

**PROTECTING THE HOMELAND: AN EXAMINATION  
OF FEDERAL EFFORTS TO SUPPORT STATE  
AND LOCAL LAW ENFORCEMENT**

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**JOINT HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
COUNTERTERRORISM, LAW  
ENFORCEMENT, AND INTELLIGENCE**

AND THE

**SUBCOMMITTEE ON  
EMERGENCY MANAGEMENT AND  
TECHNOLOGY**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTEENTH CONGRESS**

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**PROTECTING THE HOMELAND: AN EXAMINATION OF FEDERAL EFFORTS TO SUPPORT STATE AND LOCAL LAW ENFORCEMENT**

**Tuesday, May 16, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON COUNTERTERRORISM, LAW ENFORCEMENT,  
AND INTELLIGENCE, AND THE  
SUBCOMMITTEE ON EMERGENCY MANAGEMENT  
AND TECHNOLOGY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9 a.m., at Room 310, Cannon House Office Building, Hon. August Pfluger [Chairman of the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence] presiding.

Present from the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence: Representatives Pfluger, D'Esposito, Crane, Brecheen, Magaziner, Carter, Correa, and Goldman.

Present from the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence: Representatives D'Esposito, LaLota, Strong, Brecheen, Carter, and Goldman.

Also present: Representative Thompson, Higgins, Lee, Steel, Ivey, Titus, and Jackson Lee.

Chairman PFLUGER. The Committee on Homeland Security, Subcommittee on Counterterrorism, Law Enforcement and Intelligence, and Subcommittee on Emergency Management and Technology will come to order. The purpose of this hearing is to examine the state of U.S. law enforcement and how the Department of Homeland Security is engaged with State and local authorities across America to fight crime, as well as prepare for disaster response. Without objection, the gentlewoman from California, Mrs. Michelle Steel, the gentleman from Louisiana, Mr. Clay Higgins, and the gentlewoman from Florida, Ms. Laurel Lee, are permitted to sit on the dais and ask questions of the witnesses.

I now recognize myself for an opening statement. Good morning. We are holding an important hearing during National Police Week, a time when we recognize and honor the sacrifices and service of our men and women in law enforcement from across the country. I am pleased to have some of my own constituents here that are joining us today. I would first like to recognize Odessa Police Chief Michael Gerke as a witness today. In addition, I am pleased to have Midland County Sheriff David Criner and his wife Judy in the audience with us.

I have had the luxury of getting to know both of these gentlemen as well over the last 2 years, and I know that Chief Gerke will provide some valuable insight as to what issues rural police departments are facing throughout the country. Unfortunately, I think we have forgotten what it means to support our men and women in law enforcement who serve our communities every day, many of whom, well, let me strike that. All of whom are real-life heroes.

Last year, 246 law enforcement officers were tragically killed in the line of duty. This year, there have already been 41 officers killed in the line of duty serving their communities. Just this past Thursday, on May 11, Sergeant Joshua Clouse of the Cameron Police Department in Texas was shot and killed by a subject who was wanted for shooting his wife during a domestic violence incident earlier in the night as he and other officers executed a search warrant. Sergeant Clouse was an army veteran and had a wife and two children. He is a hero, and I pray for his family and friends.

We have also forgotten the importance of holding people accountable for engaging in criminal activities and preying on law-abiding citizens. From increases in aggravated assaults, robberies, and retail theft to dealing illicit fentanyl, I think many Americans no longer feel safe in their communities. Some cities are even releasing criminals back into their communities due to zero bail policies and downgrading the sentencing for felonies, allowing these bad actors to continue committing crimes. What message is this sending to career criminals? It is not one of law and order, but instead encourages lawlessness across the homeland and is unacceptable.

While criminals are not being held accountable for their actions, our law enforcement officers face extremely low morale in many places. Unfortunately, in some places that is due to anti-police sentiment. Extreme budget cuts, rogue legal reforms, and the media bias against law enforcement have resulted in significant recruitment and retention challenges for State and local law enforcement agencies across the country. These factors are not only preventing law enforcement from carrying out their duties to protect Americans, but they are also impeding police agencies across the homeland from having the resources to further train officers and prevent other mishaps.

If we continue down the path of cutting law enforcement budgets, police departments will be left with a difficult choice between lowering recruitment standards or being unable to meet their hiring needs. This committee has an important role to play as we oversee the Department of Homeland Security, which looks to support, let me say that again, support State and local, Tribal, territorial law enforcement agencies in their efforts to keep our communities safe, secure, and resilient.

From a Homeland Security standpoint, it has been over 20 years since 9/11 happened, yet we still have challenges for the timely sharing of information between the Federal Government and State and local agencies. While we have made significant progress, I worry that there continue to be gaps in how we share information in a consistent and timely manner. We have to work together to overcome these barriers, as information sharing is critical to combat the wide variety of threats that we face today. In particular, when it comes to fusion centers, which are primarily State-funded

facilities established with the purpose of information sharing between those levels, there is a common saying that says if you have seen one fusion center, you have seen one fusion center.

It is important that we ensure DHS is properly supporting fusion centers as they serve as focal points in State and urban areas for the receipt, analysis, gathering, and sharing of threat-related information. States like Texas have many different threats impacting their communities. I have seen first-hand how metropolitan areas like the one I visited in San Antonio can coordinate seamlessly between Federal, State, and local levels.

Furthermore, DHS provides various Federal grants to assist State, local, and territorial partners. We need to ensure that these grant programs continue and that they are effective in doing out what their mission says that they should be doing. Unfortunately, rural areas like my district do not experience that luxury and must rely on fusion centers that are located in other areas. There have been numerous times in the last month where Texas, DPS, or CBP were pursuing human smugglers, drug traffickers, or other malign actors through small towns in West Texas along the border that have led to catastrophic loss of life. Had a fusion center been established that caters to the unique needs of those rural areas, maybe it could have been easier for local and State law enforcement agencies to better coordinate with CBP and DPS. Today, I hope that we can examine this issue. I hope that we can find ways to highlight the information sharing and where it can be more readily available and more effective.

Last, it is important that our Nation must restore a sense of appreciation for the men and women who wear the uniform, who protect our communities, and who have been willing to sacrifice their own lives for the betterment of their communities. We have a very distinguished panel of witnesses to testify about the challenges between State and local law enforcement agencies, both in rural and in urban areas. I would like to thank all of our witnesses, not just for being here today, but more importantly, for you and your family's sacrifices in being willing to serve our Nation.

[The statement of Chairman Pfluger follows:]

STATEMENT OF CHAIRMAN AUGUST PFLUGER

MAY 16, 2023

Good morning, we are holding this important hearing during National Police Week, a time when we recognize and honor the sacrifices and service of our men and women in law enforcement from across the country.

I am pleased to have some of my constituents join us today. First, I would like to recognize Odessa Police Chief Michael Gerke as a witness today. In addition, I am pleased to have Midland County Sherrif David Criner and his wife, Judy, in the audience. I have had the luxury of getting to know both of these gentlemen well over the last 2 years and I know that Chief Gerke will provide some valuable insight as to what issues rural police departments are facing.

Unfortunately, we've forgotten what it means to support our men and women in law enforcement who serve our communities every day—many of whom are real-life heroes.

Last year, 246 law enforcement officers were tragically killed in the line of duty. This year, there have already been 41 officers killed in the line of duty serving their communities.<sup>1</sup>

<sup>1</sup>Officer Down Memorial Page, <https://www.odmp.org/>.

Just this past Thursday, on May 11, Sergeant Joshua Clouse of the Cameron Police Department in Texas, was shot and killed by a subject, who was wanted for shooting his wife during a domestic violence incident earlier in the night, as he and other officers executed a search warrant.<sup>2</sup> Sergeant Clouse was an Army veteran, had a wife, and two children.

Sergeant Clouse is a hero. I sincerely pray for his family and friends.

We've also forgotten the importance of holding people accountable for engaging in criminal activities and preying on law-abiding citizens—from increases in aggravated assaults, robberies, and retail theft to dealing illicit fentanyl, Americans no longer feel safe in their communities.

Some cities are even releasing criminals back into their communities due to zero bail policies and downgrading the sentencing for felonies, allowing these bad actors to continue committing crimes.

What message is this sending to career criminals?

It is not one of law and order but instead encourages lawlessness across the homeland—this is unacceptable.

While criminals are not being held accountable for their actions, our law enforcement officers face extremely low morale due to anti-police sentiments.

Extreme budget cuts, rogue legal reforms, and the media bias against law enforcement have resulted in significant recruitment and retention challenges for State and local law enforcement agencies across the country.

These factors are not only preventing law enforcement from carrying out their duties to protect Americans, but they are also impeding police agencies across the homeland from having the resources to further train their officers and prevent any police misconduct.

If we continue down the path of cutting law enforcement budgets, police departments will be left with the difficult choice between lowering their recruitment standards or being unable to meet their hiring needs.

This committee has an important role to play as we oversee the Department of Homeland Security, which looks to support State, local, Tribal, territorial law enforcement agencies in their efforts to keep our communities safe, secure, and resilient.

From a homeland security perspective, it has been over 20 years since 9/11, and we still have challenges for the timely sharing of information between the Federal Government and State and local law enforcement agencies.

While we've made some significant progress, I worry that there continues to be gaps in how we share information in a consistent, timely, and effective manner.

We must work together to overcome these barriers as information sharing is critical to combat the wide variety of threats from criminals and terrorists.

In particular, when it comes to Fusion Centers, which are primarily State-funded facilities established with the purpose of information sharing between State, local, Tribal, territorial, and Federal agencies, there is a common saying, "If you've seen one Fusion Center, you've seen one Fusion Center."

It is important that we ensure DHS is properly supporting Fusion Centers as they serve as focal points in States and urban areas for the receipt, analysis, gathering, and sharing of threat-related information.

States, like Texas, have many different threats impacting their communities. I have seen first-hand how metropolitan areas, like the one I visited in San Antonio, can coordinate seamlessly between Federal, State, and local law enforcement agencies.

Furthermore, DHS provides various Federal grants to assist State, local, Tribal, and territorial partners. We need to ensure these grant programs are effectively assisting law enforcement as they work to carry out their important mission.

Unfortunately, rural areas, like my district, do not experience that luxury and must rely on Fusion Centers hundreds of miles away. There have been numerous times in the last month where Texas DPS or CBP were pursuing human smugglers and drug traffickers through small towns in west Texas along the border that have led to catastrophic loss of life. Had a Fusion Center been established that caters to the unique needs of rural areas, local law enforcement agencies could have better coordinated with CBP and DPS.

I hope we can examine this issue today and find ways to better share information to our rural communities.

Last, it is important that our Nation must restore a sense of appreciation and respect for our men and women in law enforcement who serve our communities.

<sup>2</sup>Officer Down Memorial Page, Sergeant Joshua I. Clouse, <https://www.odmp.org/officer/26723-sergeant-joshua-i-clouse>.



We have a distinguished panel of witnesses to testify about the challenges State and local law enforcement agencies in both rural and urban areas face in responding to crimes in their communities.

Thank you to all our witnesses for being with us this morning, and I look forward to our discussion on this critical topic.

Chairman PFLUGER. I now recognize the Ranking Minority Member on this committee, Mr. Magaziner, for his opening statement.

Mr. MAGAZINER. Thank you, Chairman. I want to thank all of our witnesses for being here, and particularly our law enforcement witnesses. Thank you for your selfless service. Every day, you and the men and women you serve alongside put your lives at risk to protect and serve this Nation. While this is National Police Week, we honor your service every day. We are grateful for the sacrifices you and your families make, and we particularly honor those officers who have made the ultimate sacrifice and have died in the line of duty. I know I speak for everyone on both of our committees when I express my gratitude to you in our commitment to supporting the funding, the staffing, and the technology that you need to do your jobs safely and effectively.

We also want to highlight the importance of strong relationships between law enforcement agencies and the communities they serve. Community policing models based upon respect and collaboration between law enforcement and civilians have consistently been shown to be effective in reducing crime and improving safety of both officers and civilians. Police officers are often the first responders on the scene of overdoses, and we must ensure that officers have the support and the training to respond effectively in the midst of this epidemic. In order for us to reduce crime and make police work safer for those who put on the uniform, we must continue to fight for common-sense gun safety laws so that neighborhoods are safe from gun violence and police officers are never outgunned.

In the last several years, 504 police officers were killed on duty in the United States, and of those, 456 officers were fatally shot with a gun, meaning that 90 percent of line-of-duty deaths were perpetrated with a gun. This gun violence epidemic has only become worse in recent years. From 2020 to 2021, the number of police officers fatally shot rose 35 percent. It should be no surprise that these increasing occurrences of preventable officer deaths are three times more likely to occur in States with weak gun laws.

States like mine that have passed common-sense gun safety laws like background checks, red-flag laws, and ghost gun and high-capacity magazine bans generally see lower levels of gun violence and officers killed on duty than States with weaker gun safety laws.

Another factor in preventing violence is strong collaboration and information sharing between Federal and local law enforcement agencies. I share the Chairman's concern and our focus on this area because it is particularly important in preventing acts of terrorism, which is a key focus of our subcommittee. We must build on the lessons learned from the fusion center model and ensure that collaboration between State and local law enforcement in anticipating and neutralizing threats, both foreign and domestic, is as seamless as possible. Information sharing between Federal and local agencies is vital in neutralizing terror threats and preventing mass casualty events.

I find it disturbing that some of our colleagues have taken to calling for Federal law enforcement agencies like the FBI and the ATF to be defunded. I know that they do not speak for all in their party, and they certainly do not speak for all Americans, but this rhetoric is dangerous for many reasons, including the fact that these agencies play a vital role in supporting local law enforcement in preventing and responding to mass casualty events.

My hope is that this hearing will provide an insight to us as legislators on the best practices from around the country, as we work together in our shared goal to improve the safety of our homeland and all of its citizens. In addition to having an earnest conversation about gun safety laws and fusion centers, I hope to hear from today's witnesses about ways that the Federal Government can support your efforts to keep communities safe, including through improved information sharing. I want to thank the Ranking Member—I am sorry—I want to thank the Chairman for calling this hearing. I ask unanimous consent to insert into the record two statements from the Brady: United Against Gun Violence and Gifford Law Center detailing how weak gun laws endanger law enforcement. I also ask for unanimous consent that Congresswoman Jackson Lee and Congressman Ivey be allowed to sit in on today's hearing and question the witnesses. With that, I yield back.

[The statement of Ranking Member Magaziner follows:]

STATEMENT OF RANKING MEMBER SETH MAGAZINER

MAY 16, 2023

To our law enforcement witnesses, thank you for your selfless service. Every day, you, and the men and women you serve alongside in uniform put your lives at risk to protect and serve this Nation. This may be Police Week, but we honor your service every day, we are grateful for the sacrifices you and your families make, and we particularly honor those officers who have made the ultimate sacrifice and have died in the line of duty.

I speak for all of the Democrats on our subcommittees when I express my gratitude to you, and our commitment to supporting the funding, the staffing, and the technology you need to do your jobs safely and effectively. We also want to highlight the importance of strong relationships between law enforcement agencies and the communities they serve. Community policing models based upon respect and collaboration between law enforcement and civilians have consistently been shown to be effective in reducing crime and improving safety for both officers and civilians.

Police officers are often the first responders on the scene of overdoses, and we must ensure that officers have the support and training to respond effectively in the midst of this epidemic. And in order for us to reduce crime and make police work safer for those who put on the uniform, we must continue to fight for common-sense gun safety laws so that neighborhoods are safe from gun violence and police officers are never outgunned.

From 2012 to 2021, 504 police officers were killed in the United States. Out of those, 456 officers were fatally shot with a gun—meaning that 90 percent of line-of-duty deaths were perpetrated with a gun. This gun violence epidemic has only become worse in recent years. From 2020 to 2021, the number of police officers fatally shot rose 35 percent—and it should be no surprise that these increasing occurrences of preventable officer deaths are three times more likely to occur in places with weak gun laws. States like mine that have passed common-sense gun safety laws like background checks, red flag laws, and ghost gun and high-capacity magazine bans, generally see lower levels of gun violence and officers killed on duty than States with weaker gun safety laws.

Another factor in preventing violence is strong collaboration and information sharing between Federal and local law enforcement agencies. This is particularly important in preventing acts of terrorism, a key focus of our subcommittee. We must build on the strength of the fusion center model and ensure that collaboration between State and local law enforcement in anticipating and neutralizing terror threats, both

foreign and domestic, is as seamless as possible. Information sharing between Federal and local agencies is vital in neutralizing terror threats and preventing mass casualty events.

I find it disturbing that some of our colleagues on the far right have taken to calling for Federal law enforcement agencies like the FBI and ATF to be defunded. I know they do not speak for all in their party, and they certainly do not speak for all Americans. But this rhetoric is dangerous for many reasons, including the fact that these agencies play a vital role in supporting local law enforcement in preventing and responding to terror events.

My hope is that this hearing will provide insight to us as legislators, and best practices for those watching around the country, as we work together in our shared goal to improve the safety of our homeland and all of its citizens. In addition to having an earnest conversation about common-sense gun laws, I hope to hear from today's witnesses about other ways the Federal Government can support your efforts to keep our communities safe, including through improved information sharing.

Chairman PFLUGER. Thank you, Mr. Ranking Member. So ordered on the request.

[The information follows:]

LETTER FROM BRADY SUBMITTED BY RANKING MEMBER SETH MAGAZINER

The Honorable AUGUST PFLUGER,  
*Chairman, Subcommittee on Counterterrorism, Law Enforcement, and Intelligence, House Committee on Homeland Security, 1124 Longworth House Office Building, Washington, DC 20515.*

The Honorable ANTHONY D'ESPOSITO,  
*Chairman, Subcommittee on Emergency Management and Technology, House Committee on Homeland Security, 1508 Longworth House Office Building, Washington, DC 20515.*

The Honorable SETH MAGAZINER,  
*Ranking Member, Subcommittee on Counterterrorism, Law Enforcement, and Intelligence, House Committee on Homeland Security, 1218 Longworth House Office Building, Washington, DC 20515.*

The Honorable TROY CARTER,  
*Ranking Member, Subcommittee on Emergency Management and Technology, House Committee on Homeland Security, 1442 Cannon House Office Building, Washington, DC 20515.*

*May 15, 2023.*

DEAR CHAIRMEN PFLUGER AND D'ESPOSITO AND RANKING MEMBERS MAGAZINER AND CARTER: Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Our organization today carries the name of Jim and Sarah Brady. As you know, Jim was shot and severely injured in the assassination attempt on President Ronald Reagan. As victims of gun violence and lifelong gun owners, Jim and Sarah dedicated the rest of their lives to passing Federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

We are grateful to the committee for holding a hearing on the Federal efforts to support law enforcement throughout the country. We hope that this hearing will foster important discussions regarding Federal policies which affect the safety of the public and the law enforcement officers charged with protecting them.

Such a hearing would be remiss if it did not address perhaps the greatest danger to law enforcement officers in America: the flow of firearms to the illegal market. As you likely are aware, firearm injuries are the leading cause of death among police officers feloniously killed in the line of duty, responsible for 84 percent of all

such deaths in 2021.<sup>1</sup> Further, analysis has shown that felonious officer deaths by firearm have increased by 22 percent in the last decade.<sup>2</sup>

Guns do not simply appear out of thin air into cities like Oakland, Baltimore, Chicago, and Washington, DC—all cities with strong gun laws and high gun violence homicide rates year over year. Instead, tens of thousands of guns are trafficked across State lines every year,<sup>3</sup> often from States with weak laws to States with much stronger laws.<sup>4</sup> Most cities impacted the greatest by gun violence have few, if any, Federal firearms licensees (FFLs) within their city limits; rather, FFLs that are the sources of crime guns to these places typically sit outside the communities in less diverse and more affluent suburbs.

Crucially, just a small percentage of gun dealers are responsible for diverting the overwhelming majority of guns to the criminal market. According to the latest available data, about 90 percent of crime guns can be traced back to roughly 5 percent of licensed gun dealers.<sup>5</sup> Gun tracing—the method for identifying a gun’s sequence of ownership from manufacture to first retail sale<sup>6</sup>—is used to link a suspect with a firearm in a criminal investigation, to identify potential traffickers, and to detect in-State and inter-State patterns in the sources and kinds of crime guns. Trace data used to be publicly accessible, pulling back the curtain on negligent and unlawful gun dealers, but the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has interpreted the Tiahrt Amendments as blocking it from releasing that data, shielding the industry from scrutiny.<sup>7</sup> Congress should eliminate this impediment to the disclosure of trace data, to ensure transparency and provide lawmakers, researchers, and law enforcement agencies with a thorough understanding of the flow of illegal guns.

Gun traffickers also obtain firearms through burglary and theft from FFLs that lack adequate physical security or recordkeeping. Nearly 175,000 firearms were reported “stolen or lost” by FFLs between 2004 and 2011,<sup>8</sup> and burglaries and robberies of FFLs increased 48 percent and 175 percent, respectively, between 2012 and 2016.<sup>9</sup> However, there are virtually no Federal security requirements required of gun dealers to prevent theft. Congress should impose security requirements for licensed gun dealers to prevent the theft and loss of firearms that further supply the criminal market and endanger the lives of law enforcement officers.

While ATF is the only agency with oversight of the gun industry, and additionally provides critical crime gun tracing services to Federal, State, and local law enforcement, it is woefully under-resourced. Despite having a goal of inspecting all FFLs every 5 years, the agency has consistently fallen well short of that,<sup>10</sup> inspecting only 12 percent to 13 percent of all dealers, pawnshops, and manufacturers on average.<sup>11</sup>

ATF consistently falls short enforcing the law against the gun industry, primarily because the gun lobby has tied the agency’s hands behind its back by denying it

<sup>1</sup>Federal Bureau of Investigations, *Law Enforcement Officers Killed in the Line of Duty Statistics for 2021*, November 9, 2022. Available at <https://leb.fbi.gov/bulletin-highlights/additional-highlights/crime-data-law-enforcement-officers-killed-in-the-line-of-duty-statistics-for-2021>.

<sup>2</sup>Grace Hauck, *A ‘disturbing trend’: More police are dying from gun violence today than a decade ago*, USA Today, January 11, 2023. Available at <https://www.usatoday.com/story/news/nation/2023/01/11/police-officer-deaths-2022-report/11017969002/>.

<sup>3</sup>G. Aisch and J. Keller, *How Gun Traffickers Get Around State Gun Laws*, New York Times: 13 November 2015. Available at <https://www.nytimes.com/interactive/2015/11/12/us/gun-traffickers-smuggling-state-gun-laws.html>.

<sup>4</sup>Department of Justice, *Data & Statistics: U.S. Firearms Trace Data by State*, Bureau of Alcohol, Tobacco, Firearms, and Explosives: Accessed 12 December 2022. Available at <https://www.atf.gov/resource-center/data-statistics>.

<sup>5</sup>Department of Treasury, *Commerce in Firearms in the United States*, Bureau of Alcohol, Tobacco, and Firearms: February 2000. Available at [http://www.joebrower.com/RKBA/RKBA\\_FILES/GOV\\_DOCS/BATF\\_report\\_020400.pdf](http://www.joebrower.com/RKBA/RKBA_FILES/GOV_DOCS/BATF_report_020400.pdf).

<sup>6</sup>Department of Justice, *National Tracing Center*, Bureau of Alcohol, Tobacco, Firearms, and Explosives. Accessed 12 December 2022. Available at <https://www.atf.gov/firearms/national-tracing-center>.

<sup>7</sup>W. Stachelberg, A. Gerney, and C. Parsons, *Blindfolded, and with One Hand Tied Behind the Back*, Center for American Progress: 19 March 2013. Available at <https://www.americanprogress.org/article/blindfolded-and-with-one-hand-tied-behind-the-back/>.

<sup>8</sup>Department of Justice, *Review of ATF’s Federal Firearms Licensee Inspection Program*, Evaluation and Inspections Division, Office of the Inspector General: April 2013. Available at <https://oig.justice.gov/reports/2013/e1305.pdf>.

<sup>9</sup>C. Parsons and E. Vargas, *Stolen Guns in America: A State by State Analysis*, Center for American Progress: 25 July 2017. Available at <https://www.americanprogress.org/article/stolen-guns-america/>.

<sup>10</sup>DOJ, *Review of ATF’s Federal Firearms Licensee Inspection Program*.

<sup>11</sup>Department of Justice, *Fact Sheet—Facts and Figures for Fiscal Year 2021*, Bureau of Alcohol, Tobacco, Firearms, and Explosives: August 2022. Available at <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2021>.

funding and hamstringing its leadership. Without a fully resourced ATF, the small portion of gun dealers who are diverting illegal weapons into communities will continue to go unchecked, driving up rates of violence and crime. Congress should provide adequate funding for ATF to ensure robust oversight of the firearms industry to prevent the illegal diversion of firearms which endanger law enforcement officers.

Brady has represented several law enforcement officers, and their families, when they have fallen victim to guns diverted to the illegal market due to the negligent and irresponsible behavior of gun industry actors. We will continue to work on their behalf, but implore Congress to work toward solutions that protect their safety.

Most Sincerely,

MARK A. COLLINS,  
*Director, Federal Policy, Brady.*

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STATEMENT OF GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE SUBMITTED BY  
RANKING MEMBER SETH MAGAZINER

MAY 16, 2023

HOW WEAK GUN LAWS ENDANGER LAW ENFORCEMENT

Giffords Law Center to Prevent Gun Violence was formed 30 years ago after a mass shooting at a San Francisco law firm and renamed for former Congresswoman Gabby Giffords after joining forces with the organization she leads. Giffords Law Center fights for laws, policies, and programs proven to save lives. We combine deep expertise with tenacity and fierce dedication to lasting systemic change, and arm advocates, legislators, and the media with the tools they need to understand the facts about the gun violence crisis and the solutions that will solve it. Giffords Law Center accomplishes this by filing amicus briefs in cases challenging lifesaving gun laws, by tracking and analyzing firearm legislation around the country, and by developing in-depth reports on various aspects of our country's gun violence crisis.

In a little over 1 week, the 1-year mark of the massacre at Robb Elementary in Uvalde, Texas, will be upon us. In the last month, countless lives have been lost and irrevocably changed by the presence of a gun: Less than 2 weeks ago 8 people, including several children, lost their lives in Allen, Texas; a few days before that one person lost their life and 4 others were injured in Atlanta, Georgia; a few days before that 5 people lost their lives, including a 9-year-old in Cleveland, Texas; almost a week before that, 9 teenagers were injured in Jasper, Texas; and in the span of less than a week, 3 shootings involving an innocent mistake by the victims resulted in their victimization—mistakenly ringing the wrong doorbell, mistakenly pulling into the wrong driveway, mistakenly entering the wrong car. This list does not even account for a quarter of the shootings or victims of gun violence in the last month.

This list also does not account for the innumerable law enforcement officers who are called to respond to these dangerous situations and so many more, putting their lives on the line to save the lives of countless individuals, often becoming a victim themselves—physically and mentally. In 2021, almost 73 percent of law enforcement officers who died from felonious assaults were killed by firearms. This is a 36 percent increase over the number of officers killed by firearms in 2020 and the second leading cause of line-of-duty deaths of law enforcement officers. One study found that the law enforcement officer homicide rate was 3 times higher in States with high firearm ownership compared with States with low firearm ownership.<sup>1</sup>

We cannot allow this violence to continue for the next generation. Proposed gun law reforms, many of which have been introduced this Congress, would make a difference, not just to keep the public safe but to also protect law enforcement. Gun safety laws can reduce the quantity of illegal firearms in circulation, make it difficult for individuals who are prohibited from possessing guns to possess them, and reduce the number of dangerous illegal modification devices proliferating in communities. In these ways, they also help prevent and reduce the myriad of incidents that lead to law enforcement officer firearm-related death and injury. Some of the biggest dangers to law enforcement involve firearms in the wrong hands. The life-saving proposals described below, which enjoy the support of overwhelming numbers of Americans and will protect our law enforcement officers, just require action by this legislature.

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<sup>1</sup>David I. Swedler, et al., "Firearm Prevalence and Homicides of Law Enforcement Officers in the United States," *American Journal of Public Health* 105, no. 10 (October 2015): 2042–2048, doi:10.2105/AJPH.2015.302749.

## ASSAULT WEAPONS

Besides enabling mass shootings, assault weapons pose a particular danger to law enforcement officers. From 2016 to 2018, 1 in 5 law enforcement officers were killed in the line of duty by an assault weapon. Assault weapons are extremely lethal and law enforcement, when faced with assault weapons, are outgunned and under-trained; body armor often does not protect them from these lethal weapons.

Assault weapons are designed to maximize the number of people shot in the shortest amount of time. The key feature of assault weapons is the ability to accept detachable large-capacity ammunition magazines, which are magazines with a capacity of more than 10 rounds of ammunition that allow a shooter to keep firing for longer periods of time, increasing casualties and reducing victims' ability to escape or intervene.

In July 2016, a gunman ambushed a group of police officers who were assigned to a protest in the streets of Dallas, Texas. Five officers were shot and killed, and 9 others were injured. The shooter used a semi-automatic variant of a Kalashnikov AK-74 rifle to murder these police officers. Although the shooter had received military training, Federal law still enables anyone to access the kind of rifle he used through legal channels. In addition to the rifle, the shooter carried a handgun with a high-capacity magazine. Because the shooter and his weapons were so dangerous, police initially thought there were multiple shooters who "planned to injure and kill as many law enforcement officers as they could," and police had to use a bomb attached to a remote control bomb disposal robot to stop the shooter.

This was a targeted attack on law enforcement that then-President Barack Obama called a "vicious, calculated, despicable attack" and a "tremendous tragedy." Dallas Police Chief David Brown said that police efforts to identify the shooter were complicated by the fact that up to 30 civilians were openly carrying rifles during the protest and was quoted as saying, "We're trying as best we can as a law enforcement community to make it work so that citizens can express their Second Amendment rights. But it's increasingly challenging when people have AR-15s slung over their shoulder and they're in a crowd. We don't know who the good guy is versus the bad guy when everyone starts shooting."

That same month (July 2016), in an unrelated incident, a man in Baton Rouge, Louisiana, shot 6 police officers, killing 3, with a semi-automatic assault rifle at a shopping complex near a convenience store close to the Baton Rouge Police Department's Headquarters. The weapon the shooter used to attack law enforcement was a variant of the weapon deemed standard for the Israeli infantry's combat units. The officers killed were Deputy Bradford Allen "Brad" Garafola, 45, who had been with the East Baton Rouge Parish Sheriff's Office since 1992, and had 4 children; Officer Matthew Lane Gerald, 41, a former Marine who had been with the BRPD for 4 months; and Corporal Montrell Lyle Jackson, 32, who had been with the BRPD since 2006, and who had a 4-month-old child.

These two attacks were premeditated ambushes, where the shooter chose assault weapons so they could outgun and kill as many police officers as possible.

Congress must do more to restrict access to these deadly weapons. We are glad Representative Cicilline introduced H.R. 698, the Assault Weapons Ban Act, which would ban the future manufacture and sale of assault weapons and large-capacity magazines. We are also glad Representative Ivey introduced his bill, H.R. 2870, to prohibit the sale of certain semiautomatic centerfire rifles and semiautomatic centerfire shotguns to persons under 21.

## ARMOR-PIERCING HANDGUNS

Armor-piercing handguns, such as AK-47 pistols, are a kind of assault weapon designed specifically to get around the regulation of short-barreled rifles in the National Firearms Act. These handguns, which fire ammunition traditionally used in rifles, combine those weapons' armor-piercing capability with the concealability of a handgun. As a result, they can pierce the standard body armor worn by police but can be hidden under a coat or cloak. The National Firearms Act subjected short-barreled rifles to strict taxation and registration requirements to reduce the risk that concealable weapons firing rifle ammunition posed to police. But now the gun industry is evading those requirements through the development of armor-piercing handguns.

In February 2019, a 17-year veteran of the Milwaukee Police Department and a Marine who served in Iraq, Matthew Rittner was killed by an AK-47 pistol while he was executing a search warrant. An autopsy revealed that the bullet pierced both lungs and his aorta. Prosecutors said the other shots were fired through the door, nearly striking the other officers. Bullets were also recovered from a garage door across the alley from the home and from a chimney on top of the garage. "The de-

fendant did admit that he knew that AK-47 ammunition was ‘devastating ammunition’ and that hitting someone in the chest with that round would probably result in that person dying.<sup>5</sup>

The Law Enforcement Protection Act, which was introduced by former Congresswoman Demings last Congress, would bring armor-piercing handguns within the ambit of the National Firearms Act, so they are regulated like short-barreled rifles. We urge Congress to take up and pass such a bill.

#### STABILIZING BRACES

Not content to simply evade the law through the development of armor-piercing handguns, the gun industry has also designed devices known as stabilizing braces to convert these handguns into true short-barreled rifles. As noted above, these firearms can penetrate the body armor commonly worn by law enforcement, meaning that they pose a serious threat to the safety of police officers. ATF has recently finalized a rule that formally classifies these weapons so that they are properly subject to the National Firearms Act’s provisions regarding short-barreled rifles. However, a House Committee has approved a resolution that threatens to rescind that rule, once again putting officers in danger. We implore this Congress to vote against this resolution, as passage would leave not only the public but also law enforcement vulnerable to the threat of these concealable firearms that are able to fire with rifle-like accuracy and firepower.

#### TRAFFICKING/STRAW PURCHASED FIREARMS

Laws against gun trafficking reduce the ways in which people at risk of violence can obtain firearms. When people who should not have access to firearms are limited in their means for accessing firearms, public safety improves and lethal threats toward law enforcement decline.

Gun traffickers take advantage of weaknesses in the law to obtain large numbers of difficult-to-trace guns that are often used in crimes without undergoing background checks.<sup>2</sup> Gun trafficking can undermine a State’s strong gun safety laws,<sup>3</sup> especially if a neighboring State has weaker gun laws. For example, 74 percent of guns used in crimes in New York State between 2010 and 2015 originated out-of-State. Nation-wide, the percentage of out-of-State guns used in crimes was 29 percent. In addition, straw purchasers often obtain guns from sellers who are known to openly collude with gun traffickers or to sell guns without asking too many questions.<sup>4</sup>

Straw purchases (in which one person falsely claims to be the gun purchaser on behalf of another, who is usually ineligible to purchase the firearm) are the most common channel identified in trafficking investigations. One man in Indiana completed the proper paperwork to purchase a firearm for his friend who lived in Chicago and was ineligible to purchase firearms, which the man knew. In August 2021, the friend and his brother killed 29-year-old Officer Ella French in Chicago, Illinois, and critically wounded her partner using the straw purchased firearm. Both men involved in the shooting were prohibited from purchasing and possessing firearms because of their criminal records. Because of this straw purchase, one cop is dead, and another was injured.

On January 26, 2015, 31 members of the New Hope Police Department, their relatives, and city employees were gathered at the New Hope City Hall near Minneapolis for a swearing-in and awards ceremony. Officer Beau Schoenhard, whose wife and 15-month-old son were nearby, was the first officer to notice a man with a shotgun approach the crowd. The man lifted the gun and began shooting. The attack landed Schoenhard and fellow officer Joshua Eernisse in the hospital, and the man with the gun was killed by police. The New Hope Police Chief later said the scene resembled “a war zone.” The shooter had been formally committed to a mental institution twice before and had been found incompetent to stand trial for a previous crime. He was nevertheless able to obtain the shotgun he used in the shooting and two other shotguns that the police later found in his car through an on-line auction. Although he was the highest bidder for these guns, the auction house required the

<sup>2</sup>Philip J. Cook, et al., “Some Sources Of Crime Guns In Chicago: Dirty Dealers, Straw Purchasers, And Traffickers,” *Journal of Criminal Law & Criminology* 104, (October 2015): 717–760.

<sup>3</sup>Daniel W. Webster, et al. “Relationship between licensing, registration, and other gun sales laws and the source State of crime guns,” *Injury Prevention* 7: no. 3 (September 2001): 184–189.

<sup>4</sup>Garen Wintemute, “Firearm Retailers’ Willingness to Participate in an Illegal Gun Purchase,” *Journal of Urban Health* 87, no. 5 (September 2010): 865–878, doi:10.1007/s11524-010-9489-6.

transactions to be processed at a gun store. He knew that he could not pass a background check, so he asked his friend to go to the gun store and buy the guns on his behalf (a straw purchase).

Milwaukee police officer Matthew Rittner was hit by one of four shots fired from an AK-47 semi-automatic pistol by a suspected gun trafficker in 2019. The charging document says the “no knock” warrant was obtained through Milwaukee County Court Commissioner J.C. Moore after a confidential informant told police that the shooter was involved with the straw purchase of 13 to 15 weapons in recent months. The complaint paints a picture of the shooter, meanwhile, as someone heavily involved in straw purchases of firearms that he and a friend later would resell at a profit. The shooter said he assembled rifles and sold them at gun shows.

The Bipartisan Safer Communities Act, enacted in June 2022, created new Federal firearms trafficking and straw purchasing laws, providing a way to protect law enforcement and the public from illegal guns. Proper utilization of this law, however, requires unprecedented cooperation and effort by Federal, State, and local law enforcement agencies. Department of Justice (DOJ) and Congressional leaders must continue to provide a way forward to ensure that gun traffickers are held accountable.

#### PREVENTABLE COMMUNITY VIOLENCE

In many of the Nation’s most disadvantaged, low-income neighborhoods, gun violence is a tragic fact of everyday life, including for the law enforcement officers who work or live in those communities. However, when there is investment in community violence intervention (CVI) programs, everyone is safer. Fewer shootings and homicides lead to increased public safety for all members of the community, including law enforcement officers who have to respond to violent incidents.

Community violence is defined by the CDC as violence between “unrelated individuals, who may or may not know each other, generally outside the home.” This includes homicides, shootings, stabbings, and physical assaults. Community violence is highly concentrated geographically and disproportionately impacts communities of color. Seventy-four percent of gun homicide victims in the United States are Black or Latinx, despite being 31 percent of the U.S. population. In 2020, more than 24,500 Americans lost their lives to homicide—nearly 80 percent of which were committed with a firearm—and tens of thousands more were injured severely enough to require hospitalization. American rates of community violence are many times higher than other developed nations.

Despite the severity of this crisis, we know that significant reductions in community violence are possible with the implementation of holistic, public health-informed strategies focused on addressing the root causes of violence. In any given city, a small number of high-risk individuals commit the majority of acts of community violence. Evidence-based community violence intervention and prevention programs identify and effectively intervene with this population, interrupting cycles of violence and retaliation, and have been proven to be highly effective at reducing rates of community violence:

- Hospital-Based Violence Intervention Programs address the fact that experiencing violence is a significant risk factor for future exposure to violence.
- Street Outreach and Violence Interruption are proactive approaches that employ trained outreach workers to identify and mediate conflicts in their community.
- Group Violence Intervention calls for a local partnership of law enforcement, service providers, and community members to work together to identify potential offenders and bring them together to intervene with a message that the violence must stop.

Since 2007, Richmond, California, has invested in CVI efforts, including through the Advance Peace model and a hospital-based violence intervention program. The city saw a 70 percent reduction in homicides and shootings between 2007 and 2019.

Too many police officers have died as a result of community violence. Community violence intervention programs could have prevented these deaths and other shootings of law enforcement officers. For example, in October 2021, a DEA agent was killed and two other officers were injured during what was supposed to be a routine check for illegal money, weapons, and drugs on an Amtrak train when a man began firing a handgun as officers were detaining another man. The shooter had a lengthy criminal history. In October 2021, a 14-year-old boy shot a Los Angeles police officer with a ghost gun. The boy had ties to a local gang that was producing ghost guns. In March 2022, two Chicago police officers were shot when a gunman accidentally dropped his firearm in front of them while waiting in line to get food and then picked up the firearm and started shooting the officer in line behind him and an



officer waiting in their squad car. In July 2016, a man shot at 4 Baltimore police officers after they arrived at an apartment complex from which they'd heard shots fired. The shooter had an extensive criminal history.

Last Congress, Representative Horsford introduced his bill, H.R. 4118, the Break the Cycle of Violence Act, which would authorize community-based violence intervention programs, like those previously discussed. Congress should take up and pass this important bill.

#### PENSACOLA LOOPHOLE

In December 2019, an aviation student from Saudi Arabia killed 3 U.S. Navy sailors and injured 8 others in a terrorist attack facilitated by one of the most egregious loopholes in our gun laws. The 3 victims who died from their injuries were a 19-year-old airman from St. Petersburg, Florida; a 23-year-old ensign and recent graduate of the United States Naval Academy from Coffee, Alabama; and a 21-year-old airman apprentice from Richmond Hill, Georgia.

While foreign nationals, including individuals admitted under nonimmigrant visas, are generally prohibited from purchasing or possessing guns, it is far too easy for a person with bad intentions to get around this law by obtaining a hunting license from a State. Many States issue hunting licenses liberally, without any serious investigation about the person. This is how the Pensacola shooter obtained a firearm.

Federal law should ensure that ATF (or whoever the Attorney General chooses to fulfill this role) has approved a foreign national to obtain or possess a gun before he or she can do so. That way, dangerous people cannot once again take advantage of this loophole. Specifically, Federal law should require a foreign national who has been admitted to the United States under a nonimmigrant visa to obtain a waiver from the Attorney General before purchasing and possessing a firearm. This waiver should only be available if the person has resided in the United States for 180 days, has approval from the person's embassy or consulate, and the Attorney General finds it would not jeopardize public safety and is in the interests of justice.

Notably, the background check system contains criminal history information from all 50 States, but does not include data from foreign countries, so foreign nationals with extensive criminal backgrounds might be approved by the system. Federal law should therefore give DOJ the opportunity to do a more thorough assessment before the individual purchases a firearm.

In the 117th Congress, former Representative Crist introduced his bill, H.R. 2971, the Foreign National Firearms Background Check Enhancement Act, which would close this loophole by ensuring a foreign national obtains a waiver from the Attorney General before purchasing a gun.

#### SAFE STORAGE

Too often, firearms that are not stored safely end up in the hands of people who are not legally eligible to possess them (because of age, criminal history, or for another reason). Whether a child or other unauthorized individual gains access to a firearm or a firearm is stolen from a home or car, that firearm is a threat to law enforcement. Eliminating a person's ability to gain unauthorized access to firearms decreases the danger to law enforcement and the whole community.

For example, in January 2022, a man used a stolen gun to murder two New York City police officers. The firearm was stolen from a woman's safe in Baltimore in 2017 allegedly by her 13-year-old son who then sold the firearm. Whether the two officers would've been murdered if the firearm was stored and inaccessible to the 13-year-old is unknown, but that firearm would likely not have been the one used in the murders. And, in February 2013, a man used an unsecured gun stolen from a vehicle earlier in the month to kill a retired ATF special agent.

Safe storage laws promote responsible gun ownership by requiring gun owners to store their firearms securely. These laws can reduce gun suicides, unintentional shootings, and gun theft.

Gun owners who do not store their firearms securely are at greater risk of having their firearms stolen and diverted into underground firearms markets and used in crime.<sup>5</sup> Annually, roughly 380,000 guns are stolen from individual gun owners each year, with the majority of stolen firearms recovered by police between 2010 and 2016 being recovered in connection with crimes.

<sup>5</sup>David Hemenway, et al., "Whose guns are stolen? The epidemiology of Gun theft victims," *Injury Epidemiology* 4, no. 11 (December 2017), doi:10.1186/s40621-017-0109-8.

We are grateful to Representative DeLauro for reintroducing her bill this Congress, H.R. 660, Ethan's Law, which would incentivize States to pass child access prevention laws and require gun owners to safely store firearms in their home.

#### ACCESSORIES/MODIFICATION DEVICES

The gun industry has developed a wide variety of devices that increase the rate of fire of semiautomatic firearms, often causing them to approximate the speed of fire of a machine gun. Sometimes these devices do, in fact, convert these weapons into machine guns; in these cases, these devices are already illegal but too easy for criminals to obtain. All of these devices increase the danger to law enforcement officers.

More than 200 California police officers were present at the Las Vegas mass shooting where bump stocks were used. ATF has now amended its regulations to include bump stocks within the definition of "machine gun," making these devices illegal, although the ban on these weapons is still subject to court challenge and other similar devices are still available.

"Auto sears," also known as switches, are accessories that convert semiautomatic firearms into fully automatic machine guns. Regulating auto sears and similar modification devices that turn lethal weapons even more destructive helps ensure law enforcement is not placed at extreme risk. A risk that is insurmountable in some cases.

Auto sears are becoming more prevalent in cities around the country and law enforcement are finding increasing numbers of auto sears at crime scenes. In 2021, ATF seized 1,500 weapons modified with auto sears, 1,200 more than were recovered in 2020. In Houston, Texas, an auto sear was used on a handgun to kill senior police officer William "Bill" Jeffrey and injure another officer. The officers were executing an arrest warrant at the time. Soon after the apartment door opened, rapid gunfire came at them from inside the apartment.

Too often auto sears are smuggled into the country or produced at home. As a result, auto sears are an accessible modification device available to the masses at an inexpensive price. Anyone can illegally purchase an auto sear on-line, without a background check, for less than \$20. And installation of an auto sear can take seconds, not requiring special tools or skills. Like ghost guns, which auto sears are also being used in combination with, auto sears can be created using a 3D printer.

Auto sears inflict severe damage and are technically illegal because on their own they are considered a machine gun. Criminal gangs view auto sears as an advantageous new accessory, especially when joined with high-capacity magazines, because they can inflict incredible damage and intimidate enemies.

Representative Spanberger introduced her bill this Congress, H.R. 2909, Preventing Illegal Weapons Trafficking Act, which would require Federal law enforcement to coordinate efforts to prevent the importation and trafficking of conversion devices. Representative Titus also introduced her bill, H.R. 396, Closing the Bump Stock Loophole Act, which would explicitly add bump stock to the list of firearms subject to regulation under the National Firearms Act and under the Gun Control Act of 1968. These are common-sense steps to protecting the lives of law enforcement officers this Congress must act on.

#### GHOST GUNS

Ghost guns are untraceable, "do-it-yourself" firearms manufactured in the home. When gun parts are easily accessible, these firearms can be assembled by unlicensed persons, obtained without a background check, lack serial numbers, and are therefore untraceable by law enforcement if used in a crime. The alarming proliferation of these weapons is a threat to public safety, including law enforcement. Ghost guns evade all the regulations which apply to the regulated firearms industry and are thus an attractive option for firearm traffickers and people who would otherwise be unable to pass a background check and purchase a firearm, and they have been appearing more frequently in crime. Ghost guns are also an attractive option for people interested in illegal guns, like assault weapons in the 9 States that ban them.

Ghost guns have been used to target law enforcement. In 2021, a man used a ghost gun to shoot at a United States Secret Service agent and 3 security guards. United State Park Police officers responded to the scene where law enforcement recovered three 9mm ammunition shell casings and located a bullet fragment within a wall. The shooter was prohibited from possessing firearms because of a felony record but was able to use the gaps in our laws to obtain an unserialized, untraceable firearm. In Los Angeles, a 14-year-old boy was arrested after shooting at a detective with a ghost gun. He was tied to a local gang that was producing

ghost guns. Even though the boy was ineligible to possess firearms because of his age, he had access to ghost guns that were allegedly being produced using various tools, including a 3D printer and a drill press. In 2019, gunmen firing assault-type ghost guns fatally shot law enforcement officers in an ambush attack in Sacramento and a deadly shoot-out in Riverside, California. The shooters in these incidents would have been unable to purchase a serialized gun, either because the gun they used was illegal in that State or because the shooters were prohibited from purchasing guns.

On April 11, 2022, President Biden announced the finalization of the “ghost gun” rule that will define the unfinished parts used to make ghost guns as firearms, which means that those who sell them will have to be licensed, will have to serialize them and retain records, and will have to conduct a background check before every sale, closing a major loophole on how firearms enter civilian hands without any oversight. This rule will help make it more difficult for people prohibited from purchasing firearms or interested in illegal firearms to access a firearm, potentially decreasing some interactions law enforcement will have in these dangerous situations. Ghost guns, however, still litter our streets with nearly 24,000 ghost guns recovered at crime scenes between 2016 and 2020.

Comprehensive legislation such as Representative Cicilline’s Untraceable Firearms Act, H.R. 3088, which he introduced last Congress, would address this problem. Congress must act on this legislation to ensure that all firearms carry a serial number that makes them traceable by law enforcement and that 3D printing technology is not used to create firearms that end up in the hands of people prohibited from possessing them.

#### PRETRIAL RELEASE

A loophole in current law enables people to pass a National Instant Criminal Background Check System (NICS) background check even when they are prohibited from possessing guns by a pretrial release court order. Due to this loophole, State, local, and Tribal authorities are unable to rely on the background check system to enforce the pretrial condition of persons who were specifically ordered by a court not to purchase firearms. In fact, January 6th defendant Thomas Robertson was able to purchase 34 guns despite a release order that barred him from possessing firearms.

While bail reform is controversial, we can all agree that too many police officers have been shot or killed by people who were out on bail. The issue of whether a defendant subject to an explicit court order not to possess guns can pass a background check to buy a gun is simple. Last session, former Representative Carolyn Maloney introduced the Preventing Pretrial Gun Purchases Act, H.R. 6717, which would close this loophole, enabling the background check system to deny guns to a person subject to a condition of release of this kind.

#### DOMESTIC VIOLENCE

Domestic violence calls are some of the most dangerous for police officers. In December 2021, 4 people were killed in Georgia, including a police officer, after officers responded to a domestic disturbance call in Clayton County. When officers arrived, they encountered an armed man who shot and killed Officer Henry Laxson and wounded another officer, according to the Georgia Bureau of Investigation.

Just a few weeks before, Jackson County Deputy Lena Nicole Marshall was also shot responding to a separate domestic violence 9-1-1 call. She died from her wounds 3 days later. Authorities say deputies were called to Highway 124 West for a domestic incident. One deputy was shot after arriving at the location. Other deputies, authorities say, returned fire eventually striking and killing the alleged suspect. The Georgia Bureau of Investigation said the homeowners sought to remove a woman from their home who didn’t live there. The sheriff’s office said when deputies arrived, the woman pulled out a gun, fired at the deputies and struck Marshall. The second deputy returned fire and killed the shooter, the sheriff’s office said. The shooter had been in a custody dispute with her ex-husband, who cited her erratic behavior and said she had not enrolled the children in school. The shooter had also previously voiced hatred toward local judges and law enforcement officers.

While Federal law prohibits certain domestic abusers from possessing guns, those laws have been hard to implement, and many abusers continue to possess guns even though they have been convicted of domestic abuse or become subject to a restraining order, losing their eligibility to possess guns legally. Requiring people subject to domestic violence-related protective orders to provide proof that they actually relinquished their firearms (relinquishment laws) is one way States have acted to implement the Federal gun laws. These State laws are linked to a 16 percent reduction

in intimate partner gun homicides. They also protect police who must often respond to domestic violence situations by removing the presence of a gun. That is why it is imperative that this Congress provide funding to State efforts to remove guns from domestic abusers who are prohibited from possessing them, as called for in Representative Jackson-Lee's Lori Jackson-Nicolette Elias Domestic Violence Survivor Protection Act.

#### THE THREAT OF ARMED FAR-RIGHT EXTREMISTS TO LAW ENFORCEMENT OFFICERS

In recent years, extremist groups have become emboldened to expand beyond their private meetings, chat rooms, and message boards, recruiting new members through mainstream social media and gathering openly in public. This upswell of hateful ideology has also been accompanied by an escalation of public intimidation with firearms.

Law enforcement officers are not immune to the violence of armed far-right extremists. In fact, far-right extremists' anti-Government and anti-law enforcement ideologies place them at odds with law enforcement, which shows up in the purposeful targeting of law enforcement for ideologically-motivated violence and when there are opportunities to commit violence against law enforcement while law enforcement officers conduct routine activities (e.g., during patrol).

Far-right extremists also find themselves at odds with law enforcement where law enforcement officers must respond to the criminal activities of extremists.

One study of the sovereign citizens movement, a movement within the right-wing anti-Government extremist movement, found that, in the 75 instances in which sovereign citizens attempted or did harm law enforcement officers between 1983 and 2020, 27 law enforcement officers were killed, and 65 officers were injured. Of those officers killed, 30 percent died during traffic stops, 30 percent died during ambushes, 22 percent died during stand-off situations, 15 percent died during routine check or serving a warrant, and 3 percent died in a gun battle in a store parking lot.<sup>6</sup>

In the last few years, amid COVID-19 pandemic restrictions, law enforcement officers have been attacked by far-right extremists. Fueled by anger about pandemic restrictions, a Federal protection officer was shot and killed by two members of the anti-Government boogaloo movement and later a sheriff's deputy was killed while attempting to arrest one of the suspects.

The January 6 insurrection demonstrated for the world the steps these far-right extremists will take. The violent riot and breach on the U.S. Capitol, guarded by law enforcement, contributed to the death of multiple law enforcement officers and the injury—physical and mental—to countless officers.

Last session Representative Schneider introduced his bill, H.R. 350, the Domestic Terrorism Prevention Act, which would help ensure that existing laws are enforced against domestic terrorists and white supremacists and improve law enforcement efforts to intercede in these situations before they become even more violent. Given the easy access to firearms in this country, it is imperative that Congress take action to reduce the danger posed by armed extremists.

#### CONCLUSION

Law enforcement officers are placed in dangerous situations on a daily basis. One way to protect these officers is to strengthen our gun laws, so that our officers, who we depend on to protect us, are able to do so. The only thing standing in the way of progress on gun safety is the lack of political will. We urge Congress to find the courage to strengthen these laws, to show leadership on this life-and-death issue, and to act, now.

Our gun violence crisis is a uniquely American problem. It's a problem that plagues our country in countless different ways and exacts a devastating toll on our communities, including our law enforcement officers. But it's a problem with solutions. While one single law will never stop all gun violence, we know strong gun laws save lives. We know that taking proven steps to decrease the danger law enforcement is forced to face daily is not a partisan issue, or at least it shouldn't be.

We have seen progress in recent years, particularly with the passing of the Bipartisan Safer Communities Act last Congress. That progress must be the expectation, not the exception. So today, we ask all Members of this committee and Congress as a whole to recommit themselves to making progress and taking action to reduce

<sup>6</sup>Christine M. Sarteschi, "Sovereign citizens: A narrative review with implications of violence toward law enforcement," *Aggression and Violent Behavior* 60, (September 2021), doi:10.1016/j.avb.2020.101509.

gun violence in this country and in turn aiding in law enforcement's ability to carry out their mission and ensure the safety of our communities.

Chairman PFLUGER. I would now like to recognize the Chairman for the Subcommittee on Emergency Management and Technology, the gentleman from New York, Mr. D'Esposito. Before he speaks, know that he is also a former detective for the New York Police Department and has also spent time being willing to sacrifice his own, his own life for the betterment of his community. Mr. D'Esposito.

Chairman D'ESPOSITO. Thank you, Mr. Chairman, and good morning, everyone. I want to first, on this Police Week, I want to thank you for your service and your commitment to keeping this Nation and our community safe. I want to thank Chairman Pfluger, Ranking Member Magaziner, and Ranking Member Carter for joining me to convene this hearing today, where we will examine the critically important topic of the state of crime in the United States of America and the Federal Government's role in supporting State and local law enforcement efforts throughout the country.

As we mentioned, it is Police Week. I do want to thank our Nation's police officers for putting their lives on the line each and every day to protect our neighborhoods and keep our families safe. As a retired New York City Police Department detective, I know first-hand how challenging a career in law enforcement can be. Regardless of the risk, police officers show up every day to put the needs of their communities first. They truly stand the line between good and evil.

To our police officers and law enforcement serving throughout the Nation, thank you for your bravery and for your service. We commend all of you for your unwavering commitment to keeping us all safe. To those who we have honored over the last few days in the line of duty, we honor you. When we all take an oath to protect and serve, we also make a promise in our hearts to never forget. I promise that I will do everything in my power to make sure that we never forget them.

As we will hear in your testimonies, the challenges facing our law enforcement community are increasingly complex and every day seem to evolve. Americans can't turn on the news without hearing stories of carjackings, robberies, increased acts of senseless violence across this country, not to mention the continued threat of terrorism. The sad fact is, many Americans no longer feel safe in their communities. As Members of the Homeland Security Committee, we must ensure that our Nation's law enforcement personnel have the resources and necessary tools to keep our communities safe and protect this great homeland. That is why we are dedicating this time to evaluate how the Federal Government can continue to support our State and local agencies.

The Federal Emergency Management Agency, or FEMA, suite of preparedness grants assist State, local, Tribal, and territorial governments to prepare for, protect against, respond to, and recover from terrorist attacks, major disasters, and other emergencies. From lessons learned after the terrorist attacks of September 11, these grant programs provide local law enforcement with the vital training and equipment they need to prepare for new challenges as they arise in our communities. In fact, over the last 10 years, the New York City urban area has received over \$2 billion in grant

funding to prevent, prepare for, and protect against terrorist attacks in New York City.

My home State has benefited immensely from the Urban Area Security Initiative, the State Homeland Security Grant Program, and the Transportation Security Grant Program, to only name a few. For example, Federal grant funding supports the Counterterrorism Officer Program that provides NYPD patrol officers with specialized counterterrorism training to enable officers to conduct counterterrorism operations at specific intelligence-driven locations throughout the city. Grant funds have been used to purchase concrete barriers to save pedestrians and cyclists from vehicular terrorism, a necessary tool following the 2017 vehicle ramming in Lower Manhattan. Grant funds have supported the Vapor Wake Detection Canine Program, which trains canines to trail explosive or chemical odors.

With New York remaining a top terror target, the importance of grant funding, not only in New York City, but throughout this country, is paramount. As the Chairman of the Emergency Management and Technology Subcommittee, I will continue to advocate for robust investment in these security grant programs. However, when examining these grant programs, it is also important to ensure that smaller or more rural enforcement agencies across the country have the resources that they need to adapt to the changing threat landscape in their respective States.

In the past decade, the threats against our homeland have changed. Domestic and small-scale acts of terrorism now threaten our communities, and hate-filled attacks have become more frequent. According to a recent FBI report, hate crime incidents increased by 11.6 percent in 2021 from 8,210 incidents in 2020 to over 9,000 in 2021. More than half of all religious hate crimes were motivated by antisemitism, further highlighting the importance of the nonprofit Security Grant Program, which provides our faith-based communities with the means to harden their defenses, acquire security equipment, and provide training to better safeguard their congregants.

The rise in crime across the country points to the importance of FEMA's preparedness grant programs and the need for strengthening local law enforcement efforts, many departments like you represent. Today, the national homicide rate is 34 percent higher than it was in 2019. Major crimes in New York rose by 22 percent in 2022. Burglaries and robberies increased by 37 percent. However, instead of supporting law enforcement, we have heard calls for slashing police budgets and defunding police, which have promoted soft-on-crime policies that allow repeat offenders to roam the streets.

At a time when crime is increasing, we should be strengthening law enforcement, not making our communities more vulnerable. I want to take a minute to focus on New York, where Democrats impose cashless bail in criminal justice reform. As someone who has lived and seen the criminal justice system at work, I understand all well that reforms do need to be made. But those reforms can't be done with a broad brush. They also can't be done without having conversations with people from law enforcement. We have seen that now in places like New York, criminals are free to roam the

streets and once again commit more crimes after committing their first.

We want to talk about gun violence, we should focus on gun violence and removing illegal guns off the street first. That is where our focus should be. Our focus should be on providing law enforcement with the resources that they need to take illegal firearms off the street. It is interesting when we hear individuals talk about gun violence and talk about different weapons used, kind of weapon, or know the difference between weapons, but they do know that it looks, “scary.” But what is scary is being in the middle of a street in some of the most violent neighborhoods in the communities that you represent, or the ones that I used to patrol, and actually wrestling an illegal gun off the street with your life in your hands.

So, instead of focusing on where we are failing, we should focus and make sure that rogue DAs throughout this country who like to rewrite laws are actually putting bad people behind bars. Every day our Nation’s police officers are on the front lines, responding to threats against our homeland. They are our heroes. Right now, they need our support. Whether they serve in big cities like Los Angeles or where I came from in the NYPD, or in smaller towns like Island Park, where I grew up, or Nassau County, or where you represent, we owe law enforcement community a huge debt of gratitude.

I also want to talk about accountability, because it’s a two-way street, and we must hold our police departments to a higher standard. Small and mid-size departments need to be targeted investments to address on-going challenges with recruitment, retention, and PTSD. We must ensure that police departments across this country, no matter how large or how small, are working effectively to serve the people. It is our job to make sure that they have the resources they need to do that.

I want to thank you for upholding the rule of law and thank you for putting yourselves in harm’s way to protect our freedom. I have mentioned it throughout this week that Police Week always makes me reflect back on the inscription at the memorial. Right under the lion it says, it is not how these individuals died that made them heroes, it is how they lived. So, let’s make sure that we can do all we can to give the resources to the men and women that live every day protecting and serving. I look forward to hearing from our witnesses today to learn how we can strengthen local law enforcement efforts. Now more than ever, we must work together to protect our homeland. I think you would all agree with me that the thousands upon thousands of 9–1–1 calls we have responded to, there has never once been a question asked whether you are a Democrat or Republican. So, let’s work together, not as parties in politics, but as Americans, to keep this great Nation safe. Mr. Chairman, thank you. I yield back.

[The statement of Chairman D’Esposito follows:]

STATEMENT OF CHAIRMAN ANTHONY D’ESPOSITO

MAY 16, 2023

I would like to thank Chairman Pfluger, Ranking Member Magaziner, and Ranking Member Carter for joining me to convene this hearing today where we will examine the critically important topic of the state of crime in the United States and

the Federal Government's role in supporting State and local law enforcement efforts throughout the country.

In honor of National Police Week, I first want to thank our Nation's police officers for putting their lives on the line every day to protect our neighborhoods and keep our families safe. As a former NYPD detective, I know first-hand how challenging a career in law enforcement can be. Regardless of the risk, police officers show up every day to put the needs of their community first.

To our police officers and law enforcement serving throughout the Nation, thank you for your bravery and your service. We commend you for your unwavering commitment to keeping us all safe. And to those who lost their lives in the line of duty, we honor you and we will never forget the sacrifice you made. To our witnesses, thank you for your participation today in this important hearing. We look forward to hearing from each of you.

As we will hear in your testimonies, the challenges facing our law enforcement community are increasingly complex and ever-evolving. Americans can't turn on the news without hearing stories of carjackings, robberies, and increased acts of senseless violence across the Nation, not to mention the continued threat of terrorism. The sad fact is, many Americans no longer feel safe in their communities.

As Members of the Homeland Security Committee, we must ensure that our Nation's law enforcement personnel have the resources and necessary tools to keep our communities safe and to protect our homeland. That is why we are dedicating this time to evaluate how the Federal Government can continue to support our State and local law enforcement.

The Federal Emergency Management Agency's (FEMA) suite of preparedness grants assist State, local, Tribal, and territorial governments to prepare for, protect against, respond to, and recover from terrorist attacks, major disasters, and other emergencies.

From lessons learned after the terrorist attacks of 9/11, these grant programs provide local law enforcement with the vital training and equipment they need to prepare for new challenges as they arise in their communities.

In fact, over the past 10 years, the New York City Urban Area has received over \$2 billion in grant funding to prevent, prepare for, and protect against terrorist attacks in the city.<sup>1</sup> My home State has benefited immensely from the Urban Area Security Initiative, the State Homeland Security Grant Program, and the Transportation Security Grant Program—to name only a few. For example, Federal grant funding supports the Counterterrorism Officer Program that provides NYPD patrol officers with specialized counterterrorism training to enable officers to conduct counterterrorism operations at specific intelligence-driven locations throughout the city. Grant funds have been used to purchase concrete barriers to save pedestrians and cyclists from vehicular terrorism—a necessary tool following the 2017 vehicle ramming in lower Manhattan.<sup>2</sup> And grant funds have supported the Vapor Wake Detection Canine Program, which trains canines to trail explosive or chemical odors.<sup>3</sup> With New York remaining a top terror target, the importance of grant funding cannot be overstated.

As the Chairman of the Emergency Management and Technology Subcommittee, I will continue to advocate for robust investment in these security grant programs. However, when examining these grant programs, it is also important to ensure that smaller, or more rural law enforcement agencies across the country have the resources they need to adapt to the changing threat landscape in their respective States.

In the past decade, the threats against our homeland have changed; domestic and smaller-scale acts of terrorism now threaten our communities, and hate-filled attacks have become more frequent. According to a recent FBI report, hate crime incidents increased by 11.6 percent in 2021—from 8,210 incidents in 2020 to 9,065 in 2021. More than half of all religious hate crimes were motivated by antisemitism, further highlighting the importance of the Non-profit Security Grant Program, which provides our faith-based communities with the means to harden their defenses, acquire security equipment, and provide training to better safeguard their congregants.<sup>4 5</sup>

<sup>1</sup>“Preparedness Grant Effectiveness Case Study: New York City.” FEMA. March 2021. [https://www.fema.gov/sites/default/files/documents/fema\\_nyc-case-study\\_2019.pdf](https://www.fema.gov/sites/default/files/documents/fema_nyc-case-study_2019.pdf).

<sup>2</sup>Id.

<sup>3</sup>Id.

<sup>4</sup>“FBI Releases Supplement to the 2021 Hate Crime Statistics.” U.S. Department of Justice. <https://www.justice.gov/crs/highlights/2021-hate-crime-statistics>.

<sup>5</sup>Krystina Shyeda. “U.S. antisemitic incidents at highest level since group started recording them in 1970's.” ABC 7 New York. March 23, 2023. <https://abc7ny.com/antisemitic-incidents->



The rise in crime across the country points to the importance of FEMA's preparedness grant programs and the need for strengthening local law enforcement efforts. Today, the national homicide rate is 34 percent higher than it was in 2019.<sup>6</sup> Major crimes in New York rose by 22 percent in 2022. Burglaries and robberies increased by 37 percent.<sup>7</sup> However, instead of supporting law enforcement, calls for slashing police budgets and defunding the police have promoted soft-on-crime policies that allow repeat offenders to roam the streets. At a time when crime is increasing, we should be strengthening our law enforcement, not making our communities more vulnerable.

However, accountability is a two-way-street, and we must also hold our police departments to a higher standard. Small and mid-size police departments need targeted investments to address on-going challenges with recruitment, retention, and PTSD burn-out. We must ensure that police departments across the country are working effectively to serve the people they swore to protect.

Every day, our Nation's police officers are on the front lines, responding to threats against our homeland. They are our heroes; and right now, they need our support. Whether they serve in big cities like Los Angeles or New York, or in smaller towns like my hometown of Island Park, we owe our law enforcement community a huge debt of gratitude.

Thank you for upholding the rule of law. Thank you for putting yourselves in harm's way to protect our freedom.

I look forward to hearing from our witnesses today to learn how we can strengthen local law enforcement efforts. Now more than ever, we must work together to protect our homeland.

And with that, I yield back.

Chairman PFLUGER. Thank you, Chairman D'Esposito. I now recognize the Ranking Member for the Subcommittee on Emergency Management and Technology, the gentleman from Louisiana, Mr. Carter, for his opening statement.

Mr. CARTER. Thank you, Mr. Chairman, and Ranking Members, and to our guests, thank you for being here. We look forward to hearing your testimony.

I want to take a moment to reflect on the tragic shootings in Allen, Texas. My condolences go out to the families of the victims. The video that circulated of this man jumping out of an SUV, wielding an AR-15, and wearing a tactical vest as he mercilessly killed people until an officer who just happened to be at the mall took him out. It was horrible. But the video is a visual testimony. It is testimony of the depravity of weak gun laws in our country. It is a testimony to the risk of our communities and our police officers face because Republicans refuse to pass meaningful gun violence prevention laws.

Many of you know that I am a gun owner and an avid hunter. But I am a responsible gun owner who firmly believes in stronger gun laws, one who believes in the Second Amendment, but also recognizes that we can do better in making sure that we are protecting our communities without infringing upon one's Constitutional right to bear arms. Weak gun laws are killing our children. They are killing our parents, our grandparents. These are not Black or white, Republican or Democrat, rich or poor. They are Americans. They are people. They are human beings. They deserve better. We, as a committee and as a Congress, have a responsibility to do better. As my colleague said moments ago, it is not Repub-

*rising-jewish-americans/12999377/*, <https://abc7ny.com/anti-defamation-league-antisemitism-antisemitic-incidents-new-york/12999468/>.

<sup>6</sup>Major Cities Chiefs Association, *Violent Crime Survey—National Totals Year End Comparison, 2022*, <https://majorcitieschiefs.com/wp-content/uploads/2023/02/MCCA-Violent-Crime-Report-2022-and-2021-Year-End.pdf>.

<sup>7</sup>Chelsia Rose Marcus and Ed Shanahan, *Major Crimes Rose 22 Percent in New York City, Even as Shootings Fell*, New York Times (January 5, 2023).

lican or Democrat, and we should be able to come together. But heretofore we have not, and we have got to do better.

I am hopeful through the testimony today that we are able to keep it in focus of why we are here and what our true task is. Not to over-politicize, not to self-aggrandize, not to create theater, but to create policy that will save lives. I am glad that we are holding this hearing and protecting the homeland and supporting law enforcement because we want to talk about protecting the homeland, and supporting law enforcement, we must talk about weapons of war that are on our streets and making our homeland less safe and putting law enforcement in the line of fire.

Over the years, we have seen dramatic increases in gun violence against civilians and law enforcement. My district has struggled with gun violence in New Orleans, accounting for nearly 5 percent of all mass shootings across the country this year, far outpacing any other city in the country. Gun violence isn't isolated to one space. We have seen gun violence in our schools, malls, houses of worship, and public areas. Our country has a problem.

We need strong, common-sense gun law in every State, not only to protect children, but also to protect you, our law enforcement. Officers often find themselves in dangerous situations while performing their duties. In States with weak gun regulations, the dangers officers face is substantially greater. To the Gifford's Law Center, which grades States based on the strength of their gun laws, States that receive an F in their gun laws saw higher rates of police fatalities from 2017 to 2021. These are real statistics. These are real numbers. These are real lives. These are real people.

The virtually unregulated guns circulating in our communities are threats to homeland security and to law enforcement lives. The data is clear. In 2021, almost 73 percent of law enforcement officers who died from felonious assaults were killed by firearms. These firearms have only risen in recent years, making guns one of the leading causes of death in the line of duty for law enforcements in America. We must do more to protect our homeland, our communities, and our officers. That means we need to work across the aisle to pass common-sense gun laws and continue to work together to strengthen and fund the Department of Homeland Security's grant programs, which are critical to protecting our communities and law enforcement personnel from these threats.

Programs like the Urban Area Security Initiative, UASI, and the United States Security Grant Program, SHSP, assist in assuring that local law enforcement have the resources they need to defend our communities against threats. The Nonprofit Security Grant Program provides nonprofits with funding to help with their security, which is critical given the surge in right-wing violence against nonprofits, including religious organizations. While we work to address gun violence, we must continue to do our part to provide the Department of Homeland Security with funding for its grants programs to ensure that nonprofits and law enforcements have the resources they need to protect our communities.

To our witnesses, thank you for being here today. The law enforcement witnesses, I want to thank you and all those who stand beside you for your service. We appreciate your being here today during National Police Week. I look forward to hearing from you.

I look forward to us having a meaningful exchange, one that I hope can stay within the boundaries and stay within the lines. I compel my colleagues, likewise, that we make this a clear opportunity to make a difference and not to make a statement for the press. That we use this as an opportunity to find resolve and solutions, not to further divide a country that is sickened with the bloodshed that we see in our communities. Each day it gets a little closer. I hope and pray that we collectively can find a way to have resolutions that don't have Rs or Ds behind them but have American lives that are being saved. I yield back.

[The statement of Ranking Member Carter follows:]

STATEMENT OF RANKING MEMBER TROY A. CARTER

MAY 16, 2023

I want to take a moment to reflect on the tragic shooting in Allen, Texas. My condolences go out to the families of the victims. The video that circulated of this man jumping out of his SUV wielding an AR-15 and wearing a tactical vest as he mercilessly killed people until an officer, who just happened to be at the mall, took him out, was harrowing. But that video is visual testimony. It is testimony to the depravity of weak gun laws in this country. It is a testimony to the risk our communities and our police face because Republicans refuse to pass meaningful gun violence prevention laws.

Many of you know that I am a gun owner and avid hunter, but I am a responsible gun owner who firmly believes in stronger gun laws. Weak gun laws are killing children. They're killing parents and grandparents. They are killing law enforcement officers. And they are making our homeland less safe.

So, I am glad we are holding this hearing on protecting the homeland and supporting law enforcement. Because if we want to talk about protecting the homeland and supporting law enforcement, we must talk about the weapons of war that are on our streets making our homeland less safe and putting law enforcement in the line of fire.

Over the years, we have seen a dramatic increase in gun violence against civilians and law enforcement. My district has struggled with gun violence with New Orleans accounting for nearly 5 percent of all the mass shootings across the country this year, far outpacing any other city in the country. Gun violence isn't isolated to one space; we have seen gun violence at our schools, malls, houses of worship, and other public areas. Our country has a problem. We need strong and common-sense gun safety laws in every State not only to protect children but also to protect law enforcement.

Officers often find themselves in dangerous situations while performing their duties. In States with weak gun regulations, the dangers officers face is substantially greater according to the Giffords Law Center, which graded States based on the strength of their gun laws. States that received an "F" for their gun laws saw higher rates of police fatalities from 2017 to 2021. The virtually unregulated guns circulating in our communities are threats to homeland security and to law enforcement lives. The data is clear—in 2021, almost 73 percent of law enforcement officers who died from felonious assaults were killed by firearms. This figure has only risen in recent years, making guns one of the leading causes of death in the line of duty for law enforcement officers.

We must do more to protect our homeland, our communities, and our officers. That means we need to work across the aisle to pass common-sense gun laws and continue to work together to strengthen and fund the Department of Homeland Security's grant programs, which are critical to protecting our communities and law enforcement personnel from threats.

Programs like the Urban Areas Security Initiative (UASI) and State Homeland Security Grant Program (SHSP) assist in ensuring that local law enforcement have the resources they need to defend our communities against threats.

The Nonprofit Security Grant Program provides nonprofits with funding to help with their security, which is critical given the surge in right-wing violence against nonprofits, including religious institutions. While we work to address gun violence, we must continue to do our part and provide the Department of Homeland Security with funding for its grant programs to ensure that nonprofits and law enforcement have the resources they need to protect our communities.

To our witnesses, thank you for being here today. To the law enforcement witnesses, I want to thank you, and all those who stand beside you, for your service. We appreciate you being here during National Police Week.

Chairman PFLUGER. I thank the Ranking Member, and I now recognize the Ranking Member of the full committee, the gentleman from Mississippi, Mr. Thompson, for his opening statement.

Mr. THOMPSON. Thank you very much, Mr. Chairman. Mr. Chairman, I appreciate the witnesses being here at today's hearing on "Protecting the Homeland: An Examination of Federal Efforts to Support State and Local Law Enforcement." Before I begin, I want to condemn the hateful violence we saw yesterday when two Congressional staffers, one of them an intern on her first day at work, were beaten with a baseball bat while at work in Virginia for Congressman Gerald Connolly. I pray for their recovery quickly.

Protecting the homeland ultimately means protecting the people who live here, which is what the brave men and women who serve in law enforcement do every day. We thank them for their service as we commemorate National Police Week. I welcome today's discussion about how the Federal Government can support State and local law enforcement in their efforts to protect our communities. Tragically, in the days and weeks leading up to this hearing, there have been a series of mass killings inspired by those who hold extremist views. My heart goes out to the victims and families of those murdered in an apparent right-wing extremist shooting in Allen, Texas. My heart also goes out to the victims and families of those killed after a driver rammed his SUV into people waiting outside near a shelter in Brownsville, Texas, after he reportedly shouted anti-immigrant rhetoric.

When we talk about protecting the homeland and supporting State and local law enforcement, we must acknowledge that extremist views, coupled with weak gun laws, is driving violence across the United States. Moreover, weak gun laws are making our law enforcement officers less safe. The United States is facing a crisis of epic proportion when it comes to gun violence. Children are not safe at school. Shoppers are not safe at stores. Worshippers are not safe at church. Journalists are not safe in the newsroom. Gun massacres are happening more often, and they are deadlier than ever.

If we want to protect the homeland and support law enforcement, we must reform the laws that let dangerous people obtain weapons and turn them on our communities and those who are sworn to serve and protect. When we talk about protecting the homeland, we must acknowledge the very real threat from heavily-weaponized domestic terrorists, including white supremacists and anti-Government extremists have. As FBI Director Christopher Wray has said, domestic terrorism, particularly white supremacist extremism, is the most persistent and lethal threat to this country.

It is unfortunate that my colleagues across the aisle refuse to include domestic terrorism as a part of this committee's oversight plan, as we cannot properly examine how to protect the homeland and support law enforcement without acknowledging the most persistent terrorism threat we face as a country. It is my hope that moving forward, the Members of this committee can find common ground on combating violence and protecting the homeland.

When it comes to protecting our communities from violence, the Department of Homeland Security's grant programs are key. For example, the Urban Area Security Initiative, commonly called UASI, and State Homeland Security grant help ensure that local law enforcement have the training and equipment they need to protect against terrorist threat. As the Chairman from New York so eloquently put, that \$2 billion that New York has gotten from UASI is a Homeland Security grant. It's a wonderful program. I wish we had more money. The Department struggles because we can only do so many cities across the country, and those who fall off the list are the ones who come and complain that we need the money to do it. So, I am sure some of our colleagues will hear from those communities with the next round of eligible communities.

The Nonprofit Security Grant Program provides nonprofit organizations at high risk of a terrorist attack with funding to help bolster their security, which is especially important given the rise of right-wing extremist attack against nonprofits such as faith-based communities. Even though Congress has increased funding for the program, there is a growing need for organizations to access the funding. The Nonprofit Security Grant Program Improvement Act, which I authored, make improvements to the program, and will provide support to nonprofits with particular attention to nonprofits in underserved communities.

As we work to ensure that law enforcement has the resources to protect our communities, we must remain steadfast and provide DHS with full and robust funding for the critical grants program. I hope to hear from our witnesses on how we can better support our law enforcement and public safety by passing common-sense gun reform, combating domestic terrorism, and supporting DHS grant funding, including UASI and Nonprofit Security Grant Program. I look forward to hearing from our witnesses and I yield back, Mr. Chairman.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

MAY 16, 2023

Before I begin, I want to condemn the hateful violence we saw yesterday when two Congressional staffers, one of them an intern on her first day at work, were beaten with a baseball bat while at work in Virginia for Congressman Gerry Connolly. I pray they recover quickly.

Protecting the homeland ultimately means protecting the people who live here, which is what the brave men and women who serve in law enforcement do every day. We thank them for their service as we commemorate National Police Week.

I welcome today's discussion about how the Federal Government can support State and local law enforcement in their efforts to protect our communities. Tragically, in the days and weeks leading up to this hearing, there has been a series of mass killings inspired by those who hold extremist views. My heart goes out to the victims and families of those murdered in an apparent right-wing extremist shooting in Allen, Texas. My heart also goes out to the victims and families of those killed after a driver rammed his SUV into people waiting outside near a shelter in Brownsville, Texas, after he reportedly shouted anti-immigrant rhetoric.

When we talk about protecting the homeland and supporting State and local law enforcement, we must acknowledge that extremist views coupled with weak gun laws is driving violence across the United States. Moreover, weak gun laws are making our law enforcement officers less safe. The United States is facing a crisis of epic proportions when it comes to gun violence. Children are not safe at school. Shoppers are not safe at stores. Worshipers are not safe at church. Journalists are not safe in the newsroom.

Gun massacres are happening more often, and they are deadlier than ever before. If we want to protect the homeland and support law enforcement, we must reform the laws that let dangerous people obtain weapons and turn them on our communities and those who are sworn to serve and protect. And when we talk about protecting the homeland, we must acknowledge the very real threat from heavily-weaponized domestic terrorists, including white supremacists and anti-Government extremists. As FBI Director Christopher Wray has said, domestic terrorism, particularly white supremacist extremism, is the “most persistent and lethal threat” to the country.

It is unfortunate that my colleagues across the aisle refused to include domestic terrorism as part of this Committee’s Oversight Plan, as we cannot properly examine how to protect the homeland and support law enforcement without acknowledging the most persistent terrorism threat we face as a country. It is my hope that, moving forward, the Members of this committee can find common ground on combating violence and protecting the homeland.

When it comes to protecting our communities from violence, the Department of Homeland Security’s grant programs are key. For example, the Urban Areas Security Initiative (UASI) and State Homeland Security Grant Program (SHSP) help ensure that local law enforcement have the training and equipment they need to protect against terrorist threats.

The Nonprofit Security Grant Program (NSGP) provides nonprofit organizations at high risk of a terrorist attack with funding to help bolster their security, which is especially important, given the rise in right-wing extremist attacks against nonprofits such as faith-based communities. Even though Congress has increased funding for the program, there is a growing need for organizations to access this funding.

The Nonprofit Security Grant Program Improvement Act, which I authored, makes improvements to the program and will provide support to nonprofits, with particular attention to nonprofits in underserved communities. As we work to ensure that law enforcement has the resources to protect our communities, we must remain steadfast and provide DHS with full and robust funding for critical grants programs.

I hope to hear from our witnesses on how we can better support our law enforcement and public safety by passing common-sense gun reform, combating domestic terrorism, and supporting DHS grant funding, including UASI and the Nonprofit Security Grant Program.

Chairman PFLUGER. Thank you, Mr. Ranking Member. Other Members of the committee are reminded that opening statements may be submitted for the record. I am pleased to have a distinguished panel of witnesses before us today on this very important topic, and I ask that our witnesses please rise and raise your right hand.

[Witnesses sworn.]

Chairman PFLUGER. Thank you. Let the record reflect that the witnesses have answered in the affirmative. You may be seated. I would like to now formally introduce our witnesses. Michael Gerke serves as chief of police for the Odessa, Texas Police Department. In this role, he serves as the chief administrator of the Odessa Police Department and is responsible for the policy, development, control, supervision, and program implementation of this department and is accountable for the effective delivery of police service to the community. The chief’s office is the command center of the department and administrates the department’s annual budget.

Chief Gerke has proudly served Odessa, Texas and that department for more than 26 years. He received an associate degree in criminal justice in police science from Odessa College, a Bachelor of Applied Arts and Science and Criminal Justice in Law Enforcement from Midwestern State University, and a Master of Science from Tarleton State University.

I would like to now—and, Chief, thank you for being here. I would like to now recognize the gentlewoman from California, Mrs. Michelle Steel, to introduce Sheriff Don Barnes.

Mrs. STEEL. Thank you very much for inviting me here today. It is my honor to introduce Sheriff Don Barnes of Orange County, California. With over 30 years of service, Sheriff Barnes is well-versed in the public safety needs of Orange County residents. Sheriff Barnes leads the 4,000 sworn professional men and women who provide a variety of vital public safety service to our community, our residents, over 3.2 million people.

Involvement in both State and national law enforcement organizations that advocate common-sense public safety policy is a priority for Sheriff Barnes. When I was the chair of the Orange County Board of Supervisors, Sheriff Barnes and I worked closely to respond to emergencies like COVID-19, civil unrest, and wildfires. We also fought back together against California's sanctuary State policies that would have prohibited the county from working with ICE to apprehend dangerous criminals.

It is not just serious work only, but we had fun too. I wanted to show my appreciation to the sheriff's department and sheriff. I brought the In-N-Out truck so we shared the burger together during the lunch. So, it is not just serious work relationship, but we are building our relationship together, and I really love Sheriff Barnes.

I am proud to be here with Sheriff Barnes and look forward to our continued work together to keep the people of Orange County safe. The sheriff also serves as an executive officer with the California State Sheriff's Association and serves as the chair of California State Sheriff's Association's Technology Committee. At the national level, he is chair of Major County Sheriffs of America Intelligence Commander Committee.

Sheriff Barnes strongly believes that members of law enforcement must be engaged with the community they serve. He is everywhere in Orange County. He serves as the board chairman for Orange County Crime Stoppers. Because of our sheriff in Orange County, his men and women, Orange County is one of the safest cities in the United States, especially California, that our crime rates are very high.

I can truly say from my personal experience that he is one of the most exceptional law enforcement officers in the country. I think he is the best and we are fortunate to have him before this committee. I really want to thank him for being here and it is very nice to see him in Washington, DC, not just in Orange County. Thank you.

Chairman PFLUGER. I thank the gentlelady from California for that very nice introduction. I now recognize the Ranking Member from Rhode Island, Mr. Magaziner, to introduce Commissioner Cox.

Mr. MAGAZINER. Thank you, Chairman. While there are parts of the country where crime has increased in recent years, it is also important to note that there are parts of the country that have bucked that trend. For example, in my home city of Providence in 2022, we had our lowest number of homicides in 50 years last year. Right up the road from us in Boston, the city of Boston has had stable record levels of violent crime in recent years that are near historic lows. So, in order to share the lessons learned and the best practices from the historically low rates of violent crime in Boston in recent years, I am pleased to introduce Commissioner Michael

Cox of the Boston Police Department, a department of which he is a 30-year veteran.

Prior to his appointment as commissioner in the Boston Police Department, Commissioner Cox served as a bureau chief and a sergeant detective in the Intelligence Unit, where he performed dignitary protection duties, served as a liaison to the U.S. Secret Service, and as a supervisor assigned to the Joint Terrorism Task Force. Commissioner Cox also served as chief of police for the Ann Arbor Police Department in Ann Arbor, Michigan from 2019 to 2022. Welcome, Commissioner Cox, and thank you.

Chairman PFLUGER. I thank the Ranking Member. I would now like to introduce our final witness on the panel. Mr. Rafael Mangual is a fellow and head of research for the Policing and Public Safety Initiative at the Manhattan Institute, a contributing editor of *City Journal*, and a member of the Council on Criminal Justice. Mr. Mangual's work has been featured and mentioned in numerous publications, including the *Wall Street Journal*, the *Atlantic*, the *New York Post*, and other outlets. In 2020, he was appointed to serve a 4-year term as a member of the New York State Advisory Committee on the U.S. Commission on Civil Rights. Mr. Mangual has also testified multiple times before Congress on policing topics. He holds degrees from City University of New York and DePaul University in Chicago, including a law degree.

Thank you for being here, and I would like to thank all of our witnesses for being here. Now for the part that we actually came for, the witness testimony. I would ask each of you, you have submitted your written testimony, so please summarize, and do try to stay within 5 minutes, because we do have lots of Members who want to ask you questions. I now recognize from Odessa, Texas, Chief Michael Gerke for your opening statement.

**STATEMENT OF MICHAEL GERKE, CHIEF OF POLICE, ODESSA POLICE DEPARTMENT**

Chief GERKE. Well, good morning, distinguished Members of the committee. The reason for the existence of law enforcement agencies is to make the lives of the citizens that they serve better. It's my belief that the main way that we do that is to reduce violent crime. Violent crime has the most significant effect on the victims. To this end, as an example of effective policing, about 2½ years ago, we partnered with the United States Attorney's Office in the Western District of Texas for the priority prosecution of those individuals apprehended in our community who were convicted felons, narcotic dealers, and gang members who were in possession of firearms. This led not only to a reduction of violent crime in the area, but also a reduction in property crimes such as auto thefts and burglaries. This is a shining example of what partnerships between local and Federal authorities can accomplish.

We continue to have a very strong relationship with the Assistant United States Attorney in our area, and she is one of the most trusted and valued members of our team. It's very important to have these relationships as we move into the future and face the coming challenges.

The most persistent challenge that we feel at this point in my community is the use and abuse of fentanyl. The use of fentanyl



has led to numerous overdoses and numerous deaths in our community. We all know that that route, that trade route for fentanyl starts in China, comes through Mexico, and crosses the border, and ends up in our community. Particularly in West Texas, it's harming predominantly our children, our young adults. We've seen 12-year-olds to 19-year-olds to 60-year-olds who have overdosed on fentanyl.

We're at the point in law enforcement that we have issued Narcan or other types of antidotes to every one of our officers, not just to help to relieve the overdoses with the victims, but also to help each other, because, unfortunately officers do come in contact with fentanyl when we find it illegally on the street, unknowingly get contaminated, and we have to apply those antidotes to each other.

But I also want to talk about another challenge that we face. That challenge is staffing levels, pure and simple. Odessa, as you look across this panel, I am the small guy on the panel, so I have 181 sworn positions. Of those 181 positions, I'm about 38 short as we as we speak today. You know, I live in Odessa, which is the Permian Basin, which is one of the world's leading oil and gas producing areas, right?

So, high school graduates often don't see the value of education. They don't see the value of waiting, and they move into employment in the petroleum industry. Quite honestly, those careers pay more than a career in law enforcement. You can take an 18-year-old young man that graduates from Permian High School, and that young man in a matter of a few months, can be making six figures in the oil field. Our starting salary is \$69,000. Also, in Texas, you know, individuals cannot be employed as police officers until they're 21 years of age. Many times, that 3-year gap leads individuals to different career paths and down paths that no longer allow them to be in law enforcement.

Going back to violent crime and fighting that and other issues such as narcotics in our community, I want to take a moment to just talk about the importance of technology because when you look at smaller departments like mine, sometimes the funding is not there, but there's grants. But sometimes those smaller departments, even smaller than mine, have a very small knowledge of those grants. So, I think there needs to be a push, a help for those smaller departments to understand those grants. Because I tell you, automatic license plate readers, and video cameras, and advanced analytical software, and forensic equipment are game-changers. They're absolute game-changers.

Finally, I'd just like to say it's essential that more and better cooperation between all levels of law enforcement happen and that proper outcomes be identified. Please understand, numbers of arrests and the numbers of seizures don't really matter as much as lowering the number of crime victims. It's what we should be worried about is our victims. We can only accomplish these reductions if we all work together. Remember, and this is what we say around the office all the time, egos and attitudes are the enemy of progress. Thank you.

