

Rodney Scott

Chief-Retired

US Border Patrol

Senior Distinguished Fellow, Texas Public Policy Foundation

**Testimony by Rodney S. Scott, for House Homeland Security Committee Hearing, “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis.”
June 14, 2023**

Chairman Green, Ranking Member Thompson, Members of the committee, good morning and thank you for inviting me to testify before you.

I am appearing before you to ensure that you and the American people have an opportunity to understand that the chaos at our southwest border, and the subsequent national security vulnerabilities and consequences are a direct result of informed and intentional decisions made by the Biden administration. The chaos at our borders is not a reflection on the dedicated career government personnel. The career professionals that make up DHS, and specifically US Customs and Border Protection (CBP), including the US Border Patrol (USBP), deserve our praise and admiration. I am confident that they do everything they can each and every day to secure our borders and protect America even as this administration undermines their efforts.

The information and professional assessments that I provide are grounded in nearly three decades of experience as a career Border Patrol agent and my firsthand experience working in the Biden administration, as Chief of the US Border Patrol, until I retired in August 2021. For much of my career I was honored to participate in the transition from an uncontrolled chaotic southwest border to a border that was increasingly secure. Unfortunately, that progress was reversed by the Biden administration. The informed and intentional decisions made by the Biden administration directly resulted in the predicted disintegration of border security into the chaos that now threatens to be a new normal.

The current administration, supported by a lot of media, is misleading America by asserting that they inherited a border in shambles, surges in immigration like we are experiencing are normal and that they are solving the border “challenge” by allowing aliens, without any legal immigration documents, to enter the US through official Ports of Entry. The aliens are allowed to schedule an appointment via the CBPone app, assert a fear claim and then get released with Notice to Appear in immigration court in a few years. Or they can apply for a program that relies on an expanded use of Parole authority to get into the country without immigration documents. This parole program is arguably illegal, because in part, the process lacks the individual case by case determination as required by law.

Let me be clear, the crisis at our border is still raging and poses both immediate and strategic national security threats to America. Despite the current administration’s claims, just because US Border Patrol encountered 11,000 illegal aliens on a single day with Title 42 in place does not mean that arresting 3,500 illegal aliens a day under Title 8 is a good day. First, 3,500 arrests each day continues to overwhelm USBP capabilities and empowers the cartels to control who

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and what enters the US. For context, from fiscal years (FY) 2015 through 2020, USBP averaged approximately 1,250 arrests each day. FY15 and FY17 averaged below 1,000 arrests each day. Over the course of those years, USBP was improving situational awareness and improving interdiction effectiveness. This progress ended and chaos ensued with the signing of several executive orders and public announcements on, and following January 20, 2021. The message that was heard around the world was that the US borders are open and even those without legal immigration documents will be allowed to enter the United States. As you know, this resulted in over 6 million encounters¹ and over 1.4 million known got-a-ways².

Second, these numbers and comparisons alone still fail to adequately demonstrate the severity of the border crisis or the daily consequences of mass migration. Simple encounter and arrest numbers fail to portray how much time it takes to arrest, search, transport, and then process each individual. These numbers also fail to show the thousands of hours that agents spend transporting sick and injured aliens to local hospitals and then providing 24/7 security monitoring until the alien is released.

Thirdly, these numbers fail to adequately portray the loss in situational awareness as agents are not patrolling the border while they routinely detain and then transport large groups of illegal aliens out of remote areas, often three aliens at a time depending on the terrain and the vehicle capacity. Nor do they account for the number of agents required to monitor and provide care during administrative processing. Further, these numbers do not address the loss in agent effectiveness that occurred when the border wall system, to include the surveillance technology package, was terminated leaving hundreds of miles of border without persistent surveillance capability and sporadic gaps in border barrier. These numbers also fail to show how many human trafficking incidents went undetected or measure the loss of intelligence because agents and officers do not have time to conduct thorough interviews.

Fourthly, these numbers do not address how many people got into the US undetected or the volume of narcotics that was successfully smuggled to your city. If you are unaware, the Got-a-ways reported by USBP are only the known got-a-ways. They were detected but there were no agents left to interdict them. An illegal entry unseen is an illegal entry uncouneted!

