 States and you wanted to claim asylum, why would you trek through
12 a super-super-remote part of Mexico that's heavily, heavily
13 controlled by the cartel, like just south of Arizona, out towards
14 Ajo, and go to a very remote part of the desert in Arizona, where
15 it's super-hot, there's no water, there's nothing, it's going
16 to take an agent about 2 hours to drive you back to a processing
17 facility? Why would you do that on your own?

18 They don't do that on their own. They do that because the
19 cartel has controlled it, because they know that wipes out more
20 Border Patrol resources so they can bring the fentanyl, the
21 cocaine, the heroin, and the people that paid more to get away
22 in the second wave, minimizing their operational risk to
23 interdiction.

24 That is happening right now as we speak at a level that I
25 never saw my entire career, because these massive numbers of

1 illegal aliens give them an endless flow of distractions.

2 Q With this overwhelming of the Border Patrol, we've been
3 told by chief patrol agents that a lot of checkpoints within the
4 interior but still close to the border have had to be closed down
5 so that those agents can go help with processing.

6 What kind of impact does closing those checkpoints have on
7 stopping the flow of people and drugs and weapons into the United
8 States?

9 A It's a huge impact. And, again, there's empirical
10 evidence for this. People can argue it, but -- early in my
11 career -- actually, shortly after DHS, I worked on a whole study
12 with GAO on this, where we were looking at the effectiveness of
13 the Border Patrol checkpoints for two reasons.

14 One, the Border Patrol checkpoint concept, if you
15 will -- and it's a very unique authority. The Supreme Court has
16 upheld that you can stop, only for immigration purposes -- it's
17 one of the only authorities the Border Patrol has. It's only
18 immigration; it's not all border security. You can stop every
19 car on a highway as long as it meets some specific criteria. You
20 don't need any suspicion or anything. And it's all about
21 preventing the illegal entry of aliens into the United States.

22 Well, why would do we that? Because the border is so
23 wide-open, one of the criteria is you're looking at chokepoints,
24 because people want to get into a vehicle and go north as quickly
25 as possible.

1 San Diego sector is a good example. Back in the early '90s,
2 when the border was what we thought then was chaotic but nothing
3 compared to like it is today, the Clinton administration came
4 in and basically said, we need to, like, tighten up the border,
5 we need to reestablish law and order on the border -- and, again,
6 that was the Clinton administration -- we in San Diego
7 experimented with shutting down the traffic checkpoints and
8 pulling those agents down to the border to see if we could
9 literally just seal the border without this secondary level of
10 enforcement. And that's really what -- it's called "enforcement
11 in depth," if you will.

12 Shutting down those checkpoints and reassigning the agents
13 to the line really did nothing. But backing them off and taking
14 away the ability for the smugglers and the illegal aliens to
15 quickly get into a vehicle and get into the United States
16 dramatically made an impact, with fewer personnel, to seal
17 whatever that area was.

18 And each checkpoint is slightly different, depending on the
19 terrain, but I'll give you Arizona -- and this is one of the ones
20 they're complaining about now -- I'll give you Arizona for
21 example.

22 From Nogales, Arizona, to Tucson, there's really
23 only -- there's one highway, Interstate 19. And there's a
24 checkpoint right on that highway. And it's probably about
25 25 miles, maybe about 30 miles north of the border. But you've

1 got to look at the terrain around it.

2 The border of Arizona starts going northwest right at
3 Nogales. It's not direct north -- I'm sorry -- yeah, northwest.
4 It's not direct east-west. So all the canyons -- if you just
5 were a smuggler or alien, all the canyons lead right back to that
6 highway. So people could go 30 miles from Nogales, get in a
7 canyon, and then really kind of come back within, like, 10,
8 15 miles just north of Nogales, close to the highway, get in a
9 vehicle, without that checkpoint there.

10 When that checkpoint is up, it makes every single one of
11 the agents on the line more effective. You're able to control
12 a much broader area with significantly less resources.