[The prepared statement of Chief Gerke follows:]

## PREPARED STATEMENT OF MICHAEL GERKE

Distinguished Members of the committee, the reason for the existence of law enforcement agencies is to make the lives of the citizens that they serve better. It is my belief that the main goal of local law enforcement to accomplish this endeavor is the reduction of violent crime. These crimes have the most significant effect on their victims. To this end approximately 2½ years ago the Odessa Police Department entered a partnership with the United States Attorney's Office for the Western District of Texas for the priority prosecution of those individuals apprehended in our community who were convicted felons, narcotics dealers, and criminal gang members. This led not only to a reduction of violent crime in the area, but also to the reduction of property crimes such as auto thefts and burglaries.

This is a shining example of what partnerships between the local and Federal authorities can accomplish. We continue to have a very strong relationship with the Assistant United States Attorney assigned to our area and view her as one of the most trusted and valued members of our team. It is very important to have these relationships as we move into the future with the challenges that we currently face.

The most persistent challenge does not involve crime per se. It involves the resources needed to fight crime, namely personnel. Like many law enforcement agencies across America, the Odessa Police Department is significantly short of police officers. We have an authorized strength of 181 and are currently 38 officers short. In Odessa, which is in the Permian Basin, which is one of the world's leading oil and gas-producing areas, high school graduates often do not see the value of education after the high school level. This is because they can move to employment in the petroleum industry that pays more than a career in law enforcement. In Texas, individuals cannot be employed as police officers until they are 21 years of age and many times the 3 years after high school leads them to different career paths or down paths that no longer allow them to be in law enforcement.

The social harm perspective looks at those issues in a community that cause the greatest social harm. Undoubtedly the cause of the greatest social harm in Odessa and the surrounding area currently is sale and ingestion of Fentanyl by our citizens. This has led to countless overdoses and many deaths. Officers and paramedics routinely respond to these calls and many times administer an antidote such as Narcan. While this product and others like it are effective, it is getting more difficult to acquire an adequate supply for the needs of first responders.

As we all know, the difference in Fentanyl and other abused narcotics such as cocaine or methamphetamines is the drastically higher lethality rate for Fentanyl. Also, Fentanyl has been introduced to much of the population in a surreptitious manner. Many times, individuals believe that they are ingesting one substance and unwittingly ingesting Fentanyl as it has been added to the original substance or been made to look like a substance that it is not. In Odessa, the predominate form of Fentanyl that we see is in the form of counterfeit M-30 pills (oxycodone). Because of the lethality of Fentanyl, we treat the selling of it as a violent crime. When we identify a supplier, removing that individual and their supply of illegal narcotics from our community becomes a very high priority.

With this being said, the most predominate illegal narcotic used in Odessa and the surrounding area is methamphetamine. Large quantities of this substance are seized each year. Users commit crimes ranging from robbery to theft to procure property or cash that can be traded for the substance.

In the fight against violent crime and illegal narcotics as with most endeavors, information is power and is essential. To this point it is necessary to share information amongst all levels of law enforcement. This allows for efficiencies which has become much more necessary due to the shortage of law enforcement personnel. This sharing of information requires two things. First that it be collected and second that relationships exist between agencies that facilitate the passage of information.

The collection of important information is made more difficult by the reduced number of law enforcement officers. However, this gap can be filled to some extent with technology. Many larger agencies have had automatic license plate readers (ALPR), video cameras, advanced analytical software, and forensic equipment for some time. The acquisition of these technologies has been difficult for smaller departments because of the lack of funding. These departments must educate themselves with knowledge about Federal and State grant opportunities and other funding avenues. The Odessa Police Department has found ALPRs particularly effective in helping to identify vehicles driven by suspects of crime. We have also found that purchasing the equipment necessary to join the National Integrated Ballistic Imaging Network and joining the network with the coordination of the Bureau of Alcohol Tobacco and Firearms to be essential in solving and linking firearms-related crime.

Creating relationships that facilitate the sharing of information is accomplished easiest at the local level. The Odessa Police Department and the Midland Police Department (our nearest neighbor) have created the ability for the officers of each respective department to view on demand, the report information from the other. These departments have also created a local task force that focuses on removing violent criminals and narcotics from both communities. We have created a radio network in Ector County (the county in which Odessa resides) that every agency in the county uses. Most Federal and State agencies also have access to this network. Soon, this network will expand to encompass a new radio network in Midland County.

Relationship building is most difficult when dealing with Federal agencies. This difficulty, at least in our area, is caused by the almost constant turnover of personnel in these agencies. In the past this would not be as big of an issue because most departments had officers stationed with the Federal agencies as task force officers. The number of task force officers has declined because many departments are recalling their officers to fill vacancies.

It is essential that more and better cooperation between all levels of law enforcement happen and that proper outcomes be identified. Numbers of arrests and amounts of seizures do not matter nearly as much as lowering the number of crime victims. We can only accomplish these reductions if we all work together. Remember, egos and attitudes are the enemy of progress.

Chairman PFLUGER. Thank you, Chief Gerke. I now recognize Sheriff Barnes for your opening statement of 5 minutes.

**STATEMENT OF DON BARNES, SHERIFF, ORANGE COUNTY,  
CALIFORNIA**

Sheriff BARNES. Thank you, Chairman Pfluger and D'Esposito. I want to also thank Ranking Members Magaziner, Carter, and Thompson for allowing us to provide a local perspective on policing in America. My testimony will focus on the challenges, some of which are the result of misguided policies, and I will share some what I believe solutions to these issues.

Before discussing broad threats, it is important for the committee to know the environment law enforcement faces as a result of policies that have boosted criminal activity and made our jobs much more difficult. Over the last decade, California has incrementally enacted laws reducing penalties for crime while also removing tools from law enforcement. The results of the decriminalization efforts are clear. Since 2011, we've seen an almost 32 percent increase in homicides in the State. Aggravated assaults have increased by almost 35 percent. Drug-related deaths have more than doubled from 4,118 to 10,898 in a 10-year period, and the years following that have gone up substantially more.

The National Retail Federation reported an estimated \$94.5 billion in losses to retail theft Nation-wide in 2021, with the largest losses occurring in the State of California metropolitan areas. This number for comparison was \$44 billion in 2014.

As we address the policy-created lawlessness, we deal with the local impacts of external threats facing our country. The border crisis, the rapidly emerging cyber threat, and an on-going wave of foreign malign influence, a fentanyl crisis of epic proportions, and the proliferation of active-shooting incidents across our country.

Regarding the border, most relevant to this committee is a lack of an effective strategy to secure our Southern Border. One thing this has meant for my community is an influx of fentanyl. In 2021, just the Orange County Sheriff's Department investigation seized 132 pounds of fentanyl and 16,000 clandestine-produced fentanyl pills. One year later, this increased to 450 pounds of pure fentanyl

and over 400,000 clandestine-produced fentanyl pills. What we're seeing at the border today in the wake of Title 42 ending, will manifest into security challenges for local communities.

The challenges faced by the men and women of law enforcement are daunting, but there is hope. There are solutions. Today, I will highlight one of those solutions, our Fusion Center in Orange County, the Orange County Intelligence Assessment Center, known as the OCIAC, created in 2007, has evolved into addressing all crimes and all hazards, not just counterterrorism. Recognizing the fact that sharing information is key to addressing challenges of the day, we have integrated OCIAC into facing many facets of our operations.

To meet the increased cyber threat, OCIAC developed a Cyber Liaison Officer Program. To date, over 700 personnel have been trained. We participate in active shooter and school safety, over 300 assessments done in just the last calendar school year. We created a house of worship training. In 2016, launched the Faith Liaison Ops Program, and more than 500 houses of worship have partnered in this program and training.

We participate in human trafficking. Last year during the Super Bowl, the OCIAC led one of the Nation's most successful human trafficking operations known as Operation Red Zone, partnering with 11 local agencies, resulting in the arrest of 56 suspects, and 16 victims being recovered, including two juveniles as part of that operation.

Finally, I'd like to highlight a few ways the Federal Government can better support local law enforcement. The security at the border is paramount. Congress must pass legislation to secure our border once and for all. Major County Sheriffs of America documented this in their border security priorities and has been included in my written testimony. I want to recognize and appreciate the fact that this committee's recently-passed Border Reinforcement Act incorporates several of those priorities.

Sustained investment in personnel and resources for our fusion centers are paramount. Increased Homeland Security grant funding and embedded personnel in our fusion centers will strengthen our operations. More interagency communication among partners would assist in addressing the cyber threat and local tools to address technologies like unmanned aircraft.

California's example should be a warning for others minimizing the consequences for law-breaking results in a breakdown of society. Congress must be watchful of the destabilizing impacts of policies that empower criminals and victimize law-abiding residents.

Thank you again for the opportunity to share my perspective. I'm happy to help and answer any questions you may have of me. Thank you.

[The prepared statement of Sheriff Barnes follows:]

PREPARED STATEMENT OF DON BARNES

MAY 16, 2023

Thank you Chairmen Pfluger and D'Eposito and Ranking Members Magaziner and Carter for holding this hearing and seeking local law enforcement's perspective on the security challenges facing the American homeland.

We gather here today in the midst of National Police Week, an annual time to honor the fallen peace officers of our communities. This week is also a moment for our national leaders to focus on policies that help law enforcement accomplish our public safety mission.

Today, law enforcement and the communities we serve face challenges on multiple fronts. The risks are great, but there is also no greater opportunity to take action. My testimony will focus on those challenges, some of which are the result of misguided policies, and share solutions that will ultimately secure our homeland.

#### POLICY-DRIVEN CRIME WAVE

I will start with a focus on crime. The 50 States have been called laboratories of democracy. If that's the case, California's lab was blown up by our experiment with decriminalization.

Over the last decade, consequences for crime have eroded and certain tools used by law enforcement to keep our communities safe have been removed. This has made our job harder and put the safety of law-abiding residents at risk.

In 2011, the California State legislature passed Criminal Justice Realignment (Assembly Bill 109), which shifted a substantial portion of the State prison population to county facilities. In 2014, a deceptively-titled ballot initiative, the "Safe Neighborhoods and Schools Act (Proposition 47)," was approved. This bill turned the two most prominent categories of crime, property theft and narcotics violations, from felonies to misdemeanors. Two years later another deceptive initiative was approved, Proposition 57, which resulted in additional releases of people from State prison earlier than their original sentence length.<sup>1</sup>

At the same time, we have seen legislation that either removed effective tools from law enforcement or placed burdensome requirements on our agencies. Overly burdensome and unnecessary requirements on law enforcement divert our resources away from front-line services and into administrative bureaucracy. Even today, there are proposals being considered to prevent the use of apprehension K9s, prohibit certain investigative techniques, and eliminate the enforcement of certain traffic violations.

The results of these policies speak for themselves:

- Our State prison population has declined from 165,000 in 2010 to 90,934 as of March 2023. The Legislative Analyst Office in California estimates that the State has nearly 20,000 empty prison beds, comprising 20 percent of the State's total prison capacity. Unfortunately this decline in the prison population and empty bed space is not a reflection of a lack of need in California. Rather, the State simply shifted a large number of people from State custody to local communities.
- In 2011 there were 1,794 homicides in California; this number increased by 31.6 percent to 2,361 in 2021, compared to our overall population increase of less than 10 percent over that same period.
- Aggravated assaults increased by 34.6 percent from 91,483 to 123,122 in 2021.
- A lack of true consequences for illegal behavior has put law enforcement in greater danger. The five most recent California officers killed in the line of duty were murdered by individuals with extensive criminal histories. The majority of these individuals were released early due to lenient criminal justice policies.
- Drug-related deaths have skyrocketed in our State. According to the California Department of Public Health there were 4,113 California drug-related deaths in 2011. A decade later, in 2021, that total more than doubled to 10,898.
- While we see property crime still going unreported to law enforcement, retail losses help tell the story of increased theft. The National Retail Federation reported that, in 2021, there was an estimated \$94.5 billion in losses to retail theft Nation-wide, with largest losses occurring in California metropolitan areas. In a similar survey conducted in 2014 this number was estimated to be \$44 billion.
- Although our proactive posture has kept crime rates in Orange County—which is proudly home to more than 3.1 million residents—relatively low, we are beginning to see the impact of decisions made by the district attorney in the largest county within the Southern California region—Los Angeles. The DA's failure to prosecute on a variety of offenses has emboldened career criminals. Just last

<sup>1</sup>Proposition 57 was approved with the intention of showing leniency to offenders who are truly non-violent. Unfortunately, many voters were not aware that the State's definition of "non-violent" included rape of an unconscious victim, solicitation to commit murder, and assault with a deadly weapon on a peace officer amongst many other crimes.

week our deputies arrested a burglary crew of four individuals from Los Angeles attempting to burglarize a residence in Yorba Linda.

#### EXTERNAL SECURITY PRESSURES

We cannot successfully bring down crime rates without violators facing real consequences. In addition, our challenges are exacerbated by external threats around our country. These threats include: the border crisis, the rapidly emerging cyber threat, an on-going wave of foreign malign influence, a fentanyl crisis of epic proportions, and the proliferation of active-shooter incidents.

*Border Challenges.*—Most relevant to this committee is the lack of an effective strategy to secure our Southern Border. One thing this has meant for my community is an influx of fentanyl. In 2021, Orange County Sheriff's Department investigators seized 132.9 pounds of fentanyl, which equates to approximately 30 million potential lethal doses, and 16,278 pills. In 2022, this increased to 449.9 pounds of fentanyl and 405,283 pills suspected of containing fentanyl seized.

The lack of border enforcement has also extended to local communities in part because U.S. Immigration and Customs Enforcement (ICE) has virtually ceased picking up inmates who are released with a detainer.

In calendar year 2021, the Orange County Sheriff's Department notified ICE of 143 individuals who had detainers and were due to be released from our jail. Of the 143 individuals referred, only 73—or 51 percent—were taken into ICE custody. Those not taken into custody by ICE were released back into the community. A total of 24 of those released individuals were re-arrested for new offenses in Orange County.

In calendar year 2022, my department notified ICE of 155 individuals who had detainers and were due to be released. Of those 155 individuals, only 17—or 10.9 percent—were transferred to ICE's custody. With respect to the other 138 individuals who, under State law, were eligible for transfer to ICE, ICE took no action and these individuals were released back into the community. A total of 20 of these individuals were re-arrested for new offenses in Orange County.

Failure to remove these individuals jeopardizes the safety of all Orange County residents. California law limits notifications to inmates who have committed serious crimes and/or have a criminal history. In effect, this State law results in my department only notifying ICE of those individuals with detainers who pose the greatest risk to our community. We only notify ICE when the individuals have aggravating factors and therefore merit being taken into ICE custody.

What we are seeing at the border today in the wake of Title 42's end, will manifest into additional security challenges for local communities.

#### LOCAL SOLUTIONS—FUSION CENTERS

I know this is a bleak picture. The challenges faced by the men and women of law enforcement are daunting. But there is hope. There are plausible solutions. As the inscription on the Nation's peace officer memorial over at Judiciary Square states, "in valor there is hope." There is much valor amongst the individuals working in law enforcement today. There is a commitment to do the work necessary to meet those challenges and to use innovative measures to overcome obstacles.

Today I will highlight how we use our fusion center in Orange County to address threats before they materialize and support efforts to address current crime trends.

The Orange County Intelligence Assessment Center (OCIAAC) was created in 2007 by the Orange County Sheriff's Department and our municipal agency partners. It started as a Terrorism Early Warning group pre-9/11. Operated by my department, OCIAAC includes multiple municipal, State, and Federal agencies working alongside each other every day to make sure information stovepipes are minimized and relevant threat information is shared routinely. While initially designed to address threats of terrorism, it has evolved into a tool to address all crimes and all hazards.

While some people criticize the expansion of fusion centers' mission from terrorism-only to all crimes and all hazards, they ignore the reality that information sharing among local, State, and Federal agencies and the private sector is fundamental to countering all types of threats, whether they are terrorism, cyber, or criminal. My agency is responsible for preventing and investigating all of those types of crimes, and we will continue to do all we can to ensure our people and our partner agencies throughout Orange County, southern California, our State, and our Nation get the benefit of that institutionalized information sharing.

Recognizing the fact that the sharing information is key to addressing challenges of the day, we have integrated OCIAAC into many facets of our operations. A few examples:

- *Cyber Threat.*—According to the FBI, California residents lost over \$2 billion to cyber criminals in 2022. This number is an increase from the \$1.2 billion in 2021 and the \$621 million in 2020. Ransomware attacks are one of the most prevalent threats. We have recently seen this kind of attack on public-sector agencies like the San Bernardino Sheriff's Department and the city of Dallas, Texas.

To meet the increased cyber threat OCIAC developed a Cyber Liaison Officer (CLO) Program. Through this program we train our staff to recognize cyber threats and take appropriate action. We teach the CLO program at our academy. To date, approximately 700 personnel have been trained county-wide.

Last May, OCIAC led a multi-agency tabletop exercise regarding cyber attacks with municipal agencies, Federal agencies to include DHS, and private-sector partners. This preparation and education of staff is critical to staying ahead of virtual cyber criminals including terrorists.

An example of how OCIAC assists in addressing a cyber attack occurred in 2021 when emergency call centers in Orange County experienced a Telephone Denial of Service to our Public Safety Answering Point, or 9-1-1 system. The incident caused by malicious actors overwhelmed our incoming 9-1-1 lines with illegitimate 9-1-1 calls delaying critical calls for service to our community. The Orange County Cyber Crime Task Force (OCCTF) and the Orange County Intelligence Center (OCIAC) Cyber Unit were activated. OCIAC specifically helped with the investigation and restoration of service by identifying similar issues in other jurisdictions and best practices to resolve this kind of attack.
- *Active Shooter and School Safety.*—OCIAC is integrated with our School Mobile Resource and Assessment Team (SMART). SMART is utilized in school situations and incidents related to violence, threats, possession and/or use of weapons, unstable behaviors, and suicidal actions or tendencies. The team responds at the request of law enforcement personnel or school administration to provide services and resources, including threat assessments, criminal investigation, case management and referrals to mandatory counseling, where deemed appropriate. The goal of SMART is to evaluate and assess each incident individually, to effectively resolve the matter through the least intrusive means available (while still maintaining safety and security to the school), and ultimately return the staff and students to their daily routine. For the 2021-22 school SMART, in consultation with OCIAC, conducted over 300. As an example, earlier this month OCIAC worked with public safety agencies and school personnel to determine the veracity of a viral social media posts circulating on-line threatening a school shooting causing a pivot of law enforcement resources while creating panic and anxiety to school districts, parents, and our communities.

When an active-shooter incident occurred on May 15, 2022 at the Geneva Presbyterian Church in Laguna Woods in Orange County, OCIAC coordinated with the Las Vegas fusion center (the suspect's home town) to provide vital information on the suspect. This is an example of the type of information sharing and collaboration that is uniquely enabled through the National Network of Fusion Centers every day around the country.

OCIAC assisted in intelligence analysis that led to the arrest of a 40-year-old man who threatened a "killing spree" in YouTube videos. The arrest stemmed from reports of bizarre email exchanges and threats to a staff member of a large 4-year university in Orange County. The suspect had 9 firearms in his possession.
- *House of Worship Security.*—In 2016, OCIAC launched its Faith Liaison program. More than 500 houses of worship have partnered in the faith outreach program. This program engages the faith community in trainings for critical infrastructure safety, active-shooter awareness, and security briefings. Program staff fields 70-100 calls per week with 10-15 meetings per week with faith communities. This effort was highlighted as a "best practice" in the 2019 U.S. Homeland Security Advisory Council Report, "Preventing Targeted Violence Against Faith-Based Communities."
- *Foreign Malign Influence.*—OCIAC has taken a lead in educating local businesses and public officials about malicious attempts by foreign actors to steal intellectual property and influence elected officials. OCIAC is coordinating closely with DHS's Office of Intelligence and Analysis and FBI's Foreign Malign Influence Task Force. This includes vetting all requests from foreign entities received by our county government.
- *Integration with High Intensity Drug Trafficking Area (HIDTA) Program.*—Fusion Centers have become an important component of HIDTA operations. Fusion center can provide tactical support during on-going investigations, analytical products, subject workups, takedown packages, communications charts, as-

assessments, mapping products, organizational profiles, and intelligence bulletins. This information provides our narcotics information with tools to identify suspects and make both seizures and arrests. OCIACs relationship with FBI and DHS is critical to identify individuals and organizations involved in transnational organized crime.

- *Human Trafficking.*—OCIAC plays a critical role in efforts to address human trafficking through their information sharing amongst multiple agencies. As an example, In February 2022, OCIAC coordinated Operation Red Zone in partnership with 11 local law enforcement agencies, the Orange County District Attorney's Office and the U.S. Department of Homeland Security to identify victims of human trafficking and hold their perpetrators accountable. Fifty-six suspects were arrested and 16 victims were recovered, including two juveniles under the age of 16.

#### FEDERAL SOLUTIONS

In closing, I would like to highlight a few ways the Federal Government can better support local law enforcement efforts. This support will ultimately translate to a safer homeland.

*Secure the border.*—The crisis and the border and ensuing chaos that has occurred since the expiration of Title 42 remains a significant threat to the security of local communities. Congress must pass legislation to secure our border once and for all. The Major County Sheriffs of America's "Border Security and Immigration Principles" document outlines necessary actions that should be taken (attached). Key priorities include:

- Gain and maintain operational control of all United States borders.
- Fully implement a biometric entry/exit system.
- Use all available American power, including sanctions, to eradicate murderous Mexico-based cartels.
- Ensure access to information and intelligence for all State and local law enforcement.
- Support State and local law enforcement with proper training and updated technologies.
- Require reimbursement to locals for housing of illegal immigrants.
- Continue to work with local law enforcement to develop a strategy to ensure proper procedure is followed regarding ICE detainees.
- The legal immigration process should be reformed and align with enacted Congressional priorities.
- In order to accomplish the above articulated goals, it is imperative these efforts be fully budgeted, authorized, and appropriated. Increased funding for Federal grants like Operation Stonegarden would further help local law enforcement mitigate security risks associated with the border.

I want to recognize and appreciate the fact that this committee's recently-passed Border Reinforcement Act incorporates several of those priorities.

*Support fusion centers.*—The way we utilize our fusion center in Orange County is a model that jurisdictions across the Nation could follow. To maximize our effectiveness, fusion centers require sustained investment in personnel and resources. Increased FEMA grant funding through the State Homeland Security Grant Program and the Urban Area Security Initiative are important. An enhanced and sustained commitment by Federal agencies to embed personnel in local and State fusion centers will strengthen their abilities Nation-wide.

*Cybersecurity and emerging technology.*—More interagency communication among Federal partners and with local partners would assist in addressing the cyber threat. The current uncoordinated approach of addressing the cyber threat creates a challenge. Multiple Federal law enforcement agencies appear to be addressing the cyber threat independent of one another with disparate approaches. Additionally, we must redouble efforts to obtain lawful access to encrypted devices and platforms when they are concealing evidence of a crime. Finally, local law enforcement must be given the tools to address emerging technologies like unmanned aircraft systems.

*Guard against decriminalization.*—Let California's example be a warning for other jurisdictions. When consequences for law-breaking are minimized, it results in less safety for our communities and ultimately a breakdown of our society at the local level. Congress must be watchful of the destabilizing impact of policies that empower criminals and victimize law-abiding residents.

Thank you again for the opportunity to share my perspective and I am happy to help this committee address the critical issues it continues to address.



## ATTACHMENT.—MAJOR COUNTY SHERIFFS OF AMERICA BORDER SECURITY AND IMMIGRATION PRINCIPLES

FEBRUARY 2023

The Major County Sheriffs of America (MCSA) appreciates the on-going national conversation about immigration and border security. Policy solutions are long overdue. Our member sheriffs represent over 130 million Americans, and we cover regions on or near the Southern, Northern, and Maritime Borders where the effects of illegal immigration and inadequate border security are felt most acutely. From narcotics and gangs to human trafficking and labor exploitation, this crisis impacts our communities on a daily basis. As elected sheriffs who are sworn and entrusted to protect the public, we have a duty to enforce the law and an obligation to work with our Federal, State, and local law enforcement partners to reduce the threat.

We recognize that the creation and enforcement of immigration policy is fundamentally a Federal responsibility. The administration and Congress must deal with many millions of illegally present individuals in the United States while also modernizing our immigration system into one that is functional and efficient. To date, America's border security and immigration policy failures have created significant State and local law enforcement challenges. MCSA is encouraged that a bipartisan group of senators has renewed efforts in the 118th Congress to explore workable immigration and border security legislative solutions. Any solution must include tangible improvements that front-line of law enforcement officials have been urging for years.

## MAJOR COUNTY SHERIFFS OF AMERICA PRINCIPLES

*Gain and maintain operational control of all United States borders.*

The first step is to ensure that advanced technology, physical infrastructure, and adequate Federal agency staffing levels are deployed to secure all of America's borders—Northern, Southern, and Maritime.

*Fully implement a biometric entry/exit system.*

Knowing who enters our country and if or when they leave the country is basic yet vital information. The 9/11 Commission recommended implementation of this system two decades ago, and still gaps remain.

*Use all available American power, including sanctions, to eradicate murderous Mexico-based cartels.*

Violent crime and record-setting overdose deaths in our communities are being fueled by the Mexican cartels—specifically the Sinaloa and Jalisco New Generation cartels. Despite abundant evidence that these foreign organizations are directly responsible for killing more American citizens than any other entity on the globe—more than 100,000 in 2021 alone—U.S. foreign policy has been weak and utterly ineffective at addressing the threat. Despite heroic efforts by our underfunded Federal law enforcement partners, these transnational criminal organizations operate with near impunity, and overdose deaths continue to shatter records. Other foreign criminal organizations—especially those based in China—that supply these cartels with precursors to make fentanyl and other deadly narcotics need to be held accountable as well. It is time for Congress and the administration to implement a tougher, more comprehensive array of foreign policy tools with Mexico, China, and other countries to isolate and neutralize the cartels.

*Ensure access to information and intelligence for all State and local law enforcement.*

Information sharing among Federal, State, local, and Tribal law enforcement is critical to maintaining public safety and combatting a wide variety of interstate and international threats. State and local law enforcement must have access to all pertinent background information about individuals we encounter in our jurisdictions, whether in our correctional facilities or in our communities. When an individual comes into police contact, a routine query should return information from all relevant databases so that front-line officers and deputies have comprehensive situational awareness. Officer safety and public safety depend on timely and actionable information from multiple sources. Local law enforcement has a need to know, and the Federal Government has a need to share, as the 9/11 Commission recognized 20 years ago. In correctional facilities, complete and timely information is vital for the classification process to ensure an individual is placed at the proper security level, for their protection and that of our correctional staff and other inmates.

*Support State and local law enforcement with proper training and updated technologies.*

While immigration enforcement is and should be the Federal Government's responsibility, many State and local law enforcement agencies support their Federal partners through task forces and joint operations. These agencies must be properly trained, equipped, and informed to ensure their officers can provide critical support. Protecting the homeland is a shared responsibility, and focused Federal support of these efforts will help State and local law enforcement be capable of doing its part.

*Require reimbursement to locals for housing of illegal immigrants.*

Locals should not be required to bear the cost associated with housing any person that is in this country illegally. Federal reimbursement must cover the stay of an illegal immigrant from the moment they enter a detention facility until they are released. Just as immigration enforcement is the Federal Government's responsibility, the financial burden should be as well.

*Continue to work with local law enforcement to develop a strategy to ensure proper procedure is followed regarding ICE detainees.*

Numerous Federal courts have determined ICE detainees are unconstitutional and that arresting aliens based on immigration status exceeds sheriffs' arrest authority. Without proper arrest authority, sheriffs cannot disregard an individual's Fourth Amendment rights. No law enforcement official wants to release an individual charged with heinous crimes back into the community and ICE has the responsibility to ensure the process for detaining an individual meets the legal standards.

MCSA seeks continued support from the administration, Congress, and specifically ICE to afford sheriffs an additional legal basis to defend themselves when they are sued for faithfully executing their public safety duties by detaining individuals at ICE's request.

*The legal immigration process should be reformed and align with enacted Congressional priorities.*

The immigration system should ensure everyone who enters America is fully vetted, the process is timely and efficient, and that the latest technology including biometric verification is utilized. The process should allow for temporary workers as long as they pay taxes and are fully compliant with Federal, State, and local laws. Compliance with Federal, State, and local laws by all visitors should be enforced. The system should also be timely for those seeking permanent admission and citizenship in line with Congressionally-established immigration goals. It should also enable expedited due process so that people who violate our laws are quickly removed from the country.

*In order to accomplish the above articulated goals, it is imperative these efforts be fully budgeted, authorized, and appropriated.*

Sheriffs are the highest law enforcement officials in our counties. Immigration policy and enforcement are Federal Government responsibilities, and as such, a lawful, efficient, responsible, and compassionate Federal system should be fully funded to reflect those priorities.

The member sheriffs of the Major County Sheriffs of America are available to discuss these issues and appreciate the opportunity to work collaboratively with both the administration and Congress to secure our Nation.

Chairman PFLUGER. Thank you, Sheriff Barnes. I now recognize Commissioner Cox for his opening statement of 5 minutes.

**STATEMENT OF MICHAEL COX, COMMISSIONER, BOSTON  
POLICE DEPARTMENT**

Mr. COX. Thank you, Chairman Pfluger, Ranking Member Magaziner, Chairman D'Esposito, and Ranking Member Carter, and Ranking Member Thompson for the invitation to testify alongside my fellow law enforcement leaders.

It's my honor to represent the men and women of the Boston Police Department and the city of Boston. I welcome the opportunity to be with you today and share the impact of the partnerships with the Federal Government that we're having in Boston.

The Boston Police Department has a long history of proactive community policing, combined with strategic deployment, and focused interventions based on analysis and crime data intelligence. A substantial portion of our analytic capabilities are funded by our partnership with the Federal Government through grants that are critical to public safety in the Boston metro region.

First and foremost, we are a strong proponent of community policing in our department. To keep our city safe, the police must build trust with residents in all the neighborhoods we serve through deliberate and consistent relationship building. These efforts are critical to preventing crime and terrorism. Indeed, community members will not report criminal or suspicious behavior if they don't trust the local police to act appropriately with the information. The Boston Police Department prioritizes partnering with stakeholders to address issues and solve problems. In addition, the BPD partners with mental health and social service programs to connect those at risk with services and support.

Our department has strengthened our on-going engagement efforts and started community CompStat meetings in each of our 11 police districts. The goal is to take a sense of empowerment and problem solving we get from the internal CompStat meetings and push it out into the community. Our Intelligence-Led Policing Model complements our community policing. It provides real-time intelligence and analysis to inform strategic decision making and deployment of resources with a focus on individuals driving crime and violence.

This model is paying dividends in Boston. Overall, serious crime, Part I crime, have been going in a downward trend, declining more than 50 percent since 2005, which correlates with the establishment of our Boston Regional Intelligence Center, better known as the BRIC, that same year. Year to date, Part I offenses have declined 6 percent compared to 2022 and 6 percent below a 5-year average.

Annual shooting victim totals have fluctuated over the past 10 years. In 2018, 2019, and 2021, our number has been historically low then. Then, like many other cities, total shooting victims reached a 10-year high in Boston in 2020. However, unlike other major cities, Boston saw a 28 percent decrease in 2021. In 2022, shooting victims totals declined an additional 8 percent to the lowest level since the 1950's.

Despite the decline in crimes, firearm violence continues to be a concern. Aftermarket enhancement, like large-capacity magazines and sear switches, as well as the emergence of privately-manufactured firearms, better known as ghost guns, have exasperated the issues. Last year, with the assistance from our Federal partners, we investigated individuals manufacturing ghost guns and yielded firearm parts, 3D printers, and ammunition. The number of ghost guns recovered in 2022 increased 79 percent from 2021.

Overall, there was 24 percent increase in recovered crime guns between 2019 and 2022 in Boston. In 2022, approximately 10 percent of crime guns recovered were reported stolen. Thirty-three percent of those were from Massachusetts. The rest were from elsewhere. Repeat offenders account for a large portion of violence in our city. In 2022, 564 individuals were arrested on firearm charges.

Forty-two percent had prior firearm arrests, with 102 of those arrested having 3 or more.

The BRIC was established in 2005 to coordinate efforts with public safety participants in the Boston Urban Area Security Initiative, better known as UASI grant. It was created to reduce criminal activity and prevent and respond to terrorism in all its forms. DHS and the intelligence analyst personnel are instrumental to the intelligence-sharing and risk mitigations. DHS cybersecurity expertise has provided effective support in investigating ransomware attacks and other financially-motivated cyber crimes.

I and many of our counterparts are concerned that level funding or decreasing grants is the potential here, and we are deeply concerned about that. Congress could assist law enforcement by increasing funding across Homeland Security Grant Program to include the UASI and consider broadening its applicability beyond terrorism to include threats traditionally mitigated by U.S. Department of Defense and the intelligence community.

Federal investments in grant programs are vital, as are the assignments of DHS and the personnel assigned to its fusion centers. Without these resources, cities and towns are vulnerable, and I encourage Congress to continue to invest in these programs. Thank you for giving me this opportunity.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF MICHAEL A. COX

MAY 16, 2023

Thank you Chairman Pfluger, Ranking Member Magaziner, Chairman D'Esposito, and Ranking Member Carter for the invitation to testify at this hearing alongside my fellow leaders in law enforcement. The Federal Government is a critical partner in public safety for local police departments, and I welcome the opportunity to be with you today to share the impact these partnerships are having in the city of Boston.

The Boston Police Department (BPD) has a long history of proactive Community Policing combined with strategic deployment and focused interventions based on real-time analysis of crime data and intelligence. A substantial portion of our analytic capabilities are funded by the Federal Government through grants that are critical not only to public safety in Boston but to the entire Metro Boston region.

First and foremost, I am a strong proponent of Community Policing and believe that in order to have a truly safe city, we must have the trust of the communities that we serve. Trust is achieved through deliberate and consistent relationship building over time between police and residents in all of our neighborhoods. The community is crucially important to preventing crime and terrorism. Indeed, community members will not report criminal activity or suspicious behavior if they don't trust the local police department to act appropriately with that information.

BPD prioritizes building relationships with the community and partnering with stakeholders to address issues and solve problems. In addition, BPD partners with mental health and social service programs to connect those at risk with services and supports.

Recently, one way the Department has sought to further strengthen our on-going efforts to engage directly with the community is by beginning to implement "Community CompStat Meetings" in each of the 11 police districts. The goal of Community CompStat is to take the same sense of empowerment and problem solving from the Department's internal CompStat meetings out into the community. Rather than incorporating CompStat into any existing community meetings—which tend to focus on a variety of issues—the Department engages at the neighborhood level to address the unique issues facing each specific community. Additionally, these meetings provide an opportunity to familiarize the public with the good work done by the Department and to provide transparency and accountability through sharing data and analysis.

The Boston Police Department's Intelligence-Led Policing Model complements Community Policing. Intelligence-Led Policing provides commanders with real-time synthesized intelligence and analysis to inform strategic decision making and deployment of resources to focus on the individuals and/or groups that are driving crime (or fear of crime) and violence in the city, while also targeting locations of concern.

The combination of Community Policing and Intelligence-Led Policing is paying dividends in the city of Boston. Overall, serious crimes (i.e., "Part I Offenses" as defined by the FBI Uniform Crime Reporting Program) have followed a consistent downward trend in recent decades in our city, declining more than 50 percent since 2005—which correlates with the establishment of the Boston Regional Intelligence Center that same year. Year to date, Part I Offenses have declined 6 percent compared to 2022 and are 6 percent below the 5-year average.

Despite the decline in overall serious crimes, firearm violence continues to be a persistent concern in our city. Annual shooting victim totals have fluctuated significantly over the past 10 years, often spiking and dropping every other year. In 2018, 2019, and 2021, the number of total shooting victims were historically low. Following a pattern seen in other major cities, total shooting victims reached a 10-year high in Boston in 2020; however, unlike other major cities, totals decreased 28 percent in Boston the following year. Last year, in 2022, shooting victim totals declined an additional 8 percent, the lowest levels experienced since the 1950's.

Violent crime in Boston continues to be largely driven by gang-related retaliatory activity and by the continued availability of out-of-State firearms. These issues have been exacerbated by increasing recoveries of firearms with aftermarket enhancements, like large-capacity magazines and sear switches, and the emergence of privately-manufactured firearms (PMFs). BPD officers recovered 695 crime guns from the streets of Boston in 2022, a 9 percent increase compared to the prior year and a 24 percent increase compared to 2019. Approximately 10 percent of crime guns recovered in 2022 had been reported stolen. Of those reported stolen, 33 percent were reported stolen from Massachusetts, 18 percent from Maine and 11 percent from Georgia.

In 2022, BPD conducted several investigations into individuals manufacturing PMFs in Boston. Multiple firearm parts, 3D printers, and ammunition were recovered from these investigations. Privately-manufactured firearm recoveries increased 79 percent from 2021, with a total of 104 recovered in 2022, accounting for 15 percent of the overall guns recovered in that time period.

We continue to experience problems with firearm arrests for repeat offenders, which we know make up a very small percentage of our overall residents, but account for a large proportion of violence in our city. In 2022, 564 individuals were arrested on firearms charges; 42 percent had prior firearm arrests in Boston, with 102 of those arrested having 3 or more prior firearm arrests.

Another major trend we are experiencing in the city is an increase in juvenile offender involvement in firearm violence. Increasing numbers of firearms have been recovered from juvenile offenders in recent years, including 88 juveniles arrested in possession of a firearm in 2022. Firearm arrests of those under 17 increased by more than two-thirds in 2022 compared to 2021 and more than doubled 2020 totals. Juvenile offenders also appear to be escalating from less serious property crime offenses to robbery and firearm violence over increasingly shorter time periods.

The Boston Regional Intelligence Center (BRIC) is responsible for maintaining and preparing these statistics and analysis and drives BPD's Intelligence-Led Policing efforts. The BRIC is the cornerstone of BPD's data and intelligence analysis, information sharing, and counterterrorism efforts, and serves as a critical resource for the Metro Boston region.

The BRIC was established in 2005 to coordinate efforts of the 9 cities and towns in the Metro Boston region who receive Boston Urban Area Security Initiative (UASI) grant funding to reduce criminal activity and prevent terrorism. Since its inception, the BRIC has become a hub for public and private stakeholders in and around Boston for the collection and analysis of intelligence information and the investigation of homeland security-related criminal activities.

Within the Boston Police Department, the BRIC plays an important role in aligning Intelligence-Led Policing with Community Policing. For several years, the BRIC has provided information on high-risk individuals for intervention and services through the State's Safe and Successful Youth Initiative. The BRIC also develops relationships with the networks of colleges and universities in Boston, as well as hospitals and faith-based organizations, for information sharing regarding public safety topics. Recently, the BRIC provided threat briefings to LGBTQIA+ groups and worked with Boston Children's Hospital, Catholic Churches, historically Black Churches, and Jewish community organizations to share information, mitigate

threats, and complete investigations. The BRIC works to build trust with the community by providing important information to keep individuals informed and safe.

The BRIC's analytical and investigative staff are co-located in a shared workspace within the Boston Police Department. Critical liaison personnel such as representatives from Boston Emergency Medical Services, Boston Fire Department, Department of Homeland Security Office of Intelligence & Analysis (DHS I&A), and Federal Bureau of Investigation's Boston Field Office are also assigned within the BRIC. The BRIC further partners with local law enforcement agencies, other first responders and the private sector operating throughout the Metro Boston region; Federal law enforcement and intelligence partners; and other State and major urban area fusion centers to prioritize, collect, analyze, produce, and disseminate actionable intelligence—often in real time.

The importance of information sharing between Federal, State, and local law enforcement partners cannot be overstated, as this has proven critical to staying ahead of the threat environment. The national network of fusion centers, along with the network of intelligence commanders in major cities and counties, has established a critical foundation for information sharing about emerging threats to protect our communities. BPD's participation in the FBI's Joint Terrorism Task Force has been instrumental for assessing threats and collaborating on terrorism investigations to protect the city of Boston, the Metro Boston region, and the Nation.

DHS I&A personnel assigned to the BRIC and the region have also proven instrumental in intelligence sharing and risk mitigation. These personnel have provided unique access to valuable resources, including trainings, threat briefings, classified systems, specialized expertise in areas such as cybersecurity and intelligence community reach-back for unique insights regarding threats that may impact our jurisdiction. The DHS Intel Officer assigned to the BRIC has provided cybersecurity expertise that enabled effective intelligence support to several incidents to include ransomware attacks targeting State and local government and critical infrastructure partner IT systems, business email compromises and other financially-motivated cyber crimes. The Intel Officer has also provided situational awareness of nation-state and advanced persistent threat actor campaigns targeting elections and helped us prepare accordingly to the heightened tensions during the early days following Russia's invasion of Ukraine. Furthermore, DHS I&A personnel have contributed to joint analytic production on topics and events of concern such as last year's U.S. Open Golf Championship, Boston Marathon, and countless other special events that occur in the Metro Boston region each year.

Additionally, the BRIC and the Boston Police Department work closely with several DHS component Federal agencies to fulfill our public safety responsibilities. These agencies include: United States Coast Guard, United States Secret Service, Cybersecurity and Infrastructure Security Agency, Customs and Border Protection, Homeland Security Investigations, Transportation Security Administration, Science and Technology Directorate, Countering Weapons of Mass Destruction Office, and Federal Emergency Management Agency.

Federal investment in local law enforcement through grants is crucial to crime prevention and terrorism prevention throughout the country.

One significant investment that the city of Boston has made, in partnership with the U.S. Department of Homeland Security's (DHS) Countering Weapons of Mass Destruction Office (CWMD), regional law enforcement agencies and first responder agencies, is actively participating in the Securing the Cities (STC) program. The goal of STC-Boston is to build local capacity to find and intercept radiological or nuclear material before it can be used in a terrorist attack. This program augments local resources with Federal funding with the goal of detecting, deterring, and defending against terror attacks that use radioactive material. Working with public safety agencies throughout the Metro Boston region, STC-Boston will help build an enduring radiological detection network that integrates with other counter-terrorism initiatives already in place, such as the Boston Urban Area Security Initiative, Massachusetts State Police, Massport Police Department, Massport Fire Dept, and several other State and local first responder partners.

Since joining the STC Program in 2020, Boston has received a total of \$4,450,000 in funding. The most recent grant will provide the Metro Boston region with additional funding to provide equipment, training, and support in the detection and interdiction of illicit radioactive material.

A second critical source of Federal funding is provided through UASI grants. These resources are indispensable to the city of Boston's capability to prepare, prevent, respond to, and recover from an act of terrorism in all of its forms. The investments received to date are utilized daily, whether it be personnel, equipment, software, or expertise gleaned through training, exercise, or networking events. UASI funding has allowed the BRIC to increase its human capital and technology capabili-

ties to identify and mitigate both domestic and international threats to Boston's communities. The expertise and analysis provided by the BRIC is utilized to inform decision making by BPD and the Metro Boston region's public safety agencies each and every day.

Perhaps most notable, UASI provided resources to purchase tactical equipment and training that literally saved the lives of police officers in BPD's Special Operations Division. For example, in November 2021, an armed barricaded subject, who had threatened the lives of family members, shot several BPD officers through a door. These officers sustained serious, but thankfully not life-threatening, injuries. Ballistic shields, ballistic vests, ballistic helmets, and an under-door camera system purchased with UASI funding protected the officers and ultimately saved their lives. This is just one example of how these capabilities protect BPD personnel and allow officers to respond safely and effectively to the dangers presented by the current threat landscape.

Historically, Metro Boston has ranked within the 15 highest-risk UASI regions. For UASI 2023, Boston's risk ranking increased from No. 12 to No. 11, yet the region is eligible to receive \$200,000 less in the total allocation compared to last year. This decrease in funding is problematic because the Boston region has maximized its annual expenditure and has remained largely in a capability sustainment mode, despite increasing expectations for homeland security-related responsibilities. I and my counterparts are concerned that this may be indicative of the beginning of a trend of declining homeland security funding, while homeland security demands are rapidly increasing.

The terrorism threat landscape has grown substantially broader through various forms of violent extremism. Additionally, national security threats from nation-state actors and their proxies managing aggressive campaigns to sow seeds of discord in our communities through mis/dis/mal information, cyber attacks, and counterintelligence threats require more from our intelligence professionals, investigators and front-line officers to protect our communities. These are issues that our Nation's first responders have not traditionally dealt with and, as a result, we require more training, more personnel, more embedded analytical experts, and more technical capabilities to mitigate these threats.

A significant way that Congress could assist law enforcement would be to increase funding across the Homeland Security Grant Program—to include UASI—and consider broadening its applicability beyond just "terrorism" to include other threats traditionally mitigated by the U.S. Department of Defense and intelligence community.

Federal investments in the UASI and STC grant programs are vital to local efforts to prevent and mitigate potential threats, as are the assignment of DHS I&A personnel to fusion centers. Without these important resources cities and towns are vulnerable to individuals and groups intent on inflicting harm. I encourage Congress to continue to invest in these important programs.

I want to thank the committee again for the opportunity to share what we are doing in Boston. I believe our model of community policing combined with intelligence-led policing is working as evidenced by the data. This successful model would not be possible without the significant and important Federal investments that have been made in the Boston Police Department by the Department of Homeland Security. Federal partnerships with, and investments in, local and State police departments are vital to the safety and security of the United States.

Chairman PFLUGER. Thank you, Commissioner Cox. I now recognize Mr. Mangual for his opening statement of 5 minutes.

**STATEMENT OF RAFAEL MANGUAL, SENIOR FELLOW AND HEAD OF RESEARCH POLICING AND PUBLIC SAFETY INITIATIVE, MANHATTAN INSTITUTE FOR POLICY RESEARCH**

Mr. MANGUAL. Thank you, Chairman Pfluger, Chairman D'Esposito, distinguished Members of the committee. I want to thank you all for the opportunity to testify in a matter of great importance. The law enforcement community is facing many challenges, but two that stand out the most, particularly in and around major cities, are the challenges of responding to a real increase in crime at a time in which many agencies are struggling with officer recruitment and retention. In other words, in many parts of the country, police are being asked to shoulder a much bigger burden

with respect to crime and disorder, and they're being asked to do so with fewer and/or less experienced officers.

In 2019, the Police Executive Research Forum, PERF, surveyed its member agencies on this issue. Only 12 percent reported not facing a shortage of full-time sworn personnel, while a plurality, 41 percent of respondents, reported that their shortages had increased over the prior 5 years. A 2021 follow-up survey reported a 5 percent decline in the hiring rate and an 18 percent increase in the resignation rate, as well as a 45 percent spike in the retirement rate relative to the prior year. The largest agencies in that set bore the brunt of these trends.

In between these 2 years, the United States saw a 30 percent spike in homicides, the largest ever 1-year increase in at least a century. While a more recent PERF survey showed an increase in police hiring rates in 2022, the increase was outpaced by resignations and retirements, driving a continued overall decline in total staffing. Even if hiring kept up in departments, they would nevertheless have to contend with the decline in the median experience levels of their officers as retirees and resignees take their institutional and practical knowledge with them.

Add to this mix the understandably heightened level of scrutiny police now face, as well as the often-indefensible vitriol hurled at police as an institution, and you exacerbate all of the issues that flow from these challenges by sapping the morale of the officers that remain to face this all-important task. This is not a recipe for success. Addressing these issues by helping to reinforce American police departments should be considered a top priority by Congress because it will reduce crime. But it may also help send a message to an embattled institution, one that says, we are behind you, at a time in which cops need to hear that probably more than ever.

Now, the body of evidence that can be marshalled in support of a large-scale effort to add to the ranks of America's police departments is overwhelmingly strong and robust. Indeed, one of the most consistent findings in the criminological literature is that more police means less crime and vice versa. Moreover, the police recruitment and retention crises are ones that the Federal Government is actually well-positioned to address by funding the hiring of new recruits, as well as funding incentive programs aimed at retaining senior officers and investigators.

Now, because the impact of such expenditures will turn on how well police perform, which in turn depends in significant part on how well they understand the problems that they face in their respective jurisdictions, the need for more and better data on crime and enforcement trends is particularly pronounced, especially in light of the very poor transition from the Uniform Crime Reports to the National Incident Based Reporting System. This need for data to inform how police can put their limited resources to their highest end uses highlights other opportunities for meaningful Federal interventions aimed at funding and incentivizing more granular data collection.

Now, Congressional efforts to boost police hiring to accelerate the growth of the body of research that will be essential to deepening our collective understanding of what works with respect to crime control and related outcomes are two of just five important rec-



ommendations laid out in a recent Manhattan Institute report authored by my colleague Charles Fain Lehman. Rounding out his list of recommendations are the following: using money to rehabilitate failing prisons and jails with a carrot-and-stick approach; creating and propagating national standards for criminal case processing, which often takes far too long; and upgrading our national data infrastructure, especially by creating a national sentinel cities program.

Now, these ideas have enormous potential to do good by improving the quality of the services that our Nation's criminal justice systems were established to provide, thereby enhancing the most precious public commodity that we have, public safety. With respect to implementation, recent Federal initiatives can offer some meaningful insight into how such efforts might be structured. Examples include Operation Stonegarden, which directed Federal funds toward State and local law enforcement agencies participating in a joint effort with the Department of Homeland Security to help secure our borders. The Community Oriented Policing Services Program, which helped fund State and local law enforcement agency hiring, among other initiatives.

I'll close by noting that I'm encouraged by these committees' interest in assisting State and local law enforcement agencies facing one of the more challenging outlooks in a generation. As Thomas Payne noted in his famous pamphlet, *Common Sense*, security is the true design and end of government. The provision of public safety is therefore the most important of governmental functions that this body can help serve. I hope that you will consider the recommendations that I have made with respect to how Congress might go about that important mission, and I look forward to your questions. Thank you.

[The prepared statement of Mr. Mangual follows:]

PREPARED STATEMENT OF RAFAEL A. MANGUAL

TUESDAY, MAY 16, 2023

Chairmen Pfluger and D'Esposito, distinguished Members of the committees, I want to thank you for the opportunity to testify on a matter of great importance.

The law enforcement community is facing many challenges, the most significant of which—particularly in and around major cities—involve responding to a real increase in crime at a time in which many agencies are struggling with officer recruitment and retention. In many parts of the country, police are being asked to shoulder a much bigger burden with respect to crime and disorder, and they're being asked to do so with fewer and/or less-experienced officers.

In 2019, the Police Executive Research Forum (PERF) surveyed its member agencies on this issue. Only 12 percent reported not facing a shortage of full-time sworn personnel; a plurality of respondents reported that their shortages had increased over the prior 5 years.<sup>1</sup> A 2021 follow-up survey reported a 5 percent decline in the hiring rate, an 18 percent increase in the resignation rate, and a 45 percent spike in the retirement rate, relative to the prior year.<sup>2</sup> The largest agencies bore the brunt of these trends. And while a more recent PERF survey showed an increase in police hiring in 2022, the increase was outpaced by resignations and retirements, driving a continued overall decline in total staffing. Even if hiring kept up, departments would nevertheless have to contend with the decline in the median experience levels of their officers, as retirees take their institutional and practical knowledge with them.

<sup>1</sup> <https://www.policeforum.org/assets/WorkforceCrisis.pdf>.

<sup>2</sup> <https://www.policeforum.org/workforcesurveyjune2021>.

Add to this mix the understandably heightened level of scrutiny police now face, as well as the (often-indefensible) vitriol hurled at police as an institution, and you exacerbate all of the issues that flow from these challenges by sapping the morale of the officers facing this all-important task. This is not a recipe for success.

Congress should consider addressing these issues a top priority because reinforcing American police departments will reduce crime. But it may also help send a message to an embattled institution, saying “we’re behind you,” at a time in which cops need to hear that more than ever.

The body of evidence that can be marshalled in support of a large-scale effort to add to the ranks of America’s police departments is overwhelmingly robust. Indeed, one of the most consistent findings in the criminological literature is that more policing means less crime (and vice versa).<sup>3</sup>

Moreover, the police recruitment and retention crises are ones that the Federal Government is well-positioned to address by funding the hiring of new recruits, as well as incentive programs aimed at retaining senior officers and investigators. The example of the police funding component of the 1994 Crime Bill is one that this body can build on, with one important modification: Resources for hiring should be allocated to the agencies facing the largest deficits and/or the highest levels of serious crime. A comprehensive effort to use the spending power to help fill the police staffing gap should reflect an assessment of how to maximize the impact such expenditures will have on crime. Moreover, as I recommended in two 2021 Manhattan Institute Issue Briefs, such an effort would also present an opportunity to experiment with efforts to incentivize the hiring of police recruits with higher levels of educational attainment.<sup>4</sup>

Because the impact of such expenditures will turn on how well police perform—which depends in part on how well they understand the problems they face in their respective jurisdictions—the need for more and better data on crime and enforcement trends is particularly pronounced. This is especially true in light of the poorly-executed transition from the Uniform Crime Reports (UCR) to the National Incident-Based Reporting System (NIBRS). This need for data to inform how police can put their limited resources to their highest end uses highlights other opportunities for meaningful Federal interventions aimed at funding and incentivizing more and more-granular data collection, as well as at funding additional criminal justice-related research. Congressional efforts to boost police hiring and to accelerate criminological research are two of five important recommendations laid out in a recent Manhattan Institute report authored by my colleague, Charles Fain Lehman. Rounding out that list are:

- Rehabilitate failing prisons and jails with a carrot-and-stick approach;

<sup>3</sup> See this small sampling of studies (including high-quality randomized control trials) illustrating the benefits of hiring additional police, spending more on policing, and expanding police presence and proactivity (especially in crime hot-spots): [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=461280](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=461280) (showing significant crime declines in Washington, DC, caused by boosts in police presence in response to changes in the terror threat level); <https://www.law.upenn.edu/live/files/8949179jrss831pdf> (showing that expanding police patrols outside the University of Pennsylvania led to an estimated crime decline of 43 percent–73 percent); [https://eml.berkeley.edu/~jmccrary/chalfin\\_mccrary2018.pdf](https://eml.berkeley.edu/~jmccrary/chalfin_mccrary2018.pdf) (documenting a return of \$1.63 on every additional dollar spent on policing in 2010); [https://www.researchgate.net/publication/283878402\\_Do\\_Stop\\_Question\\_and\\_Frisk\\_Practices\\_Deter\\_Crime\\_Evidence\\_at\\_Microunits\\_of\\_Space\\_and\\_Time](https://www.researchgate.net/publication/283878402_Do_Stop_Question_and_Frisk_Practices_Deter_Crime_Evidence_at_Microunits_of_Space_and_Time) (finding significant crime declines resulting from discretionary stops conducted in crime hotspots in New York); <https://www.nber.org/papers/w27324> (showing significant increase in crime in the wake of abrupt declines in the volume of police activity in five cities (declines driven by pattern and practice investigations initiated by the Federal Government)); [https://media4.manhattan-institute.org/pdf/cr\\_22.pdf](https://media4.manhattan-institute.org/pdf/cr_22.pdf) (a causal analysis finding that police in New York City prevented more than 60,000 violent crimes between 1989–1998); <https://www.princeton.edu/~smello/papers/cops.pdf> (finding significant crime reduction effects resulting from COPS hiring grants); <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0157223> (finding sharp declines in crimes resulting from police surges in New York City); <https://www.aeaweb.org/articles?id=10.1257/aeri.20200792> (finding that “Each additional police officer abates approximately 0.1 homicides.”); <https://www.aeaweb.org/articles?id=10.1257/aeri.20200792> (finding a strong effect of reductions in response times on crime, such that “hiring an additional response officer would generate a benefit, in terms of future crime prevented, equivalent to 170 percent of her payroll cost.”); [https://www.nber.org/system/files/working\\_papers/w12202/w12202.pdf](https://www.nber.org/system/files/working_papers/w12202/w12202.pdf) (finding that police arrest and stop activity (as well as sentence lengths) decline in the wake of arbitration losses, driving crime increases relative to instances in which the arbitration fights are won by the police unions studies); [https://www.researchgate.net/publication/233374127\\_The\\_Effects\\_of\\_Hot\\_Spots\\_Policing\\_on\\_Crime\\_An\\_Updated\\_Systematic\\_Review\\_and\\_Meta-Analysis](https://www.researchgate.net/publication/233374127_The_Effects_of_Hot_Spots_Policing_on_Crime_An_Updated_Systematic_Review_and_Meta-Analysis) (a meta analysis finding that both hot spots and problem-oriented policing strategies reduce crime).

<sup>4</sup> See, <https://manhattan.institute/article/ideas-for-the-new-administration-criminal-justice> and <https://manhattan.institute/article/a-public-safety-and-policing-plan-for-nycs-next-mayor>.

- Create and propagate national standards for criminal case processing; and
- Upgrade our data infrastructure, including by creating a national “sentinel cities” program.<sup>5</sup>

These are ideas that have enormous potential to do good by improving the quality of the services our Nation’s criminal justice systems were established to provide, thereby enhancing the most precious public commodity: public safety.

With respect to implementation, recent Federal initiatives can offer some meaningful insight into how such efforts might be structured. Examples include:

- Operation Stonegarden, which directed Federal funds toward State and local law enforcement agencies participating in a joint effort with the Department of Homeland Security to help secure our borders;<sup>6</sup>
- Community Oriented Policing Services (COPS) Program, which helped fund State and local law enforcement agency hiring (among other initiatives);<sup>7</sup>
- Urban Area Security Initiative, which helped fund terrorism preparedness efforts in major cities;<sup>8</sup>
- “1033 Program”, which provided State and local law enforcement agencies with surplus military equipment that ranged from rifles and body armor to vehicles and night-vision goggles.<sup>9</sup>

I will close by noting that I am encouraged by these committees’ interest in assisting State and local law enforcement agencies facing one of the more challenging outlooks in a generation. As Thomas Paine noted in his famous pamphlet, *Common Sense*, “security” is “the true design and end of government.”<sup>10</sup> The provision of public safety is therefore one of the most important governmental functions this body can help serve. I hope that you will consider the recommendations I have made with respect to how Congress might go about that important mission, and I look forward to your questions.

Thank you.

Chairman PFLUGER. Thank you, Mr. Mangual. Members will now be recognized by order of seniority for their 5 minutes of questioning. An additional round of questioning may be called after all Members have had the opportunity to be recognized. I now recognize myself for 5 minutes of questioning.

I would like to thank all of you for your service, for being here, for telling us your own community’s needs, experiences, and how we can better come together. I want to push back on something that we just heard from some of our opening statements. We had 26,031 homicides in 2021, and this is on the CDC’s website. The rate of hate crimes in those homicides was .0008 percent.

So, Commissioner Cox, congratulations on, you know, bringing the crime rate down. I think what you have done is remarkable in Boston. You know, I have got the data here this year looking at 588 aggravated assaults. You compare that to New York City, 8,901 in New York City. Eight thousand nine hundred one in a soft-on-crime locality where aggravated assaults are there. So, would you say that most of the 588 aggravated assaults are white supremacy-related?

Mr. COX. I would say that there’s no correlation. Well, you know what? I don’t know without the data on that, but—

Chairman PFLUGER. But, I mean, is that consistent with the homicide rate, the aggravated assault rate that it is extremely low?

Mr. COX. There’s no correlation I know of right now between white supremacist and the data.

<sup>5</sup> <https://manhattan.institute/article/modernize-the-criminal-justice-system-an-agenda-for-the-new-congress>.

<sup>6</sup> <https://www.congress.gov/congressional-report/116th-congress/senate-report/212/1>.

<sup>7</sup> <https://crsreports.congress.gov/product/pdf/IF/IF10922>.

<sup>8</sup> [https://uscode.house.gov/view.xhtml?req=\(title:6%20section:604%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:6%20section:604%20edition:prelim)).

<sup>9</sup> <https://www.dla.mil/Disposition-Services/Offers/Law-Enforcement/Program-FAQs/>.

<sup>10</sup> <https://billofrightsinstitute.org/primary-sources/common-sense>.

Chairman PFLUGER. This notion that we hear, let's focus on violent crime and the violent crime offenders. Let's focus on making sure that we actually take care of business. So, I needed to push back on that because what we have just heard is that the numbers aren't matching up.

Chief Gerke, I want to talk about fentanyl a little bit. You know, you have identified that fentanyl is one of the greatest harms in Odessa, Texas, and the surrounding area. Since 2019, fentanyl-related deaths among Texans have increased 500 percent. What is the greatest challenge you face in preventing fentanyl deaths and trafficking of fentanyl?

Chief GERKE. Really that's easy. It's keeping them from my community. You know, once they get into the community, it's very difficult to root them out. Again, it's heartbreaking to see that a lot of these, the fentanyl overdoses and deaths are concentrated on young people.

Chairman PFLUGER. How difficult is it, the open border policies that we have, how difficult is that on Odessa, Texas?

Chief GERKE. Well, you know, as far as I'm concerned, it seems like there's just a sieve, those narcotics. We're not just talking about fentanyl. We're talking about all narcotics. Particularly in Odessa, I think our most predominant narcotic is probably methamphetamine use.

Chairman PFLUGER. Can you talk to us about human trafficking and the effect that that has had on your community?

Chief GERKE. Absolutely. Well, you know, you get calls about safe houses constantly. You respond to those things you see constantly, get calls. I know just over some time last week, we worked a prostitution sting and actually recovered two Chinese nationals who were trafficked. So, yes, it's an on-going problem I would think in Odessa, but I would also think all over the State of Texas and probably all over the Southern Border.

Chairman PFLUGER. Thank you for your service to Odessa, Texas, you know, for the shining example of what you've done over the last 26 years and now leading that department.

Sheriff Barnes, thank you for your testimony. You know, I took a couple of notes, and you talked about how California is an example and a warning of how not to be. What I would like to focus on is you described how the consequences for crime have eroded over the last decade while law enforcement authorities, you know, are struggling to keep communities safe. Could you kind-of tell the community or the committee here specific examples of when policy changes have tied your department's hands and not allowed you to have those consequences?

Sheriff BARNES. Sure, and I'll try to go fast. So, over the course of the last decade, starting in 2011, was Assembly Bill 109, the State prison realignment. Anybody sentenced to prison for non-violent, non-serious, non-sex acts are now being housed for their time in county jails, not designed for long-term incarceration. That resulted in a large impact on my facility because our staff is not designed to house people for years and they're very non-compliant. Two-thousand-fourteen, we had a bill passed, Prop 46, that resulted in the largest decriminalization of crime in the State, drug crime and property crime. Those people are now not serving sen-

tences as they would before. Then we have Prop 57—I'm sorry—Prop 47, Prop 57, mass decarcerations at the Federal prison—State prison system that with SB54 prohibiting us acting with ICE on immigration holds, except for very high-level offenders. Oftentimes them not getting picked up by ICE because they don't have the resources to do that.

All of these have manifested into a large decarceration effort. I'll add that the last 5 peace officers killed in California were killed by violent felons who should have been in custody and were early released or pending sentencing on crimes that they accessed to guns that they should not have had. It's not the guns. It's the people getting possession of guns, the criminals getting possession of guns that create the greatest threat to our country.

Chairman PFLUGER. Sheriff, thank you. We support you. We love everything that all of you do to keep our community safe. My time has expired. I recognize the Ranking Member for his 5 minutes of questioning.

Mr. MAGAZINER. Thank you, Chairman. I thank all of our witnesses as well. This is a serious topic, and I think we owe it to our constituents back home to focus on solutions and not partisan mudslinging. With solutions in mind, I want to focus on the experience in Boston because the data is clear. Crime of all categories down more than 50 percent since 2005. Violent crime down by a similar number. As was stated during Commissioner Cox's opening statement, shootings last year, the lowest they've been since the 1950's. So, I want to learn from you, Commissioner Cox, because you've been in Boston for 30 years as a sworn officer. What has worked? What would you attribute those successes to? What can other parts of the country learn from your example?

Mr. COX. Thank you. Well, as I started off as saying that Boston police has operated within a community policing model for a long period of time. You know, not only do we practice that around building trust with our community, but we partner with everyone, including the Federal Government, including Homeland Security. We've gotten a lot of grant funds and things of that nature to actually give us the data and technology to maybe, you know, to build it further from maybe 20 years ago around data and technology.

So, partnership and actually acknowledging that we can't solve it alone from a law enforcement perspective. There needs to be certainly a component where partnership with the community and the public and actually a place and role for our partners to do things that we can't to address the issues that might be driving the violence around us. You know, whether it's helping people find jobs, helping them with substance abuse, things of that nature, helping those families that have traditionally been maybe involved in some of this, helping them get out of that cycle of poverty and things of that nature.

So, I mean, we've done a lot over a long period of time, but, you know, we're constantly working to make sure we continue to do that. By also making sure that we're not alone. I think we've understood the fact is that law enforcement is not the total cure for this. We need others to partner. Everyone from the judicial, to, you know, probation, to, you know, the schools, everyone in our community needs to partner around taking public safety seriously. We are

just more or less the educator of if you're going to do it, this is how we're going to do it together.

Mr. MAGAZINER. Well, thank you for sharing that. I think this emphasis on community policing, which you are right, Boston has been doing for decades, is a lesson well-learned. It also so happens that Massachusetts has some of the toughest gun safety laws in the country. So, can you speak to the relationship there? Do you feel that the gun safety laws that have been passed in Massachusetts to keep firearms out of the hands of dangerous individuals, have made your job easier and have protected the lives of the men and women who you lead?

Mr. COX. Thank you for that. Yes, we do have some of the toughest laws in the country in that way. However, you know, our experiences, you know, and I think I put out some stats that for the most part, most of the guns are coming from elsewhere throughout the United States around that. Then obviously, the ghost gun phenomenon that's occurring. So, you know, certainly the violent crime that we do have and the gun arrests and things that we have are usually driven by guns elsewhere around that. So, it doesn't seem to be any shortage of them. No matter how many arrests that we have, we continue to have more. Seeing younger and younger people with guns, you know, which is a little disturbing.

Mr. MAGAZINER. I would argue that that speaks to the need for a Federal approach when it comes to gun safety legislation and not just a patchwork approach as we have had since the expiration of the assault weapons ban.

We only have a minute left in my questioning. It's now the 10-year anniversary of the Boston Marathon bombing. As our subcommittee is charged with counterterrorism, can you speak to the lessons learned from that experience, and particularly the importance of Federal and local information sharing through fusion centers?

Mr. COX. Absolutely. First of all, we're very appreciative of all our Federal partners in the sense that from a local perspective, you know, in Boston, at least, we can't have, you know, have all the knowledge it takes, the work it takes, and intel it takes to understand what's going on elsewhere throughout the country, never mind outside the United States. So, the partnerships and the intel that we have from particularly Homeland Security and FBI are very, very important. So, we can actually help our community stay safe internally here, you know, since there is a bit more of a trend around, you know, domestic terrorism, if you want to use that term. Just having information on who people are coming into our city before they get there, that is very valuable. So, we can share it with our, you know, faith leaders and groups that might be impacted by those.

This helps us build trust so we keep those ties with the community we serve, so we can get people to see something and say something, because we're providing some information about what's going on so they can feel safe. Part of our job is not only to deal with crime, but fear of crime. The partnerships that we have, particularly with the Federal Government and the grants that you do give us the ability to actually provide that education to keep the trust.

Mr. MAGAZINER. Thank you, Chairman. Thank you, Commissioner.

Chairman PFLUGER. Thank you. The gentlemen's time has expired. I now recognize Chairman D'Esposito for his 5 minutes questioning.

Chairman D'ESPOSITO. Well, thank you, Mr. Chairman, and to the witnesses, thank you again for being here and for your service. I am going to start with Sheriff Barnes. I am a firm believer in community policing. I am a firm believer as well in the broken windows theory, where you focus on minor crimes and it will reduce major crime. It was a policy of New York City during Commissioner Kelly's tenure, and it is something that I think truly and dramatically changed the face of New York City.

When I talk about violent crime and we talk about violent crime, I think we know the issues that are plaguing the communities. But I think what we need to focus on is that when we want to talk about community policing and we want to talk about the fact that that has helped in reducing crime in cities and counties and towns throughout this country, community policing is a buy-in. It is a buy-in between law enforcement. It is a buy-in between prosecutors. It is a buy-in between stakeholders. When one of those parts aren't bought in, the community, policing falls apart.

So, I believe that small business is, well, really all business, but definitely small business is the lifeblood of our communities. One of the things that you talked about in your testimony has nothing to do with violent crime, but I think it tells such a story. You said that there was \$94.5 billion in retail theft throughout this country, the largest in California. I am sure New York is probably right behind. When we talk about community policing and we talk about failed policies, the failure to prosecute, we have literally allowed minor crimes, right? People often roll their eyes and say, you are fear-mongering. This is petty theft. Well, I don't believe that anybody who owns one of those stores that were victims of that \$94.5 billion thinks that this is petty.

So, I guess my question to you is I think I know the answer, but it seems that we have some differing opinions up here. How do you think that this needs to change? How do we help solve this problem? Because \$94.5 billion is a huge sum of money. I guarantee you that there are business owners throughout this country who have literally shut their doors, Main Streets that are shuttered because of the crime that we have allowed to occur in communities throughout this Nation.

Sheriff BARNES. Thank you, Chairman, for that question. You're absolutely right. Unfortunately, in California, going back to Prop 47 that decriminalized property crime from felonies to misdemeanors resulted in exactly theft holidays. I believe I agree with you that the small family-owned stores suffered the most initially. Now what we're seeing are large businesses, the Walmarts, the Targets, the CVS, they have the biggest voices. All these other mom-and-pop shops as reporting, they are a single voice. But now that these larger corporations are being impacted, we're seeing the outcome of these bad policies in very urban areas. In San Francisco recently, we had Nordstrom's leave. CVS has left. Others have vacated that city. I think we're starting to see a trend of, these are

corporations, they're for profit. If they don't make money, they will leave. When we're seeing that happen in major urban areas that have enacted bad public policy over the last several years.

Chairman D'ESPOSITO. Going back home where Mr. Mangual and I live, I mean, there are CVSs and other stores, big stores that have removed the shopping, you know, the things that you carry out to put stuff in, because they don't want people just filling them up and walking out the door with them. That's not the America that we once created.

Commissioner Cox, I just want to go to guns for a minute. You may not have this information. We were told that your State has some of the strictest gun laws in the country. How many guns were recovered by the Boston Police Department in 2022?

Mr. COX. I can't say precisely, but I would say goodness gracious, around 700 or 800.

Chairman D'ESPOSITO. OK. Out of those 700 or 800 firearms that were recovered, how many of them were assault weapons?

Mr. COX. I couldn't give it to you with the, you know, with—

Chairman D'ESPOSITO. If you had to say, is it 10 percent, is it 50 percent, is it 80 percent, is it 0 percent?

Mr. COX. I would definitely not say it was 80 percent, but I would say, you know, there were a number of them.

Chairman D'ESPOSITO. Was it half?

Mr. COX. I would have to look at the—

Chairman D'ESPOSITO. The amount of shootings that you had in Boston, how many of those shootings, how many shootings did you have in Boston?

Mr. COX. For 2022, non-fatal shootings.

Chairman D'ESPOSITO. No shootings in general, non-fatal and homicides?

Mr. COX. So, let's see 2022, we had, this chart only gives me year-to-date for a time period. It's not the whole year.

Chairman D'ESPOSITO. OK. So, just real quick, because my time has expired. Non-fatal shootings and homicides, how many do you think of those non-fatal shootings and homicides were occurred with the use of an assault weapon?

Mr. COX. Yes, that I couldn't tell you because those are the ballistics.

Chairman D'ESPOSITO. Is it minimal? Is it half? Is it 80 percent? Or is it zero?

Mr. COX. I would say it would be on the lower end of it, but—

Chairman D'ESPOSITO. OK. It is on the lower end of it?

Mr. COX. I would say, but I can't—

Chairman D'ESPOSITO. Right. So, illegal handguns are the majority of the violence that is occurring in our communities.

Mr. COX. Illegal handguns, but the fact is there are quite different kinds. So, you have to match up ballistics evidence in that and I don't want to do those—

Chairman D'ESPOSITO. I understand that. But my point is that illegal handguns are what is killing people in this country.

Mr. COX. Yes.

Chairman D'ESPOSITO. Mr. Chairman, I yield back.



Chairman PFLUGER. The gentleman's time has expired. The Chairman now recognizes the gentleman from Louisiana, Mr. Carter for 5 minutes of questions.

Mr. CARTER. Mr. Chairman, thank you very much. Ranking Member Thompson mentioned in his opening statement about domestic violence and the—domestic terrorism, rather, and the issue with racially-motivated threats and white supremacy. Chairman Pfluger suggested or challenged that assertion. I want to turn your attention to this report that was done January 2020 by the Texas Department of Public Safety, which says, domestic terrorism poses a persistent and varied threat to the State of Texas. It further goes on to say that based on the prevalence of recently-conducted attacks Nation-wide, white racially-motivated, or WRM, is currently the most violent active domestic terrorism type.

Mr. Chairman, I would like unanimous consent to add this to the record for the purposes of having everyone the opportunity to review these statistics, to know that just because we don't like it, because we don't want to talk about it, doesn't make it go away. We see the rise of white supremacy and the violence that's acted out on the streets of America every day. I'd like to—

Chairman D'ESPOSITO. So ordered, Mr. Ranking Member.\*

Mr. CARTER. Thank you very much. I want to reiterate something I mentioned in my opening remarks. I am grateful for law enforcement the great work that you do, for the great officers. We know that there are good ones, and we know that there are bad. We want to make sure that we protect and provide resources so our good police officers are able to protect and serve all communities. But we know that there are things that make it difficult for you to work.

We talk about and during particularly during this week of Police Week, we talk about things that we are asking you to do better. Yet, we aren't doing anything that would make your lives safer when you go out to apprehend a villain. We know that in many States we see the repeal of carry permits so people can get firearms without carry. We know that in many States, the duty to inform has been removed from the process of those who are having concealed carries without permit. Can you talk about common gun, common-sense gun safety reform, and what it means, and what it would mean to you and your colleagues, Commissioner Cox? We know that if we had more common-sense gun measures, it will make a difference. Can you share with me your view?

Mr. COX. So, I mean, I can only speak for Boston—

Mr. CARTER. I only asked you about Boston.

Mr. COX [continuing]. In that way. Our gun laws are fairly strong. So, you can't get a firearm if you, you know, certainly have a record of that sort or certainly an open domestic violence case, or any type of conviction for the most part, or we have any other information that would indicate, and I have the discretion that, you know, you would potentially put people in harm's way around that stuff. From our perspective, I think that the gun laws that I have certainly in the city of Boston, you know, are fairly strong and ad-

\*The information has been retained in committee files and is also available at [https://www.dps.texas.gov/sites/default/files/documents/director\\_staff/media\\_and\\_communications/2020/txterrorthreatassessment.pdf](https://www.dps.texas.gov/sites/default/files/documents/director_staff/media_and_communications/2020/txterrorthreatassessment.pdf).

dresses the issues. The issues that we have is guns from other places that come in and the fact that youth have these guns and the easy access of guns. That's the issue that, you know, certainly that we see and face of how, you know, the flow of them and the easy access of them.

For the most part. We're not having an issue, certainly locally where people are applying for license and doing things. So, our region might be a little different. So, it is hard for me to speak about another region on that one.

Mr. CARTER. Let me shift gears for a second. The mass shooting at Covenant Schools in Nashville, Tennessee took the lives of 6, including 3 children, on March 27 brought this year's school shooting count to 89, with 75 total victims injured or killed. Next week, we will mark 1 year since the massacre at Robb Elementary in Uvalde, Texas, which left 19 children and 2 teachers dead. I am outraged by the lack of will of my colleagues on the other side to do more to protect their children. Unfortunately, victims, their families, and law enforcement directly feel the impact of these shootings. Since Republicans refuse to support common-sense laws to protect children, and their families, law enforcement, can you talk about how local law enforcement has adjusted to the threats posed by military-style weapons being used to target our children in our Nation's schools, Commissioner Cox?

Mr. COX. So, again, certainly making sure that people that struggle with mental health issues don't have, you know, access to guns or permits and things of that nature. You know, we locally are partnering with schools in general to make sure schools are prepared around active-shooter situations, the faculty, and things of that nature. But, you know, certainly looking out as a citizen, looking out in the big world, and seeing that these, you know, mass shootings in general, the increase of them, and then looking at the profile of some of the people from a reporting perspective because I don't have first-hand knowledge of it, you know, it does seem, you know, bewildering like how some of these people got firearms in the first half of the time. More importantly, it seems as though a lot of the people who do these things showed signs of potentially maybe doing these things, and yet no one reported it.

Mr. CARTER. OK, thank you. My time has expired. I will perhaps come back on the next round. I yield.

Chairman D'ESPOSITO. The gentleman's time has expired. I now recognize my fellow New Yorker, Mr. LaLota, for 5 minutes.

Mr. LALOTA. I want to thank my good friends Chairman Pfluger and Chairman D'Esposito for putting this important hearing together during National Police Week and especially to my fellow Long Islander Chairman D'Esposito who is a former NYPD detective and chief of the Island Park Fire Department. Thank you, Mr. Chairman, for your dedicated service to our community, but selfishly for bringing your experience to our committee today. I also want to thank our witnesses for being here. Chief, Sheriff, Commissioner, thank you especially for your service to your communities and to our country. You keep our children, our families, and our communities safe every day, and this committee appreciates that.

I have the privilege of representing New York's First Congressional District, or the east end of Long Island, Suffolk County. The

Suffolk County Police Department is home to 2,700 sworn police officers, 600 civilian members, and 400 school crossing guards. We also have the Riverhead Southold, Shelter Island, East Hampton, and Southampton police departments in my district as well. They, like you, serve every day to protect their communities, and we appreciate them as well.

As this is National Police Week, I want to discuss the ways the Federal Government can be helpful to local law enforcement. As my colleague from Rhode Island said, we want to be solutions-oriented. So, Chief, Sheriff, and Commissioner, my first question is for you, gentlemen. In my home State of New York, we have unfortunately seen some of our elected leaders choosing to support criminals more than our law enforcement officers. In particular, cashless bail has been a disaster from the very beginning. My question is, what would morale look like for your departments, for your officers, for your deputies, if they knew a criminal they had just taken in would be released nearly hours later with no incentives to show back to court? Sheriff, you want to give it a shot first?

Sheriff BARNES. That's exactly the environment we are operating in in California. I'm fortunate, my roster is almost full. I'm on the other end. I have a great retention in my organization and we are attracting people. It's not because we are the highest paid. I think we have a highly supportive community and that's probably the first, most paramount thing is having great community support. The media rhetoric is not accurate. The vast majority of Americans do support policing. So, I'd start with that.

I think one of the biggest issues probably beyond what this board can do is get us out of social work. That solves probably one of the biggest issues. If we didn't have to deal with the mental illness, the substance use that we proliferate. Right now, 1,000 people in my jail are on medication-assisted treatment. I have, half of my people entrusted in my care, have a daily nexus to mental health treatment. People I have run the largest detox facility in our county, the Orange County jail. So, those are probably the real issues that I think are the most challenging.

Violent crime, of course. Criminals have to be there. But when you look at resources and how tasked we are, getting us out of social work and let us do the job we got into to do in policing would probably be the biggest morale boost for our team.

Mr. LALOTA. Thanks, Sheriff. Commissioner or Chief, do you guys want to add something?

Chief GERKE. Yes, sir. Thank you. I think in my neck of the woods, which is West Texas, so, you know, we measure distance in time not in miles. So, I would have to second what the sheriff says in reference to mental health. If we encounter someone in crisis, we will absolutely—that officer that is assisting that person in crisis will be tied up their entire shift. So, that includes a trip to a medical facility. But then they will have to transport that person in crisis to a mental health facility, which many times is 2–2½ hours away. That does nothing for the officer and it absolutely does nothing for that person in crisis. Could you imagine being in crisis and having to ride in a police car for 2½ hours before you could get help? So that's an issue for us and that's an issue that needs to be fixed and we've been asking for it to be fixed for forever.

Mr. LALOTA. Thank you. Commissioner.

Mr. COX. Certainly, in my area, you know, we have dangerousness hearings, which we still do. So, you know, if someone actually were to do a heinous crime, you know, we don't have that trend right now of them being released. But we do have issues around juveniles and the fact is that, you know, they might be involved in, you know, certainly multiple gun arrests and things of that nature where they're not held at all. I'm not saying that they should be, but, you know, around juvenile crime, that's a different issue that we're facing.

Really, you know, that has issues. You know, as far as morale concerning around the mental health challenges, I think that we all face in every jurisdiction, we'd love to be out of the business of dealing with folks that have mental illness. But the reality is I don't know how we can because virtually every call we go to in some way, shape, or form, it seems like it pops up. So, if our officers aren't informed in some way, you know, I'm really afraid of what the outcome might be. So, we're always going to have the challenge of making sure that they're trained around some of these issues.

Mr. LALOTA. Thank you. My time has expired. Mr. Mangual, I apologize. I had another question for you, but maybe we'll get you on a future round. I yield back, Mr. Chairman.

Chairman D'ESPOSITO. Thank you, Mr. LaLota. I now recognize Mr. Correa of California for 5 minutes.

Mr. CORREA. Thanks, Chairman. Before we begin, I would like to ask unanimous consent to enter into the record a letter—

Chairman D'ESPOSITO. Without objection.  
[The information follows:]

LETTER FROM CHICAGO CRED FOUNDER ARNE DUNCAN

TUESDAY, MAY 16, 2023

To Members of the CTI Subcommittee of the Homeland Security Committee: Thank you for the opportunity to testify today during police week about the work Chicago CRED is doing in Chicago to reduce gun violence. This work began in 2016, shortly after I stepped down as U.S. Secretary of Education. At the time, gun violence in Chicago was spiking sharply and the traditional approach to fighting crime—primarily arrest and incarceration—was broadly seen as insufficient.

We built Chicago CRED around the simple belief that the best way to reduce gun violence is to engage directly with those most at risk of shooting or being shot. We serve participants through five core pillars of activity: outreach, life coaching, therapy, education, and job training. More than 1,000 people have gone through our program and studies from Northwestern University show that they are significantly less likely to be shot or rearrested compared to individuals with similar characteristics. Many of the participants are now working in the legal economy, supporting themselves and their families and living safely.

Since 2016, a network of community violence intervention (CVI) organizations have come into existence and are now serving more than 20 Chicago neighborhoods with some form of violence prevention. Initially, these CVI organizations were mostly funded by private philanthropy but, since 2019, local, county, and State governments have begun investing in violence prevention. While Chicago CRED takes no public funding, many other CVI programs in Chicago have received a share of Federal COVID relief funds. We are hopeful that, as COVID-relief funds expire, new Federal funds become available to support this work. An analysis by a leading consultant firm shows a 19–1 return on investment for CVI programs. We believe that violence prevention should be a permanent feature of Chicago's public safety strategy.

We are not alone in this belief. Our law enforcement community is increasingly convinced that CVI, in partnership with data-driven, Constitutional policing, is the path to a safer Chicago. As former interim superintendent of the Chicago Police Department and former Los Angeles police chief Charlie Beck said about CVI, "Your job is to stop the next shooting. Our job is to investigate the last one."

Respectfully, we invite the Members of the committee to visit Chicago and see the work we are doing with young men and women at risk. Spend time with them, listen to their stories, and see the transitions under way in their lives. We are confident you will not only be moved by their journey and impressed by their resilience but convinced that, rather than them being the problem, they are, in fact, the solution and that CVI is critical to a comprehensive public safety strategy.

We also hope you will recognize the profound need for gun safety laws that limit the flood of guns into cities like Chicago. Today, Chicago recovers more guns than any other city in America and roughly 60 percent of the guns recovered come from other States with weaker gun safety laws. With easier and easier access to guns with large magazines and easy conversion to automatic weapons, we are seeing more and more mass shootings. These kinds of guns have no place in our society and we implore you to pass laws that prohibit them.

There is much more we can say and show you. Thank you again for the opportunity to testify and I hope to hear from some of you and introduce you to some of the men and women who are making Chicago safer.

Sincerely,

ARNE DUNCAN,

*Founder, Chicago CRED and managing partner, Emerson Collective.*

Mr. CORREA. I live in the city of Santa Anna, my daughter was at home all alone. I was in El Paso, Texas. I got the phone call. I called Santa Anna PD. They were there quickly. Thank you very much to all the men and women in uniform for what you do.

I just want to say that back home I like to think in my district, other parts, that we take care of our men and women in uniform. We give you collective bargaining, which justifies make sure that you have a good salary, have good pensions, and we have Workers Compensation presentives, which means when you get hurt, we make sure that you are taking care of. A lot of those bills I authored when I was in Sacramento.

Sheriff Barnes, if I can, I want to welcome you here today and want to talk to you a little bit about it sounds like the biggest issue we have back home, which is fentanyl. I agree with you. In my district, not a week goes by that I don't hear about a death, a young person overdosing on fentanyl. Supply side, 90 percent of the fentanyl that is interrupted is intercepted through our ports of entry. San Ysidro probably accounts for 67 percent of all the fentanyl that is seized coming into this country.

Operation Blue Lotus, we just talked to the port director on Sunday. I was there visiting their operation. From March to May, 6,900 kilos of narco, 900 kilos of meth, 1,400 of fentanyl, just in those few months. Yet at the ports of entry, only 2 percent of the vehicles coming through the port, through our ports are actually scanned. Can you imagine if we scanned 4 percent, 5 percent, 6 percent of those vehicles? Sadly, I voted against that border bill that was passed last week. Not a cent goes toward those ports of entry. Not a new cent goes to hiring new people there, hiring new technology, or I should say bring in new technology, and more police dogs to scan, to help the scanners. Again, can you imagine if we inspected more than 2 percent of those vehicles, the success we would have?

Sheriff, you said something in your testimony that caught my interest, which is we have a situation. We have the environment of

California laws that prohibits you from reporting certain individuals communicating with immigration officials upon the release of certain inmates. Yet, you said there are many inmates that you do talk to immigration officials about, but they fail to actually come by and pick those individuals up. Can you describe what kind of individuals those people would be convicted of?

Sheriff BARNES. Sure, that's a result of a Senate bill in California, SB 54. It only allows me to communicate with ICE officials on high-level offenders or repeat offenders of certain offenses.

Mr. CORREA. Describe those high-level offenders.

Sheriff BARNES. These would be murderers, child molesters, drug dealers, violent crimes.

Mr. CORREA. If I may, I only have a minute left. Those are the people I don't want in my community. My district, we have a lot of undocumented workers that have been in the country 20–30 years. Hard workers who also don't want these individuals in their neighborhood. So, I would offer to work with you on this issue. I want to make sure, if there are people who are supposed to be picked up after they rape in our communities, that they are taken care of appropriately. They don't come back to our communities. To hear from you that a lot of those individuals are just that ICE fails to pick them up is unacceptable to me.

So, you are my sheriff. We work together. We hang out together, have lunch. I look forward to working with you on this issue as we go forward.

Sheriff BARNES. Thank you, Congressman.

Mr. CORREA. Thank you very much. Mr. Chair, I yield.

Chairman D'ESPOSITO. Thank you, Mr. Correa. I now recognize Mr. Strong from Alabama for 5 minutes.

Mr. STRONG. Thank you, Mr. Chairman, Ranking Member, distinguished Members of the committee, it's an honor to serve with each of you. I join my colleagues in recognizing our Nation's law enforcement officers, and particularly the individuals in my district that wear the badge and those that have given all in the line of duty. To mention a few, Billy Clardy was killed on December 6, 2019, by a drug dealer that should have been in jail. Garrett Crumby, March 28, 2023, just 50 days ago, was killed on a domestic violence call. Mr. Gerke, Mr. Barnes, and Mr. Cox, I would like to thank you for your service and joining us here today and also those in law enforcement that are seated behind you.

This hearing is particularly timely as we commemorate National Police Week and the officers that have given their lives. In the last 2 years, our country has become less safe, both for the average American and for our law enforcement officers. This year's FBI data regarding line-of-duty deaths paint the picture. The number of ambush attacks on law enforcement officers in 2022 reflects a 50 percent increase from the previous year.

We may disagree on how we got here, but we should all agree that we need to do more to support law enforcement and to ensure that they can safely carry out their mission. With that, I would like to start with a question for our law enforcement officers today. Chief Gerke, how has the current climate impacted your ability to do your job?

Chief GERKE. You know, things just get busier and busier, and the current climate is I think that is one of the reason that we see the numbers of sworn individuals in a lot of municipalities have gone down. Everyone has open positions because of they see the danger involved in policing. It's broadcast constantly, those negative things, those bad things. Law enforcement has done—law enforcement officials have done some very bad things in the recent past. But those things get attributed to every police officer, every sheriff's deputy the United States, which is absolutely a false statement, right? I will absolutely say that no one wants to get rid of a bad police officer, a bad deputy, more than a good police officer or a good deputy. That is an absolute fact.

Mr. STRONG. Absolutely.

Chief GERKE. So, I think that those things absolutely impact us numbers-wise. When you don't have numbers, it affects your ability to do your job.

Mr. STRONG. Thank you, Chief. In my previous service, I was the chairman of the third-largest county in the State of Alabama, and the largest city in Alabama, where in less than 10 years, our county almost doubled the size of its law enforcement. Where greater than 50 percent of the general fund is directed to the sheriff's department and in law enforcement, which led to about a 59 percent increase in less than 10 years for law enforcement. It worked. Your studies that we have seen, research indicates less policing leads to less crime. Sheriff, is that what you found?

Sheriff BARNES. I believe that it's the right policing leads to less crime. So, it's not a saturation, it's an engagement. It's partnering with the community. It's having great multifaceted programs, juvenile-based, school-based, response-based, faith community-based. It's all based on relationships. So, what I found, and I believe the officers working for me love the aspect of community engagement, many of them live in these communities. So, it's the relationship and the support that helps that. That's where this committee's influence comes in so vital, because it's those resources that allow us to build upon successful programs, emulate them, and share them across a larger spectrum of our agencies to do what we know works best. We have many examples of those in Orange County.