Additionally, these numbers also fail to acknowledge the impacts associated with the increased volume of undocumented migrants being funneled into our ports of entry. By redirecting CBP Officers to conduct civil immigration processing the wait times for legal trade and travel are increased. This further disrupts our supply chains and increases the cost of imported goods. Even more importantly, it also reduces the time officers have to conduct thorough inspections and interviews to identify potential threats. I would like to remind everyone that this is their real job. Nineteen (19) terrorists carried out the 9/11 attacks because the 20th terrorist was denied entry into the US by an alert officer that had time to conduct an effective inspection interview.

¹ [Nationwide Encounters | U.S. Customs and Border Protection \(cbp.gov\)](#)

² Public statements by USBP Chief Raul Ortiz

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I would also like to remind everyone that the majority of Fentanyl and other illicit narcotics, readily available in every state across our nation, originated outside the US. Every agent and officer taken away from inspection and patrol duties decreases our ability to interdict these poisons before they can make it to your families, friends, or neighbors.

I started my testimony with a strong assertion that I believe the chaos at our southwest border and the national security vulnerabilities and consequences are a direct result of informed and intentional decisions made by the Biden administration. I do not make this assertion lightly. As Chief of the US Border Patrol, my staff and I engaged directly with the transition teams prior to the inauguration, as well as President Biden's appointed personnel following the inauguration.

In two very brief direct engagements with Secretary Mayorkas, he acknowledged that the significant numbers of illegal entries were overwhelming Border Patrol capabilities and was not sustainable. He also acknowledged his prior experience in DHS and that he understood there must be consequences for illegal entry to stem the flow. The first engagement was a senior DHS leadership call with the Secretary and the second engagement was at a meeting with border Sheriffs in El Paso, TX. Unfortunately, I quickly learned that the Secretary's words and action were routinely very different. Routine conversations, formal and informal operational guidance, combine with the public actions and statements of Secretary Mayorkas and other Biden administration officials, quickly resulted in the conclusion that the administration had no intention of securing the border in any meaningful way despite the legal requirements to do so.

Biden administration personnel made it very clear in every engagement that their focus was on expediting immigration processing to increase throughput and open new opportunities for migrants to enter the US. This was very consistent with the statements made during the presidential campaign. My personal interactions also made it clear that many of the political appointees did not believe that millions of unknown, unvetted foreigners illegally entering the US were a problem. The only issue that the Biden administration appointees wanted to discuss was how to avoid the optics of large numbers of aliens, especially unaccompanied alien children, being detained in government facilities.

Nonpartisan career government personnel, to include myself, advised the Biden administration repeatedly that the removal of consequences for illegally entering the US, reimplementing catch and release, and very publicly terminating the construction on the border wall system would undoubtedly result in an influx of illegal aliens that would overwhelm US capabilities and empower the cartels. The Biden administration refused to acknowledge the national security threats that increase proportionately with any increase in illegal immigration and/or the fraud in our asylum processes. Despite being briefed and provided written warnings, the Biden administration refused to acknowledge that mass illegal immigration transfers control of the US border directly to the cartels.

From day one, political leadership in the Biden administration ignored career professionals and increasingly made policy decisions that resulted in thousands of aliens being released into the

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US. As predicted, the volume of illegal immigration rapidly increased, overwhelmed Border Patrol and effectively transferred control of our southwest border to the Mexican drug cartels.

I watched the border security gains that were made over three decades vanish and the safety of border communities spiral backwards. Policy makers must understand that this is not simply an immigration issue. This is a national security threat. Cartels use illegal aliens to overwhelm law enforcement creating controllable gaps in border security. These gaps are exploited to smuggle anything they want into the US. To think that well-resourced terrorist networks and hostile nations are not exploiting this vulnerability is naive.

Prioritizing immigration processing over enforcement also means that deployed agents are spread so thin that they often lack the capability to make an interdiction, even after an illegal entry is detected. This does not include the unknown gotaways along the hundreds of miles of border that lack persistent surveillance and go unpatrolled for days and even weeks. In my professional assessment, as a direct result of decisions and actions taken by the Biden administration and specifically Secretary Mayorkas, U.S. Border Patrol has lost the ability to know who and what is entering our homeland.

Border security is national security. My firsthand experiences taught me that border security and immigration policy are two distinctly different, yet interrelated issues. Border security is simply knowing and controlling who and what enters our homeland. Immigration and customs laws and policies are irrelevant if you cannot control the initial entry.

