

Statement Summary

of

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before the

Committee on Oversight and Accountability for United States House of
Representatives

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“The Biden Administration’s Regulatory and Policymaking Efforts to
Undermine U.S. Immigration Law”

Chairman Comer, Ranking Member Raskin, Members of the
Subcommittee, good morning.

I have worked for six different Presidents since I started as a Border Patrol Agent to include Ronald Reagan, George HW Bush, Bill Clinton, George W Bush, Barrack Obama and Donald Trump. I started my federal law enforcement career in 1984 as a Border Agent, then Special Agent. I rose through the ranks the next three decades to become the first Director of ICE that came up through the ranks. Border security and our nation’s national security has been my entire professional world for 34 years. Since my official retirement I have been a visiting fellow at several distinguished organizations where I continue my work consulting on border security and immigration enforcement.

While working for six different Presidents, Border Security and Immigration Enforcement policies would change from one administration to another. However, every President I worked for took some steps to secure the border because they all

understood that you can't obtain strong national security if you don't have strong border security. President Biden is the first President to ever un-secure a border on purpose. He was handed the most secure border in our nation's history with a 40-45 low on illegal immigration. It is a critical fact that border security is national security. Hard stop, it's a fact.

During my more than 34 years serving this great nation, I have been honored to participate in the creation and implementation of numerous policies that helped us to go from an uncontrolled chaotic border to a border that was the most secure I have seen throughout my career. I have seen many policies fail and other policies succeed, but the proven policies that we implemented during the Trump administration proved to be most effective, based on real data and not opinion. However, those successful policies were abolished within weeks of the new administration and here we are, back to a chaotic uncontrolled border that has resulted in many historical records, none of them good. The current administration's failure to enforce and uphold the laws as written by Congress are not just matters of legal debate but have led to unimaginable suffering and death for Americans and migrants alike.

Since the Biden administration started, an historic number of illegal aliens have died on US soil, nearly 1700 at last count. The number of senseless deaths shattered every record. Nothing even close has ever occurred. His policies have pulled thousands of Border Patrol agents off the frontline mission of securing the border. As a result, the criminal cartels have taken advantage, smuggling record numbers of illegal aliens and deadly drugs across while agents are overwhelmed or distracted. American families and communities are suffering as a result. More Americans are dying from fentanyl poisoning than ever as the drug is pushed across the Southwest border. Over 112,000 fentanyl overdose deaths of our citizens, another historic record. It is not a coincidence that in the past three years of an overwhelmed Border Patrol, that historic amounts of this dangerous poison are entering our country.

Aliens arrested by the Border Patrol that appeared on the Terrorist Screening Data Set is currently at 317, in just three years. We had 11 in four years under Trump. Not only is this another historic record, but it is also the one that should concern you the most.

A record number of unaccompanied children have also crossed our border illegally through criminal cartel operations. More than 440,000 children have been placed in the hands of criminal cartels to be smuggled across our border since Biden has taken office. This is another disturbing historic record. Most damning is that this administration has lost track of nearly 100,000 of these children and have no idea where these children are, who these children are with, or if these children are safe. We already know thousands of these children have been subjected to sex slavery, forced labor and debt bondage. So much for this administration claiming that they are “upholding our values as a nation”. To be blunt, this systematic destruction of border security and the predictable consequences scare the hell out of me. It should scare you too.

For three years, this Administration has directed and overseen the implementation of an open-borders agenda that has resulted in a national security, humanitarian, public health and public safety catastrophe unlike any we have ever witnessed at America’s borders. To put this into context, all one must do is look at CBP’s own data that shows total enforcement actions in FY20 was approximately 646,000. The next full year under Biden we tripled that number to 1.9 million followed the next year with 2.7 million and then in FY23, 3.2 million. When you have those kinds of encounters, it overwhelms the Border Patrol to the point where they have pulled up to 100% of agents off patrol to come in and process these large groups, which leaves hundreds of miles of border with no security and not a single agent on watch. That is why we are just shy of 2 million known “got aways”. Who are these “got aways”? Where are they from? Where are they now? For what purpose did they choose to escape rather than surrender themselves to the Border Patrol?

My biggest concern about this historic self-inflicted tragedy of the Biden open border is that it has become the biggest national security failure I have seen since 9-11. The Border Patrol has arrested people from 181 different countries. Some of these countries are sponsors of terror. The Border Patrol arrested over 317 people on the watch list. So, how many of the almost 2 million known “got aways” come from a country that are sponsors of terrorism? How many of these “got aways” carried fentanyl? How many of them were criminals or gang members. How many of them were sex trafficking women and children? Biden’s border crisis has turned every city and state in this country into a border city and border state. The chaos unleashed by their policies has spread throughout the country, whether in the form

of the fentanyl crisis, rising crime, or massive strain on schools and other community services. The only conclusion to draw at this point is that this crisis was intentional.

For three years this Administration has refused to enforce the laws passed by Congress and misled the American people about the crisis **and how their systematic destruction of Trump policies caused it.** The Biden administration policies, or lack of, have actively encouraged record numbers of people to make the dangerous journey to our borders. Additionally, they have released millions of illegal aliens into our communities in a flagrant abuse of immigration laws passed by Congress governing the parole, detention, and removal of inadmissible aliens.