13 Because the other way to think about it is, like -- and this
14 is another horrible example, but think about any venue -- think
15 about a county fair, where you have a security fence and you have
16 entrance gates and you have, say, some cops or security guards
17 there. If that was the only security whatsoever, there was no
18 security inside at all, people would just make a mad dash and
19 get in, right?

20 So the checkpoints prevent people from being able to do
21 that, and enforcing depth prevents people from being able to do
22 that.

23 Q So I think it's been implied, but can you make the
24 logical step for us on how Secretary Mayorkas's actions or
25 inactions are contributing to the fact that cartels are able to

1 overwhelm Border Patrol and smuggle drugs, people, and weapons
2 into the United States?

3 A Sure.

4 So, again, total transparency: Understanding that that's
5 a tactic that's been used since the beginning of time, probably,
6 in many different administrations, everything else, it's about
7 the volume and the impact.

8 So what this all comes down to -- and it's never this simple,
9 but what it all comes down to is catch-and-release.

10 And, again, I'll back up to the Obama administration.
11 There were significant conversations then; everybody
12 acknowledged we have to end catch-and-release. Because that's
13 the draw.

14 So any criminal, if they think they're just going to get
15 released -- again, I use horrible analogies, but think about your
16 neighborhood. If the law enforcement said, "Speed limits are
17 still intact, traffic laws are still intact, we're going to stop
18 you but we're not going to give you any ticket, there's no
19 consequence whatsoever, we're just going to stop you and remind
20 you that they exist," how would that work in Washington, D.C.,
21 how would that work in your neighborhoods, if all of a sudden
22 people were like, "Well, I don't care anymore, I'll drive as fast
23 as I want, I might get stopped, nothing's going to happen"?
24 That's basically the equivalent of catch-and-release.

25 So, when there's a consequence and people know that there's

1 a high probability if they get caught they're going to get sent
2 back to their country, they reevaluate the entire process. But
3 when you create and then now amplify to a level we have never
4 experienced in this country catch-and-release, no matter what
5 you say, meaning if you're political or, say, you're the
6 President of the United States, it's irrelevant. Because human
7 nature -- this has nothing to do with cartels now. Human nature
8 is, when you get to your destination -- say you're an illegal
9 alien, you're coming into the U.S. Your human nature is to call
10 home and just check in with your family and let them know what
11 happened. And that message spreads like wildfire. That used
12 to take a letter, which would take weeks. Now it's a WhatsApp,
13 it's a text message, or it's a phone call.

14 So that has created this domino effect, where every single
15 person released, almost without exception, calls home and, just
16 really not -- no nefarious -- tells their friends and family,
17 "Yeah, I used that smuggler, I got stopped and I got released,
18 or we just went around, but my point now is I'm in Chicago. Oh,
19 and, by the way, if you got caught, they took me to this other
20 facility just a little ways away from the Border Patrol station,
21 and they gave me new clothes, they fed me, they let me take a
22 shower, and then they gave me a plane ticket to where I wanted
23 to go, no charge."

24 That marketing the cartel is exploiting, not to mention the
25 NGOs are exploiting, not to mention just the word of mouth is

1 exploiting. That creates another wave. And, literally,
2 now -- used to be the cartel had to, like, recruit people. Now,
3 they're just standing there with a catcher's mitt, and they're
4 just guiding all these illegal aliens coming to them as willing
5 conspirators or victims; you call them what you want. But
6 basically they're being used to shape that border so they can
7 bring anything they want into this country anytime they want.

8 That is a huge threat -- I don't care where you sit on the
9 political spectrum -- we should not accept. Immigration is
10 causing that border security thing, but this is a national
11 security border security thing. This is not simply about
12 immigration.

1 [3:00 p.m.]

2 BY MS. O'CONNOR:

3 Q Are there cartel operations within the United States?

4 A Very much so. Yes. Every major city -- because think
5 about where narcotics are sold. Nothing stays at the border.
6 It transits the border.

7 So, originally, a lot of times, it was gang affiliates or
8 whatever else, but we'd be naive to think that the Mexican drug
9 cartels are only in Mexico. That's the head of the snake, if
10 you will, but they have -- or the octopus; call it whatever you
11 want -- they have tentacles all throughout the United States.