I realize that some people see the border security and immigration enforcement decisions of this administration, and specifically Secretary Mayorkas, as simple policy differences. I do not agree with that opinion. Policy is how you carry out your duties and responsibilities under the law. Our government officials should not be allowed to use policy differences as an excuse to ignore the law. By law, the Secretary of Homeland Security is required to take action to prevent the entry of illegal aliens and to secure the border. I argue that even if unattainable the law requires the Secretary to at least try to meet these objectives.

I believe that Secretary Mayorkas and subordinate political appointees have taken actions and made public statements clearly demonstrating that the Secretary has made informed decisions to ignore legal responsibilities. Instead, he has chosen to dedicate the resources of the Department to provide care, feeding, and even facilitating the movement of aliens that entered the US illegally. I would argue that once again his actions do not match his words and go against his own enforcement prioritization guidance issued on September 30, 2021. This guidance states that Department resources should be focused on the most significant national security and public threats. Despite issuing that guidance, he has chosen to expend a significant portion of the resources and capabilities of the Department to process civil immigration cases at the expense of addressing significant national security and public safety threats at the border.

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I have heard many people of both parties rightly argue that we have never had enough resources to detain and prosecute everyone that enters the US illegally, and that this is why we must leverage prosecutorial discretion. While on the surface this statement is true, it is also misleading, as it leaves out some very important facts. Prior to Secretary Mayorkas taking the helm at DHS, prosecutorial discretion was heavily complimented by deterrence strategies and effective polices that decreased the total number of illegal entries. As illegal entries decreased the percentage of law violators that could be detained and prosecuted increased, This acted as a further deterrent. These cascading effects resulted in improved border security year over year until January 20, 2021

I believe the intent of the law is clear even in areas where the means and methods are not clearly defined. My personal observations and experience have led me to believe that Secretary Mayorkas has intentionally ignored legal responsibilities and empowered his subordinates to do the same. Specific areas of concern are outlined below.

Secretary Mayorkas has ignored his duty to prevent aliens from illegally entering the United States as required by law.

8 USC 1103 (a)(5) Secretary of Homeland Security... He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper.

Secretary Mayorkas has ignored his duty and failed to take any meaningful action towards establishing operational control of the US borders as required by law.

The Secure Fence Act of 2006 states in part that:

...the Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States...

Biden administration personnel demonstrated contempt for the Impoundment Control Act of 1974 and openly discussed methods to ignore the Appropriations Acts that authorized and funded border wall construction. They prevented any meaningful construction, while creating the appearance that work was being done to avoid an Impoundment Act violation.

The Presidential Proclamation³ that paused border wall construction was issued on January 20, 2021. The Proclamation included a required review of each project and that a submission of a

³ [Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction | The White House](#)

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plan within 60 days. It also included the following statement,

“while providing for the expenditure of any funds that the Congress expressly appropriated for wall construction, consistent with their appropriated purpose. The plan shall be developed within 60 days from the date of this proclamation. After the plan is developed, the Secretary of Defense and the Secretary of Homeland Security shall take all appropriate steps to resume, modify, or terminate projects and to otherwise implement the plan.”

Based on statements made during the 2020 presidential campaign, I had anticipated this type of guidance and directed my staff to create a database with details of every wall project. The database would include, but not be limited to, the origination of the specific operational requirement, funding source, construction status, and any foreseeable questions that the new incoming administration may ask. That database was completed well before the Presidential Proclamation was issued. This information was presented and made available to Secretary Mayorkas and several Biden administration personnel on multiple occasions. Yet, to my knowledge, no meaningful construction of Congressionally appropriated wall projects has been resumed.

While the statements of Secretary Mayorkas and subordinate political appointees usually include at least one small fact to evoke understandable compassion for the plight of migrants, I have yet to hear a single statement or see any action toward protecting Americans or securing our borders. I acknowledge and champion our responsibility as humans to help others, but Secretary Mayorkas oversees the **United States** Department of Homeland Security, with significant capabilities and billions of tax dollars in appropriated funds, that are supposed to be used to protect Americans, and America. This administration is clearly not doing that.

I look forward to answering your questions.



Rodney Scott
Retired – Chief U.S. Border Patrol
Honor First!