Mr. STRONG. That shows that more policing is better for our communities. Mr. Mangual, would you agree that you have said that defunding or diverting funds away from policing is not the best way to stop rising crime in the United States. Is that correct?

Mr. MANGUAL. That's absolutely correct. I mean, again, you know, the overwhelming conclusion that you can draw from the body of research on the effect of policing on crime is that the more policing and the quality matters that you have, the less crime that you're going to have. So, when you divert funds away from the sort of tip of the spear in your core law enforcement institutions that is going to make streets less safe. I think the data bears that out, and every analysis that actually tests that question.

Mr. STRONG. Would you say that by adding more law enforcement in the field, would that reduce crime?

Mr. MANGUAL. Say that one more time, sir?

Mr. STRONG. Would you believe that adding more law enforcement officers, would that increase or decrease crime?

Mr. MANGUAL. It would absolutely decrease crime. It would absolutely decrease crime. Every study that's ever been done to assess the impact of either additional police, additional police spending, or expansions of police patrols have found significant reductions in crime of all sorts within those jurisdictions.

Mr. STRONG. Thank you. Mr. Chairman, I yield back.

Chairman D'ESPOSITO. The gentleman's time has expired. I now recognize fellow New Yorker, Mr. Goldman, for 5 minutes.

Mr. GOLDMAN. Thank you, Mr. Chairman. Thank you all for being here. I was a Federal prosecutor working with task forces, NYPD, and an assortment of Federal law enforcement agents for 10 years. Chief Gerke, what you just said is exactly what every law enforcement officer I ever worked with said, which is we got to root out the bad apples because the vast, vast majority are really good apples, working really hard to defend our communities and promote public safety.

It is interesting as I sit here, because what I am hearing from the witnesses on the ground about what the needs are and what effective policing is, is very different from what I am hearing from my colleagues up here. Sheriff Barnes, I think you made an important distinction just now in the questioning you received from my colleague from Alabama when he said more policing would be better. You said, right policing is more effective. I think that is incredibly important. More, in terms of quantity, does not necessarily make the difference.

I want to focus a little bit on what several of you have talked about in terms of community-based policing and especially community-based violence intervention programs. Commissioner Cox, can I start with you? Can you just explain what you mean when you say you engage and utilize community-based violence intervention programs?

Mr. COX. Sure, thank you. So, you know, community policing really is about building trust. How do you go about doing that? You can do it multiple ways, from engaging youth in games, and things of that nature, to mentoring kids in school, to actually working with residents to address whatever the issue of the day. The more you work with people and they get to understand, you know, our officers and see that they're people, too, the more trust they have, the more we are able to, you know, provide education tips on how to stay safe.

The more they're able to tell us about where we should be, right? Data is one thing, but having on-the-ground information and intel from the people that live there around the problems that go on, that is how we can put officers in the right place to help prevent these things from happening in the first place. So, understanding what the issues are in these communities through dialog, through actually building relationships, we're able to also bring in partners to address their other issues and problems that might be the root of some of the, you know, reasons why people choose to go down the life of crime.

Mr. GOLDMAN. So, is it fair to say that if your officers had more time to spend in the communities that they would be able to prevent more crime from happening before it happens?



Mr. COX. I believe so. Working in conjunction with the residents there, yes, absolutely.

Mr. GOLDMAN. One of the things that several of you have touched upon is, and Chief Gerke, you just mentioned this and I think this is important, is the prevalence of mental health issues in the calls, the 9-1-1 calls, and other requests that are made from—made to all of your offices. I guess I have a basic question, which is, would it be helpful to you if you had support from mental health professionals who could help to either diffuse a situation or handle a mental health issue once it had been diffused? Is that something that support would be helpful to your staff?

Chief GERKE. I think that support would be helpful to any law enforcement agency, absolutely. That is because mental health issues are so prevalent in our communities.

Mr. GOLDMAN. Your officers—am I right?—are not trained mental health professionals.

Chief GERKE. They have some training in helping those folks in crisis that we encounter, but no, they are not trained, qualified mental health professionals.

Mr. GOLDMAN. One of the things that the Chairman has talked about here today several times is the notion of illegal firearms. One of the issues, I think, Chief Gerke, that you may be able to touch on is there was a significant and deadly mass shooting in your county in 2019. It was an individual who couldn't pass a background check, had been adjudicated by a judge to be mentally incompetent. So, he wasn't able to buy a gun legally, and he went and bought a gun illegally and then used it for a mass shooting. If there were universal background checks that would apply to private sales as well, that would have caught that shooter, wouldn't it have?

Chairman D'ESPOSITO. The gentleman's time has expired. The witness, you can answer the question.

Chief GERKE. So, absolutely. That mass shooting was perpetrated by an individual that could not pass a background check because of his mental health status. He did go and purchase a firearm from an individual that was making these on a personal basis, although I believe he was making about 60 a year on a personal basis. So, he was absolutely he was a manufacturer. So, if he was required to do a background check, I think that, yes, that would have been caught.

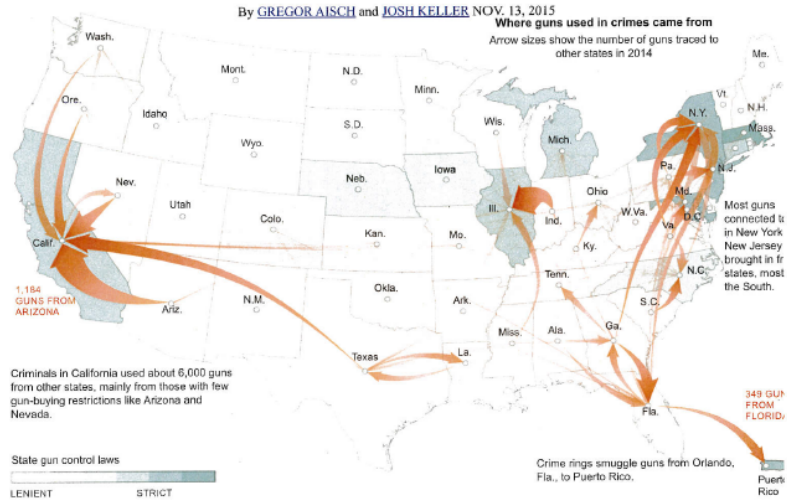
Mr. GOLDMAN. Mr. Chairman, if I could just ask for unanimous consent to enter into the record a *New York Times* article titled, "How Gun Traffickers Get Around State Gun Laws," which shows that in New York and New Jersey, more than two-thirds of guns used in crimes come from out of State, mostly from States in the south with much more lax gun laws—and that 6,000 guns used in crimes in California came from other States with lax gun laws, such as Texas.

Chairman D'ESPOSITO. Without objection.

[The information follows:]

## How Gun Traffickers Get Around State Gun Laws

By [GREGOR AISCH](#) and [JOSH KELLER](#) NOV. 13, 2015

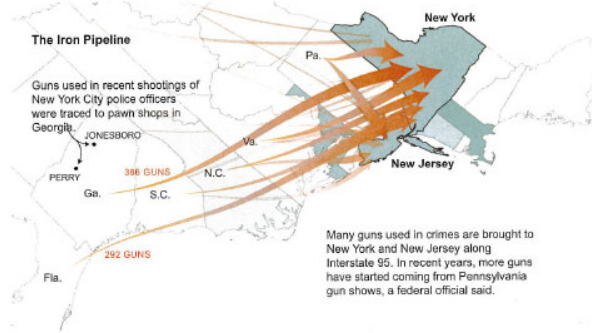


In California, some gun smugglers use FedEx. In Chicago, smugglers drive just across the state line into Indiana, buy a gun and drive back. In Orlando, Fla., smugglers have been known to fill a \$500 car with guns and send it on a ship to crime rings in Puerto Rico.

In response to mass shootings in the last few years, more than 20 states, including some of the nation's biggest, have passed new laws restricting how people can buy and carry guns. Yet the effect of those laws has been significantly diluted by a thriving underground market for firearms brought from states with few restrictions.

About 50,000 guns are found to be diverted to criminals across state lines every year, [federal data](#) shows, and many more are likely to cross state lines undetected.

In New York and New Jersey, which have some of the strictest laws in the country, more than two-thirds of guns tied to criminal activity were traced to out-of-state purchases in 2014. Many were brought in via the so-called Iron Pipeline, made up of Interstate 95 and its tributary highways, from Southern states with weaker gun laws, like Virginia, Georgia and Florida.



A handgun used in the killing of two Brooklyn officers last year was traced to a [pawnshop just south of Atlanta](#). A revolver used in a fatal shooting of an officer in Queens in May was traced to a [roadside pawnshop](#), also in Georgia, about 100 miles from Atlanta. And a handgun used to kill an officer in East Harlem last month was traced to [South Carolina](#).

"We're trying to deal with it, but we have a spigot that's wide open down there and we don't have a national or local ability to shut that spigot down at the moment," said the New York City police commissioner, William J. Bratton, as he announced an indictment against gun traffickers last week.



New York Police Department, via Getty Images

Two guns used in killings of New York City police officers were traced to pawnshops in Georgia.

The economics are straightforward: A low-quality handgun that sells for \$100 in an Atlanta store might sell for \$500 or \$600 in New York City, researchers say — and it can be transported cheaply. By contrast, the majority of guns used in crimes in Texas, Georgia and other states with more lenient gun laws are purchased in-state.

The New York Times examined gun trafficking by analyzing nine years of data compiled by the Bureau of Alcohol, Tobacco, Firearms and Explosives, as well as an index of state gun laws developed by researchers at Johns Hopkins University.

Law enforcement officials express frequent frustration that they are not able to track every gun that crosses state lines, which means the estimates here are conservative. When the police do recover a gun tied to criminal activity, typically after an arrest, they can trace the gun to where it was last sold through a federally licensed dealer.

Chicago offers perhaps the starkest example of trafficking. There are no retail gun dealers within city limits, because Chicago has some of the tightest municipal gun regulations. Yet bringing a gun into Chicago can be as simple as driving less than an hour to a gun show in Indiana, where private sales are not recorded and do not require a background check.

"If you're in the city of Chicago on the South Side, you may be closer to Indiana than you are to the Magnificent Mile," said Roseanna Ander, executive director of the [University of Chicago Crime Lab](#), referring to a well-known part of Chicago's downtown.



Many guns follow a complex path from the original sale to the underground market. Most guns are originally bought from retail stores, but people who can't pass a background check typically obtain guns from friends, family or illegal dealers.

According to an anonymous [survey of inmates](#) in Cook County, Ill., covering 135 guns they had access to, only two had been purchased directly from a gun store. Many inmates reported obtaining guns from friends who had bought them legally and then reported them stolen, or from locals who had brought the guns from out of state.

One inmate said, "Some people get on a train and bring them back, can be up to five or six guns, depending on how much risk they want to take."

Some larger traffickers use more elaborate techniques. Buying a gun in Puerto Rico requires an expensive permit and a lengthy application process, but Florida has no such restrictions. Traffickers in Orlando tied to organized gangs in Puerto Rico send guns in the mail, through FedEx, or even encased in cars that travel by ship to the island.

"They'll buy a \$500 car and stuff it with as many guns as possible," said Carlos Gonzalez, an agent with the Miami division of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

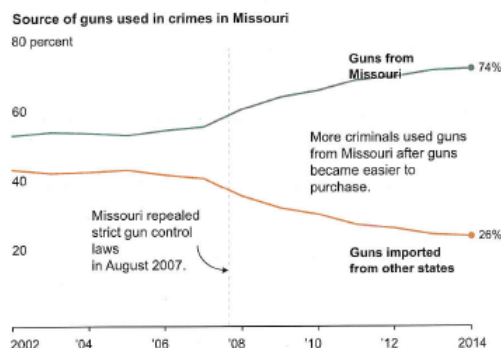


Federal agents and postal inspectors have caught some traffickers, leading to modified techniques, such as shipping guns in newer, more expensive cars or mailing guns from Jacksonville, Fla., instead of Orlando. Stopping such smuggling is logistically hard. "If the U.S. Postal Service were to screen every single package that entered into Puerto Rico, it would bring the economy to a halt," Mr. Gonzalez said.

Most gun trafficking patterns have remained remarkably constant over time. But some researchers point to a significant shift in Missouri as evidence that changes to one state's laws can have broad implications.

Before 2007, Missouri required gun buyers to get a state permit and to undergo background checks on private sales, two restrictions strongly associated with states that provide fewer guns to interstate traffickers, according to research by Daniel Webster, director of the [Johns Hopkins Center for Gun Policy and Research](#). At the time, nearly half of the guns used in crimes and recovered in Missouri were traced to other states, largely from neighboring Kansas and Illinois.

But when Missouri relaxed its gun control laws in 2007, the flow started to change. The number of guns traced to other states decreased, while the number of guns from within Missouri increased to nearly three-quarters.



Note: State gun strictness shown in maps is based on work by researchers at Johns Hopkins University that examined whether states require licenses to purchase handguns, regulate private handgun sales, require gun owners to report theft or loss, strongly regulate gun dealers and ban junk guns that do not meet certain design and safety standards. Guns shown include those illegally possessed, used in a crime or suspected to have been used in a crime.

Sources: [Bureau of Alcohol, Tobacco, Firearms and Explosives](#) (gun traces); [Daniel Webster, Johns Hopkins Center for Gun Policy and Research](#) (gun laws); "Sources of guns to dangerous people: What we learn by asking them," Philip J. Cook, Susan T. Parker and Harold A. Pollack (underground gun sources).

Chairman D'ESPOSITO. The gentleman's time has expired. I now recognize Mr. Crane of Arizona for 5 minutes.

Mr. CRANE. Thank you guys for coming here today. I really appreciate it. It is an honor to have so many police up in the Capitol this week. Thank you for what you do and please let your families know that we appreciate what they do as well.

I want to go ahead and read the Second Amendment real quick because I think that it is something that probably doesn't get read or mentioned enough up here. I think often some of the politicians that have taken an oath to, you know, protect the Constitution of the United States often forget what it says. A well-regulated militia be necessary to the security of a free state. The right of the people to keep and bear arms shall not be infringed. Chief, what do you think of the Second Amendment? Do you think that we should hold to it? Do you think we should honor it, yes or no?

Chief GERKE. Absolutely honor it, no question.

Mr. CRANE. Sheriff Barnes, what do you think?

Sheriff BARNES. I can guarantee you that I absolutely do honor it.

Mr. CRANE. Commissioner Cox, what do you think, sir?

Mr. COX. We honor it.

Mr. CRANE. I am sorry, let me get the name. Mr. Mangual, what do you think, sir?

Mr. MANGUAL. I absolutely think it should be honored.

Mr. CRANE. Well, I appreciate that you guys said that because I know that there are plenty of people in this country that would love to see it go away. Many of them don't want to take it in one fell swoop. It is death by a thousand cuts. Do you guys know that Mexico has some of the most violent gun crimes in the world? Do

you guys know what their gun laws are? Do you guys know is it can people just own guns in Mexico like we can here, Sheriff Barnes?

Sheriff BARNES. Their gun laws are very prohibitive.

Mr. CRANE. Yes, they are. That's weird, isn't it, Sheriff? Why is that? That doesn't add up. I don't understand, if their gun laws are so strict, how is it often ranked in the top five globally for gun violence? Maybe you can help me with that one.

Sheriff BARNES. Because they don't enforce their gun laws.

Mr. CRANE. Yes. Is it true, Sheriff, Chief, Commissioner, that criminals often don't care about laws?

Sheriff BARNES. I can tell you that what we've seen in some of the lawlessness that those who are committing violent crimes with guns are those who are prohibited from possessing them because of their criminal acts. That's been my experience.

Mr. CRANE. Yes. Thank you. Sheriff, you know, I was listening to your opening testimony and one of the words, one of the phrases that you chose struck me. You said policy created lawlessness. Can you expound on that, Sheriff?

Sheriff BARNES. Certainly. So, I think that we have had over the course in California and probably other parts of this Nation policies that are passed for political extremist positions rather than focused on keeping our public and our constituents safe. We've seen that manifest over the last 10 years-plus in California. We've seen a tax on some of our—the Second Amendment, for example, there's a bill in California to make it so prohibitive, but on its face, it's believed to be absolutely unconstitutional. So, why—

Mr. CRANE. Thank you.

Sheriff BARNES [continuing]. We'd pass something like that is beyond my.

Mr. CRANE. Yes, thank you. Chief, what did defund the police, what did you think of that whole movement? What did that do to your department?

Chief GERKE. Well, the area that I police in, I mean, that wasn't even an option. That was never something that was brought up or even considered, so—

Mr. CRANE. Was it good? Was it good for you guys, Chief, or bad?

Chief GERKE. Oh, it was bad because, you know, you look around and you say those poor guys, wherever defunding was happening, and you would say, those poor guys in that department. You know, you'd hear our rank-and-file say, I'd hate to work for that department. I'd hate to work for that city—

Mr. CRANE. Yes.

Chief GERKE [continuing]. Because they don't appreciate us like they do in West Texas.

Mr. CRANE. Commissioner Cox, what about you, sir? Defund the police, was that good or bad for your department, for your city?

Mr. COX. I mean, defund the police, you know, philosophy, as well as, you know, several other things, has probably made it a lot more challenging to certainly retain officers and more access to attract young people to our profession.

Mr. CRANE. I thought so. The last thing I want to do is I want to read bits of an article that a friend of mine wrote about some of the gun data being thrown around. Activists seeking restrictions

on the Second Amendment are fond of citing, “homicide rate”, instead of raw homicide numbers. They do this because it allows them to skirt any admission of gun control failures in blue States. California’s pro-gun control Governor, Gavin Newsom, provides a good example of the left’s propensity to use rates to avoid the use of raw numbers. On May 13, 2023, he tweeted, it has to be the humidity. Why else would California’s gun violence rate be 57 percent lower than Florida’s? That tweet, coupled with Newsom’s on-going push for more gun control, alongside criticism of Florida laws like constitutional carry, concealed carry, et cetera, appears designed to give readers the impression that California’s gun control keeps people safe while Florida’s pro-2A costs more lives. But here’s the raw statistics. The number of homicides in California during 2021 was 2,495 according to the CDC homicide mortality map. The CDC’s homicide mortality map shows the number of homicides in Florida in 2021 was 1,468.

So, there’s a lot of misdirection, more misinformation about gun data and violence in the United States. It is the same old thing—

Chairman D’ESPOSITO. The gentleman’s time has expired.

Mr. CRANE [continuing]. Just shift, shift, fire. Thank you, I yield back.

Chairman D’ESPOSITO. Thank you, Mr. Crane. Before we get to our next, I just have to comment, Chief Gerke, to Mr. Crane’s questioning. I think it is one of the reasons why we are having this hearing today, and one of the reasons, one of the biggest detriments that we see to law enforcement. When you discuss the defund the police movement, you said that you heard over and over again, not just from your department, from throughout other people in law enforcement, “I would hate to work for that department.” I think that sums up why we are here today. We need to make sure that our law enforcement professionals throughout this country never think that and never say that. With that, I now recognize Ms. Titus of Nevada for 5 minutes.

Ms. TITUS. Thank you, Mr. Chairman. Thank you all for being here. We have heard a lot about community policing. I would argue, and I think statistics show this, that part of that is having police officers look like the people they serve, having more diverse police departments because that way they can build trust in the community. They can serve as role models for a community. They can get more information from the community. There is better communication. A Spanish-speaking officer, for example, in an area that is largely Hispanic, would be able to build that trust. So, I would just add that to the notion of community policing.

You all also talked about the need for better cooperation or collaboration between the Federal Government and the local governments. You have mentioned grants. So, it is about money, but also information. So, I would like to ask you about the information that you are trying to get from the ATF about gun tracing. We have tried to set up a national searchable, centralized gun transaction database, but largely due to the efforts of the gun lobby, that has not happened. So, the ATF’s hands are really tied and it takes, the statistics shows an ATF employee would have to sift through about 1,800 documents per day, absent a digital system, to determine the history of a crime gun. We hear a lot about these illegal guns. Com-



missioner, could you talk about the need for better information to be able to better trace these guns?

Mr. COX. I mean, we could always want more and better, so there's no doubt about that. But we work well with the ATF locally. As a matter of fact, we have them embedded in our office, and we have officers embedded with them as well. So, I mean, there's always a backlog of, you know, guns and, you know, tracing and things of that nature. But I can't sit here today and criticize ATF in any way because their partnership has been fairly strong in Boston. But it's a matter of resources, and so, you know, more would be better.

Ms. TITUS. Are they part of your fusion center? I know most large cities and States have fusion centers.

Mr. COX. So, we have our Boston Regional Intelligence Center, and they are not a part of that. But the fact is we have a ballistics unit, and they actually have personnel assigned to our unit and task force. We have multiple task force, part of the JTTF, and we actually have one with ATF that we have an actual body, actually two bodies assigned with them.

Ms. TITUS. Well, I am glad to hear that is the case in Boston, because it doesn't seem to be the case in a lot of cities where we hear that ATF takes too long to provide information.

Let me ask you another question about this cooperation between State or Federal and local governments, and that is with red flag laws. We haven't gotten much passed through the Congress about gun violence regulation, but the bipartisan Safer Communities Act did set aside \$750 million in funding for States to pursue, implement, improve what they called extreme risk protection orders or red flag laws. I think 19 States have done that, including Nevada has a red flag law. Could you tell us, Chief or anybody, how these laws help you or hurt your efforts in stopping violence with guns?

Sheriff BARNES. I can tell you that I'm a believer in red flag laws, and we have several provisions in California to take guns away from people who are prohibited from possessing firearms. My agency not only has issued the most CCWs in California, but also has investigative teams that go out and take guns away from people who are prohibited from possessing them.

To your previous question real quick, one of the big issues on querying for databases on guns is the fact that you have to go to I think it's 20 different databases to search for ownership, guns, other things. If they could narrow that query down to one query that searches all those databases would make not only ATF, but agencies working with ATF much more successful and utilize resources much more efficiently if that were to be employed.

Ms. TITUS. Thank you. I appreciate that. So, anybody else have an opinion on red flag laws?

Chief GERKE. I'll say in Texas that, you know, particularly victims of family violence, those are of great concern to us. Those are issued emergency protective orders almost immediately. When that happens, those people are prohibited from carrying guns right at that point. My department we take a very proactive approach to those. When we know that there's been a protective order issued, we will go by that residence sometimes twice a shift to check on those protected individuals to make sure they're OK.

Also, going back to the ATF question, you know, we do follow-up. Any time there is a gun crime, we want to know where that gun came from. Many times, that gun is stolen. So, that answers one question. But if that gun is not stolen and it's in the hand of a 16-year-old gang member, how did that 16-year-old gang member come to own that gun or possess that gun? So, we do trace that back. We find those owners and we find out, you know, particularly you want to know if that one owner has bought 17, 20, 30 guns in the last 5 months, right? Those are things that are important to know.

Chairman D'ESPOSITO. The gentlewoman's time has expired.

Ms. TITUS. Thank you.

Chairman PFLUGER. I now recognize Mr. Brecheen of Oklahoma for 5 minutes.

Mr. BRECHEEN. Thank you to the Chairman. Thank you all for being here. You are heroes to people that you protect and I am grateful to you. As my colleague said a while ago, also the thanks to not only your families, but all the families who, when they say goodbye in the morning, they know the danger that their loved ones encounter throughout the day. So, what an amazing testament of courage to our men and women in the policing service.

I want to recognize in Oklahoma last year, we had three officers lost in the line of duty. I just want to just pay honor to them and their families. Deputy Sheriff Jeremy McCain of Oklahoma County, Patrolman Joseph Barlow of McAlester, and Detention Officer Kenneth Fowler of Pontotoc County.

I found it astounding this morning, Mr. Gerke and Mr. Barnes, you both alluded to fentanyl being one of your priority issues and which absolutely, as we know, is a result of lack of enforcement, lack of capture at our Southern Border, given the flow. So, in 2021, we know that 70,000 deaths occurred. It is the leading cause of death, fentanyl poisoning. Many times, people are thinking they are taking some other substance, they are taking fentanyl, and it leads to their demise. That 70,000 would be as if a jetliner every day was crashing to get to that annual number. It is the leading cause of death, 18 to 45 in America today. In Oklahoma in 2022, there were 326 Oklahomans who died from fentanyl. Just in the first 5 months of this year, there's already 300. So, it is just a number that continues to grow.

The deadly mixture of tranq that keeps Narcan from being able to revive someone. My question to anyone at the panel. What are you seeing with this? What is your experience? What are your suggestions as it pertains to what the Federal Government can be doing with this dangerous mixture concoction of the fentanyl being laced with xylazine?

Sheriff BARNES. So, I'm also the county coroner in Orange County, and we look at all that data. We've seen the presence of xylazine increase over the last 4 years to become much more dominant. So, we know that that is a causal factor in the synergy created with fentanyl. So, it is an on-going issue.

The rise of the 70,000, in our analysis of the fentanyl addiction, the vast majority of those deaths are people not taking one pill, are people who are addicted to fentanyl, who are seeking out fentanyl as an addiction that is causing their demise. My analysis was 96

percent of those who died in my area as a result of fentanyl had an addiction or prior arrest for drug offenses that weren't first-time users. That does happen. The clandestine-produced pills are often being sold as Xanax, OxyContin, oxycodone, and other things. You do have xylazine sometimes mixed. But it's mostly the addicts and they're seeking out the pure fentanyl for an addictive high.

Mr. BRECHEEN. Sheriff Barnes, since I have got you on the mic already, I want to kind-of pivot to something I found really interesting. You talked about the lawlessness that policies as a laboratory of experimentation that your State has been seeing. You quoted some numbers that your prison population as of 2010 was 165,000, and that dropped to 90,000 almost in half in a 10-year time period. To date, you are about 90,000 prison population. But what you talked about in your opening remarks was that that decriminalization element where State law has been changed, it has led to a 31 percent increase of homicides in that same time period. A 31 percent increase in homicides, and the population only rose 10 percent. It is astounding. Also, in that 30-percentile range was aggravated assaults had grown 30 percent.

You then talked about that those that are killed, officers that are killed in the line of duty come from those with extensive criminal records. You, a moment ago told a member of this panel that it is not the gun, it is those that are getting the gun. So, we see in America today, the gun is looked at as the target for our focus. Yet I appreciate you talking about the human factor. Would you expound upon that?

Sheriff BARNES. Sure. So just to put that in perspective, I've issued 20,000 CCWs and none of those individuals have gone out and committed a homicide. So, I think when you look at just guns being issued, it's the criminal element using guns in the commission of crimes, oftentimes when they should have been incarcerated for the previous crimes, that is driving the violence that we're seeing with these decarceration efforts.

Mr. BRECHEEN. So, just to follow and ending with this, Mr. Chairman, that if we would be more apt to go after the criminals and not bring about policy that decriminalizes them on lesser crimes, we could go to the heart of what leads to more aggressive, more violent behavior years later. It is ushered in by being lax on criminal behavior. With that, I yield.

Chairman D'ESPOSITO. The gentleman's time has expired. Before we get to the next speaker, I just want to, going back to my questioning before, Mr. Cox. So, in 2022 there were 563 people charged with unlawful possession in Boston. That was 93 percent of all firearm arrests. The overwhelming majority of shootings both with victims and not with victims, involved handguns. According to the complaints that were filed, there was not one that referred to any white supremacy-driven violent crime. With that, I now recognize Mr. Ivey of Maryland for 5 minutes.

Mr. IVEY. Thank you, Mr. Chairman. I want to yield to Mr. Correa to follow up on a point that was made earlier.

Mr. CORREA. Thank you, Mr. Ivey. I just want to ask for unanimous consent to enter into the record an article from the Trace titled *Guns Recovered in Mexico Come Mostly from U.S. Makers*. It shows that as much as 90 percent of all guns recovered in Mexican

soil originate from the United States. If I can admit this for the record, please?

Chairman D'ESPOSITO. Without objection, Mr. Correa.  
[The information follows:]

ARTICLE SUBMITTED BY HONORABLE J. LUIS CORREA

GUNS RECOVERED BY MEXICO'S MILITARY COME MOSTLY FROM U.S. MAKERS

*In the wake of a judge's decision to throw out the Mexican government's lawsuit against the gun industry, data shows American companies produce the weapons driving cartel violence.*

*By Champe Barton, Alain Stephens, and Steve Fisher*

*Oct 20, 2022*

On September 30, a Federal judge dismissed a groundbreaking legal challenge to the gun industry filed by the government of Mexico. The suit laid out an argument that major U.S. gunmakers have knowingly facilitated more than a decade of deadly cartel violence across the southern border. They have done this, Mexico argued, by marketing weapons in a way that attracts criminals and turning a blind eye to those weapons' diversion into trafficking routes. The judge dismissed the claim on account of a special legal shield enjoyed by the gun industry.

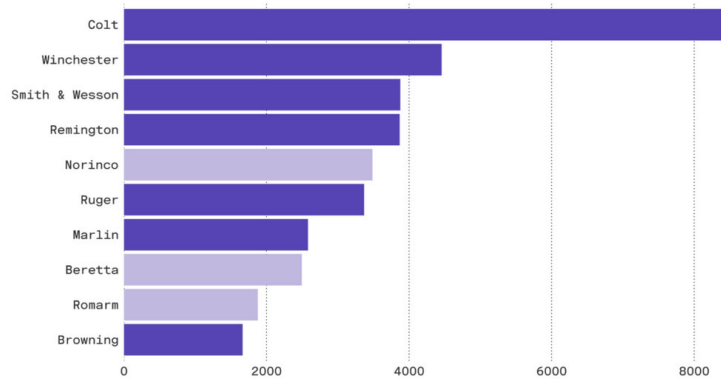
To date, data underlying Mexico's dramatic pronouncements—that as much as 90 percent of all guns recovered on Mexican soil originated in the U.S.; that as many as 597,000 weapons slip over the border each year, most from American gun manufacturers—has only been shared in aggregate form by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

But data obtained from Mexico's Secretariat of National Defense provides a detailed look at the specific manufacturers who produce weapons commonly used in cartel violence. The data details every firearm recovered by the Mexican military between 2010 and May 2020—almost 125,000 weapons, including machine guns, grenade launchers, and tens of thousands of pistols and rifles. Taken together, the numbers tell a damning story of iconic American gunmakers' involvement in a decade of Mexican bloodshed.

U.S. gun manufacturers make up seven out of the top 10 companies whose guns are most frequently seized by the Mexican military. Colt Manufacturing, based in Hartford, Connecticut, led the list, with more than 8,500 firearms—6.8 percent of all guns recovered in Mexico over the 10-year span. Winchester Repeating Arms, based in New Haven, Connecticut, followed in second place with over 4,000 weapons recovered. Major gunmakers including Smith & Wesson, Remington, Ruger, and Browning, also appear in the top 10.

### Top 10 Gun Brands Seized by Mexico's Military

Government data on gun seizures between 2010 and 2020 shows the popularity of U.S.-made firearms.



THE  
TRACE

Source: Mexican Secretariat of National Defense

Champe Barton

Altogether, U.S. weapons manufacturers accounted for at least 30 percent of guns in the dataset, according to a Trace analysis. Another 61,000 guns—roughly half of all the weapons recovered—either had no identifiable manufacturing marks, or had their manufacturer information left out during data entry. It's possible many of these guns originated in the U.S., but had identifying characteristics scratched away by their owners in attempts to evade tracking by authorities. (Like U.S. police agencies, the Mexican government traces firearms with the ATF.)

It is also possible that many of the guns manufactured by foreign-based gun companies originated in the U.S. Glock, an Austrian company, has a separate operation headquartered in Georgia. Sig Sauer, a German company, has headquarters in New Hampshire. These companies, along with several others, manufacture and sell millions of guns domestically every year. The Mexican military's data shows that 970 Glock firearms were recovered in the country between 2010 and 2020. But because the data does not specify the country in which each gun was manufactured, guns produced by foreign companies were excluded from The Trace's estimates of U.S.-made guns. ATF trace data, which may include some subset of these firearms, as well as recoveries made by law enforcement authorities other than the Mexican military, shows that more than 70,000 guns made their way from the U.S. to Mexico between 2015 and 2020.

Mexico enforces extremely stringent gun laws. There is only one gun store in the entire country, and it's located behind fortified walls on a military base. Anybody interested in purchasing a gun from this store must undergo months of background scrutiny. Law enforcement and border security experts have long recognized that these restrictions—paired with a thriving array of cartels warring for regional power—make Mexico a hot destination for trafficked firearms. The country's proximity to the U.S. and the sheer abundance of guns in circulation here make the U.S. a natural source.

"We produce some of the best firearms in the world," said David Shirk, a professor of political science at the University of San Diego who specializes in U.S.-Mexico relations. "Some of the people who are most interested in obtaining firearms and with the most financial resources to do so are Mexican drug trafficking and criminal organizations."

The human cost of this black market transaction is extraordinary: The Mexican government claims that more than 180,000 people were killed in violent gun crimes between 2007 and 2019, spinning an unfathomable web of grief and forcing many to flee their homes. The violence in certain areas is so extreme that the U.S. Department of State has advised travelers to avoid them.

This death toll has become a political sticking point for the administration of Mexico's current president, Andrés Manuel López Obrador. Where previous administrations have tried to snuff out cartel activity by force, Obrador has tried to shift some of this focus to root causes: socioeconomic struggles that make cartel involvement appealing to young men, and arms trafficked over the country's northern border. It was in step with this strategy that Mexico launched its lawsuit against U.S. gun companies in 2021.

"[The manufacturers] should make necessary changes so they are not appealing to narcos," said Alejandro Celorio Alcántara, a legal advisor for Mexico's Foreign Ministry who was intimately involved with the country's lawsuit. "They have access to trace information."

Domestically, countering arms trafficked from the U.S. has been of second mind to policymakers, who have tended instead to focus on drugs and people being trafficked north. But some efforts to clamp down on southbound gun trafficking routes have picked up steam in Congress. Most recently, in June, the U.S. Congress passed the Bipartisan Safer Communities Act, which makes straw purchasing and gun trafficking Federal crimes.

Law enforcement experts say it's dangerous to underestimate the integral role firearms play in driving both drugs and people north.

"Tens of thousands of people are dying from fentanyl overdoses every year in the U.S., and most of that fentanyl these days is coming directly from Mexico, from the cartels," said Joseph Lestrage, a retired Homeland Security Investigations division chief, who is now a security consultant, adding that U.S. guns arm most of the cartels sending these drugs north. "[Gun trafficking] fuels and facilitates the continued expansion of criminal enterprises in Mexico that are feeding this demand."

Mr. CORREA. Thank you. Very quickly, if I can answer, respond to my colleague who is not here right now. I wish he would be here. About guns in Mexico. I don't make Mexican laws. I am a U.S. lawmaker. But we did meet, Democrats and Republicans met with the Mexican president about 2 or 3 months ago. This was one of the issues that was brought up by the Mexican president, which is he needs help from us addressing the gun smuggling issue. He was telling the story of the arrest of Chapo Guzman's son, 14 soldiers, Mexican soldiers died in that action. He said they had 50-caliber weapons. We can't compete with those. So, they need our help.

So, yes, Second Amendment, preserve it. But let's make sure, like my sheriff says, that we go after the criminal element as well. I yield.

Mr. IVEY. Thank you. To the Chairman's point, I appreciate the fact that assault weapons are not the vast majority of—are used in the vast majority of murders in the United States. I don't think that means that we don't try and control both because it is clear that assault weapons—we will have a hearing at 2 and we will talk a lot about that today—are driving the mass killings in the country by far.

This is Police Week. I want to take a moment and acknowledge police officers, especially in my jurisdiction of Prince George's County. I was a State prosecutor there for 8 years and worked with them closely. Prosecuted officers across the line, but the vast majority of our more than 2,000 officers did a hard job well.

I did want to say quickly with respect to the commissioner, when I ran for office in 2002, the basis for my campaign was to implement the Boston strategy in Prince George's County. The logic of that for me was, yes, we need tough enforcement. We want to have a carrot-and-stick approach. So, we want to make sure that we do everything we can for intervention prevention efforts. Chief, as you mentioned a minute ago, it is better to preempt the crime than to deal with arrests after the fact, because then you are saving victims from having to undergo the suffering, the death, and the loss,

and the like. Sheriff, you mentioned the thefts that take place. Trying to preempt that is a good way to go as well.

But I do want to preempt, or push back a little bit on the approach, or the suggestion that incarceration is the only way to deal with this problem. You know, I remember when we had 2.2 million people in jail here in the United States. I think there was a point where we surged ahead of China and had more people incarcerated than any other country in the world. Certainly, there is a place for enforcement, but, you know, I found that we had success with intervention prevention efforts that incorporated the faith community, outreach to our schools, we used coaches. Whatever strategy we could approach to try and reach young people in particular before they got into trouble or if they were in trouble, to pull them back out of trouble, if they were in gangs, for example, we thought that was an important way to go. I think that dovetailed well with the community policing strategy that was outlined a minute ago by the commissioner and also with respect to outreach to the citizens.

It is a team effort, and the most successful strategies, I think, are the ones that try and integrate law enforcement along with prosecutors, but also making sure that the community is brought in and is part of what is going on with respect to reducing the crimes, because they are the witnesses in these cases when they come to court. They are the ones that provide the tips to the police to make the arrests. Sometimes they are the ones that provide the tips to go get the gun before somebody gets shot with it, you know, or gets brought out of the car, or out of the police, or out of the school locker.

I did want to say this, too, just quickly with respect to your testimony. I appreciated the fact that you outlined your partnerships actually, both of you did, with Federal prosecutors and Federal law enforcement. We have got bills here in the House where one of my colleagues has offered, a Republican colleague, offered a bill to eliminate ATF. One has offered a bill to eliminate the FBI. There have been calls by, you know, certain national leaders to eliminate the Department of Justice and the FBI. But I know from my experience and just based on what I read from your testimony, that the Federal and State and local partnership can be very effective. In fact, sometimes the most effective in fighting crime.

So, I commend you for the work that you do, and I encourage you to keep it up. I thank you for coming here today.

Chairman D'ESPOSITO. Well, thank you. Thank you to all the witnesses for your valuable testimony, and obviously to my colleagues for their questions. Perhaps we don't often agree on everything, but I think during this week, especially whether you are a Republican or you are a Democrat, we can recognize and agree that we appreciate all of your hard work, your sacrifice, the work that you do to keep our community safe. So, thank you to all for being here, for making the trip here, and I think for really engaging in a conversation to move policing forward and keep police officers safe across this Nation for the future.

The Members of the subcommittees may have additional questions for the witnesses, and we ask the witnesses to respond to those in writing.

Pursuant to committee rule VII(D), the hearing record will be open for 10 days. Without objection, the subcommittees stand adjourned.

[Whereupon, at 11:18 a.m., the subcommittees were adjourned.]



## APPENDIX

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### QUESTIONS FROM HONORABLE LAUREL M. LEE FOR MICHAEL GERKE

*Question 1.* When it comes to information sharing between Federal and State authorities, would you speak to some of the challenges Odessa faces when it comes to communication with the Federal Government and its partnership with the National Human Trafficking Hotline?

Answer. Response was not received at the time of publication.

*Question 2.* Would you walk us through what information sharing looks like when attempting to identify broader trafficking trends?

Answer. Response was not received at the time of publication.

*Question 3.* What other obstacles exist when attempting to stop criminals trafficking humans and illegal narcotics?

Answer. Response was not received at the time of publication.

### QUESTION FROM HONORABLE LAUREL M. LEE FOR DON BARNES

*Question.* In your written testimony, you included reference to Operation Red Zone across a dozen or so law enforcement agencies. Would you speak to some of the efforts of the Orange County Intelligence Assessment Center in the fight against human trafficking?

Answer. With regard to Operation Red Zone, the Orange County Intelligence Assessment Center (OCIAC) coordinated Operation Red Zone in partnership with 11 local law enforcement agencies, the Orange County District Attorney's Office and the U.S. Department of Homeland Security to identify victims of human trafficking and hold their perpetrators accountable. This operation took place during the week leading up to the 2022 Super Bowl, which was held in Los Angeles.

The operation resulted in the arrest of 56 suspects and recovery of 16 victims. The more than 4 dozen arrests included men ages 20 to 55 from Orange and Los Angeles counties. Charges included human trafficking, pimping and pandering, solicitation for sex, and narcotics. In addition, one unregistered handgun was recovered.

Agencies conducted multiple operations utilizing investigative techniques most impactful for their specific city. This included undercover operations, investigation into online-based sex solicitation websites and investigations into known problematic businesses.

As Orange County's fusion center, OCIAC plays a critical role in addressing human trafficking. The analysts at OCIAC provide actionable information to our human trafficking task force, threat briefings, and assist in community awareness campaigns.

Another specific area where OCIAC has been instrumental is the identification of on-line sex ads that use or target juveniles. In 2022, the Orange County Intelligence Assessment Center identified more than 6,000 possible juveniles in commercial (on-line) sex ads in Orange County. OCIAC flags and shares these ads with the appropriate law enforcement agencies for further investigation.

During the pandemic, we saw a marked increase in the number of potential human trafficking incidents in the form of commercial (on-line) sex ads. This was attributed to an increase in the number of young people staying home and participating in unmonitored on-line activity.

- 2019: 5,293 commercial sex ads involving possible juveniles
- 2020: 20,456 commercial sex ads involving possible juveniles
- 2021: 10,000 commercial sex ads involving possible juveniles
- 2022: 6,232 commercial sex ads involving possible juveniles.

An increase in the number of commercial sex ads featuring possible juveniles tells us that there is an increased probability human trafficking is occurring. In many cases, participating in the sex trade is not a choice, but rather a product of being trafficked.

Venues for on-line trafficking solicitation include on-line gaming with direct messaging and voice messaging options and social media. Traffickers may mass message individuals with an innocuous type introduction message. The target is typically a young female but it happens to boys and men, too. They may also pose as a scout for a talent agency or something similar. The traffickers attempt to target individuals with noticeable vulnerabilities, i.e. someone with low self-esteem, someone who is lonely, or maybe a victim too young or naive to understand what is happening. Once the victim engages in conversation, the traffickers work to build trust. They may make false promises of a loving relationship or the promise of a well-paying job. Traffickers work to fulfill the victim's needs, whether that is something tangible like money or a place to stay, or something intangible like love or affection. Once they isolate these victims they begin to exploit them. OCIAC is critical in identifying these on-line sex ads and supporting law enforcement efforts to address and eliminate this threat.

Unrelated to your specific question, but important to note with regard to human trafficking is a new California law that has made law enforcement's work to combat trafficking more difficult. Senate Bill 357 took effect January 1, 2023. The legislation repeals a law that allows law enforcement to detain a person loitering with the intent to engage in prostitution. Essentially this law de-criminalizes those paying for services and those exploiting women. The former loitering law was a tool used by investigators to engage potential victims in a safe place and determine if they are a victim of human trafficking. It also helped us identify those who may be conducting the larger operation. The passage of SB 357 takes away an important tool and will prevent us from identifying and, ultimately, helping victims of trafficking. While this issue is currently specific to California, it is important to highlight this poor public policy so that it is not replicated in other jurisdictions.

QUESTIONS FROM HONORABLE DONALD M. PAYNE, JR., FOR MICHAEL A. COX

*Question 1.* In your testimony, you mention that UASI is a critical source for your Department and that Boston is receiving \$200,000 less this year while going up in the UASI risk ranking. As you noted, the threat landscape has broadened. Do you have recommendations on how DHS grant programs can better address the growing threat landscape?

Answer. A significant way that Congress could assist law enforcement would be to increase funding across the Homeland Security Grant Program—to include UASI—and consider broadening its applicability beyond just “terrorism” to include other threats traditionally mitigated by the U.S. Department of Defense and intelligence community.

In addition, flexibility regarding time frames for expenditure of grant funds would better support long-term projects.

*Question 2.* Like many local government agencies, police departments have been hit hard by ransomware attacks in recent years. Such attacks risk exposing private information and sensitive details regarding criminal investigations and can interfere with a police department's ability to carry out its vital public safety mission. In just the past couple months, law enforcement agencies in Dallas, TX; Camden County, NJ; and San Bernardino County, CA have fallen victim to ransomware attacks. Can you describe the potential impact a similar ransomware attack could have on your agency and its ability to serve the public and what steps your agency has taken to strengthen your cyber defenses?

Answer. A successful ransomware attack launched by a skilled adversary against the Boston Police Department could hamper or cripple emergency services and public safety communications throughout the region. Law enforcement personnel could also lose access to case and operational data for weeks, impacting active investigations and prosecutions. Ransomware affiliates often steal data before encrypting it on target systems and the personally identifiable information of Boston area residents, sensitive criminal information and operational details could all be leaked on the internet or used for nefarious purposes. In addition to the impact on the Boston Police Department, disruptions to network traffic flow may impact other city systems and agencies.

A ransomware attack on our agency could also have far-reaching operational impacts. One of the most immediate and critical would be on the agency's Computer Aided Dispatch (CAD) system, which is essential for timely emergency response and coordination of law enforcement officers, firefighters, and emergency medical services. With CAD disrupted, response times could see significant delays, putting lives at risk.

In addition, the integrity of our telecommunications systems, including both phone and radio communications that we heavily rely on for internal communication

and public contact, could be undermined. A breach of this nature would not only obstruct our daily operations but also impede emergency responses.

On the investigative front, a ransomware attack could result in the encryption or total loss of essential data related to on-going investigations. This would cause substantial setbacks and could impair our ability to effectively solve crimes. A ransomware attack could also threaten the availability, integrity, and confidentiality of our case files and digital evidence. This could potentially undermine on-going and future prosecutions.

On the administrative side, the disruption of our financial systems could lead to substantial logistical issues. For example, systems used for payroll, purchasing, budgeting and accounts could all be targeted, preventing employees from being paid on time and vendors receiving timely payment, therefore creating confusion related to our finances.

Surveillance systems could also fall victim to ransomware, hindering our ability to monitor public areas and investigate crimes.

Last, public trust in our agency could be undermined, especially if personal information is exposed or critical services are disrupted.

To mitigate the risk of ransomware attacks, our agency has proactively undertaken several important measures. We conduct regular backups to protect critical data and keep all software and hardware updated to guard against known vulnerabilities. Our staff undergo on-going cybersecurity training to spot potential threats. We utilize incoming email filtering to block phishing attempts. Implementing next-generation antivirus solutions and multi-factor authentication bolsters our defenses further. Finally, we're in the process of upgrading our firewall to a next-generation system, enhancing our threat detection and prevention capabilities. These combined steps provide a multi-layered defense against ransomware, helping safeguard our agency's crucial services.

*Question 3.* How can the Federal Government better ensure law enforcement agencies have the resources to defend against and respond to these attacks?

Answer. Federal investments in the UASI and STC grant programs are vital to local efforts to prevent and mitigate potential attacks. Continued funding of these critical investments is necessary to defend against and respond to these attacks.

National security threats from nation-state actors and their proxies managing aggressive campaigns to sow seeds of discord in our communities through mis/dis/mal information, cyber attacks, and counterintelligence threats require more from our intelligence professionals, investigators, and front-line officers to protect our communities. Because these are issues that our Nation's first responders have not traditionally dealt with, we require more training, more personnel, more embedded analytical experts and more technical capabilities to mitigate these threats.

Specific to cyber attacks:

The role of the Federal Government is crucial in ensuring that law enforcement agencies like ours have the necessary resources to both prevent and respond to cyber threats effectively. An increase in Federal funding would significantly empower us to adopt advanced cybersecurity tools and technologies that are vital to safeguard our digital infrastructure. With the cyber threat landscape constantly evolving, staying up-to-date with the latest defenses is extremely important.

Additional financial support would assist us in attracting and retaining the highly-skilled cybersecurity professionals who are at the forefront of managing and improving our defenses.

In the unfortunate event of a cyber attack, Federal funding ensures that we can respond rapidly and effectively, minimizing operational disruption and swiftly restoring vital services. A proactive investment in our systems through regular updates and maintenance, facilitated by this funding, is another critical defense strategy.

Equally important are third-party security audits, which identify potential vulnerabilities and areas for improvement. Last, Federal funds could also support law enforcement agencies in covering the cost of cyber insurance premiums, providing an essential safety net.



# THE BIDEN BORDER CRISIS: PART III

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## HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION INTEGRITY,  
SECURITY, AND ENFORCEMENT

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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TUESDAY, MAY 23, 2023  
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## THE BIDEN BORDER CRISIS: PART III

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Tuesday, May 23, 2023

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION INTEGRITY, SECURITY,  
AND ENFORCEMENT

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, Hon. Tom McClintock [Chair of the Subcommittee] presiding.

*Members present:* Representatives McClintock, Jordan, Buck, Biggs, Tiffany, Roy, Van Drew, Nehls, Moore, Hunt, Jayapal, Nadler, Correa, Jackson Lee, Ross, and Swalwell.

*Also present:* Representative Lawler.

Mr. McCLINTOCK. The Immigration Subcommittee of the House Judiciary Committee will come to order. A quorum is present. The Chair asks unanimous consent that Mr. Lawler of New York be seated on the Subcommittee for the Hearing. Is there any objection?

Hearing none, Mr. Lawler, welcome to this Subcommittee.

The Immigration Subcommittee meets today to hear testimony on the effect of the ongoing border crisis that began on Inauguration Day of 2021.

We have four witnesses with us today who are going to testify to the effects that this is having on the social services of our cities as well as the tragedies that it is causing for our citizens.

With that we will begin with—our first witness is Chief Rodney Scott, formerly the Chief of the Border Patrol of the United States.

Mr. Scott, we welcome you to the hearing today and recognize you.

Oh, I am sorry, we are going to do—start with—see that is what happens when I go script-less. I will actually begin with opening statements, and I will begin with myself.

When President Biden canceled construction of the border wall and ordered ICE not to enforce court-ordered deportations, we have seen 2.1 million illegal immigrants unlawfully admitted to the United States by this administration. That is a population larger than the entire State of Nebraska.

While that has been going on an additional 1.5 million known got-aways have entered while the Border Patrol has been overwhelmed. That is in additional illegal population larger than the



State of Hawaii. Combined that is 3.6 million illegal migrants admitted to our country. That is larger than the population of 20 of our States. That is just in 28 months.

The danger of this policy should be self-evident. When the President surrendered unconditionally to the Taliban and abandoned Bagram Air Base in the middle of the night, he released 5,000 of the most dangerous terrorists on the planet who were detained there. We know where one went. Ten days later he went to Abbey Gate at Kabul Airport and detonated the bomb that killed 13 U.S. Marines. We know that nearly 200 individuals on the Terrorist Watchlist were apprehended by the Border Patrol in 2022 and 2023, compared to just 14 in all four years of the Trump Administration combined. What we don't know is how many more are among the 1.5 million known got-aways.

Now, HHS Secretary Xavier Becerra told his staff that he demanded a rapid release of illegal migrants into the country. He compared it to an assembly line, and he warned subordinates that if they didn't move faster, he would find others who would. The lack of any serious vetting of those entering our country is producing tragic results for families like that of Kayla Hamilton whose grieving mother we will hear from today. In her case a 17-year-old MS-13 gang member was released into the United States as an unaccompanied alien child. Kayla Hamilton is dead as a result.

Police investigating her murder noticed her assailant had gang tattoos. One call to El Salvadoran authorities confirmed he was a known MS-13 gang member, something Federal officials never bothered to ask as they recklessly allowed him to enter the United States.

Drug trafficking now produces an average of 200 fentanyl deaths in the United States every day, the equivalent of a passenger jet crashing every day. Just a few days of such carnage would ground every aircraft in America.

We are told that human trafficking is now becoming an even more profitable business to the cartels than drugs. Illegal migrants arrive deeply in debt to the cartels whose violent gangs are proliferating in our cities to enforce these debts. In places like Tulare County, California, just outside of my district, we are starting to see cartel executions of entire families including in this case a mom shot through the head as she shielded her baby.

Every Border Patrol officer says the same thing: This is no longer a border problem. If it hasn't already come to your community, it soon will. I am afraid this culminate either in a terrorist attack by elements that have come in through our border or the kind of cartel gun battles breaking out in cities that have already become commonplace in Mexico.

Now, this is not to paint every illegal migrant as a gang member or terrorist, but the Biden open borders policy is clearly allowing many dangerous gang members, terrorists, and criminals into our country, and he doesn't seem to care about the resulting damage.

Meanwhile, the social safety net meant to help Americans in need is collapsing under the weight of millions of desperate, destitute, and dependent illegal migrants who are flooding our country.

New York City has now turned as many as 20 public school gymnasiums into hotels for illegal aliens. Recess is canceled because single adult men are sleeping on cots in gyms intended for school children.

We have heard from food pantries whose supplies are exhausted because of the explosion of illegal migrants. We have heard from hospital administrators at the border who have had to tell American citizens that they have no room for them because they are overwhelmed by migrants. We hear from law enforcement of the increasing presence of criminal cartels and foreign gangs in their communities.

Yet, the Democrats' witness is going to tell us a solution: Simply spend more money and process illegal migrants faster. This is lunacy.

It is a crime to illegally enter the United States. Federal law requires every asylum claimant to be detained until their case is heard and to be deported if it is rejected, but this administration simply ignores the law.

Now, these first hearings have examined the effect of these policies. Over the next few weeks, we will turn our attention to the cause: What laws are being violated and by whom?

With that I am pleased to recognize the Ranking Member of the Subcommittee, Ms. Jayapal, for five minutes.

Ms. JAYAPAL. Thank you, Mr. Chair.

I want to start just by taking a moment to express my deepest condolences to you, Ms. Nobles. You have experienced a profound loss and I appreciate your coming to share Kayla's story with us today.

Turning to today's hearing, it appears once again unfortunately that it is Groundhog Day in our Subcommittee. Today is Part 3 of our hearings on the Republicans' assault on immigrants and immigration, and I am sure we will have many more parts to come.

I worry that today will be more of the same with my Republican colleagues once again showing us that they are not serious about governing and finding solutions to the complex issue of immigration. After passing their extreme, cruel, and unworkable border bill, where the only bipartisan thing about it was the opposition, Republicans have spent the last few weeks fearmongering over the end of Title 42.

This fearmongering about the border, let me be clear, empowers the smugglers and cartels when our Republican colleagues claim that the border is open. That is the most important information that they use to continue their activities. Turns into disinformation and misinformation shared by smugglers, distributed by social media, and stoked by relentless right-wing media lies and shouts of open borders, all which fuel migration patterns.

Yet, what are the facts? The facts are that when Title 42, a public health policy, not an immigration enforcement policy, finally ended, what happened? Border encounters plummeted by 70 percent. Thus far, the increased migration narrative pushed in the right-wing media has not yet come.

The lower numbers are likely due, at least in part, to the Biden Administration's new policies announced in the lead-up to the end of Title 42. These announcements detailed how they plan to ad-

dress migration to the southwest border going forward. The administration showed that once again Democrats have real workable solutions to manage migration and expand legal pathways.

On top of the parole programs created by the Biden Administration earlier, this year the administration announced the creation of additional legal pathways that are intended to relieve pressure at the border. The administration announced that they are opening regional processing centers across the Western Hemisphere for the first time to facilitate access to legal pathways in the United States. This is an important step to allow migrants to get their protection and benefits claims assessed in a humane way without having to make the dangerous journey to the U.S.-Mexico border.

The administration is also creating new family reunification parole processes for El Salvador, Guatemala, Honduras, and Colombia. This is for people who already have an approved family petition modeled off the Cuban Family Reunification Program my colleagues attempted to codify in H.R. 2.

The administration is also increasing the number of appointments that will be available under the CBP One app, which while far from perfect, does increase CBP One's ability to process more migrants.

The administration also implemented new policies that I do have significant concerns about. This includes a new asylum regulation that limits access to asylum for those who cross between ports of entry as well as new expedited processing of single adults from Spanish-speaking countries where individuals will get an initial asylum screening in a Border Patrol facility.

Now, none of these solutions are perfect. Addressing the issue of migration is difficult, but Democrats have shown time and time again that we take this complex humanitarian crisis seriously. By creating a more human immigration system that recognizes the horrific conditions that cause migrants to flee as well as contributions of immigrants to America we can decrease unauthorized crossings, strengthen our economy, and protect migrants and citizens from harm.

Unfortunately, Republicans have shown us their priorities with their border bill and now with their Fiscal Year 2024 Department of Homeland Security appropriations bill. That bill would only create more disorder at the border. Budgets are moral documents that show what we value and prioritize.

Their bill, which was released last week, defunds the Emergency Food and Shelter Program which is helping migrants who are processed by CBP move away from the border to be with sponsors or family in the United States as they await their court hearing.

Their bill ends the use of the Family Case Management Program which had a nearly 100-percent success rate in helping families show up for their immigration court hearings. It disallows the use of alternatives to detention unless the secretary himself directly approves it, which would create a significant bottleneck for moving people out of CBP custody.

It defends the Asylum Officer Rule, which allows asylum officers to adjudicate asylum claims, helps alleviate the growing immigration court backlog, and it ends the use of the CBP app for people

who are coming through parole, which will severely hamper CBP's ability to process migrants in a safe and orderly way.

Now, all these policy choices give the game away. None of these policy choices are intended to help the agency. They will create more chaos and disorder at the border. That appears to be the point of my Republican colleagues' efforts. Create chaos and disorder and hope, hope to win the next election.

Now, if the Chair of the Subcommittee is so concerned about airplanes being grounded, I would just say that the Default on America Act and the attempts that Republicans are making right now to put forward serious cuts—that default would actually halt all the air traffic controllers across the country.

I look forward to hearing from all our witnesses today. The American people deserve better, and I hope that our witnesses can shed light on real solutions to address the situation at our border in a holistic way.

With that, I yield back, Mr. Chair.

Mr. McCLINTOCK. Thank you.

The Chair now recognizes the Chair of the House Judiciary Committee, Mr. Jordan.

Chair JORDAN. I thank the Chair.

The Ranking Member started her statement by saying the border is secure. Really?

Ms. JAYAPAL. I did not.

Chair JORDAN. More than 52 million illegal aliens along the southwest border has been encountered since Joe Biden took office, two million of these illegal aliens have been released into American communities, and more than 12 million known illegal got-aways have successfully crossed the southwest border undetected. These include criminal gang members, drug dealers, and individuals on the Terrorist Watchlist. That is not a secure border. That is not a closed border.

Ms. JAYAPAL. I never said that—I never started my statement with a—

Chair JORDAN. That is—

Ms. JAYAPAL. —secure border, Mr. Chair.

Chair JORDAN. That has happened because on day one—

Ms. JAYAPAL. I am just—

Mr. McCLINTOCK. The time—

Ms. JAYAPAL. I am correcting the record, because you stated something that was not true. Thank you, Mr.—

Mr. McCLINTOCK. The gentlelady should know that interrupting a Member without making a valid point of order is against the rules of the Committee.

Ms. JAYAPAL. Not if they lie about what I said.

Chair JORDAN. The time belongs to the Chair. The Chair is recognized.

Chair JORDAN. I would just point out the gentlelady said Republicans say the border is open. She said that is not so. So, what does that mean if it is open? So, is it something that is not secure, not closed? I would just say what she referenced in her opening statement. Day one of this administration they stopped construction of the wall, they ended Remain in Mexico, and they put back in place

Catch and Release. Day one. That is why we have the situation we do.

In that same period, I just talked about 28 months of this administration over 43,000 pounds of fentanyl have been seized at the southwest border with an unknown amount making it into our communities. There has also been an uptick in the number of individuals on the FBI Terrorist Watchlist.

Just two weeks ago Border Patrol apprehended an Afghan who illegally crossed into San Diego Sector in California and days later news reports indicate that an additional five watchlisted illegal aliens were apprehended in Tucson, Arizona after attempting to avoid detection.

Our witnesses today understand the consequences of our borders being unprotected all too well, all of them, and I want to thank them for being here today.

I want to particularly thank Ms. Nobles for bravely agreeing to appear here today to talk about the unthinkable tragedy that affected her family. Her daughter Kayla was 20 years old when she was assaulted and murdered. The person charged with the crime was an MS-13 gang member who was allowed to enter the United States after crossing the border illegally as a so-called unaccompanied alien child.

Despite the UAC having a criminal history in El Salvador for MS-13 gang affiliation well before he even entered the United States, law enforcement only became aware of this fact after Kayla's murder. Why not until after Kayla's murder? Because prior to the murder no one in this administration bothered to check into the UAC's criminal history in his home country. The Hamilton family was not alone this year in experiencing such a horrific event.

In January suspected cartel members massacred six people, including a 10-month-old infant, assassination style in Goshen, California. In April of this year a nationwide manhunt ensued after a man who had been deported on four separate occasions killed five people including a nine-year-old boy.

It is well past time that we enforce the law, secure our border, and we should pass—the Senate should pass the bill that we passed in the House just a few weeks ago, so we can get our border under control and secure.

With that, Mr. Chair, I yield back.

Mr. McCLINTOCK. The Chair now recognizes the Ranking Member of the House Judiciary Committee, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair.

I first wish to express my most sincere condolences to Ms. Nobles. I am so sorry for your loss, and I thank you for coming to tell us Kayla's story. May her memory be a blessing.

Mr. Chair, the United States has a long history of welcoming asylum seekers to our shores. Our constituents in Manhattan are able to see a reminder of this history every day in the Statue of Liberty welcoming the tired, the poor, and huddled masses yearning to breathe free.

Throughout our history refugees from near and far have sought safety here. While our laws have never been perfect, they have always allowed at least some refugees to enter.

Our modern refugee program and the world's view about our collective responsibility for refugees were radically reshaped by the Holocaust. When the United States joined both Canada and Cuba in turning away the MS St. Louis and her than 900 Jewish passengers in 1939, we allowed asylum seekers to be returned to persecution in Europe. Nearly  $\frac{1}{3}$  of the boat's passengers perished at the hands of the Nazis.

Many other countries also turned away Jewish refugees during World War II. The horrors that followed led to the creation of the United Nations and ultimately to the international refugee framework that we still use today. It took a while for domestic laws to catch up to our international commitments, so when Congress moved too slowly presidents used their expansive immigration powers to help get people to safety.

In 1956, President Eisenhower oversaw the parole of over 30,000 Hungarian refugees into the United States. More parolees followed including more than 58,000 Cubans between 1961–1962, 15,000 Chinese refugees from Hong Kong between 1962–1966, and over 130,000 Southeast Asian refugees following the fall of Saigon in 1975.

We passed the Refugee Act of 1980 with overwhelming bipartisan support which established the domestic framework for refugee and asylee processing. The commitment by resident—by presidents and lawmakers of both parties to accept refugees solidifies—solidified our country's status as a symbol of hope for those trying to escape persecution.

Sadly, that came to a crashing halt under the Trump Administration. Former President Trump slashed our refugee program both at home and abroad, implemented discriminatory bans, demonized immigrants, separated families, and put all his focus into building a wall between ourselves and Mexico.

Still people came because the dangers they faced on their journeys here paled in comparison to the horrors from which they were fleeing. COVID exacerbated the problems and President Trump used authorities under Title 42, a policy to protect public health, to turn away asylum seekers arriving at the border.

When President Biden came into office, he reversed course on many of the prior administration's most heinous policies, but Title 42 remained, even while our Republican colleagues claimed that the border was open and that President Biden and Secretary Mayorkas were purposefully inviting an "invasion," in quotes, "of migrants to our shores."

These claims were used by smugglers to entice migrants to make the journey North and echoed by mass shooters in their manifestos.

The Biden Administration has been working to get our immigration system back on track, but Republicans have been fighting him every step of the way. They voted to end the COVID emergency declaration, but they said that the administration should not end its use of Title 42 even though that policy was tied to the pandemic. They passed a messaging bill over bipartisan opposition that would decimate our asylum system and send vulnerable people back into harm's way.

In the weeks leading up to Title 42's expiration they stoked fears that we would see chaos and massive numbers of migrants crossing

at the border. Yet, what happened? Thanks to the policies put in place by the Biden Administration the numbers at the border dropped by 70 percent following the expiration of Title 42, but the fearmongering continues.

Unfortunately, my colleagues are not ones to let facts get in the way of a good story. The latest example comes from my home State of New York where Orange County Republicans claimed that homeless veterans were being displaced by migrants. This was quickly echoed by the Speaker of the House and other Congressional Republicans, and even by one of our witnesses.

On the screen are tweet after tweet by my Republican colleagues amplifying this story to stoke fears about the border and to distract from their own failures to enact meaningful solutions, yet the claims contained in the story have turned out to be completely unfounded with even the *New York Post* running a retraction.

So, here we are again in another hearing about the, "Biden border crisis." I am sure that no matter what happens at the border we will continue to have hearings on this topic, and we will continue to see partisan messaging bills that have no chance of ever becoming law.

As one of my Republican colleagues said, there is a reason why we haven't gotten significant border security done and why we haven't seen significant immigration reform done. It is in the interests of many politicians to have this crisis continue to flare up.

Democrats are willing to work with serious Republicans to make changes to our immigration system that would allow people to come here lawfully while ensuring the safety and security of our citizens. We want to have the tough conversations about the best path forward and we have passed bipartisan legislation that has addressed some of the thorniest issues like the Farm Workforce Modernization Issues, but so long as this majority insists on its partisan blame games, we are just going to keep talking past each other and nothing will be solved.

I look forward to hearing from our witnesses today. Thank you for coming to speak about your experience and your expertise.

I yield back the balance of my time.

Mr. McCLINTOCK. Without objection, all other opening statements will be included in the record.

Mr. McCLINTOCK. I will now introduce the four witnesses we have today.

The first will be the Hon. Rodney Scott. Chief Scott served over 29 years in the United States Border Patrol before retiring as Chief of the Border Patrol in August 2021. During that time, he held numerous leadership positions at various stations and sectors along the South border, as well as several leadership and specialized assignments at U.S. Customs and Border Protection Headquarters.

Our second witness will be Mr. Mark Hetfield. Mr. Hetfield has been the President and CEO of the Hebrew Immigration Aid Society since 2013. Prior to that he held several other positions at the Society, worked as an immigration attorney, and worked for the Immigration and Naturalization Service. The Hebrew Immigration Aid Society is a nongovernmental organization that settles refugees and provides legal services to aliens.

I will now yield to the gentleman from New York, Mr. Lawler, to introduce the third witness.

Mr. LAWLER. Thank you, Mr. Chair. It is my distinct pleasure to introduce Orangetown Supervisor Teresa Kenny, a lifelong Rockland County resident, who cares deeply for her residents and their quality of life. Supervisor Kenny is an attorney and daughter of a retired New York City police officer. She has both a deep appreciation for the rule of law and a deep knowledge of our legal system. Prior to serving as Supervisor, she served as Deputy Town Attorney for the Town of Orangetown and practiced real State law in private practice for over 30 years. I can think of no one better to highlight the gross overreach by Mayor Eric Adams and other officials in New York attempting to usurp local zoning laws than Teresa Kenny.

Any claim that our border is secure you need not look further than New York where New York City has taken in over 65,000 migrants since this crisis exacerbated last year. The Governor and the Mayor are asking for an emergency declaration. They have nowhere else to house these migrants.

So, the idea that we do not have open borders is laughable on its face. Couple that with New York's sanctuary city policy and you have a recipe for disaster in New York City and it is spilling out into communities across New York State. That is why Teresa Kenny's testimony here today is invaluable to this Committee.

Mr. MCCLINTOCK. Thank you. Then we will finally hear from Ms. Tammy Nobles. Ms. Nobles is a realtor from Norfolk, Virginia. She volunteers part-time as the President of the Downs Syndrome Association of Hampton Roads. She is the mother of Kayla Hamilton.

We welcome our witnesses. We thank them for appearing today and we will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record reflect that the witnesses have answered in the affirmative. Thank you and you can be seated.

Please know that your written testimony will be entered in the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes, and we will begin with Chief Rodney Scott. You want to turn your mic on.

#### **STATEMENT OF CHIEF RODNEY SCOTT**

Chief SCOTT. Sorry, I thought it was on. I apologize. Chair McClintock, Ranking Member Jayapal, Chair Jordan, and Ranking Member Nadler, and Members of the Committee, thank you for having me here today.

I am currently a Senior Distinguished Fellow for Border Security and Immigration at the Texas Public Policy Foundation, but as stated, before joining Texas Public Policy, I served 29 years as a United States Border Patrol Agent. I started out as a GS-5 Border Patrol Agent Trainee and I was competitively promoted through the Civil Service ranks and was ultimately promoted to Chief. I served as President Biden's Chief of U.S. Border Patrol until I re-



tired in August 2021. I think it is important to know I was never a political appointee.

Over my career, I was honored to participate in the transformation of an uncontrolled chaotic southwest border to a border that was increasingly secure. Meaningful progress started in 1994 under the Clinton Administration when a strategy proposed by U.S. Border Patrol was adopted. That strategy used focused personnel deployments, barriers, technology, and consequences for violations of law to reduce the chaos of illegal immigration and free up agents to focus on public safety threats.

The basic principles of this successful strategy endured every Presidential Administration until January 2021. My first-hand experiences taught me that border security and immigration are two distinctly different, yet interrelated issues. Border security is simply knowing and controlling who and what is entering our homeland. Immigration and the customs laws are completely irrelevant if you cannot control the initial entry.

The terrorist attacks on 9/11 also had a profound impact on my understanding of border security. Prior to 9/11, terrorism was not part of the border patrol's discussions. This changed as our Nation realized that foreign terrorists that exploited vulnerabilities in our border security. Congress responded quickly by creating the Department of Homeland Security and I responded by accepting an opportunity to build the Office of Antiterrorism with Customs and Border Protection. I quickly found myself immersed in classified intelligence briefings and interagency planning to mitigate terrorist threats.

The terrorists that perpetrated 9/11 entered through our ports of entry and as such, our priority was improving the ports of entry. We knew that as we mitigated those vulnerabilities, terrorists would predictively shift to entering in between the ports of entry. We also had reason to believe that the terrorist organizations would increasingly seek operatives that were unknown to U.S. intelligence, so we could not rely solely on records checks. We would need skilled interviewers.

The border patrol strategy evolved with an increased focus on situational awareness through intelligence and physical surveillance. However, deterring illegal immigration through a certainty of arrests and application of consequences remained a fundamental pillar.

When I was selected as Chief, the capabilities of the border patrol to detect and interdict illegal entries was better than ever and it was rapidly improving. Fewer illegal entries combined with the construction of the new border wall system made every agent more effective. This equated to additional time that agents were spending on interviews to identify somebody positively as well as their intent and to glean intelligence on criminal networks that was used to improved investigations and operations.

In contrast, I also experienced the reverse of the border security and immigration policy that was initiated by the Biden Administration. From day one, political leadership ignored career professionals and increasingly made policy decisions that resulted in thousands of aliens being released into the United States. As predicted, the volume of illegal immigration rapidly increased. It overwhelmed

border patrol and effectively transferred control of the United States border with Mexico to the drug cartels.

I watched border security gains that have been made over three decades vanish and the safety of border communities spiral backward. Policy makers must understand this is not simply immigration issues. This is a national security threat. Cartels use illegal aliens to overwhelm law enforcement, create controllable gaps in border security that they then exploit to bring in anything they want. To think the well-resourced terrorist networks and hostile Nations are not exploiting this same vulnerability is naive.

Prioritizing immigration processing over enforcement also means that the agents are spread so thin when they are deployed that even when they detect an illegal entry, they are not always able to interdict it. These events are reported by the border patrol as known gotaways. It is also important to know that this does not encompass the total gotaways. The hundreds of miles of border that are left unpatrolled on a daily or weekly basis now and that lack persistent surveillance we have no idea what is crossed in those areas.

In my professional assessment, the U.S. Border Patrol has lost our ability to know who and what is entering our homeland. Please remember, the border is simply a transit location. It is not a destination. These people and these things are going to every city, town, and State across this Nation. I look forward to your questions.

[The prepared statement of Chief Scott follows:]

Testimony summary for Rodney Scott 05/23/2023

Chairman McClintock, Ranking Member Jayapal, Members of Congress, good morning and thank you for inviting me to testify before you today.

Before I talk about the national security threats associated with the current border crisis and take your questions, I believe it would be beneficial for you to understand the unique experience I gained over my career so you can put my concerns into the proper context.

My name is Rodney Scott. I am currently a Distinguished Senior Fellow for Border Security and Immigration at the Texas Public Policy Foundation (TPPF). Before joining TPPF, I served as a U.S. Border Patrol (USBP) agent for over 29 years. I began my career as a GS-05 Border Patrol agent trainee in San Diego, Ca in 1992. I competitively progressed through the ranks and earned key leadership roles under presidential administrations of both parties. Over my career I had several unique assignments that formed my border security perspectives. I was ultimately promoted to Chief, USBP in February 2020. I served as President Biden's Chief of USBP until I chose to retire on August 14, 2021.

I have never been a political appointee. Throughout my entire career, I worked diligently to secure our international borders as a nonpartisan civil servant. My only objective is and has been to provide America with the best border security possible.

When I joined the USBP in 1992 the USBP was primarily a reactionary law enforcement agency and did not have any semblance of control over any section of the US border. In 1994 the Clinton administration initiated Operation Gate Keeper and Operation Hold the Line. These two operations represented the first phase of an effective long-term strategy to establish control over our borders in between the ports of entry. The strategy, which included focused personnel deployments, physical barriers, improved access, the application of technology and appropriate consequences for violations of law was designed to reduce the clutter and chaos of illegal immigration so agents could more effectively identify and mitigate the most serious public safety threats. This successful strategy evolved over time to address various surges in illegal immigration and changes in smuggling tactics. However, the fundamental principles of deterrence and appropriate consequences for violations of law endured up until January 20, 2021.

The success experienced by Border Patrol agents sparked an unprecedented level of optimism within the USBP rank and file. High morale equates to a motivated workforce which further improved border security. We began to see what a secure border looks like and increasingly knew how to replicate it. I was privileged to observe and experience the transition from chaos to order firsthand. I watched the people and the economies of border communities in the US and Mexico begin to thrive as order was restored and people felt safe again.

These successes instilled in me a fundamental understanding that while border security and immigration policy are often spoken about synonymously, they are in fact two distinctly different, yet interrelated issues. Border security is simply knowing and controlling who and what enters our homeland. All immigration and customs laws and associated policies are founded on the premise of being able to establish and maintain border security, or simply the ability to control the initial entry. If you cannot control who enters our home, any discussion about who is allowed to stay is irrelevant.

The terrorist attacks that occurred on September 11, 2001, also had a profound impact on my career and subsequently on my perspectives of border security. Prior to the terrorist attacks on 9/11 my duties as a Border Patrol agent had focused on interdicting illegal narcotics and illegal aliens. Terrorism was not part of the US Border Patrol's daily discussions or focus. That all changed as we realized we had been

attacked by foreign terrorists that had exploited vulnerabilities in our border security. Congress responded by creating the Department of Homeland Security and consolidating the legacy border interdiction and inspection missions of US Customs, US Immigration and Naturalization Service, including the US Border Patrol, and the Department of Agriculture to create US Customs and Border Protection.

Shortly after DHS was established in March of 2003, I was recruited to be on a small team that stood up the CBP Office of Anti-Terrorism. I traded the remote mountain canyons and deserts of Arizona for the florescent lights of an office in DC and a windowless SCIF. I quickly found myself immersed in classified intelligence briefings and associated operational and strategic planning efforts, advising CBP senior leaders and representing CBP in interagency efforts to mitigate terrorist threats facing the United States.

The terrorists that perpetrated the 9/11 attacks had entered the country through official Ports of Entry. As such, improving our inspections at Ports of Entry was the top priority. Although, we never lost sight of the fact that as we mitigated the vulnerabilities at ports of entry, terrorists would predicably shift to entering illegally in between the ports of entry. There was also reason to believe that terrorist organizations would increasingly seek to use operatives that were unknown to US intelligence or law enforcement.

In the years since 9/11 CBP dramatically enhanced the security at our ports of entry through many initiatives. This included information sharing on known threats as well as advanced training and technology to help identify unknown threats. The Border Patrol strategy also evolved with an increased focus on situational awareness through intelligence and information sharing as well as physical surveillance along the borders. However, the strategy of deterring illegal immigration through a certainty of arrest and application of consequence remained a fundamental pillar.

When I was selected as Chief of the USBP, the capabilities of the USBP to detect and effectively interdict illegal entries along our southwest border were rapidly improving. Illegal entries were dropping to record lows. The reduction in illegal immigration combined with the construction of the new border wall system and advances in technology were making every agent more efficient and more effective. The efficiencies equated to additional time that could be devoted to conducting thorough intelligence interviews of anyone that was arrested. These interviews provided invaluable information on multiple levels. First it allowed agents a better opportunity to verify an arrested subject's identity and their intent. Further, it helped agents to identify transnational criminal networks and smuggling tactics to inform investigations and improve daily operational deployments.

As Chief, I was the most senior official responsible for border security between the ports of entry. I personally witnessed the unprecedented seismic shift in border security and immigration policy that was initiated by the Biden administration on January 20, 2021. As political leadership consistently ignored the guidance of career professionals and increasingly made policy decisions that resulted in aliens being released into the US, the volume of illegal immigration predictably increased dramatically. I observed and experienced the rapid degradation of our border security from order back to total chaos firsthand. I watched the border security gains that were made over three decades dismantled and the economies and safety of border communities in the US and Mexico spiral backwards.

It is my professional assessment that this highly publicized policy shift created the current border crisis and effectively transferred control of our southwest border into the hands of the Mexican drug cartels. Of greater concern, I also witnessed a lack of any meaningful effort on behalf of the Biden administration to secure our borders against the illegal entry of aliens as required by 8 USC 1103(a)(5) or to establish Operational Control of our borders as required by the Secure Fence Act of 2006 (Public Law 109-367,

109<sup>th</sup> Congress). I also witnessed disregard for the Impoundment Control Act of 1974 which established procedures to prevent the Executive Branch from unilaterally substituting their own funding decisions for those of Congress.

As I sit here today and reflect on the significant border security advances that were made over the past three decades, I am sickened by the avoidable and what appears to be intentional destruction of what was the most effective border security in our Nation's history.

During my tenure as Chief, the Biden administration's team at DHS was laser-focused on expediting the processing and flow of migrants into the U.S. They downplayed or completely refused to accept the significant vulnerability this creates for terrorists, narcotics smugglers, human traffickers, and even hostile nations to gain access to our homeland. Common sense border security recommendations from experienced career professionals were systematically ignored and/or stymied by inexperienced political appointees. The sustained record-breaking mass illegal immigration we have been experiencing is a direct result of the catch and release policies implemented through the termination of the Migrant Protection Protocols, broad exemptions to Title 42 expulsions, reduction of detention space and the implementation of an arguably illegal parole program.

While the sheer volume of aliens illegally entering the US is overwhelming, it is critical that policy makers understand that these mass incursions are not simply an immigration issue. These illegal entries are controlled by transnational criminal organizations (TCO) to overwhelm law enforcement and create controllable gaps in border security. These gaps are then exploited to easily smuggle contraband, criminals, or even potential terrorists into the U.S. at will. Today, low level, unsophisticated and uneducated smugglers are illegally crossing the border and increasingly evading apprehension. To think that well-resourced terrorist networks, criminal organization, and hostile nations are not doing the same is naive.

Unfortunately, due to the mass illegal immigration and the administration's decision to prioritize immigration processing over enforcement, when USBP detects an illegal entry, agents are routinely spread so thin that they lack the capability to make an interdiction. These events are reported as known Gotaways. It is important that you understand that the gotaways that USBP reports are only the known gotaways. That number does not include any estimate on the total number of gotaways that are not detected along the hundreds of miles of border that lack any persistent surveillance technology and go unpatrolled for days and even weeks. This is largely due to manpower being redirected to conduct administrative immigration processing and care and feeding of aliens in custody. Of note, when the border wall construction was stopped, the installation of the surveillance and communication technology that was part of the wall system was also halted.

It In my professional assessment, U.S. Border Patrol has lost the ability to maintain any meaningful level of situational awareness to know who and what is entering our homeland. The ability of USBP to detect and interdict those that want to evade apprehension has been decimated. An illegal entry unseen is an illegal entry uncounted. It is important to remember that what happens at the border does not stay at the border. The border is not the destination. The border is simply a transit point enroute to every, town, city, and State throughout the United States.

Again, thank you for inviting me here today and I look forward to answering your questions.

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

Mr. McCLINTOCK. Thank you. Next, we will hear from Mr. Mark Hetfield.

#### **STATEMENT OF MARK HETFIELD**

Mr. HETFIELD. Mr. Chair, Ranking Member Jayapal, and Members of the Subcommittee, I thank you for this opportunity to join you today to speak about securing about border.

HIAS, founded over 120 years ago, is the Hebrew Immigrant Aid Society. It is the oldest refugee organization in the world. We were founded to help refugees because they were Jewish. Today, we help refugees because we are Jewish. We resettle refugees across the United States and partnership with the U.S. Government and Jewish communities. We also operate in 22 other countries, half of which are in Latin America, working to help refugees find welcome and safety in their countries of asylum.

HIAS is old enough to remember the importance of American leadership in drafting the Refugee Convention of 1951 and the Refugee Act of 1980 which passed this chamber and was signed into law with strong bipartisan support. These landmark measures were intended to ensure that never again would people fleeing persecution be turned back to their persecutors.

Today, however, our asylum and immigration and border protection systems are in dire need of investment, updating, and repair. We can all agree that the status quo is absolutely unacceptable. Congress has not addressed illegal immigration pathways in over three decades. The pretext for not doing so is that we cannot fix legal immigration pathways until we fix the border. This is a false choice, ignoring the laws of supply and demand. We cannot fix the border without also reforming legal immigration pathways.

As long as there are jobs to fill that American citizens cannot or will not do, the U.S. Government will not be able to secure the border. Congress needs to establish more pathways. As long as the Government continues to invest in immigration enforcement officers without investing in immigration judges and asylum officers and in a more and efficient asylum system, we will not be able to secure the border. Otherwise, people will continue to apply for asylum and be assigned a court date many years into the future.

As long as this system continues to leave people in limbo for decades like TPS recipients, streamers, humanitarian parolees, and people who have withholding of removal with no pathway to permanent residence or family reunion, we will not be able to secure the border.

So long as it is difficult for asylum seekers to access legal counsel, you won't be able to secure the border because they will not have access to advice on whether or not they qualify and should proceed with their application.

HIAS welcomes the Biden Administration's announcement that it is establishing resettlement processing centers in South and Central America. To secure the border, we need such safe and legal pathways for fleeing for their lives to access resettlement, but as a safer complement to asylum, not as a substitute.

Similarly, we welcome the Biden Administration's earlier decision to reopen the Central American Minors Program, so children will no longer have to risk their lives to reunite with family across

the border. Separating families, pushing people back without a hearing for their asylum claims, and subjecting asylum seekers to inhumane conditions on both sides of the border in detention shames us, but will not deter people from coming here if they have no better options.

My written testimony details the story of one HIAS client in Mexico from Venezuela who after struggling with the glitchy CBP app was locked in Mexican immigration detention in March in Huarez when the fire broke out where detainees were locked in their cells and could not escape. Forty people were killed, but he survived by keeping his head in the toilet throughout the ordeal. He is now in the United States receiving medical treatment for the burns all over his body.

My written statement provides details on HIAS's proposed approaches to the many challenges at the border. I cannot over-emphasize, however, that there are no easy or cheap solutions to make up for decades of under investment, neglect, and polarization around this issue. We hope we can rely on the administration and Congress and this Subcommittee to find bipartisan solutions that provide the legal pathways and the enforcement mechanisms necessary to restore equilibrium and integrity to our asylum and immigration systems.

In the meantime, there needs to be additional resources at the border and within our asylum system, but those resources cannot be solely focused on apprehension, removal, and detention or on removal without a screening. The administration should not replace one legal fiction barring asylum seekers on health grounds with another, barring them because they did not go through asylum systems that are even more dysfunctional than our own.

In the immediate term, the administration and Congress should focus on increasing resources for the fair and efficient adjudication of asylum claims on a last-in and first-out base with legal counseling and measures to ensure that CBP follows the law and their own procedures to ensure that no one is sent back into harm's way. The Refugee Admissions Program should be resourced to be safe and orderly for pathways so that people can rely on U.S. law rather than on smugglers. We are not the only country facing this humanitarian challenge and we cannot solve it alone. Thank you.

[The prepared statement of Mr. Hetfield follows:]

**Hearing of House Judiciary Committee  
Subcommittee on Immigration Integrity, Security and  
Enforcement**

***The Biden Border Crisis: Part III***

**Testimony of Mark Hetfield**

**President & CEO, HIAS**

**10:00 a.m. Tuesday, May 23, 2023**

**2141 Rayburn House Office Building**



Chairman McClintock, Ranking Member Jayapal, and distinguished members of the Subcommittee, I thank you for the opportunity to join you here today on behalf of HIAS to discuss what is happening at the U.S.-Mexico border.

HIAS, founded over 120 years ago as the Hebrew Immigrants Aid Society, on the lower east side of New York City, is the oldest refugee organization in the world. We were founded to help refugees because they were Jewish, today HIAS helps refugees because we are Jewish. We resettle refugees in partnership with Departments of State and Health and Human Services, and with Jewish family service agencies, congregations, and other local partners across the United States. We also operate in 22 other countries, half of which are in Latin America and the Caribbean, working in local communities to help refugees find welcome and safety in their countries of asylum.

HIAS is old enough to remember when this country, and this planet, did not recognize the right to seek and enjoy asylum, including during a time when 6 million Jews were murdered, trapped inside of a genocide, with no right to flee and no places that would accept them, during a time when the United States and other countries were turning refugee ships back to their persecutors, such as the Saint Louis, the refugee ship of 937 passengers which – this month 84 years ago – was turned away and sent back to Europe.

HIAS is also old enough to remember the importance of American leadership in the drafting of Article 14 of the Universal Declaration of Human Rights of 1948, the Refugee Convention of 1951, and the Refugee Act of 1980 – which passed this chamber and was signed into law with strong bipartisan support. These landmark measures were intended to ensure that never again would people fleeing persecution be turned back to their persecutors.

Today, however, the asylum and immigration systems in this country are in dire need of investment, updating and repair. Everyone in and outside of this room can agree that the system is broken. The status quo is unacceptable.

Congress has not addressed legal immigration pathways in over three decades. The excuse for not doing so is often that we can fix legal immigration pathways until we fix the border. This is a false choice, ignoring the laws of supply and demand. We cannot fix the border without also reforming our legal immigration pathways.

As long as there are jobs to fill that American citizens cannot do or will not do, the US government will not be able to secure the border. Congress needs to establish legal pathways.

As long as the government continues to invest in immigration enforcement officers without investing in immigration judges and asylum officers and in a more fair and efficient asylum system, the USG will not be able to secure the border. Otherwise, people will continue to apply for asylum and be assigned a court date many years into the future. With these massive

backlogs, people who are not legally entitled to protection will stay in the US for years before they will be sent back, and people who are entitled to protection will anxiously sit for years, unable to enjoy peace of mind.

As long as the system continues to leave people in limbo status for decades - like TPS recipients, Dreamers, humanitarian parolees, and those who receive withholding of removal - with no pathway to permanent residence or family reunion, you will not be able to secure the border. People who are living in danger or in extreme poverty will want to come here to reunite with loved ones, to work, and to start a new life..

So long as it is difficult for asylum seekers to access legal counsel, you will not be able to secure the border, because they will not have access to advice on whether or not they qualify and should proceed with their application.

HIAS welcomes the Biden Administration's announcement that it is establishing resettlement processing centers in South and Central America. In order to secure the border, we need such safe and legal pathways for people fleeing for their lives to access resettlement, but as a safer complement to asylum, not as a substitute. Similarly, we welcomed the Biden Administration's earlier decision to reopen the Central American Minors program, so that some children (and other eligible family members) from El Salvador, Honduras and Guatemala with qualifying parents or legal guardians in the U.S. will no longer have to risk their lives to reunite with family across the border.

Separating families, pushing people back without hearing their asylum claims, and subjecting asylum seekers to inhumane conditions on both sides of the border in detention shames us, but will not deter people from coming here, as they have no better options.

I can't get my mind off of one HIAS Mexico client in particular, a 26 year old Venezuelan man with a wife and three children, who was turned away from the United States without a hearing under Title 42. He then tried to get an appointment using the CBPOne App, but was only able to get an appointment for himself, not for his family, who remained in Mexico. Concerned about their safety, he returned to Mexico, where he continued to try to get an appointment using CBPOne for his entire family, while selling flowers on the street in Juarez to help his family survive. On March 27, he was among those in the Juarez Mexican detention station, when a fire broke out with people locked in their cells. 40 people were killed in that fire, but he survived by putting his head in a toilet bowl and keeping it there throughout the ordeal, suffering severe burns all over his body. He and his family were ultimately allowed to enter the United States so that he could receive medical care for the severe burns from the fire.

My full written statement provides details on HIAS' proposed approaches to the many challenges at the border, and I am happy to answer any questions you may have. I cannot overemphasize, however, that there are no easy or cheap solutions to make up for decades of

underinvestment, neglect, and polarization around this issue. We hope we can rely on the Congress and this Subcommittee to find bipartisan solutions that provide the legal pathways and the enforcement mechanisms necessary to restore equilibrium and integrity to our immigration and asylum systems. These problems cannot be solved without joint leadership from both Congress and the Administration.

In the meantime, there need to be additional resources at the border and within our asylum system. But those resources cannot be solely focused on apprehension, removal and detention or on removal without a screening. The administration should not replace one legal fiction – barring asylum seekers on health grounds – with others – barring them because they did not go through asylum systems that are even more dysfunctional than our own. In the immediate term, the Administration, and Congress should focus on increasing resources for the fair and efficient adjudication of asylum claims, on a last in and first out basis, with legal counseling and measures to ensure that Customs and Border Protection follow the law and DHS procedures to ensure that no one is sent back into harm's way. The refugee admissions and Central American Minors programs should be resourced to be safe and orderly pathways so that people can rely on U.S. law rather than on smugglers.