12 I believe we have corruption problems in the United States,
13 not to the extent you have in Mexico because we -- at least until
14 recently -- we have laws in place and we would go after that
15 corruption and we would try to stop that illegal activity.

16 But the threat is on both sides of the border. It's not
17 just in Mexico. You just see the violence more in Mexico, again,
18 because years ago they chose to not address it. That's where
19 we're going if we don't get our head out of our --

20 Q Would you say that cartels control the southwest border?

21 A Cartels control the southwest border 100 percent right
22 now.

23 Q And I think you just explained, but the cartels and gangs
24 within the United States coordinate with the cartels at the
25 border?

1 A Correct. And that's such a -- like, I think you know
2 what I meant, but just for the context of this conversation, when
3 I say the cartels control the southwest border right now, there's
4 a couple things that I've heard the current administration say
5 that are misleading.

6 They talk about the ports of entry and then they talk about
7 in between the ports of entry like there's some, like, hard line
8 between the two and they're completely different. We
9 acknowledged as a country that that was all interrelated when
10 we created DHS and we put Customs and Border Protection in place
11 to have a unified border agency, because the cartels are the same.
12 The same cartels smuggle through the ports of entry as in between
13 the ports of entry. They'll exploit any vulnerability they can
14 possibly exploit.

15 And I just want to make sure -- the next piece. At the
16 ports, they give me loads and they try to distract officers.
17 They've always done that as well. But now we're giving them all
18 these additional people with the CBP One app that takes a minimum
19 of 2 hours it takes a CBP officer off of enforcement duties. You
20 add one more gimme load (ph) from the cartel, that wipes out our
21 enforcement at a port of entry.

22 So, when I talk about the cartels exploiting picking and
23 choosing what's coming into the country, it's easier in between,
24 but they're doing it at the ports of entry as well.

25 In between the ports of entry, they pay scouts, locals; they

1 have their own technology. We've found complete repeater sites
2 with solar panels and stuff on them so they can communicate.

3 But they are literally watching what the agents do every
4 single day. They have people that watch our stations, count how
5 many vehicles leave. They have people at the airports that watch
6 when our planes take off so they know where we're at. And then
7 now they have this endless flow of human beings to use as
8 distraction so that they can shape and then basically force a
9 response from Federal law enforcement and then bring in anything
10 they want.

11 So that's why I adamantly argue that we have given cartels
12 complete and total control to pick who and what comes into our
13 country. It's insane.

14 Q When did that start?

15 A It's always been a challenge. And I'm not going
16 to -- again, total transparency: They've always used these
17 techniques. But to the level it is today started when President
18 Biden put executive orders -- well, they started to shift when
19 President Biden won. And I think everybody kind of saw people
20 showing up with T-shirts and stuff, and we started seeing the
21 increased flow on the border. But it was after January 21st,
22 2021, when all these policies went in place, catch-and-release
23 was reestablished -- really, when MPP went down, we saw a complete
24 flow, because that was one of the last tools we had.

25 This was the first administration I ever saw go backwards.

1 I think that's the biggest difference. Every other
2 administration, those challenges existed; I'm not telling
3 anybody they didn't. But we were getting more and more secure
4 at the border. We were making the border more and more secure
5 every day. We were taking away the cartels' ability to freely
6 move things, and we were driving up their cost of business. But
7 since January 2021, we went completely the opposite
8 direction -- completely the opposite direction.

9 Ms. O'Connor. And I'll pass to my colleague, if you've got
10 any questions?

11 Mr. Yi. Sure.

12 BY MR. YI:

13 Q Mr. Scott, earlier, in the previous hour, my Democrat
14 colleagues asked you if you believed legislation would be helpful
15 or if it's needed to help secure the border.

