

Questions for the Record
From Chairman McClintock to Chief Rodney Scott for:
The Hearing Titled, "The Biden Border Crisis: Part III."

1. As a career appointee at the Department of Homeland Security, you have served under Administrations of both parties.

a. Can you describe the most significant differences between this Administration and the prior Administration?

Answer: The three most significant differences were: 1-Mission Focus, 2-Truth and Transparency, and 3-Team.

1- Mission Focus: On January 20, 2021, the mission focus dramatically changed, shifting away from protecting America, securing our borders, and enforcing the enacted laws of the United States to what Biden administration personnel refer to as the "humanitarian mission". Picking up illegal aliens that are simply standing on US soil or surrendering and transporting them to environmentally controlled processing centers was prioritized over preventing gotaways from occurring. The term humanitarian mission was increasingly used to describe CBP and US Border Patrol's priority functions even though this does not appear in any law, regulation, or appropriations.

Over my career, prior to the Biden administration, daily discussions, strategic and tactical level strategies, as well as operational deployments focused on protecting America. CBP and Border Patrol's mission was clearly understood to be doing everything we could to control who and what was entering the United States consistent with Federal law. And, that we were continually getting better at it. This included concepts like continually expanding situational awareness of all border domains. A reciprocal way of saying this is that there was a significant effort put into reducing the unknow. In this context situational awareness includes the ability to detect and classify any illicit cross-border activity, as well as identifying and documenting any transnational criminal organizations associated with the criminal act. A significant focus was placed on improving the interdiction effectiveness of operations. In simple terms, that means the ability to interdict any identified illicit cross border activity and reduce the incidents of known gotaways.

Biden administration personnel assigned to CBP and those that I interacted with at DHS shifted the focus to protecting migrants, reducing administrative processing time, decreasing the time in custody of all arrested or encountered aliens. They also focused on changing the organizational terminology away from terms with legally established definitions found in law and regulations to fabricated terms that they found more pleasing.

This had very practical daily implications that affected operations and budget decisions. Appropriated funds intended for operations, and other border security purposes were redirected to fund temporary processing facilities, also known as soft sided facilities. Biden administration personnel initially insisted that CBP refer to these facilities as "welcoming centers" and even included this term in proposed appropriations language at one point but backed off this due to a visceral reaction from career DHS personnel.

Biden administration personnel had no interest in hearing about operational effectiveness, known gotaways, or the degradation of situational awareness.

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2- Truth and Transparency. *During the Trump administration I was empowered and required to communicate openly with the public and the media. Trump administration personnel would routinely ask me for updates on various aspects of border security that they could share publicly. At the beginning of each month the Commissioner of US Customs and Border Protection would host an open press conference including the Chief, US Border Patrol and the Executive Assistant Commissioner of Field Operations, or their designees to provide updates on enforcement actions and other initiatives that occurred over the past month. Every press conference would end with an open question and answer session. I was expected to answer questions truthfully and was never pressured to "spin" any information in any political way or to say anything that was not true. Additionally, we hosted routine conference calls with State and local law enforcement as well as other stakeholders to provide similar updates and answer any questions openly and honestly.*

Within minutes of President Biden's inauguration, Lise Clavel arrived at CBP, and I was informed that she was the new Chief of Staff. Additionally, I was informed that all public messaging must go through her. This effectively terminated direct engagement with the media. On more than one occasion I was provided factually incorrect talking points that were to be used in the unlikely event that I, or any US Border Patrol personnel were allowed to speak to the media. For example, talking points included assertions that CBP was testing aliens for Covid prior to any release, that any alien that tested positive for Covid would be quarantined appropriately, and the border was secure.

3-Team. *During the Trump administration, career government officials were consistently leveraged for subject matter expertise and recommendations to improve border security. New ideas were encouraged and constantly solicited. Communication was very fluid. Interagency workgroups were maintained at various levels. This included senior level leadership that engaged directly with the Trump administration's White House personnel, and Department level workgroups that included decision makers and subject matter experts from all DHS agencies working together as an integrated team. Additionally, interdepartmental teams were also established to tackle problem sets that crossed or involved more than one Department.*

The Biden administration choose to rely upon political appointees that routinely lacked any operational experience. Input from career professional personnel beyond supplying simple statistics was not welcomed. The Joint Interagency Action Group (JIAG) and the operational Deputies group were both completely disbanded.

Blas Nieto, a politically appointee serving as the CBP Chief Operating Officer at the time, made it very clear to me when he stated to my face, "this administration does not trust you and does not trust the Border Patrol".