As a faith based organization with operations in more than 20 countries, and as an agency which saw how critical U.S. leadership was in recognizing the international human right to seek and enjoy asylum, HIAS feels strongly that the promise made by President Biden in his inaugural address applies at our borders. We need to lead not just by the example of our power, but by the power of our example. The global refugee crisis is truly global, with more displaced persons across the globe than at any time in human history. We are not the only country facing this humanitarian challenge, and the United States can't solve it alone.

Detailed testimony

Perhaps most relevant to the discussion today, it is important to note that HIAS works in 11 countries, with more than 70 field offices, in Latin America and the Caribbean. HIAS first opened offices across Latin America in the 1930s to facilitate the immigration of Jewish refugees from Nazism in Europe, and maintained a presence in Latin America until the mid-1990s. In 2000, HIAS reopened its regional office in Buenos Aires to assist Jews fleeing the Argentine economic crisis with relocation to countries in the Americas, Europe and Australia. We then reopened operations in Ecuador in 2003 to serve refugees fleeing the conflict in Colombia. Since then, HIAS' presence in the region has expanded—reaching from Mexico and Central America to South America and the Caribbean. today,

Our work is taking place within the context of an estimated 20.6 million people who have been forced to flee from their homes in the region. For far too long, when the global community addressed displacement trends, the Latin American and Caribbean region was, for all intents and purposes, ignored. However, due to the sheer numbers of people now on the move in our hemisphere, that can no longer be the case. HIAS' response to this growing displacement trend has been, and continues to be, to provide legal protection, community mental health and psychosocial services, gender-based violence protection, economic inclusion support, and emergency response services to forcibly displaced people throughout the region.

A quick snapshot of one of HIAS' country teams demonstrates the type of work that we do with asylum seekers before they arrive in the United States. HIAS Mexico has offices in Juarez, Matamoros, Mexicali, Mexico City, Monterrey, Nuevo Laredo, Queretaro, Palenque, Puebla, Reynosa, San Cristobal de Las Casas, Tijuana, and Tuxtla Gutierrez. On an annual basis, HIAS Mexico provides thousands of individuals with legal protection services, including Know Your Rights (KYR) presentations and legal orientations about U.S. asylum law and current border policies for those seeking asylum in the U.S.

They also provide individual consultations for those seeking protection in Mexico. HIAS Mexico works in close collaboration with HIAS' U.S. headquarters-based Legal and Asylum Department to ensure that the information provided to asylum seekers is up to date and covers important, basic information. HIAS Mexico also provides referrals to our HQ Legal and Asylum

team and supports the development of programming to support legal representation of asylum seekers in the U.S. In addition, HIAS Mexico provides mental health, psychosocial services and gender based violence prevention and protection services. This is noteworthy given that these types of holistic supportive services for migrants are extremely limited, and in many Mexican cities and otherwise non-existent in many others.

All of this to say, on a daily basis, my colleagues in Mexico see with their own eyes what the regional displacement crisis really looks like. They see exactly why it is that people are forced to make the wrenching decisions to leave all that they know behind in an effort to find safety and peace for their families, and they see what the new U.S. border policies really mean in human terms.

For example, as I mentioned in my opening, HIAS Mexico staff recently shared the story of EJ, a 26 year old man from Venezuela that they served. EJ was traveling with his wife and their three children, ranging in age from two to 14 years old. They fled Venezuela due to political persecution, arriving in Ciudad Juarez in January of this year. When they first tried to enter the U.S, they were expelled under Title 42. Then, when the CBPOne app was introduced, EJ was able to obtain an appointment to present at the border, but because of confusion about how the app works (or does not work), EJ received an appointment but his family members did not. Even though he was ultimately allowed to enter the United States in order to start to pursue an asylum claim, he decided after a few days that he had to return to Mexico because he could not bear being separated from his family.

He was unsuccessful in getting a CBPOne appointment for his entire family. In order to support them while they were in limbo in Mexico, he started to sell flowers in the street because he was unable to get a more formal job, even though HIAS helped him to obtain the necessary documents to do so.

In March, he was illegally detained and taken to the immigration station in Juarez where a fire broke out, killing 40 people. EJ was able to survive because he put his head in the toilet bowl in one of the bathrooms, but he still suffered severe burns all over his body. Ultimately, he and his family were able to enter the United States in order for him to receive medical care, but his suffering and that of his family could have all been avoided if they had all been able to request asylum together when they first tried.

The HIAS Mexico team also recently started to help a new client, a Venezuelan woman named JF. JF is 38 years old and had no choice but to leave Venezuela because of the persecution she experienced just because of who she is as a transgender woman. She has been unable to ask for protection in the United States because she is experiencing difficulties using the CBPOne app because she cannot read or write. In addition, while she has been in shelters in Mexico, she has been the victim of transphobic discrimination. HIAS is now offering her support while she still waits to get an appointment through CBPOne.

My HIAS Mexico colleagues are working to explain to the people they serve, people like EJ and his family and JF, the complicated new policies that now dictate operations at the U.S Mexico border. As we all know, on 11:59 pm on May 11th, the implementation of Title 42 came to its inglorious end after three years; and, in its place came the administration's *Circumvention of Lawful Pathways rule*, its new asylum ban. To be very clear, HIAS and our fellow humanitarian organizations have been fighting for the termination of Title 42 since March 2020. Under the previous and current administration, because of this misused public health policy that was contorted into a draconian migration management policy, there were 2.8 million expulsions of people who were not able to exercise their legal right to seek asylum, a right enshrined in both our own U.S. law as well as accepted international law. The use of Title 42 was a black eye on our reputation as a country that prides itself on the rule of law; and, the new asylum ban is no different in that respect.

From the moment the administration released the details of the asylum ban, in addition to submitting our own comment, HIAS rallied the American Jewish community to submit comments during the absurdly brief 30 day notice and comment period. More than 5000 of HIAS' constituents submitted comments, all of them decrying the plan to replace one overly restrictive asylum policy with another. More than a few of the people who submitted comments talked about their families own refugee histories, including those whose parents and grandparents found safety in the U.S. after the horrors of World War II. This outpouring of opposition to the new asylum ban was a strong indication to us that in spite of the frenzied, debates taking place in Washington DC about U.S. border policies, vast swaths of the American public are deeply troubled by the recent changes to U.S. asylum policy and feel like we as a country are going backwards on these issues rather than forward.

My community's opposition to the new package of restrictive asylum policies is not without awareness that there are undeniable challenges at the U.S. Southern border. HIAS recognizes that there are high numbers of people presenting at the border, or hoping to present at the border, and that as a result, border operations and border communities are under significant pressures. We also do not believe that every single person who claims the need for asylum should receive it.

There is no denying that not everyone who seeks asylum can meet the strict definition of requiring international protection due to their past persecution, or well-founded fear of persecution, on account of their race, religion, nationality, membership in a particular social group, or political opinion. We need an efficient and humane asylum system to make those determinations.

However, HIAS maintains that everyone who comes to the U.S.-Mexico border should, without fail, be treated with dignity and respect, and have access to a fair, efficient and humane process. We do not believe that the new package of restrictive asylum policies will be effective in identifying those who are in actual need of protection in the United States, and we further assert that the new policies will deny the most basic tenets of due process to people who are trying to navigate extremely stressful and challenging border changes.

A significant amount of attention has already rightfully been paid to the two foundational components of the asylum ban: 1) The presumed ineligibility for asylum if someone is not successful in using the aforementioned CBPOne app to schedule an appointment to present at an official Port of Entry (POE); and 2) The presumed ineligibility if someone who enters the U.S. between POEs did not first seek asylum, and been denied asylum, in one of the countries through which they transited en route to the U.S. HIAS believes that this rule not only violates U.S. law that states that you can apply for asylum no matter how you enter the country; but it also violates our immigration law's firm resettlement and safe third country provisions in multiple ways, including that there cannot be a guarantee that asylum seekers' lives would not be threatened on one or more of the previously mentioned protected grounds, and where they would not have access to a "full and fair procedure for determining an asylum claim." It is clear that to require that people have first sought and been denied asylum in a transit country, many of which are also countries from which people are fleeing themselves, is a bar that cannot realistically be cleared. Moreover, many of the transit countries are grappling with asylum systems that are unable to meet the needs of the moment, rendering them as unrealistic protection options for the vast majority of people in search of safety."

In addition to the policy changes included in the asylum ban, in April, the administration quietly announced a new policy, *Expedited Credible Fear in U.S. Border Patrol (ECF-USBP)* that has not garnered as much attention as the asylum ban, but also has a significantly detrimental impact on true access to the asylum system. This new policy, implemented in 5 USBP sectors, involves conducting credible fear interviews (CFIs) shortly after people arrive and while they are in U.S. Customs and Border Protection (CBP) custody. Even before the policy was put into practice, HIAS and our partners were concerned that the proposed plan does not adequately address how asylum seekers will be able to access legal counsel in CBP custody, even though the administration contends that legal counsel will be available.

For some additional context, these CFIs are a part of the larger expedited removal process. Expedited removal allows CBP officers to quickly remove noncitizens who do not meet the requirements for entry into the United States. However, the law requires that any non-citizen who expresses a fear of return to their country of origin be referred to an asylum officer to determine if the noncitizen has a "credible fear" of persecution or torture if returned to their home countries. If the asylum officer finds credible fear, the noncitizen is referred to an immigration judge for an asylum determination. Studies by the US Commission on International Religious Freedom, one of which I led in 2005, and others have documented serious flaws in the expedited removal process. These include detaining asylum seekers in prisons or prison-like conditions, documenting that officers routinely fail to follow even the minimal due process protections required by the law and by DHS' own policy and procedures, and that records created by CBP do not accurately reflect the interview with the non-citizen

HIAS continues to support the USCIRF recommendations, and I urge Congress to do the following:

- Urge the administration to appoint a high-ranking official with sufficient authority and resources to make the necessary reforms to ensure that asylum seekers subject to expedited removal are protected. This official should also chair a regular interagency working group of all of the relevant agencies involved with the implementation of expedited removal.
- Consistently message to all relevant federal agencies implementing expedited removal that their law enforcement mandate includes the implementation of U.S. law and regulations that govern the protection of individuals seeking safety from return to persecution or torture.
- Request that the DHS Office of Inspector General audit the expedited removal process for compliance with U.S. laws and with DHS' own policies and procedures
- As Congress did in the International Religious Freedom Act, authorize and fund regular independent studies on the treatment of asylum seekers in expedited removal at all stages of the process.
- Request the Government Accountability Office to conduct a study to assess whether non-citizens removed to their home countries under Expedited Removal have faced persecution or torture after their return.

Unfortunately, our initial fears have proven to be true. Since the launch of CFI interviews in CBP detention, there have been multiple reports, including directly from pro bono attorneys attempting to counsel asylum seekers, that meaningful access to legal counsel for asylum seekers in CBP custody is largely not taking place. Moreover, since the launch of the ECF-USBP, there has been a shift from guaranteed legal counsel before a CFI from 48 to 24 hours, rendering the position that migrants have real access to legal counsel a farce.



I would like for us all to imagine for a minute how virtually impossible it would be for any of one of us to be detained in what amounts to a prison cell, after harrowing journeys to a new country, to understand how to navigate an incredibly complex legal landscape, all while the demand for legal consultations far outpaces the capacity to provide services. I suggest that only the luckiest among us would be successful in this endeavor, and I do not think that any of us, even those among us who would wish to see fewer people seeking protection in this country, would think that the best we can do is have an asylum system that is rooted in sheer luck versus adherence to basic legal standards.

In addition to the limited capacity to actually meet the legal needs of those in CBP custody, other challenges have further complicated access to counsel for asylum seekers, including but not limited to:

- The ECF-USBP is only supposed to apply to Spanish speakers, but there are reports of indigenous language speakers also subject to the program now.
- Consultations between asylum seekers and counsel are all being conducted telephonically, not even via video conference calls, exacerbating communication challenges and raising real privacy concerns.
- There are also reports that asylum seekers are not being provided with substantive KYR materials ahead of the time during which they can in fact speak to an attorney, creating the need for precious time to be dedicated to basic KYR discussions rather than focusing on the specifics of each case.
- Getting the completed G-28 form, the form required for an attorney or accredited representative to represent an asylum seeker, remains extremely challenging due to legal representatives not having access to their clients. While we are pleased that CBP now recognizes that this is a problem, their suggested remedy of having CBP officers get the required signatures from the asylum seekers, then being responsible for getting the signed form to the lawyers is a cumbersome, time consuming process that will likely be extremely difficult to implement for high numbers of people.
- Thus far, asylum seekers are not receiving written copies if they receive negative determinations following their CFIs. This further complicates their ability to quickly have further consultations with counsel before an immigration judge reviews the decision. I also understand that asylum seekers do not receive in writing the details about when their immigration judge review will take place.

This is not an exhaustive list of the due process challenges confronting asylum seekers in CBP custody; but, I wanted to highlight these because I think they are illustrative of a larger issue at

play, which is the denial of access to the most basic legal consultations to asylum seekers when there are literally life and death decisions at stake.

I certainly understand that the size and scope of the challenges at the border are daunting. However, I also think that there are real proposals that should be considered to address these challenges, proposals that respect the basic human rights of those seeking protection while also alleviating some of the pressures at the border. For example:

- The **asylum backlog** has reached new heights. There are currently more than 1.3 million pending asylum applications, with an estimated 750,000 in the immigration courts and over 600,000 with U.S. Citizenship and Immigration Services (USCIS). In order to make meaningful progress in reducing the massive asylum case backlog, Congress must appropriate robust funding to hire more asylum officers and immigration judges. This is of paramount importance, because the shortage of immigration judges and asylum officers contributes not only to the paralysis of the asylum system, but also to the inability of the United States to deter and remove non-citizens who are ineligible to remain in this country.

For years, Congress and democratic and republican administrations alike have invested billions of tax dollars in Border Patrol, Immigration and Customs Enforcement, detention beds, and border enforcement technology. Meanwhile, they allocated a relative pittance of resources to the immigration courts and to U.S. Citizenship and Immigration Services (USCIS).

Years long backlogs at USCIS and in the immigration courts due to massive underinvestment are responsible for the failure to enforce U.S. immigration laws. Justice delayed means justice denied not just for asylum seekers, but for all concerned about the integrity of our borders, because as long as Congress invests in immigration enforcement without investing in immigration judges and asylum officers, quite simply, securing the border will remain more of a buzzword than an attainable goal. People will continue to try to apply for asylum and then get lost in the years long backlog. With these massive backlogs, people who are not legally entitled to protection will stay in the U.S. for years before they will be sent back to their home countries, and people who are entitled to protection will anxiously sit for years, unable to truly start their lives over again while they are in a purgatory of sorts while they wait for their final asylum decisions.

- **Improved communications mechanisms**

Currently, the main source of information for people seeking asylum are the human smugglers and word-of-mouth. People who are considering entering the United States should have access to information that helps them to understand what the United States will expect from them if they plan on asking for asylum. In addition, they should also have easy access to up-to-date information about major asylum policy changes from the U.S. government.

Rocio Melendez Dominguez is HIAS Mexico's Managing Attorney. She lives in Ciudad Juarez, just across the border from El Paso, Texas. As she recently told NPR, one of HIAS Mexico's biggest challenges is the amount of misinformation about U.S. border policy that she and her staff must combat. She notes that sometimes false information is spread by smugglers, but frequently, well meaning people also unintentionally spread inaccurate information because the shifting situation at the border is extremely hard to understand, particularly without consistent access to reliable updates.

- **Detention along the border**

Not only does subjecting people to the inhumane conditions in immigration detention shame us as a country, it does not actually deter people from trying their hand at coming to the United States, because what they are leaving behind is so much worse than immigration detention.

Immigrant detention should only be used when absolutely necessary, and reserved for those who pose a serious public safety or national security threat. CBP detention should be in the least restrictive setting possible, and U.S. Immigration and Custom Enforcement (ICE) detention facilities should only be used when absolutely necessary, for those who have been found to be a national security threat, public safety concern, or extreme flight risk due to previous immigration history.

- We support the administration's plan to infuse an additional \$15 million into its Case Management Pilot Program. HIAS has seen through our own offering of wrap around services to the asylum seekers for whom we provide legal services the positive impact that programming like this offers. Case management, run by community-based organizations, results in reduced immigration detention use; alleviates pressures on local

governments; and helps to ensure compliance with mandated immigration proceedings. We would like to see this type of programming become more widespread and the new norm for the types of services available to asylum seekers while they are going through their immigration processes.

- **Increased access to legal representation -**

As discussed above, the lack of legal representation for asylum seekers in CBP custody now is of grave concern to HIAS. Yet, that is just the first of many steps in the legal process when access to legal counsel for asylum seekers is of paramount importance, but extremely difficult to actually obtain.

Yes, HIAS believes that the surest way to promote equality and fairness in the asylum process is by dramatically increasing access to legal counsel at all stages of the asylum process. However, limited access to legal counsel for asylum seekers also has a direct impact on our country's inability to secure the border. For as long as it is too difficult for asylum seekers to have legal representation on both sides of the border, asylum seekers will not have access to the reliable advice they need in order to decide whether or not they could qualify for legal protection in the U.S, leading many to attempt to cross the border operating under the pretense of erroneous information.

U.S. immigration law is notoriously complex and faces constant updates and changes. In addition, the requirements to prove you are deserving and eligible for asylum are arduous. Therefore, being represented by a qualified representative that understands U.S. immigration and asylum law is a necessary step towards ensuring a fair and equitable system.

- **Collaboration with border shelter systems**

The federal government is not alone in managing the incoming population of asylum seekers. DHS should develop and implement communication and coordination systems among border cities and communities in the interior to facilitate the organized and humane transfer of asylum seekers from the border to their destinations of choice, ensuring coordinated service delivery in their destination city.

- HIAS has also long advocated for **increased refugee resettlement from the Western Hemisphere**, so we were encouraged on April 27th to learn of the administration's plans to significantly increase resettlement out of the region. U.S. proposals to double the regional resettlement numbers, as part of the commitments made in the Los Angeles Declaration on Migration and Protection are laudable. However, while we are optimistic about the benefits that will come from this planned expanded resettlement, we are at the same time troubled that this increase has been directly linked with restrictive asylum policies. Expanding resettlement is a great approach to promote safe passage and protection, but it must not ever be treated as a rationale for restricting asylum, which seems to be the rationale at play right now.

I ask that you use your oversight authority to help to ensure that the administration meets its stated goal of doubling resettlement numbers out of the Western Hemisphere. Along with this, I urge you to encourage the administration to take every step necessary to make sure that any surge of resources to support the Regional Processing Centers (RPCs) that will eventually be found throughout Latin America will not come at the cost of resettlement from other parts of the world. As we are approaching the time when the administration must consult with Congress about its refugee admissions goals for FY24, now is the time to hold it accountable for making sure that our resettlement program truly reflects the global resettlement needs. We ask that Congress ensures that the necessary supplemental funding resources are made available to the Bureau of Population, Refugees and Migration (PRM) in the Department of State, the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services, and U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security.

- I would be remiss if I wrapped up my testimony this morning without expressing HIAS' opposition to H.R.2, which recently passed your chamber, as well as S.1473 and its House companion, H.R.3234. Support of this bill would have us moving further away from actually having an orderly U.S. asylum system. Rather, if implemented, it would essentially the entire system. As currently written, the bill would allow CBP to conduct mass expulsions to Mexico for two years, just like was done under the Title 42 policy, but this time without even the most specious of public health rationales. As if that is not troubling enough for those of us who support the U.S. hosting a functional asylum system, there are no provisions in the bill that would exempt unaccompanied children from this treatment.

H.R. 3234 would also require that before DHS expels people that entered the U.S. between POEs or who arrived at POEs without prior approval, it has to detain them first,

including children (those with their families and those who are unaccompanied). Many of us are still haunted by images of young children behind bars in immigration detention, and to even suggest that we would return to a place where we are detaining babies and young children is unthinkable for HIAS.

As a refugee organization founded over a century ago by Jewish Americans driven by the imperative to welcome the stranger, HIAS remains deeply committed to the fundamental human right to seek asylum and staunchly oppose recent efforts to severely curtail access to this protection. As the asylum space in this country continues to shrink, we again call on the administration and Congress to lead by the power of example, by working together towards real, comprehensive immigration reform.

Mr. McCLINTOCK. Thank you. We will next hear from Supervisor Teresa Kenny.

#### STATEMENT OF TERESA KENNY

Ms. KENNY. Thank you. Thank you, Mr. Chair, and every Member of the Subcommittee for giving me the opportunity to speak with you today about what transpired with Mayor Eric Adams and his efforts to house migrants in a local hotel in Orangetown, New York. I am here today as the Town Supervisor of Orangetown, a suburban community, approximately 30 miles North of New York City to give you some insight into what is happening around the country as a result of migration crisis at the southern border.

It is important to note at the onset that what is happening in Orangetown is not unique. It is playing out throughout communities all over our country as major cities are reaching capacity for migrant housing and they are sending into other communities without any regard for whether they have the resources or capabilities to handle them.

Orangetown's story began on Friday, May 5th, when New York City Mayor Adams called to tell me about a pilot program he was implementing as part of his decompression strategy. The plan, he explained, was to relocate migrants from New York City and to house them in hotels across New York State. He was calling to let me know that a hotel in Orangetown has been identified as a possible location.

Mayor Adams downplayed the plan telling me there was a chance that no one would be housed in Orangetown, and he implied that it would be happening in weeks. When pressed for specifics, he told me that a member of his team would get back to me.

I received a call from a member of the Mayor's staff and that is when I learned that the plan was to house single, adult males in a local hotel and that the buses would be arriving imminently. In fact, it was within hours of that call that I received photos of hundreds of mattresses stacked outside the Armoni Inn and Suites hotel and it was evident to me that the plan had been in the works for quite sometime and that it included getting local elected officials very little advance notice as a means to thwart legal challenges.

Throughout the following day, it became clear that New York City intended to house 340 men at the Armoni Inn and Suites, a local hotel in Orangeburg, a small hamlet of just over three-square miles in a population of approximately 4,500 people. The hotel is situated less than a mile from two college campuses, two senior citizen housing complexes, and a high school. It is located at the intersection of New York State, Route 303, which is one of the most dangerous highways in the county and Kings Highway, a street of mostly residential homes.

Mayor Adams' plan was simple, to convert the hotel in Orangetown into a housing facility for long-term residents. In other words, to open a New York City homeless shelter in Orangetown which is a clear violation of our local zoning standards. So, based on this information and what was brought up from the phone calls and the observations of medical supplies and other shelter items by town

officials who inspected the property, the town issued a Notice of Violation to advise the hotel that it was not consistent with the definition of a hotel as set forth in our town code.

Despite the issuance of the Notice of Violation, on Tuesday, May 9th, New York City scheduled a debriefing call with elected officials to tell us that they would be sending buses the next day. They also described conditions consistent with a shelter and that there would be onsite staff available 24 hours a day, seven days a week, including one social worker and one case worker per migrant for 30 migrants and that New York City would cover the cost of three meals, laundry service, and housekeeping for up to four months. They also introduced us to the staff from DocGo, a company that New York City had contracted with which specializes in providing medical-related services to shelters.

In light of this, the town filed legal papers in Rockland County Supreme Court and retained a restraining order against the hotel on Tuesday, May 9th, effectively preventing the use of a hotel as a shelter and the arrival of any migrants from New York City the next day.

To be very clear, for our purposes the immigration status of the individuals is irrelevant to the town's decision to seek legal recourse. The counsel of legal action to ensure the integrity of local zoning regulations and the protection of those who would be housed in the hotel on a long-term basis as a shelter, as well as the community at large.

I also want to outright reject any charges made that it is an act of anti-immigration. Rockland County is home to a vibrant immigrant population and in fact, I am married to one, but over the last two years, there has been a steady increase of migrants finding their way to Rockland County and settling in with the support of family, friends, and local community groups. This has already started to put a strain on Rockland County and Rockland County Department of Social Services so much that just over two months ago, Congressman Mike Lawler and County Executive Ed Day held a press conference and standing with nonprofits explained the financial impact on Rockland County.

The problem with Mr. Adams' plan is that he does not have one. That became evident when during the debriefing call, a member of staff was asked what would happen with the migrants at the end of the four months? The response was that they expected them to integrate into the community by that time. Orangetown, like the rest of New York State, is in a housing crisis, affordability crisis. So, the question is how are these men, without English skills, without family support, going to integrate into our community?

So, I will tell you what will happen. They will end up renting from unscrupulous landlords and we know it is happening because just this past March there was a tragic house fire in Rockland that killed five undocumented immigrants including two children with five others being hospitalized. Orange and Rockland County just do not have the resources or staffing levels to investigate and remedy these types of situations on a wide-scale basis.

That the Federal government acting to stem the flow of migrants at the border, it was only a matter of time before it impacted all



our neighborhoods. While it is Orangetown today. It will be yours tomorrow. Thank you and I look forward to answering questions.  
[The prepared statement of Ms. Kenny follows:]



Thank you for giving me the opportunity to speak with you today about what transpired with Mayor Eric Adams and his efforts to house migrants in a local hotel in Orangetown, N.Y. I am here today as the Town Supervisor of Orangetown, a suburban community approximately 30 miles north of New York City, to give you some insight into what is happening around the country as a result of the migration crisis at the southern border.

It is important to note at the onset that what is happening in Orangetown is not unique; it is playing out throughout communities all over our country as major cities are reaching capacity for migrant housing and they are sending them to other communities, without any regard for whether they have the resources or capabilities to handle them.

Orangetown's story began at 11 am on Friday, May 5, 2023, when NYC Mayor Eric Adams called to tell me about a PILOT program he was implementing as part of his "decompression strategy." The plan, he explained, was to relocate migrants from NYC and to house them in hotels all across NYS. His call was to let me know that a hotel in Orangetown had been identified as a possible location. Mayor Adams downplayed the plan, telling me that there was a chance that no one would be housed in Orangetown, and he implied that it was weeks from happening. When pressed for specifics, he told me that a member of his team would get back to me later that day with the details.

At 1:30 pm that day, I received a call from a member of the Mayor's staff. That's when I learned that the plan was to house single, adult males in a local hotel and that the buses would be arriving "imminently." In fact, it was within hours of that call that I received a photo of hundreds of mattresses stacked outside the Armoni Inn and Suites Hotel. It was evident that this plan had been in the works for quite some time, and that it included giving local elected officials little advance notice as a means to thwart legal challenges.

Throughout the following days, it became clear that NYC intended to house 340 men at the Armoni Inn and Suites Hotel, a hotel located in Orangeburg, a small hamlet of just over 3 square miles and a population of approximately 4,500 people. The hotel is situated less than a mile from two college campuses, two senior citizen

housing complexes and a high school. It is located at the intersection of NYS Route 303, one of the most dangerous highways in Rockland County, and Kings Hwy, a street of mostly single-family residential homes. It was during this time that I obtained a copy of a pamphlet, which I have shared with the committee, and was told that it was being handed out to the migrants as they arrived in NYC.

Mayor Adams' plan was simple: convert the hotel in Orangetown into a housing facility for long-term residence. Or, in other words, to open a NYC homeless shelter in Orangetown, which is a clear violation of our local zoning standards. So, based upon the information that was garnered from the phone calls and observations of medical supplies and other shelter items by Town Officials who inspected the property, the Town issued the hotel a Notice of Violation on Sunday, May 7, 2023, giving them notice that the intended use was not consistent with the definition of a "Hotel" as set forth in the Town Code.

Despite the issuance of the Notice of Violation, on Tuesday, May 9, 2023, NYC officials scheduled a 4:30 pm "debriefing call" with elected officials from Rockland and Orange Counties. The purpose of the call was to tell us that buses would start arriving sometime the following day. During this call, they also described conditions consistent with a shelter, in that there would be on-site staff available 24 hours a day/7 day a week, including 1 social worker and 1 case worker per 30 migrants, and that NYC would cover the cost of 3 meals, laundry service, and housekeeping, for up to four months, and medical and legal consultations. We were also introduced to staff from "DocGo," a company that NYC had contracted with which specializes in providing medical related services to shelters.

By the time of this call, the Town had already filed legal papers in the Rockland County Supreme Court seeking a Temporary Restraining Order to enjoin the use of the hotel in Orangeburg for the long-term housing of individuals under the care of New York City. The Court granted the requested relief at 6:01 pm on Tuesday, May 9, 2023, effectively preventing the use of the hotel as a shelter and the arrival of any migrants from NYC the next day. This matter is scheduled to be back in court on May 31, 2023.

The County of Rockland also brought a separate legal action, based on the failure of NYC to possess the requisite license to operate such a facility, as is required by the Laws of Rockland County. The Court granted a Temporary Restraining Order, and that matter is back in court on May 30, 2023.

To be very clear, for our purposes the immigration status of the individuals is irrelevant to the Town's decision to seek legal recourse. The Town sought legal action to ensure the integrity of local zoning regulations and the protection of those who would be housed in the hotel on a long-term basis as a shelter, as well as the community at large.

I also want to outright reject charges being made against County Executive Ed Day and me that our actions are anti-immigration. Rockland County is home to a vibrant immigrant population. In fact, I am married to one. But, over the last two years, there has been a steady increase of migrants finding their way to Rockland County and settling in with the support of family, friends and local community groups. This has already started to put a strain on Rockland County and the Rockland County Department of Social Services.

So much so that, just over two months ago, Congressman Mike Lawler and County Executive Ed Day held a press conference and, standing beside a number of nonprofits, food pantries and immigrant services organizations, sounded the alarm of what was to come if action was not taken to address the crisis at the southern border. It was disclosed that over the last six months, the impacts have included food pantries running out of food, necessitating Rockland County investing another \$1 million to help them, as well as the addition of 1,000 children enrolled in local school districts and a 35% increase in children in foster care, with nearly one-third being undocumented migrants.

The problem with Mr. Adams' plan is that he does not have one. That became evident when, during the debriefing call, a member of his staff was asked about what would happen with the migrants at the end of four months. The response was that they expected most of them to integrate into the community by that time.

But that raises the obvious question: How are these men with no family support, no working papers and with limited to no English language skills going to be able to integrate into our community? Especially when the Town of Orangetown, like all of NYS, is in the midst of a housing affordability crisis. My college educated adult children, with full-time employment, had to live at home for almost two years after graduation to be able to afford suitable housing. When the Mayor's staff was questioned about this, the response was that the migrants are "resourceful" and they will find work "off the books." This is not a plan; it is a recipe for disaster.

Let me tell you what will happen. These individuals will end up working for unlivable wages and renting in overcrowded homes, that are often unsafe, from

unscrupulous landlords. I know because it is already happening in Orangetown and throughout Rockland County. Just this past March, there was a tragic house fire in Rockland that killed five undocumented immigrants, including two children, with five others being hospitalized. Orangetown and Rockland County just do not have the resources or staffing levels to investigate and remedy these types of situations on a wide scale basis.

I know that Rockland County continues to work diligently with their partner nonprofits to ensure basic human services are maintained, but it is not prepared to take in hundreds of more people in a short period of time. And, if Mayor Adams is permitted to open shelters wherever and whenever he wants, with a complete disregard for local zoning laws or the suitability of the location for the migrants or the community, that number can easily swell into the thousands in Rockland County. Unlike NYC, which received \$1.0 billion from NYS and \$30 million from the Federal Government, Rockland County did not receive a single dollar of funding to assist with this problem.

While I certainly empathize with Mayor Adams and the situation he finds himself in, it is the result of bad policies at both NYC and the federal level. And my heart breaks when I hear about unaccompanied children at the border and the human trafficking that is taking place, as well as the violence, abuse and death of migrants looking for a better life. This is now a humanitarian crisis and something more sustainable needs to be done. From the President down, every elected official has known that this crisis was coming.

Without the Federal Government acting to stem the flow of migrants at the border, it was only a matter of time before it impacted all our neighborhoods. While it is Orangetown today, it will be yours tomorrow.

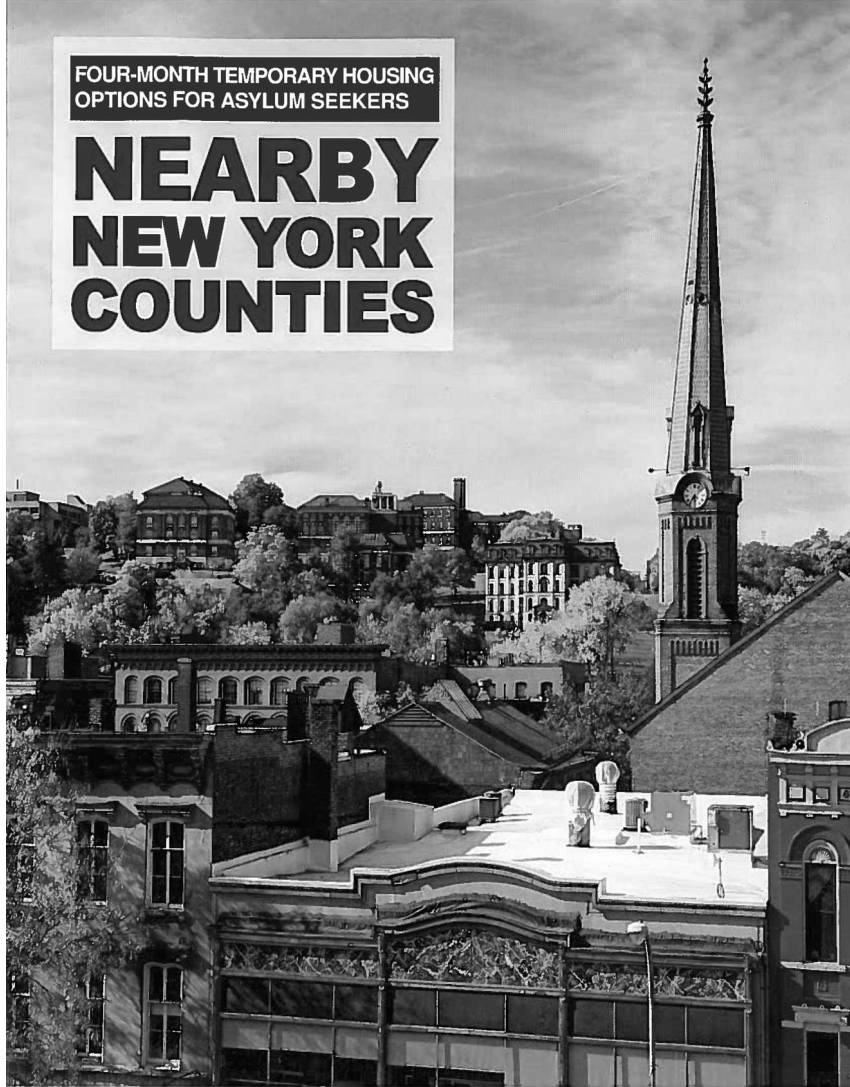
This situation requires solutions on the Federal level, and I sincerely hope the lawmakers in D.C., both Democrats and Republicans, can come together to find a solution to fix this broken and unsustainable system.

I thank you all for your time and am happy to answer questions.

Teresa M. Kenny  
Town of Orangetown Supervisor

FOUR-MONTH TEMPORARY HOUSING  
OPTIONS FOR ASYLUM SEEKERS

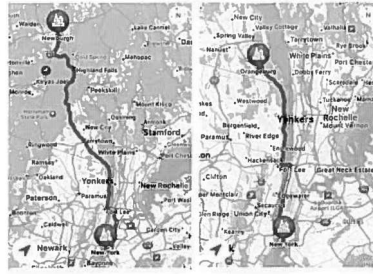
# NEARBY NEW YORK COUNTIES



## NEARBY NEW YORK COUNTIES

### FOUR-MONTH TEMPORARY HOUSING OPTIONS FOR ASYLUM SEEKERS

New York has arranged for temporary housing and support services to help you and other asylum seekers. Located near the Hudson Valley, just outside New York City, these shelter options will include a warm environment, nutritious meals, and case workers to help adults over the age of 18 access what you need to care for yourself and transition to a new home.



To Newburgh  
1 hr 32 min

To Orangeburg  
50 min

### TEMPORARY HOUSING

We have secured Double Occupancy Rooms for adults over 18 years old which include clean rooms and private bathrooms, housekeeping and medical consultations with a remote healthcare professional via telehealth for medical conditions. We will be providing you with a room at one of the two following hotels:

#### NEWBURGH



#### ORANGEBURG



### MEALS

3 meals served each day - breakfast, lunch, and hot dinner

### LAUNDRY SERVICE

Laundry service will be provided to you every other week. Case workers will coordinate a pickup day and time for your laundry, which will be returned to you in your room.

### ADDITIONAL AMENITIES

Housekeeping, medical consultations with a remote healthcare professional via telehealth for medical conditions, hygiene kits and more.



**ADDITIONAL SERVICES**

Onsite case workers will be there daily to assist you:

- Arrival/ check in
- Coordinate medical care
- Accessing Legal services
  - The case manager will help identify your needs and connect you to the services, resources, and information you may need.
- Reconnection services
- Introduction to community-based organizations and religious groups
- Hygiene kits including shampoo, soap, deodorant, shaving kit, nail file, antibiotic ointment, toothbrush, toothpaste and more.

**GETTING THERE – SHUTTLE BUSES & PUBLIC TRANSPORTATION**

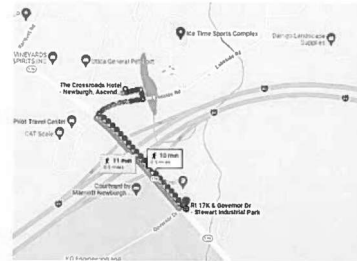
A shuttle will take you directly to your temporary housing in Upstate New York.

Public Transportation Options:

The Armoni Hotel in Orangeburg is 0.4 miles away from the Orangeburg Rd and Western Highway South bus stop for train and bus services.

The Crossroads Hotel in Newburgh is 0.5 miles away from the Stewart Industrial Park Bus Station.

Walk 0.5 miles from the hotel to the Short Line Bus Stop on Route 17k. Take the east for 2.8 miles to the Short Line Transportation Center.





Mr. MCCLINTOCK. Thank you. Finally, we will hear from Ms. Tammy Nobles. Ms. Nobles, you have already heard from several of our colleagues. Our hearts go out to you, as do the hearts of every American who hears your story. I know that grief that always feels very alone, but I want to assure you that you are not alone, and you are recognized to tell your story.

#### STATEMENT OF TAMMY NOBLES

Ms. NOBLES. Thank you to the Members of the Committee for having me. My name is Tammy Nobles. I am the mother of Kayla Hamilton. July 24, 2002, was one of the best days of my life. I gave birth to a beautiful baby girl and named her Kayla Marie. She was a happy and easy-going baby. Even back then, she loved to smile and laugh. She always kept her friends close and never forgot anyone. She was kind, caring, thoughtful, and funny. She loved life and God. She showed the world that being yourself was OK and you didn't have to follow everyone else.

Sadly, on July 27, 2022, I received the worse news that a parent doesn't want to hear, that my newly 20-year-old daughter Kayla Hamilton was murdered in her own room and left on the floor like trash. She left behind a mother who loved her, a stepfather, a brother, a younger sister, grandparents, and lots of aunts, uncles, and cousins. At first, we knew very little details of the murder until an arrest was made. The details we learned broke us.

At the of March 2022, Kayla's murderer was apprehended by Border Patrol crossing illegally into the U.S. at the southwest border and Rio Grande City, Texas. I am not sure if he was vetted or not, but he was a 16-year-old known gang member affiliated with MS-13 in El Salvador. The MS-13 motto is kill, rape, and control. He entered the country as an unoccupied alien child. As a UAC, the murderer was allowed to go live with his aunt in Frederick, Maryland. She was also an illegal immigrant. There were issues with him living there and he went to go live with his half-brother who lived in the same trailer park as Kayla and her boyfriend.

My questions are what protocol was the aunt supposed to follow? If she couldn't handle him, then why not inform the proper authorities? The half-brother tried to get him a job and to do the right thing, but that didn't happen. So, the half-brother told him that he had to leave.

At the trailer park, an illegal immigrant owned numerous trailers and was subletting them out. That is how Kayla was able to get a place because she didn't make much and had no credit yet. The half-brother asked the owner if she had any rooms for rent. She did. The same trailer as Kayla. Kayla's murderer was living there less than five days before he viciously murdered my daughter.

Kayla had two jobs. She was working at a cleaning company and at a grocery store. Kayla had autism, but she was determined to live independently and make her way in this world and my baby paid the ultimate price. She had just gotten home from working the night shift and said goodbye to her boyfriend that morning when he left for work. She then went to sleep. The murderer went into Kayla's room, straddling her, grabbed her iPod charger and wrapped it around her throat and face while strangling her to

death. Kayla grabbed her phone and called her boyfriend but went to voice mail. The voice mail of the murderer strangling her was two minutes and 30 seconds long. The murderer then violently sexually assaulted Kayla. Kayla's boyfriend came home from work and found her dead on the floor. The charger cord was so tight around her neck and face that her boyfriend had to use his teeth to get it off. The murderer robbed her of her phone and six dollars. Six dollars was all my baby had in cash because she used the snack machines at work to get something to eat.

He then went to lunch with his half-brother like nothing happened. Local police didn't have enough evidence to arrest the murderer, so Child Protective Services took him into custody and placed him in an unsecured children's home with other children, even knowing that he was a named suspect in a premeditated murder case.

When he was arrested for Kayla's murder, he laughed and smirked. For me, this is not a political issue. This is a safety issue for everyone living in the United States. This could have been anyone's daughter. Kayla wasn't doing anything wrong. She didn't deserve to be murdered. I don't want any other parent to live the nightmare that I am living. I am her voice now and I am going to fight with everything I have to get her story told and bring awareness of the issue at the border. I will make sure her memory lives on.

Murder itself is already taboo, but then you mention MS-13 and nobody wants to touch it. Nothing will change if nobody talks about the problem. The U.S. Government has to secure our border. We need to properly vet all border crossers. The Government could have placed a phone call to authorities in El Salvador and found out that he was a gang member, but they didn't. If we had stricter border policies, my daughter would still be alive today. Nothing will bring my daughter back nor the pain, nor will fix the pain of not having her here. I want to prevent this from happening to someone else's child. This is about protecting everyone here in the United States. Thank you.

[The prepared statement of Ms. Nobles follows:]

**Testimony of Tammy Nobles**  
**Subcommittee on Immigration Integrity, Security and Enforcement**  
**Biden Border Crisis: Part III**  
**May 23, 2023**

Good morning to the members of the committee. My name is Tammy Nobles. I am the mother of Kayla Hamilton.

July 24<sup>th</sup>, 2002, was one of the best days of my life. I gave birth to a beautiful baby girl and named her Kayla Marie. She was a happy and easy-going baby. Even back then she loved to smile and laugh. She always kept her friends close and never forgot anyone. She was kind, caring, thoughtful and funny. She loved life and God. She showed the world that being yourself was ok and you didn't have to follow everyone else. But sadly, on July 27<sup>th</sup>, 2022, I received the worst news that a parent doesn't want to hear that my newly 20-year-old daughter Kayla Hamilton was murdered in her own room and left on the floor like trash. She left behind a mother who loved her, a stepfather, a brother, a younger sister, grandparents and lots of aunts, uncles and cousins.

At first, we knew very few details of the murder until an arrest was made. The details we learned broke us. At the end of March of 2022 Kayla's murderer was apprehended by Border Patrol crossing illegally into the U.S. at the southwest border in Rio Grande City, Texas. I am not sure if he was vetted or not, but he was a 16-year-old known gang member affiliated with MS-13 in El Salvador. The MS-13 motto is "kill, rape and control". He entered the country as an unaccompanied alien child.

As a UAC the murderer was allowed to go with his aunt who lived in Frederick, Maryland – she was also an illegal immigrant. There were issues with him living there and he went to go live with his half-brother who lived in the same trailer park as Kayla and her boyfriend.

My questions are what protocol was the aunt supposed to follow? If she couldn't handle him then why not inform the proper authorities? The half-brother tried to get him a job and to do the right thing. But that didn't happen, so the half-brother told him that he had to leave. At the trailer park an illegal immigrant owned numerous trailers and was subletting them out. That is how Kayla was able to get a place because she didn't make much and had no credit yet. The half-brother asked the owner if she had any rooms for rent. She did, in the same trailer as Kayla.

Kayla's murderer was living there less than 5 days before he viciously murdered my daughter. Kayla had 2 jobs. She was working at a cleaning company and at Weis grocery store. Kayla had autism but she was determined to live independently and make her way in this world. And my baby paid the ultimate price. She had just gotten home from working the night shift and she said goodbye to her boyfriend that morning when he left for work. She then went to sleep.

The murderer went into Kayla's room startling her, grabbed her iPod charger and wrapped it around her throat and face while strangling her to death. Kayla grabbed her phone and called her boyfriend but went to voicemail. The voicemail of the murderer strangling Kayla was 2 minutes and 30 seconds long. The murderer then violently sexually assaulted Kayla.

Kayla's boyfriend came home from work and found her dead on the floor. The charger cord was so tight around her neck and face that her boyfriend had to use his teeth to get it off.

The murderer robbed her of her phone and \$6.00. \$6.00 is all my baby had in cash because she used the snack machines at work to get something to eat. He then went to lunch with his half-brother like nothing happened. Local police didn't have enough evidence to arrest the murderer so Child Protective Services took him into custody and placed him in an unsecured children's home with other children – even knowing that he was the main suspect in a premediated murder case. There were issues at the children's home so he was placed with the foster family until he was arrested. When he was arrested for Kayla's murder he laughed and smirked.

For me this not a political issue this a safety issue for everyone living in the United States. This could have been anyone's daughter. Kayla wasn't doing anything wrong and she didn't deserve to be murdered. I don't want any other parent to live the nightmare that I am living. I am her voice now and I am going to fight with everything I have to get her story told and bring awareness of the issue at the border. I will make sure her memory lives on.

Murder itself is already taboo but then you mention MS-13 and nobody wants to touch it. Nothing will change if nobody talks about the problem. The United States Government has to secure our border. We need to properly vet all border crossers. The Government could have placed a phone call to authorities in El Salvador and found out that he was a gang member. But they didn't. If we had stricter border policies my daughter would still be alive today. Nothing will bring my daughter back nor fix the pain of not having her here, but I want to prevent this from happening to someone else's child. This isn't about immigration this is about protecting everyone in the United States.

Mr. MCCLINTOCK. We will now proceed with the five-minute rule of questions. I will defer mine until the end and recognize Mr. Biggs of Arizona.

Mr. BIGGS. Thank you, Mr. Chair. Ms. Nobles, thank you again for being here. I thank all the witnesses, but thank you for your poignant testimony.

I think of Steve Ronnebeck, whose son Grant was murdered as he worked at a convenience store in Mesa, Arizona by an illegal alien or Mary Ann Mendoza whose son Brandon was a police officer was killed by an illegal alien in Mesa, Arizona. Our heart goes out to you, Ms. Nobles.

I am stunned that a witness would say we need to find equilibrium at a time when six million plus people have illegally entered the country in the last two years. Stunned. I am stunned to know that of 31,000, 32,000 people, 21,000 of them were released into the country over a 72–96-hour period. I am stunned because we don't have control of our border. The CBP Chief Ortiz has testified that the cartels control our border, as has Sector Chief Modlin of the Tucson Sector, as has Sector Chief Chavez of the Rio Grande Valley Sector.

I will go to you Chief Scott. Has Secretary Mayorkas taken the actions necessary and appropriate to achieve and maintain operational control of the borders?

Chief SCOTT. Absolutely not, sir. If you listen to the words he states every time, it's about creating safe pathways. When I was Chief, we were not allowed to even discuss consequences or actually securing the border. It was all about expediting the processing and avoiding the optics of people backed up into Border Patrol stations.

Mr. BIGGS. We've heard today about new parole processes being implemented. Last year, over 300,000 people received parole. This year, it will be over 750,000.

Prior to the Biden Administration, typically, you might see 15–20, maybe as high as 25, parole processes. That's because that's an individual process. Even Secretary Mayorkas has testified before this Committee that it's an individual process.

What has he done to distort the parole process, Chief Scott?

Chief SCOTT. I, honestly, do not understand how they can look at the law and do what they're currently doing with the parole process. By law, every one of those approvals is supposed to be a case-by-case basis. It's supposed to be based on a humanitarian reason or a benefit to the U.S. Government.

My entire time in the Border Patrol, I probably approved—and I'm estimating—about six or eight paroles a year, at the most, and those were usually to benefit a case or because of some type of a medical condition. There were tight restrictions put on every one of those. It was probably a packet about an inch thick—about keeping track of the individual. Because the concept of parole is you're allowing someone into the United States that we know does not have a legal right to be here. They haven't proven it. So, we're accepting risk on behalf of all America. That's a heavy burden. We all took that very seriously.

I do not believe the Border Patrol can be doing today the legal assessment required for each individual case. It's just not possible.

Mr. BIGGS. Chief Scott, DHS officials—and I’m quoting now from a *The New York Times* piece reads, “Thousands of migrants are successfully using CBP instead of paying smugglers.” Are we to believe that CBP is an alternative to cartel smuggling? Or are we actually using CBP to facilitate cartel smuggling?

Chief SCOTT. There’s—the CBP app is a—from my understanding, it is, basically, a queuing mechanism, like we used to do at ports of entry with a pen and paper on the South side. Anything that happens on the South side of that border is definitely controlled or influenced heavily by the cartel.

Anything we can do to get them out of the system would be fine, but I think the piece that we’re missing here, too, is we’re now taking away from the legal trade-and-travel processes of the CBP officers at those ports of entry. They were all gainfully employed prior, and the CBP app is pushing more and more people into that port of entry that don’t have, by definition, do not have a legal right to be here.

The other challenge is it’s a magnet. Because to use the CBP app—again, from my understanding—you have to be in Mexico; you have to be up close to the border. So, that entices even more people into that border community, and the throughput does not match the demand. Where does that overage go? Right back to the cartels.

Mr. BIGGS. Thank you. My time has expired.

Mr. MCCLINTOCK. The Chair now recognizes the Ranking Member for five minutes.

Ms. JAYAPAL. Thank you, Mr. Chair.

Mr. Hetfield, thank you for your very compelling testimony.

As you know, one of the Biden Administration’s answers to increased migration at the border is to expand legal pathways. As Title 42 was set to expire earlier this month, the United States announced its opening of regional processing centers all over the hemisphere. They will be starting in Guatemala and Colombia, and then, expanding to other countries, including Mexico.

This seems like a positive step by the administration to build its capacity to take increased numbers of refugees before they even make that dangerous journey to our southern border. Would you agree with that? What do you think the United States needs to do to make these regional processing centers a success?

Mr. HETFIELD. Yes, I absolutely agree with that. I also agree with Chief Scott’s assessment about the overuse of parole. The administration needs to rely more on the U.S. Refugee Admissions Program as a lawful pathway—with a pathway to permanent residence and, ultimately, citizenship and suitable vetting, and less on humanitarian parole. This is, definitely, a step in the right direction. So, I hope those centers are resourced.

One of the key strategies that’s going to have to be implemented, though, is you have to make those centers for asylum seekers with legitimate claims more attractive than crossing the border to seek asylum. So, you have to look at things that have been used in the past with the refugee program, like the Lautenberg Amendment, and apply that to their applications. You have to make sure that they are—that their applications are processed expeditiously and fairly. So, yes, but I’m absolutely supportive of that measure.

Ms. JAYAPAL. If you listen to my colleagues, you will think that the United States is bearing the brunt of the global refugee crisis alone. HIAS works all over the world, as you said. It's simply not true. Can you discuss how other countries in the hemisphere are seeing significant increases in the number of asylum claims?

Mr. HETFIELD. Yes, absolutely. It really is a global refugee crisis, and we are just one player in this global refugee crisis. Colombia alone, which was, traditionally, a refugee-producing country, is now taking in refugees. Millions of Venezuelans, over 2.5 million Venezuelans have sought refuge in Colombia, where HIAS operates.

Likewise, over 1.5 million in Peru; over half a million in Ecuador; and nearly half a million in Chile. If you look at every single country in the hemisphere, there are many asylum seekers. Most of them come from Venezuela, but also from Central America, and even outside of the Western Hemisphere, seeking asylum.

So, this really requires international attention, and the U.S. has to lead on this issue.

Ms. JAYAPAL. It's my understanding that HIAS is actually helping some of these individuals apply for asylum in other countries. Can you tell us more about that?

Mr. HETFIELD. Sure. I mean, HIAS's No. 1 job is to make asylum seekers safe and secure and welcome wherever they are. That's in the first countries to which they flee. When that fails, then, we try to find them third countries, but, again, through safe and orderly means, like refugee resettlement. Our operations have expanded massively over the last few years because of the refugee crisis, and the Venezuelan migration, in particular, throughout the Western Hemisphere.

Ms. JAYAPAL. As you pointed out, refugee admissions and the need to assist refugees has always been a bipartisan concern until recently. In fact, I remember the testimony of somebody from the National Evangelical Association saying that our refugee resettlement program is the crown jewel of humanitarian assistance.

Mr. Hetfield, I wanted to see if you could discuss misinformation and how it spreads among migrants who are making the long journey to the border. Can you discuss how rumors and misinformation is spread by the cartels of an open border impacts the number of migrants that we see trying to come to the United States?

Mr. HETFIELD. Sure. It's massive, but it's not all misinformation. They're spreading misinformation and, also, information about how broken our border and our immigration system is. That is an attractant to people to come in, to apply for asylum and other benefits, to which many of them are not actually entitled.

Ms. JAYAPAL. Thank you, Mr. Hetfield. I couldn't agree more. I think our words matter, and I think that you pointing out of the importance of really establishing a functioning immigration system is absolutely crucial.

As the Ranking Member of the Full Committee said in his opening statement, it is, unfortunately, seen as an advantage by many of our colleagues across the aisle to leave our immigration system broken, so that we can continue to point fingers at immigrants who are simply trying to do what so many of our forbearers have done—come to the United States because it is a country that has pro-

tected so many people fleeing terrible persecution and many other ills.

I thank you for your testimony today and for being with us.

I yield back, Mr. Chair.

Mr. McCLINTOCK. The Chair recognizes Mr. Tiffany from Wisconsin for five minutes.

Mr. TIFFANY. Thank you, Mr. Chair.

Chief Scott, isn't it correct that many of these people are not asylum seekers; that they're actually not legitimate asylees?

Chief SCOTT. That is very accurate. Most of them, when you ask them questions, they're economic refugees, if anything. They're seeking work. It's they're not political—

Mr. TIFFANY. Isn't it correct, when Remain in Mexico was in place under the previous administration, there was over 90 percent rejected? They were not legitimate asylees?

Chief SCOTT. That is correct. That also acted as a deterrent. So, people stopped coming to the border because they knew they couldn't get away with fraud.

Mr. TIFFANY. Yes, just for the record, Mr. Chair, I was down at the Darien Gap two years ago at this time in May. That's exactly what we heard, people were coming—they were like, "We had resettled to Chile and we were perfectly happy there—We resettled to Brazil." Haitians, others, the Venezuelans, they said, "We were perfectly happy there, but since you're going to open the border, we're going to come to the United States of America." That's not a legitimate asylum claim, is it?

Chief SCOTT. That is not.

Mr. TIFFANY. Secretary Mayorkas, has he done his job to protect the American people?

Chief SCOTT. I do not believe that he has. He's focused on the processing and completely ignored border security, which, by the way, actually decimates our immigration system. Good border security supports our good immigration system.

Mr. TIFFANY. Ms. Nobles, if border policies continue as they are over the last two years, will there be more Kaylas?

Ms. NOBLES. Yes, I believe so, and that is why I'm getting—trying to get her story out. So, people are aware of the issue.

Mr. TIFFANY. Might Kayla be alive if the Biden Administration had secured the border over the last two years?

Ms. NOBLES. Yes, I believe she would still be here if he was properly vetted.

Mr. TIFFANY. Would you prefer from us, if you had a choice, to get condolences from Members, which I'm sure are very heartfelt—would you prefer condolences or would you prefer changes in the law, like the Secure the Border Act to make—

Ms. NOBLES. I would like—oh, sorry. I would like to have changes in the law, and I want to put a law in Kayla's name to help to have her memory live on, and so those will know that she was the one that could that changed the law.

Mr. TIFFANY. Unfortunately, Mr. Chair, we have a name for these people, angel families. That is a horrible thing here in America, that we have such a thing, that we have to name all those people that have been killed by people who came in here illegally into our country.



I want to go back to you, Mr. Scott. Have you had a chance to see the grand jury presentment in Florida? Have you reviewed that?

Chief SCOTT. I have not reviewed it in its entirety, no.

Mr. TIFFANY. Would it surprise you, out of that presentment, a 24-year-old male was processed by ORR, the Office of Refugee Resettlement, and went on to violently kill his sponsor by stabbing him 50 times? Would it be a surprise that this person came in as a minor, but, actually, was a 24-year-old male? Is that surprising to you?

Chief SCOTT. It is not surprising. I'm familiar with that case. There's no data base that we can check people's ages off of. So, you have to go with their word.

Mr. TIFFANY. Would you be surprised, out of that presentment, that many don't carry any form of identification or authentic IDs?

Chief SCOTT. I'm not surprised. Usually, they get rid of it before they cross the border.

Mr. TIFFANY. Are you surprised that UACs, unaccompanied alien children, are not rapid DNA tested or biometric tested?

Chief SCOTT. To be honest, they're not even fingerprinted and photographed on many occasions if they're under 14. So, no.

Mr. TIFFANY. Would you be surprised to know, out of that presentment, that most case managers at ORR do not have any special training and many have been hired over the phone, sight unseen, with a very cursory approach?

Chief SCOTT. That's very troubling, but, unfortunately, I'm not surprised.

Mr. TIFFANY. Would you be surprised that agents in the El Paso region discovered more than 665 adult illegal aliens in 2021 alone who tried to pose as unaccompanied minors to gain expedited entry into the United States in the past 12 months?

Chief SCOTT. I am not surprised. Anytime you carve out a special group, people try to take advantage of that and lie and get into it.

Mr. TIFFANY. Would you be surprised if an ORR attorney, the Office of Refugee Resettlement, stated, "We only get sued for keeping them too long. We don't get sued by traffickers."?

Chief SCOTT. I am not surprised, no. It's consistent with what I was told and heard during my time as Chief in this administration.

Mr. TIFFANY. Thank you to all the people that are here today.

I would just close: We heard all kinds of data from the Ranking Member here in his presentation over the course of three decades about—I believe it added up to about 233,000 people came in via parole. That was over the course of three decades. We've had over a million people come in, Mr. Chair, in just a little over two years. That is not humane in any way. Terrorists, human traffickers, and fentanyl poisonings are a product of what has happened under the Biden Administration and Secretary Mayorkas.

I yield back.

Mr. McCLINTOCK. The Chair now recognizes Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Hetfield, our Republican colleagues use a lot of inflammatory rhetoric, calling migrants arriving at the southern border "an invasion." Can you discuss the impact this kind of language has on the work that you and HIAS do?

Mr. HETFIELD. Yes, that's a difficult topic. It's had a significant impact, especially as a Jewish agency. First, there's the vilification of undocumented immigrants and asylum seekers, which is having a major impact on the agency, security issues regarding the agency, and on relationships with the people that we deal with.

The vast majority of asylum seekers are coming here because they are fleeing persecution. Many people who come here are not in need of protection, but that's why we need a system that makes that distinction. We don't have one right now.

In terms of HIAS itself, unfortunately, the theory of replacement theory is gaining more and more mainstream attention, which is that there is a conspiracy of Jews and others to bring in Brown people and non-Christian people to replace White Christian Americans. This is becoming a serious problem for us. It's gaining more and more mainstream acceptance, and I'm not really sure what to do with that.

Mr. NADLER. Thank you.

The United States, along with others in the hemisphere, recently signed the Los Angeles Declaration on Migration and Protection. As part of the declaration, the United States committed to taking 20,000 refugees over the next two years from the hemisphere. This feels like a start, but seems wholly inadequate, given that seven million people are displaced from Venezuela alone. Would you agree and can the United States be doing more to take refugees from the hemisphere?

Mr. HETFIELD. Yes, absolutely. We're very late to that. As I said, many other countries are accepting many Venezuelans in much larger numbers than we are through more efficient processes. Venezuelans now make up the No. 1 population in the United States for asylum seekers. It is a hemispheric problem that needs a hemispheric solution, and we need to be part of that strategy, and accepting more to the Refugee Settlement Program. Again, a safe and orderly program is the best way to go.

Mr. NADLER. Thank you.

Can you discuss how the United States stepping up its refugee program can have a positive impact on the number of asylum seekers we see at the U.S. border?

Mr. HETFIELD. Right. It needs to be done in conjunction with having an asylum system that gives—that's efficient and that gives responses quickly and makes decisions quickly. It provides a safe and legal pathway for people who need protection, and therefore, discourages them from taking their lives at risk trying to cross the border to get that protection. It's absolutely a necessary safety valve and legal pathway.

Unfortunately, the Biden Administration has not yet succeeded in rebuilding that program. As you know, the refugee resettlement admissions ceiling last year was 125,000, and we fell 100,000 short of that.

Mr. NADLER. Thank you.

Barriers to work authorization have devastating consequences for arriving migrants in local communities, which is one reason there has been bipartisan support for improving access to work permits and addressing lengthy processing backlogs. What does Congress

and the administration need to do to support local employers and improve access to work authorization?

Mr. HETFIELD. Well, this is a really vexing problem, where asylum seekers are not allowed to accept employment, nor are they allowed to receive any assistance while their asylum application is pending for a minimum of six months. In many cases, it's much, much longer than that.

So, basically, they have to find a way to support themselves and there are no legal means for doing so. So, that is a system that is destined to fail.

H.R. 1325, the Asylum Seeker Work Authorization Act of 2023, does provide a solution. So, I would urge that this or similar measures be supported.

Mr. NADLER. Thank you.

My final question is, we heard the story of the person who murdered Ms. Nobles' daughter. Now, this person, I gather, was—came in as an unaccompanied minor. Has any change been made between the Trump and Biden Administrations that would have affected the ability of an unaccompanied minor to come into this country and what he would do afterwards?

Mr. HETFIELD. Many changes have been made by the administration; that the Trump Administration was, as you know, pushing, pushing minors back at the border. The bottom line is that this goes back to the other parts of my testimony, which is that we need a system where control does not stop at the border, but continues into the United States. So, right now, we're not properly resourcing the system to do that, including as *The New York Times* recently exposed, with regard to the treatment of unaccompanied minors.

Mr. NADLER. Thank you.

Thank you. My time has expired. I yield back.

Mr. MCCLINTOCK. Mr. Van Drew?

Mr. VAN DREW. Thank you, Mr. Chair.

Well, here we go again—addressing the continued policy failures of this administration at the border. As our border descends further into chaos, I can't help but worry that this Nation is becoming increasingly comfortable with accepting weakness, not accepting the rule of law, and accepting it all as our new normal—an acceptance of weakness that led to the highest number of border encounters in a single day ever.

By the way, there was a comment from somebody from the other side and they said that Republicans enjoy this because they can use it as political fodder. Let's be clear. The Democrats were in control for two years. They had the presidency; they had the Senate; they had the House of Representatives. They could have done anything. They could have made this better. They could have straightened it out. It wasn't a split. They didn't; that's the reality.

So, let's talk about what's really true and let's not just talk political talk that doesn't make sense. An acceptance of weakness has turned every town in America—from El Paso, Texas, to Orange County, California—I'm sorry—New York, into a de facto border town.

An acceptance of weakness that has turned public parks, police stations, and school gymnasiums into makeshift shelters. Tell me

that's good for America. Anybody sitting out there right now, you tell me that's good for our America.

An acceptance of weakness that led to the tragic case of Kayla Hamilton, where an MS-13 gang member was allowed into our country as a supposedly, quote, "unaccompanied minor"—despite a history of criminal activity and of violence. Tell me that's good for our America.

If you have strong borders—if you don't have strong borders, excuse me, you are not a strong Nation. Every country in the world, basically, has strong borders. Third world countries have stronger borders than we do right now.

If this administration cannot protect its citizens, they are not worthy of the authority Americans have trusted them with. Personally, I do not think that Secretary Mayorkas is worthy and I do not think our President is.

If you continue to accept the weakness we are witnessing, you are surrendering the very foundations of our democracy, the disregard for our laws. We're not a Nation of the rule of law anymore. Think about the premise in which we argue, discuss, and debate this. It's against the law to illegally enter the country. It's against the law. You've broken the law. I don't understand why the law doesn't matter anymore. Are we a Nation of laws or are we not? That's the important question here.

It's gotten so out of hand that our Secretary Mayorkas is celebrating—actually, celebrating—6,300 illegal encounters as a good day. That's a good day. Think about that. President Obama's Homeland Security Secretary once claimed that a thousand encounters a day would be a crisis. Now, 6,300 is a good day. Today, it's a triumph.

This is the acceptance of weakness consuming our Nation, and it threatens the safety and well-being of each and every American, and we should not tolerate it and we should change it. You can be a humane and good country, but still believe in the rule of law.

I wonder how Kayla's family feels about it all. I wonder if she thinks this is good.

I have three quick questions for Chief Scott. With the number of crossings our country is experiencing, can Border Patrol properly debrief and access the information and intentions of every migrant trying to come across our border? Yes or no?

Chief SCOTT. No.

Mr. VAN DREW. Thank you.

Do you believe it is easier for a terrorist to get into the United States undetected today than five years ago? Yes or no?

Chief SCOTT. It definitely is.

Mr. VAN DREW. Thank you.

As thousands of illegal migrants are accepted into our country every day, are there less obvious threats to Americans that we aren't noticing yet or are we looking into them enough? The question is, are we looking into these threats enough? Yes or no?

Chief SCOTT. No, the Border Patrol barely has time to process who's in custody. They're leaving hundreds of miles of border unpatrolled every day. No.

Mr. VAN DREW. Exactly. This is—and thank you, sir. Thank you for your work.

This is a joke. Let's really talk about the real issue. It's the rule of law. It's the safety of our people. We're breaking the law and we're becoming weaker, and we've got to stop it.

Thank you, Chair. I yield back.

Mr. MCCLINTOCK. The gentleman yields back.

The Chair recognizes Mr. Correa of California.

Mr. CORREA. Thank you, Mr. Chair.

First, Ms. Nobles, I also want to express my condolences, as a fellow parent. I also have a daughter about the same age that your daughter. About two years ago, I got a phone call at home—I should say, at work—from home. My daughter was all alone at home; called me screaming, crying, saying, “Daddy, there’s two men in the house.” Two men were burglarizing the house. “What do I do, Daddy?” I said, “Stay by the dogs. Let me call 911.” Those moments of terror, I hate to think what would have happened if those German Shepherds weren’t there, or if our local Santa Ana PD had not gotten there in minutes.

Ma’am, I can guarantee you that no one condones criminals in our streets with or without documents. This is about our families and the safety of our families. With or without documents, I do not condone anybody in our streets that would harm our families.

Ms. Nobles, my prayers are with your family.

Mr. Chair, without objection, I’d like to submit for the record this *Wall Street Journal* article entitled, “What Everyone—Except the U.S.—Has Learned About Immigration. Washington remains divided over allowing more foreign workers while global rivals lower barriers to ease persistent labor shortages.”

Mr. Chair?

Mr. MCCLINTOCK. That’s right. Without objection.

Mr. CORREA. Mr. Hetfield, if I may, COVID, the aftermath of COVID, it seems that the USA is again the world’s economic locomotive. The world seems to be devastated economically. Even the great China, even the great economy is sputtering right now.

I got a phone call the other day from the President of Guatemala asking for help with the refugee challenge Guatemala is facing. You mentioned Colombia, 2.4 Venezuelan refugees. Mexico is having a challenge. This is a worldwide phenomenon.

You’ve already addressed it, but I want you to, again, repeat, is this a U.S. challenge at this moment? We can look at this last two or three years and say this is wrong, but you’ve got to open it up beyond just the United States. It’s a worldwide phenomenon. Am I correct or not?

Mr. HETFIELD. Yes, you’re absolutely correct. The United States cannot solve this problem alone, but we’re not going through it alone, either. The global refugee crisis is over 120 million people right now.

Mr. CORREA. I’m always tempted to say this is a refugee challenge like we haven’t seen since World War II, when 60 million Europeans were on the move. Am I correct in that assessment?

Mr. HETFIELD. Yes, the actual number is double that in terms of forcibly displaced persons. So, you’re not incorrect at all. As a proportion of the world population, of course, it’s smaller, but, in absolute numbers, it’s double.

Mr. CORREA. Chief Scott, if I may ask you a question, sir? I want to say, first, you are doing an impossible job. Thank you for what you're doing.

The private sector in our society continues to be a magnet for workers. Sixty percent of the individuals that come across blend into society. They have families they arrive with. They blend into society.

Fifty percent of our farm workers aren't documented. I would say that, as long as we don't have immigration reform, that it's sensible, that it works for our private sector. The need for workers in this country is also a magnet. Would you say that or not?

Chief SCOTT. I started out in the Immigration and Naturalization Service, where I was taught border security supports our legal immigration system, so that we can meet needs like that. They do go hand-in-hand, but I do point out that, if you can't control the flow in any way, then you really can't—and any kind of numbers or any kind of decisions you put at the other end are irrelevant.

I do believe this country was based on immigration. I think everybody in the Border Patrol supports immigration. That's why they got in. We support it legally.

Mr. CORREA. I agree with you. The problem is there is no way to get in to work in this country right now. Our economy would suffer. Again, 50 percent of our farm workers being undocumented. I don't think anybody supports a policy to deport those workers because that would affect our food security.

I look forward to working with all of you in making sure we do some common-sense reforms that are good for the American economy and the American people.

Thank you very much, Mr. Chair. I yield.

Mr. MCCLINTOCK. The gentleman yields back.

Ms. JAYAPAL. Mr. Chair?

Mr. MCCLINTOCK. For what purpose does the gentlelady seek recognition?

Ms. JAYAPAL. I have a unanimous consent request to enter the following statements into the record: Organizational statements from the Center for Gender & Refugee Studies, Church World Service, and National Immigration Reform.

Mr. MCCLINTOCK. Without objection.

Ms. JAYAPAL. Thank you.

Mr. MCCLINTOCK. The Chair now recognizes Mr. Roy of Texas.

Mr. ROY. I thank the Chair.

Mr. Scott, we were just told that we're unable to get workers into this country. True or false, we get somewhere around a million green cards every year and we have seasonal workers available to come here and work under our current system under the law?

Chief SCOTT. That's correct.

Mr. ROY. Currently, at our border, what do we have right now in terms of our ability for Border Patrol to stop the flow between ports of entry or is it, in fact, that Border Patrol is processing people at the ports of entry?

Chief SCOTT. The Border Patrol stays outside the ports of entry themselves, but the Border Patrol is, literally, it's almost acting as a port because they're processing getaways and they're leaving hundreds of miles of border wide open.

Mr. ROY. For example, at a tent like in Eagle Pass, right, where you've got a 10-acre facility where you're processing 1,500 people a day? Is Border Patrol a part of that operation?

Chief SCOTT. Yes, sir. Yes.

Mr. ROY. As opposed to actually being on the line and being able to go patrol the border between the ports of entries, as they're supposed to do?

Chief SCOTT. Correct. There's been some numbers reported, but I think what's important is, even if half of the Border Patrol agents are deployed to the field at the beginning of a shift, within an hour or so, they're overwhelmed with thousands of more illegal aliens, and then, they are processing as well—leaving the border wide open.

Mr. ROY. Chief Scott, do we know how much fentanyl or dangerous narcotics come in between our ports of entry or dangerous individuals?

Chief SCOTT. We have no idea, but there's no shortage in Chicago or New York.

Mr. ROY. Right. So, this claim by my colleagues on the other side of the aisle that all the fentanyl comes in at the ports of entry—we, literally, don't know how much is coming in between the ports of entry because the Border Patrol is unable to do its job while it's being overwhelmed by the failed policies of this administration? Is that true?

Chief SCOTT. That is accurate. If you look at the statistics, anytime illegal immigration across the border between the ports slows down, drug seizures actually increase because agents are actually out there identifying it.

Mr. VAN DREW. Supervisor Kenny, your community has been dramatically impacted, right, by the number of individuals that have been dumped in your community? Can you quickly—it's just a matter of time—explain how much that has negatively impacted your community?

Ms. KENNY. I'm from Orangetown in Rockland County. We, actually, obtained a restraining to prevent them from coming until it goes through the court system. The county just North of us has received hundreds and hundreds at this point, and I can't speak for them.

Mr. ROY. You have had hotels filled up with like single, often single males that are filling up places, so that needy individuals aren't able to get facilities and they aren't able to get the resources they need? Is that true?

Ms. KENNY. Yes. The goal of Mayor Adams was to send 340 single, adult men to a hotel in my town. It's been put on hold by the courts.

Mr. ROY. Where is your town again?

Ms. KENNY. In Orangetown, which is 30 miles North of New York City.

Mr. ROY. OK. So, not on the southern border of the United States?

Ms. KENNY. No.

Mr. ROY. So, this is something we're dealing with. As my friend from Arizona, Mr. Biggs, knows, and my friend from California, Mr. McClintock, and others know, on the border, we deal with it

all the time in our communities in South Texas, but this is something that the entire country is now dealing with.

I'd like to now move to Ms. Nobles. I cannot possibly put into words, Ms. Nobles, what you have experienced as a result of the failed policies of this country.

I would simply ask, as carefully as I can, having met with numerous family members who have lost loved ones due to these failed policies, whether it's through violence, as you have, unfortunately, experienced, or whether it is through, for example, fentanyl poisonings that so many of our moms have experienced.

I met with three fentanyl moms just two weeks in Austin, Texas. I've met with dozens. I've met with dozens of individuals who have lost loved ones, including a family member in San Antonio whose son was killed by an illegal immigrant who had been here, had been arrested; let go; arrested; let go, and then, burned this woman's son to death.

That's what we have going on in our country, while our colleagues on the other side of the aisle bury their head in the sand and pretend that somehow, it's compassionate.

I would just ask you, Ms. Nobles, to explain whether or not you've had interactions with other moms and family members who have had similar unfortunate experiences as a result of our failed policies?

Ms. NOBLES. Unfortunately, I haven't. I haven't seen anybody talk about their story or shared anything about what—because I know that Kayla wasn't the only one. Where are they? So, that's why I'm standing up and talking about her story and getting her story out. At least, I can speak for my child and make sure that I make people aware of what's going on.

Mr. ROY. Well, Ms. Nobles, I'm going to, after this hearing, connect you with angel families who have had a number of these experiences that they've put out—with the Vargas family in San Antonio who have been dealing with it, with lost from these kinds of policies.

I would just ask, Chief Scott, are the current policies stopping the kind of violence that can occur through having, for example, in this case, a UAC, an unaccompanied alien child, who ended up carrying out this crime that Ms. Nobles had to suffer from? I want to ask you that question.

I also just want to point out before you answer the question—and then, I'll yield back—I just came back from the Federal District Courthouse because I went over there to support Jaime Zapata's family. Because Jaime Zapata was gunned down by the cartels in 2011 and the sentencing is going on right now, as we speak.

Cartels are empowered at our border. They are empowered by China. They are empowered by our own Federal government failing to do its job, and Americans are dying as a result, and so are migrants.

Mr. Scott, if you can answer that question? Then, I'll yield back.

Chief SCOTT. The current crisis is making it impossible to be able to weed out the criminals, especially the UACs, from anyone else. The agents don't have time to do face-to-face interviews. There's no global, like, data base of criminal records.



Mr. ROY. Thank you, Chief Scott.

Mr. BIGGS. Mr. Chair, I seek unanimous consent on various articles—to put a piece from *The New York Times*, dated April 23rd, “Biden Opens a New Back Door on Immigration”; the Navajo Nation requesting answers to questions; “Border Crossings Down”—this is a *Washington Post* article from May 19th, “Border Crossings Down, But Many Migrants Released to the U.S. to Ease Crowding”; a *Breitbart* piece entitled, “Human Smuggler Drops Preschool-Age Child Over California Border Wall,” dated today’s date; as well as a piece dated today, “Georgia Democrat Slams Party for Favoring Migrants Over Americans.”

Mr. MCCLINTOCK. Without objection.

Mr. BIGGS. Thank you.

Mr. MCCLINTOCK. The Chair now recognizes Ms. Jackson Lee of Texas.

Ms. JACKSON LEE. Thank you, Mr. Chair, and to the Ranking Member.

As one would expect, Ms. Nobles—and I’m over here; Ms. Nobles, I’m in this direction.

Ms. NOBLES. Oh, yes.

Ms. JACKSON LEE. As a mother, I couldn’t say anything less than the pain that I know that you’re experiencing. I could say my heart goes out to you, but I want to acknowledge the pain for any mother, any family, to lose their precious child.

I want your daughter’s story to be heard. If we can work in a bipartisan way, I will sign onto any bill that enhances her heroic story. I think that’s what you are surviving on.

What a young woman—wanting to be independent, working two jobs, holding her head up high. A vicious act.

Forgive me if I say this is not solely immigration. It’s poor police work, to be honest with you. Frankly, we wanted that not to happen. No one on this panel is championing MS-13; I can tell you that.

So, we’ve got to find a way to decipher, discern, to weed out. Because if there is a mother trying to come just to work in the fields, I know that may not be the best way for her to come, but that is not the MS-13. They don’t deserve to be in this country, period.

So, let me just—I don’t want to say thank you, because you’re here in pain. I just want you to know I think her story has to be told.

Thank you for your presence here today.

Chief, I assume we served overlapping; I’m not sure. What years were you? You’re retired. So, what years have you served, sir?

Chief SCOTT. As the Chief, it was 1920, February 2020 until August 2021. I was a Border Patrol Agent for over 29 years.

Ms. JACKSON LEE. Starting what year?

Chief SCOTT. 1992.

Ms. JACKSON LEE. Yes. So, you’ve had several leaders, Presidents, and then, of course, Homeland Security came into being after 9/11. I was on the Committee in its origins and know just about every one of your Border Patrol leaders.

Would you say that it would be better to approach immigration reform, Republicans and Democrats, in a terminology that we coined under the late John McCain, comprehensive immigration re-

form, which, in essence, deals with border security in the North and the South and recognizing legal pathways for entry? Would you accept that would be a better approach?

Chief SCOTT. I believe border security is exactly like your home; it gets overcomplicated a lot of times in the public discussion, but it's exactly like your home. We just need people to come through the front door in a legal manner. Congress gets to pick who those people are, not the Border Patrol.

Ms. JACKSON LEE. So, my time is short. I want you to answer the question specifically. Comprehensive immigration reform with border security and legal pathways, would you accept that?

Chief SCOTT. Based on my experience, the border security has to come first.

Ms. JACKSON LEE. Well, I can't put words in your mouth, but you're not going to get border security coming first. You need to be able to balance it. You would not accept a border security and recognizing pathways to legal entry?

Chief SCOTT. Based on my experience, and looking at 1986 IRCA, you have to be able to secure the border first—

Ms. JACKSON LEE. Well, you'll be stuck—

Chief SCOTT. —or all the other conversations are irrelevant.

Ms. JACKSON LEE. Yes, I appreciate that.

Reasonably, Mr. Hetfield, as you understand, when John McCain, the late John McCain—we had a very strong comprehensive bill, and it had border security and a legal pathway. We get stuck on border security. We're not listening to the witnesses here. We're not listening to the New York town that is frustrated with what's happening to them—and rightly so.

So, let me just get you to this, espouse, because my time is going.

First, your organization was affiliated with the Tree of Life, was it not? Or the attitude of that killer?

Mr. HETFIELD. Yes, I'd rather not discuss the Tree of Life because the prosecution is ongoing at this point.

Ms. JACKSON LEE. Well, let me just say, since I went there, let me just say that the attitude was that Jews were bringing in migrants and immigrants. Was that true?

Mr. HETFIELD. That is correct.

Ms. JACKSON LEE. It resulted in death, did it not?

Mr. HETFIELD. That is correct.

Ms. JACKSON LEE. All right. Let me just get to the point of the work that you do. That is, have things changed in the hemisphere, so that more refugees are coming and you work with refugees to help the United States, so they don't result in being lost or being in the wrong direction? As well, I would assume that you abhor MS-13 as well? If you can answer those two questions, I'd appreciate it.

Mr. HETFIELD. Absolutely and absolutely.

Ms. JACKSON LEE. You've got to say—

Mr. HETFIELD. Yes. Yes, HIAS is entirely focused on legal pathways to bring people into the United States, so they do not resort to fleeing across borders to seek asylum. We try to provide them with safe and legal alternatives to that, and in partnership with the U.S. Government and Jewish communities.

Absolutely, we need a system of control which can identify, vet, and detain, and reject and remove people who are a danger to the society.

Mr. McCLINTOCK. The gentlelady's time has expired.

Ms. JACKSON LEE. Like MS-13?

Mr. HETFIELD. Yes.

Ms. JACKSON LEE. Yes.

Mr. McCLINTOCK. The Chair recognizes Mr. Moore of Alabama.

Ms. JACKSON LEE. I yield back.

Mr. MOORE. Thank you, Mr. Chair.

Certainly, I want to thank all the witnesses for being here today. I've said this before and I'll say it again—that a closed border, a controlled border is actually a compassionate border—and not just for the migrants who get turned into indentured servants, or worse, but for the Americans that some of these illegal aliens harm.

For example, in my district, the 2nd Congressional District of Alabama, a couple of weeks ago, the Autauga County Sheriff Department arrested Grevi Zavala, a 29-year-old illegal alien from Honduras for the rape of a teenaged girl in Prattville. It's alleged that he dragged her into a bathroom in a restaurant. Press reports indicate that he entered the United States in November 2021 through Texas, using a fake name, but was allowed to enter into this country. In addition, according to the press reports, he had a criminal record in Honduras. I don't know how this is possibly acceptable.

Ms. Nobles, unfortunately, you and your family know this all too well. I am terribly sorry for what happened to you and your daughter. I'm a proud father of four. I've got two girls and a granddaughter that will be born probably by Friday, I understand. That's what the experts are saying. Anyway, we should never let this happen.

So, Mr. Hetfield, I want to go to you initially. You said we've got a lot of people coming to this country that are not qualified. What do you mean by that?

Mr. HETFIELD. The only way for many people to come into this country is through the asylum system. That's the only way to be able to not be expeditiously removed at the border, is to claim a fear.

So, of course, people are using that pathway, if they're coming here for reasons that do not qualify them for asylum, such as they need to support themselves. They're trying to escape poverty. They're trying to reunite with family. Which is why we need to have an asylum system that functions and efficiently determines whether or not somebody has a legitimate asylum claim or not.

Mr. MOORE. Mr. Hetfield, let me ask you this: I was in Yuma, Arizona. This is our third hearing and we had one in the district in Yuma, or actually on the border. The sheriffs informed us there that, basically, they're just—the border agents have become concierges. They're just giving these people a Motion to Appear, an \$800 taxpayer-funded subsidy, and a cell phone. Then, when we take their calls for court dates, they're not—they'll take our phones, but they're not taking our calls.

Do you find that alarming, that we're just turning people loose with very little background checks?

Mr. HETFIELD. I find it very alarming that people are getting lost in the system, waiting for years to get an asylum hearing. That doesn't work for anybody.

Mr. MOORE. Speaking of lost in the system, we heard a few weeks ago that we had lost 85,000 unaccompanied minors. The Federal government had shipped them to Google addresses in America. Now, it sounds like, based on testimony, that they're not all minors and there are actually some of them here doing a great deal of harm.

Mr. Scott, I want to ask you a question really quick. I heard prices people had on their heads for coming to this country. Just South of the border, the last time I heard, it was about six or seven thousand dollars to come of Mexico. Further South, the Triangle Nations, it's about nine or ten thousand dollars. Then, Syria was \$20,000. Russians were paying \$19,000, and Chinese nationals were paying \$80,000. Where is that money going, do you think, Mr. Scott?

Chief SCOTT. It goes directly to fuel the cartels.

Mr. MOORE. It fuels the cartels. What happens if somebody doesn't have the money? Do they actually become indentured servants or slaves? Is that what happens?

Chief SCOTT. So, that is one of the many things that could happen. The prices vary, depending on how much risk you're willing to take, how far out in the desert you'll go. So, they vary.

The price also varies if you're willing to do other things. So, if you're willing to guide or you're willing to smuggle narcotics, or you're willing—

Mr. MOORE. I heard that—that's interesting, Mr. Scott. I appreciate you mentioning that they'll actually, if you'll backpack that heroin or cocaine or fentanyl, that your passage is somewhat considered paid if you're willing to be a drug mule rather than a slave. Is that correct?

Chief SCOTT. That is how some people cross, yes.

Mr. MOORE. Ms. Nobles, have you heard anything from the Biden Administration concerning the loss of your daughter?

Ms. NOBLES. No, I haven't.

Mr. MOORE. Thank you.

Thank you, Mr. Chair. With that, I'm going to yield back.

Mr. MCCLINTOCK. The gentleman yields back.

For what purpose does Ms. Jackson Lee seek recognition?

Ms. JACKSON LEE. I'd like to ask unanimous consent that I can submit into the record an article, "The Biden Administration To Send 1,500 Troops to the Southern Border," for support ahead of expected migrants, and also, to have a statement that reflects that the numbers have gone down, as it relates to those entering the United States at this time. I ask unanimous consent.

Mr. MCCLINTOCK. Without objection.

Mr. McCLINTOCK. The Chair recognizes Ms. Ross.

Ms. ROSS. Thank you very much, Mr. Chair.

Thank you to all the witnesses, and, in particular, to Ms. Nobles for sharing your story. Please know that I join with my colleagues in wanting justice for her and for other people who have, similarly, lost their lives through senseless—senseless—acts. At least know we're with you.

Earlier this spring—and the Ranking Member may have brought this up in her opening comments—we traveled to McAllen and Brownsville, Texas, two Texas border towns. Our conversations with U.S. Customs and Border Protection during that visit reinforced my commitment to ensuring that CBP has the resources that it needs to strengthen border control.

Agents we spoke with specifically emphasized the need for sophisticated surveillance technology to monitor border crossings. They talked about how the cartels had more drones and kids on roofs who are operating the drones than the kinds of technology that we needed to see people before they get to the border and be able to stem that. I see that Chief Scott is nodding, as I talked about that.

During our visit, I was also struck by the reliance of our immigration and asylum systems on nonprofits and local governments; that they were not getting the support from the Federal government or the State governments to do their jobs. What goes on in Brownsville, Texas, on the local government tax dollar is nothing short of extraordinary, to make sure that people who have been allowed to cross the border can get on their way quickly, and not be in Brownsville and not be in those hotels. They say they don't want people to stay overnight in Brownsville. They want to get people to the bus station. They want to get people to the airport.

Now, while their work is admirable, this responsibility shouldn't fall solely on NGO's and local governments. State and Federal governments need to bolster the resources dedicated to responding to this many people who enter the United States under asylum claims and through other legal pathways. The Federal government must fund the technology that CBP needs and the training and the personnel, so that they can do their jobs.

Immigration is an extremely complex issue, and Democrats are pushing for implementation of effective solutions to strengthen border security and expand legal pathways to enter this country. It is important that we expand legal pathways because we simply need the workers.

I represent North Carolina. I heard from the agriculture industry every day. I went to visit a small, family farm two weeks ago. No. 1 issue, immigration. Hospitality industry, No. 1 issue, immigration. Tech industry, No. 1 issue, immigration. We need to do both.

In fact, we need to make sure that our rhetoric doesn't make the immigration problems worse. Unfortunately, it's been documented that repeated right-wing claims about the border being completely open are used on social media by smugglers to encourage more people to attempt to come to the United States without authorization. We need to have that stopped. We need to put aside our partisan blinders and use these hearings, not to magnify the problems of our immigration system, but to solve them in a bipartisan way.

With the remaining minute I have, my first question is for Mr. Hetfield. Unlike many countries, ours does not have a reception system for asylum seekers after they've been initially processed by immigration officials at the border and allowed to come into our country.

NGO's and local governments, like Brownsville, Texas, are stepping in to fill the gap that the Federal and State governments have left. We simply need a more orderly process. I wish everybody could see how well Brownsville does its job.

From your experience, how are these programs contributing to a safe and orderly immigration system, and what more can be done—in 14 seconds?

Mr. HETFIELD. They're absolutely essential. When I directed the U.S. Commission on International Religious Freedom's study on expedited removal a few years ago, we did find that, when you provide that kind of counseling, you actually have a very high dissolve rate by asylum seekers, because they realize that they're actually not eligible for the benefit. So, they withdraw their claims. By not having a reception system, you are just contributing to having people get lost in the system.

Ms. ROSS. Thank you, Mr. Chair, and I yield back.

Mr. MCCLINTOCK. The Chair recognizes Mr. Nehls of Texas.

Mr. NEHLS. Thank you, Mr. Chair.

Ms. Nobles, thank you for your testimony today. I can't imagine. I have three daughters—22, 17, and 10. I can't imagine what you and your family have been going through. Like so many other families across the United States, I'm incredibly sorry for your loss.

Chief Rodney Scott, I thank you for being here.

I had the opportunity to review the case file. This is the case file on this murderer, this—well, I'm going to stop with that—on this alleged 17-year-old unaccompanied alien child who brutally killed and raped Kayla Hamilton. I know you're familiar, sir. You're familiar with the intake forms.

Record of Deportable/Inadmissible Alien, this is the form here. So, I'm going to walk through a few things that I noticed, that I saw on this form—that this bad hombre said his intended location was Texas. As we know, he went to Maryland. He didn't stay in Texas. He didn't stay there very long.

This bad hombre said he had no funds in his possession, and that his father was his method of support. As we know, he somehow was moved to live with his aunt.

This bad hombre said he was claiming credible fear—credible fear, like everybody up there. We know that a majority of those claims are unsubstantiated. I think it's about 10 percent. Later said on his HHS intake form that he had come to work.

So, he's a liar. He's a bad hombre and a lying one at that.