16 Are you familiar with H.R. 2, also known as the Secure the
17 Border Act of 2023?

18 A I'm very familiar with it, yes.

19 Q Okay.

20 I just want to state for the record that H.R. 2, among other
21 things, would've restarted construction of the border wall, it
22 would end catch-and-release, it would end the abuse of executive
23 immigration authority, and do other things to support Border
24 Patrol agents as well. So these types of, I guess, efforts have
25 been made by House Republicans and the majority, but

1 unfortunately hasn't been passed into law yet.

2 But we really appreciate your testimony today. We
3 understand you're here voluntarily. And your insight and your
4 professional background is greatly respectable and appreciated.
5 And thank you for your service.

6 Before we conclude today's interview, I just want to ask
7 you three questions.

8 In your expert opinion, based on your decades of
9 professional experience and background in the border security
10 and law enforcement fields and the evidence available to you,
11 do you believe Secretary Mayorkas has willfully and systemically
12 refused to follow the law?

13 A Yes.

14 Q In your expert opinion, based on your professional
15 experience in government and background in the border security
16 field and the evidence available to you, do you believe Secretary
17 Mayorkas has abused his power vested in him as Secretary?

18 A Yes.

19 Q In your expert opinion, based on your professional
20 experience and background in the border security field and the
21 evidence available to you, do you believe the impeachment against
22 Secretary Mayorkas is appropriate, justified, and necessary?

23 A Yes. I think anybody that lies to Congress and fails
24 to uphold the duties of the job they swore to take should be
25 impeached, regardless of party.

1 Mr. Yi. Appreciate your testimony today.

2 The time reads 3:06 p.m. With that, we'll go off the
3 record.

4 [Recess.]

5 Ms. Marticorena. We can go back on the record. The time
6 is 3:08.

7 BY MS. MARTICORENA:

8 Q Mr. Scott, if President Trump is elected in 2024, do you
9 have any ambition to return to government?

10 Mr. Howell. Answer if you wish, but keep in mind we're
11 scoped to the Mayorkas border crisis and his handling of it. So
12 it's up to you.

13 Mr. Scott. Sure, I'll answer.

14 I was a career government employee, and I care about border
15 security, and I've made it clear that anybody that's willing to
16 listen to my advice on border security, I'd be willing to help
17 them out regardless of the individual or the party.

18 BY MS. MARTICORENA:

19 Q Okay. Have you had any discussions with anyone
20 associated with the Trump campaign about your willingness?

21 A No. Not specifically, no.

22 Q Okay.

23 And you mentioned previously that you've been on conference
24 calls or other meetings with The Heritage Foundation about the
25 border. Do you remember who else was on those calls?

1 Mr. Howell. It's another objection to scope.

2 But answer as you see fit.

3 Mr. Scott. As part of my life and focus on the border, I'm
4 on many different calls with what would kind of be referred to
5 as, like, a border coalition. I know there are some people from
6 Heritage on there, but I do not have specific names of everybody
7 on all the calls.

8 A lot of times, they're just basically informational
9 calls -- what's going on in Congress, what should we be looking
10 at. I don't have a -- like, we don't send out a roster, like,
11 a list or anything of names. And it's not always Heritage;
12 there's different organizations.

13 Q Okay. Do you recall who other than Heritage is
14 organizing these calls?

15 A There's a broad perspective. Sometimes it's been
16 congressional staff wanting an opinion on something. Sometimes
17 it's been Texas Public Policy. Sometimes it's been, like,
18 America First. I don't know all the different organizations,
19 but it is a very loosely affiliated group of organizations that
20 are just committed to keeping each other informed.

21 Q And during the last half-hour, there was a discussion
22 about cartels operating in the United States along the border.

23 Do cartel operations include U.S. citizens?

24 A Yes.

25 Q Okay.

1 And during our transcribed interviews with chief patrol
2 agents, they were asked about cartels controlling the border,
3 and they all clarified that they meant south of the border, in
4 Mexico.

5 Do you believe that the cartels control territory in the
6 United States where your Border Patrol agents operate?

7 A At times, yes, I do. I believe the cartel controls who
8 and what enters the United States. And by definition of that
9 process, because they are allowed -- or because they currently
10 have the capability to shape Border Patrol operations, they do
11 end up controlling space in the United States.