Hundreds of criminal illegal aliens are being released into our communities, and cities and states are spending billions of dollars not on their own citizens, but on illegal aliens arriving every day. A recent in-depth study by the Center of Immigration Studies on ICE arrests was shocking. It shows that the Biden administration is responsible for the following when comparing FYs 2017, 2018, and 2019 to FYs 2021, 2022, and 2023, a 57 percent decrease in arrests of criminal aliens, a 68 percent decrease in at-large arrests of criminal aliens, a 44 percent decrease in detainer requests issued on criminal aliens, a 67 percent decrease in deportations of criminal aliens and a 55 percent decrease in immigration-related criminal convictions. Overall, deportation removals by ICE stand at historic lows despite historic high illegal immigration. Although Secretary Mayorkas said ICE would concentrate on public safety threats and criminals he did nothing about sanctuary cities. How can you prioritize criminal aliens and be locked out of every major city and county jail in the country and not be allowed to work with your local and state law enforcement agencies?

In FY22, ICE conducted a mere 72,177 removals and 59,011 in FY21. By comparison, in FY20, during the COVID-19 pandemic, ICE removed 185,884 illegal aliens, while in FY19, these exceeded 267,000. ICE recorded only 142,580 removals in FY23, still below the Trump-era low in FY20, during a year when CBP recorded more than 3.2 million total encounters. The number of removals of illegal alien gang members has decreased under his leadership. In FY19, ICE removed 5,497 known or suspected gang members, but just 3,406 in FY23. Again, this is not mismanagement or incompetence. It is all by design.

Then there is the blatant misuse of parole authority by this administration. Under section 212 of the Immigration and Nationality Act (INA), parole may only be granted on a case-by-case and temporary basis, for urgent humanitarian reason or significant public benefit. From Jan. 20, 2021-November 2023, DHS recorded at

least 1.5 million paroles due to the southwest border crisis—more people than the population of New Hampshire.

In its 2021 ruling in *Texas v. Biden*, the Fifth Circuit Court of Appeals wrote that Mayorkas' mass-parole of illegal aliens "is the opposite of the 'case-by-case basis' determinations required by law" and that Mayorkas violated "Congress's statutory commands" in the parole statute. Mayorkas created/oversaw a host of mass-parole programs—paroles at the border via Parole ATD, Parole with Conditions, etc.; nationality-based parole programs like CHNV; and more. Mayorkas claimed multiple times before the House Judiciary Committee in July 2023 that his use of mass parole was consistent with the law and past precedent. However, mass parole under Mayorkas' leadership, at this scale, is unprecedented in my 34 career. Despite the ruling in the 5th District, they continue to do at abusing the authority at record levels.

Encounters of inadmissible aliens at official ports of entry are also overwhelming the system, not just illegal crossings along the Southwest border. In FY20, nationwide encounters at ports of entry totaled 241,763, an average of about 20,146 per month. In FY23, total encounters at the ports exceeded 1.1 million, more than 94,000 encounters per month—a 370% increase—with more than 235,000 just in the first two months of FY24. This is partly due to mass-parole schemes Mayorkas has devised to release into the interior individuals who would otherwise have no lawful basis to enter the country—including improper use of the CBP One mobile app. In October 2023, after months of resistance from DHS and a subpoena threat, the Committee obtained documents that show 278,431 appointments were scheduled via the app from Jan.12-Sept. 30, 2023, and that roughly 96% of these (266,000+) resulted in parole into the United States with a court date via a Notice to Appear (NTA). By November, the number of appointments had grown to roughly 360,000.

The statutory responsibility to detain inadmissible aliens as articulated in section 235 of the INA is clear and comprehensive. According to federal judge Kent Wetherell in his ruling striking down Mayorkas' Parole + ATD policy, "The evidence establishes that in late January or early February of 2021, DHS made a discrete change in detention policy from 'release only if there is a compelling reason to' to 'release unless there is a compelling reason not to.'" The numbers reflect the poor policy. When factoring in releases via parole, NTAs, and Notices to Report (NTRs), Mayorkas oversaw the release of well over three million inadmissible aliens into the

United States, along with more than 1.8 million known got aways that have evaded short-staffed agents on the line unable to apprehend and detain them.

Mass release is a major incentive for illegal aliens to come. The cartels sell the fact that one can cross the border illegally, turn yourself over to a Border Patrol Agent, get processed quickly, get a free airline ticket to the city of the alien's choice, get put up in a hotel, get three meals a day, free medical care, and a work permit. This giveaway program is causing much of the current crisis. The lack of enforcement and the lack of consequences is at the heart of this unprecedented surge. It's not global warming, it's not seasonal and it is not typical as this Administration claims.

And for the record, we can call these millions of people "asylum seekers" but based on immigration court data over the last decade, the vast majority will never get relief from our courts because they simply don't qualify for asylum. They are not escaping fear or persecution from their home government because of the race, religion, or political affiliation. The vast majority are coming here for a better job and a better life. I understand that but it doesn't make them eligible for asylum. So, for the folks that say these millions have the right to make a claim and have the right to due process then you should also agree that whatever the immigration courts decide, those final court decisions must be carried out. Because if we don't, then due process is meaningless. If those court orders have no standing, then shut down the immigration courts and abolish the border patrol because there cannot be any border security or national security if there are no consequences for violating our nation's laws.