The UAC said he had no prior criminal history—no prior criminal history. However, after his arrest, Maryland law enforcement—think about that. We can't count on the Federal government down at the border to make sure that the people entering our country are decent people that don't have criminal records.

It took local and State law enforcement in Maryland one phone call to El Salvador. That's it. Get on the phone. I call El Salvador. I say, "Hey, let me ask you about this bad hombre that entered our

country. Has he been arrested?” They say, “Oh, yes. Oh, yes, sir, he’s been arrested in El Salvador in 2020 for his illicit association with MS-13 gangs.”

Couldn’t figure that out down at the border. We’ve got to find out after he kills, rapes, and murders a young woman in the United States.

He said he was 16. He wasn’t 16. He had no parole form. You don’t need to prove your age. You just say, “I’m 16.”

We were in a case here a month or so ago about the gentleman that comes through. He claims he was a UAC. He goes to Florida with his caretaker and butchers the guy in Florida.

I saw a picture of this guy. He had more chin whiskers than the witness next to you. He’s 25 years old. He came in as an unaccompanied alien child. How does that work? How does that happen? How or why don’t we have more safety guards, safety wheels, down at our southern border?

So, we were able to establish this man—or, Chief, any of the 380,000 UACs that have entered since Joe Biden took office—were under the age of 18. How are we able to determine whether they’re actually truly under 18?

Chief SCOTT. We really can’t, sir. That’s where a seasoned, professional agent comes in. When they interview them, a lot of those inconsistencies you talked about come up in the story immediately. The chaos that we have on the border today prevents the agents from having that amount of time. The administration is yelling at them to process and move them down the assembly line as fast as possible.

Mr. NEHLS. So, when Secretary Mayorkas gets in front of the camera and lies to the American people every other day, if not daily, and he says these people are betted, is that a true statement, sir?

Chief SCOTT. They’re vetted against a blank sheet of paper. There’s no global data base to vet them off.

Mr. NEHLS. Yes. What kind of a border—what kind of background check is done on these individuals?

Chief SCOTT. They’re ran through a United States Government’s NCIC, which runs through criminal data bases. Unless the individual has been in the United States, committed a crime here before, it’s not going to be in that system.

Mr. NEHLS. I’ve said it before, and I’ll say it again. This is No. 3, the third hearing on the border. All Joe Biden had to do, when he was inaugurated on January 20th—I sat; I went there; I respect the office of the President—all he had to do was keep his mouth shut. He didn’t have to say anything about our southern border, and we’d be a much safer country today.

On March 12, 2021, I have a report. Hold it up. Following a reassessment, the CBP Director terminated Title 42 with respect to unaccompanied alien children. If I’m understanding this correctly, is it true that for the last two years we created a blanket waiver to allow anyone claiming to be under 18 into the United States, despite their criminal records or gang affiliation? Yes or no?

Chief SCOTT. I believe the gang affiliation, if they know, they could still deport them. For the most part, that—yes.

Mr. NEHLS. Parents let's be clear, MS-13 stands for kill, rape, and control. Joe Biden and Secretary Mayorkas are allowing potentially 30-year-old gang members into our communities, into our schools, and around our kids, where they will do the exact damned thing they did to Kayla Hamilton. Shame on them, and we must hold them accountable.

I yield back.

Mr. MCCLINTOCK. For what purpose does the gentlelady from Washington seek recognition?

Ms. JAYAPAL. Mr. Chair, I ask unanimous consent that the following be made a part of the record.

This is an email that was sent yesterday by the Department of Health and Human Services reminding my colleagues that HHS allowed Committee staff an in-camera review of this, the individual, the unaccompanied minors' file, with the expectation that the Committee would refrain from disclosing any nonpublic information it obtained.

It is imperative that we do not interfere with the integrity of criminal proceedings. I would hope that my colleagues would not disclose any information that could impact the criminal proceedings or Ms. Nobles' ability to get justice for her daughter.

Mr. MCCLINTOCK. The gentlelady was recognized for a unanimous consent request. Without objection.

Ms. JAYAPAL. It was a serious violation.

Mr. MCCLINTOCK. Without objection, that will be entered into the record.

Ms. JAYAPAL. Thank you, Mr. Chair.

Mr. MCCLINTOCK. I'll next recognize myself for five minutes.

Supervisor Kenny, again, 3.6 million illegal immigrants entering this country over the past 28 months. Gallup, by the way, told us last year they're estimating in Latin American and the Caribbean alone 42 million people intend to come here now that the borders are open.

What's this doing to the situation in your homeless shelters, in your food pantries, and what are you hearing from other cities in New York?

Ms. KENNY. Yes. So, as I've learned in recent weeks, we already have a lot of migrants finding their way to Rockland County through family and friends. It's already putting a burden on our social services in our Rockland county—so much so that they recently had to give another million dollars to the food pantries. Keeping in mind that Mayor Adams got eight—I'm sorry. He got a billion dollars from New York State, and he is looking to put them in hotels in our town without any support or any—

Mr. MCCLINTOCK. What are your constituents telling you?

Ms. KENNY. The constituents have concerns and as you—as I sit here today, and I hear this testimony and I understand why. There are questions raised about where the individuals are going to be vetted and they were told this would be—they would be vetted at the border. So, in light of what I'm hearing today it gives pause for questions about who should be in our community.

Mr. MCCLINTOCK. Thank you.



Chief Scott, one of our colleagues said that you had an impossible job. Was your job impossible when we were actually enforcing our immigration laws?

Chief SCOTT. It was not impossible, and we were getting better at it every single day and we had a strategy to actually secure the border.

Mr. McCLINTOCK. It is basically becoming impossible since Biden changed those policies, is that correct?

Chief SCOTT. Correct. The current flow of illegal immigration will exceed any ability to be able to secure—

Mr. McCLINTOCK. When Mr. Biden canceled work on the border wall did that also cancel work on the technology at the border to detect illegal crossing?

Chief SCOTT. It did that and it also shut off our new communications capability that was being built into the wall system as well.

Mr. McCLINTOCK. Under the Immigration and Naturalization Act foreign nationals claiming asylum are required to be detained until their claim is heard. Are they?

Chief SCOTT. No.

Mr. McCLINTOCK. What can you tell us about cartel and gang activity being introduced into our country over the past two years?

Chief SCOTT. So, everything that crosses that southwest border now is controlled by the cartels. The cartels control the illegal migrant crossings so that they can create these gaps in border security and then they smuggle—when I say gaps in border security, I mean they overwhelm all the law enforcement in the area beyond Border Patrol. Then that opens gaps where there's no law enforcement and they bring anything they want into the country behind that.

Even on the U.S. side, if it's narcotics or even aliens, they are basically facilitated or guided to their ultimate destinations through cartel on this side in very, very, very tight ties with many of the gangs, MS-13 and others. Can't really tell where the cartel ends and where they don't. It's more of a terminology. This is a huge threat and it's gotten significantly worse with the open border created.

Mr. McCLINTOCK. So, they are brought in by the cartels to whom these migrants pay thousands of thousands of dollars, arrive at the border deeply indebted to those cartels, and then they are trafficked throughout the country, are they not?

Chief SCOTT. They are. I really use—

Mr. McCLINTOCK. Who is doing that trafficking?

Chief SCOTT. Again, that's still cartel and that's still gang affiliations or anybody—

Mr. McCLINTOCK. Do we not also have a lot of nongovernmental organizations that are assisting in distributing these migrants across the country?

Chief SCOTT. So, yes. So, currently they're getting millions of dollars. The nongovernmental organizations are getting millions of through FEMA. The people get to choose where they go. So, it's not necessarily those nongovernmental organizations that are telling them go to New York and hook up with smuggler.

Mr. McCLINTOCK. Right.

Chief SCOTT. They're just getting the free plane ticket, the free care, and the feeding and place to rest for a while.

Mr. MCCLINTOCK. Well, free? Nothing is free. Who is paying for those plane tickets?

Chief SCOTT. You are. It's going through FEMA and its basically money being laundered and given to the NGO's to support this entire enterprise.

Mr. MCCLINTOCK. The Dems tell us this is just a hemispheric problem beyond our control, but when we had the Remain in Mexico policy and were completing the border wall and were enforcing court-ordered deportations didn't illegal immigration slow to a trickle?

Chief SCOTT. Dramatically. I agree with the colleague to my right, when people knew what the parameters were and they knew they couldn't defraud the system and get released into the United States before a judge adjudicated their case, they stopped coming. That reduced flow allowed agents to be more effective.

Mr. MCCLINTOCK. Ms. Nobles, can you tell us what you thought when you found out that the suspect in Kayla's murder was found to be an MS-13 gang member and that it was confirmed by a simple phone call by the local police department to El Salvadoran authorities and then discovered that the Federal authorities never bothered to make that call before releasing him into the country?

Ms. NOBLES. I was very angry about the whole thing.

Mr. MCCLINTOCK. What would you have to say to the organizations and officials responsible for the illegal entry literally of millions into this country over the past couple of years?

Ms. NOBLES. It's unbelievable. Like I'm really upset about how it was failed at the border and then allow him to go with his aunt. Then all it started right at the border and then it just went downhill from there.

Mr. MCCLINTOCK. Thank you.

The Chair now recognizes Mr. Hunt. Or no, Mr. Jordan.

Chair JORDAN. I thank the Chair.

It seems to me, Chief Scott, that the fundamental question that people are asking is why? Why is this happening now at this scale? It is certainly the question Ms. Nobles has about what happened to her daughter Kayla. It is a question the supervisor—it is a question the American people have. Why is this happening at this scale? Is it because—well, let me—give me an answer, Chief, what you think the why is.

Chief SCOTT. The short answer is Catch and Release.

Chair JORDAN. Yes.

Chief SCOTT. As long as people know they're going to be released into the United States that is the prize. They don't care about all the rest of the immigration process.

Chair JORDAN. Until you change that fundamental incentive that now exists you will not correct the problem, right?

Chief SCOTT. Correct.

Chair JORDAN. This administration decided on day one—I think this is so important for everyone to fully—on day one they decided they were going to stop building the wall, as you just talked about in your question—in response to the Chair. They said we will stop building the wall. We are going to end Remain in Mexico and we

are going to release you once you get here. They made that decision on day one. That says it all.

So, people come, and they say you know what, we won't have to wait in Mexico. There is not going to be a wall to get over and when we get in, we are going to get released to wherever we want to go. Who wouldn't come to the greatest country ever? Good people and a lot of bad people. Right?

It seems to me this administration made an intentional decision to put in place policies that have led to everything we have been talking about this morning. Do you agree, Chief?

Chief SCOTT. I agree with that. All the conversations I was part of focused on expediting the release of people into the United States. They were adamantly opposed to detention.

Chair JORDAN. When you bring in, as the Chair just talked about, two million who come here, are encountered, who are released, another 1.5 million that we know came, but we didn't actually get—they snuck in somehow, they got in somehow, 32 million people, there are going to be some and people in there.

Chief SCOTT. Statistically that is guaranteed.

Chair JORDAN. Drug dealers, gang members, as Ms. Nobles knows about all too well unfortunately, they are going to be there. Also, terrorists. What is the number up to now? Like we are close to like 100 people who have been on the Terrorist Watchlist who have been encountered on our border because of an intentional decision the Biden Administration made on January 20, 2021. Is that accurate, Chief?

Chief SCOTT. I believe that is accurate.

Chair JORDAN. What is the solution?

Chief SCOTT. The solution is to put back in place procedures that make sure that somebody has due process, that they don't get the prize until a judge adjudicates the case. You have to end Catch and Release. You can do that through detention or you can do that through something like the Remain in Mexico Program.

Chair JORDAN. We want to let good people come to this country. Legitimate asylum seekers, we want to let them in. You know what our legislation did? It did what you just described. It said when you come to this country you will either have to wait in Mexico or we will detain you while we evaluate your claim.

The Democrats say that is radical. That is common sense. If we would have kept that policy Kayla may be alive today, but because we didn't, all kinds of bad things happened.

That is what has to happen. Until the country understands that, the Democrats understand that—it is just so basic: You can't just let people come in the—you have to evaluate their claim. While you are doing that they have to be detained or they have to remain in some other country before we let them come to the United States. That is the answer.

Chief SCOTT. That is the answer. It worked.

Chair JORDAN. Worked before. It will work again. We just have to have the will to put it back in place so that the bad things we see happening all over the country won't continue.

Chief SCOTT. Correct.

Chair JORDAN. With that I yield back, Mr. Chair.

Mr. McCLINTOCK. The Chair recognizes Mr. Hunt.

Mr. HUNT. First, I want to thank the witnesses for being here today to discuss this very important topic that is facing our Nation.

To you, ma'am, Ms. Nobles, I am so sorry for your loss. We failed you. I am so sorry that you lost your daughter, and I can assure you that you are sitting here today means that she lives through you and we will do everything in our power to make sure that her voice will be heard for the future to stop this foolishness from happening again. Thank you for being here, ma'am. I really appreciate it.

Ms. NOBLES. Thank you.

Mr. HUNT. You might be wondering what this photo is behind me. This is a photo of a room in a plush New York City tent made specifically for migrants. There are Xboxes and flat screens everywhere. Every creature comfort that you could think of is in this tent. This tent is actually nicer than my room at West Point. I wish I had this stuff.

My colleagues on the left often talk about the long arduous journey to get to this country. I ask you this: Why would illegal immigrants not make the journey to this country if this was going to be the end result?

In this facility they get free room and board, flat screens, three meals a day, free Internet, and phones. This is the carrot that is bringing millions of illegal aliens to this country at a time when this country can least afford it. For the Democrats migrants jump to the top of the list while Americans are consistently left behind.

Mayor Eric Adams never thought the border crisis would make it to New York City and now even he has to admit that the Biden open border policies have created a, quote, "real-life humanitarian crisis." I say again, a real-life humanitarian crisis. Welcome to the party, sir.

Let me show you a real-life humanitarian crisis. It is American cities due to Democrat policies. American cities had been crumbling long before President Biden opened the border. Now, that every town that we know of including New York City is a border town, it is about to get worse.

This is Philadelphia. These are not illegal immigrants. These are American cities currently living in abject poverty. This situation is about to get worse.

Greetings from Gary, Indiana. Or is that eastern Ukraine? It is hard to say, but I can guarantee you that if this were eastern Ukraine the government would be printing as much money as possible to help them, but not our own American citizens. Not so good for the people of Gary, Indiana. This is not the Dust Bowl or the Great Depression. This is yesterday. Our situation is about to get worse.

It has been three months since the train derailment in East Palestine and the people of East Palestine don't have the necessary resources to rebuild and the community can't even drink clean water today. Like Philadelphia and Gary, Indiana, East Palestine, Ohio, is part of the forgotten America, the Americans left behind as Democrats provide the American dream to illegal aliens and not to our fellow Americans. I have got news for you: It is going to continue to get worse.

We have San Mateo, California in California's 15th Congressional District. If some of my colleagues would spend more time in their districts instead of inside the Beltway, they would see the destruction that their policies are causing their own districts and their own towns. Perhaps then they would have a different position on the southern border. It is about to get worse.

Wait, there is more. This is Redwood City, California. Or is it Tent City, California? Does this look like a country that is thriving? Does this look like a country that is equipped to handle a massive influx of millions more into this country illegally? I think not. The situation is only going to get worse.

This is the death of the America dream and it starts with a carrot, as I discussed in the very beginning, and ends in abject poverty and despair for Americans. It ends in us losing control of our sovereign border. It ends with cartels running our sovereign border and killing our young people. It ends in fentanyl overdoses. It ends in crime.

I am a military guy by trade. I have never seen a derelict of duty like this in my entire life. This is insanity. While we owe the American people an apology, we also owe them to do our damn jobs.

Thank you so much for being here.

With that, I yield back.

Thank you, ma'am. God bless you.

Ms. NOBLES. Thank you.

Mr. MCCLINTOCK. The gentleman yields back.

The Chair recognizes Mr. Swalwell of California.

Mr. SWALWELL. Thank you, Chair.

I am proud to represent the 14th Congressional District of California. I will tell the colleague of mine who represents the 15th that he should probably come and defend his great district because our two districts are some of the most diverse, wealthiest, most educated places in America, and one of the biggest complaints I have from my constituents is it is too damn expensive to live there because there is too much demand on housing.

So, we have got a housing crisis. We have got a congestion crisis because of traffic. It doesn't look like a place that nobody wants to live, but certainly with open hearts and open minds we are doing everything we can to address immigration in our country.

What I hear from my colleagues in this hearing is more chaos, an appetite not for solutions, but an appetite to pander to grievances. They don't want to solve the problem. That is not worth anything to them politically. They want to stoke fear. When the Border Patrol seizes fentanyl at the border, God bless them. Thank them for doing that. They don't celebrate the Border Patrol. They try and use that to own the libs, and clap back at Joe Biden.

Where I come from when cops do their job and catch the bad guys and take drugs off the street, we thank them. We don't use them as political tools because we don't have any ideas or solutions when it comes to immigration.

When they say we are a country of open borders, that doesn't recognize the thousands of Border Patrol agents who work on the border, work hard every day and are trying to make sure we can secure the border. What it does is it invites people to believe that

the borders are open, and it invites more immigration to our country. Again, they don't want to solve this problem.

If they wanted to solve this problem, they would have brought to the floor the comprehensive immigration bill from 2014 where 68 Republican and Democratic senators voted to secure the border, to put 20-plus-thousand more border agents on the border, to have a pathway for earned citizenship, to take care of the dreamers who came here by no fault of their own. Republicans and Democrats voted for that. They walked away from it. So, this is really just more border theater, not border solutions.

Mr. Hetfield, thank you for being a serious participant in this process. I would just like to ask you, if we had passed that comprehensive immigration bill, the bipartisan bill back in 2014 where the most conservative Members of the Senate joined some of the most liberal Members of the Senate, where would be today as far as immigration in America?

Mr. HETFIELD. There's no panacea, but we'd be in a much, much better place. We would have a fighting chance to address this issue. I mean, Congress has not passed immigration reform about legal pathways since 1990. We barely had the—we didn't have the Internet then, right? Most people didn't have computers then. This was a totally different world and that illegal pathways have been totally ignored for 33 years.

Mr. SWALWELL. Talk to me about a shortage of labor. I see this in all sectors across my district. I see it in childcare, I see it in tourism, I see it in hospitality, I see in construction. I have got 50-plus wineries in my district. I see it with the wineries when harvest comes. What would an earned pathway or a skilled workforce pathway mean for addressing labor shortages that only lead to every one of my constituents having to pay more for the goods and services they consume?

Mr. HETFIELD. Yes, that's exactly right. Like we need legal pathways, so that people can take jobs that American citizens are not willing to take. There has been no movement in that area in decades.

People are not coming here to bring fentanyl and to kill people. They're coming here primarily to work and to seek protection. We need a system that actually identifies the people that are coming here for legitimate purposes and to give them legal pathways to do that and to identify the bad actors. We don't have that right now. Our system is totally out of control because we have not resourced—we have not resourced it.

Mr. SWALWELL. Thank you. Yield back.

Mr. MCCLINTOCK. The gentleman yields back.

If there is no further business to come before the Subcommittee, that will conclude our hearing.

I would like to thank our witnesses again for appearing before the Committee today.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 12:13 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Immigration Integrity, Security, and Enforcement can be found at the following links: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=115998>.



**EXAMINING DHS'S FAILURE TO PREPARE FOR  
THE TERMINATION OF TITLE 42**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
BORDER SECURITY  
AND ENFORCEMENT**

OF THE

**COMMITTEE ON HOMELAND SECURITY**

**HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 6, 2023

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## EXAMINING DHS'S FAILURE TO PREPARE FOR THE TERMINATION OF TITLE 42

Tuesday, June 6, 2023

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:14 p.m., in room 310, Cannon House Office Building, Hon. Clay Higgins [Chairman of the subcommittee] presiding.

Present: Representatives Higgins, Guest, Greene, Luttrell, Brecheen, Correa, Thanedar, Garcia, and Ramirez.

Also present: Representatives Pfluger, Crane, Clarke, and Green.

Chairman HIGGINS. I thank my colleagues for joining us today. Welcome to the Subcommittee on Border Security and Enforcement hearing on Title 42 and the preparations leading up to Title 42.

The purpose of today's hearing is to examine the Department of Homeland Security's—what we perceive as a failure to prepare for the termination of Title 42. We are going to discuss that today.

I welcome our witnesses and I very much appreciate their professionalism and taking their time to be with us today. However, I am very disappointed that the Department of Homeland Security declined our request for a third witness, that being someone from senior chain with ICE, Immigration and Customs Enforcement, and we are going to discuss why we believe that particular witness was withheld.

I am also concerned that the witnesses' testimony, written testimony, was not made available to this committee until late in the evening yesterday, rather late at night, well after normal business hours, despite the deadline for written testimony being last Friday. We are going to inquire about that during the course of today's hearing, because what we seek, the truth, on this committee, requires transparency and cooperative effort. When we have a deadline for written testimony, that is when we expect to receive the written testimony. I suspect that our panelists provided that testimony, but it was slow rolled by the Department. We will see. We will dig into that today.

So, despite what Secretary Mayorkas and other officials at DHS are advising the American public regarding the numbers being down, what we have come to observe is rather a shell game in the way numbers are actually documented and reported. The numbers of human beings crossing into America without appropriate documentation are indeed still at the record levels that we saw prior to the end of Title 42. But the classification of those human beings

and the way they are brought into the country has been very cleverly changed by the administration, and we seek clarity on that today. We will ask questions extensively from both sides of the aisle, again seeking truth. There is no benefit to any of us to conceal the actual numbers and the truth regarding immigration, both legal and illegal.

So to reclassify illegal entry as those that have entered by a legal pathway and then tell the American people the numbers are way down, we have this thing under control, this is misleading by design, and we are going to dig into that today.

The CBP One app is being used as a type of asylum application very broadly, allowing those who register with it to move to the front of the line at ports of entry, be processed quickly into the United States as an asylum seeker without the normal asylum process and vetting. These migrants would have attempted to enter the United States between ports of entry and would have been considered illegal aliens and intercepted or encountered by Border Patrol between the ports of entry, but they are being pushed back. If they make it through the NGO's in Central America and Mexico, where many, many are being intercepted and quite effectively redirected through the ports of entry using a CBP One app. The ones that make it to the border are being turned around. Steady increase in what referred to as voluntary return. They are being sent back deeper into Mexico where they are received by NGO's, and they are assisted to fill out the CBP One app and then they are being bussed to the ports of entry and they are entering in that manner through what the administration is calling a legal pathway. So then they tell America that the numbers of illegal migrants are down. It is a shell game. We are going to expose it today. We are going to do so respectfully, but quite aggressively.

I appreciate the opportunity to have presented this opening statement.

I yield the balance of my time.

[The statement of Chairman Higgins follows:]

#### STATEMENT OF CHAIRMAN CLAY HIGGINS

Good afternoon and welcome to the Subcommittee on Border Security and Enforcement hearing on Title 42. The purpose of today's hearing is to examine the Department of Homeland Security's failure to prepare for the termination of Title 42. I would like to welcome our witnesses from the Department of Homeland Security for being here today. While I appreciate the Department for making both these witnesses available for today's hearing, I am incredibly disappointed that the Department did not fulfill the committee's request for a third witness from Immigration and Customs Enforcement.

Title 42 was a highly effective tool used to expel illegal aliens on public health grounds stemming from the COVID-19 pandemic. While my colleagues and I knew the emergency authority would not be in effect indefinitely, the Biden administration had plenty of time to prepare for its ending, enforce existing immigration laws, and implement tougher restrictions to combat the continuing monumental increase of aliens presenting at the Southern Border.

Days before the Biden administration's catastrophic end to Title 42, U.S. Customs and Border Protection (CBP) agents encountered more than 10,000 illegal aliens for at least three consecutive days—a historic record! In addition, front-line Border Patrol agents saw a record number of known gotaways, as more and more aliens attempted to cross the U.S. and Mexico border and evade detection, including an increase in the apprehensions of individuals on the terrorist watchlist.

While it is true that the number of alien apprehensions between ports of entry have fallen since Title 42 expired, per U.S. Border Patrol Chief Ortiz, that number is expected to rise again. As media reporting suggests, there are more than 25,000

aliens in shelters and makeshift encampments living in Mexico. Alarming, an estimated total of 657,000 individuals are either living, traveling, or intending to travel from other countries in the Western Hemisphere and are on track to reach the Southwest Border any day. Moreover, CBP is funneling aliens to ports of entry as evidenced by the rise in CBP's Office of Field Operations Nation-wide inadmissible numbers, which were 82,288 in February 2023—in comparison to the Trump administration pre-COVID, where the inadmissible number was at 24,269 in February 2020.

Mere days after the termination of Title 42, the administration proudly proclaimed that its policies were highly effective in curtailing illegal immigration for the first part of 2023 by creating arguably illegal parole programs. What the administration does not want to publicly acknowledge is that most aliens claiming asylum will lose their claims in U.S. immigration courts. Thanks in large part to the Biden administration's de-prioritization of interior enforcement, many, if not the majority, of these aliens will not be removed or deported from the United States, despite breaking U.S. immigration law and being ordered removed by courts of law. The administration undoubtedly has the necessary tools available to deter and repel aliens coming to our borders and it outright refuses to utilize them, setting the United States up for an infiltration of illegal aliens into American communities.

By failing to sufficiently prepare for the end of Title 42, the administration has announced to the world, and most significantly, our adversaries, that the United States is more vulnerable than ever before, as is evident by the increase of gotaways and those on the terrorist watchlists. Instead of accepting responsibility for their failure to secure the border, the Biden administration would rather play a dangerous game with American's sovereignty and safety. The administration's refusal to adequately respond to the border crisis will no longer be tolerated in a Republican-controlled Majority—enough is enough.

With that, I yield back the balance of my time and look forward to hearing from our witnesses.

Chairman HIGGINS. I recognize for his opening statement my friend and colleague, Ranking Member Correa.

Mr. CORREA. Chairman Higgins, first of all, let me thank you very much for holding this most important hearing. What we want to do is get down to the facts and make sure we know what is going on at the border.

As policy makers on both sides of the aisle, we have to recognize the challenges we have as a Nation. It is important to start by looking back over the last few years and what we have seen to look forward as to what we can expect.

Mr. Chairman, we have dealt with COVID-19, and America spent trillions in fighting COVID-19, and we did pretty well. In fact, our economy is doing better than any other economy in the world today. Record unemployment, worker shortages, and this is happening while, sadly, the rest of the world, the rest of all economies are really crumbling. Even the great China economy is having trouble getting back on its feet.

I would like to submit, without objection, this article from *The Wall Street Journal*, talks about "China's fading recovery reveals deeper economic struggles."

Chairman HIGGINS. Without objection.  
[The information follows:]

ARTICLE SUBMITTED BY RANKING MEMBER J. LUIS CORREA

CHINA'S FADING RECOVERY REVEALS DEEPER ECONOMIC STRUGGLES

BALLOONING DEBT, TEPID CONSUMPTION AND WORSENING RELATIONS WITH THE WEST  
TO WEIGH ON GROWTH, ECONOMISTS SAY

*By Stella Yifan Xie and Jason Douglas*

*May 30, 2023 12:01 am ET*

China's era of rapid growth is over. Its recovery from zero-Covid is stalling. And now the country is facing deep, structural problems in its economy.

The outlook was better just a few months ago, after Beijing lifted its draconian Covid-19 controls, setting off a flurry of spending as people ate out and splurged on travel.

But as the sugar high of the reopening wears off, underlying problems in China's economy that have been building for years are reasserting themselves.

The property boom and government overinvestment that fueled growth for more than a decade have ended. Enormous debts are crippling households and local governments. Some families, worried about the future, are hoarding cash.

Chinese leader Xi Jinping's crackdowns on private enterprise have discouraged risk-taking, while deteriorating relations with the West—exemplified by a new campaign against international due diligence and consulting firms—are stifling foreign investment.

Economists say these worsening structural problems are hobbling China's chances of extending the growth miracle that transformed it into a rival to the U.S. for global power and influence.

Instead of expanding at 6 percent to 8 percent a year as was common in the past, China might soon be heading toward growth of 2 percent or 3 percent, some economists say. An aging population and shrinking workforce compound its difficulties.

China could drive less global growth this year and beyond than many business leaders expected, making the country less important for some foreign companies, and less likely to significantly surpass the U.S. as the world's biggest economy.

"The disappointing recovery today really suggests that some of the structural drags are already in play," said Frederic Neumann, chief Asia economist at HSBC.

China's economy expanded at an annual rate of 4.5 percent in the first quarter, boosted by the end of Covid-era restrictions.

Yet more recent signals suggest the revival is ebbing. Retail sales rose 0.5 percent in April compared with March. A bundle of data on factory output, exports and investment came in much weaker than economists were expecting.

More than a fifth of Chinese youths aged 16 to 24 were unemployed in April. E-commerce companies Alibaba and JD.com reported lackluster first-quarter earnings. Hong Kong's Hang Seng Index, dominated by Chinese companies, is down 5.2 percent year to date, and the yuan has weakened against the U.S. dollar.

Most economists don't expect China's problems to lead to recession, or derail the government's growth target of around 5 percent this year, which is widely seen as easily achievable given how weak the economy was last year.

McDonald's and Starbucks have said they are opening hundreds of new restaurants in China, while retailers including Ralph Lauren are launching new stores.

A boom in electric-vehicle production allowed China to surpass Japan as the world's largest exporter of vehicles in the first quarter. Beijing's industrial policies and China's manufacturing prowess mean it is still finding ways to succeed in some major industries.

"We still have confidence in the long-term growth story of China," said Phillip Wool, head of research at Rayliant Global Advisors, an asset manager with \$17 billion under management. He said the country's transition to one that relies more on domestic consumption instead of exports will help keep it on track.

Still, many economists are growing more worried about China's future.

The big hope for this year was that Chinese consumers would step up spending, as the main drivers of China's past growth—investment and exports—languish.

But while people are spending somewhat more after almost 3 years of tough Covid-19 controls, China isn't experiencing the kind of surge other economies enjoyed when they emerged from the pandemic.

Consumer confidence is low. More important, some economists say, is that Beijing hasn't been able to meaningfully change Chinese consumers' long-running propensity to save rather than spend—a response to a threadbare social-safety net that means families must sock away more for medical bills and other emergencies.

Chinese household consumption accounts for around 38 percent of annual gross domestic product, according to United Nations data, compared with 68 percent in the U.S.

“Consumer-led growth has always been a bit of an aspirational target” for China, said Louise Loo, China lead economist in Singapore at Oxford Economics, a consulting firm. Now, it might be even harder to achieve, she said, given how cautious Chinese consumers are coming out of the pandemic.

Although Beijing is trying to make it easier to borrow this year, lending data indicate households prefer to pay down debt than take on new loans.

In March, Zi Lu dipped into her dowry and paid off the remaining 1.2 million yuan, equivalent to about \$170,000, on her mortgage for an apartment she bought in Shanghai 2 years ago. Working for an e-commerce retailer, she said sales have been underwhelming this year. Lu said she is anxious and wants to reduce her debt burden.

“I’m scared of getting laid off out of the blue,” she said.

Also looming over the economy is its massive debt pile.

Between 2012 and 2022, China’s debt grew by \$37 trillion, while the U.S. added nearly \$25 trillion. By June 2022, debt in China reached about \$52 trillion, dwarfing outstanding debt in all other emerging markets combined, according to calculations by Nicholas Borst, director of China research at Seafarer Capital Partners.

As of last September, total debt as a share of GDP hit 295 percent in China, compared with 257 percent in the U.S., data from the Bank for International Settlements shows. Viewing the debt buildup as a threat to financial stability, Xi has made deleveraging a centerpiece of his economic policy since 2016, weighing on growth.

To help deflate the country’s housing bubble, regulators imposed strict borrowing limits for property developers from late 2020. Property development investment fell 5.8 percent in the first quarter of this year despite policy efforts to stem the pace of the slide.

Two-thirds of local governments are now in danger of breaching unofficial debt thresholds set by Beijing to signify severe funding stress, according to S&P Global calculations. Cities across the country from Shenzhen to Zhengzhou have cut benefits for civil servants and delayed salary payments in some cases for teachers.

These problems are deepening when China’s appeal as a destination for foreign firms is waning, data show, as tensions rise with the U.S.-led West.

Foreign direct investment into China tumbled 48 percent in 2022 compared with a year earlier, to \$180 billion, according to Chinese data, while FDI as a share of China’s GDP has slipped to less than 2 percent, from more than double that a decade ago.

Competition for investment with countries including India and Vietnam is heating up as firms seek to diversify supply chains, partly in response to the risk of disruption from conflict between the U.S. and China.

Jens Eskelund, president of the European Union Chamber of Commerce in China, said uncertainty over China’s long-term economic prospects is another factor in companies’ investment decisions.

“Naturally, it dampens the willingness to go out and invest in additional capacity if you are not super optimistic about the economic outlook,” he said.

Reforms to foster more productive, private-sector activity have stalled under Xi, who is placing greater emphasis on security than economic growth. Beijing has tightened regulation of sectors including technology, private education and real estate, leaving many business owners unwilling to invest more.

In the first 4 months of this year, fixed-asset investment made by private firms grew 0.4 percent from a year earlier, compared with 5.5 percent growth in the same period in 2019.

Chinese leaders have dialed up rhetoric to reassure entrepreneurs and investors. Li Qiang, China’s No. 2 official and new premier, said in March that China will open further to foreign players, and told Communist Party officials to treat private entrepreneurs as “our own people.”

Economists are split over whether policymakers, who have held off on launching large-scale stimulus as they did in 2008 and 2015, will resort to more aggressive stimulus now. Some, including economists from Citigroup, expect China’s central bank to cut interest rates in the coming months to lift sentiment.

Others say that Beijing’s restraint stems from fear of compounding already-high debt levels, and that more stimulus might do little to trigger demand for credit anyway.

Jeff Bowman, chief executive of Cocona, which makes temperature-regulating materials used in apparel and bedding, said he is still optimistic about China. He said that during a recent 2-week business trip to Taiwan and China, customers who were



focused on China's domestic market were far more upbeat than their counterparts exporting to the U.S. or Europe, who he said "are hurting for sure."

He said that Cocona, based in Boulder, Colo., plans to set up a subsidiary in China to expand its business there.

But many analysts still wonder where the growth will come from.

"The big question is, have we reached the point where awareness of the structural slowdown is becoming a near-term issue for confidence? Then it's a bit of a vicious cycle," said Michael Hirson, head of China research at 22V Research, a New York-based consulting firm.

Mr. CORREA. Thank you, Mr. Chairman.

What we now have is a world-wide economic crisis that has led to world-wide economic crisis. There has never been more misplaced individuals probably in the last 100, 200 years in this world. World War II, 60 million individuals on the move. Today we have confirmed it, a greater number of individuals moving throughout the world displaced. This chart, if I can, from the U.N. Refugee Agency, shows the number of displaced persons, those in need of international protection and asylum seekers just in the Americas. As you can see from this chart, countries around the region, in this region, are suffering the challenge of refugees. Mexico is dealing with the refugee crisis within its borders, struggling. Guatemala is struggling. Europe, of course, is also feeling the stress. Further south in Colombia, not only is it hosting 2.5 million Venezuelan refugees, but others as well. Of course, these refugees are facing terrible conditions as they move north, looking for safety and opportunity.

This next picture I am going to show you is of a little girl struggling to continue north across the Darién Gap. She is separated from her mother and is being helped by another refugee trying to survive in that very dangerous region as they move north. If those refugees are willing to take that journey north, you know there is desperation.

So when we look at the post-COVID-19 world, we have to look at the challenges as a Nation. Let me start by saying Title 42 was a pandemic policy that was supposed to end when COVID ended as well. The party in charge of the House Representatives voted to end the COVID-19 pandemic and in doing so, voted to end or lift Title 42. I have to say I agree with them because Title 42 is an issue dealing with pandemics, health issues, and not an immigration instrument tool.

Looking forward to hearing from our witnesses today about the recent encounters at the border. I ask again that you talk about the numbers. As you do, you keep in mind the current challenges and the upcoming challenges, because this refugee challenge is not going away.

I have been to Central America and those nations, their infrastructures are devastated, and it is going to take a lot to get them back on their feet.

Also nearby, I visited all the CPB facilities that I could over the last few months on our Southern Border in the months leading up to the lifting of Title 42. I have also visited San Diego before and after 42. On every trip I would take, I would ask our officers at the border, are we prepared for May 11? Are we ready? They would say, yes, we are, to the best of our ability and based on assumptions that we have made on the numbers of individuals we are as-

suming will be here. You know what? They did a really good job. It wasn't just CBP, it was DHS, State Department, the administration, they did a good job.

In those first few days after Title 42 ended, the encounters dropped at the border by more than half. In fact, if you look at this next chart, those are the numbers reported by Border Patrol Chief Raul Ortiz showing more than a 50 percent drop in encounters since the ending of 42. These numbers continue to remain lower than what they were seeing earlier this spring, despite the fact that there is usually a normal increase at this time of the year, that is a seasonal increase.

Let me just repeat some of the things the administration did. They opened up regional processing centers in which CBP agents told me that they were very helpful in managing the capacity of processing individuals at the border, the administration created legal pathways for Venezuelans, Cubans, Haitians, and Nicaraguans to enter the United States legally, the administration sent active-duty military personnel to help with the logistics and expected surges at the border. By the way, California sent the National Guard and Texas sent the National Guard as well.

While I disagree with some of the consequences put in place at the border, some of the penalties in place at the border following the end of Title 42, they appear to be part of what has happened at the border today. I would say that as a body, as a legislative body, we have got a lot of work to do. The refugee crisis is not going away. It has got to be addressed with on a continent basis. South of the border, these are our neighbors, they are not going to move, they are going to be hanging out for a while. We have to address the challenges south of the border.

I would welcome the Chairman and others to visit with me countries south of the border to address the root causes of migration, to make sure that we prepare for the long-term. We can fight each other, point at each other, but we are talking about solutions in our continent, in our backyard. Though we roll up our sleeves and figure it out, we are going to continue to bicker and fight amongst each other and nothing is going to get done long-term.

So today, from our witnesses, I look forward to hearing your testimony. What you think has led to this—Mr. Chairman, I am not going to say a decline—but management of the border, was there a decline, what were the solutions you put in place, and what we can expect going forward?

Again, I don't believe this chapter is over in this refugee crisis. COVID-19 is still with us, it has devastated the continent, the world, and we are the only game in town. Like it or not, we are the greatest, strongest economy in the world.

With that, Mr. Chair, I want to thank you for my time and I turn over to you.

[The statement of Ranking Member Correa follows:]

STATEMENT OF RANKING MEMBER J. LUIS CORREA

JUNE 6, 2023

It's important to start by looking back over the last few years to see where we've been. And we need to look at where we are and look forward to see what we need to prepare for.

Chairman, we've dealt with COVID-19. America spent trillions in fighting COVID. And as a Nation, we have done pretty well in the aftermath.

In fact, our economy is doing so well that we have a record low unemployment rate and worker shortages. This is happening while the rest of the world's economies are stumbling. Even China, the second-largest economy in the world, is stumbling. I'd like to submit for the record one article talking about China and its post-COVID-19 pandemic woes.

What we have now is a world-wide refugee crisis, like the world has never seen. There are more displaced individuals than there were in World War II—about 60 million then. Today, the number is much greater number.

This chart from UNHCR, the U.N. Refugee Agency, shows the number of displaced persons, those in need of international protection and asylum seekers in the Americas. You can see countries across the region are experiencing unprecedented numbers.

This is not America's problem, it's the world's challenge.

Mexico is dealing with refugees within its borders. Canada has issues as well. Guatemala is feeling the stress of refugees. Europe is also feeling the stress. Further south, Columbia is hosting about 2.5 million Venezuelan refugees. Refugees are braving terrible conditions to find safety and opportunity.

I'd like to show this picture of a little girl struggling to continue on in the Darién Gap to show just some of the conditions refugees are willing to overcome to find safety.

If they are willing to endure this, we can only imagine what home must be like. So, when we look at the post-COVID world, let's look at challenges ahead of us as a Nation.

Let me start by saying that Title 42 was a pandemic policy supposedly intended to protect the public from COVID-19. The party in charge of House of Representatives voted to end the COVID-19 pandemic health emergency. Thus, my Republican colleagues voted to lift Title 42. And let me say, I agree with them. Title 42 should not be used as an immigration or border management tool.

I'm looking forward to hearing from our witnesses about recent encounter numbers. I ask that as you talk about the numbers, you keep in mind the current challenge of world-wide migration. This is not going away and this issue will require a long-term perspective.

While we heard a lot of fear about what might happen post-Title 42, the numbers of migrants we are seeing at the border actually dropped. We were told just last week that there is now significant capacity available in Border Patrol facilities. It's clear this administration has taken extensive steps to prepare for the end of Title 42.

I visited CBP facilities across the Southern Border in the months leading up to end of Title 42. And I visited the border in San Diego just days after it ended.

On every trip I made I would ask the officers and agents "Are we prepared for May 11? Are we prepared for when Title 42 ends?"

They would say "Yes we are prepared. But there is the great unknown and we continue to prepare for all possible scenarios."

They did the best they could, and they were ready.

It wasn't just CBP. It was DHS, the State Department, and this administration more broadly. And it looks like they did a pretty good job.

In those first few days after Title 42 ended, encounter numbers dropped by more than half. In fact, if you look at this chart, these are the numbers reported publicly by Border Patrol Chief Raul Ortiz showing more than a 50 percent drop in encounters since the ending of Title 42. That significant drop in the chart is when Title 42 ended.

Numbers remain significantly lower than what they were seeing earlier this Spring, despite the fact that numbers normally increase at this time of year. Yet this hearing is entitled "Examining DHS's Failure to Prepare for the Termination of Title 42." It's an interesting title. I'd like to recap some of the actions this administration took to prepare.

The administration is opening Regional Processing Centers, which CBP agents have told me will be incredibly helpful in managing the capacity and processing individuals at the ports of entry.

The administration created legal pathways for Venezuelans, Cubans, Haitians, and Nicaraguans to enter the United States legally.

The administration sent active-duty military personnel to help with logistics and surged additional resources from DHS to manage increased encounters.

The administration expanded access to the CBP One app and increased efforts to combat misinformation and stop transnational criminal organizations and smugglers from taking advantage of vulnerable migrants and those who seek to traffic drugs

into the United States. While I disagree with some of the consequences put in place, our border was not overwhelmed following the end of Title 42. Again, we've seen a significant decrease in encounters at the border.

There is still more we can do to improve our border security and reform our immigration system. We need to be prepared if numbers do increase in the future. Because this isn't a short-term challenge. We need to come up with more incentives for refugees to apply for admission to the United States before approaching our borders. We have to refocus on the economies of the world that have been devastated, with particular attention to our North American continent, and our neighbors to the south. And of course, we have to address immigration reform, and the demand for workers by an economically vibrant American economy.

Chairman HIGGINS. I thank my friend, Ranking Member Correa.

Other Members of the committee are reminded that opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

PREPARED STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

JUNE 6, 2023

We are here today to discuss the Department's readiness for the end of Title 42. Despite this hearing's title, the administration did, in fact, prepare for the end of Title 42. And that preparation has been successful. But let's start by acknowledging that Title 42 was a pandemic-era policy. And that Republicans in the House voted to end the public health emergency, which means they voted to end Title 42.

Under Title 42, hundreds of thousands of migrants were denied due process and access to the lawful asylum system. Migrants have the legal right to request protection under U.S. law, and I am glad to see we have transitioned back to regular immigration policy that allows for those laws to be followed. Nevertheless, terminating Title 42 was a complex undertaking that required significant planning.

DHS and the Biden administration instituted a whole-of-Government approach more than a year-and-a-half ago to prepare for the end of Title 42. DHS and the administration surged resources, increased efficiencies, administered consequences for unlawful entry, bolstered capacity, disrupted criminal organizations, and collaborated with international and Federal partners to prepare for the end of Title 42.

While my Republican colleagues may be disappointed with the lack of chaos at the border, the administration's actions led to a dramatic decrease in encounters with migrants at our Southwest Border following the end of Title 42. While the decrease in encounters is encouraging, we know that numbers may increase in the future.

Our immigration system has been broken for decades and we must continue to work to address the problems that plague this system. This committee should help ensure the Department has the personnel and resources it needs to process migrants in an orderly and humane manner. Democrats have worked to ensure the Department has the resources needed to process migrants humanely and efficiently.

Instead of helping the Department prepare and manage encounters on our Southwest Border, Republicans recently voted against authorizing the 1,700 CBP officers needed to increase capacity at our ports of entry. They also voted to cut 2,400 CBP officers and agents. And yet now, despite decreased encounters and the fact that they voted to end Title 42, they are trying to claim that the Department did not adequately prepare.

I look forward to hearing from the witnesses on the state of the border post-Title 42, as well as the Department's extensive efforts to prepare for its termination.

Chairman HIGGINS. I am pleased to have a distinguished panel of witnesses before us today on this very important topic and I ask that our witnesses please rise and raise your right hand.

[Witnesses sworn.]

Chairman HIGGINS. Let the record reflect that the witnesses have answered in the affirmative.

Thank you gentlemen, please be seated.

I would like to now formally introduce our witnesses.

Mr. Blas Nuñez-Neto has been serving as the assistant secretary for border and immigration policy since October 1, 2021. Mr.

Nuñez-Neto has nearly 20 years of homeland security experience and previously served as the chief operating officer at U.S. Customs and Border Protection.

Mr. Benjamine “Carry” Huffman is the acting deputy commissioner for U.S. Customs and Border Protection, where he oversees the daily operation of CBP’s expansive mission, including matters related to trade, travel, and national security. Mr. Huffman entered duty with the U.S. Border Patrol on February 3, 1985 as a member of the Border Patrol Academy Class 173.

I thank our witnesses for being here today, and I now recognize Assistant Secretary Nuñez-Neto for 5 minutes to summarize his opening statement.

**STATEMENT OF BLAS NUÑEZ-NETO, ASSISTANT SECRETARY FOR BORDER AND IMMIGRATION POLICY, OFFICE OF STRATEGY, POLICY AND PLANS, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. NUÑEZ-NETO. Chairman Higgins, Ranking Member Correa, and distinguished Members of the subcommittee, I appreciate the opportunity to appear before you today.

DHS led a comprehensive planning effort for more than 18 months to prepare for the end of Title 42. This effort included record deployments of personnel, infrastructure, and resources to support our front line. We also developed a series of policy measures intended to disincentivize unlawful entries at the land border while incentivizing migrants to use safe, orderly, and lawful processes and pathways to come to the United States.

The end of Title 42 on May 12 allowed DHS to once again impose consequences at the border. Unlike an expulsion under Title 42, removal under Title 8 carries with it a minimum 5-year bar to re-entry and the potential to be prosecuted for repeated re-entries. In the weeks since May 12, DHS has overseen a whole-of-Government effort that has reduced unlawful entries between our ports of entry by 70 percent. We did so even as Congress appropriated less than half of the \$4.9 billion that DHS requested to prepare for the end of Title 42.

As part of these efforts, we strengthened the consequences for those who are apprehended crossing the border unlawfully through the new Lawful Pathways Rule. This rule places common-sense conditions on asylum eligibility for migrants who do not use the lawful pathways and processes that we have dramatically expanded over the last year. Since May 12, USCIS has conducted a record number of credible fear interviews, more than 13,000, for migrants placed in expedited removal. We have repatriated over 38,400 single adults and families to more than 80 countries, including over 1,400 nationals of Cuba, Haiti, Nicaragua, and Venezuela who were returned to Mexico under our Title 8 authorities. This is the first time in our bilateral history that the government of Mexico has allowed the repatriation of non-Mexican nationals at the border under our Title 8 authorities.

DHS has made clear through these efforts that there are serious consequences for unlawful entry. However, consequences are by themselves not sufficient to deter migration. To be most effective, the consequences we enforce must be paired with incentives for mi-

grants to use lawful processes. This administration has overseen a historic increase in access to lawful processes for migrants to come to the United States in a safe and orderly manner that takes them out of the hands of the drug cartels and the coyotes. These processes include supporter-based parole processes for nationals of Cuba, Haiti, Nicaragua, and Venezuela, which have significantly reduced unlawful entries at the border, they include a 300 percent increase since 2019 in temporary work visas available for migrants in the region, and a dramatic expansion of refugee resettlement in the Western Hemisphere. The recently-announced Safe Mobility offices in Guatemala and Colombia will also allow migrants to be referred to legal pathways, not just to the United States, but to other partner countries, including Canada and Spain, that are participating in this effort. We have also significantly expanded orderly access to our land border ports of entry through the CBP One mobile application, which allows us to process almost four times our pre-pandemic average of individuals at our land border ports of entry each day.

Once again, the end result of this comprehensive effort has been a 70 percent decrease in unlawful entries between ports of entries since May 12. However, we know that the conditions in the hemisphere that are driving the unprecedented movement of people, not just to our country, but to countries throughout the region, are still present, and that the cartels and the coyotes will continue to weaponize disinformation to put migrants' lives at risk for profit.

I'd like to conclude by noting that these surges in migration have now become a regular occurrence for more than a decade, under both Republican and Democratic administrations. Presidents of both parties have attempted to use their Executive authorities to address these challenges as we have. This, in turn, has invited litigation from both sides of the political spectrum and has resulted in courts across the country dictating border and immigration policy. It is abundantly clear that Executive action alone cannot solve the entrenched challenge of irregular migration in our region, and neither party can address its impact on our border by themselves. Until and unless the U.S. Congress comes together in a bipartisan way to address our broken immigration and asylum system, we will continue to see these surges in migration at our border.

Thank you for the opportunity to appear before you today and I look forward to your questions.

[The prepared statement of Mr. Nuñez-Neto follows:]

PREPARED STATEMENT OF BLAS NUÑEZ-NETO

JUNE 6, 2023

INTRODUCTION

Chairman Higgins, Ranking Member Correa, and distinguished Members of the committee, I appreciate the opportunity to appear before you today to discuss the Department of Homeland Security's (DHS or Department) on-going efforts to secure and manage our Nation's borders.

I have been serving as the assistant secretary for border and immigration policy since March 26, 2023, having previously acted in this capacity since October 1, 2021. Prior to this role, I served as the chief operating officer at U.S. Customs and Border Protection (CBP), as well as the vice chair for the Secretary of Homeland Security's Southwest Border Taskforce.

For more than 3 years, starting in March 2020, DHS enforced the public health order that the Centers for Disease Control and Prevention (CDC) issued, under Title 42 of the U.S. Code, in response to the COVID-19 pandemic. On May 11, 2023, at 11:59PM ET, the public health emergency officially expired and the pandemic-era Title 42 public health order came to an end.

DHS led a planning effort for more than 18 months to prepare for the end of the Title 42 public health order. This effort included record deployments of personnel, infrastructure, and resources to support our front-line personnel as well as the development of a series of policy measures intended to disincentivize unlawful entries at the land border while incentivizing migrants to use safe, orderly, and lawful processes and pathways to come to the United States. In the weeks since May 12, DHS has executed on this plan by leading a whole-of-Government effort to ensure the safe, orderly, and humane management of the Nation's borders and the continued enforcement of U.S. immigration laws. We did so even as Congress failed to adequately fund these efforts, appropriating less than half of the \$4.9 billion that DHS requested to prepare for the end of Title 42.

The end of the Title 42 Order allowed DHS to fully return to processing all non-citizens under its long-standing Title 8 immigration authorities. DHS has strengthened the consequences for those who are apprehended crossing the border unlawfully, who are now subject to the Circumvention of Lawful Pathways rule on asylum eligibility. Migrants who do not use the expanded lawful pathways and processes to come to the United States in a safe and orderly manner are subject to a rebuttable presumption of asylum ineligibility unless they meet an exception or are able to rebut the presumption.

The result of this comprehensive planning effort has been a significant reduction in unlawful entries between ports of entry along our Southwest Border (SWB), which have decreased by more than 70 percent since May 12. The plan we put forward is working. We are cognizant, however, that the conditions in the hemisphere that are driving unprecedented movements of people are still present and that the cartels and coyotes will continue to spread disinformation about any potential changes to policies at the border in order to put migrants' lives at risk for profit. We will remain vigilant and continue to execute our plan, making adjustments where needed.

Surges in migration have been a regular occurrence for more than a decade under Republican and Democratic administrations. Presidents of both parties have attempted to use their Executive authorities to address these challenges—as we have. This, in turn, has invited litigation from both sides of the political spectrum and has resulted in courts across the country dictating border and immigration policy in ways that are contradictory and detrimental to our ability to manage the border. It is abundantly clear that Executive action cannot solve the entrenched challenge of migration in our region, and that neither party can address its impact on our border by itself. Until and unless Congress comes together in a bipartisan way to address our broken immigration and asylum system, we will continue to see surges in migration at our border.

#### CONTEXTUALIZING MIGRATORY FLOWS

There are more people displaced throughout the world today than at any other time since World War II. Violence, food insecurity, severe poverty, corruption, climate change, the fall-out of the COVID-19 pandemic, and dire economic conditions have all contributed to a significant increase in irregular migration around the globe. In the Western Hemisphere, failing authoritarian regimes in Venezuela, Cuba, and Nicaragua, along with an on-going humanitarian crisis in Haiti, have driven millions of people from those countries to leave their homes. Moreover, violence, corruption, and the lack of economic opportunity—challenges that are endemic throughout the region—are driving many others from countries as diverse as Colombia, Ecuador, Guatemala, Honduras, and Peru to make the dangerous journey to our border.

Transnational criminal organizations encourage and facilitate these migratory flows, spreading disinformation about what individuals will encounter along the route and at our border, so they can exploit migrants as part of a billion-dollar criminal enterprise. The increasing role that drug cartels are playing in human smuggling throughout the region is particularly concerning given their complete disregard for human life, which has led to tragedies in the United States, Mexico, and other countries.

The increased migratory flows at our border are a direct result of global trends that have been building for many years. Historically, encounters along the SWB in the 1980's and 1990's consisted overwhelmingly of single adults from Mexico, most

of whom were migrating for economic reasons and regularly crossed back and forth across the border. Until the early 2000's, annual encounters routinely numbered more than a million. In the early 2010's, after three decades of bipartisan investments in border security and strategy, encounters along the SWB reached modern lows, averaging fewer than 400,000 per year from 2011 to 2017. However, even during this period of relatively low encounters, DHS faced significant surges in migration by unaccompanied children in 2014, and family units in 2016, which strained our operations given the unique challenges posed by those demographics. Between 2017 and 2019, encounters along the SWB more than doubled, and—following a significant drop during the beginning of the COVID-19 pandemic, which shut down travel across the world and depressed migration—continued to increase in 2021 and 2022.

In fiscal year 2021, encounters at the SWB reached levels not seen since the early 2000's, with a total of 1.7 million encounters. In fiscal year 2022, DHS reached a high-water mark for encounters at the SWB with 2.4 million total encounters. A surge in migration of nationals from Cuba, Haiti, Nicaragua, and Venezuela (CHNV) accounted for more than two-thirds of the increase in encounters from fiscal year 2021 to fiscal year 2022. DHS encountered more than 626,000 CHNV nationals in fiscal year 2022 comprising 26 percent of total encounters and 35 percent of unique encounters—by far the highest proportion these groups had ever accounted for. This surge was largely driven by deteriorating conditions in these countries, as well as DHS's general inability to impose immigration consequences on nationals from these countries that were encountered at the border because of the requirement to implement the Title 42 public health order. Venezuela does not allow repatriations via charter flights, which significantly limits DHS's ability to remove Venezuelan nationals. Nicaragua and Cuba have historically placed restrictions on the number of charter flights that DHS can operate. DHS has, however, recently restarted removal flights to Cuba, conducting two individual flights on April 24 and May 10—the first since the onset of the COVID-19 pandemic in 2020. While DHS does continue to operate removal flights to Haiti, the deteriorating security, economic, and political situation on the ground there, including the security situation at the Port-au-Prince airport, has raised operational challenges in doing so at particular times.

These historic challenges were exacerbated by the unpredictable impacts that the application of Title 42 at the SWB had on migration in our hemisphere. Because Title 42 expulsions had no immigration consequence for migrants, these expulsions did not have the same impact as traditional Title 8 processing. Unlike a Title 42 expulsion, a removal under Title 8 carries with it at least a 5-year bar to admission, among other legal consequences such as potential criminal prosecution for repeated entries. The application of Title 42 at the border—which DHS was required by a court order to continue to implement after the CDC initially determined it should have been ended in April 2022—may have actually increased border encounters, particularly for single adults expelled to Mexico. This is due to the significant increase in recidivism—or multiple encounters of the same person—observed for individuals processed under Title 42 as compared to those processed under Title 8 authorities. From the start of the pandemic and the initiation of Title 42 expulsions through December 31, 2022, 39 percent of all Title 42 expulsions were followed by a re-encounter of the same individual within 30 days, compared with a 30-day re-encounter rate of 9 percent for Title 8 repatriations. Similarly, the 12-month re-encounter rates were 51 percent for Title 42 expulsions versus 20 percent for Title 8 repatriations. Overall, in April 2023, 26 percent of encounters at the SWB involved individuals who had at least one prior encounter during the previous 12 months, compared to an average 1-year re-encounter rate of 14 percent for fiscal year 2014–2019.

#### A WHOLE-OF-GOVERNMENT APPROACH TO MANAGE AND SECURE THE BORDER

DHS led a comprehensive all-of-Government effort to prepare for the end of the Title 42 public health order that lasted more than a year-and-a-half. In the Fall of 2021, DHS began contingency planning efforts that included building an operational plan and conducting regular interagency tabletop exercises. Through the Southwest Border Coordination Center (SBCC), formally launched in February 2022, DHS leveraged its components, including CBP, U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), U.S. Coast Guard, and the Federal Emergency Management Agency (FEMA), in coordination with interagency partners across the Federal Government, to strategically position resources and accelerate processing efficiencies that enable DHS to better manage the operational environment along the SWB. DHS is also working closely with the De-



partment of State (DOS) to engage partners in the region to streamline repatriation processes, increase removal flights, and address migratory flows downstream.

In April 2022, Secretary of Homeland Security Alejandro N. Mayorkas issued the DHS Plan for Southwest Border Security and Preparedness, laying out a six-pillar plan to manage an increase in encounters once the Title 42 Order was no longer in effect. DHS updated this comprehensive plan in December 2022, and continues to build upon the impact DHS has seen as a result of these efforts, which include: (1) Surging resources, including personnel, transportation, medical support, and facilities to support border operations; (2) increasing CBP processing efficiency and moving with deliberate speed to mitigate potential overcrowding at U.S. Border Patrol (USBP) stations and to alleviate the burden on the surrounding border communities; (3) administering consequences for unlawful entry, including removal, detention, and prosecution; (4) bolstering the capacity of non-governmental organizations (NGO's) to receive noncitizens after they have been processed by CBP and are awaiting the results of their immigration proceedings; as well as ensuring appropriate coordination with and support for State, local, and community leaders to help mitigate increased impacts to their communities; (5) targeting and disrupting the transnational criminal organizations (TCOs) and smugglers who take advantage of and profit from vulnerable migrants, and who seek to traffic drugs into the United States; and (6) deterring irregular migration south of the border, in partnership with the DOS, other Federal agencies, and nations throughout the Western Hemisphere, to ensure responsibility sharing. This robust plan leverages a whole-of-Government approach to prepare for and manage potential increases in encounters of noncitizens at the SWB.

At our current funding level, DHS has:

- Surged personnel to reinforce the more than 24,000 USBP and Office of Field Operations (OFO) personnel at the border, with approximately 1,000 law enforcement officers from across the DHS network, as well as other Federal agencies, thousands of contract personnel, 1,500 active-duty military personnel, and hundreds of volunteers from across DHS and interagency partners.
- Dedicated and retrained more than 1,000 USCIS officers to conduct credible fear interviews of migrants encountered at the border, allowing DHS the ability to more quickly provide relief to those who are eligible and expeditiously remove those who are not.
- Enhanced surveillance capacity by adding 81 new autonomous surveillance towers since the start of fiscal year 2022 for a current total of 223. The President's fiscal year 2024 budget also requests more than \$500 million in border technology.
- Expanded CBP temporary holding capacity at the border by nearly 50 percent, from 13,230 in January 2021 to over 19,000 today.
- Made available several thousand detention beds in the ICE network by updating guidelines to reflect the latest CDC guidance regarding congregate settings in detention facilities.
- Increased contracted medical personnel by 75 percent since the start of fiscal year 2022.
- Arrested nearly 10,000 smugglers and disrupted thousands of human smuggling operations, such as raiding smuggler stash houses, impounding tractor trailers that are used to smuggle migrants, and confiscating smugglers' information technology.

We have also been working closely with the DOS and countries throughout the hemisphere—including Mexico, Guatemala, Costa Rica, Colombia, Ecuador, and Panama—to expand efforts to counter human smuggling organizations, humanely secure borders, increase labor mobility, and expand protection and lawful pathways for intending migrants. A key part of this coordination with foreign partners has been working to increase our capacity to remove individuals who do not establish a legal basis to remain in the United States. These efforts have included significantly increasing the number of flights that ICE is able to operate to countries throughout the hemisphere—with the number of removal flights doubling or tripling for some countries—while streamlining the requirements that countries place on operating those flights, and generally making it easier to repatriate individuals. As an example, we have increased the number of weekly flights that we can operate to countries such as Ecuador and Colombia from 2 and 1 in 2021, to 8 and 12 today, respectively.

Through this planning effort and intensive international negotiations, DHS has repatriated—through removals, returns, and expulsions—record numbers of noncitizens over the past 2 years. Since January 2021, DHS repatriated 3.4 million individuals to 146 countries, including a record 1.5 million individuals in fiscal year 2022.

NEW MEASURES TO EFFECTIVELY MANAGE AN ORDERLY AND HUMANE IMMIGRATION SYSTEM

In addition to coordinating an all-of-Government response and surging personnel, infrastructure, and other resources to the border, DHS has taken a number of innovative policy steps that seek to change the calculus for intending migrants. These measures impose new consequences on individuals who cross the border unlawfully and do not qualify for an exception, while significantly expanding lawful pathways to incentivize noncitizens to use safe, orderly, and lawful pathways to come to the United States without having to put their lives in the hands of drug cartels and smugglers. As part of these efforts, we have also overseen the largest expansion in lawful pathways in decades even as we have set records for repatriations.

As described above, most of the increase in encounters from fiscal year 2021 to fiscal year 2022 was driven by a surge in migration from CHNV nationals—countries for which the United States had limited ability to impose consequences on unlawful entry. In the fall of 2022, Venezuelan migrants began to take the extraordinarily dangerous path to our border in increasing numbers—a journey that goes through the most dangerous border crossing in the world, the Darién region, a jungle between Colombia and Panama. By early October 2022, DHS was encountering more than 1,100 Venezuelan migrants a day between ports of entry (POEs) and Panama was encountering roughly 4,000 a day exiting the Darién. In response to this challenge, DHS developed—in close coordination with the government of Mexico—an innovative approach that provided Venezuelans with a safe, orderly way to come to the United States and imposed new consequences on those who crossed unlawfully. Venezuelans who did not use this new process and were encountered at the land border would, for the first time, be returned to Mexico. As part of this process, U.S.-based supporters provide financial support for Venezuelan nationals who can be authorized to travel directly to the interior of the United States—after clearing national security and public safety vetting—to seek a discretionary grant of parole based after a case-by-case determination.

The Venezuela process significantly reduced irregular migration to the border, and throughout the entire hemisphere. Two weeks after the announcement, encounters of Venezuelan nationals between POEs had declined to under 200 per day. This significant reduction continues today with a daily average of 162 the week ending June 2. Panama has seen a similarly dramatic decline in Venezuelans exiting the Darién, reflecting a paradigm shift in regional migratory flows.

In November and December 2022, DHS began to see a surge in migration from nationals of Cuba and Nicaragua, with CHNV encounters between POEs peaking at 3,644 encounters on December 10. On January 5, 2023, DHS announced the expansion of the Venezuela process to Cubans, Haitians, and Nicaraguans. Encounters of CHNV nationals between POEs at the SWB immediately declined, from a 7-day average of 1,231 on the day of the announcement on January 5, to a 7-day average of 205 2 weeks later. The reduction occurred even as encounters of other noncitizens began to rebound from their typical seasonal drop and represented a decline of 94 percent from the early December 10 peak; and CHNV encounters between POEs are even lower today, averaging 182 per day the week ending June 2, down 95 percent from the December peak.

The significant decrease in unlawful entries after the implementation of the CHNV enforcement processes—a decrease that holds months later—demonstrates clearly that migrants will wait to utilize a safe, lawful, and orderly pathway to the United States if one is available, rather than putting their lives and livelihoods in the hands of ruthless smugglers.

It is also true that smugglers will look for any opportunity to deceive migrants about U.S. law and immigration policies at the border in order to drive migration. We saw this phenomenon play out in the weeks leading up to the end of Title 42, when smugglers weaponized misinformation to convince migrants in Mexico that the United States was no longer returning Venezuelan nationals at the border and used the promise of heightened consequences starting on May 12 to convince migrants to part with their money and risk their lives to attempt to enter unlawfully before that date. This resulted in an increase in encounters of Venezuelan nationals to their highest levels since the implementation of the parole process in October 2022—even as encounters of Cubans, Haitians, and Nicaraguans remained at historically low rates. Encounters of Venezuelans once again declined precipitously with the resumption of Title 8 processing and the implementation of stricter consequences for non-citizens who unlawfully cross the border into the United States. As noted above, after May 12 CHNV encounters declined precipitously once again, to an average of fewer than 182 per day the week ending June 2.

On May 12, 2023, after a robust regulatory process that included responding to more than 50,000 comments from the public, DHS and the Department of Justice began implementing the Circumvention of Lawful Pathways rule, which is designed to build on the success of the CHNV enforcement processes. The rule is designed to cut the transnational criminal organizations that prey on migrants out of the process, making migration safer and more orderly. Its provisions incentivize migrants to use the new and existing lawful processes that DHS has established and disincentivize dangerous border crossings by placing a common-sense condition on asylum eligibility for those individuals who fail to do so, and who do not otherwise qualify for an exception.

Under the rule, individuals who circumvent the expanded lawful, safe, and orderly pathways into the United States—including the CHNV processes, the significant expansion in refugee and temporary work visas, and use of the CBP One mobile app to schedule a time and place to arrive at a port of entry—and also fail to seek protection in a country through which they traveled on their way to the United States, are subject to a rebuttable presumption of asylum ineligibility in the United States unless they meet specified exceptions. Individuals who cannot establish a valid claim to protection under the standards set out in the rule are subject to prompt removal under Title 8 authorities, which carries at least a 5-year bar to admission to the United States and the potential to be criminally prosecuted for repeated unlawful entry.

To implement the rule to the maximum extent possible, DHS has surged resources, including training more than 1,000 USCIS officers to support an unprecedented increase in credible fear interviews for those placed into expedited removal proceedings. This ambitious plan included adding more than 600 private interview spaces in CBP and ICE facilities to provide noncitizens in our custody who wish to consult with legal services providers the opportunity to do so—if legal service providers are available.

Since May 12, USCIS has conducted more than 13,000 credible fear interviews—a record number of interviews conducted by USCIS personnel during a 3-week period.

DHS has made clear through these efforts that there are consequences for unlawful entry. From May 12 to June 2, 2023, DHS repatriated over 38,400 noncitizens under Title 8 authorities, including single adults and families, to more than 80 countries. This includes over 1,400 noncitizens from Cuba, Haiti, Nicaragua, and Venezuela who were returned to Mexico under Title 8 authorities—the first time in our bilateral history that the government of Mexico has allowed the repatriation of non-Mexican nationals at the border under Title 8 authorities.

Consequences are, by themselves, not sufficient to deter migration. Migrants have, time and time again, shown that they are willing to endure unfathomable suffering for an opportunity to come to the United States. And our Nation has, for generations, been made stronger by those migrants that have come. To be effective, the consequences we apply must be paired with incentives for migrants to use lawful processes. This administration has overseen a historic increase in access to lawful processes for migrants to come to the United States in a safe, orderly, and lawful manner.

The CHNV processes described above have allowed more than 130,000 individuals who have U.S.-based supporters and have passed the requisite national security and public safety vetting, to come directly to the United States. We have significantly expanded the number of temporary work visas available for migrants in the region, especially in Northern Central American (NCA) countries of El Salvador, Guatemala, and Honduras, through the H-2A and H-2B programs. As of May 11, 2023, 11,991 H-2B visas were issued to nationals of El Salvador, Guatemala, Honduras, and Haiti. This is almost double the number of H-2B visas issued for these populations last fiscal year and a 300 percent increase compared to the entire fiscal year 2019.

We have also dramatically expanded refugee resettlement in the Western Hemisphere, working in conjunction with the DOS. We resettled 2,485 individuals in fiscal year 2022, a 521 percent increase over fiscal year 2021 and an 8-year high for the region. As of April 30, 2023, we have already resettled 2,826 refugees from the Western Hemisphere—a nearly 20 percent increase over the total fiscal year 2022 with 5 months left in the fiscal year. With the establishment of Safe Mobility Offices in South and Central America, we will significantly increase the number of individuals processed for refugee resettlement in the coming months and years.

We have also significantly expanded access to our land border ports of entry. The CBP One mobile app, which is available to download for free to a mobile device, allows individuals of any nationality who are in Central or Northern Mexico to schedule an appointment to present at a POE along the SWB in a safe and orderly man-

ner. The advance biographic and biometric information captured by the app allows CBP to significantly streamline its processes at the border, which in turn has allowed CBP to greatly increase its ability to process inadmissible individuals at land border POEs compared to its 2014–2019 pre-pandemic average. On June 1, CBP expanded the number of available daily appointments to 1,250 per day—almost 4 times our pre-pandemic average. These individuals have presented in a safe and orderly manner at a port of entry each day during their scheduled appointment time. Since its launch on January 18, 2023, more than 125,000 noncitizens have successfully scheduled an appointment to present at a designated POE through the CBP One app, and more than 109,000 of those appointments have been processed thus far at POEs along the SWB. This app, available in English, Spanish, and Haitian Creole, effectively cuts out the smugglers, decreases migrant exploitation, and improves safety and security in addition to making the process more efficient.

We also recognize that the United States cannot address this issue on its own. As endorsed by the 21 countries that signed the Los Angeles Declaration on Migration and Protection in June last year, it is our collective responsibility to address the factors causing irregular migration throughout our hemisphere. A key pillar of these efforts includes DHS and DOS are continuing to deliver on our commitments by establishing Safe Mobility Offices in South and Central America, starting with Guatemala and Colombia, which formally announced their participation on June 1 and June 5, respectively. Safe Mobility Offices enable eligible individuals to begin the process of accessing protection and other lawful pathways to the United States or other partner countries including Canada and Spain.

We have also seen governments in the region step up their enforcement measures since May 12. For instance, The GOM is also undertaking an unprecedented migration management effort on its Southern Border with Guatemala, and along key transit routes, and along our shared border. For its own sovereign reasons, the GOM continues to be a leader in the region when it comes to innovative and balanced efforts to manage migration. The government of Guatemala (GOG) has also taken important steps to address migratory flows. In addition to our work together to establish safe mobility offices, the GOG has augmented its border control activities by deploying military and law enforcement personnel on its own Southern Border. And finally, recognizing that the unmonitored flow through the Darién region has increasingly been managed by transnational criminal organizations, is dangerous for the migrants who use it, and contributes significantly to the volume of irregular migratory flows in the region, the governments of Colombia and Panama are, for the first time, working together to attack transnational criminal networks operating in the Darién. Finally, throughout the region, DHS and DOS are working bilaterally with numerous partner countries to encourage the strengthening of visa policies, better and more targeted screening of individuals flying into the hemisphere, and enhanced capture and exchange of biometric data. All these efforts, when taken together, represent significant strides forward in managing the extraordinary migration challenge that is facing this hemisphere.

#### CONCLUSION

The bottom line is that this approach is working. Since the CDC’s Title 42 public health order ended and the Biden-Harris administration’s comprehensive plan to manage the border went into full effect on May 12, 2023, encounters between POEs at the border have decreased by more than 70 percent compared to the 48 hours preceding the end of Title 42, with CBP averaging 3,400 USBP encounters in between POEs per day and less than 300 non-CBP One OFO encounters at POEs per day.

Our message has been clear—there are safe, lawful pathways to come to the United States, and consequences for those who do not use them. Those who come lawfully will be able to stay and work in the United States for the time that they are authorized to be here, while those who come unlawfully will be subject to strengthened consequences and quickly removed.

DHS is encouraged by this progress, but we recognize that the underlying conditions prompting historic migration across the Western Hemisphere remain, and smugglers will continue to weaponize disinformation to put migrants lives at risk for profit. DHS remains vigilant and will continue to deliver the strengthened consequences that have been put in place at the border for migrants who fail to take advantage of the historic increase in lawful pathways to come to the United States. We will continue to work with our foreign partners, including the GOM, to coordinate enforcement efforts and provide lawful pathways for migration throughout the Hemisphere.

We have demonstrated our commitment to work innovatively within our statutory authorities, and using the resources made available by Congress, to address the challenges we are facing at our border and in the region—challenges that have led to repeated surges in migration over the past decade years under Presidents of both political parties. However, it is clear that there is no lasting solution to these challenges that does not include the U.S. Congress working on a bipartisan basis to update our hopelessly outdated immigration laws—laws that have not been touched in decades, and that were created to deal with a dramatically different migratory challenge. The fact that DHS’s efforts continue to be the subject of on-going litigation—from both sides of the political spectrum, and often on the same issue—clearly demonstrates the need for Congressional action. Neither party can solve this problem on its own, and letting the courts continue to dictate immigration and border policy is simply untenable.

The Department remains eager to work with this committee and other Congressional leaders, on a bipartisan basis, to update the United States’ immigration framework, including by modernizing the asylum system. Until that happens, DHS will continue to utilize every tool currently at its disposal and within DHS’s authorities to secure the border and create a safe, orderly, and humane immigration system.

I am proud of the work that DHS and the men and women on the front lines have been doing to address these challenges. The best way for Congress to support them is by once and for all fixing our outdated, broken immigration system.

I look forward to working together and to answering your questions. Thank you.

Chairman HIGGINS. Thank you, sir. Appreciate your opening statement.

I now recognize Mr. Huffman for 5 minutes to summarize his opening statement.

**STATEMENT OF BENJAMINE “CARRY” HUFFMAN, ACTING DEPUTY COMMISSIONER, CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. HUFFMAN. Good afternoon, Chairman Higgins, Ranking Member Correa, and distinguished Members of the subcommittee. It is an honor to testify today on behalf of U.S. Customs and Border Protections work force and discuss our preparations for the termination of Title 42 Public Health Order.

Before I cover those preparations, however, I want to take a moment to state how proud I am of the CBP work force and how time and again they rise to meet any challenge thrown their way. I would also be remiss if I didn’t point out that last month, the U.S. Border Patrol celebrated their 99th anniversary since their establishment in May 1924. I’ve had the privilege of serving within their ranks for over 38 of those 99 years.

CBP operates in an ever-evolving and dynamic environment, which is complex, demanding, and dangerous. The 64,000 men and women who make up CBP work in this environment under extreme stress, stress not only is a result of the mission itself and the expectations of the Nation we serve, but also acute personal stress. The last 3 years have been particularly difficult, exhaustive, and taxing while extending our work force to extreme limits. This period of time has required enormous sacrifices, the greatest of which has been the cost of the lives of our work force—64 line-of-duty deaths since 2020, of which 55 were attributed to COVID-19 and, tragically, another 36 employees who died by suicide. The leadership of CBP recognizes the stress and the well-being of our employees as a CBP’s top priority. I am thankful for the support Congress has provided us for our dedicated work force.

Whether we're talking about the Southwest Border before, during, or after Title 42, CBP has seen considerable operational demands. Today, I would like to first highlight some of those challenges and second, discuss how CBP prepared for the end of Title 42.

First, the Southwest Border environment is immensely complex and can be dangerous. To that end, CBP continues to counter the threat of sophisticated transnational criminal organizations that profit from ruthless human and drug smuggling. When it comes to drugs, such as illicit fentanyl, CBP is increasing our detection capabilities and working with our partners to dismantle production and trafficking. These efforts have led to results. In April, we surpassed the amount of fentanyl seized during all of fiscal year 2022. Special multi-agency operations, such as Operation Blue Lotus and Four Horsemen, amplified our efforts. In just 2 months these operations led to the seizures of more than 5,700 pounds of fentanyl and 250 arrests.

CBP is also responding to the historic flows of irregular migration as transnational criminal organizations take advantage and mislead migrants. In the course of combating these ruthless organizations, CBP regularly performs life-saving rescues and provides initial emergency medical care to those in distress in often the extreme environments. As a result, CBP officers and agents have conducted nearly 3,700 rescue operations this year alone and provided life-saving assistance to more than 24,000 migrants.

Which brings me to my second point. CBP, along with our DHS partners, have been planning and preparing for the end of Title 42. Our preparations align with CBP's overall strategy, prioritize and strengthen National and border security, enforce the rule of law, including human and civil rights, while implementing Executive branch policies, provide for the safe, humane processing of migrants, and ensure the continued flow of lawful trade and travel.

In anticipation of increased migration flows, CBP surged resources to encounter migrants crossing between ports of entry and to safely and thoroughly conduct immigration processing. This is done with a persistent focus on maintaining national and economic security, with all of our preparations considering how to care for and alleviate the stress upon our most important asset, our work force. As we have done throughout our history, CBP has resumed fully using Title 8 immigration authorities. Title 8 provides meaningful consequences for unlawful border crossings, including expedited removal, a 5-year ban on U.S. admission, and criminal prosecution.

In the days preceding the lifting of Title 42, CBP encounters with non-citizens between the ports of entry reached historic highs, approximately 10,000 a day. In the weeks since, the numbers have dropped by approximately 70 percent. At our ports of entry we've recently been encountering over 1,250 non-citizens a day who have made appointments through the CBP One app mobile application.

In closing the border has always been a dynamic and complex environment, and as always, the CBP work force will be prepared for any challenges that may come up. CBP will continue to do our part enforcing the law, ensuring our work force and individuals in our

custody are properly cared for, and being a trusted partner to all others in this effort.

Thank you for the opportunity to appear here today, and I do look forward to your questions.

[The prepared statement of Mr. Huffman follows:]

PREPARED STATEMENT OF BENJAMINE “CARRY” HUFFMAN

JUNE 6, 2023

INTRODUCTION

Chairman Higgins, Ranking Member Correa, and Members of the subcommittee, thank you for the opportunity to discuss the conditions along the Southwest Border and U.S. Customs and Border Protection’s (CBP) critical role in securing our borders and facilitating lawful trade and travel. I am honored to represent the dedicated men and women of CBP who operate on the front lines to ensure our national and economic security.

The emergence of the COVID–19 pandemic and the March 2020 implementation of the Centers for Disease Control and Prevention’s (CDC) public health order, commonly referred to as Title 42,<sup>1</sup> transformed the Southwest Border environment and significantly altered CBP’s operations. From March 2020 until the order terminated at 11:59 p.m. ET on May 11, 2023, CBP assisted in enforcing Title 42, which suspended the right to introduce into the United States certain non-citizens arriving at the land and adjacent coastal borders to protect against the spread of COVID–19.

Throughout the pandemic, CBP and our partners responded to high levels of migrant encounters, simultaneously upholding civil and human rights, securing our borders, and protecting the health and safety of surrounding communities, our personnel, and the noncitizens we encounter. The COVID–19 outbreak in early 2020 and the resulting worldwide pandemic was particularly hard on the men and women of CBP. While many people retreated to the safety of their homes and telework, CBP remained on the front line directly confronting this deadly virus in continuance of our border security mission and keeping the Nation’s economic engine running and viable. This was at extreme cost to the agency with tens of thousands of employees contracting the virus—resulting in 55 deaths directly attributed to contracting the virus in the line of duty.

While the Title 42 Order was effective in helping CBP quickly expel certain covered noncitizens as part of our national efforts to prevent the spread of the virus, the order carried no legal consequences for attempts at unlawfully crossing the United States border and, as a result, repeat encounters increased significantly.<sup>2</sup>

As a critical component of the Department of Homeland Security (DHS) planning effort, CBP made numerous preparations for the end of the Title 42 order. Our response focused on the application and enforcement of immigration authorities and regulations and was supported by the deployment of technology and infrastructure; increased levels of personnel; improved processing efficiencies and security; and coordination with our partners.

Leveraging experience and expertise gained during previous migration surges, CBP, together with our partners, prepared a response plan, now implemented, to ensure we can continue to scale our operations and effectively respond to areas of the greatest need, impose consequences on those who break the law, and process noncitizens safely and humanely.

CURRENT POST-TITLE 42 PROCESSING AND SECURITY OPERATIONS

As anticipated, in the days leading up to the termination of the Title 42 Order, daily CBP encounters with noncitizens between the ports of entry (POEs) reached historic highs of approximately 10,000 per day. Since the CDC’s Title 42 public health order terminated and DHS and the Department of Justice (DOJ) began implementing a new regulation on May 12, 2023, CBP has experienced a significant reduction in encounters at the Southwest Border. Following the termination of the

<sup>1</sup>March 20, 2020, CDC Order under Sections 362 and 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268), Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists. [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf).

<sup>2</sup>See U.S. Border Patrol Recidivism Rates—<https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

Title 42 Order, CBP has been encountering approximately 3,400 noncitizens between POEs per day. At the POEs, CBP has been encountering approximately 1,000 noncitizens per day, predominately with an appointment scheduled through the CBP One mobile application. The level of encounters between the POEs represents a decrease of approximately 70 percent compared to the 48 hours preceding the termination of the Title 42 Order.

Together with our partners across DHS and throughout the Federal Government, CBP's response has been focused on the resources and capabilities needed to enforce the law and regulations to mitigate potential increases in migration and keep our front-line personnel where it belongs: on the front line.

#### *Enforcement of Immigration Authorities and Regulations*

With the termination of the CDC's Title 42 public health order, CBP has resumed using its full range of immigration authorities under Title 8 of the U.S. Code to process migrants encountered at the border without documentation for lawful admission, as we have done throughout our agency's history. These authorities provide for meaningful consequences that include placing individuals in expedited removal or other immigration removal proceedings. Under Title 8, an individual who is removed is subject to at least a 5-year ban on admission to the United States and can face criminal prosecution for any subsequent attempt to cross the border illegally.

Coupled with these consequences, DHS and DOJ implemented a final rule,<sup>3</sup> "Circumvention of Lawful Pathways," that establishes a rebuttable presumption of asylum ineligibility for certain noncitizens who fail to seek asylum or other protection in one of the countries through which they travel on their way to the United States, and who fail to take advantage of the existing and expanded lawful pathways to enter the United States, including the opportunity to schedule a time and place to present at a POE via the CBP One mobile application.

Those who attempt to cross the Southwest Border without utilizing these processes are, with some exceptions, subject to a rebuttable presumption of asylum ineligibility. To maintain our border security posture and ensure this process is conducted fairly, efficiently, and safely, CBP has deployed technology, increased personnel, expanded facilities and transportation, improved processing efficiencies, and strengthened coordination with our partners.

#### *Deployed Technology, Infrastructure, and Personnel*

Accelerating efforts to provide significant enhancements to its domain awareness capabilities between the POEs, CBP made substantial investments in advanced technologies that improve our agent and officer efficacy and safety, including improved communications solutions, body-worn cameras, and additional autonomous surveillance towers. Additionally, CBP's large- and small-scale non-intrusive inspection (NII) systems are critical tools used at and in between the POEs to provide officers and agents with deeper insight into what is entering or traveling through the United States. The NII systems alert officers and agents to the presence of anomalies in shipments, passenger belongings, cargo containers, commercial trucks, rail cars, and privately-owned vehicles, quickly signaling to officers and agents where further inspection is needed.

CBP has also closed 55 gates and gaps in the border barrier to date, and we are working to close an additional 74 gates and gaps along with life, safety, environmental, and other remediation activities at incomplete border barrier projects.

Surveillance and detection technology is critical to our border security operations but serves only limited purpose without our greatest asset: our skilled and professional workforce. CBP has approximately 24,000 agents and officers along the Southwest Border. We have been hiring more personnel, especially non-uniformed support personnel and contract personnel to assist in data entry and facility operations. These personnel investments allow our law enforcement agents and officers to stay in the field and focus on their critical security mission.

#### *Expanded Facilities and Transportation and Improved Safety*

To accommodate increases of non-citizens in CBP custody, we renovated and opened the Rio Grande Valley Central Processing Center (CPC) in McAllen, Texas, in March 2022; opened two new soft-sided facilities in the El Paso and San Diego sectors in January 2023; recently expanded the Yuma and El Paso soft-sided facilities and maintained additional soft-sided facilities located in priority locations. These facilities include wrap-around service contracts that provide sanitation, food, and medical services necessary to ensure appropriate conditions for migrants in cus-

<sup>3</sup>88 FR 31314 (published May 16, 2023).



tody and front-line personnel. Higher numbers of migrant encounters require deliberate and coordinated actions to ensure individuals in CBP custody are held in safe and sanitary conditions and unaccompanied children or other vulnerable populations are appropriately cared for until they are transferred out of CBP custody.

We are also maximizing the use of air and ground transportation contracts to move noncitizens from U.S. Border Patrol Sectors that are over capacity to other less-impacted CBP locations.

#### *Improved Processing Efficiencies and Security*

Deployed in conjunction with expanded facilities, non-uniform personnel, and contracted services, CBP's investments in virtual and mobile processing have provided operational flexibility and streamlined operations to ensure the safe and humane processing of migrants and relieve agents of non-enforcement duties.

For example, noncitizens are able to use the CBP One mobile application to schedule an appointment at one of seven Southwest Border POEs and present themselves for inspection to a CBP officer. The ability to use the app cuts out the smugglers, decreases migrant exploitation, and makes processing more efficient upon arrival at the POE. The CBP One scheduling process is available to all noncitizens who are located in Central and Northern Mexico.

CBP collects biometric and biographic information and screens and vets all noncitizens encountered at the border against multiple public safety databases. Noncitizens who may pose a threat to national security or public safety are detained. Noncitizens who are provisionally released must abide by the requirements of their release, including contact with U.S. Immigration and Customs Enforcement (ICE) for further processing once they reach their destination. CBP coordinates with non-governmental organizations and local governments to identify locations where noncitizens can safely access services, transportation, or accommodations.

#### *Coordination with Partners*

In February 2022, DHS stood up a Southwest Border Coordination Center (SBCC) to bring CBP together with other DHS and Federal partners to coordinate planning, operations, engagement, and interagency support in response to migration increases at the Southwest Border. CBP is the primary supported component of the SBCC and is also utilizing our operational coordination capability to provide expertise and resources in response to the irregular migration flows across the Southwest Border. This enhanced collaboration spans the entire scope of border security activities, including resources and capabilities related to infrastructure, facilities, transportation, medical care, and joint processing.

### MAINTAINING BORDER ENFORCEMENT AND FACILITATION EFFORTS

As part of our planning for the termination of the Title 42 public health order, we surged resources, technology, and personnel to manage challenges safely and orderly along the Southwest Border—while at the same time maintaining a persistent focus on our other missions to ensure national and economic security.

#### *Combating Human Smuggling*

CBP's posture and response to migration events are informed by comprehensive analyses of information and intelligence on operations of smugglers and the movement of noncitizens. We are more effectively tracking movements of various migrant groups who may be headed toward the U.S. border, and more aggressively pursuing investigation and prosecution of transnational criminal organizations (TCOs) and human smuggling networks responsible for illegal border crossings.

CBP's collaborative efforts with our partners help stop cruel and profit-driven human smugglers and save lives at the border and beyond. For example, launched in 2016 as a joint effort between CBP and the government of Mexico (GOM), "Se Busca Información," which translates to "Information Wanted," identifies individuals associated with TCOs wanted for crimes associated with human and drug smuggling on both sides of the border. The "Se Busca Información" initiative promotes binational unity and encourages the public to anonymously report information about known smugglers. CBP has also taken the lead on Operation Sentinel, a major U.S. interagency effort supported by the GOM that aims to cut off access to TCO profits from human smuggling by denying these criminals the ability to engage in travel, trade, and finance in the United States.

Migrant smugglers put vulnerable individuals and families in danger every single day. Smuggling organizations are abandoning migrants in remote and dangerous areas, leading to a dramatic rise in the number of rescues CBP performs. In fiscal year 2022, CBP conducted nearly 22,500 rescues Nation-wide, which was 69 percent higher than the total number of rescues in all of fiscal year 2021. These humani-

tarian life-saving acts are often lost in the border debate, but these acts are clear examples of the bravery, selflessness, and humanity our CBP agents and officers display each and every day.

#### *Interdicting Illicit Drugs*

In addition to migrant smuggling, illicit drugs are another major source of revenue for TCOs. CBP remains focused on our efforts to combat the flow of illicit drugs and disrupt TCO activity by collaborating and sharing information with other agencies and foreign partners; obtaining advance electronic information to identify and target suspect shipments; leveraging advanced scientific, laboratory, and canine capabilities; and deploying NII.

Fentanyl and its analogs are synthetic opioids that continue to be some of the most dangerous illegal drugs flowing through, and damaging, communities across the Nation and are involved in more overdose deaths than any other illicit drug trafficked into the United States. CBP seizures of fentanyl have been escalating for several years.<sup>4</sup> In fiscal year 2022, CBP seized approximately 14,700 pounds of fentanyl Nation-wide, with most of it—12,500 pounds—seized at POEs, and we already exceeded those amounts just 7 months into this fiscal year.