12 Because they push across a large group of illegal aliens
13 or sometimes even a small load of some kind of narcotics to draw
14 law enforcement to a certain area. That, by definition, pulls
15 them out of another area. And that's where they bring whatever
16 their higher commodity threat is into the United States.

17 I understand what the chiefs are trying to say, and I don't
18 want to go against any of them, but there's empirical evidence
19 of this as well. There were cases in Arizona where there were
20 shoot-outs with cartel members over 100 miles inside of the
21 United States. They systematically create those gaps where
22 there's no law enforcement. And, by definition, when theirs is
23 no law enforcement in that area and they're physically in the
24 United States, they are controlling that area.

25 Q And do they often use U.S. citizens or permanent

1 residents to try and enter the United States?

2 A Uh --

3 Q Do cartels use U.S. citizens and U.S. permanent
4 residents to try and enter the United States?

5 A So I'm not sure what you're asking, but I think I'll try
6 to answer it nuanced.

7 It's not that simple. There are U.S. citizens and there
8 are LPRs, if you will, legal permanent residents, that are
9 associated with and that are technically cartel members. Do we
10 know who they all are? No.

11 I'm here testifying -- or the reason I'm so adamant about
12 this isn't necessarily trying to poke my finger that it's all
13 Mexicans. I've never said that. They're named "Mexican
14 cartels" because that's where the leadership and the head of
15 the -- think of it as a giant corporation -- is. But they have
16 tentacles of that corporation -- and I even testified
17 earlier -- well into the United States.

18 They are using the illegal immigration as a way to continue
19 to function and make more and more money with less and less risk
20 to be able to bring commodities into the United States. And they
21 don't care -- they don't care if you're an illegal alien, they
22 don't care if you're a legal citizen, they don't care if you're
23 a legal resident alien. If they can use you to facilitate their
24 operations or themselves, they're going to do that.

25 Q And when you were Chief of the Border Patrol, did cartels

1 at times, as you said, sometimes control territory in the United
2 States?

3 A Yes, they did. But the difference was, we were
4 constantly trying to shrink their ability to do that. And there
5 was a strategy in place that included multiple levels, to
6 include -- the border wall was part of that. Deep-dive
7 interviews were part of that. We built an entire new database,
8 that when you do interviews, we could document the context of
9 those interviews so we could systematically identify who the
10 cartel members were, which factions posed a higher risk.

11 And, unfortunately, all that has stopped now. None of that
12 is taking place because of this mass illegal immigration and they
13 shut down the border wall.

14 Q Okay.

15 So I'd like to talk about a few incidents that happened
16 during your time with CBP. And, again, if you choose not to
17 answer, you're welcome to decline to answer the question.

18 For what years did you serve as chief of the San Diego
19 sector?

20 A So I don't have the specific dates in front of me. So
21 it would probably be 2019 to -- or maybe late 2018 to 2020. So
22 I ceased being the chief officially on February 20th, 2020, when
23 I became Chief of the Border Patrol. And that was my job just
24 prior to that. I did it for about, I don't know, a little over,
25 I don't know, maybe 2 years? I think it was 2017?

1 Q My records indicate that you started in 2016. Is that
2 not correct?

3 A It could be. So -- I think it was 2017. Let me --

4 Q Take a minute.

5 A I apologize. Usually, I bring a bio that has all those
6 dates.

7 And I'm not sure where you're going with the question, but
8 it'd be almost irrelevant, because prior to being chief of San
9 Diego, I was chief in El Centro sector, which is still southern
10 California. It's a very much similar area. The chief in San
11 Diego retired a little bit earlier than he was supposed to, and
12 they ended up asking me to take that job over there.

13 Q Okay.

14 A I hate to caveat it this way, but the prototypes were
15 already about halfway done before I became chief of San Diego --

16 Q Okay.

17 A -- sector, so I thought it was 2017, but --

18 Q Let me -- so -- and I wanted to ask about an incident
19 that happened in 2018 --

20 A Okay.

21 Q -- because it was --

22 A I was chief in 2018.

23 Q Okay. So one high-profile incident that happened
24 during your time in San Diego was, Border Patrol officers used
25 force on a group of individuals attempting to cross between ports

1 of entry on November 25th, 2018, including using tear gas and
2 acoustic devices, and the group included women and children.