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2. During your tenure as Chief of the Border Patrol, did you observe any immigration officials violate the law? If so:

Answer: Law is subject to interpretation, and the Secretary of DHS does have unique authority under the law, therefore I cannot answer this question with a simple yes or no. I believe that several decisions by the Biden administration violate the intent of Congress when laws were enacted.

Federal law requires the Secretary of The Department of Homeland Security to control and guard our borders against the illegal entry of aliens. Additionally doing anything to knowingly help an alien without legal immigration documents enter the United States is a violation of law.

8 USC 1324 (a)(1)(A)(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or (v)(I) engages in any conspiracy to commit any of the preceding acts, or (II) aids or abets the commission of any of the preceding acts,

8 USC 1103 (a) (5), Secretary of Homeland Security shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens.

Per the CBP Chief Operating Officer, Blas Nieto, via email on May 3, 2021, Subject: Huisha Huisha abeyance, Secretary Mayorkas ordered CBP's Office of Field Operations to allow 150 aliens a day, without any immigration documents, to enter the US Port of Entry and to process them under Title 8 Immigration authority. To my knowledge names, or other personal identifiable information for each alien was not provided in advance nor was any individualized assessment of each alien provided. It is my understanding that Secretary Mayorkas deferred authority to a consortium of non-governmental organizations (NGO) operating in Mexico. Thereby empowering the NGOs to make decisions about which aliens, with full knowledge that the aliens did not have any immigration documents allowing them to enter the US, would be allowed to enter the Port of Entry. This is arguably a violation of 8 USC 1324 and would be expanded to all of those involved via a conspiracy charge. One can argue that the Secretary has the legal authority to make these decisions yet in context, the decision still appears to violate the intent of Congress when granting the claimed underlying authority as well as the border protection and immigration laws.

Secretary Mayorkas ordered that all minors be exempt from Title 42 expulsions in total disregard for the fact that neither the order issued by CDC, nor the medical justifications associated with the CDC order made any differentiation by age, or other demographic group. The active CDC order to expel aliens was based solely on the individual's likely exposure and potential further transmission of Covid-19. Only after Secretary Mayorkas issued his guidance to DHS personnel, and had made public statements to the effect, did CDC modify the order to exempt minors. Secretary Mayorkas prioritized foreign nationals over the health and welfare of frontline DHS personnel and Americans by knowingly increasing the potential for transmission of Covid in congregate settings and created an incentive for more foreign national minors to travel to the US alone, without immigration documents, during the peak of the Covid-19 pandemic.

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On several occasions Biden administration personnel knowingly made factually incorrect statements asserting that all aliens being released into the US were being tested for Covid and appropriately quarantined if results were positive when in fact they were not. These statements were made to the public as well as Congressional Representatives. Furthermore, CBP lacked any authority to force an alien to submit to Covid testing or hold any processed alien in quarantine against their will. Additionally, these same officials provided scripted talking points with the same factually incorrect information for career CBP personnel to use them publicly. Personnel directly associated with these statements included Secretary Mayorkas, David Shahoulian and Lise Clavel.

Which laws?

- 8 USC 1103 (a) (5)
- 8 USC 1324
- The Secure Fence Act 2006

b. Which officials?

Secretary Mayorkas

David Shahoulian, DHS Policy

Blas Nieto, CBP, Chief Operation Officer

Lise Clavell, CBP, Chief of Staff

3. During your tenure as Chief of the Border Patrol, did you observe any instances when immigration laws were ordered not to be enforced by immigration officials? If so:

Answer: Yes.

a. Which laws?

8 USC 1325, via memorandum issued September 20, 2021, by Secretary Mayorkas

b. By which officials?

Secretary Mayorkas

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4. During your tenure with the Border Patrol, can you describe when you observed that the border was most secure?

Answer: *In my professional assessment, the border was never more secure than it was in the first quarter of Fiscal year 2021 (Oct. 1, 2020 - Dec. 31, 2020). To be clear, prior to Secretary Mayorkas, no one in a position of authority has ever asserted that the US international borders are secure. Several officials, including myself have asserted that our borders were never more secure than they were during the last year of the Trump administration.*

a. What made it so?