Our partnerships are also invaluable to our enforcement efforts. For example, through Operation Blue Lotus, CBP and our ICE Homeland Security Investigation (HSI) partners surged our intelligence, analysis, and enforcement capabilities to not only target and seize illicit fentanyl, but also pursue investigations and take down criminal networks. In just 2 months, the operation resulted in 108 arrests and the seizure of nearly 4,800 pounds of fentanyl. Through a concurrent operation between the POEs, the U.S. Border Patrol seized an additional 2,260 pounds of fentanyl.<sup>5</sup>

#### *Limiting Disruptions to Travel and Trade*

In addition to its border security mandate, one of CBP's core mission objectives is to enhance the Nation's economic prosperity through the facilitation of travel and trade. The Nation's POEs are vital gateways for cross-border commerce and travel—critical sectors that drive economic growth and opportunities for American businesses and consumers. The scope and importance of CBP's role in protecting the economic security of the United States cannot be understated. Collecting almost \$112 billion in duties, taxes, and fees in fiscal year 2022, CBP remains the second-largest collector of revenue in the Federal Government.

The resources, technology, and processes put in place to manage anticipated challenges along the Southwest Border associated with the termination of the Title 42 public health order were also established to limit disruption to the critical and lawful traffic that flows through our POEs and supports our economic security responsibilities.

Commercial vehicle traffic at both the Northern and Southwest Border land POEs fully rebounded to levels experienced before the COVID-19 pandemic, and since COVID-19 travel restrictions were lifted, CBP continues to process increasing numbers of arriving travelers without any significant delays.<sup>6</sup> CBP will continue to track POE traffic and wait times and adjust resources as needed to ensure travelers and goods move safely and efficiently across the Southwest Border.

#### CONCLUSION

Planning and preparedness efforts are critical to managing irregular migration. As we approached the end of Title 42, CBP was prepared to ensure we could continue to fulfill our border security mission. In anticipation of potential challenges, we deployed resources, streamlined processes, and put measures in place to prevent disruptions to our critical border security and facilitation operations.

CBP remains committed to maintaining border security, properly caring for those in our custody, and keeping the American people and our CBP workforce safe. We remain vigilant and responsive to the full range of our responsibilities including interdicting illicit drugs crossing into the United States, preventing dangerous people and goods from crossing our borders, enforcing hundreds of trade laws, and ensuring the efficient flow of lawful trade and travel that is so important to our economy.

<sup>4</sup><https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

<sup>5</sup>Operation Blue Lotus ran from March 13, 2023, to May 8, 2023. U.S. Border Patrol's Operation Four Horsemen ran from March 6, 2023, to May 6, 2023.

<sup>6</sup>As of May 12, 2023, COVID-19 travel restrictions have been fully terminated. See 88 FR 30033 (May 10, 2023) (terminating restrictions at land POEs and ferry terminals along the United States-Canada border); 88 FR 30035 (May 10, 2023) (terminating restrictions at land POEs and ferry terminals the United States-Mexico border).

Thank you for the opportunity to testify today. I look forward to your questions.

Chairman HIGGINS. Thank you, Mr. Huffman.

Members will be recognized by order of seniority for their 5 minutes of questioning. An additional round of questioning may be called after all Members have been recognized.

I now recognize myself for 5 minutes of questioning.

My colleagues and Americans watching this, the Legislative branch of our Government passes laws, and the Executive branch historically works to enforce those laws. In a broad perspective, the Executive branch is required to have—is a rulemaking whereby the laws are interpreted and the means by which the enforcement of those laws shall be established across the country. This is reasonable and understandable.

Federal law enforcement, especially when it comes to something as clear as enforcement of border and immigration law, is much less of a gray area. The solution that has been suggested here, one could argue that from my colleagues across the aisle, you have reached a solution, but it is not a solution within the parameters of enforcement of existing Federal law as established by the U.S. Congress. And we are the Legislative branch.

So there has been an interesting interpretation of Executive authority since January 2021 whereby our current administration, if it doesn't like an existing law, it uses Executive authority to find a way around that law. That is what has happened with the incoming wave upon human wave of illegal migrants attempting to come into our country.

The Federal immigration laws that have been established by Congress have been essentially replaced by immigration policy that legalizes illegal entry into our country. They tell you the numbers of illegal entry are down because this Executive branch has redefined what an illegal entry is. The CBP One app goes down through Mexico and Central America into Colombia. These migrant citizens, these children of God, who endeavor to enter our country, but they are undocumented, which makes them illegal, historically, they would be intercepted at the border and handled appropriately. But this administration has changed that. They have diffused our border and essentially extended American operations for border control down through South America and Central America and Mexico and establish these so-called legal pathways.

Can I see the quote please? There you go. Put the quote up Mr.—sir, do you recognize these quotes? It is not trick stuff, these are your quotes. Do you acknowledge that these are your quotes?

Mr. NUÑEZ-NETO. I can't read that from here, unfortunately, but I—it looks like—

Chairman HIGGINS. They are from an NPR interview recently. You say, you know, what we have done is really oversee a historic increase in lawful pathways to the United States, including at our ports of entry through the CBP One app. Do you acknowledge that? You said that?

Mr. NUÑEZ-NETO. I do.

Chairman HIGGINS. Thank you.

You went on to say, and what we are really trying to do here is incentivize migrants to use safe, lawful, and orderly pathways, that

again, we have expanded dramatically over the last 2 years. Do you acknowledge that that is your quote?

Mr. NUÑEZ-NETO. I do. It's also in my opening remarks.

Chairman HIGGINS. Yes, sir. So what we are establishing here is that this Executive branch has redefined what an illegal entry is, and you admit that exact policy agenda. So when you report that illegal migrants, the numbers are down, that is a shell game. It is like a magic trick.

We were advised by Chief Ortiz and what I believe was his last confidential briefing, that there were 657,000 immigrants in the pipeline south of the border. It was an interesting number, because Chief didn't say between 600,000 and 700,000, he didn't say 650,000, give or take, he said 657,000. That is quite a precise number.

Mr. Huffman, Mr. Nuñez-Neto, I will just ask you each to—and I will yield the balance of my time—where are those 657,000 people headed?

Mr. NUÑEZ-NETO. So I have not seen that particular estimate. We do know that there are—

Chairman HIGGINS. It was from the Chief. He is now retired.

My time has expired.

Are they headed north?

Mr. NUÑEZ-NETO. We believe many of them are waiting for the lawful pathways and processes that we have established—

Chairman HIGGINS. In order to come north?

Mr. NUÑEZ-NETO [continuing]. Not just in Mexico, but in other countries along hemisphere.

Chairman HIGGINS. They are headed here.

Mr. Huffman, do you agree they are headed here?

Mr. HUFFMAN. A lot of them are headed here, yes, sir. Some of them have stayed in other countries. Like we know there's many of the Venezuelans have stopped and stayed in Colombia. So there's a lot of people in movement—

Chairman HIGGINS. OK.

Mr. HUFFMAN [continuing]. But generally this direction, yes, sir.

Chairman HIGGINS. Thank you for your answers, gentlemen, for being here.

My time has expired. I recognize Ranking Member Correa for 5 minutes.

Mr. CORREA. Thank you, Mr. Chairman.

I am going to follow up with the Chairman's last comment, 657,000—let's call it 700,000. Where do we get that intel to figure out that number? Either gentlemen, please.

Mr. NUÑEZ-NETO. So our Office of Intelligence and Analysis does estimate the number of people who are in the hemisphere and who may be moving north. The numbers I've seen don't quite match the 650,000, but those are all rough estimates. I think we can all agree that there are hundreds of thousands of migrants throughout the hemisphere that—

Mr. CORREA. But you do this with a partnership of others that work with us?

Mr. NUÑEZ-NETO. Of course, yes.

Mr. CORREA. Mr. Huffman, any thoughts on that number?

Mr. HUFFMAN. So, again, I don't know the exact source of the Chief Ortiz's number. I've known Chief Ortiz a lot of years, and I'm sure he's extremely confident in that number if he gets that number, I just don't know the source of it.

I am confident there are a lot of people moving into the hemisphere, mostly headed this way. The exact number, it's hard to tell where they're going to stop. But yes, they are moving. People are moving this way. We see the news reports, we look at shelters that have people that are housing—

Mr. CORREA. Mr. Huffman, again, I would invite folks, if we could put together Codel to go visit some of these countries to see the devastation. You don't have to argue that point here. People are hungry, devastated economies, they will find a place to survive as that picture of that little girl showed.

I guess if I can, I would say that Mr. Chairman is right, which he showed in that poster was what I would call part of the hope, the opportunity to maybe figure out a way to employ a safe legal pathway. I would say the other two legs of that stool are penalties, Title 8. There are severe penalties for trying to cross not using a legal pathway.

The last one I want to focus on, my last 3 minutes are the cooperation piece. I think it is important because if we are going to move forward to address the issues in the hemisphere, specifically our Southern Border, we have to continue to work with our partners. You mentioned, for example, that Mexico is taking—for the first time ever, is taking repatriated individuals from Cuba, Haiti, Nicaragua, and Venezuela. Are these people that are then repatriated to Mexico? Do they stay in Mexico or does Mexico repatriate them back to the other countries?

Mr. NUÑEZ-NETO. So that is really a question for the government of Mexico. But these are individuals that are repatriated under our Title 8 authorities, which, as you know, it is the first time in our history Mexico is allowing that.

Mr. CORREA. So, essentially, I believe what Mexico is doing—and I will double check myself here, but I think they are providing with work visas and other opportunities to actually work.

You mentioned—was it you were that I listened to this morning in the news that we are cooperating with Panama, Colombia, in other efforts across the hemisphere. I hope that those are humanitarian efforts to address this refugee crisis and begin to figure out how to get a handle on this situation because it is going to be with us for a number of years, in my opinion.

But any thoughts on that, Mr. Huffman, Mr. Nuñez-Neto?

Mr. NUÑEZ-NETO. So, if I may, I think when someone arrives at our border, it is far too late. We need to engage regionally with our partner countries in order to address these flows well before they reach our border. What Colombia and Panama are doing right now is unprecedented. It is a coordinated bi-national operation in the Darién to try to attack the smuggling networks. We have been providing technical assistance. I know CBP has deployed personnel to assist in that, the Department of Defense has been active. Those are the kinds of things that we really need to do more of because, again, I think the more we can impact these flows well before our border, the better off—

Mr. CORREA. Mr. Huffman—excuse—my last 50 seconds, please.

Mr. HUFFMAN. Yes, thank you. Sure. From an operational perspective, I would say that Mexico has cooperated with us more recently than I've seen in my career. The help they've been—

Mr. CORREA. Your career is how many years?

Mr. HUFFMAN. 38 years, sir.

Mr. CORREA. Thank you.

Mr. HUFFMAN. They are increasing their enforcement efforts on their Southern Border as well, which is slowing the flow, they are redirecting folks that we have returned to Mexico and flying them back to their Southern Border to kind-of add an extra consequence and deter them from coming to come north. They're also helping redirect folks to our border to kind-of slow them down as a way as well. So that's a very positive outcome that we've been having recently. It's been very helpful. I think it's part of the reason some of the flows have slowed down here recently.

Mr. CORREA. I would like to, with my last 3 seconds, say I do hope we continue to double down on the humanitarian aspect of this refugee crisis.

Mr. Chairman, I ran out of time.

Chairman HIGGINS. The gentleman yields.

The gentleman from Mississippi, Mr. Guest is recognized for 5 minutes for question.

Mr. GUEST. Thank you, Mr. Chairman, gentlemen, thank you for being here today.

As Chairman Higgins indicated a few moments ago, roughly 2 weeks ago, Chief Ortiz was here on Capitol Hill briefing Members of Congress, particularly Members of this committee, about events that have transpired post-Title 42. We had the opportunity to speak with him and Chief Ortiz said that he believed that the reduction that we have seen post-Title 42, he described it as what he believed to be a temporary reduction and that he expected the numbers to return at some point back to the baseline that we had seen over the last 2 years.

So my first question to both of you: Do you agree with Chief Ortiz's assessment that the reduction that we have seen is more temporary in nature and that we will return to the base last 2 years? Or do you believe that the reduction that we have seen is permanent in nature?

Mr. NUÑEZ-NETO. I would say that we're encouraged by what we've seen the last 3 weeks. But as I mentioned, we are clear-eyed that the factors in our hemisphere that are driving this historic movement of people are still there and that smugglers use disinformation to drive migration. So this is a fragile equilibrium that we have on the border and it could be upset in the future for sure.

Mr. HUFFMAN. I would agree with that statement. Also with Chief Ortiz's that there's still numbers there in Mexico. I believe they've taken kind-of a wait-and-see approach to see how this pans out, how do we stick to our guns with this, with how we're enforcing the Title 8 rules, and see how that works out? Time will tell.

Mr. GUEST. Then also Chairman Higgins mentioned earlier some conversation about the CBP One app. I know both of you mentioned that in your written testimony about the use of the CB One

app. We see that news reports show that the CB One app, that there are roughly 1,000 immigrants a day who are able to apply for some sort of status within the United States using the CBP One app. Recent report by Fox News talks about the administration is seeking to expand that very quickly to 40,000 a month.

So my question is, is when Congress receives information, the public receives information from DHS about southwest land border encounters, those numbers in March were 191,000 and some change, in April were 211,000 and some change, are the individuals who are applying and entering the country through the CBP One app, are those individuals included in the figures that we are receiving or are those individuals somewhere else not included in those numbers? Because that is very important for us to know exactly how many people are coming across the border, whether you are coming across illegally and claiming asylum or whether you are coming in by using the CBP One app, presenting yourself at a port of entry, they are still being allowed into the country. So we are trying to get—at least I am and I am assuming others on this committee—we are trying to wrap our head around the true figure of individuals who are allowing to come into the country each and every month.

So are you aware of how those numbers are calculated when you are talking about the southwest land border encounter numbers that we routinely rely upon from CBP?

Mr. NUÑEZ-NETO. Yes. Thank you, sir.

So my understanding is that when CBP issues its monthly reports, those numbers include encounters at ports of entry and it also includes encounters between ports of entry, which obviously would not include CBP One.

I would also note that the Immigration and Nationality Act expressly authorizes individuals to present at ports of entry and claim asylum and they must be processed. We're actually under litigation right now that prevents the use of metering at the land border.

So I know Chief Huffman has thoughts here, but the CBP One app is really just a scheduling tool to allow us to let people who may wish to claim asylum present at a port of entry in a way that is safe and orderly and doesn't tie up our ports of entry.

Mr. HUFFMAN. Yes, thank you.

Yes, sir, those numbers that we encounter, for example, I have the numbers running my office every day and they'll say like 4,500 apprehensions yesterday. That will include probably 3,000 to 4,000—3,000 or so encounters by the Border Patrol, plus it includes the ones that applied for entry or presented themselves for entry using that—being scheduled by the CBP One app.

I want to emphasize something that's very important to us because concern is the CBP One—can easily get misconstrued. For us, it is nothing more than a scheduling tool. It allows us to have an orderly process at our ports of entry. Because without that scheduling tool, all these people that are waiting and seeing would all be showing up at the same time and clogging up and shutting down our ports and impact trade, impact other people that have lawful ways into the country, the U.S. citizens, lawful permanent residents, those things. So we use the CBP One as a scheduling

tool to help us maintain that order at our ports because we are not allowed to use our metering that we used to do due to a lawsuit a number of years ago.

Mr. GUEST. Thank you.

Mr. Chairman, I yield back.

Chairman HIGGINS. The gentlemen, yields.

Mr. Thanedar, the gentleman from Michigan, is recognized for 5 minutes for questioning.

Mr. THANEDAR. Thank you, Chairman, and thank you the gentleman, for being here.

I feel a strong personal connection to the issues we are discussing here today. You see, in 1979, at the age of 24, I was one of those immigrants with only a name, \$20 in my pocket, and my American dream, entering this country with no friends, no family, and very fearful about how I would survive in this new homeland.

During summers between the academic school years, I was often forced to sleep in a car or sometimes homeless shelter funded by a faith-based non-government organization, NGO's. Now you know, NGO's have played a crucial role for decades in providing care and support for migrants, including at the U.S. border. In times of solitude, those NGO's could be the only aid an immigrant receives for weeks. Strengthening the capabilities of NGO's to receive individuals who are not citizens following their processing has been an essential aspect of Secretary Mayorkas' preparation for lifting of Title 42.

Mr. Nuñez-Neto my question is, can you please expand on those NGO's role at the border and why they remain vital to ensuring the treatments for the immigrants?

Mr. NUÑEZ-NETO. Yes, thank you very much for that question.

As an immigrant myself, I think it is a sign of this country's strength that an immigrant like you could become a Member of Congress and that one like me could achieve the kind of role I have at DHS.

You know, Chief Huffman and I were just in Brownsville last week observing first-hand how the city government in Brownsville and the local NGO's process migrants as they are released from CBP custody or from ICE custody and allow them to connect with family members and move onwards to their final destination. These are non-citizens who are issued notices to appear and released to have their court proceedings as the law provides. Those NGO's and our city and State governments on the border are really playing a critical role in allowing migrants to be able to move onward and not remain at the border.

I know CBP obviously relies a great deal on those relationships locally, and I'm sure Chief Huffman has some thoughts there as well.

Mr. THANEDAR. Mr. Huffman after receiving my PhD in chemistry and a United States citizenship, I became a serial entrepreneur. In that time, I learned a lot about the importance of technological innovations in solving problems.

Can you elaborate on the app's advantage, both for applicants and CBP officers? Also how would CBP expand the availability of this system in coming months?

Mr. HUFFMAN. Thank you for the opportunity to respond.



As far as technology goes, technology is key for all aspects on ours, not just the CBP One, but how we do border security across the whole. The border now is a much more dynamic border than we've ever had in our history. The folks that want to enter this country illegally or they're traffickers, they can change the picture of the border with easy, fast, quick communication. So we have to be able to communicate as well, and we have to have the technology to respond as well too.

The problems grow very rapidly, more rapidly than we can build our capacity. So the only way we actually increase our capacity oftentimes is with the use of innovation and technology. That's what we've done in a number of areas. CBP app is one, how we process is another way, how we transport information is another way. All those things combined help us to be a much more agile response to whatever threat we see facing us.

Mr. THANEDAR. Thank you, Mr. Huffman.

Chairman, I yield back.

Chairman HIGGINS. The gentleman yields.

My colleague, the gentlelady from Georgia, Ms. Greene is recognized for questioning for 5 minutes.

Ms. GREENE. Thank you very much.

I have enjoyed learning about the CBP One app today. It is a pretty nifty little app. I just wanted to point out that so if someone is illegally coming into our country—I call it illegally, because I feel like a lot of them are in our country illegally—they can go to this app, and all they have to do is download CBP One and they can come into Mexico, they can click on here and decide are they a traveler, a broker, carrier, aircraft operator, bus operator, sea pilot, commercial truck driver, international organization. It is really interesting, though, the commercial truck driver one doesn't work yet, which I think is a complete failure. When you click on commercial truck driver, it says, coming soon. You would think that to keep track of imports coming into our country, trucks, agriculture, goods, whatever is bringing into the country, that is a really important fact and figure to keep track of. But if I am an individual and I am coming into America, I can go on there and I can choose how I want to come in. I am a pedestrian, so I click pedestrian. Let me tell you how great it is for people that are coming into our country that are not American citizens. They can find a wait time that fits their schedule. All they have to do is go on here, and I can pick Calxico East, and I only have a 5-minute wait at a port of entry. Then I can look at this neat little graph that somehow tracks what time of the day is busier or less busy. But again, this app does not track or check trucks, commercial trucks coming into our country.

Then here is what is really interesting. I find this very interesting. I can get a scheduled appointment and it says you must be in central or northern Mexico to accept and schedule an appointment. So if I am coming from China or Africa or whatever country in the world, I got to get my plane ticket to Mexico and then schedule my appointment so I can come into a port of entry. Now, here is the really interesting part, I would like our laws followed, but they are not followed right here on the CBP One app because it says that passports are optional. I think that is a big problem for people coming into our country and being told to go directly to the

port of entry instead of, of course, going outside of the port of entries because that messes up the numbers, that apprehension numbers were off the chart and that was a real problem for the Biden administration.

So I would like to ask you, Mr. Nuñez-Neto, why can't you tell us how many people are coming in the United States when you have a handy dandy little app that you are tracking? You know the numbers. This is the American Government. We put a man on the moon. We are able to count. Why can't you tell us how many so-called migrants are coming into our country?

Mr. NUÑEZ-NETO. So we do update the public and Congress on the number of people who are processed through the CBP One application. I believe my testimony notes that since May 12 we've been averaging about 1,070 individuals a day using the CBP One application, which again, as Chief Huffman noted, is just a scheduling tool that allows individuals who may wish to claim asylum to access the ports of entry as the Immigration and Nationality Act provides.

Ms. GREENE. Well, can I ask you a question? This is something else I am trying to understand. Now that we have an app to organize the illegal invasion into America so that everyone gets accepted, they have a time to come in, they say that they are seeking asylum, and then the American taxpayer gives them a plane ticket or a bus ticket to any town in the United States—gosh, the American taxpayers are nice—right here it says that you say the reason why people are coming to America today is because of violence, food insecurity, severe poverty, corruption, climate change, and the COVID-19 pandemic. Did you know that there are over half a million homeless people in the United States today? As a matter of fact, the homeless population rose significantly since 2019. That is for Americans. So we have homelessness here in America.

Natural disasters. Talk about climate change. This is the fourth-largest country in the world. We have an extremely diverse climate, we have a wide range of natural disasters—97 natural disasters occurred in 2021. I don't think this is very safe for migrants here in America. We had 97. How many are they having in their country? These natural disasters include wildfires, heat waves, droughts, flash floods, winter storms, cold waves, tropical cyclones, and on and on and on. But yet they need to come to our country because of climate change? That doesn't make a lot of sense.

It is not a safe country either by the way. In America there were 1,313,000 violent crimes in the United States and that was in 2020. I can't imagine what the numbers are since then, since crime has come up.

I think that you need better reasons if you are going to try to let a bunch of people in the United States using a handy dandy app where you don't track imports than climate change, because that is not an excuse people are buying.

Thank you.

Chairman HIGGINS. The gentlelady yields.

Mr. Gonzales, my colleague from Texas, is recognized for 5 minutes for questioning. He is not here?

Mr. Garcia is here, though. My colleague from California, Mr. Garcia is here.

Mr. GARCIA. Close.

Chairman HIGGINS. You are recognized for 5 minutes.

Mr. GARCIA. Thank you, Mr. Chairman. I am glad that we have an opportunity to speak with our witnesses today. Thank you for your service.

That was an interesting conversation about the app, which I will get to in a minute.

But I want to just start off by talking about Title 42. As a proud immigrant myself who believes in humane immigration, I think we all agree that a secure border is important and is vital. Our Nation benefits when people have an opportunity to come here to build better lives, as you have, sir, and like I have as well and other Members of the Congress. I want to remind my colleagues in the Majority that attempts to demonize immigrants and people who come here legally to seek asylum is un-American. Our country is a Nation of immigrants and we are constantly reinvigorated with immigrants, with their talents and with their innovation.

I know that some people here have been openly rooting for a post-Title 42 crisis as a way to score political points, but let's be very clear, that crisis did not happen. This hearing is an attempt to manufacture one.

Now, as has been stated, Border Patrol encounters are at the lowest point since 2020. That is a fact. Those are statistics that are widely accepted. They have been reviewed by our Departments, they have been put out as information for us to assess, and I want to thank you all for your work with that. It is also true that these numbers should be not celebrated but welcomed as progress in our ability to control and secure the border.

I just really briefly want to just ask to get clarification from Mr. Blas Nuñez-Neto. Would you agree and do you support those numbers that we are at the lowest border encounters since 2020?

Mr. NUÑEZ-NETO. I believe if we're talking about encounters between ports of entry, that, yes, we are at the lowest level since, I believe, December 2020.

Mr. GARCIA. Thank you, sir.

Now, I think a key reason for the conditions and why they have improved also is the pathways for asylum seekers that we have focused on. So you have worked on, the entire Department has been supportive of, the CBP One app, and that continues to improve, I think, outcomes for all and for us here on the country, certainly for asylum seekers. I know we had a difficult rollout early on, but the Department has also made really great progress. I want to thank all the groups involved in getting the One app to where it is today.

Now, I appreciate the gentlelady from Georgia's tutorial on the One app and how it works. I personally appreciate the use of technology and its way to actually facilitate information, collect data, and make things simpler for all involved, including those that are seeking asylum, who I wish to remind the committee and her, have a legal right to actually claim in the United States of America.

It is also important to note that the One app is actually allowing us to actually manage this crisis better here at home and at our ports of entry. I want to thank you for that work.

I think claiming that the One app somehow is facilitating an invasion of the country is incredibly irresponsible. Asylum is a legal

right in this country, and claiming asylum is, so—and so until that changes, we need to continue to support this program and make it easier for folks and for us to manage anyone that is coming to the border or a port of entry or now, in many cases, going to other parts of the hemisphere and seeking asylum there, which I think has been a very productive advancement the Biden administration has done as well.

I want to note that I support the administration's new efforts to create these regional processing centers in Central and South America, including in Guatemala and Colombia, where we know migrants receiving interviews with immigration officials, with specialists, and, if eligible, are able to be processed rapidly for pathways to the United States, if, of course, they meet our standards.

I also want to note that I hope that we can strengthen our Shelter and Services program, which supports groups like Catholic Charities that support legal asylum in our country. I think it has been unfortunate that Members of this committee tried to actually defund this critical program that essentially partners with non-profit agencies to use Federal funds, secure an orderly border. So I hope that that is something that we can continue.

Finally, I want to remind the committee that we have a responsibility to provide legal status and protections to the people who build lives and pay taxes here, and I hope that is something that we can move forward on.

Mr. Nuñez-Neto, finally, what will the administration do to continue to expand legal pathways to protect the right of asylum while maintaining access to the border?

Mr. NUÑEZ-NETO. So, as we have said, we are committed to continuing to expand lawful pathways and processes. I think you mentioned these safe mobility offices, which is what we're calling the regional processing centers. I view that and we view that as really a fundamental tool to help better organize migration, not just to the United States, but, as I said, to some of our partner countries, including Canada and Spain, which have signed on. We are in active discussions with other countries to allow for referrals to their processes as well.

Mr. GARCIA. Thank you very much, sir.

I yield back.

Thank you for your service.

Chairman HIGGINS. I thank the gentleman.

My colleague from Texas, Mr. Luttrell has been recognized for 5 minutes for questions.

Mr. LUTTRELL. Thank you, Mr. Chairman. Good afternoon, gentlemen.

If the numbers that Mr. Correa and Mr. Garcia are talking about are in fact the truth, and those numbers are dropping, job well done. I am a border State. I am a Texas boy. I am one of the landing zones for the illegal migration coming across the border. So if those numbers are dropping, absolutely I applaud that effort because that is what I need. That is what my base are asking me for every day. How do we control that situation?

Mr. Nuñez-Neto, ICE detention policy states that ICE uses its limited detention resources to detain non-citizens to secure their presence for immigration proceedings or removal from the United

States, as well as those that are subject to mandatory detention as outlined by the Immigration and Nationality Act or those that ICE determines are a flight risk during the custody determination process. Now, in my district I border Liberty County—Polk County and Liberty County. The population of Liberty County is roughly around 90,000. There are 50,000—50,000 illegal immigrants parked right on the border of my district and another Member's district. Now, here is my issue, and I want your help solving this problem, we are a country of immigrants, absolutely, and my colleagues on the other side, they shine a very good, a very meaningful light on people and the process and the struggle is real. I get it and it is very challenging. But that number of illegal immigrants in that small area is scuttling that county. The school districts are absolutely overwhelmed. They are having to bring in teachers that speak Spanish because none of the children speak English. The area that they have occupied looks like a Third World country.

My question is, why isn't ICE—or why doesn't ICE move on that and assist our county in the removal of those undocumented immigrants?

Mr. NUÑEZ-NETO. So ICE's function is to obviously enforce our immigration laws and carry out—execute what we call final orders of removal. I don't know the circumstances in your county. I'd be happy to look into it. I will say ICE has never received enough funding to detain every individual we encounter. This has been the subject of active litigation. I think, as we have said repeatedly, we are a Nation of laws and we're a Nation of immigrants and we need to be able to enforce our laws while also providing avenues for immigrants who wish to come to be able to come.

Mr. LUTTRELL. So I am glad you said that, we are a Nation of laws, so in that we need to enforce those laws. But that is obviously not happening. I don't know where the rub is between State, county, and local law and Federal law, since these are our illegal immigrants that were processed—some, not all, but some were processed in. How do I fix this problem, sir?

Mr. NUÑEZ-NETO. So again, without knowing the specific details, I'd be happy to follow up with your office. Individuals who are issued a notice to appear can go through the immigration court process, which can take many years. It is an unfortunate reality in this country that our immigration and asylum system is so broken that it does take an extraordinary time for people to go through that process. Individuals with final orders of removal should be removed at the end of that process. But historically it has been quite difficult, again under Presidents of both parties, to execute final orders of removal for people who are not detained.

Mr. LUTTRELL. OK. To that, can you confirm for me—and this committee was in El Paso and down at the—I am sorry, I forgot what the other place that we went—but they told us that it is widely reported that aliens are released into the interior without court dates, regardless of whether or not they were issued an NTA. Are those reports true? Do illegal migrants that come across, are they processed through without a show time or show place?

Mr. NUÑEZ-NETO. So historically the Border Patrol has issued notices to appear without court dates on them until frankly fairly recently.

Mr. LUTTRELL. Or locations?

Mr. NUÑEZ-NETO. Right now we are issuing NTAs with court dates on them. In the lead up to the lifting of Title 42 we were also—because of the—

Mr. LUTTRELL. That happened. Have illegal migrants come across and not been issued—because we have heard from leadership that that is the case, but I want to hear what you have to say.

Mr. NUÑEZ-NETO. So we have paroled individuals in order to relieve the overcrowding in our facilities. Those individuals are required to report into ICE facilities and be issued NTAs there.

Mr. LUTTRELL. How on earth are we supposed to track those individuals if we are just releasing them basically on their own recognizance? I am sorry sir, can you answer that for me?

Chairman HIGGINS. Would the gentleman like to answer that question?

Mr. NUÑEZ-NETO. Sure. Many of those individuals were placed into alternatives to detention program, which does include monitoring. So as part of that program, more than 90 percent of the individuals who are released on ATD do, in fact report to their ICE facilities.

Mr. LUTTRELL. Thank you, sir.

Chairman, I yield back.

Chairman HIGGINS. The gentleman yields.

The gentlewoman from Illinois, Ms. Ramirez, is recognized for questioning.

Ms. RAMIREZ. Thank you Chairman Higgins.

I want to thank both of you for being here today.

Similar to Congressman Thanedar, I have a similar family of migrant story. Actually as I look around, I think all of us here have a history of family migrating here, it just depended on when we came.

So I want to clarify a few things and then I want to get into some questions.

First, I have heard a lot of conversation about legal entrance versus illegal entrance to this country. It is my understanding that the CBP app is a tool to do the scheduling so that people can enter here seeking asylum legally, correct?

Mr. NUÑEZ-NETO. That's right. The CBP one app allows individuals to schedule their presentation at a port of entry. Our Immigration and Nationality Act expressly provides that people without documents can claim asylum.

Ms. RAMIREZ. So Mr. Nuñez-Neto, that means that if they are making that request, if they are filling out the app, as one of my colleagues has talked about, the filling out of the app, they show up to a port of entry and turn themselves in during that appointment, they are lawfully entering and seeking asylum. Yes or no?

Mr. NUÑEZ-NETO. Individuals—and I welcome Chief Huffman's views here—but individuals who are processed by CBP at the ports of entry will be placed into removal proceedings and issued a notice to appear. They, as part of that process, the immigration court process, have a right to claim asylum, which again is enshrined in the INA.

Ms. RAMIREZ. If someone requests asylum because of the fear or the extreme circumstances that they have experienced in their

country or maybe Mexico or maybe Guatemala or Honduras or Nicaragua or whatever country that they are fleeing from or in the process of getting up north from, they go through the critical fear interviews, correct?

Mr. NUÑEZ-NETO. That is true for individuals who are placed into expedited removal at the border. That is a separate, more streamlined process that is primarily used for individuals encountered between ports of entry, although it can be used at ports of entry as well. That's right, the credible fear interview, which is basically a broad screen as it was designed by Congress in the Immigration and Nationality Act, that allows, frankly, most individuals who are going through that interview under normal circumstances to be screened in.

Ms. RAMIREZ. Got it.

So I just want to come back to this concern. I really appreciate my colleagues on the other side being concerned for the children and the people that are crossing the border and the inhumane experiences that they go through. My youngest sister is adopted, she was 12 years old, weighed 60 pounds when she crossed, unaccompanied more than 16 years ago. So I appreciate care for people like my family. The thing that I don't appreciate is the idea that they come to the border, they are at a school, or they are attempting to seek asylum like my little sister was, and all of a sudden we want ICE to deport them immediately to Mexico or to wherever their country of origin is. In my opinion, having been in these countries for a very long time, months at a time, I personally know clearly what people are escaping. So I know that if Iris, my little sister, would have been deported immediately, if ICE would have come to the school and deported Iris, Iris would have died within a month in Guatemala at the age of 12.

So I actually have to push back on the other side and say that seeking asylum is not a crime. That is what many of our families have done. Maybe they did it now, maybe they are doing it today, maybe they did it 100 years ago. So I am really concerned, actually, when we talk about the number of people that have been repatriated or deported, because I am not very clear yet on how many of the people that are requesting the critical fear interviews, in fact, are able to stay from immediate removal based on some of the training questions that I have. I will go ahead and send you some of that in advance so that I can get more information on that.

I also want to mention, we have talked a lot about legal and illegal pathways. I do want to say that I appreciate the administration's commitment to identifying ways through some of the regional centers and other ways that asylum seekers can apply to be able to seek asylum here. While I don't think those are perfect and I don't think it solves our immigration issue or the cause of migration, I certainly think it is a path forward. I also do invite my colleagues if they want to go to Guatemala, Honduras, El Salvador, my family is from the border there, happy to bring you with me. We can talk and walk through some of those roads and get to know a little bit more of the immigrant experience.

Chairman, I yield back.

Chairman HIGGINS. The gentlelady yields.

My colleague from Arizona, Mr. Crane, is recognized for 5 minutes for questions.

Mr. CRANE. Thank you, Mr. Chairman. I appreciate it.

I also appreciate you bringing up the quote from Mr. Nuñez-Neto.

I want to go through that quote really quick again, Mr. Nuñez-Neto. Here is what you said. You know, what we have really done here is oversee a historic increase in lawful pathways to the United States, including at our ports of entry, through CBP One application. You most certainly have given us a historic increase, sir. I want to go to a historic increase real quick. Just an example, just a couple of days ago, not a couple of years ago, but a couple of days ago in Arizona, where I am from, this is Fox News on 6/4/23, Border Patrol canine sniffs out \$2 million in fentanyl during traffic stop in Arizona. Fox News. Mr. Huffman, are you aware of this story? Do you remember this one?

Yes, Border Patrol canine helped agents sniff out \$2 million worth of smuggled fentanyl during a traffic stop in Arizona last week. The seizure happened at a checkpoint along I8 near Yuma. Yuma Sector Chief Patrol Agent Patricia McGurk Daniel. Daniel stated the narcotics totaled more than 192 pounds, enough to kill 48 million people. Sir, I didn't say 48 people, I didn't say 48,000 people, I said 48 million people. That is exactly the historic increase that you all have brought to the United States of America.

Now, I want to go down to the second part of your quote where you say, and what we are really trying to do here is incentivize migrants to use safe, lawful, and orderly pathways that, again, we have expanded dramatically over the last 2 years. I want to focus in on one word—incentives. That is exactly what you have done. I know why you have done it, sir, because that is exactly what your boss did. He was doing that when he was campaigning for President. I actually got a chance to read his very quote to Secretary Mayorkas sitting in your chair like a month ago. If you guys were actually serious about securing this border and protecting Americans, that word would not be incentivized. You know what it would be, sir? It would be deter. I will say it one more time, it would be deter. You guys would be trying to deter people.

Now, I understand my colleagues over here, they are talking about folks trying to come here, migrants. Because one of my colleagues said he attributed our border crisis to global economic disaster, OK. I have said this in this committee before, this side of the aisle, we do love the fact that the United States of America is such a great country that people want to come here. As a matter of fact, we can all recognize that one of the great things about this country is that we do have a lot of immigrants here, but legal immigrants. That is what we want, sir. Because of the Biden open border policies, it is flooding people into this country and it is tying up our Border Patrol Agents to the tune of—this story that I just read you, 48 million people could have died by the fentanyl that just came in in Arizona 2 days ago. What do you think about that, sir?

Mr. NUÑEZ-NETO. Thank you for that question.

I would note that 90 percent of the fentanyl that comes into the country comes through our ports of entry, not between our ports of entry. We have been engaged in an all of government—



Mr. CRANE. Hold on a second, sir. How are you able to even calculate that when there are so many gotaways that come through port of entries that you guys don't even get? How could you say that? The only numbers that you can calculate are based on——

Mr. CORREA. Will the gentlemen yield?

Mr. CRANE. Yes, go ahead.

Mr. CORREA. I was just going to say two separate issues, fentanyl. Earlier we had a witness, my Orange County Sheriff, that said a lot of the fentanyl precursors are now coming into the United States through our own ports of entry, then going south into Mexico for manufacturing. So I think it is a—Mr. Crane, great issue, fentanyl. Love to set up another committee hearing to address this issue specifically, sir.

Mr. CRANE. Mr. Correa—I am going to claim back my time. Are you saying that fentanyl is not coming through the gaps? Is that what you are saying, sir?

Mr. CORREA. I am saying, sir, that fentanyl is coming in from all parts.

Mr. CRANE. Yes, that is what I am saying too. So he is claiming that 98 percent according to experts is coming through the ports of entry. How can he possibly know that? Anybody in Border Patrol can tell you they don't have enough manpower, especially when a lot of our agents are busy processing people coming in through the country. They don't have enough manpower. That is why there are so many gotaways. That is why there are so many people on the Terror Watch List that are coming through the border as well.

Mr. CORREA. Mr. Crane, just to answer your question, I think he is talking—I am not going to put words in their mouth—but, from experience, that is where most of the fentanyl is being caught right now, at the ports of entry. I have been there like you have.

Mr. CRANE. Caught, that is the key, caught. That is because that is where most of our people are. There is not the same percentage of people in the gap. That is what I am telling you.

Mr. CORREA. If we doubled the number of blue uniforms at those ports or entry, we would catch double the amount.

Mr. CRANE. But you still aren't touching the gaps where there aren't people in the open desert. That is what we are talking about. There is video after video of people that just—ranchers, good citizens that just go to the border, sit there with cameras, and watch these people come in with backpacks. I live in Arizona, sir. I know you live in California, right?

Chairman HIGGINS. So this is engaging debate. It is the kind of thing that should be discussed, but the gentleman's time has expired.

I recognize——

Mr. LUTTRELL. Mr. Chairman, real quick. For the record, it was—we went to McAllen.

Chairman HIGGINS. Yes, OK.

Mr. LUTTRELL. I just wanted that for the record. Popped into my head. Sorry. Thank you.

Chairman HIGGINS. Again, to 1,954 miles border and some of us have scouted the entire thing on several occasions.

I recognize my friend Mr. Green from Texas for 5 minutes for questioning.

Mr. GREEN. Thank you Mr. Chairman.

I thank the committee for allowing me to participate as an interloper today.

Mr. Huffman, I believe you indicated that the CBP is in its 99th year of existence.

Mr. HUFFMAN. So CBP is actually in its 20th year existence. The U.S. Border Patrol, one of the legacy agencies, is in its 99th year of existence.

Mr. GREEN. Well, I want to just say thank you to all of the persons who do this work. I know it is not easy.

In my old age I am starting to see both sides of things more and more. Just celebrated my 25th birthday for the third time. There are some people who live on our side of this border who are suffering too. Just mentioned communities, they are suffering too. We need to do something about that. We need to do something about the people who are hungry, need to be fed. When I was thirsty, you gave me water, when I needed shelter, clothing, you gave me clothing. Somewhere around Matthew 25. It is a difficult problem. There is no real simple solution. There really isn't. If the solution were really simple, it would have been solved. There are better minds than have been here and had the opportunity.

Mr. Nuñez-Neto—Is that correct? Sir, you said that the conditions driving the migrants still exist. Could you just quickly articulate some of those conditions, please?

Mr. NUÑEZ-NETO. Sure. We have seen over the last 2 years, at times, surges in migration from Cuba, Venezuela, Nicaragua. Those are countries with failing regimes and devastated economies that we have difficulties removing people to. That is still the case. We have at times seen surges in migration of Haitian Nationals. Haiti, a place that is in the middle of a humanitarian crisis. We have seen economies failing throughout Latin America, leading to the movement of countries to our border that we have not historically seen. That includes countries like Colombia, Ecuador, Peru, as well as some others.

Mr. GREEN. Thank you.

I heard someone say not so very long ago that the whole country has become the border now, that it is not just at the south where you make your entry. When you think about that, we all have to share the burden. My Governor has been putting people on buses and he just sends them. I don't approve of the way he is doing it, but I do think that the places to migrate to other than just right at the border, not a bad idea. I think that we ought to try to work together to implement an idea. Why, why not call and say, we have some people here, one Governor to another, we have some people, can you help us? Federal Government steps in and says we are going to help by providing some additional resources.

At some point, we will have to work together to resolve this. It is just not going to be resolved with simple sound bites. So I am hoping that we can do so now.

I want to just say this, I find Mr. Mayorkas a decent man. He has a tough job, just as you have a tough job, Mr. Huffman, just as you do. We all have tough jobs. I found him be a good, decent man. He is working with a broken system that we have not fixed,

to borrow some Texas terminology. What do you do when you have the system that we—we have not—we have neglected?

So I thank you.

I am sorry, Mr. Chairman. I thank you.

I yield back.

Chairman HIGGINS. The gentlemen yields.

My colleague and friend from Texas, Representative Pfluger, is recognized for 5 minutes for questioning.

Mr. PFLUGER. Thank you, Chairman. Thank you for letting me wave onto this committee.

Mr. Huffman, thank you for your service.

I will get right into it. Assistant secretary, how long have you been the assistant secretary for immigration?

Mr. NUÑEZ-NETO. Officially, since, I believe, April. But I was acting in this role since October 2021.

Mr. PFLUGER. OK. Can you tell me the number of apprehensions since January 2021?

Mr. NUÑEZ-NETO. I don't have the numbers right in front of me, but I believe the number is somewhere in the 3.5 million range.

Mr. PFLUGER. I don't have the document, Mr. Chairman, but but that sounds about 2 million short. Apprehensions on the Southwest Border—and I will yield to you if you can back me up—about 5½ million.

Chairman HIGGINS. Is the gentleman referencing for the total number of encounters and apprehensions?

Mr. PFLUGER. Yes.

Chairman HIGGINS. I would say that is—3½ million is low.

Mr. NUÑEZ-NETO. I'm sorry, I meant the last 2 fiscal years. I think if you're counting from January, that's probably a little bit higher.

Mr. PFLUGER. How do those compare to the 4-year period between 2017 and beginning of 2021?

Mr. NUÑEZ-NETO. It is higher.

Mr. PFLUGER. Twice, three, four, five times higher?

Mr. NUÑEZ-NETO. It is significantly higher.

Mr. PFLUGER. OK. Would you consider that a success for the Department?

Mr. NUÑEZ-NETO. You know, we have seen over the last few years, again, as I said, these surges in migration under Presidents of both parties. This is not a new phenomenon, this is not something that is solely the purview of one party or the other.

Mr. PFLUGER. No, but Assistant Secretary, it is the numbers indicate a story out here. Would you consider that a success for our country?

Mr. NUÑEZ-NETO. I don't believe that what we have seen at the border is a success for anybody.

Mr. PFLUGER. OK. I agree with that.

Mr. NUÑEZ-NETO. Going back more than a decade.

Mr. PFLUGER. That might be the first answer that I have agreed with DHS on our border in the last 3 years since I have been here.

It is not a success. Title 42 is not the answer. This was a Band-Aid fix. It goes to the point where I meet with Mr. Huffman's officers, and it doesn't matter if I am in Del Rio or El Paso, McAllen or Laredo, Eagle Pass, or my hometown of San Angelo, it really

doesn't matter, the thing that keeps coming back, every officer, every Border Patrol, Customs agent or ICE agent says these words, and I quote, "there are no consequences". Without consequences, there is chaos. The chaos that we are seeing is fentanyl, 100,000-plus deaths, trafficking of humans, 53 people who died in a tractor trailer south of San Antonio in July.

So to your answer, I am disappointed that you don't actually know the number. As the assistant secretary, that number should be ingrained. You should know that number and you should be able to add it up today for the crossings, the apprehensions today. You should be able to have a running counter today. That is the problem with this administration, is that the tragedies that are happening to us, in my community in Odessa, Texas, where we had the police chief here 2 weeks ago, we are feeling the impact of this. Without rules, there is chaos.

Would you say that after Title 42 ended and Title 8 was reverted to, DHS has noted that aliens may qualify for an exception and even if they don't use a lawful pathway, would you say that those—do aliens who use the alleged lawful pathways need a legal basis to enter? Or can anyone enter the United States at this point?

Mr. NUÑEZ-NETO. Going back to my previous comments, sir, I would note that Title 42 did not allow us to place consequences at the border. We need consequences on unlawful entry in order to deter unlawful migration. That is why we have implemented the Circumvention of Lawful Pathways Rule, which does place common-sense conditions on asylum eligibility. But we need Congress to act here, or there will never be a success on our border.

Mr. PFLUGER. You need Congress to act here?

Mr. NUÑEZ-NETO. We do, sir.

Mr. PFLUGER. Assistant Secretary, we passed the most comprehensive border security package in the history of Congress. We have acted. That is one of the most outrageous statements that I think I have ever heard.

Mr. NUÑEZ-NETO. We need Congress to act in a bipartisan manner to fix this problem. Neither party is going to solve this on its own.

Mr. PFLUGER. Mr. Chairman, my time has expired.

I am having trouble—

Chairman HIGGINS. I indulge the gentleman.

Mr. PFLUGER. We passed H.R. 2 and have acted. What this country needs is the political will to enforce the laws that are already on the books. In fact, the gentleman sitting next to you as Commissioner has 19,000 Border Patrol agents that are currently out there ready to give their lives and they are saying that there are no consequences because Remain in Mexico, MPP has not been adhered to, because the political will to engage with our allies and our partners and countries to the south of us has not been adhered to. We had policy that deterred, and without deterrence, we will see a massive surge.

So I take great offense to the fact that you are telling me that you think Congress should act, and that that is the problem.

I couldn't disagree with you more.

With that, Mr. Chairman, I yield back.

Chairman HIGGINS. The gentlemen yields.

It has been an engaging committee hearing. We have shared insightful and I think well-thought-out perspectives from both sides. The Ranking Member and I are friends, and we will continue to discuss this.

I thank the witnesses for their testimony today. I thank the Members for their questions.

Members of the subcommittee may have some additional questions for the witnesses. We would ask that the witnesses respond to these questions if presented to you in writing.

Pursuant to committee rule VII(D), the hearing record will be held open for 10 days.

Without objection, the subcommittee stands adjourned.

[Whereupon, at 3:45 p.m., the subcommittee was adjourned.]

## A P P E N D I X

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### QUESTIONS FROM CHAIRMAN MARK E. GREEN FOR BLAS NUÑEZ-NETO

*Question 1.* When Title 42 ended, CBP reverted to Title 8 to process and remove illegal aliens from the United States who were not authorized to remain or who did not use a designated “lawful pathway” for entry. However, DHS notes that aliens may qualify for an exception if they do not utilize a “lawful pathway.” The exceptions are expansive. Currently, what percentage of those who did not use a “lawful pathway” for entry have been granted an exception? Do aliens who use the alleged “lawful pathways” need a legal basis to enter, or can anyone wishing to enter the United States use the pathways? Those using parole pathways—what happens after the 2-year term ends—are they issued NTAs, or are they expected to present for removal on their own volition? Are the parole pathways expected to be implemented in perpetuity?

Answer. Response was not received at the time of publication.

*Question 2.* Parole+ATD was struck down by a Federal judge in March 2023. Prior to the end of Title 42, Chief of Border Patrol Raul Ortiz issued a policy called “Parole with Conditions,” which in practice seemingly was the same program as Parole+ATD, just under a different name. Is Parole+ATD still in use, despite the court order to terminate? What are the differences between Parole+ATD and Parole with Conditions? Are aliens still released under these conditions? What conditions do the aliens have to meet in order to be released?

Answer. Response was not received at the time of publication.

*Question 3.* The administration has announced recent agreements with the government of Mexico, one of which being that Mexico will accept 30,000 returns per month from the United States. Are only Cubans, Haitians, Nicaraguans, and Venezuelans being accepted by Mexico, or are other nationalities being accepted, as well? What are the limitations of the agreement? Since the agreement’s inception, how many aliens has Mexico accepted? Is Mexico accepting returns only from specific portions of the border (i.e., Southwest border), or does Mexico accept aliens from any portion of the United States? Are there any restrictions on whom Mexico will accept?

Answer. Response was not received at the time of publication.

*Question 4.* ICE detention policy states that, “ICE uses its limited detention resources to detain noncitizens to secure their presence for immigration proceedings or removal from the United States—as well as those that are subject to mandatory detention, as outlined by the Immigration and Nationality Act, or those that ICE determines are a public safety or flight risk during the custody determination process.” Does ICE Enforcement and Removal Operations (ERO) have enough officers to handle both a potential upcoming post-Title 42 surge at the border and the ability to continue its interior enforcement operations? What plan does DHS have for ICE to track those who fail to show for their immigration removal proceedings? Also, it has been widely reported that aliens were released into the interior without court dates, regardless of whether they were issued a NTA. Are the reports true, and how does DHS expect to track those aliens without proper documentation?

Answer. Response was not received at the time of publication.

### QUESTIONS FROM HONORABLE JOSH BREECHEN FOR BLAS NUÑEZ-NETO

*Question 1.* Under President Biden and Secretary Mayorkas, DHS has closed several detention centers across the country that were previously used to house and keep aliens in DHS custody and prevent their release into the interior of the United States. Instead of detaining aliens, this administration decided to implement alternatives to detention like GPS ankle monitoring, telephonic reporting, and SmartLINK phone app monitoring. On May 20, 2021, then-ICE Acting Director Tae Johnson said, “ICE will continue to ensure it has sufficient detention space to hold

noncitizens as appropriate.” Yet, in his fiscal year 2024 budget proposal, President Biden requested 9,000 fewer detention beds at detention facilities—a reduction from 34,000 to 25,000.

Is this memo accurate?

Answer. Response was not received at the time of publication.

*Question 2.* Will CPB have the flexibility to conduct a DNA test if CBP agents are suspicious of an adult alien?

Answer. Response was not received at the time of publication.

*Question 3.* Would you agree that this policy change will encourage more children to be trafficked into the country with complete strangers?

Answer. Response was not received at the time of publication.

QUESTIONS FROM CHAIRMAN MARK E. GREEN FOR BENJAMINE “CARRY” HUFFMAN

*Question 1.* Regarding the parole process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), the CHNV program was created due to a large amount of those aliens presenting at the border. What is the process for screening individuals for parole when they arrive at air ports of entry? Have any been denied parole at the port of entry? Have any sponsor applicants within the United States been denied sponsorship of those arriving under CHNV and on what grounds were they denied?

Answer. Response was not received at the time of publication.

*Question 2.* It was noted that CBP has closed gates and plugged gaps in the wall to prevent illegal aliens from entering between points of entry. However, it has been reported that Border Patrol agents are shuffling in aliens through an area used by authorized personnel called Gate 42. Why is Border Patrol escorting aliens through personnel gates, such as Gate 42?

Answer. Response was not received at the time of publication.

*Question 3.* The committee has been told that 90 percent of the drugs crossing our border enter through ports of entry, while also being told that the amount caught is roughly between 5–10 percent being trafficked into the United States. Please clarify what percentage of illicit substances are interdicted at our ports of entry. Has Border Patrol seen an increase of fentanyl seizures between ports of entry? In total, what is the estimated percentage of fentanyl being trafficked across the border between ports of entry?

Answer. Response was not received at the time of publication.

*Question 4.* In his testimony, Mr. Huffman stated that in addition to the approximately 24,000 agents and officers along the Southwest Border, CBP has also been hiring non-uniformed personnel and contract personnel to assist in processing and facility operations. How many non-uniformed personnel have been hired specifically for processing along the Southwest Border? How many contract personnel have been hired for the same reason? Where are the majority of these extra personnel being sent? How much do the extra non-uniform personnel cost?

Answer. Response was not received at the time of publication.

*Question 5.* Once family units (FAMUs) are released into the United States, are all family members tracked/accounted for individually, or is only the head of household tracked? What does the vetting process look like for family units? How is it determined that the family units are indeed related?

Answer. Response was not received at the time of publication.

*Question 6.* There have been reports of NGO’s bussing processed migrants into the interior of the United States—as many as three chartered busloads in just a few hours. How does CBP keep track of every individual on the bus? Which specific NGO’s does CBP work with to arrange travel for the aliens and how is the decision made when choosing an NGO?

Answer. Response was not received at the time of publication.

QUESTIONS FROM HONORABLE JOSH BREECHEN FOR BENJAMINE “CARRY” HUFFMAN

*Question 1a.* Under President Biden and Secretary Mayorkas, DHS has closed several detention centers across the country that were previously used to house and keep aliens in DHS custody and prevent their release into the interior of the United States. Instead of detaining aliens, this administration decided to implement alternatives to detention like GPS ankle monitoring, telephonic reporting, and SmartLINK phone app monitoring. On May 20, 2021, then-ICE Acting Director Tae Johnson said, “ICE will continue to ensure it has sufficient detention space to hold noncitizens as appropriate.” Yet in his fiscal year 2024 budget proposal, President Biden requested 9,000 fewer detention beds at detention facilities—a reduction from 34,000 to 25,000.

Why would the administration claim a lack of resources as justification for implementing alternatives to detention policies, yet simultaneously request fewer detention beds? Shouldn't this administration be requesting more beds, not less?

Answer. Response was not received at the time of publication.

*Question 1b.* I was made aware of a CPB memo dated May 19, 2023, which states that this administration voluntarily directed Border Patrol to terminate all DNA testing last Wednesday, on May 31.

Last fiscal year there were over 560,000 apprehensions at the Southern Border of aliens in a family unit. If we were to use GAO's 8 percent of familial claims being fraudulent, this would mean that over 44,000 of those kids apprehended were not traveling with their families.

Answer. Response was not received at the time of publication.





# HELP WANTED: LAW ENFORCEMENT STAFFING CHALLENGES AT THE BORDER

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY,  
THE BORDER, AND FOREIGN AFFAIRS  
OF THE  
COMMITTEE ON OVERSIGHT  
AND ACCOUNTABILITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 6, 2023

**Serial No. 118-39**

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- \* Letter, to Chairman Grothman and Rep. Garcia, re: Project on Government Oversight, June 6, 2023; submitted by Rep. Garcia.
- \* Email, between Inspector General Cuffari and IG office, re: the importance of Federal Employee Viewpoint Survey scores; submitted by Rep. Frost.
- \* Article, *Politico*, “DHS has a Program Gathering Domestic Intelligence and Virtually No One Knows About It”; submitted by Rep. Porter.
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*Documents are available at: docs.house.gov.*



## **HELP WANTED: LAW ENFORCEMENT STAFFING CHALLENGES AT THE BORDER:**

**Tuesday, June 6, 2023**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY  
SUBCOMMITTEE ON NATIONAL SECURITY, THE BORDER, AND FOREIGN  
AFFAIRS

*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Glenn Grothman [Chairman of the Subcommittee] presiding.

Present: Representatives Grothman, Comer, Gosar, Higgins, Sessions, Biggs, Mace, LaTurner, Armstrong, Perry, Garcia, Raskin, Lynch, Goldman, Moskowitz, Porter, and Frost.

Also present: Representative Ivey.

Mr. GROTHMAN. The Subcommittee on National Security, the Border, and Foreign Affairs will come to order. Everyone, welcome.

Without objection, Representative Connolly of Virginia and Representative Ivey of Maryland are waived on to the Subcommittee for the purpose of questioning the witness of today's hearing.

Without objection, the Chair may declare a recess at any time.

I recognize myself for the purpose of making an opening statement.

On day one of his Administration, President Biden signaled to the world through words and actions that our borders are open, and so they were. Our country has since watched the crisis along our Southwest border devolve into a catastrophe, a humanitarian and national security catastrophe. The deteriorating conditions along the Southwest border and mismanagement of resources have harmed law enforcement and made existing staffing challenges even worse.

Just last month, the Department of Homeland Security Office of the Inspector General issued a report examining how law enforcement and Customs and Border Protection and Immigration and Customs Enforcement have been negatively impacted by historically high levels of illegal immigration and other operational challenges. Per this audit, the DHS Office of Inspector General surveyed over 9,000 DHS law enforcement personnel within ICE and CBP. They collected information from Border Patrol agents who protect our border from illegal entries, Office of Field Operation of-

fficers who guard our points of entry, Enforcement and Removal Operation officers who enforce immigration laws, and Homeland Security Investigation agents who investigate cross-border criminal activity.

What they found is shocking. Eighty-eight percent of ICE and CBP law enforcement personnel who responded said their work location was not adequately prepared and staffed during migrant surges. Seventy-one percent of CBP personnel and 61 percent of ICE personnel stated that their current work location was not adequately prepared and staffed even during normal operations, but there is nothing normal about the current border catastrophe.

As noted in the IG's report, migrant encounters at the Southwest border have risen from approximately a little under a million in Fiscal Year 2019 to 2.5 million in 2022. This Fiscal Year through the end of April, CBP has already made 1.4 million encounters along the Southwest border with 1.2 million of those coming from Border Patrol agent apprehensions of illegal border crossers. Each of these encounters represents law enforcement resources expended in arresting and processing those individuals, and those resources are being used up at the expense of enforcement.

The Inspector General's report highlights a 300 percent increase in the number of known got-aways, meaning migrants who invade apprehension entirely, in Fiscal Year 2022 compared 2019. Last year there were more than 600,000 known got-aways recorded by CBP. In one Border Patrol station reviewed by the Inspector General's audit, 15 percent of the got-aways over a five-day period evaded apprehension simply because no agents were available to respond. Think about that. I mean, people are showing up at the Southern border, even though we know they are there. We do not have anybody who can show up and process these people. These challenges have left the men and women on the front lines of this crisis overwhelmed and stretched to their limits.

To meet mission requirements, DHS implemented stopgap measures, like increased overtime and temporary details, that exacerbate staffing challenges in the long term by eroding morale and jeopardizing retention of experienced law enforcement professionals. Today, we hear from Inspector General Cuffari on his office's findings about the reality of the problem, how DHS is managing these staffing challenges, and recommendations to solve the staffing crisis.

Since 2016, DHS Office of Inspector General and the Government Accountability Office have issued 25 reports examining staffing issues at our border, but 80 percent of the recommendations have been closed without yielding tangible results at DHS. In fact, DHS did not concur with one of the three recommendations in this report, appearing not even to be willing to acknowledge the impact of temporary details and overtime on the workforce. We must hold DHS accountable to achieve critical mission goals, including ensuring border security, enforcement of our immigration laws, and facilitating lawful trade and travel, and that means DHS must successfully manage law enforcement resources and support the men and women who carry out these essential functions.

I want to thank Inspector General Cuffari for appearing today, and I look forward to working with his office to ensure continued

robust investigation of DHS. I will tell you, I have been at the border several times. Last time I was down there two months ago, it was shocking the degree to which we did not have enough people to deal with particularly would-be got-aways coming across the border, and that is why we have this drug crisis in our country. But in any event, I would like to recognize the Ranking Member Garcia for the purpose of making his opening statement.

Mr. GARCIA. Thank you very much, Mr. Chairman, and I want to thank you for convening this important hearing. I want to just start by just noting that I hope that we can all commend the Biden-Harris Administration for their actions to prevent a serious disorder at the border following the expiration of Title 42, which I believe was the right decision. As a proud immigrant myself and a patriotic American, we certainly have to focus on a humane and secure border but also have legal pathways to let people continue to come to this country and be part of our experience. We know that immigrants make our country stronger and we are a Nation of immigrants.

Congressional Democrats and President Biden have taken clear actions to improve border security. We have provided unprecedented resources to the men and women who protect our borders, and President Biden has implemented numerous policies to bolster the health and wellbeing of border security. Now, House Republicans, on the other hand, have opposed greater funding to frontline agencies, including Customs and Border Protection, and House Republicans have called to defund our Federal law enforcement agencies, claiming oftentimes and weaponizing them to further political agendas. Now, Democrats know we have a responsibility to support the wellbeing of all Federal employees and, as Mayor of Long Beach, California, I worked closely with all of our employees and was proud to have the support of our local police department.

Today, I am glad we are addressing concerns of Federal law enforcement agencies. The work that they do is very important, but I believe we have a responsibility to support all Federal employees who serve our country, and that is everything from DHS to the U.S. Postal Service. However, today I am very concerned that we are holding a hearing today on the basis of a flawed report and with a witness with a problematic record.

Now, Mr. Cuffari is a witness who repeatedly refused to comply with this Committee's requests for meetings and information, and he has sought to block congressional oversight at every turn. And it is actually ironic that we are dealing with a politicized and problematic report given his own Department's staff morale challenges. Now, on September 23, 2022, a letter was published that was drafted, "By concerned DHS OIG employees representing every program office at every grade level." The letter claimed that Inspector General Cuffari "no longer has the support of his workforce," and that staff fear retaliation if they speak up about the multitude of issues at the office. Staff made the startling claim that DHS OIG "will continue to fail under the IG's disastrous leadership."

Now, the concerns about this witness go on and on, from his resigning under ethical concerns early in his career, allegations of deliberately delaying essential oversight reports, and alerting and covering up critical investigatory facts. Now, we all know that the

Inspector General is currently under investigation by the Council of the Inspector General on Integrity and Efficiency, CIGIE. Now, rather than cooperate with legitimate oversight efforts, the Inspector General has filed a lawsuit against CIGIE in a desperate attempt to escape scrutiny or consequences for failures and transgressions. Now, it is unacceptable that the individual entrusted to investigate fraud, waste, and abuse in our third largest executive department believes that he is above the law, believes that his office is above scrutiny from Congress, and believes that he is beyond reproach for his own potential perpetration of fraud, waste, and abuse.

Now, under Inspector General Cuffari's leadership, Department of Homeland Security Office of Inspector General has developed a pattern of flawed and misleading investigations, including a failure to report sexual misconduct and harassment at DHS and a failure to investigate and disclose to Congress missing Secret Service text messages from the January 6 interaction.

I would also like to briefly address the report on which this hearing is based, a report that is misleading, non-representative of the broader Agency, and deeply flawed. The DHS Office of Inspector General claimed that the purpose of their work was to gain insight into staffing. Instead, the report made sweeping generalizations about morale at CBP and ICE. The report has mathematical errors and misleading tables and graphs. DHS OIG even states that their work was conducted in accordance with "generally accepted government auditing standards, with the exception of data reliability." And I do not know about all of you, but with the exception of data reliability seems like a pretty big exception to me.

Now, we need an IG in place at DHS who is able to perform high-quality audit work with integrity, objectivity, and independence, or we will never have the accountability and transparency that we need and that we deserve from this agency. We should expect better. I look forward to this hearing only for the opportunity for our Members to raise longstanding concerns. We have serious challenges to address at our borders, and I look forward to building solutions to address them. Mr. Chairman, I yield back.

Mr. GROTHMAN. I am pleased to introduce our witness today. Joseph Cuffari was confirmed by the Senate to be the Department of Homeland Security's Inspector General in July 2019. He was previously a policy adviser to the Governor of Arizona, served in the U.S. Air Force, and spent 20 years at the Department of Justice. In 2013, he retired from his position as Assistant Special Agent in Charge for the Office of Inspector General in Tucson, Arizona. I want to thank Dr. Cuffari for being here today, and I look forward to his testimony. I was down in Tucson sector for, I think, the third time in the last four years, and I will tell you, I am glad you are in that position and look forward to hearing from you and your testimony.

Pursuant to Committee Rule 9(g), the witness will please stand and raise your right hand.

Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. CUFFARI. I do.



Mr. GROTHMAN. Let the record show the witness answered in the affirmative.

We appreciate you being here today and look forward to your testimony. Let me remind you that we have read your written statement, and it will appear in full in the hearing record. Please, if you can, limit your oral statement to five minutes. As a reminder, please press the button on the microphone in front of you so that it is on, and the Members can hear you. When you begin to speak, the light in front of you will turn green. After four minutes the light will turn yellow, and when the red light comes on, your five minutes have expired.

I recognize you to please begin your opening statement.

**STATEMENT OF JOSEPH CUFFARI  
INSPECTOR GENERAL  
DEPARTMENT OF HOMELAND SECURITY**

Mr. CUFFARI. Chairman Grothman, Ranking Member Garcia, and distinguished Members of the Subcommittee, thank you for the opportunity to discuss Homeland Security IG's critical oversight of DHS.

Prior to my unanimous confirmation in 2019, I served more than 20 years with the Department of Justice IG and various offices along the Southwest border. For 10 of those years, until the establishment of DHS in 2003, DOJ IG oversaw the Immigration and Naturalization Service and its component, the U.S. Border Patrol. I personally observed three special Border Patrol operations in which INS detailed agents to the Southwest border, and I investigated financial irregularities related to one of those operations.

As I promised Congress during my confirmation process, as Homeland Security IG, I prioritized oversight of border security and immigration. My first visit to the Southwest border was within two months of my confirmation, and since then, I have personally traveled to the Southwest border nine times to review DHS operations and border conditions. These trips have encompassed all nine Border Patrol sectors from San Diego, California, to the Rio Grande Valley in Texas. In addition, my senior staff or I have visited the Northern borders of Washington, Michigan, New York, Vermont, and Florida's maritime border. During my visits, I have engaged with senior law enforcement and frontline personnel to better understand how DHS can enhance border security and fight corruption. I have also received situational briefings from NORTHCOM, SOUTHCOM, U.S. Army North regarding active and reserve components assisting at the Southwest border.

My testimony today will focus on CBP and ICE's management of resources as discussed in our recently published audit about the health and morale of CBP and ICE. We conducted this audit to determine the extent to which DHS is effectively managing law enforcement staffing resources. Our audit work included analysis of attrition rates, succession plans, and physical observations of 31 facilities. We also interviewed and surveyed law enforcement personnel. We determined CBP and ICE's current approach to staffing is neither effective nor viable long-term.

Despite greater workload, staffing levels of both agencies have remained relatively flat since 2019. CBP and ICE have relied on

the use of temporary duty assignments, overtime shift work to surge staffing along the Southwest border, a practice that dates back to at least 1994 with the creation of the INS' national border strategy. Although CBP and ICE annually assessed their staffing needs, neither Agency has assessed the impact of these details on their operations.

CBP and ICE have initiated programs focused on the wellbeing of their agents and officers. Both components could benefit from a more strategic approach to resource allocation. We heard from more than 9,000 law enforcement personnel. That represents 16 percent of the 57,000 who we surveyed. Our analysis of the survey comments indicated that many recipients felt the current staffing has negatively impacted their health and morale. CBP and ICE cannot continue to use temporary duty assignments and overtime shift work effectively to meet the challenges at the Southwest border. We made three recommendations to help DHS strategically assess the issues we identified. DHS concurred with two of these recommendations and did not concur with one.

In total, during my tenure, we published 51 reports and made 145 recommendations specifically aimed at improving DHS Southwest border ops. I am very proud of the quality and quantity of the work by more than 700 professional career DHS employees have produced under my leadership. As I have reported since the fall of 2021, DHS continues to delay and deny OIG access to information that DHS is required to provide to us and that we need to do our jobs. I remain hopeful DHS will improve their responsiveness to our request for information so that we can continue to provide Congress and the public robust timely oversight like that being featured in today's hearing.

Mr. Chairman, this concludes my prepared remarks. I look forward to the Subcommittee's questions.

Mr. GROTHMAN. Thank you. Right on the button. I will give you a few questions.

Law enforcement staffing at the Southwest border is facing a systemic crisis, one that the Department of Homeland Security does not have a coherent plan to address. Why did you decide to initiate this report, and what are some of the biggest challenges our law enforcement agents and officers face at the Southwest border that your report found?

Mr. CUFFARI. Mr. Chairman, thank you. So, starting in around March 2021 when it became safe to travel post-COVID, I began to visit the Southwest border again. I began to hear from line law enforcement personnel and senior staff that there were morale issues impacting the workforce. And those issues related to the deployment of Border Patrol primarily from the Northern tier offices to the Southwest border. I asked my staff to conduct a review, and they did so within a year and a half, and they completed the report in May of this year.

Mr. GROTHMAN. What were some of the mental and physical consequences of the current work conditions that DHS' law enforcement officers reported?

Mr. CUFFARI. According to the law enforcement personnel, who actually have been doing these details, the constant flux of being transferred to the Southwest border from the home station for 30

to 60 days provides a lot of turmoil to the agents and their families. In some cases, they do not know where on the Southwest border they are going to be detailed and/or for how long they are going to be there. Once they complete their initial assignment, they return back to their home station where they are back working where they were originally assigned. And then 30 to 60 days later, they get notified again that they are going back to the Southwest border, so it is a constant churn. It is the unknown effects, and, according to the respondents, they have developed an inability to continue to do what they consider to be their primary law enforcement function.

Mr. GROTHMAN. One of the issues addressed in your report is temporary detailing, which is the practice of temporarily assigning agents and officers to different locations for a period of time before returning to their permanent duty station. Many Border Patrol agencies and Office of Field Operation officers can be detailed from their duty locations to assist with custody and processing of migrants. One Border Patrol agent said in your report that agents were providing clothing, diapers, formula, and other domestic services, noting that the job feels more like social worker duties rather than law enforcement. How can DHS improve their detailing practices to make sure the detailees are actually performing jobs within their job description?

Mr. CUFFARI. It is a function of the first recommendation that we made to DHS, what they did not concur with, which was to hire an outside national academy to take a look and develop a strategic staffing model so that DHS would be best able to use the resources they have to the most effective benefit of the organization.

Mr. GROTHMAN. Does the practice of temporary details leave home duty stations vulnerable or understaffed?

Mr. CUFFARI. According to the agents who responded, yes, there is a gap when you pull resources from one area to another.

Mr. GROTHMAN. No question. Anybody who is down at the border knows that. What are the current staffing levels at ICE and Customs and Border Patrol compared to their authorized levels?

Mr. CUFFARI. I do not know the exact number, Chairman. I would have to get that number to you.

Mr. GROTHMAN. OK.

Mr. GROTHMAN. How many Border Patrol agents and Office of Field Operation officers do we need to address the issues we are dealing with today?

Mr. CUFFARI. That is a matter for the Department to decide based on the recommendation, No. 1, that we made to have an outside entity take a look at their organization to have a strategic staffing model.

Mr. GROTHMAN. I ask you, in a two-year period we went from about 20,000 people coming across the Southern border to about 220,000 per month. Isn't that kind of part of the big problem, that they have not adjusted the number of agents for the huge number of people who are coming over here?

Mr. CUFFARI. There certainly has been a significant influx of migrants coming in the Southwest border. The staffing levels for ICE and CBP, although I do not know the actual numbers, have remained relatively flat. So as the—

Mr. GROTHMAN. OK. How does the turnover rate within DHS' law enforcement agencies compare with other government agencies?

Mr. CUFFARI. Their turnover rate, from what I recall from our report, is consistent with that of other agencies in the Federal Government.

Mr. GROTHMAN. OK. OK. Very good. We will now call on Mr. Garcia for five minutes.

Mr. GARCIA. Thank you, Mr. Chairman. Mr. Cuffari, I want to look at the report you recently published about Customs and Border Patrol morale among people working at the Southern border. Now, an examination of your report shows that it is exceptionally flawed, and I am stunned that you and your team released this report. It does not meet the standards required of inspectors general or, quite frankly, data collection of any kind.

[Chart]

Mr. GARCIA. Now, as you can see on this poster behind me, one of the first points highlighted in the report is that it is based on "a non-statistical survey." I am going to read that again, "a non-statistical survey." You might as well at this point be doing a Twitter poll, which is the same exact thing as a non-statistical survey. I want to also, again, quote from the report, "It cannot be projected to the entire population of CBP and ICE law enforcement officers and agents." Again, a non-statistical survey.

Now, in fact, on the same page as this paragraph, you explained that only 16 percent of border law enforcement personnel actually responded to the survey that the report is based on. And so, we have 16 percent respondents, of which was non-statistical of those that are in the Department, and so this is really flawed just from the go. And I just want to make sure that we highlight that as very important as far as this Committee is worth.

Now, throughout the report, then you begin to cherry pick responses from individual law enforcement officers to bolster your conclusions. Now, last week, our Committee staff had the chance to sit and have actually interviews with Border Patrol sector chiefs. A Border Patrol agent, Joel Martinez, who is the Chief Patrol Agent of Laredo Sector, said it best, and I want to quote him: "If you speak to 20 different agents, you will get 20 different opinions. Some guys are out there just loving their job." Now, it should be pretty obvious to anyone that there is a diverse set of opinions in any organization, and if you do not actually conduct statistical analysis, you are not actually going to get a real report.

Now, Mr. IG, did you interview chief patrol agents at CBP for this report?

Mr. CUFFARI. Yes, we did.

Mr. GARCIA. I do not believe you did actually, sir, and if you did, it is not clear in this report. But the most egregious flaw in this report is your office's failure to even test the reliability of the data. Now, as you can also see here, you explain that you conducted your audit, "according to generally accepted government auditing standards, with the exception of data reliability." I am going to read that one more time, "according to generally accepted government auditing standards, with the exception of data reliability." Now, do you agree that you need reliable data to do an audit?

Mr. CUFFARI. I believe we need reliable data. We asked for that reliable data from the Department. They were unable to provide it to us.

Mr. GARCIA. OK. So, the answer is, yes, I think we need reliable data to do an audit, and yet the data reliability of this report cannot be verified, and you actually say this in the report. So, in other words, we simply do not know if the data you relied upon is sufficient to support any of the findings of this report. So, essentially, this report is not verified and should not be acceptable to anyone to make any sort of conclusions.

Now, I know, sir, that the President that appointed you to this position also had a problem with facts and data, and so this is not a surprise, but I want to go back to actually the report itself. The title of the report, for instance, makes no mention of staffing issues at CBP and ICE, which you allege were the entire purpose of this work. And the attrition data in the report is full of basic math errors, so there are errors of basic math all throughout the report. The data is not reliable, and a small subsection of folks were actually interviewed. Now, I think we can all agree that safely establishing humane immigration policies, and at the border, we know are challenging tasks for Congress in every administration, but flawed reports like this only make those tasks harder. Now, this report is a disservice to our law enforcement personnel, and instead of working to actually identify and solve issues affecting morale, our attention now is forced to correct mistakes and correct a report that is deeply flawed. Mr. Chairman, with that, I yield back.

Mr. GROTHMAN. Mr. Gosar?

Mr. GOSAR. Thank you, Mr. Chairman. Thank you very much for being here, Inspector. Now, in 2021, the Department of Health and Human Services took over \$2 billion designated for other purposes, such as replenishing medical supplies and coronavirus testing, and moved it to house and care for illegal alien children. The executive took advantage of the recently terminated COVID-19 National Emergency to spend money on programs unrelated to COVID-19. Are you concerned that the Department of Homeland Security may be using National Emergency Act money to redirect spending, contrary to Congress' intention?

Mr. CUFFARI. Sir, I think you mentioned Health and Human Services, apparently.

Mr. GOSAR. Yes.

Mr. CUFFARI. And in the Department of Homeland Security, it is primarily FEMA who is responsible for the disbursement of COVID-related funding. So, we have a number of audits, and, in fact, we have created a special COVID Fraud Unit to investigate criminal fraud related to pandemic relief money.

Mr. GOSAR. So, has Department of Homeland Security been forthcoming to you on how they are spending taxpayer money?

Mr. CUFFARI. Based on the questions we have asked, we have been provided with information, and we are evaluating that information.

Mr. GOSAR. Can you tell me the most egregious example of wasteful spending by DHS that you have uncovered?

Mr. CUFFARI. There is a whole host of audits that we have completed, and I do not have one off the top of my head to give you at the moment.

Mr. GOSAR. Were contracts done appropriately?

Mr. CUFFARI. There have been a number of audits that we have conducted to look at ICE's—I am sorry—DHS' unsolicited, no-bid, sole-source contracting. We published a report about that last year. And we have also identified, in one instance, where an unsolicited contract was awarded to a company to provide housing, and that company also received an award from Health and Human Services.

Mr. GOSAR. By the way, at the very beginning, I talked about the status of children. What are the status of some of these children? How many have we lost?

Mr. CUFFARI. DHS' responsibility is to care and feed for the children who are in their custody during the term that they are in their custody, which is primarily for a short period of time of about 72 hours, and DHS then releases the unaccompanied minors to Health and Human Services, to the Office of Refugee Resettlement. It then turns into a Health and Human Services responsibility.

Mr. GOSAR. And we have lost a bunch. Well, let me go back to something else. You uncovered the fact that the Secret Service erased text messages in the aftermath of January 6, 2021. After you requested the electronic communications, could you please expound on your office's work in this area, one. No. 2, why in the world did the Secret Service erase text message? That is No. 2. Does it make you suspicious that there is something to hide, and how many requests for documentation preservation were there?

Mr. CUFFARI. I know of at least five preservation notices.

Mr. GOSAR. And who did those come from?

Mr. CUFFARI. Four of those were issued by Majority Members of oversight committees in the last Congress starting on January 16, 2021, four from a committee or multiple committees, and one from our office when we opened an audit of the events of January 6th.

Mr. GOSAR. Can you come up with any idea why the Secret Service under preservation notices would erase emails?

Mr. CUFFARI. We have been unable to get an answer to that question.

Mr. GOSAR. Wow, that is pretty incredible. And last one, you mentioned that there was a 100 percent increase in ICE's notices to appear, an NTA, from October 2020 to April 2022. Could you explain what is in an NTA, and how often do illegal aliens show up for their court hearings?

Mr. CUFFARI. I believe DHS discontinued the use of notices to appear, or NTAs, in November 2021. They began to issue notices to report, which required migrants to report to an immigration court on a predetermined date. The Immigration Court, as you know, is within the jurisdiction of the Department of Justice, and the Immigration Court would retain statistics on no-shows or individuals who actually do show for their court date.

Mr. GOSAR. I want to thank you for your information. I think the other side is very particular because this does not point very good to them. So, I yield back.

Mr. GROTHMAN. Congressman Raskin?

Mr. RASKIN. Mr. Chairman, thank you. Mr. Cuffari, your duty under the Inspector General Act is to immediately report flagrant and serious abuses that are taking place. You were aware at least as early as May 2021 that the Secret Service had erased thousands of text messages that were sent before and during the January 6 violent attack on the Capitol, the Congress, and the Vice President, but you failed to notify Congress for 14 months—for a year and two months—that the Secret Service was refusing to comply with your requests for information. So why did not you immediately report, as you are statutorily bound to do, these serious and flagrant failures to answer your questions about the disappearance of thousands of texts that were sent during January 6?

Mr. CUFFARI. Just so the record is clear, Congressman, we were not informed by the Secret Service on the date that you described in 2021. In fact, at no time in 2021 were we informed that Secret Service had deleted and was no longer able to retrieve text messages on cellphones owned by the Secret Service.

Mr. RASKIN. So, when did you become aware of that?

Mr. CUFFARI. In February, I believe, of 2022.

Mr. RASKIN. Well, we have documents showing that just six weeks after the initial request for documents from the Secret Service, you canceled requests to the Secret Service for phone records and text messages. Why did you do that?

Mr. CUFFARI. If I recall correctly, and I mentioned during my prepared remarks here, DHS was delaying or denying us access to relevant information. We—

Mr. RASKIN. But did you report that to Congress at that point or ask for a report to Congress?

Mr. CUFFARI. I was working with the senior leadership of the Department to free up or to pry loose information that the Department was withholding from us. In fact, I met with the Secretary of Homeland Security in about September or October 2021. I explained to him that we were having delays in getting information, and the Secretary saw fit to publish a memo in which he directed all the employees in the Department to cooperate with our office. We subsequently received a tranche of documents from the Department. They were basically emails that we had been waiting for eight months to receive. I think there were about 700,000 emails.

Mr. RASKIN. Yes. Well, what I do not understand is your office revived the request that you nullified six weeks after originally making it, five months later in December 2021 is what the paper trail reveals. But what I do not understand is your statutory duty to immediately inform Congress about this flagrant abuse. I mean, we are talking about the worst violent insurrection against Congress in the history of the United States, and the Secret Service is not cooperating with your request for information. Why did you not think that you needed to immediately alert Congress to that fact?

Mr. CUFFARI. I was working with senior leadership and the Department of Homeland Security to get the records we were lawfully entitled to receive. The Department was also under four preservation notices by congressional oversight committees last Congress, and to my knowledge, the Department never informed Congress that itself had deleted the messages.

Mr. RASKIN. Right.

Mr. CUFFARI. Nor were they ever asked—

Mr. RASKIN. But that is the role of the inspector general. That is why we have an inspector general. Look, in June 2022, you published your semiannual report where there was going to be a reference to the Secret Service's obstruction of this investigative path, and you removed that. Why was the reference to the Secret Service's obstruction deliberately deleted from the June 22 semiannual report of the Inspector General?

Mr. CUFFARI. I believe our first notification at Congress was in the fall of 2021 in our semiannual report, where we describe the delays that the Department was doing to us and prohibiting us from receiving requested information.

Mr. RASKIN. Well, did you sign off on the decision to remove this reference from the report?

Mr. CUFFARI. I do not know when that reference was.

Mr. RASKIN. In June 2022, there was going to be a reference to Secret Service's obstruction of questioning about the disappearance of the texts, and that was deliberately removed. Did you sign off on that deliberate removal?

Mr. CUFFARI. I signed off on the removal, and I signed a letter specifically to the January 6th oversight committee and to this Oversight Committee.

Mr. RASKIN. But why did you remove it?

Mr. GROTHMAN. Your time has expired. I am going to say something here. I think what is going on in the border is the biggest crisis this country has to deal with today. And it is not surprising that when the number of people coming into this country has increased by a factor of 11, it would have a tremendous impact on the morale of the Border Patrol. I realize Dr. Cuffari was originally appointed by Donald Trump, and some people are never going to get over that, but our focus today should be on what is going there. We could have a million hearings on the Southern border, but today we are going to focus on the morale of the Border Patrol and what effect this increase by a factor of 10, the number of people coming across, has. I am down on the border many times. I can assure you, if you go down there, the Border Patrol agents will tell you all sorts of things. But in any event, next we have Mr. Higgins.

Mr. GARCIA. Mr. Chairman, I just want to also just add. I think of the questions that have been asked so far, the statements on our side have been all within the scope of the hearing. I think we are merely pointing out flaws and issues within the witness and the witness' statements. And so, I just want to just add that I think their line of questioning so far has been very reasonable, within the scope of the hearing.

Mr. GROTHMAN. Mr. Higgins?

Mr. HIGGINS. Thank you, Mr. Chairman. Inspector General Cuffari, Joe Cuffari is one of the most honorable men I have ever met. I have had interactions with many in seven years of congressional service to my country. He is a rare combination of experience and intellect and honor and principle. You always get a straight answer from Joe Cuffari. I hope America is listening to him today. He has had attack after attack after attack from the left. The man is not looking at notes. He is responding from his head because he knows what is going on. It is no surprise that the Biden Adminis-



tration and my colleagues across the aisle do not like him because he is an honorable man who speaks the truth. There is a lot of wailing and gnashing of teeth over there.

The Democrats' issue with Inspector General Cuffari is that he is an actual investigator, he is not a political hack, and he speaks the truth. Here is the problem, though, that my colleagues launching these attacks against this good man, face. Joe Cuffari is a principled man, and he deals with personal attacks against him like something stuck to the bottom of his boot.

Inspector General Cuffari, you have been accused of conducting your survey. You surveyed over 9,000 agents, is my understanding. Our colleagues managed to leave that out. They act like you talked to 28 people. Over 9,000 agents participated, and in your report that you provided, you go on to attest to the quality of the survey, which is essentially amazing to America watching. You came to the conclusion that these border agents that have been tasked with dealing with the disintegration of our sovereignty at the Southern border. They have been moved from all across the country to work the Southern border, taken away from their primary law enforcement role to do housekeeping and social work. Your survey came to the conclusion, amazingly, that there is a problem with morale, but they are folding themselves in half over there trying to impugn you as a man. They get nowhere. America is watching.

Let me ask you about these deployments, Inspector General Cuffari, deployments from across the country, down to the Southern border, where agents were moved from where they lived and worked, where their family is, where their kids go to school, to go down to the Southern border. Were those deployments voluntary or were the agents ordered?

Mr. CUFFARI. In certain cases, according to the agents and other employees of the Department who were deployed, they were voluntary, and in others they were voluntold to go.

Mr. HIGGINS. So, could you clarify what that means? I know what it means. I am a veteran, an Army veteran. I was a cop for 12 years. I mean, you get volunteered. Your chain of command tells you, yes, we need you to volunteer for this. So, these guys are deployed for quite some time in incredibly difficult circumstances. They love their country. They are serving their country. By and large, they concur. But the longer they stay down there, the more it impacts themselves, their family, their morale, the esprit de corps of their units.

I think it is obvious that this system of moving people down there has been detrimental to the health and wellbeing of our agents. It is concerning that agents are not performing their primary law enforcement roles. America is largely under the impression that we are moving border agents down there to enhance law enforcement. Is that the role that agents are primarily performing, Mr. Cuffari?

Mr. CUFFARI. The role that they were hired to do and the performance of their duties is to do law enforcement, at least for the Border Patrol and the 1,811 criminal investigators who were deployed there.

Mr. HIGGINS. But what role are they actually performing down there?

Mr. CUFFARI. They are doing some law enforcement, but they are also providing care and welfare services to the detained and those individuals who they are processing.

Mr. HIGGINS. Thank you, Inspector General. Thank you for your service. God bless you, sir. Stand strong. My time has expired. Mr. Chairman, I yield.

Mr. GROTHMAN. Thank you. Congressman Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. Mr. Cuffari, first let me say that I have been on this Committee for 22 years and have been involved in dozens and dozens and dozens of investigations, from 20-something trips to Afghanistan, over 20 to Iraq, Ukraine. There has been no Member on this Committee currently that has done more investigations and involved in this type of work longer than I have, and I am honored to do it.

Mr. Cuffari, I do want to say that our relationship with the inspectors general during that 22 years that I have been on this committee has been a partnership. We rely heavily on our inspectors general to cooperate with us. It has been a good relationship, and I have dealt with probably three to four dozen different inspectors general over that 22 years, and I have been proud to do it. I have to say that based on the evidence I have before me, our relationship with you is different. It is different. We have not had the cooperation and the relationship of trust that we have had with other inspectors general. We have not had that with you, and I regret that. I do not diminish your service to your country or any other capacity. I am just talking about the facts of what has happened and what is going on.

Are you familiar with the Project on Government Oversight?

Mr. CUFFARI. Yes.

Mr. LYNCH. OK. So, the Project on Government Oversight is a nonpartisan, independent, nonprofit group that we have worked with for more than the 22 years I have been here. And I think they started in 1980, and they have been nothing short of honest and forthright. And I have worked with them in Republican administrations and Democratic administrations, and sometimes I agree with them, sometimes I do not, but they have always been straightforward, regardless of whose administration was in power at that time.

Mr. Chairman, I want to ask for unanimous consent to enter into the record a letter from the Project on Government Oversight urging the President of the United States to remove Inspector General Joseph V. Cuffari from his position with the Department of Homeland Security Inspector General.

Mr. GROTHMAN. OK.

Mr. LYNCH. Mr. Cuffari, currently another group that we work with very closely, and continue to, is the Council of Inspectors General, and they are a group that not only does their own independent work, but also polices other inspectors general. Am I correct in saying that you are currently under investigation by the Council of Inspectors General on integrity and efficiency? Is that correct, Mr. Cuffari?

Mr. CUFFARI. You are correct, Mr. Lynch.

Mr. LYNCH. What is the basis of that investigation? Could you share that with us?

Mr. CUFFARI. I am uncertain, since I am under investigation, if I can share that in a public setting. I would be happy to discuss it with you.

Mr. LYNCH. They have made it public, so I am not sure how private this is. There are several allegations. One, as the Ranking Member of this full Committee indicated, was your failure to promptly notify Congress of crucial information on the Secret Service erasure of text messages related to the January 6th attacks on this Capitol. That did happen. It did happen. And I witnessed Republicans and Democrats running for their lives, so anybody who says that did not happen, let us just disabuse that notion. But the relationship of trust that we have had with our inspectors general have not been continued. I want to yield my remaining time to the Ranking Member.

Mr. GARCIA. Thank you, sir. Thank you.

Mr. GROTHMAN. The time is up.

Mr. GARCIA. Yes, go ahead, sir.

Mr. GROTHMAN. OK. Kelly Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chair. Your report states that frequent deployments at the Southern border are affecting staffing levels at the Northern border. This is an important issue to my home state of North Dakota. Businesses rely on customers from both sides of the Canadian-U.S. border. Commerce does not stop at 5 p.m. when CBP closes a port of entry. Crops still need to be planted. Substantial detours to operating facilities significantly raise costs.

After years of shortened operational hours, CBP finally extended hours at three ports of entry in North Dakota on a trial basis, but these hours are only temporary while CBP evaluates vehicular traffic, which does not account for other ramifications, including the transfer of goods and services. Lawful economic access to the United States should not be based on volume. It is the government's basic duty to maintain the Northern border.

And drawing down at the Northern border to beef up the Southern border does not justify shutting down North Dakota's economic sector. DHS is not properly allocating resources, and we talk about these things in large dollar amounts. But I am going to talk about what is, actually, in the grand scope of things, a fairly insignificant one. However, it would be significant at the Northern border.