3 Do you remember this incident?

4 A Very well.

5 Q Okay. And were you chief at that time?

6 A I was the chief at the time.

7 Q Okay.

8 So the Department of Homeland Security Inspector General
9 investigated the incident. We have copies of this. We can
10 enter it into the record, the OIG use-of-force report.

11 [Scott Exhibit No. 2
12 was marked for identification.]

13 Mr. Howell. This is out of scope, so it's up to you if you
14 want to answer. It's just out of scope, so you don't have to
15 deal with it. I mean, you haven't had a chance to familiarize
16 yourself with this report.

17 BY MS. MARTICORENA:

18 Q So the Department of Homeland Security Inspector
19 General investigated the incident, and, among other things, they
20 found -- it's on page 8 -- that your officers obtained a strictly
21 prohibited acoustic device that could increase the risk of
22 hearing loss to those exposed, and that not all of your Border
23 Patrol officers had completed required training and
24 certification to carry less lethal force devices.

25 In fact, the OIG reported during this period that San Diego

1 sector officials gave their agents unrestricted access to less
2 lethal devices without first verifying agents were certified to
3 use them, and did not maintain records indicating when and where
4 less lethal devices were issued to agents.

5 Does that sound accurate --

6 Mr. Howell. We're --

7 Ms. Marticorena. -- to your --

8 Mr. Howell. I'm sorry. Go ahead and finish.

9 Ms. Marticorena. I said, does that sound accurate to your
10 recollection?

11 Mr. Howell. We're going to go ahead and object to this
12 question, being out of scope. This report, I think, covers
13 2018-2019, and we're here to talk about the impeachment of
14 Mayorkas.

15 Ms. Marticorena. Okay.

16 So, for the record, you decline to answer, correct?

17 Mr. Howell. I am advising my client to stay within the
18 scope of the interview that we agreed to.

19 BY MS. MARTICORENA:

20 Q Okay.

21 So, also -- strike that.

22 So the DHS OIG also undertook a review of actions that
23 occurred in your sector, under your watch, relating to whether
24 officers improperly targeted journalists, attorneys, and others
25 because of their affiliation with and perceived support for a

1 large group of migrants.

2 This will be exhibit 3.

3 [Scott Exhibit No. 3
4 was marked for identification.]

5 BY MS. MARTICORENA:

6 Q So, according to the OIG, three officials in the San
7 Diego sector made unauthorized disclosures about U.S. citizens
8 to the Mexican Government.

9 Do you recollect this incident?

10 Mr. Howell. We're going to go ahead and object again, as
11 this is out of scope. It covers 2018 and '19, and we're here
12 to talk about Mayorkas's impeachment.

13 Ms. Marticorena. Okay. So, for the record, you are
14 recommending that he decline to answer?

15 Mr. Howell. I'd advising my client to stay within the
16 bounds that we all agreed to.

17 Ms. Marticorena. Just for the record, I'd like to note that
18 the Democratic staff were not part of any such discussions about
19 the bounds of this interview.

20 BY MS. MARTICORENA:

21 Q So both of these incidents I just referenced resulted
22 in significant media attention and resulted in both agency- and
23 Department-wide reviews, and numerous recommendations were
24 made.

25 When were you promoted to Chief of the entire Border Patrol?

1 A February 2nd, 2020.

2 Q So less than 2 years after these offenses; is that
3 correct?

4 A Correct.

5 Q Okay. And who was the DHS Secretary at that time?

6 A Kevin McAleenan was the Acting.

7 Q Okay. And who was the President?

8 A Donald Trump.

9 Q Okay. And --

10 A My position is not political. It's a promotion, not a
11 political appointment.

12 Q Understood.

13 And were you Chief of the Border Patrol in May of 2020?

14 A Yes.

15 Q Okay.

16 According to GAO -- and we can distribute that one -- Border
17 Patrol deployed up to 800 personnel per day in Washington, D.C.,
18 and Portland, Oregon, during widespread protests that occurred
19 in May and June of 2020.