Answer: *The short answer is, intent. With the single exception being President Biden, it has been my experience that every Presidential administration that I served under since 1992 made an intentional effort to improve the security of our international borders. From an operational perspective, several factors contributed to the most secure border that I have ever known, peaking during the Trump administration. However, the two most significant factors are the certainty of arrest and the likely hood of a meaningful consequence for violating the law. For an illegal alien the most meaningful consequence is removal from the United States. For a smuggler a meaningful consequence can include prosecution with a lengthy incarceration, fines, and, or the forfeiture of property.*

Before I get into the specifics, I believe it is important to frame the conversation and ensure you understand the context of the terms, definitions, and metrics that I rely upon. Per The Secure Fence Act of 2006, the legal definition of Operational Control means the prevention of all unlawful entries into the United States. As such, when operational control is established the certainty of arrest would be 100%. However, if a meaningful consequence does not follow the arrest, then the arrest will cease to have any deterrent effect and become meaningless. In the context of illegal immigration, history has proven that releasing aliens into the United States pending final adjudication of their case will certainly result in a significant increase in illegal entries. What is commonly referred to as catch and release not only fails to create a deterrent, but it also multiplies future illegal entries as each alien that is released calls home or posts his/her story on social media and other see the release as success.

Year over year, until January 20, 2021, US Border Patrol (USBP) continually refined strategies, operations, and investments that progressed toward the goal of establishing and maintaining operational control of our borders. Several factors come into play when establishing or even determining the level of operational control but the most critical is situational awareness. In laymen's terms this is simply knowing who and what is crossing the border at any given time and place. Through strategic investments in tactical infrastructure, complimented with technology, intentional personnel deployments and increasing data collection and analysis, USBP was systematically improving situational awareness and subsequently improving the effectiveness of each agent. Deploying an appropriate mix of infrastructure and technology resulted in an ability to control significantly more of the border with a single agent. This significantly increased the certainty of arrest.

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Just as importantly, during the Trump administration several initiatives were put in place to increase meaningful consequences, reduce the time from arrest to removal, and reduce the incidents where illegal aliens were released into the United States while their immigration case was being adjudicated.

On and after January 20, 2021, the Biden administration dismantled or reduced many of the programs that facilitated a meaningful consequence and served as a deterrent. Some examples include detention, the Migrant Protection Protocols, Electronic Name Verification, Asylum Cooperative Agreements, prosecutions, and investments in removal flights.

The Biden administration went even further and created categorical exemptions to Title 42 expulsions and increasingly released aliens into the United State. This created a tidal wave of illegal entries that surpassed the capabilities of the US Border Patrol and all but eliminated the certainty of arrest for any that was willing to pay more money to avoid law enforcement, or for any narcotics smuggler that would simply wait until all the Border Patrol agents were occupied by the massive illegal immigration.

5. During your tenure as Chief of the Border Patrol under the current Administration, did you advise any officials about the effectiveness of the prior Administration's policies? If so:

Answer: Yes.

a. What were your recommendations?

I recommended that we keep the migrant protection protocols (MPP) and asylum cooperative agreements in place to keep asylum fraud in check and preserve the integrity of the asylum system. I also provided a factual counter narrative to claims that forcing aliens to wait in Mexico until their court date was inherently dangerous. I shared information provided by Mexican law enforcement about incidents that were wrongly associated with the MPP shelters but were a result of the individual alien's behavior and criminal actions completely apart from the MPP process.

I recommended against creating categorical exemptions to Title 42 for UACs that were not consistent with the CDC order or the medical briefings that I had attended.

I recommended the completion of the border wall system consistent with the Border Security Improvement Plan developed by the United States Border Patrol. I explained that the border wall system requirements were developed over several years by the USBP. I also explained that the border wall system included integrated fiber optic cabling that was intended to be the spinal cord for USBP situational awareness and communications over the next decade and that terminating construction would also result in the termination of the associated technology deployments. I also made it clear that the border wall system was not a simple "vanity project" of the prior administration as was being asserted by many in the media and by the administration personnel.

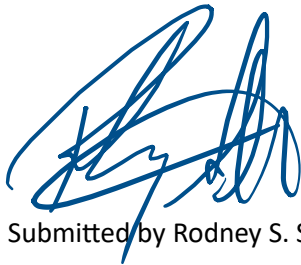
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b. Did you warn about the consequences of rolling back border enforcement policies?

Answer: Yes. *I, along with other career personnel, made it very clear that removal of consequences, and increasing catch and release would certainly result in a massive increase in illegal immigration and other smuggling.*

c. If you had concerns, were they addressed or ignored? By which officials?

Answer: *All concerns were ignored. Prior to inauguration this included the transition teams, which included Blas Nieto. Well after inauguration, I was even told to my face by Blas Nieto that the administration did not trust me and did not trust the Border Patrol. Lise Clavell and Secretary Mayorkas were also advised and ignored recommendations.*



Submitted by Rodney S. Scott

June 20, 2023