One of your reports highlights that ICE spent over \$17 million for hotel space and services that largely went unused in 2021. Can you elaborate on how ICE managed to waste \$17 million in taxpayer resources?

Mr. CUFFARI. If you are speaking about the contract that was between DHS and the Endeavors Corporation?

Mr. ARMSTRONG. I am.

Mr. CUFFARI. The contract required a minimum number of beds to be available to ICE during certain periods, and those beds would be paid for regardless of whether a migrant was actually staying in the hotel room.

Mr. ARMSTRONG. Were the beds ever used?

Mr. CUFFARI. Not to my knowledge, no.

Mr. ARMSTRONG. Why was ICE able to use sole-source contracting and not award a contract based on an open competitive process?

Mr. CUFFARI. Because the question that you just asked relates to an ongoing matter, I am not able to provide more sufficient information in this setting.

Mr. ARMSTRONG. OK. If the company had no experience, why were they awarded the contract over more experienced companies?

Mr. CUFFARI. Again, Congressman, the same answer as before.

Mr. ARMSTRONG. So, my next question, there is an ongoing investigation, so hopefully somebody will be held accountable?

Mr. CUFFARI. Sir.

Mr. ARMSTRONG. Would \$17 million help at the Northern border?

Mr. CUFFARI. I believe it would help anywhere.

Mr. ARMSTRONG. I mean, we do not have the volume that they have on the Southern border. Everybody understands that, but we also move a lot of products that a lot of people need. If you like bread, you like what goes on between North Dakota and Canada. If you like, you know, to eat a hamburger, you care about what goes on in North Dakota and Canada. I am just trying to understand where we end up and how we get to these places that we have these scenarios where we are paying for money. I mean, we have seen people all over the country, many in sanctuary cities, balk and revolt at the fact that we are moving migrants across and moving them out of a high-density area into other places. Do we have any analysis at this point, yet, of what we are spending on hotel rooms and other facilities while we have \$17 million worth of unused beds?

Mr. CUFFARI. I believe, Congressman, we have an ongoing audit to look at the movement of migrants and what it is costing DHS to do that.

Mr. ARMSTRONG. Thank you. I would just say as we finish this off, that we have to figure out a better way to do this. At the same time, the level of frustration from my constituents that exists when we have unfettered access, whether it is ports of entry, whether it is between ports of entry, and the vast majority of illegal activity that is occurring. And at the same time, economic sectors for Northern border communities are absolutely being crushed, and it started with COVID and it started with vaccine mandates, and it finally ended with the United States being the last, essentially, country in the civilized world that lifted those mandates, and these are real-world consequences.

And when we talk about trust in government and talk about trust of these issues, when people see fentanyl flowing across the Southern border, ports of entry, between ports of entry, we have had that debate a thousand times. When we see people being released into the interior of the United States with court dates that do not exist for five, seven, nine years in advance, and I got a farmer from Grano, North Dakota, that cannot get across the border after 5 p.m. because we do not have the resources to do it. The frustration is real, and it exists all across the country and exists as far away from the Southern border as you can possibly be, which is North Dakota. Thank you and I yield back.

Mr. GROTHMAN. Mr. Moskowitz?

Mr. MOSKOWITZ. Thank you, Mr. Chairman. The border has been a problem for a long period of time because Congress has failed to pass comprehensive immigration reform. It is not like this is a new issue. This is something that has been going on for decades here. It has been passed from one President to the next, to the next. Is it possibly worse now? Well, that is what happens when you have a problem that you do not fix for three decades. The same people who talk about the border, it is not like they have come up with solutions. They complain to get on Fox News every day, but it is not like we are having solutions.

And so, I want to ask you a couple of questions because I am frustrated with Homeland as well. I mean, I have folks back home who were raped by their nanny. She spent 20 years in jail in Florida, and all the family wanted to know is that, when she was released, what was going to happen. That is it. She was a victim. She had a right to know, and I had even on her behalf made connections with Homeland on this issue. We were told, do not worry, we will make sure the family knows if she is deported or if we are keeping her, whatever the story is. Guess what? None of it happened. The rapist was deported. Nobody knows what happened to her. She is not flagged in the system. And now that family, the girl, who is now a mother of two, has to be worried about where her rapist is.

And so, I have a couple of questions because obviously, there are complaints all around, whether it is Secret Service or ICE. Homeland was founded 22 years ago, or 20 years ago, after a national emergency. It has got 22 agencies, and I am not going to list them all. They are all household names. Has Homeland become too big? Is it too big? Is it time to split Homeland up? Is it time to reform the bureaucracy?

Mr. CUFFARI. Congressman, let me first say that you and I did have a discussion about the individual who was convicted of rape. And we discussed the Crime Victims' Rights Act, and the prosecutor should have complied with that. I hope that that information was helpful that I supplied to you.

Mr. MOSKOWITZ. Well, that is a whole other issue because—

Mr. CUFFARI. Yes, sir.

Mr. MOSKOWITZ [continuing]. Quite frankly, the rapist had more rights than the victim.

Mr. CUFFARI. Yes, sir. I agree with you. I will say that Homeland Security is the third largest department, and the Federal Government is quite large. It was put together, as you described—

Mr. MOSKOWITZ. You are almost as big as DoD.

Mr. CUFFARI. Yes, sir. We are No. 3 right behind DoD and Health and Human Services. It perhaps may require a look by this Committee or others, maybe the Committee on Homeland Security, to see sort of a look back to see if it is fulfilling the mission that it was intended to do. But that would be a decision for Congress and not for me as the Inspector General.

Mr. MOSKOWITZ. So, you do not have any suggestions on potential reforms or opinions on whether you think the Agency can still function with 22 agencies. I mean, I hear it is kind of like when all the agencies get together with the Secretary, it is like the

Knights of the Round Table. They each give five-minute updates to the Secretary, and then the meeting is over.

Mr. CUFFARI. I will share that from our experience of doing audits and inspections, and even criminal investigations, that silos of information remain to this day in DHS, which is presenting a problem for effective management.

Mr. MOSKOWITZ. Yes. So, what I would like to hear is I would like to hear solutions to problems rather than continuing to gaslight issues at Homeland or INS or Customs and Border, whatever it is, and I do not hear any solutions. And I think it is quite time we start looking at reform at Homeland. I will yield the balance of my time to the Ranking Member.

Mr. GARCIA. Thank you. Mr. Cuffari, in April 2022—I want to get back to something—the nonpartisan watchdog Project on Government Oversight, and this was mentioned by another Member, broke a disturbing story that your office sought to censor findings of sexual harassment and misconduct at DHS. According to the draft report that we have obtained in the committee, 28,000 DHS employees were surveyed, and more than 10,000 of the 28,000 reported experiencing sexual harassment and misconduct in the workplace, yet the report was shelved. Mr. Cuffari, did your report on the morale of CBP, which we have been discussing, consider the effects of sexual harassment on employees?

Mr. CUFFARI. I am sorry, Ranking Member. What is the question?

Mr. GARCIA. Did you report on the morale of CBP or ICE employees, considered the effect of sexual harassment and misconduct? I think the answer to that is actually no, but would you agree that sexual harassment or misconduct are one factor that could actually impact morale?

Mr. CUFFARI. It could be a factor, certainly.

Mr. GARCIA. Thank you. And yet it was not considered in that report, and so I just want to make that note. I also with the remainder of my time, just want to note that —thank you, Mr. Chairman, I will discuss it later.

Mr. GROTHMAN. Mr. Sessions?

Mr. SESSIONS. Chairman, thank you very much. Dr. Cuffari, welcome to the committee. I think it is interesting that our friends, rather than asking pertinent questions about what your ideas have been in writing, have been simply to attack you.

I have been to the border, top to bottom, for a number of years and I went back and saw firsthand the piles of equipment that still sit there waiting for the wall to be built. This is not a question to you, but it is my understanding that was there to help the Border Patrol agents so that they were not overrun as they are being done now. It would allow them operational control of the border. That would mean that they could then follow the political will. If we went from one President to another, we would effectively understand, I do not know about 100 percent, but a higher percentage of people who were coming in, could control drug usage, could control people who might come to this country who were wanted or would be seen as wanting to harm our country.

And these piles are still there. Requiring the Border Patrol, as when I was there with our young Chairman, Chairman Comer,

down in Yuma, where we were in a bus, there were 90 or so people from Cuba, men. One Border Patrol agent, one female Border Patrol agent whose job was to hustle and get her job done, and that was not to catch people that were running away. That was to hurry up and take them to processing because her boss or her boss' boss was being held accountable for how long it took them to hustle to do their job, to take these people in rather than protecting our border. I am concerned that there is a staffing issue problem—we have spoken about it—you have today with understanding how we protect this country. Seemingly, you are being attacked about your oversight after things have occurred rather than your ideas.

We know the border is in trouble. We know that we have a problem with fentanyl, got-aways, drugs, people come to this country losing children—the government actually taking control of children and then losing them—them being let loose on the streets of Texas, Arizona, California. People in California seem to be happy with it. People in Arizona, I will let them speak for themselves. But in Texas, it is causing a huge problem, so much so that our Governor is transporting them where they want to go, Washington, DC, New York City, Chicago, and now they are being attacked for doing what these people wanted.

I want you to know this Congress views, in the Majority, that you are doing your job, that you are being stretched to a political limit about reporting what is happening versus trying to toe the line of what this Department wants to do, the Department of Homeland Security, including the Secret Service. A few minutes ago, literally they said you did not do your job in reporting to them. Have you ever offered to come and meet with the Minority, which was then the Majority? Were you ever asked to come meet with them?

Mr. CUFFARI. I volunteered and I met with several Members of this Committee, who are now Minority Members.

Mr. SESSIONS. Well, I would say to my friend, Congressman Lynch, that if he feels like he is not getting what he needs from his vast service, which I am a friend of Stephen and I appreciate him, I would encourage him to do that with this Subcommittee, to write the same letter, to get an answer because I view that this Department is failing to protect this country, which is its core mission. Why it was established was not to let anybody come into this country, encourage them, waive them through, and then lose them from within the masses of millions that are coming. I am concerned about rule of law. I am concerned about the deaths. I am concerned about even mid-sized cities receiving people who have come from a marketing organization of a cartel to distribute drugs all over this country. They are openly allowing this, and the Democratic Party is right there with this Administration to allow it to happen.

I want to thank you for taking time to be with us. I find you refreshing, but I also want you to know when our friends that are on the other side, the Democrat Members of this Committee, wish to correspond, I would encourage them to come, and we will get them the same answer rather than an answer that they do not like. Thank you very much. I yield back my time, Mr. Chairman.

Mr. GROTHMAN. Mr. Goldman?

Mr. GOLDMAN. Thank you, Mr. Chairman. Did I just hear you say that you offered to come and sit with members of the Majority in the last Congress?

Mr. CUFFARI. That is correct.

Mr. GOLDMAN. You did?

Mr. CUFFARI. Yes.

Mr. GOLDMAN. And did you ever do that?

Mr. CUFFARI. Yes.

Mr. GOLDMAN. With who?

Mr. CUFFARI. Mr. Moskowitz. Ms. Porter.

Mr. GOLDMAN. Mr. Moskowitz was not in Congress last Congress.

Mr. CUFFARI. I am talking about this Congress.

Mr. GOLDMAN. I said last Congress. You said last Congress. He asked you last Congress did you ever meet with the Majority, Chairman Thompson, Chairman Maloney, anyone?

Mr. CUFFARI. I did meet with Chairman Thompson, did not meet with Chairwoman Maloney.

Mr. GOLDMAN. OK. On August 1, 2022, former Chairwoman Maloney and former Chairman Mr. Thompson from the Homeland Security Committee requested that you provide all communications and documents related to your office's decision not to pursue missing Secret Service text messages related to the January 6 insurrection. Did you ever provide that information to those committee chairmen?

Mr. CUFFARI. I did in an August 23, 2022 letter to both Chairwoman Maloney and to Chairman Thompson.

Mr. GOLDMAN. You wrote a letter. Did you provide all the communications and documents related to your decision?

Mr. CUFFARI. I provided information that was requested and not particular documents.

Mr. GOLDMAN. OK. Well, let the record show that you did not actually provide the requested information. Were your Deputy Inspector General and your Chief of Staff requested to have transcribed interviews last Congress as well?

Mr. CUFFARI. Yes.

Mr. GOLDMAN. And did you allow them to undergo these transcribed interviews?

Mr. CUFFARI. Because of ongoing investigations, I did not permit them to be interviewed by this body.

Mr. GOLDMAN. So you just blanketly refused to permit them, even though they could, of course, come in here and say that they cannot answer specific questions related to ongoing investigations?

Mr. CUFFARI. That is correct.

Mr. GOLDMAN. OK. You know, I find it remarkable that we are having this hearing with someone with a very clear vendetta and politicized approach to the job of an independent inspector general. If the point of your report and the point of this hearing is, as my colleague from Texas just said, because we have a problem at the border, we can all agree, and if the morale is down because there are not enough agents and officers at the border, we can all agree.

The sad reality is that my colleagues on the Majority have no interest in any meaningful immigration reform. They would prefer to hold a hearing like this, and we have many of them in the Homeland Security Committee where they can talk about the problems.



They can accuse the Biden Administration, make false allegations about all of their terrible policies, and yet they do not want to actually do anything. Would you agree we need more immigration judges to decide asylum cases, Mr. Cuffari?

Mr. CUFFARI. That would be a decision that would rest with the Justice Department who has—

Mr. GOLDMAN. That is not my question. Do you think it would help things at the border if we had more immigration judges to decide asylum claims faster?

Mr. CUFFARI. More people will certainly help across the entire network.

Mr. GOLDMAN. That is right. It gets tiresome to continue to have these conversations. There is a tremendous migration issue in Central America. There are 2.4 million Venezuelans in Colombia. This is not particular to the United States. This is a problem that congressional effort and oversight and legislation needs to correct, yet we are not doing that. And when you hear my colleagues on the other side of the aisle talk about all the problems with fentanyl and with got-aways and with smuggling, you know what they do not ever talk about? They do not ever talk about the tremendous exportation of American-made guns to Mexican cartels that give them the power and authority to control the fentanyl trafficking into this country.

My colleague from Texas just listed a whole litany of things that are the problems we are having at the border, and never mentioned guns. H.R. 2, Mr. Perry, was a immigration border security bill. It does not mention guns. It does not mention gun trafficking. It does not mention guns going from America to Mexico. If you want to talk about immigration reform and you want a fix at the border, come talk to us. Let us be real about how we can actually fix the border. I yield back.

Mr. GROTHMAN. Mr. Biggs?

Mr. BIGGS. Thanks, Mr. Chairman. Thanks, Dr. Cuffari for being here. You know, I do think it is interesting that the last gentleman was asking you about asylum and immigration courts, but that is not in your purview, right? That is DOJ. That is not DHS, right?

Mr. CUFFARI. That is correct.

Mr. BIGGS. Yes. So that was odd, I thought, but it was pretty consistent because I thought the Ranking Member, who is sitting in there today, rather dubious, his own credibility. It is kind of dubious because he basically questioned this document, your document, your report, but in so doing, he spent a good portion of his time lobbying the Biden border policies. When you start lobbying the Biden border policies—I do not care what the pre-42 surge was, we have gone back down to the typical Biden border crisis numbers. That is where we sit today, and that is about a fivefold increase over what Jeh Johnson said was a crisis on the border. If you see 1,000 a day, he says “that is a crisis.” Here you got about 5,000 a day, the gentleman from Long Beach says, whoa, we have got this thing back under control. Well, you do not. You just simply do not.

But I will say this. Your report is consistent with my on-the-ground experience and getting down to the border many, many times. I have taken the Chairman down many times. I have been

down there. I go down there. You just go down there. I do not take anybody with me. I will park my car. I will start walking along the border, see how long it takes for a Border Patrol agent to come. When they finally get there, I ask them how things are going. They tell me it is not going good. I say, well, what do your colleagues feel. Well, they feel like they have been abandoned by this Administration. The other thing I will say is, you had survey responses from 16 percent of the entire force, is that right?

Mr. CUFFARI. Sixteen percent of the 57,000 employees in DHS, primarily ICE and CBP, who we surveyed.

Mr. BIGGS. Yes. Well, in my studies, a large in-study, was typically, we thought anything over 350 to 500 was a large in-study. Nine thousand would be pretty persuasive. He compared it to a Twitter survey. The only difference is you had a limited universe, and if you are going to make a claim, you might say selection bias because only the people that cared enough to respond responded, but you had 9,000, 16 percent, respond.

Well, let us take a look here just a little bit. Can you discuss what steps your office takes when an auditor investigation is opened?

Mr. CUFFARI. We notify the Department through a transmittal memo of opening of a project, an audit, or an inspection. We let them know that we will be looking for certain documents, for some communication. And we set what is called an entrance conference with the Department's Liaison Office and the component's Liaison Office to begin our audit or inspection work.

Mr. BIGGS. And when you request documents or information, what is the typical response time for an agency?

Mr. CUFFARI. Normally, it is about 30 days to respond back to us.

Mr. BIGGS. The DHS, are they responsive typically within 30 days?

Mr. CUFFARI. They have been on certain occasions.

Mr. BIGGS. What is their typical responsive time now?

Mr. CUFFARI. There is one project that is 140 days that we have made our request and have not got any information.

Mr. BIGGS. So, did they give you a rationale for their five-month delay?

Mr. CUFFARI. Not in that particular case, but they have in others.

Mr. BIGGS. Is a rationale for a delay that they give to you, are those allowed under the Inspector General Act?

Mr. CUFFARI. The only exception to not providing the IG, that I am aware of in the IG Act, is the Secretary of the Department would have to make a determination that, for national security or not to compromise an ongoing investigation. The Department secretary would then have to make that determination.

Mr. BIGGS. Has Secretary Mayorkas made that determination and communicated that to you?

Mr. CUFFARI. He would also have to communicate that to this Oversight Committee as well.

Mr. BIGGS. Has he communicated that to you?

Mr. CUFFARI. No, sir.

Mr. BIGGS. He has not communicated that to us as far as I know, so he is not complying with the requirements of the Inspector General Act. Is that fair to say?

Mr. CUFFARI. Not to my knowledge.

Mr. BIGGS. Well, my time has expired, and I told you it goes by fast, but, Mr. Chairman, thank you.

Mr. GROTHMAN. OK. Congressman Ivey?

Mr. IVEY. Thank you, Mr. Chairman. Good morning, sir.

Mr. CUFFARI. Good morning, sir.

Mr. IVEY. Mr. Raskin was asking you about text messages with respect to January 6. I had some questions about some messaging, I believe it was Signal, that was used, I think, by you and some of your colleagues beginning around December 13, 2020, and this is based on an affidavit that you filed yesterday in a case that is pending. Do you recall filing the affidavit?

Mr. CUFFARI. I do.

Mr. IVEY. OK. And in the affidavit, you talked about how there was a time where you made a switch and others to using Signal. Do you recall that?

Mr. CUFFARI. I recall at the direction of DHS, Signal was placed on our government cellphones as a result of the SolarWinds compromise of the Department's communication.

Mr. IVEY. OK. And who was it specifically that directed the use of Signal?

Mr. CUFFARI. I believe it was the Chief Information Officer for the Department of Homeland Security.

Mr. IVEY. OK. And so, during that time period, you used Signal until early 2021 according to your affidavit.

Mr. CUFFARI. I physically used Signal on one occasion in a two-week period of time.

Mr. IVEY. OK. Well, I am not sure you said that in your affidavit, but there came a time where you stopped using it in early 2021, according to your affidavit?

Mr. CUFFARI. That is correct.

Mr. IVEY. All right. And Signal, you may know, is an application where, in some instances, it can automatically delete the communications that are exchanged on it.

Mr. CUFFARI. Actually, I do not know that.

Mr. IVEY. All right. Well, let me ask you this. As the Inspector General unit, you are familiar with the Federal Records Act, right?

Mr. CUFFARI. Yes.

Mr. IVEY. All right. And so, you know there is an obligation to preserve official government documents. Is that correct?

Mr. CUFFARI. That is correct.

Mr. IVEY. All right. And electronic messaging falls under that category. Isn't that right?

Mr. CUFFARI. Yes.

Mr. IVEY. OK. Now, according to your affidavit, whatever those messages were, were all deleted. Is that correct?

Mr. CUFFARI. No, that is incorrect.

Mr. IVEY. OK. They are not preserved?

Mr. CUFFARI. No. What I am saying is that the one instance that I did use Signal, it was an oral communication telephone call with the members of the Department of Homeland Security. I believe it

was their Breach Response Team. That is the one and only instance that I ever used Signal.

Mr. IVEY. OK. Well, did your organization, did your Department respond that none of the messages on Signal were preserved in the filing yesterday from the U.S. Attorney's Office?

Mr. CUFFARI. I do not believe there were messages. There was an oral communication, not text messages or anything to my knowledge, at least in my case. I only used it once, as I described.

Mr. IVEY. All right. Well, let me read this to you: "However, until that time, the Signal messaging application was not approved for use on DHS devices. However, I was one of the small number of users authorized to install the application on my OIG-issued cellphone for the limited purpose of discussing via SecureME," through a response to the above-described apparent breach of DHS computer networks. So, that is the messaging you are talking about?

Mr. CUFFARI. That is the oral communication, not a message. I just want to be clear with the Committee.

Mr. IVEY. OK. And then in the next paragraph down, you said, "No more than a few weeks after installing the Signal application, I deleted Signal from my OIG-issued cellphone because I no longer had use for it." That is correct?

Mr. CUFFARI. That is correct. Yes.

Mr. IVEY. OK. So, any messages that are unavailable were not based on you deleting anything. It is just, they were not preserved in some way?

Mr. CUFFARI. No, what I am saying, just to be clear, Congressman, I did not use Signal to do messaging. I used it to do a telephone call at the request of DHS.

Mr. IVEY. All right. And nothing was done to preserve anything with respect to those telephone calls?

Mr. CUFFARI. Unless we had a title three or some other electronic intercept of my oral communications, I do not believe there would be a message that would be preserved.

Mr. IVEY. All right. Let me ask you this question. With respect to the January 6 documentation from the Secret Service, all right, and there was a 14-month delay before you notified Congress of that issue with respect to the deletion of the Secret Service text?

Mr. CUFFARI. Just to be clear, I answered that question previously, and it is not 14 months. We learned that DHS deleted all the text messages from the Secret Service phones. We learned that in February 2022.

Mr. IVEY. All right. Thank you, Mr. Chair. I yield back.

Mr. GROTHMAN. Now we have Mr. Perry.

Mr. PERRY. Thanks, Mr. Chairman. Mr. Cuffari, as often is the case, I am left with correcting, clarifying the record in these hearings. Comprehensive immigration reform, as decried by my colleagues on the other side of the aisle, is generally known and perceived rightly so as amnesty for breaking America's laws. Therefore that, they lament the fact that we are not interested in allowing people that come across our border, illegally bringing fentanyl, engaged in human trafficking, gang activity, we are not interested in providing amnesty for their lawlessness. So, no, there is not going

to be comprehensive immigration reform because that is what it includes. Just let the record reflect that.

Regarding my colleague who complained about the rape of his constituent and the fact that it seemed like the person that was deported had more rights than she did, I would just remind my colleague on the other side of the aisle that they support that. They supported that in all the cities that they run across the country and at the Southern border. They support that lawlessness. And so, it is rich for him to come in and complain on her behalf when he and his Party have been aiding and abetting it for years upon years.

And Mr. Goldman says that we do not want to talk about guns. We are happy to talk about Fast and Furious, where his Party took guns across the border to Mexican cartels that were used to kill Americans trying to protect this border, but they did not want to talk about it. Eric Holder did not want to talk about it, was held in contempt, and they still do not want to talk about it. And it is rich for Mr. Goldman to talk about you promoting falsehoods while he sat at the front and center of impeachment of a President based entirely on falsehood, which he was well aware of at the time and is well aware of right now. I know you are laughing it up over there, aren't you? You are laughing it up because you are full of perfidy, lies and more lies and more lies.

Mr. Cuffari, it has been alleged or averred that more people would make it better, more Border Patrol agents, Mr. Goldman said more judges, more would make it better. Here is what also would make it better, I think. If less people were allowed to cross the border illegally, would that make it better?

Mr. CUFFARI. That certainly would help, yes.

Mr. PERRY. If there were less people crossing illegally, would we need more judges to deal with those less people crossing illegally?

Mr. CUFFARI. You would need more judges to process people who were claiming asylum.

Mr. PERRY. Right, but they are crossing illegally and claiming asylum based on their illegal crossing. The point is, yes, we can hire as many as we want to, but as long as you are going to let more and more and more unstoppable people coming across the border illegally, you are never going to have enough. The solution is not to hire more people. The solution is to stop the people from coming across illegally. That is the solution.

To get you to say that the solution is actually to hire more people belies the fact that people are coming across illegally because of the policies of my friends on the other side of the aisle, and no other reason, for no other reason. Was the border ever manageable before without hiring more people? Let me ask you that question. Was it ever manageable before without hiring more people?

Mr. CUFFARI. According to my personal experience, it was manageable starting in 1994.

Mr. PERRY. You did a survey, 9,300 and change, 16 percent of the total population surveyed, much more than most of the polls that this operation runs to determine public opinion about who is going to vote for what, and you are being criticized here today for the survey. And some Border Patrol agents said that local management would transport migrants out of the facility before a visit and re-

turn them after the visit ended. Why would they do that? Why would that happen?

Mr. CUFFARI. I cannot answer that, sir. That is—

Mr. PERRY. I do not know. Hazard a guess?

Mr. CUFFARI. Let me say, in my experience, I did not see that happen.

Mr. PERRY. Well, how would you see it happen? Like, how would you see it happen? If they move them before you got there and moved them back after you left, how would you see it happen?

Mr. CUFFARI. We also do unannounced inspections when they do not know that we are coming to a particular detention.

Mr. PERRY. Right. But still, you do not know that, right, but these are Border Patrol agents saying it. Are Border Patrol agents signing up for overseeing meal delivery, restocking snacks and hygiene products? Is that why people want to secure the border? Is that the job that they are looking for when they sign up and say, I want to be a Border Patrol agent, I want to replenish the snack supply for people coming across illegally? Is that like the No. 1 request on their list of job assignments?

Mr. CUFFARI. That is the frustration that they described.

Mr. PERRY. Thank you, Mr. Chairman. I yield the balance.

Mr. GROTHMAN. Mr. Frost?

Mr. FROST. Thank you, Mr. Chair. Mr. Cuffari, the Office of Personnel Management's Federal Employee Viewpoint Survey is a tool for Federal Agency employees to provide feedback on how engaged they are in their work. When people are engaged at work, they are more effective at their jobs. They perform the work more efficiently, and part of a principal's job is keeping their team engaged. In other words, the Federal Employee Viewpoint Surveys can reveal what leadership techniques are working for agency executives and which ones are not.

In fact, Mr. Cuffari, you regularly tout your office's Federal Employee Viewpoint FEVS score. Since you have taken over as Inspector General in May 2022, in a letter to this Committee, you highlighted portions of your office's survey data from 2020 and 2021 that apparently show improvement in employee engagement. And in an email you sent to all your staff in December 2022 that I have here, you again highlighted improvements in your Agency's 2022 survey data.

Mr. Chair, I ask unanimous consent to enter into the record an email between Inspector General Cuffari and his office lauding the importance of Federal Employee Viewpoint Survey scores.

Mr. GROTHMAN. Without objection.

Mr. FROST. Thank you. Mr. Cuffari, do you agree that the Federal Employee Viewpoint Survey data are important indicators for how an agency is performing?

Mr. CUFFARI. Yes.

Mr. FROST. That is right. And in the past, you have said that they document progress. However, in the most recent survey data shows that a majority of the people in your office do not believe that their senior leadership maintains high standards of honesty and integrity, 66 percent of your employees. Mr. Cuffari, are you a senior leader?

Mr. CUFFARI. Yes.

Mr. FROST. Mr. Cuffari, are you aware that nearly half of the employees in the Office of Inspection and Evaluations fear retaliation if they disclose suspected violation of laws, rules, or regulation?

Mr. CUFFARI. You are asking if I am aware of it?

Mr. FROST. Are you aware of that? Are you aware of the fact that 40 percent compared to 43 percent who don't?

Mr. CUFFARI. No, sir.

Mr. FROST. Yes, that is a reality through the survey that you tout. Mr. Cuffari, do you know about the fact that less than half of your staff in the Office of Counsel feel like they can safely disclose suspected wrongdoing?

Mr. CUFFARI. Yes.

Mr. FROST. You are aware of that. Only 45 percent feel like they can disclose that. I find this incredibly alarming, especially when coupled with the fact that you have run away from any efforts to conduct oversight in your office using taxpayer money, \$1.4 million, to contract a law firm, to run away from accountability on your part.

And, you know, I have seen weak leaders run from accountability before. In my home state of Florida, right now, Governor Ron DeSantis is saddling taxpayers with billions in legal fees to defend his unlawful policies. With his intimidation, his removal of dissenting officials, he is taking major losses on the backs of taxpayers because private sector officials called out his disastrous agenda. And the Florida legislature has approved a whole new budget to pay for all of his legal losses, but he does not want to answer for that.

And I admit at this point many of us realize that DeSantis gets an F in accountability. However, inspectors general are meant to serve as a safe haven for whistleblowers. How is a whistleblower supposed to trust your office when members of your own staff do not even feel safe to report wrongdoing themselves? I yield to Mr. Ivey.

Mr. IVEY. Mr. Cuffari, I am sorry. I had one question left or a couple of questions left. This is with respect to text messages with respect to your government-issued iPhone.

Mr. CUFFARI. Yes.

Mr. IVEY. Did you delete text messages from your government-issued iPhone?

Mr. CUFFARI. Yes.

Mr. IVEY. OK. Well, when was that?

Mr. CUFFARI. It is my normal practice to delete text messages.

Mr. IVEY. So, you delete them on an ongoing basis?

Mr. CUFFARI. That is correct.

Mr. IVEY. All right. Are they stored anywhere? Not sure?

Mr. CUFFARI. I am not sure.

Mr. IVEY. OK. Well, is it safe to say, based on that at the time you deleted them, you did not know if they were stored in an alternative place? Is that fair?

Mr. CUFFARI. Correct.

Mr. IVEY. All right.

Mr. CUFFARI. It is also fair to note that I do not use my government cellphone to conduct official business.

Mr. IVEY. All right. So, your testimony today is that these text messages that you have deleted, or at least some of them, had no Federal information or any information that would be implicated under the Federal Records Act?

Mr. CUFFARI. Under the Federal Records Act, that is correct.

Mr. IVEY. OK. And so, they have no connection to official business at all?

Mr. CUFFARI. Nothing that would be considered a Federal record.

Mr. IVEY. Well, are you using your Federal phone for personal purposes then?

Mr. CUFFARI. No, sir.

Mr. IVEY. All right. Then what is the purpose for using your government-issued phone?

Mr. CUFFARI. To conduct business.

Mr. IVEY. But not Federal business related to your Department?

Mr. CUFFARI. Not Federal business considering that they are records. It is a clearly defined statute that places requirements on what a Federal record actually is.

Mr. IVEY. All right. So, just a final question. So, you have made a conscious decision with the documents or the messages you deleted that the Federal records laws did not apply to the messages you deleted?

Mr. CUFFARI. The messages that I deleted, I did not consider those to be Federal records, and, therefore, I deleted them. That is correct.

Mr. IVEY. OK. Thank you, Mr. Chairman.

Mr. GROTHMAN. Ms. Mace?

Ms. MACE. Thank you, Mr. Chairman. I did not know we were going to be debating 2024 Presidential candidates this morning, but welcome to Congress.

Mr. CUFFARI. Thank you.

Ms. MACE. In 2019, there were just under 17,000 border agents handling an average of 71,000 monthly encounters. As of 2022, border agents decreased to 16,654, but average monthly encounters rose to around 184,000 encounters. In that time, it is no coincidence, there was an over 300 percent increase in known got-aways. Border agent morale is low, border agent retention is low, and this Administration's ability to follow the rule of law is simply in the gutter.

I am very proud of South Carolina. At FLETC, we train Border Patrol agents. I have been to one of their graduations. I know that they put a lot on the line. They work hard, and so the purpose of this hearing today is to talk a little bit about that. Speaking on the condition of anonymity, one agent said, "Under Biden, things are the worst they have ever been by far. Agents are calling in all the time. You always hear, 'It doesn't matter. What is the point?' Agents are afraid of ending up on the news for doing their job or getting in trouble for just doing their job, and there is no morale."

Mr. Cuffari, yes or no, is this the same type of sentiment you found when visiting the Southwest border from our Border Patrol agents?

Mr. CUFFARI. Border Patrol agents have expressed similar comments to me and to my staff.



Ms. MACE. Do you think it is the worst it has ever been for their morale?

Mr. CUFFARI. It has been significantly increased since I started with my Federal civil service in 1993.

Ms. MACE. OK. My next question, do you find agents have become apathetic as their concerns that workplace issues are not being addressed? Are they sort of apathetic when you talk to them?

Mr. CUFFARI. They express frustration. I must say that the Border Patrol and the Immigration and Customs Enforcement agents do a great job every single day of the year, and they are just frustrated.

Ms. MACE. They work very hard, don't they?

Mr. CUFFARI. They do.

Ms. MACE. When you speak with Border Patrol agents, do they blame Agency leadership, do they blame the Administration, or both? The status of the border, I mean, who do they blame for this?

Mr. CUFFARI. They express frustration with both.

Ms. MACE. All right. Mr. Cuffari, I just want to thank you for your time today. I appreciate your work regarding the sad state of affairs that is the Border Patrol agents' morale. I think it is very clear and evident today. It does not take a 65-page report to realize something is wrong. It is self-evident. It is undeniable. Thank you for answering my questions today.

While my colleagues on the other side of the aisle knew this was a problem, their goal has always been to push our Border Patrol issues to the brink of unsustainability, and that is where we are today. What we are doing along our Southern border is completely unsustainable. It is a consistent strategy: never let a good crisis go to waste. And unfortunately, this plan has come at the expense of deadly journeys for migrants, vilification of our border agents, and a less safe country for American citizens.

Last Congress when the left had the House, they had the Senate, they had the White House, on this Committee, I remember having one hearing about the border, and it was about the Northern border where we were getting less than 10,000 illegal immigrants coming across the Northern border every year. And today, you know, we saw even last year, the growth of illegal immigrants coming and crossing over the Southern border daily. It far surpasses, and I hope that Republican leadership can hold this Administration accountable. Thank you, and I yield back my time, Mr. Chairman.

Mr. GROTHMAN. Mr. LaTurner?

Mr. LATURNER. Thank you, Mr. Chairman. I appreciate it, and thank you, Mr. Cuffari, for being here today.

America's Border Patrol agents put their lives on the line to secure our border and halt the flow of illegal immigrants, drugs, weapons and human trafficking from entering our country. For far too long, under this Administration, these brave men and women have been understaffed and without adequate resources to do their job effectively, and that needs to change.

Between fiscal years 2020 and 2022, your recent report found the number of Border Patrol agents guarding the Southwest border fell slightly, while monthly encounters with illegal aliens spiked by a staggering 450 percent. Your report also found that Fiscal Year 2022 set the record for migrant deaths, with more than 800 mi-

grants dying while attempting to cross the Southwest border. These are not just statistics. They represent a very real crisis at the border that remains unaddressed by the Biden Administration.

Unsurprisingly, 88 percent of ICE and CBP agents you surveyed said their duty locations are not adequately staffed to handle the surge of people streaming across our border. And to further compound the problem, 24 percent of respondents said they plan to leave their respective agencies within the calendar year. It is a dangerous and demanding job in the first place, and it is clear from your reporting that morale amongst our border agents is lower than ever before. One agent testified that due to a significant shift in immigration policies from the prior administration, it feels like they are trying to do their job “with one hand tied behind their back.”

Mr. Cuffari, amongst the agents you surveyed, which policy changes did they say most hindered their efforts to protect our border?

Mr. CUFFARI. The unknown, lawsuits, there are just a whole wide variety of concerns.

Mr. LATURNER. Would the current number of agents be better able to maintain control of the Southwest border if Remain in Mexico was still in place?

Mr. CUFFARI. More individuals certainly would help stem the flow of illegal immigration.

Mr. LATURNER. I understand that, but the Remain in Mexico policy, if that was still in place, would that help them maintain control of the Southwest border from your observations?

Mr. CUFFARI. I cannot speak to the policy decisions.

Mr. LATURNER. You concluded your report with three recommendations to remedy the staffing shortage at CBP and ICE. The Biden Administration agreed with two of them, but rejected the first under the premise the Agency’s staffing models are already sufficient and that your report did not recognize all the DHS initiatives to support its personnel. Do you agree with that assessment?

Mr. CUFFARI. No.

Mr. LATURNER. According to your report, between Fiscal Year 2019 and 2022, there was a 303-percent increase in known got-aways. Is this occurring because there are no agents available to respond?

Mr. CUFFARI. According to the agents who are on the border, yes.

Mr. LATURNER. Your report details that at one Southwest Border station, 15 percent of got-aways in a five-day period occurred because no agents were available to respond. How common of an occurrence is that?

Mr. CUFFARI. To my knowledge, it is a weekly occurrence.

Mr. LATURNER. What impact does the staffing shortage have on efforts to combat human trafficking, drug smuggling, and other illicit activities?

Mr. CUFFARI. A negative impact.

Mr. LATURNER. Given the increasing demand for cybersecurity expertise, what steps is the Department taking to recruit and retain individuals with specialized skills in this area?

Mr. CUFFARI. I believe the Department implemented a H.R. program to provide additional funding, like an enhancement to basic salary for those types of career fields, those jobs that relate to that.

Mr. LATURNER. Are there any partnerships or collaborations with educational institutions or industry to enhance recruitment that you know of specifically?

Mr. CUFFARI. Not that I am aware of, no.

Mr. LATURNER. OK. Your report also detailed CBP and ICE's use of details and overtime as a staffing mechanism. How efficient is this from a budget perspective, and is this an approach that is the best use of taxpayer money?

Mr. CUFFARI. It is driving a huge cost in terms of expenditures of money to the Department.

Mr. LATURNER. My time is about to expire, but I just want to thank you for being here today. I know you have put up with a lot from the other side of the aisle. And the reason that I am so pleased with you being here and the way in which you have conducted yourself is because you have given short answers that center on the facts and the truth as you have observed it, and I appreciate that. You can ask any of my colleagues up here. You know you are getting the runaround when answers are really, really long and do not allow for you to get to all the questions that you have. So, I appreciate you being here today, and I yield back, Mr. Chairman.

Mr. CUFFARI. Thank you.

Mr. GROTHMAN. Thank you. Ms. Porter?

Ms. PORTER. Hello, Inspector General Cuffari. I want to ask you about the Office of Intelligence and Analysis. Are you aware of a domestic intelligence program under OIA that allowed Homeland Security individuals to interview just about anyone in the United States to gather human intelligence?

Mr. CUFFARI. I believe we have an audit into that.

Ms. PORTER. You have an ongoing audit?

Mr. CUFFARI. I believe.

Ms. PORTER. When was it initiated?

Mr. CUFFARI. We are going to have to get back to you, ma'am.

Ms. PORTER. Have you conducted any other oversight of this program, the Overt Human Intelligence Collection Program, specifically?

Mr. CUFFARI. Not that I am aware of, no.

Ms. PORTER. Are you aware of this political article from March 6 of this year, "DHS Has a Program Gathering Domestic Intelligence and Virtually No One Knows About It?"

Mr. CUFFARI. I am not certain that I have seen that one.

Ms. PORTER. Mr. Chairman, I would like to enter this into the record.

Ms. PORTER. This program gives government officials broad discretion to interview any civilian for any reason that they want. Does it concern you that some employees working in this program are so worried about the legality of their actions that they wanted legal liability insurance?

Mr. CUFFARI. That would certainly be a concern.

Ms. PORTER. Are you aware of the workings of this program?

Mr. CUFFARI. No.

Ms. PORTER. Given that it made national news multiple times, why have you not undertaken an audit of this program in the past?

Mr. CUFFARI. As I mentioned, I am going to have to get back to you, ma'am. About when we did or did not open an audit, I am not certain.

Ms. PORTER. As you go about that work, let me give you some facts. There was a survey in 2020. There were 126 respondents, so this is three years ago. Half of the respondents said they alerted managers about their concerns that their work involved activity that was inappropriate or illegal. Are you aware of this survey?

Mr. CUFFARI. No.

Ms. PORTER. The slide deck put together by the Department responded to this fact that half of all respondents said they were concerned their work was inappropriate or illegal. The slide deck said, "There is an opportunity to work with employees to address concerns they have about the appropriateness or lawfulness of a work activity." Do you think it is appropriate for your Agency to work with employees about their concerns about lawfulness, or do you think that your office should be making sure the program is actually lawful?

Mr. CUFFARI. The program that you described, it appears to be at main DHS, so not within the Office of the Inspector General.

Ms. PORTER. Correct. But you as the Inspector General, sir, is your job, like, not to do oversight of main DHS?

Mr. CUFFARI. Oh, most certainly.

Ms. PORTER. OK. So, I am asking you about a program of DHS, and I would like to know why you have not conducted any oversight of it at this time.

Mr. CUFFARI. I thank you for making us aware of it.

Ms. PORTER. You were not aware?

Mr. CUFFARI. I was not.

Ms. PORTER. Are you aware that this program was interviewing incarcerated individuals without their counsel present?

Mr. CUFFARI. No, ma'am.

Ms. PORTER. Is that constitutional?

Mr. CUFFARI. It is unconstitutional.

Ms. PORTER. So, can I have you promise that you will conduct an investigation into this program?

Mr. CUFFARI. You have my commitment that if we do not have an ongoing audit, we will look into the matter that you are describing.

Ms. PORTER. Thank you very much, Mr. Cuffari.

Mr. CUFFARI. You are welcome.

Ms. PORTER. I yield back.

Mr. GROTHMAN. OK. In closing, I would like to thank our panelist for his important and insightful testimony. I will yield to Ranking Member Garcia for his closing remarks.

Mr. GARCIA. Thank you, Mr. Chairman. I want to thank all of my colleagues today for their hard work and certainly to holding our witness accountable for the long history of partisan and improper behavior, for the mishandling of the January 6 investigation, and for his inability to do his critical, important job to its standards.

I want to remind the Committee that this whole hearing is premised on a nonstatistical survey and an opinion article that is disguised as serious oversight. The report is “a non-statistical survey,” that cannot be projected to the entire population of CBP and ICE law enforcement officers and agents.” This is, again, a report that would not hold muster in any serious survey work. Without making this hearing a lesson on statistical methods and data integrity, if you are not willing to put in place data controls or use the foundational basics of statistics, you are left with the equivalent of a Twitter poll or a Yelp review.

Now, I spent some time studying statistical methods when I did my doctoral work, and this work and this report would never be accepted in a basic stats class. This is not about data from the Department of Homeland Security as you claimed in response to my earlier question. This is about the methods that you chose to publish publicly to push a political argument. This report indicates that you knew the fundamental problems with the report, yet you published it anyway.

Now, our Committee relies on the work of dedicated inspector generals to root out against waste, fraud, and abuse. I also just want to note, and this was actually a very important note from earlier in the hearing, that I am extremely concerned that today, in front of our Committee, and by the way, that oversees the Federal Records Act, that you had admitted to deleting Federal records based upon your own determination. That should concern the Chairman and this entire Committee.

Now, I personally have no confidence in your ability to hold up the mission that you are intended to do. Now, coming here with a study that does not meet the basic standards of data reliability by your own admission should be an embarrassment. An inspector general who does not understand his own duties, who resists basic congressional oversight, who is deleting Federal records, who is under investigation, and who has lost the faith of his workforce has no business serving.

And before I close, Mr. Chairman, I ask unanimous consent to include in the record a letter to both the Chairman and myself from the Project on Government Oversight dated June 6, 2023, that speaks to the continued concerns with the Inspector General and how his inability to perform his job is preventing independent oversight. And I also ask unanimous consent to include into the record a letter from September 2022 from concerned DHS staff, representing every program office at every level, to the President detailing the IG’s troubling management of the office, and I want to quote “his disastrous leadership.” With that, I yield back.

Mr. GROTHMAN. OK. So ordered.

Mr. GROTHMAN. I think we have kind of a lack of common sense here. As Congressman Biggs said, he has had me down on the border probably six or seven times by himself. I have been down there at other times. We have a situation, which, depending on the metric, contacts at the border, got-aways at the border, people crossing into the border, unaccompanied minors, the number of people coming here is, say, 8 to 10 times what it was two years ago.

So common sense will tell you what the morale is of the Border Patrol. When you have that many more people coming across, you

obviously have a hard time doing your job. A lot of these people are little children. When I am down there, the Border Patrol complains about having to kind of be a babysitter instead of doing what they signed up to be, which is a law enforcement agency.

They uniformly, by the way, say the biggest problem is not the lack of personnel, although they say the lack of personnel is a big problem. The biggest problem is the policies of the Biden Administration and that they got rid of the Remain in Mexico policy. And no matter how many people they have down there, as long as they have this asylum policy, a huge number of people are going to come in here.

Another thing that frustrates them is the degree to which the Mexican cartels run the border. Last time I was down there, me and Congressman Biggs ran into 21 people coming here from Mexico. The reason they came there and the Border Patrol on the way is because the Border Patrol was going to have to process 21 people, including two kids under the age of one. And while they were busy processing them, it opened that segment of the border because they were understaffed to people crossing the border with illegal drugs, which leads to over 100,000 Americans dying every year of illegal drugs because we do not have enough people to both process people and continue to guard the border.

I will remind the Minority that 9,000 people were surveyed here, but you do not need 9,000 people if you are down at the border. You talk to 10 or 20 or 30 Border Patrol agents, you all get the same thing. They are woefully understaffed. And the Biden Administration, their policy when they got rid of Stay in Mexico, was apparently they do not care how many people are coming here, and that results in low morale because they signed up to guard our border, and they are not allowed to guard our border when you have over 100,000 people coming here.

And over time, the arrogance of the people coming here just keeps getting worse. I am struck by Border Patrol telling me people complaining that they have got concert tickets to go somewhere next week and come on, Border Patrol, let's go, let's go, let's go. And it is probably true, but that is who we have coming across. It is so automatic.

So, in any event, I hope in the near budget we get more Border Patrol agents down there so you cannot just send a few families across, tie up the Border Patrol, and then people coming across with drugs that are killing Americans. I also hope somebody in the Biden Administration cares about the fact that getting rid of the Stay in Mexico policy has made it so difficult for these guys to do their jobs, but in any event, I thank you for being here.

With that and without objection, all Members will have five legislative days within which to submit materials and submit additional written questions for the witness, which will be forwarded to the witness for their response.

Mr. GROTHMAN. If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:58 a.m., the Subcommittee was adjourned.]



**TRANSNATIONAL CRIMINAL ORGANIZATIONS: THE  
MENACING THREAT TO THE U.S. HOMELAND**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
COUNTERTERRORISM,  
LAW ENFORCEMENT, AND  
INTELLIGENCE**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 7, 2023

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## **TRANSNATIONAL CRIMINAL ORGANIZATIONS: THE MENACING THREAT TO THE U.S. HOMELAND**

**Wednesday, June 7, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON COUNTERTERRORISM,  
LAW ENFORCEMENT, AND INTELLIGENCE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:04 p.m., in room 310, Cannon House Office Building, Hon. August Pfluger (Chairman of the subcommittee) presiding.

Present: Representatives Pfluger, Bishop of North Carolina, D'Esposito, Crane, Jackson Lee, Thanedar, Garcia, and Ramirez.

Mr. PFLUGER. The Committee on Homeland Security, Subcommittee on Counterterrorism, Law Enforcement, and Intelligence will come to order. Without objection, the subcommittee may recess at any time.

The purpose of this hearing is to receive testimony from a non-governmental panel of expert witnesses to examine the wide-ranging operations of Transnational Criminal Organizations, TCOs, which have expanded both in size and sophistication as well as to explore Federal and other efforts to mitigate and disrupt TCO activities. I now recognize myself for an opening statement.

Good afternoon, and welcome to Subcommittee on Counterterrorism, Law Enforcement, and Intelligence. Today, we are holding an important hearing on the menacing threat posed by Transnational Criminal Organizations, TCOs, to our Homeland Security and public safety. I'd like to thank all of our witnesses for your time and for testifying today.

TCOs are groups or networks of individuals who engage in illegal activities across national borders. They engage in multifaceted criminal enterprise from drug trafficking, to human trafficking, to human smuggling, and other criminal acts. Organized crime is a massive business. In fact, it's a multibillion-dollar business.

TCOs are responsible for trafficking deadly drugs, like illicit Fentanyl and other opioids into American communities fueling violence and corruption and undermining the rule of law. These enterprises exploit our poor Southern Border to advance their criminal agendas as they facilitate and profit off of smuggling and trafficking of people, often victimizing susceptible migrants who are traveling along the treacherous journey from Central and South America to the United States.

According to the DEA, Mexican TCOs, in particular, control smuggling corridors, mainly across the Southwest Border and maintain the greatest drug trafficking influence in the United States. The trafficking of drugs, like illicit Fentanyl into American neighborhoods and communities from Texas to New York by TCOs have contributed to the deaths of hundreds of thousands of Americans. In fact, Fentanyl is the leading cause of death for Americans between the ages of 18 to 45, and these deaths are occurring in every single State in our Nation unfortunately.

The scourge of Fentanyl has hit every single one of our communities. In February, two of my constituents lost their son Jackson Lee Warnick, 17 years old, to Fentanyl poisoning. Jackson's parents had to live through a nightmare that no parent should ever have to endure. Jackson's family has been working tirelessly across the Permian Basin to share their son's story, to help educate other people in the dangers posed by synthetic opioids.

According to the Centers for Disease Control and Prevention, 107,735 Americans died between August 2021 and August 2022 from drug overdoses or from the poisoning of Fentanyl, with the vast majority of those deaths involving synthetic opioids like Fentanyl.

Just this past April, the head of the DEA, Anne Milgram, called the Sinaloa Jalisco New Generation Cartel the greatest criminal drug threat that the United States has ever faced, and that these ruthless, violent criminal organizations have associates, facilitators, and brokers in all 50 States in the United States as well as in more than 40 countries around the world.

These cartels purchase precursor chemicals from China which are shipped to South America and Mexico and using those precursors to produce Fentanyl and even process that Fentanyl into counterfeit prescription pills. The cartels then traffic the drugs from Mexico into the United States for distribution.

To put this in perspective, and as noted recently by the DEA administrator, it cost the cartels as little as 10 cents to produce a Fentanyl-based fake prescription pill that is then sold in the United States for as much as \$10 to \$30. As a result, the cartels make billions of dollars from trafficking Fentanyl in the United States each year.

Cartels are also beginning to mix Fentanyl with Xylazine, a powerful sedative that the U.S. Food and Drug Administration has permitted for veterinary use. It has licit uses, but it causes fatal overdoses in this country.

It is also important to examine the collaboration between Asian and Mexican TCOs. In particular, the Asian TCOs play a major role in the laundering of the illicit drug proceeds on the behalf of Mexican TCOs. Meanwhile, China has ceased all counterdrug cooperation with the United States, which raises serious concerns about the global effort to curb precursor chemicals from going to Mexico for the manufacturing of illicit Fentanyl.

Additionally, these criminal activities by TCOs extend well beyond drug-smuggling and money-laundering activities. TCOs are also involved in human trafficking, human smuggling, and a wide variety of other crimes.

In fiscal year 2022, Homeland Security Investigation or HSI initiated over 1,300 criminal investigations related to sex trafficking and forced labor resulting in more than 3,650 arrests and 630 convictions. We cannot allow these criminal networks to operate with impunity and endanger our Homeland Security and public safety. We must explore all tools at our disposal to detect, disrupt, and dismantle their operations and hold them accountable for their actions.

As we face a growing crisis at the border, and as TCOs evolve, both in size and sophistication, it is more important than ever that we unequivocally support our dedicated Border Patrol Homeland Security Investigation agents as well as our State and local law enforcement as they work on the front lines to disrupt and dismantle the egregious operations of the TCOs.

This afternoon, I'm pleased to say that we have a distinguished panel of expert witnesses to discuss the TCOs, the grave threat that they pose to our homeland, and to have a debate in front of the American public on the direction that we should go as a whole-of-Government in order to put a stop to this scourge that is causing hundreds of thousands of deaths.

I'd like to thank our witnesses for being with us this afternoon, and I look forward to this discussion on a critical topic.

[The statement of Chairman Pfluger follows:]

STATEMENT OF CHAIRMAN AUGUST PFLUGER

JUNE 7, 2023

Good afternoon, and welcome to the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence. Today we are holding an important hearing on the menacing threat posed by transnational criminal organizations to our homeland security and public safety.

I would like to thank all of our witnesses for testifying today.

Transnational criminal organizations or TCOs are groups or networks of individuals who engage in illegal activities across national borders. They engage in a multifaceted criminal enterprise from drug trafficking, human trafficking, human smuggling, and other criminal acts.

Organized crime is a massive business. In fact, it is a multi-billion dollar business.

TCOs are responsible for trafficking deadly drugs like illicit Fentanyl and other opioids into American communities, fueling violence and corruption, and undermining the rule of law.

These enterprises exploit our porous Southern Border to advance their criminal agendas, as they facilitate and profit off of the smuggling and trafficking of people, often victimizing susceptible migrants who are traveling along the treacherous journey from Central and South America to the United States.

According to the Drug Enforcement Administration (DEA), Mexican TCOs, in particular, control smuggling corridors, mainly across the Southwest Border and maintain "the greatest drug trafficking influence" in the United States.

The trafficking of drugs like illicit Fentanyl into American neighborhoods and communities from Texas to New York by TCOs have contributed to the death of hundreds of thousands of Americans.

In fact, Fentanyl is the leading cause of death for Americans between the ages of 18 to 45, and these deaths are occurring in every State in our Nation.

The scourge of Fentanyl has hit every single one of our communities. In February, two of my constituents lost their son, Jackson Lee Warnick, age 17, to a Fentanyl overdose. Jackson's parents had to live through a nightmare that no parent should ever have to endure. Jackson's family has been working tirelessly across the Permian Basin to share their son's story to help educate folks on the dangers posed by synthetic opioids.

According to the Centers for Disease Control and Prevention, 107,735 Americans died between August 2021 and August 2022 from drug overdoses, with the vast majority of those deaths involving synthetic opioids like Fentanyl.

Just this past April, the head of the DEA, Anne Milgram, called the Sinaloa and the Jalisco New Generation Cartel the “greatest criminal drug threat the United States has ever faced” and that “these ruthless, violent, criminal organizations have associates, facilitators, and brokers in all 50 States in the United States, as well as in more than 40 countries around the world.”<sup>1</sup>

These cartels purchase precursor chemicals from China, which are shipped to South America and Mexico, and using those precursors to produce Fentanyl and even process that Fentanyl into counterfeit prescription pills.<sup>2</sup>

The cartels then traffic these drugs from Mexico into the United States for distribution.<sup>3</sup>

To put this into perspective, and as noted recently by the DEA administrator, “[i]t costs the cartels as little as 10 cents to produce a Fentanyl-laced fake prescription pill that is then sold in the United States for as much as \$10 to \$30. As a result, the cartels make billions of dollars from trafficking Fentanyl into the United States.”<sup>4</sup>

Cartels are also beginning to mix Fentanyl with Xylazine—a powerful sedative that the U.S. Food and Drug Administration has permitted for veterinary use—causing fatal overdoses across the country.

It is also important to examine the collaboration between Asian and Mexican TCOs. In particular, Asian TCOs play a major role in the laundering of illicit drug proceeds on behalf of Mexican TCOs.<sup>5</sup>

The money-laundering tactics used by Asian TCOs involve the transfer of funds between China and Hong Kong, using front companies to facilitate international money movement.<sup>6</sup>

Meanwhile, China has ceased all counter-drugs cooperation with the United States, which raises serious concerns about the global effort to curb precursor chemicals from going to Mexico for the manufacturing of illicit Fentanyl.

Additionally, these criminal activities by TCOs extend well beyond drug smuggling and money-laundering activities. TCOs are also involved in human trafficking, human smuggling, and other crimes.

In fiscal year 2022, Homeland Security Investigations initiated over 1,300 criminal investigations related to sex trafficking and forced labor, resulting in more than 3,650 arrests and over 630 convictions.<sup>7</sup>

We cannot allow these criminal networks to operate with impunity and endanger our homeland security and public safety. We must explore all the tools at our disposal to detect, disrupt, and dismantle their operations, and hold them accountable for their actions.

As we face a growing crisis at the border, and as TCOs evolve in both size and sophistication, it is more important than ever that we unequivocally support our dedicated Border Patrol, Homeland Security Investigations agents, as well as our State and local law enforcement as they work on the front lines to disrupt and dismantle the egregious operations of TCOs.

This afternoon, we have a distinguished panel of expert witnesses to discuss TCOs and the grave threat they pose to the homeland.

Thank you to all our witnesses for being with us this afternoon, and I look forward to our discussion on this critical topic.

**Mr. PFLUGER.** I would now like to recognize the Ranking Member of the subcommittee, Mr. Magaziner for his opening statement.

**Mr. MAGAZINER.** Thank you, Chairman. Thank you for calling this hearing on such an important topic and to our witnesses for

<sup>1</sup> *Fiscal Year 2024 Request for the Drug Enforcement Administration: Hearing before the Committee on the Appropriations, Subcomm. on Justice, Science, and Related Agencies*, 118th Cong. (Apr. 27, 2023) (testimony of Anne Milgram at 4, Administrator, U.S. Drug Enforcement Administration).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 2020 *Drug Enforcement Administration NDTA National Drug Threat Assessment* at 69, (March 2021) available at [https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20Drug%20Threat%20Assessment\\_\\_WEB.pdf](https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20Drug%20Threat%20Assessment__WEB.pdf).

<sup>6</sup> *Id.* at 76.

<sup>7</sup> U.S. Dep’t of Homeland Sec., *DHS Center for Countering Human Trafficking Releases Fiscal Year Annual Report (Jan. 31, 2023)*, <https://www.dhs.gov/news/2023/01/31/dhs-center-countering-human-trafficking-releases-fy-2022-annual-report>.

being here today and for your work and your expertise. I am glad that we are having this hearing to examine threats posed by Transnational Criminal Organizations to the U.S. homeland.

TCOs are broad-ranging, originate all over the globe, and engage in many forms of criminal activity, from drug and arms trafficking, to human smuggling, to cyber crime, and illegal fishing and mining. In carrying out criminal activity, TCOs are often violent, degrading the security and stability of the countries they have a presence in, harming and killing civilians of those countries, and threatening the national security of the United States.

In our neighboring country of Mexico and in Central and South America, violent crime has steadily been on the rise at the hands of drug trafficking organizations. It has been estimated that between 40 and 65 percent of all homicides in Mexico are organized-crime-related. It is possible that the percentage is higher. As it is well-known that the cartels have threatened journalists and government officials in attempts to cover up the identities of homicide victims.

Mexican citizens are unfortunately not alone in living in fear of extreme violence under TCOs. Guatemala, Honduras, and El Salvador have some of the highest homicide rates in the world. Women and girls are disproportionately affected by TCO violence.

In response, Central Americans and Mexicans flee their homes to avoid the threat of violence, and often travel to the U.S. Border for safety. More than 2 million people are estimated to have left El Salvador, Guatemala, and Honduras from 2014 through 2022. Many hoping to escape the violence in their home countries end up facing danger and extortion from TCOs on their journey.

TCOs are connected to migrant smugglers who will charge a fee before allowing the smugglers and migrants to pass through territories under their control. Streamlining asylum processing and allowing migrants to apply for legal protection before they get to our border is a smart policy that is good for our national security, because it undermines the financial model of human traffickers and creates more order at our border and points of entry. I am encouraged that the administration is exploring these policies, so that those who are eligible for legal asylum don't have to make the dangerous journey under the extortion of smugglers. Those who are not eligible can find out—because as we all know the cartels and the smugglers, the traffickers will tell people anything in order to convince them that if they do come to the United States, they'll have no problem getting in, even what that's not true.

So by creating these opportunities, we can undercut the cartels' ability to exploit traffic and profit from vulnerable people.

It is also critical that the United States collaborate with our partners in Mexico and Central America to stop the primary harm from TCOs to the U.S. homeland illicit drug trafficking. Mexican drug traffickers are the primary wholesalers of U.S.-bound cocaine from the major supply countries of Colombia, Peru, and Bolivia, and are also largely responsible for the procurement of Fentanyl precursors from China, and control the cross-border trafficking of Fentanyl, a drug DEA Administrator Anne Milgram has declared the single, deadliest drug threat our Nation has ever encountered.

As we hold today's hearing, we also need to focus on another source of the cartels' strength, the illegal export of guns from the United States across our Southern Border. ATF estimates that as many as 597,000 firearms are trafficked from the United States into Mexico each year, 597,000 each year. It is shameful, and it is fueling the cartels' violence which only exacerbates the problems we face here at home. We cannot call ourselves fully committed to the fight against threats posed by transnational crime groups, particularly, those operating in Mexico and Central America until we act on illegal gun trafficking.

So my hope for today's hearing, in addition to objectively examining the TCO threat landscape, is that we begin a discussion in how we in Congress can support the U.S. Government's efforts to stifle the cartel and all TCO activity. It is critical that we examine the efforts of the Department of Homeland Security, which through several components, including Homeland Security Investigations, and the Office of Intelligence and Analysis, develop intelligence, interdict illicit money and goods, and investigate the TCOs. We must ensure that DHS has the resources and the authorities it needs to protect Americans from TCO violence. With that, once again, I thank the witnesses for being here, and I yield back.

[The statement of Ranking Member Magaziner follows:]

STATEMENT OF RANKING MEMBER SETH MAGAZINER

JUNE 7, 2023

I am glad to be holding this hearing to examine threats posed by transnational criminal organizations to the U.S. homeland. TCOs are broad-ranging, originate all over the globe, and engage in many forms of criminal activity, from drug and arms trafficking to human smuggling to cyber crime and illegal fishing and mining. And in carrying out criminal activity, TCOs are often violent—degrading the security and stability of the countries they have a presence in, harming and even killing citizens of those countries, and threatening the national security of the United States.

In our neighboring country of Mexico, and in Central America, violent crime has steadily been on the rise at the hands of drug trafficking organizations. It has been estimated that between 40 and 65 percent of all homicides in Mexico are organized-crime-related, and it is possible that the percentage is much higher—as it is well-known that the cartels have threatened journalists and Mexican government officials in attempts to cover up the numbers and identities of homicide victims.

Mexican citizens are unfortunately not alone in living in fear of extreme violence under TCOs. Guatemala, Honduras, and El Salvador have some of the highest homicide rates in the world, and women and girls are disproportionately affected by TCO violence. In response, Central Americans and Mexicans flee their homes, to avoid the threat of violence, and travel to the U.S. border. More than 2 million people are estimated to have left El Salvador, Guatemala, and Honduras from 2014–2022. Many—hoping to escape violence in their home countries—end up facing danger and extortion from TCOs on their journey. TCOs are connected to migrant smugglers and will charge a fee before allowing the smugglers and migrants to pass through territories under their control.

Streamlining asylum processing and allowing migrants to apply for legal protection before they get to our border is smart policy that is good for our national security because it undermines the financial model of human traffickers and creates more order at our border and points of entry. I am encouraged that the Biden administration is exploring these policies in the interest of American security.

So far, I have also been pleased with the Biden administration's handling of Title 42's expiration, as recent numbers indicate encounters are down significantly since the week of its expiration, and even lower than the average daily encounters in March. This is further evidence that expanding legal pathways for migrants and a more humane approach to our immigration system is better for our country and better for migrants. By creating further opportunities, we can undercut the cartels' ability to exploit, traffic, and profit from vulnerable people.



It is also critical that the United States collaborate with our partners in Mexico and Central America to stop the primary harm from TCOs to the U.S. homeland—illicit drug trafficking. Mexican drug traffickers are the primary wholesalers of U.S.-bound cocaine from the major supply countries of Colombia, Peru, and Bolivia. We also know that the Mexican cartels are largely responsible for the procurement of Fentanyl precursors from China and control the cross-border trafficking of Fentanyl—a drug DEA Administrator Anne Milgram has declared “the single deadliest drug threat our Nation has ever encountered.”

As we hold today’s hearing we also need to focus on another source of the cartel’s strength: the illegal export of guns from the United States across our Southern Border. ATF estimates that as many as 597,000 firearms are trafficked from the United States into Mexico each year.

Five hundred ninety-seven thousand. Each year.

It is shameful and it is fueling the cartels’ violence, which only exacerbates the problems we face here at home. We cannot call ourselves fully committed to the fight against threats posed by transnational crime groups—particularly those operating in Mexico and Central America—until we act on illegal gun trafficking.

My hope for today’s hearing—in addition to objectively examining the TCO threat landscape—is that we begin a discussion on how we in Congress can support the U.S. Government’s efforts to stifle cartel activity. It is also critical that we examine the efforts of the Department of Homeland Security, which through several components, including Homeland Security Investigations and the Office of Intelligence & Analysis, develop intelligence, interdict illicit money and goods, and investigate various TCOs. We must ensure that DHS has the resources and the authorities it needs to protect Americans from TCO violence.

Mr. PFLUGER. Thank you, Ranking Member Magaziner. Other Members of the committee are reminded that opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

JUNE 7, 2023

I am pleased the subcommittee is exploring threats to the homeland from transnational criminal organizations (TCOs) and the fact that violence perpetrated by TCOs is one of many reasons that people migrate to the U.S. Southern Border. Violent crime has caused thousands across the globe to flee in fear for their lives, particularly in Central America, a region that experiences some of the highest crime rates in the world.

As migrants seek a better, safer life, and embark on a journey to the United States, they face extortion and violence on migration routes through Mexico which the cartels control and charge large sums to allow the migrants to pass.

Increasingly, we hear awful stories of migrants being assaulted, robbed, abandoned, and even murdered along the way. Some experts assess that the increased violence toward and extortion of migrants may be a result of heightened profit competition among the various cartels. That is important for us to factor into today’s conversation—the cartels are profit-driven. They are violent, and criminal, but they are not political. They act with callousness toward migrants, perpetrate horrendous acts of gun violence, profit from illicit drug trafficking at the expense of American lives, and disrupt the much-needed border trade helping to lift millions of our Latin American neighbors out of poverty.

However, designating Mexican cartels as Foreign Terrorist Organizations will do nothing to stop them. They are not deterred by anything unless it affects their bottom line—which terrorist designations will not accomplish. What designating these transnational criminal organizations as terrorists will succeed in is damaging our relationship with the government of Mexico. Comments from Republicans suggesting we invade Mexico only make matters worse.

As I have said before, and will say again, it is high time the Majority stop focusing on trying to score political points—especially when those “points” work to our Nation’s detriment. I urge my colleagues across the aisle to join Democrats in seeking real solutions to address the threats posed by heinous TCOs. For example, we ought to reinstate the interagency Joint Task Force-Investigations—which coordinated efforts across the Federal Government to dismantle TCOs, prevent their reconstitution, and reduce illicit flows. Unfortunately for us and fortunately for the cartels, the Trump administration shut this task force down.

We must improve the Department of Justice's Transnational Organized Crime Actor Detection Program.

At my request, the Government Accountability Office recently conducted a review of this program and recommended that DOJ build on its success by increasing participation and information sharing among partner agencies and developing analysis from the shared data.

We must support DHS's surge operation against Fentanyl, known as "Operation Blue Lotus," which in its first month of operation stopped over 4,000 pounds of Fentanyl at ports of entry, where more than 90 percent of Fentanyl is trafficked.

We must also support our Customs and Border Protection officers at points of entry since they are on the front lines of the battle against Fentanyl.

Democrats were disappointed to see Republicans vote down our amendments to their border bill that would have authorized Operation Blue Lotus and ensured CBP is well-staffed and resourced to seize Fentanyl.

I am hopeful we can begin to work together to further address the dangers posed by the cartels.

Mr. PFLUGER. I am pleased to have the distinguished panel of witnesses before us today on this very important topic, and I ask our witnesses to please rise and raise their right hands.

[Witnesses sworn.]

Mr. PFLUGER. Thank you. You may be seated. Let the record show that the witnesses have answered in the affirmative.

I would now like to formally introduce our witnesses. Mr. Douglas Farah is the founder and president of IBI Consultants, a security consulting firm that specializes in field research study and security challenges in transnational organized crime in Latin America. From September 2013 to September 2022, Mr. Farah was a visiting senior fellow at the Center for Strategic Research, the National Defense University, where he led the Western Hemisphere Illicit Network Review Project under the auspices of Deputy Secretary of Defense for counter narcotics and global threats. In that position, Mr. Farah briefed his research findings across the inter-agency and intelligence communities, including U.S. Southern Command.

Farah also testified before Congress more than a dozen times on important matters related to Western Hemisphere and U.S. homeland. Thank you.

Mr. Christopher Urben is a former assistant special agent in charge of U.S. Drug Enforcement Agency, DEA. Currently, he is the managing director of Nardello & Company in which Mr. Urben supports the firm's efforts to target organized crime groups operating in the ports and borders of the United States, Mexico, Panama, and Colombia. Mr. Urben started his career with DEA in 1996 as a special agent in the New York division. He was later assigned to the New Jersey division where he worked on several high-profile investigations involving Colombian and Mexican drug cartels. Mr. Urben also served on two overseas tours in Europe, working with international law enforcement agencies.

Mr. Urben's most recent position was assistant special agent in charge of the Special Operations Division for Europe, Africa, the Middle East, and the Far East. In particular, Mr. Urben has led sensitive global undercover DEA operations that targeted Chinese organized crime groups that facilitated money laundering for Mexican drug cartels. Thank you for being with us.

Ms. Melissa Ford is the policy director for the Texas Public Policy Foundation's secure and sovereign Texas campaign which helps

to keep our country safe and free. Ms. Ford's work is focused on policies that secure the border and restore the rule of law.

Prior to joining the foundation, Ms. Ford served at the White House first in the Office of American Innovation, and later in the Domestic Policy Council. Ms. Ford has written extensively about foreign policy, public safety, drug cartels, and organized crime. Thank you for being with us.

Last, Mr. Jason Blazakis is a professor at Middlebury Institute of International Studies where he focuses on threat financing, sanctions, and violent extremism, and special operations-related research. He is the director of the Center on Terrorism Extremism and Counterterrorism where he directs research on domestic terrorism, terrorism finance, recruitment propaganda, and the use of special operations to counter transnational threats.

In 2008 to 2018, he served as the director of Counterterrorism Finance and Designations Office, Bureau of Counterterrorism, U.S. Department of State.

I would like to welcome all of our witnesses and thank you for your professional experience.

I know that you have submitted statements for the record. Some of those will exceed 5 minutes. In the interest of time, please summarize your statements to 5 minutes so that we go along the committee lines here and ask questions.

I now recognize Mr. Douglas Farah for your 5 minutes in an opening statement.

**STATEMENT OF DOUGLAS FARAH, FOUNDER AND PRESIDENT,  
IBI CONSULTANTS**

Mr. FARAH. Thank you, Chairman Pfluger and Ranking Member Magaziner, and Members of the subcommittee for the opportunity to be here today talk about the issue of Transnational Criminal Organizations and the threats they pose to their homeland. The multi-billion-dollar illicit economies in Latin America centered on the cocaine trade but diversifying to new commodities and activities are undergoing profound restructuring with long-term strategic repercussions for United States and its allies in the hemisphere.

New actors, new markets, and new products are driving fragmentation among traditional groups, consolidation of criminalized economies, and convergents among different actors are driving instability and corruption. The growing ideologically-agnostic criminalized authoritarian model that's spreading across Latin America with leaders staying in power through alliances with transnational criminal structures that render ideology almost meaningless.

While the world of illicit economies and TCO structures are undergoing the seismic realignment across the hemisphere, many of our strategies to combat these threats remain rooted in the past.

Much of the law enforcement and intelligence community analysis do not grasp the significant implications of states and governments that actively seek the participation of TCOs as part of their national strategic endeavors. Often relying on old paradigms of ideologically-driven actors, model product cartel structures, and shared values of once-friendly government. Yet, as General Richardson, the commander of USSOUTHCOM recently stated, the

Western Hemisphere is under assault from “A host of cross-cutting trans boundary challenges that directly threaten the homeland.”

Already the staunchly anti-U.S. bloc of countries led by Venezuela is ensconced in power, while deeply corrupt authoritarian governments in El Salvador, Guatemala, and Honduras are no longer viable partners for the United States.

In Colombia, which has been the strongest partner of the United States for the past three decades, President Gustavo Petro campaigned on moving away from that alliance, and since taking office has consistently bolstered the Maduro regime in Venezuela.

Most of Colombia’s counter-narcotics efforts have been brought to a standstill by budget cuts, loss of experience, personnel, and a lack of political will. This leaves us with the very real possibility of a traditionally robust alliance that U.S. strategic partners in Latin America will be reduced to a handful of the smallest countries rather than regional economic and political leaders.

Amid these changes, new actors such as Albanian organized crime, Turkish criminal groups, Libyan fixer groups, and Italian mafia groups are emerging as significant new players across the region changing the dynamics of the traditional criminal economics and offering new paths to expand profits to product and market diversification.

I and my colleagues at the international coalition against illicit economies in the spring 2023 policy brief identified several emerging threats that we believe need to be dealt with quickly. The first is the trafficking of natural resources, especially gold. That is a primary contributor to massive environmental degradation, health hazards, child labor, human trafficking, and sexual slavery, and loss of state legitimacy. It also brings broad new avenues of almost untraceable money laundering that’s being taken advantage of by criminalized states and criminal groups.

The second is the diversification and the expansion of the cartels, Jalisco Nueva Generacion. Jalisco in the past 3 years has emerged as the most prominent cocaine trafficking organization in Latin America and is expanding its operation and corruptive influence in different parts of the world. A primary area of expansion is into the diversified economic portfolio of growing fake and counterfeit pharmaceuticals, a new multibillion-dollar industry, as well as the Fentanyl industry mentioned by the Chairman and the Ranking Member.

The second is the evolution of the MS-13 and the PCC gangs and the Transnational Criminal Organizations. Since the 1990’s, the MS-13 are Mara Salvatrucha in Central America and the PCC. In Brazil, it has been identified primarily as street thugs known for their ruthless violence, flashy tattoos, neighborhood extortion rings, and cultural insularity. These groups have now moved far beyond being that type thing and are what we have termed in the academic community, Community Embedded Transnational Armed Groups. Working in informal and imperfect alliances to become part of the multinational trafficking structures that are effectively challenging U.S. strategic interest in the region and make the U.S. ability to respond to the broadening instability much more difficult.

The third one that we identified is the emergence of new extra regional criminal structures as noted with the diversification of

markets and products. The face of transnational organized crime in Latin America is going much more diverse.

Now, there is a growing presence of Eastern European, Chinese, Turkish, Italian, Balkan, syndicates all vying for space across the transnational criminal world in the hemisphere, and this is most visible in the crisis in Ecuador.

In conclusion, as illicit networks expand their territorial control, ecosystems of corruption, and political power, they are aided and abetted by extra regional actors, such as China, Russia, and Iran. They will undercut the rule of law and directly challenge U.S. goals and initiatives across the hemisphere.

As traditional Transnational Organized Criminal Groups form new alliances with non-state extraregional networks and emerge with regional criminal state actors, the United States is very likely facing an unprecedented loss of key allies and influence in the hemisphere. The United States has an underutilized toolbox that can be deployed to reverse these worrisome trends, but new policy initiatives back by resources to carry them out must be deployed quickly or the cost of these trends will be even higher. I thank you for your time.

[The prepared statement of Mr. Farah follows:]

PREPARED STATEMENT OF DOUGLAS FARAH

JUNE 7, 2023

Chairman Pfluger, Ranking Member Magaziner, and Members of the subcommittee: Thank you for the opportunity to discuss with you today the issue of Transnational Criminal Organizations and the threat they pose to the homeland.

The multi-billion dollar illicit economies in Latin America, centered on the cocaine trade but diversifying to new commodities and activities, are undergoing profound restructuring with long-term strategic repercussions for the United States and its allies in the hemisphere.

New actors, new markets, and new products are driving fragmentation among traditional groups, consolidation of criminalized economies within the Bolivarian Joint Criminal Enterprise (BJCE)<sup>1</sup> and convergence among different actors that are driving instability and corruption.

The growing, ideologically agnostic criminalized authoritarian model is spreading across Latin America. Authoritarian cliques are staying in power through alliances with transnational criminal structures that renders ideology almost meaningless. This new approach has opened new possibilities for formerly antagonistic groups. One-time ideological opponents are no longer considered enemies, but potential partners who can provide or purchase specific criminal services and financial rewards.

The sustained ability of the Bolivarian authoritarian criminal structures to consolidate and endure in Venezuela, Nicaragua, Bolivia and elsewhere has emboldened new leaders across the political spectrum. These new leaders follow the same playbook to gain a chokehold on state power and the wealth generated by the alliance of states and transnational criminal organizations (TCOs).

This necessitates using the same type of state partnership with an array of illicit actors in order to generate revenues, withstand U.S. economic sanctions, evade accountability and maintain a grip on power. Because they are politically agnostic, leaders of criminalized states often merge across ideological boundaries to move their illicit products or hide their illicit fundings through a shared network of fixers and facilitators.

This dynamic cripples democratic governance and the rule of law by embedding the criminal alliances at the most senior levels of multiple governments. Weakened democratic governance and growing criminal authoritarianism, in turn, greatly un-

<sup>1</sup> We define the Bolivarian Joint Criminal Enterprise as an alliance of criminalized states and non-state actors, led by the Maduro regime in Venezuela, the Revolutionary Armed Forces of Colombia (FARC) in Colombia and the Daniel Ortega regime in Nicaragua. For a full discussion of the BJCE see IBI Consultants deliverable for DAS-D CNGT March 28, 2019, "Maduro's Last Stand: Venezuela's Survival Through the Bolivarian Joint Criminal Enterprise."

dermine U.S. strategic interests and influence by undermining its key allies in the region.

While the world of illicit economies and TCO structures are undergoing a seismic realignment across the hemisphere, many of our strategies to combat these threats remains rooted in the past, often attacking problem sets and issues that were relevant years ago but are no longer part of the landscape.

Much of the law enforcement and intelligence community analysis do not fully grasp the significant implications of the ideologically agnostic criminalized states—that is, states and governments that actively seek the participation of TCOs as part of their national strategic endeavors. This leads to gaps in understanding how illicit activities are undertaken and who profits from them. The law enforcement and intelligence communities often rely on old paradigms of ideologically-driven actors, mono-product cartel structures, and shared values with once-friendly countries. Unfortunately, these paradigms no longer describe the context that allows these illicit economies to flourish, and they do not help law enforcement develop viable strategies to address them.

Few states are wholly criminalized and most operate along a continuum. At one end are strong criminalized states, where the state acts as a partner of TCOs and/or use TCOs as an instrument of state policy. In addition to Venezuela, Nicaragua, Bolivia, and Cuba of the Bolivarian bloc these include the countries of the Northern Triangle of Central America (El Salvador, Honduras, Guatemala); while Paraguay and Argentina are moving closer to that end of the spectrum.

At the other end are weak and captured states, where certain nodes of governmental authority have been seized by TCOs, where officials are the primary beneficiaries of the proceeds from the illicit activity but where the state as an entity is not integrated into the enterprise.<sup>2</sup>

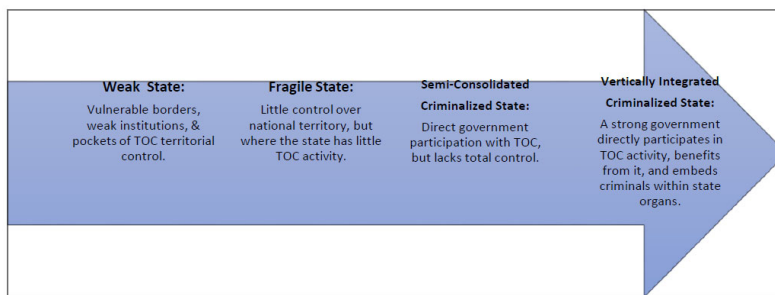


Figure 1: Continuum of state capture from weak state to criminalized state (IBI Consultants)

The framework of the convergence paradigm posits that multiple transnational criminal and terrorist groups—and their enablers, regardless of ideology—work collaboratively when economic or political interests align, and under state protection when such cooperation is mutually beneficial.<sup>3</sup> In too many places in the hemisphere, these threat networks co-opted governance structures and penetrated key public institutions and markets. Yet this framework, although repeatedly validated in recent years, is seldom used to analyze threat structures and illicit product pipelines.

The result is that now Latin America is facing a “perfect storm of reinforcing economic, criminal, and political stresses that is eroding its institutions and economic prospects, radicalizing its people, and undermining its commitment to democracy and the rule of law.”<sup>4</sup>

The massive levels of corruption and multiple, persistent armed conflicts among and between state and non-state actors are key drivers of the regional decline in

<sup>2</sup>Douglas Farah, “Transnational Organized Crime, Terrorism and Criminalized States in Latin America: An Emerging Tier-One National Security Priority,” U.S. Army War College, Strategic Studies Institute, August 2012, accessed at: <https://press.armywarcollege.edu/cgi/viewcontent.cgi?article=1551&context=monographs>.

<sup>3</sup>For an examination of convergence theory see: Michael Miklaucic and Jaqueline Brewer, eds. *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC, NDU Press, 2013); Douglas Farah, “Convergence and Criminalized States: The New Paradigm,” in *Beyond Convergence: World Without Order*, Ed. Hilary Matfess and Michael Miklaucic, Center for Complex Operations, NDU Press, October 2016.

<sup>4</sup>Evan Ellis, “Latin America’s Perfect Storm,” *Global Americans*, August 31, 2022, accessed at: <https://theglobalamericans.org/2022/08/latin-americas-perfect-storm/>.

democratic governance and the wave of authoritarian populism in the hemisphere. The Biden administration designated corruption as a “core United States national security interest” in December 2021,<sup>5</sup> noting that

“In today’s globalized world, corrupt actors bribe across borders, harness the international financial system to stash illicit wealth abroad, and abuse democratic institutions to advance anti-democratic means . . . Corruption threatens United States national security, economic equity, global anti-poverty and development efforts, and democracy itself.”<sup>6</sup>

While the United States has revoked the U.S. visas of several dozen Latin American leaders for corruption, these are executed in a haphazard, episodic manner that do not dismantle criminal structures or lead to asset forfeiture, the true life blood of the corrupt. Significantly more political will and a broader, more coordinated and coherent set of enforcement efforts will have to be employed to dismantle kleptocracies and criminal ruling elites.

This significant reordering of illicit networks structure in the Western Hemisphere is not taking place in a vacuum. The malign influence of China, Russia, and Iran adds new layers of complexity to regional anti-crime strategies.

This is in part because, at the same time illicit economies are expanding, traditional U.S. allies are shifting away from strategic partnerships with the United States to either openly antagonistic relationships or ones of dramatically less strategic engagement.

As Gen. Richardson, commander of U.S. Southern Command, recently stated, the Western Hemisphere is under assault from “a host of cross-cutting, transboundary challenges that directly threaten” the homeland. She added that:

“Transnational criminal organizations (TCOs), which operate nearly uncontested, and blaze a trail of corruption and violence that create conditions that allow the PRC and Russia to exploit, threaten citizen security, and undermine public confidence in government institutions. These threats, along with Iran, corruption, irregular migration, and climate change, all overwhelm the region’s fragile state institutions, springing unrest and increasingly frustrated populations. This combination of factors pushes many political leaders to seek resources and support from all sources, including our adversaries who are very eager to undermine U.S. presence and public image.”<sup>7</sup>

Already the staunchly anti-U.S. bloc of the BJCE is ensconced in power in Venezuela, Bolivia, and Nicaragua while deeply corrupt authoritarian governments in El Salvador, Guatemala, and increasingly Honduras, are no longer viable partners for the United States.

In Argentina, President Alberto Fernández announced his country as the gateway to Russian expansion in the hemisphere on the eve of the Russian invasion of Ukraine and following a face-to-face meeting with Vladimir Putin.<sup>8</sup> He has also granted the PRC privileged access to strategic Argentine state infrastructure and key minerals. These concessions included the construction of an autonomous deep space station, control of a key access point to Antarctica, and access to lithium deposits under opaque contracts.

Brazil’s right-wing populist leader Jair Bolsonaro also visited Russia just before the invasion of Ukraine. Bolsonaro declared his solidarity with Russia after meeting Putin and falsely bragged that he had negotiated a peaceful resolution to the looming conflict.<sup>9</sup>

In a sequence that clearly demonstrates blurred ideological lines, Bolsonaro’s successor, long-time leftist leader Luiz Inácio Lula da Silva (Lula), went out of his way to downplay Russia’s aggression in Ukraine, declare the United States was partly

<sup>5</sup>“Strategy on Countering Corruption,” The White House, December 2021, accessed at: <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

<sup>6</sup>United States Strategy on Countering Corruption, December 2021.

<sup>7</sup>Statement of General Laura Richardson, Commander, United States Southern Command, Before the 117th Congress, House Armed Services Committee, March 8, 2022, accessed at: <https://www.southcom.mil/Media/Special-Coverage/SOUTHCOMs-2022-Posture-Statement-to-Congress/>.

<sup>8</sup>Federico Rivas Molina, “Alberto Fernández le ofrece a Rusia que Argentina sea su puerta de entrada a América Latina,” El País, February 4, 2022, accessed at: <https://elpais.com/internacional/2022-02-04/alberto-fernandez-le-ofrece-a-rusia-que-argentina-sea-su-puerta-de-entrada-a-america-latina.html>.

<sup>9</sup>Giovanna Galvani, “Bolsonaro em encontro com Putin: ‘Somos solidários á Russia,’” CNN Brasil, February 16, 2022, accessed at: <https://elpais.com/internacional/2022-02-04/alberto-fernandez-le-ofrece-a-rusia-que-argentina-sea-su-puerta-de-entrada-a-america-latina.html>.

to blame for Russia's actions, and publicly embraced Maduro and the region's other authoritarian regimes.<sup>10</sup>

In Colombia, which has been the strongest partner of the United States over the past three decades, President Gustavo Petro campaigned on moving away from that close alliance. Since taking office, Petro has consistently bolstered the Maduro regime in Venezuela and used his large social media following to repeat Russian propaganda talking points. Most of Colombia's counter-narcotics efforts have been brought to a standstill by budget cuts, loss of experienced personnel, and lack of political will.

This opens the door to the real possibility that the traditionally robust alliance of U.S. strategic partners in Latin America will be reduced to a handful of the smallest countries rather than regional economic and political leaders.

This erosion of alliances comes while traditional actors in criminal economies have remained active—including the Sinaloa Cartel (Mexico), the Cartel Jalisco Nueva Generación—CJNG (Mexico), and several thousand dissident members of the Revolutionary Armed Forces of Colombia—FARC (Colombia/Venezuela/Ecuador) divided into different groups.

Amid these changes, new actors such as Albanian organized crime, Turkish criminal groups, Libyan actors, and other mafia groups are emerging as significant new players. These groups are changing the dynamics of traditional criminal economies, challenging and upsetting current relationships, and offering new paths to expand profits through product and market diversification. Each group brings added prospects of globalization for products, money laundering, and exchanges of lessons learned.

New actors, new markets, and new products are driving fragmentation among traditional groups, consolidation of criminalized economies within the BJCE and convergence and competition among different actors that are driving instability and corruption. The Mexican CJNG has displaced the Sinaloa cartel as the dominant criminal network, expanding its illicit pipelines from primarily trafficking in cocaine to dominating Fentanyl markets, fake pharmaceuticals, precursor chemicals, methamphetamines, and a host of other products.

Traditional criminal actors based in Colombia and Mexico are now competing with—and sometimes collaborating with—new actors such as transnational gangs in Brazil and Central America, as well extra-regional, non-traditional actors. New actors such as Albanian organized crime, Turkish criminal groups, Libyan actors and Italian mafia groups are emerging as significant new players that are changing the dynamics of these traditional groups, challenging and upsetting current relationships, and offering new paths to expand profits through product and market diversification. Each group brings added prospects of globalization for products, new technologies, money-laundering methodologies, and exchanges of lessons learned.

As attention in the United States is focused heavily on the Russia-Ukraine conflict, and will likely remain so for the foreseeable future, the space for criminal actors and state-sponsored criminal groups to expand under the protection of regional and extra-regional governments will likely continue to grow.

Among the most visible effects of the on-going reordering of illicit economies and networks in Latin America under the protection of a criminalized state is the massive refugee and humanitarian crisis arising from the Maduro regime's repression, corruption, and mismanagement. Some 6 million people have fled Venezuela in the past 5 years, with more than half remaining in camps in Colombia and millions more scattered around the region. This crisis is not the focus of this report but must be noted not only because of the human toll, but because supporting the Venezuelan migrant community strains the humanitarian resources of surrounding countries.

Long-term results of these two major blows to the regions' economies has been to force the state to retrench, leaving broadening gaps for illicit economies to flourish while empowering non-state armed actors that can replace the state. These issues, in turn, make finding viable, sustainable strategies to combat these trends in the near- and mid-term very difficult, even in the countries where the political will to do so exists.

In this context I and my colleagues at the International Coalition Against Illicit Economies (ICAIE), where I am a senior adviser, in a recent Spring 2023 Policy Brief (<https://icaie.com/2023/04/spring-icaie-policy-brief-emerging-transnational-organized-crime-threats-in-latin-america-converging-criminalized-markets-illicit-vectors/>) identified several emerging security trends that offer new challenges to law enforcement and policy communities in the region that are far-reaching, and threat-

<sup>10</sup>Will Grant and Jaroslav Lukiv, "Lula welcomes back banned Venezuelan leader Maduro," BBC News, May 30, 2023, accessed at: <https://www.bbc.co.uk/news/world-latin-america-65750537>.



en to accelerate the negative trends unless dealt with effectively. I summarize our findings in the Policy Brief, below.