20 Do you recall that deployment?

21 Mr. Howell. Same objection, as out of scope. We're here
22 to talk about the impeachment of Secretary Mayorkas, not the
23 disastrous riots of 2020.

24 Ms. Marticorena. Would you like to answer the question,
25 or would you like to decline to answer the question?

1 Mr. Howell. I'd advise you to not answer and remain within
2 the scope that we all agreed to.

3 Mr. Scott. I will remain within the scope of the interview,
4 as my attorney recommends.

5 Ms. Marticorena. Okay. We don't need to enter that into
6 the record then. My apologies. We'll strike that.

7 So the GAO also reported, at the time of that deployment,
8 Border Patrol did not provide training on crowd control and
9 demonstration response to all officers.

10 Was this deployment your idea or were you simply
11 implementing an administration policy at the time?

12 Mr. Howell. Same objection, as being out of scope. We're
13 here to talk about the impeachment of Alejandro Mayorkas, not
14 the disastrous riots of 2020.

15 Ms. Marticorena. So, for the record, you're declining to
16 answer?

17 Mr. Howell. I'm advising my client to stay within the
18 bounds of the interview that we all agreed to.

19 Ms. Marticorena. And, again, I would note that the
20 Democratic staff were not part of any such negotiations.

21 Mr. Howell. And I'll note for the record that you were on
22 the email chain with the invite that we agreed to.

23 Ms. Marticorena. And I will just clarify, we were not on
24 the invitation. We were added to the email chain afterwards.

25 Mr. Howell. I will clarify that we were all on the same

1 email thread. And if you'd like to submit that for your record,
2 we can do it too. But there is a letter from the committee, of
3 which you are a staffer, that scoped this testimony today.

4 Ms. Marticorena. I will just say, as we covered at the
5 beginning, that we are not bound by that letter, as we were not
6 privy to those discussions.

7 And you are welcome to decline to answer.

8 Mr. Howell. Okay. And I'll just say for the record, that
9 was debunked earlier when majority counsel said that you guys
10 are governed by the same rules as everyone else.

11 Ms. Marticorena. That is an interpretation we will discuss
12 with the majority staff afterwards.

13 Mr. Yi. Well, I would say that if the minority doesn't wish
14 to participate in this transcribed interview, they're here at
15 the invitation of the majority, so we can conclude the interview.

16 If the minority accepts the conditions of it -- which we
17 made an agreement with this witness and their counsel, and you
18 were exposed to that during the email chains that counsel had
19 just referenced -- then you may remain and participate within
20 the scope.

21 Of course, the minority can ask anything they wish. But
22 if we're going to keep going in this banter, I don't think it's
23 a very good use of the witness's time, in which they did make
24 an agreement that this interview would last 3 hours, and we want
25 to make sure we keep to that agreement and keep Mr. Scott on

1 schedule.

2 Ms. Marticorena. Understood. I plan to keep him on
3 schedule.

4 And I appreciate you noting that we can ask whatever we like,
5 and you can decline to answer. And for the record, I was thanking
6 the majority staff for that.

7 Mr. Yi. Can counsel repeat what she just said?

8 Ms. Marticorena. I said, just for the record, I was
9 thanking the majority staff for clarifying that we can ask
10 whatever we would like, and they can decline to answer.

11 Mr. Yi. Thank you.

12 Ms. Marticorena. Okay.

13 So, Mr. Scott, were you at one point a member of a Facebook
14 group called "I'm 10-15"?

15 Mr. Howell. So I'm going to advise you to stay within the
16 scope of this agreed-to interview, which is about the impeachment
17 of Secretary Mayorkas, not about Facebook groups.

18 Ms. Marticorena. Okay. So, for the record, we're noting
19 that you recommend that he decline to answer.

20 Mr. Howell. Again, as previously stated, I'm recommending
21 that both the witness and everybody else here obeys the terms
22 to which we all agreed.

23 Ms. Marticorena. So I'll note that, according to a
24 Committee on Oversight and Reform report, you were a member of
25 this group for a couple of years.

1 Here, I'm just going to describe some of the posts that were
2 made in this group that, again, the Committee on Oversight and
3 Reform noted you were a part of.

4 There was a photograph of a drowned migrant father and
5 toddler child that referred divisively to them as "floaters";
6 a sexually explicit doctored image and derogatory comments about
7 a Member of Congress; an internal CBP video of a migrant falling
8 off a cliff to their death, as well as an explicit and offensive
9 comment about a Member of Congress; an explicit and offensive
10 comment referring to a Member of Congress, writing "FTP," which
11 he explained meant -- I don't really want to say that for the
12 record. It's just that it had a very derisive meaning. And an
13 agency record that contained --

14 Mr. Yi. Sorry. Can counsel clarify what she means?

15 Ms. Marticorena. Sure. Would you -- "FTP" has curse
16 words in it. I'm happy to say them, but I just said I don't want
17 to repeat the language for the record. But I'm happy to do so
18 if you'd like.

19 Mr. Yi. I'm just asking because I don't know what you're
20 referring to.

21 Ms. Marticorena. Okay. So I will say it, and I apologize
22 in advance for my language. An explicit and offensive comment
23 referring to a Member of Congress, writing "FTP," which he
24 explains meant, and I quote, "Fuck the puta." And "puta" means
25 "slut" in Spanish.

1 An agency record that contained personally identifiable
2 information of a migrant in custody; offensive and homophobic
3 comments; a post that said, "Let's get back to work, these
4 children aren't going to separate themselves"; and multiple
5 other posts involving racist, sexist, and political attacks as
6 well as the release of unauthorized sensitive information.

7 So, according to the investigation, you stated that you saw
8 questionable content.

9 Further, according to the congressional report on the
10 group, multiple CBP employees investigated for their actions on
11 "I'm 10-15" stated that the participation of Chief Provost,
12 Acting Deputy Chief Scott, and other senior managers in the group
13 gave the impression that CBP leadership was aware of the group
14 and the nature of its posts.

15 For example, according to the CBP investigative report,
16 Border Patrol Agent No. 1 told investigators that, quote, "if
17 the BPA Chief was in the 'I'm 10-15' group account, then it
18 must've been okay" for him, the agent, to be in it.

19 Mr. Scott, were you a member of the Senior Executive Service
20 when you were being investigated for participation in the 10-15
21 group?

22 Mr. Howell. I'm going to object to that, being out of scope
23 as well.

24 Ms. Marticorena. Is it accurate to state that SES
25 officials are required to model high standards of ethics for

1 their workplace and demonstrate integrity?

2 Mr. Scott. Yes.

3 Ms. Marticorena. Okay. Do you believe that your
4 participation in a Facebook group where multiple unauthorized
5 disclosures of law enforcement sensitive information was shared
6 reflected a high standard for your workforce?

7 Mr. Howell. I'm going to go ahead and again --

8 Mr. Scott. Do you believe that being a member of a party
9 that promotes lying to the American people about the situation
10 on the border matches that same criteria? Because I'm not going
11 to hold you accountable for Secretary Mayorkas's actions, just
12 like you're talking about something that -- it wasn't me.

13 I'd like you to clarify that I'm not -- there's no
14 allegation that I did anything wrong in anything that you just
15 read.

16 Ms. Marticorena. I did not make an allegation that you made
17 any posts in the group, for clarification.

18 Mr. Scott. Thank you.

19 Ms. Marticorena. To the extent that you are aware, was DHS
20 Secretary Mayorkas ever a member of the 10-15 group?

21 Mr. Scott. I have no idea. There was 8,500 members,
22 according to the report.

23 Ms. Marticorena. Okay.

24 That's all we have. I'm happy to go off the record. The
25 time is 3:30.

1 Mr. Howell. All right.

2 Mr. Scott. Thank you.

3 [Whereupon, at 3:30 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date