*Trafficking in Natural Resources.*—The illicit trafficking of natural resources not only opens new revenue streams for transnational criminal organizations and money-laundering avenues, but it is a primary contributor to massive environmental degradation, health hazards, child labor, human trafficking and loss of state legitimacy. The most lucrative commodity is gold—especially illegally-mined gold—a largely unregulated trade booming across the hemisphere from Venezuela, Colombia, Ecuador, Guyana, and in the north to the Madre de Dios regions of Peru and Bolivia and the Amazon Basin in Brazil.

Gold has several advantages that make it increasingly attractive to criminal groups as the formal financial system has put anti-money laundering laws and regulations in place. As the Organization of American States (OAS) noted in a series of reports, illicit gold mining provides fungible assets that are easy to transport, largely impossible to trace once out of the ground, and readily convertible in markets around the world.<sup>11</sup>

The price of gold has risen sharply in recent years, meaning in many places, mining gold illegally is more profitable for miners in the jungles of South America than planting coca crops to produce cocaine.<sup>12</sup> If gold is moved at 95 percent purity or below it does not legally have to be declared a financial instrument. This makes it easy to move nearly pure gold to a financial hub without declaring it, refine it in situ and have gold that can be turned into cash immediately in ways that avoid the formal banking system. This process enables criminals and kleptocrats to exploit gold markets as a way to launder dirty money.

The Maduro regime in Venezuela has raised hundreds of millions of dollars through the sale of illegally mined gold, often with the support or proxy actions of Colombian non-state armed actors affiliated with different groups of the Revolutionary Armed Forces of Colombia (FARC) dissident factions. Large gold refineries in the United Arab Emirates, United States, and elsewhere have been sanctioned for their massive failure of their own “know your customer” rules and due diligence. One refinery in Suriname helped the FARC, the Maduro regime, and Mexican cartel launder hundreds of millions of dollars through illicit gold and falsified gold invoices.<sup>13</sup>

As U.S. pressure to stem the flow of what human rights groups and others call “blood gold” to the international market has increased, growing amounts of gold have flowed from Venezuela, Nicaragua, Suriname, Ecuador, and elsewhere to state actors and criminal enterprises operating outside of the hemisphere, including Turkey, China, Kenya, the United Arab Emirates and elsewhere.<sup>14</sup> In recent years, China has become an increasingly important market for gold mined by the Maduro regime, which often the allied regime of Daniel Ortega in Nicaragua to move the gold to market.<sup>15</sup> A group of Libyan middlemen who had long ties to the Gadhafi regime’s sanctions evasion efforts in the 1990’s are key facilitators in this new criminal convergence space.<sup>16</sup>

The Ascent, Diversification, and Expansion of the Cartel Jalisco Nueva Generación (CJNG): The CJNG in the past 3 years has emerged as the most promi-

<sup>11</sup>“Tipologías y señales de alerta relacionadas con el lavado de activos provenientes de la minería ilegal en América Latina y el Caribe,” Organization of American States, Department Against Transnational Organized Crime, January 2022, accessed at: <https://www.flipsnack.com/dcmcenter/doc-tipolog-as-y-se-ales-de-alerta-mineria-ilegal-esp.html>.

<sup>12</sup>Javier Villalba, “Colombia Drug Trafficking Money Laundered Through Modified Gold,” Insight Crime, June 17, 2021, accessed at: <https://insightcrime.org/news/urabenos-gold-launder-drug-money-colombia/>.

<sup>13</sup>Douglas Farah and Kathryn Babineau, “Suriname: New Paradigm of a Criminalized State,” Global Dispatch, Center for a Secure Free Society, March 2017, accessed at: <https://www.securefreesociety.org/wp-content/uploads/2017/03/Global-Dispatch-Issue-3-FINAL.pdf>.

<sup>14</sup>See for example: Carina Pons and Mayela Armas, “Venezuela sold 73 tonnes of gold to Turkey, UAE last year: Legislator,” Reuters, February 6, 2019, accessed at: <https://www.reuters.com/article/us-venezuela-politics-gold/venezuela-sold-73-tonnes-of-gold-to-turkey-uae-last-year-legislator-idUSKCN1PVIXE>; and “Gold and Grief in Venezuela’s Violent South,” International Crisis Group, February 28, 2019, accessed at: <https://www.crisisgroup.org/latin-america-caribbean/andes/venezuela/073-gold-and-grief-venezuelas-violent-south>.

<sup>15</sup>Yalilé Loiza, “La OEA advirtió sobre el incremento de comercio de oro desde Ecuador a China,” Infobae, February 1, 2023, accessed at: <https://www.infobae.com/america/america-latina/2023/02/01/la-oea-advirtio-sobre-el-incremento-del-comercio-ilegal-de-oro-desde-ecuador-a-china/>.

<sup>16</sup>For details see: Douglas Farah and Marianne Richardson, “Dangerous Alliances: Russia’s Strategic Inroads in Latin America,” Institute for National Strategic Studies, National Defense University, Strategic Perspectives 41, December 2022, accessed at: <https://inss.ndu.edu/Portals/68/Documents/stratperspective/inss/strategic-perspectives-41.pdf>.

ment cocaine trafficking organization in Latin America, surpassing the Sinaloa Cartel and other Mexican and Colombian trafficking structures. It now operates in at least 29 of Mexico's 33 states, as well as northern Central America, Ecuador, Colombia, and Venezuela.<sup>17</sup> It is also expanding its operation and corruptive influence in different parts of the world.

In order to achieve this, the CJNG has successfully focused on:

- Expanding its territorial control in multiple jurisdictions in order to control all illicit activities rather than just operating as a cocaine plaza;
- The indiscriminate use of wide-spread violence to combat other cartels, law enforcement, perceived enemies such as journalists, and would-be competitors and successfully targeting high-profile targets;
- A rapid scaling up of its business opportunities inside and outside of Mexico while moving to diversify its portfolio and develop new methodologies for laundering and moving its illicit proceeds.

A primary area of the CJNG's expanded and diversified economic profile now includes a growing dominance in the trafficking of fake medicines and counterfeit pharmaceuticals, a multi-billion illicit industry repeatedly traced back to this cartel. In Mexico, 60 percent of commercially-sold pharmaceuticals are counterfeit, expired, or stolen.<sup>18</sup> Pirated pharmaceuticals are most common in Guanajuato, Jalisco, Guerrero, and Michoacan. The medicines are sold on-line, in the informal economy, and in professional brick-and-mortar pharmacies, where CJNG liaisons force pharmacists and storekeepers to sell and store them alongside real medicine.

Counterfeit pharmaceuticals are often sold for a fifth of the price of real medicine. Fake medicine has included treatments for HIV, cancer, osteoporosis, diabetes, blood pressure, cholesterol, and obesity.<sup>19</sup> Pharmacists who oppose the sale of the counterfeit medicines, do so at risk to their own lives.<sup>20</sup>

The cartels' expanded trafficking in counterfeit pharmaceuticals includes pills that are cut with illegal drugs, notoriously Fentanyl, or Fentanyl disguised as other pharmaceutical products. Many counterfeit pharmaceuticals connected to the CJNG and other cartels contained Fentanyl, including counterfeit Oxycodone, Xanax, and Roxicodone.<sup>21</sup> These pills were milled in pill presses to mimic legitimate pharmaceuticals. Including Fentanyl in the recipe for these drugs makes drug trafficking even more profitable and harder to detect, as cartels can package the substances into ever-smaller bags, spread them among an ever-wider network of distributors, and achieve the same or greater levels of usage.<sup>22</sup> Increasingly, the cartels have also started mixing Fentanyl with Xylazine—a sedative used in cow and horses—and found in many cities across the United States which causes severe skin ulcerations, necrosis, and can result in amputations if left untreated.

The CJNG is sourcing the precursor chemicals for Fentanyl production from the same suppliers—largely Chinese and Indian—used by other cartels, including the Sinaloa cartel.<sup>23</sup> The Asian suppliers sell to precursors to large Mexican companies and primarily imported through the Lázaro Cardenas and Manzanillo ports.

The link between expanded Fentanyl production and supply of precursor chemicals makes controlling ports, especially vital ports such as Lázaro Cardenas and Manzanillo, critical for cartel economic supremacy. Whoever controls the ports has a stranglehold on the production of the new synthetic production line, and related illicit markets.

The Evolution of the MS-13 and PCC Gangs into Transnational Criminal Organizations: Since their emergence in the criminal landscape as prison-based gangs in

<sup>17</sup> IISS Armed Conflict Survey, 2022. Data from the Mexico Ministry of Finance and Public Credit.

<sup>18</sup> Castillo Garcia, Gustavo. "Se apodera el 'CJNG' de la producción de medicinas 'piratas'". *La Jornada*, 17 March 2020. <https://www.jornada.com.mx/ultimas/politica/2020/03/17/se-apodera-el-cjng-de-la-produccion-de-medicinas-piratas-9877.html>.

<sup>19</sup> "El CJNG extiende sus tentáculos criminales; así trafica medicamentos piratas en México." *Infobae*, 17 March 2020. <https://www.infobae.com/america/mexico/2020/03/17/el-cjng-extiende-sus-tentaculos-criminales-asi-trafica-medicamentos-piratas-en-mexico/>.

<sup>20</sup> Castillo Garcia, Gustavo. "Se apodera el 'CJNG' de la producción de medicinas 'piratas'". *La Jornada*, 17 March 2020. <https://www.jornada.com.mx/ultimas/politica/2020/03/17/se-apodera-el-cjng-de-la-produccion-de-medicinas-piratas-9877.html>.

<sup>21</sup> Atlanta-Carolinas High Intensity Drug Trafficking Area's 2019 Threat Assessment. [https://www.sestatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AlcoholDrugAbuse/Drug\\_Trafficking\\_Threat\\_Assessment.pdf](https://www.sestatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AlcoholDrugAbuse/Drug_Trafficking_Threat_Assessment.pdf).

<sup>22</sup> "La estrategia del CJNG y el Cartel de Sinaloa para inundar Estados Unidos con fentanilo." *Infobae*, 12 May 2022. <https://www.infobae.com/america/mexico/2022/05/13/la-estrategia-del-cjng-y-el-cartel-de-sinaloa-para-inundar-estados-unidos-con-fentanilo/>.

<sup>23</sup> Asmann, Parker. "Mexico's Sinaloa Cartel, CJNG Share Fentanyl Chemical Suppliers." *Insight Crime*, 16 November 2022. <https://insightcrime.org/news/mexico-sinaloa-cartel-cjng-chemical-suppliers-fentanyl/>.

the mid-1990's both the MS-13 (Mara Salvatrucha) in Central America and the PCC (Primeiro Comando da Capital) in Brazil have been identified primarily as street thugs known for their ruthless violence, flashy tattoos, neighborhood extortion rings, and cultural insularity. While that typology was true for many years, both groups have now grown into transnational criminal threats, making the past nomenclature both obsolete and inaccurate.

As I have argued in recent academic publications and policy discussions that this coalescing of transnational criminal groups that have moved beyond gangs to Community Embedded Transnational Armed Groups (CETAGs) in informal and imperfect alliances, pose enormous and little-understood challenges to U.S. strategic interests and the U.S. ability to effectively respond to broadening hemispheric instability. Rooted in their communities, this type of criminal group is likely to expand across the hemisphere.

The MS-13, primarily operating in the Northern Triangle of Central America (El Salvador, Honduras, Guatemala) and the PCC, based in São Paulo (and active in most Brazilian States), are now both tier one criminal/political/military threats to hemispheric stability.<sup>24</sup> The groups—no longer gangs but transnational criminal structures—are becoming more deeply enmeshed in the global drug trade, the body politic, and armed conflicts in the hemisphere. Both structures are rapidly amassing formal political power and seek new alliances with each other and other state and non-state armed actors to achieve their goals of becoming major criminal enterprises embedded in the state. In addition, both groups share important characteristics. These include:

- A hierarchical structure that is both rigid and allows for local autonomy. At the highest levels, the hierarchies are pyramid-shaped. Leaders achieve coordination through bodies known as *sintonias* (PCC) and *ranflas* (MS-13), but local groups have significant freedom in implementing the strategic decisions the leadership makes;
- Members aspire to visible trappings of wealth and economic success (weapons, cars, luxury houses, beautiful women, jewelry);
- An increasing reliance on local, retail drug sales (*narco menudeo*) to create local demand and provide income that allows them to diversify their criminal portfolios and move away from deeply unpopular revenue streams such as extortion in the neighborhoods they control. The retail sales include cocaine, crack cocaine, chemical-laced marijuana called *krispy* and generate the bulk of revenues for both groups; prostitution; human smuggling and other high-end illicit activities;
- A reliance on territorial control in heavily populated areas such as national and regional capitals, as well as key drug trafficking routes, to gain political and economic leverage and vertically integrate their trafficking structures;

In addition, both groups have reached some understanding with the Maduro regime in Venezuela and allied criminal structures operating in Venezuelan territory to acquire cocaine and weapons, and both rely on territorial control as their primary claim to legitimacy.

These groups have replaced the state as the arbiter of power across most of the areas where they operate; they have more legitimacy in many ways than government institutions.

The MS-13 remains largely confined to northern Central America and the United States, with a growing presence in Mexico. The MS-13 poses an existential threat to the governments of El Salvador and Honduras, both small countries whose primary strategic importance derives from their proximity to the United States. The group is expanding territorial control, infiltrating the police and negotiating pacts with governments that have increased the group's engagement in cocaine trafficking, production, and retail. While moving aggressively to take over cocaine trafficking routes in the region, the MS-13 is far less involved in the transnational drug trade than the PCC. However, most of the MS-13 activities directly impact the United States, making it a more direct challenge.

<sup>24</sup>A tier one, or existential threat is considered to be among the most serious of all threats to national security, and has been defined as a threat that would “deprive the United States of its sovereignty under the Constitution, would threaten the territorial integrity of the United States or the safety within U.S. borders of large numbers of Americans, or would pose a manifest challenge to U.S. core interests abroad in a way that would compel an undesired and unwelcome change in our freely chosen ways of life at home.” See Louis Jacobson, “Is ISIS an existential threat to the United States,” *PolitiFact*, November 16, 2015.

The MS-13—initially formed in prisons in Los Angeles, California in the 1980’s before many were deported back to post-conflict Central America in mid-1990’s<sup>25</sup>—has long been recognized as a significant strategic challenge for the United States, in part because of its U.S. roots and on-going proximity and engagement across the United States. In 2012 the group was declared “significant transnational criminal organization” by the U.S. Treasury Department.

While the PCC, unlike the MS-13, does not have operational U.S. branches and does not operate near a U.S. border, this CETAG has a demonstrated capacity to disrupt and destabilize multiple countries in the hemisphere—most notably Paraguay and Bolivia—as well as the operational capacity to deliver cocaine and other illicit products to Brazil, Africa, and Europe. This broad reach, now extending into Colombia, Peru, and Venezuela, in turn, drives massive corruption and is spurring the groundwork for State collapse in multiple countries. The cumulative impact poses a significant strategic threat to the United States and its hemispheric allies.

The Emergence of New Extra-Regional Criminal Structures: For most of the history of large-scale cocaine production and shipments in Latin America, the primary operational groups were Colombian or Mexican, with Caribbean groups and Central American structures playing a lesser role. With the diversification of both markets and products, the face of transnational organized crime in Latin America is growing much more diverse.

Now, operating alongside—and sometimes in competition with—the fragmenting and realigning regional structures, there is a growing presence of Eastern European, Chinese, Turkish, Italian, and Balkan syndicates vying for space.

There are many other indicators of growing extra-regional actors in the region. Albanian, Kosovar, and Greek criminal groups are competing alongside Mexican cartels for power in Ecuador.<sup>26</sup> An Albanian national, reportedly an important link between South American drug trafficking networks and Balkan criminal networks, was shot to death in a restaurant in Guayaquil in late January 2022.<sup>27</sup>

The Ecuadoran media has confirmed at least 6 murders of Albanians since 2019. Turkish organized crime has been developing inroads into Venezuela since at least 2020<sup>28</sup> and in November 2022, Panama’s role as a central logistics hub for extra-regional criminal organizations came to light. Authorities arrested 49 people in Dubai, Spain, France, Belgium, and the Netherlands, all with alleged ties to the so-called ‘Super Cartel’. Defendants were allegedly coordinating a massive drug trafficking operation out of Panama with support from leading cartels in Ireland, Italy, Bosnia, the Netherlands, and Morocco.<sup>29</sup> According to Panama’s attorney general, Panamanian nationals had been helping the Super Cartel move drugs and maintain communications around the world.

Italian organized crime, in particular groups with ties to the ‘Ndrangheta, are also active in Argentina and Chile, with ties in Central America along drug trafficking routes to Europe.<sup>30</sup> Cocaine seizures in Portugal in August 2022 also indicate comprehensive collaboration between prominent Brazilian criminal groups, in particular the PCC, and West African groups operating out of Angola and Guinea Bissau.<sup>31</sup>

<sup>25</sup>In the mid-1990’s, as the civil wars in Central America ended, the Clinton administration began deporting thousands of gang members as they completed their prison terms in the United States, primarily California, flooding the Northern Triangle with thousands of violent felons the reconfigured back into the mirror images of the gangs they had formed in the United States. For a detailed look at the policies and history of the gang deportations and enormous difficulties this policy has caused in Central America, see Ana Arana, “How Street Gangs Took Central America,” *Foreign Affairs* 84, no. 3 (May/June 2005): 98–110.

<sup>26</sup><https://www.wsj.com/articles/drug-trail-from-europe-to-ecuador-inside-the-hunt-for-elusive-narco-suspect-dritan-rexhepi-11637756980>.

<sup>27</sup>Mistler-Ferguson, Scott. “Albanian drug traffickers jockey for position in Ecuador.” *InSight Crime*, 28 February 2022. <https://insightcrime.org/news/albanian-drug-traffickers-jockey-for-position-in-ecuador/>.

<sup>28</sup>“Turkish organized crime boss: to evade DEA and ship cocaine to middle east, Erkan Yildirim, son of former Prime Minister and Parliament Speaker Binali Yildirim, close friend of Interior Minister Suleyman Soylu, recently established ‘New Headquarters’ in Venezuela.” *Memri*, 26 May 2021. <https://www.memri.org/reports/turkish-organized-crime-boss-evade-dea-and-ship-cocaine-middle-east-erkan-yildirim-son>.

<sup>29</sup>Ballestin, Raquel. “Panama becomes logistics hub for drug trafficking ‘Super Cartel’.” *InSight Crime*, 9 December 2022. <https://insightcrime.org/news/panama-logistics-hub-drug-trafficking-super-cartel/>.

<sup>30</sup>Alvarado, Isaías. “Este país de América es el nuevo ‘paraíso’ de carteles y su fama de tranquilo se está diluyendo.” *Univision*, 25 July 2021. <https://www.univision.com/noticias/narcotrafico/este-pais-es-el-nuevo>

<sup>31</sup>Ford, Alessandro. “Portugal fighting back against rising tide of cocaine.” *InSight Crime*, August 2022. <https://insightcrime.org/news/portugal-fighting-back-against-rising-tide-cocaine/>

Guinea Bissau has long been identified as a narco-state, with drug kingpins able to live freely and openly outside the capital with no threat from law enforcement.<sup>32</sup>

#### CONCLUSIONS

Latin America is facing a “host of cross-cutting, transboundary challenges” that directly threaten not only U.S. strategic interests, but the key pillars that have sustained long-standing partnerships across the region to jointly face myriad common issues. As illicit networks expand their territorial control, ecosystems of corruption, political power, and product lines, they are aided and abetted by extra-regional actors such as China, Russia, and Iran who undercut the rule of law and directly challenge U.S. goals and initiatives in the Western Hemisphere.

As traditional transnational organized criminal groups have formed new alliances with non-state extra-regional networks and merged with regional criminalized state actors, the United States is very likely facing an unprecedented loss of key allies and U.S. influence in the hemisphere. The terrain that is lost will likely prove very difficult to regain as states continue to deal with the fallout of the COVID-19 pandemic and the on-going Venezuelan humanitarian crisis.

Russia and China view Latin America as a key theater of great power competition, and act accordingly. The United States must forgo the complacency inherent in having been most of the region’s international partner of choice for a century, and seek creative new engagements with its partners. Higher-quality, more comprehensive, and more sustained engagement with the right communities will go far to strengthen democracy, civil society, and regional stability.

The sheer number of violent, criminal networks now controlling territory and wielding political power—some of them protected by member states of the BJCE—mean the desired end-state of stability will prove elusive for many communities. The same forces wield massive corruption networks to undermine rule of law, hollow out state institutions, weaken civil society, and drive violence and irregular migration.

The United States has an underutilized toolbox that can be deployed to reverse these worrisome trends, but new policy initiatives, backed by resources, must be deployed quickly or the costs of these trends will be even higher.

In order to counter the current trends in Latin America, the United States must take short-term actions that support a long-term strategy of re-engagement and partnership. These include:

- Getting U.S. Ambassadors confirmed and in place in key countries across the region would be an important and achievable first step. The lack of Ambassadors feeds the perception that the United States does not prioritize the region and provides less robust engagement at senior policy levels.
- Redefine who the United States is willing to strategically partner with away from the traditional right vs. left paradigm to one that prioritizes democratic governance, rule of law, and anti-corruption efforts. This would open the doors to meaningfully engage with the new governments of Chile and Honduras more robustly while making countries like Argentina and Brazil less central for policy initiatives.
- Fully embrace the Biden administration’s twin policies of combatting transnational organized crime and corruption as priorities. This includes funding and implementing unfulfilled and unfunded initiatives to create task forces to work with regional partners on these issues and empower civil society to participate in these struggles.
- As part of the whole-of-Government agenda, refine and prioritize combatting illicit networks, particularly those linked to state actors such as Venezuela and Nicaragua. This not only combats corruption but weakens the criminalized states and their non-state actors.

Use the Summit of the Americas event in June 2022 to reset U.S. engagement in the region with a clear articulation of priorities, while highlighting the advantages partnership with the United States offers as opposed to the consequences of allying with Russia, China, or Iran.

**Mr. PFLUGER.** Thank you, Mr. Farah. I now recognize Mr. Urben for your opening statement.

<sup>32</sup>Dalby, Chris. “Record cocaine hauls confirm Guinea-Bissau’s ‘narco-state’ reputation.” *In-Sight Crime*, 25 September 2019. <https://insightcrime.org/news/analysis/guinea-bissau-colombia-cocaine-hauls/>

**STATEMENT OF CHRISTOPHER URBEN, FORMER ASSISTANT  
SPECIAL AGENT IN CHARGE OF U.S. DRUG ENFORCEMENT  
AGENCY, DEA, AND MANAGING DIRECTOR, NARDELLO &  
COMPANY**

Mr. URBEN. Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of this subcommittee, thank you for the opportunity to address you today on this important issue. I spent 24 years working for the DEA where I worked as an agent as well as a supervisor to investigate and disrupt and dismantle significant transnational organized crime within the United States and around the world.

During the last several years of my career with DEA, I worked in DEA's Special Operations Division, SOD, with an interagency group to target what we identified as a growing threat. The collaboration between Chinese and Mexican TCOs in the trafficking of Fentanyl and in the money-laundering activities associated with it. It is a development that I and others at SOD dedicated substantial efforts to understanding and addressing. This may be relevant to the subcommittee's consideration as it seeks to address threats to the homeland posed by these TCOs.

To understand how this collaboration works, it's important to understand how it developed in the past. Mexican cartels, including Sinaloa and CJNG have long established control over territory in Mexico and access to supply and distribution chains extending into the United States. This dates from their trafficking time in cocaine and heroin and other drugs that are produced south of the U.S. border and moved into the United States for sale.

The cartels used that control and access to move into the Fentanyl marketplace as the source of supply for these deadly drugs. They became available primarily via precursor chemicals supplied by Chinese TCOs. This development presents an unprecedented challenge by itself.

But there is another part of this growing relationship that helps fuel the success of Fentanyl production and distribution—the growing role of Chinese organized crime that they have taken in the laundering drug proceeds. The Mexican cartels, they laundered these proceeds for the Mexican cartels in a way that's safer, quicker, and more profitable for the cartel.

As reflected by the graphic in exhibit 1 to my testimony that you have, here is how it works. Every day in the United States, Chinese money brokers pick up narcotics proceeds from the sales of Fentanyl and other drugs, such as cocaine and heroin in the form of bulk U.S. cash. A distribution gang, let's say, in New York, or any other city in the United States that owes payment to the Mexican cartel delivers bulk cash to the Chinese broker in the United States. That Chinese broker then sells the U.S. dollars to Chinese customers who want to spend their money in the United States, acquiring real estate, paying for college tuition, gambling, or other investments. These Chinese customers pay in China for the cash they receive in the United States. It doesn't cross borders. Proceeds in China are used to buy goods for exports in Mexico or South America where the goods are sold by Chinese brokers located in Mexico to recoup their funds.

Some of the proceeds are also used to pay for precursor chemicals that enable cartels to produce more synthetic opioids than bound for the United States. These Chinese brokers accomplish all this with a trusted electronic encryption communications network that allows this to happen instantly. It is called WeChat.

While the threat posed by the collaboration between Chinese and Mexican TCOs is real and growing, more can be done to combat it. More investigative resources such as translators, data scientists, and experienced targeting analysts will enable law enforcement to have the tools needed to detect and investigate these networks, where they operate.

Both the Trump and Biden administrations have authorized the imposition of sanctions on participants in the global trade of Fentanyl and synthetic opioids. Recent sanctions on Chinese brokers of precursor chemicals and Mexican suppliers of synthetic opioids are an encouraging development. But further investments in the sanctions program, along the lines of the effective sanctions program targeting those involved in the Russian aggression against the Ukraine would help address this threat.

In the private sector where I now work on Nardello & Co, the global investigative firm, I am also seeing greater awareness by the business community that needs to understand this emerging threat and develop the tools to address it. More investments in training and detection will facilitate private sector's organization's compliance with anti-money laundering laws and help protect the integrity of our financial system as well as reduce the flow of dangerous synthetic opioids in the United States.

Congress can also play a vital role by providing resources, incentives, and authority for Government and the private sector to work together to combat this threat. Thank you for the opportunity to speak with you today about this important issue.

[The prepared statement of Mr. Urben follows:]

JUNE 7, 2023

PREPARED STATEMENT OF CHRISTOPHER URBEN

Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of this subcommittee, thank you for the opportunity to address you today on this important issue.

I spent 24 years working for the United States Drug Enforcement Administration ("DEA"), where I worked as an agent and supervisor to investigate and disrupt or dismantle significant transnational criminal organizations ("TCOs") within the United States and around the world.

During the last several years of my career with DEA, I worked in DEA's Special Operations Division ("SOD") with an interagency group to target what we identified as a growing threat: the growing collaboration between Chinese and Mexican TCOs in trafficking of Fentanyl and in money-laundering activities. It's a development that I and others at SOD dedicated substantial efforts to understanding and addressing, and that may be relevant to this subcommittee's consideration as it seeks ways to address threats to the homeland posed by TCOs.

To understand how this collaboration works, it's important to understand how it developed. Mexican cartels, including the Sinaloa and Cartel Jalisco New Generation ("CJNG"), have long-established control over territory in Mexico and access to supply and distribution chains extending into the United States. This dates from their time trafficking cocaine, heroin, and other drugs that are produced south of the U.S. border into the United States for sale.

The cartels used that control and access to move into the Fentanyl/synthetic opioid marketplace as the source of supply for these deadly drugs became available, primarily via precursor chemicals supplied by Chinese TCOs. Prior to approximately

2019, the cartels and drug dealers within the United States were receiving Fentanyl in shipments directly from chemical brokers in China and selling it in the United States. Then, the Chinese government started cracking down on the production of pure Fentanyl in mainland China and its shipment and sale into the United States. Now, Mexican cartels increasingly are receiving what are known as precursor chemicals via chemical brokers in China and using them to produce Fentanyl themselves in territory they control in Mexico for distribution into the United States.

The potency of the synthetic opioids created in Mexican cartel-run drug labs has made them particularly dangerous—as the DEA has reported previously, 1 kilogram of pure Fentanyl has enough opioid to kill 500,000 people. Because of the Mexican cartels' powerful existing distribution networks, it's relatively easy for them to smuggle Fentanyl into the United States. Where once the cartels might have had to smuggle tractor trailers full of cocaine, heroin, or other drugs into the United States to supply the market, now just a few kilos smuggled via passenger cars or individual travelers, or via the mail, can supply equivalent potency to local drug trafficking organizations ("DTOs") here in the United States, which mix the Fentanyl with other chemicals for consumption or process them into counterfeit pills for sale on the street or over the internet.

This development presents an unprecedented challenge by itself. But there's another part of this growing relationship that helps fuel the success of synthetic opioid production and distribution: the growing role that Chinese TCOs have taken in laundering drug proceeds for the Mexican cartels in a way that's safer, quicker, and more profitable for the cartels.

The most predominant laundering scheme that had been employed by the Mexican cartels, known as the Black-Market Peso Exchange ("BMPE"), was complex and dangerous, resulting in high transaction costs of 7–10 percent of the total amount laundered and lengthy delays of a week or more. Moreover, because of the BMPE connection to the cartels, laundering involved a constant risk of violence, theft, or law enforcement intervention.

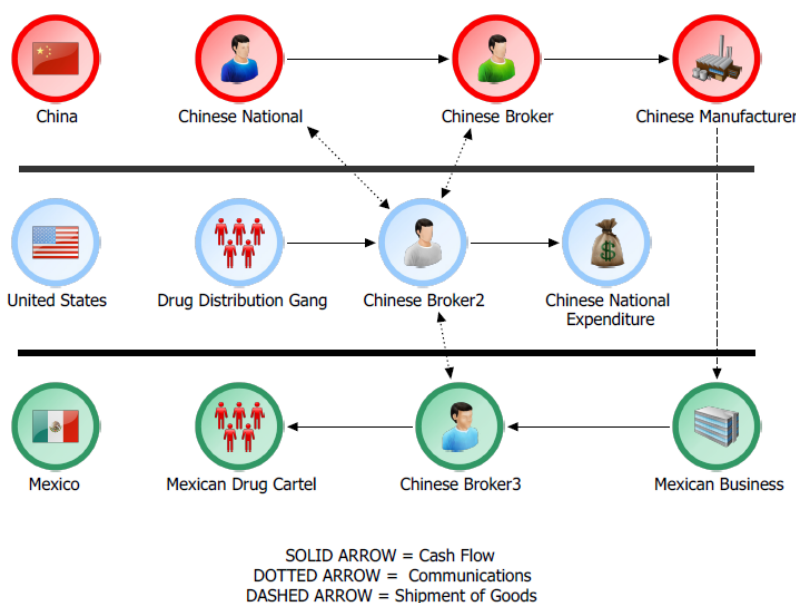
The method used by the Chinese TCOs avoids the costs, delays, and risks of the BMPE by employing brokers in three countries—China, the United States, and Mexico—and by addressing needs of other participants in the global economy that are in China or that do business with China.

As reflected by the graphic in Exhibit 1 to my testimony, here's how it works:

Every day in the United States, Chinese money brokers pick up narcotics proceeds—from sales of Fentanyl and other synthetic opioids as well as heroin, cocaine, and other drugs—in the form of bulk U.S. cash. A drug distribution gang in New York or another U.S. city that owes payment to the Mexican cartel delivers the bulk cash to the Chinese broker. The Chinese broker then sells the U.S. dollars to Chinese customers who want to spend money in the United States, acquiring real estate, paying college tuition, gambling, or making other investments. These Chinese customers pay in China for the cash they receive in the United States. The proceeds in China are used to buy goods for export to Mexico or South America, where the goods are sold by the Chinese brokers in Mexico to recoup their funds. Some of the proceeds also are used to pay for the precursor chemicals that enable the cartels to produce more synthetic opioids. The Chinese brokers accomplish all of this with trusted electronic encrypted communications that allow all of this to happen instantly.



**EXHIBIT 1: Testimony of Christopher Urben**



What makes this so effective and hard to detect?

- First, it minimizes movement of funds. Dollars don't leave the United States, pesos don't leave Mexico, and RMB does not leave China.
- Second, it takes advantage of the huge and increasing volume of trade with China, and the existence of capital controls within China, by ensuring a constant stream of customers and making it harder to separate legitimate from illegitimate transactions.
- Third, it uses technology to its advantage, advertising the sale of dollars in internet chat rooms and communicating primarily via WeChat, an encrypted network that is resistant to surveillance by U.S. law enforcement and that facilitates speed and trust within the Chinese organized crime network.

While the threat posed by collaboration between Chinese and Mexican TCOs is real and growing, more can be done to combat it. More investigative resources such as translators, data scientists, and experienced targeting analysts will enable law enforcement to have the tools needed to detect and investigate these networks where they operate. Both the Trump and Biden administrations have authorized imposition of sanctions for participants in the global trade of Fentanyl and synthetic opioids. Recent sanctions on chemical brokers in China for precursor chemicals and Mexican suppliers of synthetic opioids are an encouraging development, but further investments in the sanctions program along the lines of the effective sanctions program targeting those involved in Russian aggression against the Ukraine, would help address the threat. Additional investigative tools and rules addressing this money-laundering scheme also can play an important role.

In the private sector, where I now work for Nardello & Co., the global investigative firm, I am also seeing greater awareness by the business community that it needs to understand this emerging threat and develop tools to address it. More investments in training and detection will facilitate private-sector organizations' compliance with anti-money laundering laws, help protect the integrity of the financial system, and help reduce the flow of dangerous synthetic opioids into the United States.

Congress can play a vital role by providing resources, incentives, and authority for the Government and the private sector to work together to combat this threat. Thank you for the opportunity to speak with you about this important issue.

Mr. PFLUGER. Thank you, Mr. Urben. I now recognize Ms. Ford, for your opening statement of 5 minutes.

**STATEMENT OF MELISSA FORD MALDONADO, POLICY DIRECTOR, TEXAS PUBLIC POLICY FOUNDATION, SECURE AND SOVEREIGN TEXAS CAMPAIGN**

Ms. FORD MALDONADO. Chairman Pfluger, Ranking Member Magaziner, and Members of the subcommittee, thank you for the opportunity to testify today. My name is Melissa Ford Maldonado, and I'm a policy director at the Texas Public Policy Foundation; a nonprofit and nonpartisan research institute. We're based in Austin, Texas, but I'm originally from Bolivia.

My work focuses on the relationship between the United States and Mexico. I have done extensive research on Mexican drug cartels and why they pose a huge threat to the United States and Texas.

What I've learned is that cartels have complete control over the Southern side of the border. The border that the United Nations recently labeled the deadliest land crossing in the world. There are record numbers of people dying while attempting to cross in the worst conditions possible, and this is all being orchestrated by cartels.

People who have lived and worked on the border for decades are saying that they have never seen tragedies of this magnitude. Officials in Eagle Pass evening are having to keep a refrigerated truck to hold the bodies of migrants that are drowning in the Rio Grande. Across the river in Piedras Negras, families often report seeing bodies floating under the bridge.

Less than a year ago, a trailer with over 60 migrants locked inside was abandoned by a smuggler near San Antonio, and 53 of them died after being left in the heat.

To cartels, these human beings are just commodities to be exploited and discarded. That's what cartels do; they prey on the vulnerable. Workers that aid migrants at the border estimate that most females encounter some sort of sexual assault on their way to the United States. They're also telling us that there's been a significant rise of sex trafficking cases involving children.

The cartels won't stop. They're richer, and they are bolder than ever, and they will continue to take advantage of our weak border to extend their operations into the United States.

The effect on Texans is just as heartbreaking. We've spoken to ranchers and homeowners who no longer feel safe in their homes, who can't walk around their property unarmed, or let their children play outside because they have encountered armed smugglers on their land, breaking in, stealing, destroying their property, and many have had to move away because of this. Texas communities are also facing a growing number of high-speed car chases.

In March, in Ozona, a 7-year-old girl named Emilia and her grandma were killed, along with 2 of the 11 migrants due to a high-speed car chase that ended in a wreck.

We are also seeing an increase in American teenagers being recruited on social media by cartels to transport migrants. We saw it with a 15-year-old in Mission, and a 12-year-old and 15-year-old in San Antonio, and then with a 15-year-old in El Paso as well. DPS there in El Paso when we were there a few weeks ago told us that is a daily occurrence for them, and sometimes they see multiple of these high-speed car chases in just 1 day.

Another problem we are having is these officers are increasingly assaulted; 248 border agents have been assaulted just this fiscal year. This is all having a huge impact in the quality of life of communities in Texas, but it's not just a Texas problem. Our entire country is feeling the effects of the deadliest drug crisis in history. Texas alone has seized 418 million lethal doses of Fentanyl since 2021. To put that into perspective, that's enough to kill every man, woman, and child in America.

One of the most disturbing parts of this is that the cartels are processing deadly amounts of Fentanyl into pills made to look like any other prescription pill, but they're laced with Fentanyl.

One mother, Rebecca, shared in testimony how both her sons, Kyler and Caleb, 18 and 20, were killed by pain pills that were laced with Fentanyl.

Chairman Pfluger, Ranking Member Magaziner, and Members of the subcommittee, I believe that cartels are the largest threat to the United States right now. Texas is working really hard to fight them, but we need help. This crisis is happening because the Federal Government has failed to do their job to secure the border and protect the people of Texas and the United States. I ask you to be realistic about what we are up against.

We must face the facts that the border is already militarized from the Southern side. Cartels control 30 to 40 percent of Mexico's territory right now. There is extensive evidence of collusion between the state and the cartels. This is a new scenario that demands new solutions; new solutions from policy makers like you who need to understand that the Mexican state as a meaningful partner against cartels is a thing of the past. Therefore, I think we need to use every option on the table to fight back against them. Thank you for your time. I am grateful for your leadership and ready to answer any questions.

[The prepared statement of Ms. Ford Maldonado follows:]

PREPARED STATEMENT OF MELISSA FORD MALDONADO

WEDNESDAY, JUNE 7, 2023

Chairman Pfluger, Ranking Member Magaziner, and Members of the subcommittee, thank you for the opportunity to testify today. My name is Melissa Ford Maldonado, and I am the policy director for Secure & Sovereign Texas, an initiative of the Texas Public Policy Foundation, a nonprofit and nonpartisan research institution based in Austin, Texas.

Much of my work focuses on the relationship between the United States and Mexico, and the center of that relationship, Texas and Mexico. Texas and Mexico not only share a heritage and culture, but also 1,200 miles of common border and a massively important trade alliance. However, this close relationship and proximity has left a door open for illegal activity from Mexico to harm the United States, especially Texas.

The Secure & Sovereign Texas campaign has done extensive research on Mexican transnational criminal organizations, specifically drug cartels, and why they pose a grave and imminent threat to the safety and well-being of families and communities

in Texas and in the United States. I want to share with you what we've seen and learned.

Today, the flow of humans being smuggled, opioids, and poisonous illegal narcotics are driven by Mexican drug cartels. These drug cartels are ruthless, strategic, highly organized money-making entities that continue to evolve in strength and sophistication. They are running a billion-dollar slave trade, and are richer, more armed, and bolder than ever. This is leading to a lot of suffering at the border and beyond the border as well. Texas citizens and communities are being devastated by crime, drugs, a humanitarian crisis, and an unprecedented level of violence.

Smugglers are profiting from pushing people across our border, and it has been heartbreaking to see literally millions of migrants being smuggled—and often abused—across the Texas-Mexico border in the worst conditions possible. Mexican drug cartels have complete control over the southern side of the border. There are record numbers of migrants dying at the U.S.-Mexico border, and a U.N. report recently labeled it the most dangerous and deadliest land crossing in the world.

Maverick County Sheriff Tom Schmerber, who grew up in the area, called the border a graveyard, saying he's been working on the border for almost four decades but has never seen tragedies of this magnitude. Local officials in Eagle Pass, Texas, are having to keep a refrigerated truck to hold the bodies of migrants who drown in the currents of the Rio Grande while trying to cross the border into the United States. Across the river, families having picnics or walking along the waterfront promenade of Piedras Negras, Mexico, say they sometimes see bodies floating by or bobbing among the reeds under a bridge. "We had times when we received four or five bodies a week," said Hugo González, owner of Funerarias González in Piedras Negras. "At one point, there were a lot of corpses and there was nowhere to put them. We just didn't have enough refrigerators at the funeral home."

In the 2022 fiscal year that ended in September, the bodies of more than 890 migrants, a record number, were recovered by U.S. authorities along the border, a 58 percent increase over 2021, and far higher than the 247 to 329 deceased found each year between 2014 and 2020. Unfortunately, the number of actual deaths is likely higher, as other local agencies often recover bodies without involvement from U.S. Customs and Border Patrol.

There are countless heartbreaking stories of cartel-orchestrated human smuggling in Texas. Less than a year ago, a trailer with more than 60 migrants locked inside was abandoned by a smuggler near San Antonio. Fifty-three of them died after being left in the heat. This is terribly sad. The men, women, and children who died in that hot trailer were just looking for a better life, but cartels saw them as disposable commodities to be exploited and discarded. That's why we must work hard to target those that are using them and profiting from their illegal crossings the most.

Regrettably, it is a grim reality that cartels exploit the most vulnerable, specifically targeting women and young girls. Rape, assault, and sexual slavery are everyday life for the women and children who attempt to cross. In our investigations, we have conducted interviews with Border Patrol agents and engaged with individuals involved in supporting and safeguarding female migrants. They estimate that an overwhelming majority of female migrants face some form of sexual assault during their journey toward the United States. Furthermore, they have alerted us to a concerning surge in instances of child sex trafficking.

The impact on the Texas side of the border is equally disheartening. Exploiting the porosity of our border, cartel operatives have expanded their operations into the United States, inflicting turmoil upon our border communities. Texan ranchers and homeowners often find themselves confronted with armed smugglers trespassing on their land, engaging in theft, destruction, arson, and property invasion.

Individuals residing in border towns have shared with us their profound sense of insecurity within their own homes. Many now find themselves unable to roam their properties unarmed, and their children are no longer allowed to play outside. One of these women is Dolores Chacon, whom we met about 3 weeks ago in El Paso. She lives in a small home on the El Paso-Mexico border. In 2008, a fence was erected right behind her home, which she now calls her freedom wall. Before that, she says her property was constantly getting broken into and vandalized, which left her constantly terrified in her own home. Many of her neighbors moved away because of this.

Many Texas communities are also seeing an increasing number of high-speed car chases in usually quiet little towns, placing residents at risk. In March, a human smuggler in Ozona, Texas, killed Emilia, a 7-year-old girl and her 71-year-old grandmother while trying to escape police. The smuggler also killed 2 of the 11 illegal immigrants he was transporting.

Another disturbing trend we are witnessing involves the recruitment of American teenagers by cartels through popular social media platforms such as Snapchat,

Facebook, Instagram, TikTok, and others. These platforms serve as avenues for enticing young individuals with the promise of quick cash in exchange for transporting migrants into the United States.

In February, a 15-year-old led police on a high-speed chase in Mission, Texas, that ended with 7 migrants bailing out of the vehicle on a dirt road. That same month, a 12-year-old and 15-year-old transporting illegal immigrants near San Antonio, Texas, crashed their vehicle while trying to outrun cops in a high-speed chase. Last August, a 15-year-old girl transporting migrants in El Paso led police on a high-speed chase which ended in a multi-vehicle wreck.

The smuggling of migrants is often used as a diversion to overwhelm Border Patrol agents, who are increasingly assaulted doing their job. Since October of last year, 248 Border Patrol agents have been assaulted at the Southern Border.

All these occurrences have a huge impact on the local economy and quality of life of communities in Texas, but it is not just a local issue anymore—this is affecting the entire country.

Mexican drug cartels are responsible for the smuggling not only of humans but of record amounts of illegal drugs into the United States, the former being used to help facilitate the latter.

Whether transported by the criminals themselves or smuggled by the migrants on the orders of their coyotes, drugs are coming across the border in record amounts, and people are dying in record numbers in what has become the deadliest drug crisis in history.

- Texas law enforcement has seized 418 million lethal doses of Fentanyl since the beginning of Operation Lone Star in 2021. That is enough to kill every man, woman, and child in America.
- Over 107,000 Americans died from drug overdoses in the 12-month period ending in January 2022, and we've had more than 1,000,000 American drug overdose deaths since 1999.
- Fentanyl is involved in more deaths of Americans under 50 than any cause of death, including heart disease, cancer, homicide, suicide, and accidents.
- More Americans are dying each year from drugs than were killed in the entire Vietnam War—and the death toll is rising every day.

One of the most disturbing parts of this is that Mexican drug cartels often process deadly amounts of Fentanyl into pills made to look like any other prescription medicine. One mother, Rebecca Kiessling, shared her story when she testified before the Homeland Security Subcommittee on Border Security earlier this year, after both her sons, Caleb, 20, and Kyler, 18, were killed by prescription pain pills that ended up being laced with Fentanyl.

Chairman Pfluger, Ranking Member Magaziner, and Members of the subcommittee, I believe that Mexican criminal organizations are the largest criminal threat to the United States right now. Texas is working hard to fight them with every means possible, but we need help, and it is past time to take decisive action to protect American communities.

I'd like to conclude by making two points:

1. The Federal Government has failed to fulfill its duty to secure the border and protect the people of Texas and the United States.
2. The Mexican state is no longer a partner to the United States. There is irrefutable evidence of extensive collusion between the Mexican state and criminal cartels at all levels of government. Cartels effectively control 30 to 40 percent of Mexico's territory and together, they are conducting a deadly export trade, trafficking in Fentanyl, corruption, and worst of all, literally millions of fellow human beings. This collusion makes it impossible for the United States and Mexico to have a reliable border security partnership.

It is crucial that we approach the border situation with a realistic perspective and respond accordingly. The border is already militarized from the southern side, and the cooperation with the Mexican state ceased a long time ago because the Mexican government would much rather cooperate with cartels than with us. In light of these circumstances, we must implement robust measures and utilize the full strength and capabilities of the United States to effectively address the border crisis.

Thank you for your time. I am grateful for your leadership, and I am happy to answer any questions you may have.

#### ATTACHMENT

[A copy of the document has been retained in committee files and it can also be accessed at the following: <https://www.texaspolicy.com/wp-content/uploads/2022/>

*09/2022-09-RR-SST-Abrazos-no-Balazos-The-Mexican-State-Cartel-Nexus-paper1.-pdf.]*

Mr. PFLUGER. Thank you, Ms. Ford. The Chair now recognizes Mr. Blazakis for his opening statement of 5 minutes.

**STATEMENT OF JASON BLAZAKIS, PROFESSOR, MIDDLEBURY INSTITUTE OF INTERNATIONAL STUDIES, DIRECTOR, THE CENTER ON TERRORISM EXTREMISM AND COUNTERTERRORISM**

Mr. BLAZAKIS. Good afternoon, Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of the committee. Thank you for the opportunity to testify today. I request that my full written statement be put into the record.

Since the beginning of the Trump administration, the U.S. National Security Architecture has pivoted to the challenge of tackling state foreign threats. While there is little question that Russia, China, and Iran pose significant threats to U.S. national security interests, we must not ignore the broad array of transnational actors that seek to harm the United States. This is why your hearing today is so important. It gives us a chance to examine the transnational threat landscape.

Prior to joining the Middlebury Institute as a professor, I worked in the Federal Government for nearly 20 years. Of those years in Government service, I worked across both Republican and Democratic administrations. While in Government, I worked directly on counterterrorism, counter-narcotics, and intelligence issues. These experiences of working in counterterrorism, law enforcement, and intelligence for the U.S. Government really has influenced my views about which policy options are most suitable for countering terrorist groups and criminal organizations like drug cartels.

Today, I was asked to focus my testimony on the question of whether or not the Mexican drug cartels should be designated as foreign terrorists organizations or FTOs for short. It's also very important to emphasize that the question of whether to label the Mexican cartels as FTOs has come up before. In fact, President Trump said that he was going to designate the cartels, but he did not do so.

Here are some of the reasons why I think designating the Mexican drug cartels as FTOs is a bad policy idea. I also like to note in my written testimony there are other reasons that I can't address in my oral.

First, the FTO list is comprised of organizations that are guided by an ideological belief system. The Mexican drug cartels are guided by one thing: A desire to make money. They don't peddle drugs because they want to uproot the powers that be. They have no interest in governing. Simply put, unlike ISIS, they have no interest in creating a caliphate-like structure. They don't have an interest overthrowing the Mexican government.

Second, if the State Department starts designating criminal groups as terrorists, the number of eligible targets that could be added to the FTO list would increase significantly. Hundreds of new organizations would be added to the FTO list, not just a Mexican cartel. Many more would be eligible for listing—Brazilian gangs, Central American gangs, Italian mafia groups, the Yakuza

crime syndicate, and many more. That's a recipe for disaster. It's a recipe for bureaucratic inertia, especially when you consider the amount of work that goes into every FTO designation.

Each FTO designation takes hundreds, or in some cases, thousands of hours to complete. There is one significant advantage, though, to applying the FTO regime against Mexican cartels. Adding the Mexican cartels to the terrorist list would trigger the material support benefits that come with FTO designations. Simply put, that means more time behind bars for those who try to provide material support to the cartels. But on the other hand, there is a negative to this benefit. I can easily imagine scenarios where drug consumers may run afoul of the material support clause when they buy drugs trafficked by a Mexican cartel.

I provide a few examples of such hypothetical scenarios in my written testimony.

Fourth, the designation of the Mexican drug cartels would damage U.S.-Mexico relations. If the U.S. Government pushes the Mexican government on the FTO designation, it does run the risk that Mexico will distance itself from the United States and strengthen relations with countries like China and Russia. For these reasons and for others mentioned in my written testimony, adding the Mexican drug cartels to the FTO list would do very little to solve this immense national security challenge.

There are better alternatives to meaningfully counter the cartels. First, the United States needs to look inwards. The Mexican drug cartels are well-armed. It has been well-documented that the cartels are getting their guns from the United States. The United States should explore arms control options that diminish the cartels' access to weapons.

Second, the United States should engage in capacity building to build up the Mexican financial sector, not just the governmental sector.

Third, the State Department should make more cartel individuals subject to the Narcotics Rewards Program.

Fourth, we must treat the demand side of this problem. This means investing more in health and educational policies that can cut down America's insatiable appetite for drugs.

Finally, we must not forget the challenge that is posed by groups like ISIS, al-Qaeda, the Wagner Group in Iran's threat network, these transnational actors throw—or pose a significant threat to the U.S. homeland. I look forward to your questions. Thank you.

[The prepared statement of Mr. Blazakis follows:]

#### PREPARED STATEMENT OF JASON BLAZAKIS

##### INTRODUCTION

Good afternoon, Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of the committee. Thank you for the opportunity to testify today. I request that this written statement be put into the record.

Since the beginning of the Trump administration, the U.S. national security architecture has pivoted to the challenge of tackling state-borne threats. While there is little question that Russia, China, and Iran pose significant threats to U.S. national security interests, we must not ignore the array of transnational actors who seek to harm the United States. This is why your hearing today is so important—it gives us a chance to examine the transnational threat landscape.

Before diving into the substance, I want to share with you some of my past and current work experiences that qualify me to speak to the issues that I am going to cover in my testimony below.

My name is Jason Blazakis and I am a professor at the Middlebury Institute of International Studies in Monterey, California. I am also the director of Middlebury's Center on Terrorism, Extremism, and Counterterrorism (or CTEC for short). I have served in these dual roles since July 2018. At the same time, I am also a senior research fellow at the Soufan Center, a non-profit and non-partisan think tank based in New York City.

Prior to joining the Middlebury Institute, CTEC, and the Soufan Center, I worked in the Federal Government for nearly 20 years. Of those years in Government service, I worked across both Republican and Democratic administrations. The last 10½ years of my Government service was spent at the Counterterrorism (CT) Bureau at the U.S. Department of State.

Additionally, I was the head of Embassy Kabul's Narcotics Affairs Section (NAS) for much of 2004 and worked at the State Department's Bureau of International Narcotics and Law Enforcement Affairs Bureau (INL). Finally, I spent nearly 4 years in the U.S. intelligence community (USIC). In the USIC, I worked at the Bureau of Intelligence and Research (INR). These experiences working on counterterrorism, law enforcement, and intelligence issues for the U.S. Government influence my views on which policies are most suitable for countering terrorist groups and criminal organizations, like drug cartels.

At the CT Bureau between early 2008 and July 2018, I directed the activities of the Office of Counterterrorism Finance and Designations. Simply put, I, and my team, at the CT Bureau were responsible for evaluating and compiling the underlying evidence that ultimately contributed to the Secretary of State's labeling of Foreign Terrorist Organizations (FTOs) pursuant to the Immigration and Nationality Act. My office was also responsible for recommending which groups or individuals should be designated as Specially Designated Global Terrorists (SDGTs) pursuant to Executive Order (EO) 13224. Furthermore, my team developed the evidence required for listing state Sponsors of Terrorism consistent with various legal statutes. In my time at the Department of State I oversaw the designations of hundreds of individuals, organizations, and countries as terrorists. Simultaneously, my office was responsible for reviewing hundreds of Treasury Department proposed terrorist designations under EO 13224. Finally, I served as the CT Bureau's representative to the U.S. Government's review group responsible for activities related to the Rewards for Justice (RFJ) program, the U.S. Department of State's national security rewards program that was established in 1984.<sup>1</sup>

#### THE MEXICAN DRUG CARTELS

Today, I was asked to devote a significant portion of my testimony to the question of whether the "Mexican drug cartels should be designated as FTOs." In my time at the CT Bureau at the State Department the issue of whether to designate the "Mexican cartels" as FTOs was raised periodically. Every time the debate arose, I expressed my opposition to leveraging the FTO tool against the "Mexican drug cartels." Before getting into the substance of my reasons for this I want to note two things. First, I was not alone in opposing these designations. Many others at the State Department, Department of Defense, intelligence community, and law enforcement community believed this was a bad idea. This remains the case today. It is also very important to emphasize that this is why the Trump administration did not designate any Mexican drug cartels as an FTO, despite promising to do so.<sup>2</sup> Second, the Mexican drug cartels are not monolithic. As such, when someone calls for designating the drug cartels, we need to inspect what this precisely means. There are dozens of drug cartels based in Mexico. Not all of them are created equal and some, quite frankly, are not significant threats to U.S. national security, much less the homeland. Yet, while I oppose the use of terrorism tools to counter cartels, I want to be clear: several Mexican drug cartels are a threat to the homeland. For example, a recent press release by the Department of Justice noted, "the Sinaloa Cartel is one of the most powerful drug cartels in the world and is largely responsible for the manufacturing and importing of Fentanyl for distribution in the United States."<sup>3</sup>

<sup>1</sup>U.S. Department of State. "Program History and Statutory Authorities." <https://rewardsforjustice.net/about/program-overview/>. Accessed on June 1, 2023.

<sup>2</sup><https://www.npr.org/2019/11/27/783449704/president-trump-says-he-will-designate-mexican-drug-cartels-as-terrorist-groups>.

<sup>3</sup><https://www.justice.gov/opa/pr/justice-department-announces-charges-against-sinaloa-cartel-s-global-operation#:~:text=The%20Sinaloa%20Cartel%20is%20one,times%20more%20potent%20than%20heroin>.



The Sinaloa Cartel is a clear and present danger to U.S. national security, especially when you consider that Fentanyl is more than 50 times more potent than heroin and is the leading cause of death for Americans ages 18 to 49.<sup>4</sup>

Nevertheless, designating any of the Mexican drug cartels as FTOs at this time is a bad idea.

Here's why: First, the FTO list is comprised of organizations that are guided by an ideological belief system. The Mexican drug cartels are guided by one thing—a desire to make money. They do what they do, sling drugs, to make money. They don't peddle drugs because they want to uproot the powers that be. They have no interest in governing. Simply put, unlike ISIS, they have no interest in creating a caliphate-like structure. They don't have any interest in overthrowing Mexican President Andres Manuel Lopez Obrador. The U.S. Government must not conflate terrorism and crime. It is a slippery slope when the State Department gets into the business of identifying criminal organizations as terrorist groups. As of June 1, 2023, the FTO list has 68 groups on it. If the State Department starts designating criminal groups as terrorists, the number of eligible targets that could be added to the FTO would significantly increase. Hundreds of new organizations could be added to the FTO list—not just Mexican drug cartels, but Brazilian gangs, Central American gangs, Italian mafia groups, the Yakuza crime syndicate, and many more. That's a recipe for disaster. It's a recipe for bureaucratic inertia, especially when you consider the amount of work that goes into every FTO designation package. Each FTO designation takes hundreds, in some cases thousands, of combined person hours to complete. Each FTO designation package is the equivalent of writing a Ph.D. dissertation. My old office responsible for this work has fewer than 10 people who are exclusively dedicated to sanctioning FTOs. As such, they must carefully prioritize the targets they select for designation. If the CT Bureau at State gets into the business of designating criminal groups as terrorists, it gets out of the business of designating terrorist groups. This is a bad tradeoff.

However, there is one very significant advantage of applying the FTO regime against the Mexican drug cartels. Adding the Mexican cartels to the terrorist list would trigger the material support benefits that come with FTO designations.<sup>5</sup> Simply put, that means more time beyond bars for those who try to provide material support to the cartels.<sup>6</sup> On the one hand, that's a net positive. However, this is also a possible benefit with downsides. I can easily imagine scenarios where drug consumers may run afoul of the material support clause when they buy drugs trafficked by a Mexican drug cartel. I can imagine a scenario where a high school junior, let's name him Henry, buys Fentanyl from a Mexican drug cartel and an overly enthusiastic prosecutor decides to pursue a material support case against Henry because he provided funding to an FTO. Similarly, I can see a college sophomore, let's call her Sally, who goes to spring break in Acapulco and ends up buying drugs from a Mexican cartel. In this scenario, let's assume when Sally returns home from spring break that she has the illicit drugs in her checked bag. This results in Sally being arrested at the airport. She's eventually charged for providing material support to a Mexican drug cartel that had been already designated by the U.S. Department of State as an FTO. These types of theoretical scenarios worry me—and should worry every one of you. Sadly, because of America's drug epidemic, there are a lot of Sallys and Henrys hooked on drugs. I don't think the solution is branding Henry and Sally as terrorists. Yet, adding the Mexican drug cartels to the list of terrorist organizations increases the chances that many more Americans could be prosecuted for terrorism. Their drug addiction is already a tragedy. It seems unnecessary to compound the error, but adding the Mexican drug cartels to the list of terrorist organizations would do just that.

Moreover, a U.S.-driven FTO designation of drug cartels holds a variety of consequences for asylum seekers. For example, victims coerced into carrying out material support are frequently discounted from receiving any humanitarian assistance or asylum.<sup>7</sup> In this way, an FTO designation fails to distinguish those who act willingly on behalf of the cartel from those that are forced to do so. Conversely, an FTO designation could aid those attempting to flee for politically-motivated reasons—an

<sup>4</sup> Ibid.

<sup>5</sup> <https://www.latimes.com/opinion/story/2023-03-17/dont-designate-mexican-drug-cartels-as-foreign-terrorist-organizations>.

<sup>6</sup> Many of the cartels are treated as transnational criminal organizations already and as a consequence individuals who support these groups can face stiff prison sentences. Yet, low-level material supporters of FTOs often receive 20 to 25 years behind bars.

<sup>7</sup> <https://michiganlawreview.org/ms-13-as-a-terrorist-organization-risks-for-central-american-asylum-seekers/>.

FTO automatically identifies a terrorist or terrorist group as a political actor.<sup>8</sup> Should civilians speak out against the cartels, they are more likely to obtain asylum for expressing a suppressed political opinion; nonetheless, only a limited group of individuals can receive this benefit. Even those asylum seekers that are capable of resisting recruitment may not be considered “politically persecuted,” much less those forced to carry out the cartel’s illicit activities.<sup>9</sup>

One of the strengths of the FTO regime is the fact that the designation requires financial institutions to block any assets associated with the designated entity. Because the most dangerous Mexican drug cartels are already designated pursuant to the Foreign Narcotics Kingpin Designation Act,<sup>10</sup> they are already subject to having their property and interests blocked. Of note, hundreds of entities and individuals have been designated as Kingpins and there have been tangible results. According to a 2019 GAO study, OFAC has “reported that it has frozen more than half a billion dollars of sanctioned individuals’ or entities assets under the Kingpin Act between 2000 and 2019.”<sup>11</sup> Simply put, the FTO designation would bring nothing new to the table when it comes to accessing the wealth of the Mexican drug cartels.

Fifth, one of the benefits of the FTO regime is that it renders individuals associated with the designated terrorist group inadmissible to the United States. According to the same GAO study, one of the consequences of sanctions pursuant to the Kingpin Act is that it provides a basis for denying visa requests. Specifically, “Treasury provides information to State so it can decide whether to cancel existing visas and deny visa applications of Kingpin Act designees.”<sup>12</sup> Yet again, an FTO designation would not benefit the U.S. Government when it comes to denying drug traffickers access to the United States. The ability to do that already exists thanks to the Kingpin Act.

Finally, the designation of the Mexican drug cartels would damage U.S.-Mexico relations. In 2019, when the Trump administration explained that it was considering the FTO designation, President Obrador was categorical in his opposition. To counter the Mexican drug cartels, the United States must work with the Mexican government. Foreign Minister Marcelo Ebrard emphasized this point in an Op-Ed earlier this year. He criticized U.S. efforts to seemingly undermine Mexican authority and indicated that an FTO designation would ultimately increase violent and illicit activities within both countries.<sup>13</sup> It is clear that U.S. calls for intervention in Mexico have increased tensions between the two countries writ large; to defend Mexican authority and geopolitical interests, Ebrard stressed that the United States’ sheer plethora of available weaponry remains a major contributing factor to increased cartel violence.<sup>14</sup> To maintain our own image and secure our relationships with our Central American partners, it is in the United States’ best interest to secure avenues of collaboration—not competition. While Mexico can certainly do much more to fight the drug cartels, we would be mistaken to think that they are sitting on their hands. We would also be mistaken to think that the Mexican drug cartel challenge is only Mexican-made. Some have irresponsibly argued<sup>15</sup> that the designation would allow for more direct U.S. military action against the cartels. This notion is highly problematic, likely would result in a violation of Mexico’s sovereignty and poison the well for any cooperation with the Mexican government. Even worse, it could push Mexico further into the orbit of America’s fiercest economic (China), military (Russia), and ideological (Iran) opponents.

China’s investment in Mexico has grown in leaps and bounds over the last several years. In fact, in 2021, Chinese and Mexican trade exceeded \$100 billion.<sup>16</sup> In 2022, Chinese foreign direct investment (FDI) in Mexico was significant at \$282 million—indicative of Chinese industry’s vested interest in expanding its global reach and overarching sphere of influence.<sup>17</sup> Moreover, evidence of criminal collusion between Chinese chemical companies and the Sinaloa cartel are noteworthy; an unsealed indictment in April revealed that a Chinese company sold illicit Fentanyl-producing ingredients to cartel personnel, thus perpetuating America’s burgeoning opioid cri-

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-598>.

<sup>11</sup> <https://www.gao.gov/assets/gao-20-112.pdf>.

<sup>12</sup> Ibid. Page 12.

<sup>13</sup> <https://www.reuters.com/world/americas/mexicos-top-diplomat-stresses-cooperation-with-us-versus-intervention-2023-03-11/>.

<sup>14</sup> <https://www.wsj.com/articles/mexico-foreign-minister-drug-cartels-bill-barr-ag-91345214>.

<sup>15</sup> <https://www.usatoday.com/story/news/nation/2023/04/16/mexican-drug-cartels-terrorist-organizations-senators-fentanyl-mexico-border/11666432002/>.

<sup>16</sup> <https://www.brookings.edu/on-the-record/how-is-china-involved-in-organized-crime-in-mexico/>.

<sup>17</sup> <https://www.dallasfed.org/research/swe/2023/swe2303>.

sis.<sup>18</sup> A U.S.-driven FTO designation could serve to facilitate and sustain Chinese and Mexican illicit trade routes, should the Mexican and Chinese governments fail to adequately address this expanding criminality. The United States' volatile relationship with the CCP in addition to its mounting tensions with Mexican authorities have the potential to isolate U.S. influence from conversations on mitigating the Fentanyl trade—a trade that ultimately reaps severe consequences among the American public.

Russia similarly continues to cultivate relationships and strategic business ventures in the LATAM region. While limited in quantity, Russia previously supplied Mexico with military equipment and continues to expand its presence among the United States' central and South American neighbors, likely to sow geopolitical discord and sour perceptions of U.S. authorities.<sup>19</sup> Evidently, given growing interest and investment from our adversaries in Mexico, the United States must work to ensure our partnerships in Central America are strong and cooperative in nature. There have also been reports that the notorious Russian mercenary organization, PMC Wagner, tried to establish an office in Mexico prior to the outbreak of COVID-19.

All this to say, if the U.S. Government pushes Mexico on the FTO designation, it runs the risk that Mexico will distance itself from the United States and strengthen relations with countries like China and Russia.

These are but handful of reasons why designating the Mexican drug cartels as terrorist groups would be a mistake. Yet, there is much more that should be done to counter these groups. The next section of my testimony explores some possible ways the U.S. Government can expand its efforts to counter the drug cartels.

#### WHAT SHOULD BE DONE ABOUT THE MEXICAN DRUG CARTELS?

Militarizing the border, putting U.S. troops into Mexico, and sanctioning the cartels as FTOs are not appropriate policy responses to countering the drug cartels. As noted earlier, the Mexican cartels are not only a Mexican-made problem. The trafficking of arms, ammunition, and other weaponry from the United States across the border into Mexico broadens cartels' breath of resources and facilitates continued violence. Mexican authorities found that approximately 70 to 90 percent of guns found during criminal investigations are linked to the United States.<sup>20</sup> This figure tells us that the availability and accessibility of guns within the United States renders their feasible illicit transfer. Moreover, it indicates U.S. complicity in the cartel's violent crimes. In fact, a gun used to carry out the kidnapping and subsequent murder of two Americans in Mexico during March of this year was trafficked by way of the United States.<sup>21</sup> More recently, in April 2023, a U.S. citizen was caught plundering 5,680 rounds of pistol ammunition from Southern Texas to his home in Mexico.<sup>22</sup> In addition to arms and ammunition, U.S. Customs and Border Control officials uncovered 50,000 pounds of Fentanyl crossing into the U.S. Southern Border in 2022 alone.<sup>23</sup> These examples serve as a snapshot of a much broader problem, implicating both the United States and Mexico in furthering transnational cartel crime. There are no simple solutions to this problem, but one obvious policy is to adopt stricter arms control laws in the United States. Simply put, America is arming the Mexican drug cartels and that must stop.

#### NARCOTICS REWARDS PROGRAM/REWARDS FOR JUSTICE (RFJ) PROGRAM

When I was at the State Department, I managed the CT Bureau's involvement in the RFJ program that focused on countering terrorists. That program has been used more frequently than the U.S. Department of State's "Narcotics Rewards Program (NRP)." The RFJ program is administered by the Bureau of Diplomatic Security (DS), but the NRP program is administered by the State Department's INL bureau. This is a bureaucratic inefficiency and folding NRP under the authority of the DS Bureau may improve the pace of narcotics-related designations. The NRP should

<sup>18</sup> <https://www.washingtonpost.com/health/2023/04/27/fentanyl-china-chemical-companies/>.

<sup>19</sup> <https://www.csis.org/analysis/russia-western-hemisphere-assessing-putins-malign-influence-latin-america-and-caribbean>.

<sup>20</sup> <https://news.harvard.edu/gazette/story/2022/02/stopping-toxic-flow-of-gun-traffic-from-us-to-mexico/>.

<sup>21</sup> <https://abcnews.go.com/International/gun-kidnapping-americans-mexico-allegedly-us/story?id=98012006>.

<sup>22</sup> <https://www.justice.gov/usao-sdtx/pr/american-living-mexico-caught-trying-export-5680-rounds-ammunition>.

<sup>23</sup> <https://www.nbcnews.com/politics/national-security/fentanyl-gun-smuggling-us-mexico-border-deal-rcna75782>.

be used more. The program is designed to incentivize individuals to provide tips on the activities of drug dealers so that they can be prosecuted for their misdeeds. Adding more individuals from the Mexican drug cartels to the NRP list would be useful. If the program expands, it is very likely that some of the best lead information will come from within the cartels. After all, criminals like their money, especially informants within crime groups. It is important to acknowledge that on April 14, 2023, the U.S. Department of State used the NRP to announce rewards offers for information leading to the arrest and conviction of 27 individuals involved in illicit Fentanyl trafficking. Expanding these efforts would be better than labeling drug cartels as FTOs.

#### CAPACITY BUILDING

According to the U.S. Department of State, between 2008–2021, the United States spent \$3.3 billion in equipment, training, and capacity building for Mexican justice and law enforcement sectors.<sup>24</sup> Much of this security cooperation assistance has focused on assisting Mexican police, prosecutors, and judges' efforts to better track criminals, drugs, arms, and money to disrupt organized crime groups. Moving forward, funds for countering the drug cartels should aim to build Mexico's Financial Intelligence Unit (FIU) capacity. Further, specialized attention and training in the area of anti-corruption is critical. Based on my experience of working in the NAS in Embassy Kabul, building up judiciary and law enforcement capacity is crucial. However, winning the fight against blood money will require an expansion of regulatory efforts, as well as the strengthening of Mexico's FIU and most importantly the private sector. The solution to countering the financing of the cartels will require reinforcing and bolstering Mexico's banking compliance systems. In my experience of countering illicit actor financing, the private sector's buy-in is critical. Like the Financial Action Task Force (FATF),<sup>25</sup> I define private sector broadly, to include accountants, lawyers, precious gem dealers, among many others. In its last Follow-Up Report regarding its FATF mutual evaluation, Mexico scored a "non-compliant" on FATF recommendation 23. As such, the United States should focus on capacity building efforts that aim to strengthen Mexico's Designated Non-Financial Businesses and Professions (DNFBPs). The Mexican drug cartels need accomplished lawyers and accountants to make their money look clean as they try to insert their dirty money back into the formal financial system. Improving Mexico's DNFBPs' abilities to detect and report suspect transactions and money laundering is a cost-effective way to counter Mexico's drug cartels.

#### SOCIAL, HEALTH, AND EDUCATIONAL POLICIES

As much as the Mexican drug cartels are a national security challenge, the broader challenge of drugs in America is, frankly, more of a health, social, and educational challenge. In my view, the Federal Government is not allocating enough time, money, and resources to health, education, and social policies that can decrease America's appetite for drugs. We must address the demand side of this problem while also countering the suppliers and traffickers.

In the 2022 fiscal year, the U.S. total Federal drug control spending was \$41 billion. In response to the increase of substance use disorders, namely the ever-growing Fentanyl crisis, the budget requests for 2023 and 2024 were slightly increased.<sup>26</sup> The misuse of prescription drugs and the opioid epidemic are a major focus of U.S. drug control strategies and spending. The death rates caused by the misuse of opioids and synthetic variants such as heroin continue to rise. From 1999 to 2014, the number of annual deaths caused by Fentanyl overdoses hovered just underneath 3,000 deaths per year. After 2015, there has been a massive spike in Fentanyl overdoses. In 2021, overdoses dramatically increased to 70,601. This jump is alarming—this new potent synthetic opioid is the No. 1 cause of drug-related death in the United States.<sup>27</sup> Yet, when compared to other types of spending, our efforts to fight the drug problem on the demand side can be best characterized as unserious, especially when we compare that \$41 billion to the current Department of Defense (DoD) budget. DoD's budget for fiscal year 2023 was over \$2 trillion.<sup>28</sup> Simply put, killing,

<sup>24</sup> <https://www.state.gov/u-s-relations-with-mexico/#:text=The%20United%20States%20and%20Mexico%20partner%20to%20combat%20transnational%20organized,justice%20and%20law%20enforcement%20sectors>.

<sup>25</sup> FATF sets guidelines for countries to follow in countering terrorism financing and money laundering.

<sup>26</sup> <https://www.statista.com/statistics/618857/total-federal-drug-control-spending-in-us/>.

<sup>27</sup> <https://www.statista.com/statistics/895945/fentanyl-overdose-deaths-us/>.

<sup>28</sup> <https://www.usaspending.gov/agency/department-of-defense#:text=Each%20year%20Federal%20agencies%20receive,making%20financial%20promises%20called%20obligations%20>.

prosecuting, and sanctioning the supply-side entities and individuals (the Mexican drug cartels) of this problem is not enough. It may not be sexy policy to invest in educational, medical, and social-policy initiatives to fight the drug scourge, but this is an area where lawmakers must invest more financial resources.

#### OTHER TRANSNATIONAL THREATS

The United States faces a broad array of transnational threats, to include gangs, terrorist groups, and private military companies. In my view, the groups noted below represent the most serious transnational threats to the U.S. homeland.

#### MS-13

The Mara Salvatrucha (MS-13) originated in the 1970's and 1980's in Los Angeles, California.<sup>29</sup> Formed by Salvadorian immigrants escaping civil war, the transnational street gang now has outreach in El Salvador, Honduras, Mexico, and the United States. Engaging in crimes such as murder, narcotics, weapon trafficking, and extortion, MS-13 continues to pose a serious threat to U.S. security.<sup>30</sup> Despite its American origin, the gang's cultural ties to Central America have enabled their influence to spread rapidly among communities in El Salvador, Honduras, Guatemala, and Nicaragua. Chasing the reputation of being the most murderous gang in the world, MS-13 is on the road to just that: in March 2022 the gang's death toll reached an all-time high of 62 deaths within a 24-hour period.<sup>31</sup> Unsurprisingly, their barbaric practices have become well-known to the U.S. Department of the Treasury, who recently sanctioned members of the gang residing in Nicaragua and Honduras in February 2023. Freezing their property rights and blocking their financial transactions, the U.S. Department of the Treasury hopes their response will prevent further extortion, money laundering, and drug trafficking across the U.S.-Mexico border.<sup>32</sup> MS-13's violence, sadly, is unlikely to end because of these designations, or any designation for that matter. Indeed, MS-13's violence has sparked the flow of refugees—innocents who want to escape the violent world MS-13 has created in Central America. Sadly, as I have previously described, this violence has American roots.

#### TERRORIST THREATS (ISIS AND AQ)

The Salafi-jihadist threat posed groups like ISIS and al-Qaeda. These groups, while not the potent forces they once were, still have the capacity to inspire homegrown extremists to carry out acts of violence. Frequently, we can still read Department of Justice media releases documenting a new arrest, prison sentence, or guilty verdict for individuals associated with ISIS and al-Qaeda. Recently, not far from where we sit today, in Virginia, the U.S. Government arrested an alleged ISIS supporter. In early May 2023, Virginia resident Mohammed Chhipa was arrested for sending nearly \$200,000 overseas to ISIS.<sup>33</sup> Chhipa could face decades behind bars for providing material support to a designated FTO. This underscores that ISIS sympathizers remain active in the United States. Second, it underlines the point that terrorist financing is also a persistent threat to U.S. national security interests. As the February 2023 Annual Threat Assessment of the U.S. Intelligence Community, "ISIS's ideology and propaganda . . . almost certainly will continue to inspire attacks in the West, including the United States."<sup>34</sup> This challenge is likely to intensify because of the ham-fisted way the United States left Afghanistan. This spring, General Michael Kurilla, head of U.S. Central Command, told the U.S. Senate Armed Services Committee that ISIS's province in Afghanistan, ISIS-Khorasan, "can do an external operation against U.S. or Western interests abroad in under six months with little or no warning."<sup>35</sup>

<sup>29</sup> <https://insightcrime.org/el-salvador-organized-crime-news/mara-salvatrucha-ms-13-profile/>.

<sup>30</sup> <https://www.ojp.gov/ncjrs/virtual-library/abstracts/ms-13-gang-profile>.

<sup>31</sup> <https://www.bbc.com/news/world-latin-america-60893048>.

<sup>32</sup> <https://apnews.com/article/drug-crimes-crime-caribbean-honduras-central-america-812e435334860ae703110202fa64c008>.

<sup>33</sup> <https://www.fox5dc.com/news/virginia-man-accused-of-sending-money-to-isis-remains-behind-bars-following-court-appearance>.

<sup>34</sup> <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf>.

<sup>35</sup> <https://www.usnews.com/news/national-news/articles/2023-03-16/u-s-commander-isis-in-afghanistan-6-months-away-from-foreign-attack-capability>.

Like ISIS, al-Qaeda remains a threat to U.S. national security interests, despite that the group's leader was killed in 2022.<sup>36</sup> Of particular concern is the sanctuary al-Qaeda now has in Afghanistan by virtue of the Taliban<sup>37</sup> taking over the country. As the Annual Threat Assessment of the U.S. intelligence community explains, "al-Qaeda remains committed to attacking U.S. interests." The group also continues to inspire home-grown extremists and the group is well-known for playing the long game. Unlike ISIS, al-Qaeda is more patient. In many ways, this makes the group more difficult to infiltrate and counter. One of many examples of al-Qaeda's careful planning culminated in the group's deadly December 2019 attack at a Naval Air Station in Pensacola, Florida. The perpetrator of the attack was part of the Royal Saudi Air Force and the investigation following the attack revealed operational ties between the attacker and al-Qaeda's affiliate in Yemen.<sup>38</sup>

#### IRAN'S THREAT NETWORK

The Iranian regime and its many proxies represent a clear threat to the United States. While Iran's proxies, including Hizballah, operate in the United States, Iran's menacing activities are a greater threat to U.S. overseas interests. Nonetheless, Hizballah's U.S.-based terrorist financing schemes have made the group millions of dollars. Iran has also plotted to assassinate Americans, most notably John Bolton. This month the U.S. Department of the Treasury sanctioned Mohammad Reza Ansari and Shahram Poursafi pursuant to E.O. 13224 for their plot to assassinate Americans.<sup>39</sup>

#### PMC (WAGNER)

Private Military Companies (PMCs), such as the Russia-based Wagner Group represent a threat to U.S. national security interests. Indeed, the Treasury Department emphasized the transnational criminal aspects of the Wagner Group on January 26, 2023, when it designated the group as a transnational criminal organization (TCO) pursuant to Executive Order 13581.<sup>40</sup> In justifying the Wagner Group's criminal designation, the Treasury Department explained, "Wagner personnel have engaged in an on-going pattern of serious criminal activity, including mass executions, rape, child abductions, and physical abuse."<sup>41</sup> While it has been well-documented in numerous reports that the Wagner Group carries out terrorism and criminal acts in Ukraine and throughout the African continent, what is less well-known is that the organization leverages American-made social media tools to recruit U.S. citizens and others to its cause.

In May 2023, *Politico* published an article noting that PMC Wagner was trying to recruit, via Facebook and Twitter, individuals to fill positions as medics, drone operators, and psychologists to assist in the group's war effort in Ukraine.<sup>42</sup> According to Logically, a U.K.-based disinformation-focused research group, the posts were in multiple languages and received more than 120,000 views.<sup>43</sup> The Wagner Group has grand ambitions, and its founder has admitted to meddling in U.S. elections. In a post over Russia social media site VK, Prigozhin explained, "we have interfered in U.S. elections, we are interfering, and we will continue to interfere."<sup>44</sup> The Wagner Group is a threat to the United States. That is why I have argued that the group should be added to the State Department's list of Foreign Terrorist Organizations. It is also why I support the bipartisan HARM Act, which would require the State Department to designate the Wagner Group as an FTO.<sup>45</sup>

<sup>36</sup> <https://www.csis.org/analysis/zawahiris-death-and-whats-next-al-qaeda>.

<sup>37</sup> Al-Qaeda is a long-time ally of the Taliban and the ties between the groups remain strong.

<sup>38</sup> <https://www.cnn.com/2020/05/18/politics/pensacola-shooting-al-qaeda/index.htm>.

<sup>39</sup> <https://home.treasury.gov/news/press-releases/jy1513>.

<sup>40</sup> <https://home.treasury.gov/news/press-releases/jy1220>.

<sup>41</sup> *Ibid.*

<sup>42</sup> [https://www.politico.eu/article/russia-ukraine-war-mercenaries-wagner-group-recruit-twitter-facebook-yevgeny-prigozhin/?utm\\_campaign=Readbook&utm\\_medium=K-email&hsmi=260770258&hsenc=p2ANqtz-9yPLN20j9Zz7stblBhK5trA8vxwCc-CH9DJf3B2\\_dmNWEusDazbwgk4RB8c45f3Dz2MrxkB5kXkdzvFo0hVqrCJYcIw&utm\\_content=260770258&utm\\_source=hs\\_email](https://www.politico.eu/article/russia-ukraine-war-mercenaries-wagner-group-recruit-twitter-facebook-yevgeny-prigozhin/?utm_campaign=Readbook&utm_medium=K-email&hsmi=260770258&hsenc=p2ANqtz-9yPLN20j9Zz7stblBhK5trA8vxwCc-CH9DJf3B2_dmNWEusDazbwgk4RB8c45f3Dz2MrxkB5kXkdzvFo0hVqrCJYcIw&utm_content=260770258&utm_source=hs_email).

<sup>43</sup> *Ibid.*

<sup>44</sup> [https://www.reuters.com/world/us/russias-prigozhin-admits-interfering-us-elections-2022-11-07/#:~:text=LONDON%2C%20Nov%207%20\(Reuters\),efforts%20to%20influence%20American%20politics](https://www.reuters.com/world/us/russias-prigozhin-admits-interfering-us-elections-2022-11-07/#:~:text=LONDON%2C%20Nov%207%20(Reuters),efforts%20to%20influence%20American%20politics).

<sup>45</sup> <https://www.Congress.gov/bill/118th-congress/house-bill/506?s=1&r=50>.

## CONCLUSION

The threat posed by a broad range of transnational groups remains significant. The drug trafficking organizations, terrorist groups, and mercenaries I have highlighted in my testimony only represent a very small component of the overall threat picture. Books are quite literally written about each one of these dangerous groups. What is contained in the testimony above is a surface-level examination. Moreover, there are many other types of transnational threats that persist, such as the growing threat posed by racially- and ethnically-motivated violent extremists (REMVE). The REMVE threat has become increasingly interconnected with U.S.-based Nazis linked to overseas REMVE groups like the Russian Imperial Movement (RIM). RIM was designated as a terrorist group by the U.S. Department of State on April 7, 2020, pursuant to Executive Order 13224.<sup>46</sup>

I want to close my testimony by emphasizing that while I strenuously oppose the terrorist designation of the Mexican drug cartels, I can understand the desire to label them as FTOs. They are a menace and more must be done to counter them. Congress certainly has an important role in ensuring this is done by holding the Executive branch accountable for failed approaches. While I encourage Congress to not designate the cartels as FTOs, Congress does have every right to pursue that objective. I speak from direct experience when I say that without Congressional pressure, the State Department would not have moved as quickly as it could have to designate Boko Haram and the Haqqani Network as FTOs. In the case of the Mexican drug cartel issue, however, I would encourage all to examine some of the recommended policy approaches I offer instead. Unlike a Mexican cartel FTO designation, these alternative approaches are more likely to impact the cartels' blood-stained wallets.

Mr. PFLUGER. Well, thank you, Mr. Blazakis, for your statement, for all the witnesses' statements. Members will now be recognized by order of seniority for 5 minutes of questioning, and an additional round of questioning may be called after all Members have been recognized. I now recognized myself for 5 minutes of questioning.

Hearing the discussion that the first thing that I'll address is that there's this narrative that seems to be that the problem is in the United States and not with the lack of rule of law at our border and to the south. So immediately I would like to push back on that suggestion that the rule of law and the lack of rule of law, as we see it, is directly responsible for this.

I'll start with Mr. Urben. In April, you testified before the House Oversight Committee and the Accountability Committee. In your testimony, you discussed how Chinese organized crime networks launder money, or Mexican Transnational Criminal Organizations. You stated more needs to be done. What steps can the United States take to undercut this budding relationship between the Chinese organized crime networks and Mexican TCOs?

Mr. URBEN. So it is two-fold. One is certainly on the government-law enforcement side. There's is an opportunity to leverage data that's judicially acquired by law enforcement. One component or an access point or a weakness of Chinese organized crime is that you can hold that data in and map the network out, identify the targets that the Government should go after in terms of prosecution. So that's on the Government side.

Also, on the Government side, we have used the term whole-of-Government approach in the past. What I mean by that is using specific authorities that the Government has that we can leverage to impact the Chinese money-laundering network.

<sup>46</sup> <https://2017-2021.state.gov/united-states-designates-russian-imperial-movement-and-leaders-as-global-terrorists/>.

For example, sanctions. For example, pulling visas of identified Chinese money laundering that we decide we're not going to prosecute. There's a limited amount of resources to prosecute high-valued targets in leadership. So that's on the Government side.

On the private-sector side, I think training, I think enhanced compliance at banks, financial institutions, wire remitters. This is an evolving threat, so I think there needs to be essentially a partnership, to some degree, with Government in the private sector where we provide the intelligence, not sensitive intelligence, but the information that will allow them to enhance their compliance programs to impose what I call cost on Chinese money launderers, make it more difficult for them, whether again through Government, arrest and prosecutions, or on the private-sector side with compliance.

Mr. PFLUGER. Well, thank you, Mr. Urben. I am hearing that strength works best when dealing with these thugs. Ms. Ford, I'll go to you. This narrative that illegal immigration from some of my counterparts on the other side of the aisle has absolutely nothing to do—the wide open borders has nothing to do with the rise of transnational criminal organizations, trafficking of drugs, the trafficking of people. You mentioned the 53 tragic deaths on the tractor south of San Antonio. What is illegal immigration, and the surge, over 5 until since Biden took office, doing to allow the flow of drugs and trafficking of people into in country?

Ms. FORD MALDONADO. Thank you, Chairman Pfluger. A lot of people do say that the problem with legal immigration is sometimes we use the cartels as a guise to go after illegal immigration, right? But I would say two things about that. The problem is not about immigration. This is about border security and national security. I also think that if people care about migrants, they should realize that the most inhumane thing that we can do to them is let things run the course that they're continuing to run. They're being smuggled. They're being abused. They are often being killed at the border. So we need to crack down on the border and crack down on the people that are taking advantage of them, if we want to do something about illegal immigration.

Now, I also think that illegal immigration is posing a threat to what's happening, because we are seeing numbers come in like they've never come in before. We're seeing so much insecurity at the border, and that's taken away a lot of limited resources and attention that should be going toward protecting the homeland.

Mr. PFLUGER. Thank you very much. Mr. Farah, the evidence that links the Sinaloa cartel and Hizballah, has been well-documented by the DOJ through arrest and indictments and the relationship between the two organizations as fueled instability between Latin America and the Middle East for the last decade. Can you describe that relationship to us today?

Mr. FARAH. The Mexican cartels and Hizballah have primarily a financial relationship that allows them to move money to designated terrorist organizations in the Middle East in exchange for access to ports and the import of illegal products or smuggled products or products, counterfeit products into our hemisphere.

I think my work is primarily focused on the tri-border area of Paraguay, Argentina, and Brazil where you see this network of



now Essesay, which is the main gang with Hizballah operatives and with Colombian and Mexican drug cartels moving into ever-expanding circles of collaboration, not out of ideology or religion, but simply for the ability to profit. When I talked about the new groups that are emerging in the hemisphere, it's this type of new specialization that comes in. This ability of Hizballah to provide new things that the cartels didn't have before access to new methodologies, et cetera.

So I think that it is an economic relationship that is primarily going into a different types of specialization, which is being harmful to the countries in place as well as posing an increasing threat to the homeland.

Mr. PFLUGER. Thank you. My time has expired. I now recognize the gentleman from Rhode Island, the Ranking Member, Mr. Magaziner, for 5 minutes of questioning.

Mr. MAGAZINER. Thank you, Chairman. You know, the reality is that because these TCO treats emanate from outside our border, because the violence, the taking advantage of people who are fleeing poverty, fleeing persecution all originates or primarily originates in Central, South America, and beyond. We need to work with our foreign partners in order to crack down on TCO violence. We have to do that. Some of those countries that we must work with are more reliable partners than others. That is the case. It has always been the case. But if we are truly going to get to the root causes of these threats, it requires multilateral coordination.

So on that theme, Mr. Blazakis, you talk about building capacity in our partner countries in your written testimony? Can you expand on what the opportunities are in working with Mexico and ourselves and Central American allies to crack down on TCO activity?

Mr. BLAZAKIS. I would highlight one specific example from my written testimony. I highlighted the need for Mexico for instance, to improve its financial action task force or FATF rating related to recommendation 23, which focuses on designated nonfinancial businesses and professions DNFBPs for short. This area is especially important in Mexico and is one of some countries really that has struggled with trying to strengthen the designated nonfinancial business and professional sector. It is really important to build that up for a lot of reasons, especially in Mexico.

When we're talking about DNFBPs, we're talking about lawyers, accountants, and many others in similar professions who are enabling transactions. The drug cartels can't wash their money in the way that Mr. Urben discussed really eloquently without having some sort of legitimate business or invest in real estate without having an army of enablers. These enablers are areas where the U.S. Government should focus a lot of its capacity building moving forward, in addition to trying to build the capacity of prosecutors, especially in the area of corruption.

Mr. MAGAZINER. Thank you. On a related note, Mr. Farah, I was struck by a portion of your written testimony. You wrote: Russia and China view Latin America as a key theater of great power competition and act accordingly. The United States must forego complacency and see creative new engagements with its partners. Higher quality, more comprehensive, and more sustained engage-

ment with the right communities will go far to strengthen democracy, civil society, and regional stability.

Can you expand on that a bit? In so doing, what can we do? What can we the United States do to motivate our foreign partners to be better partners and more effective partners in tracking down on TCO activity?

Mr. FARAH. Thank you. I think it's a challenging environment because we are now facing numerous governments that have—for example, the government of Argentina, which has declared itself as Russia's doorway to Latin America and has allowed China to come with nuclear programs, deep space stations, et cetera. So I think that there's more constraint space to operate with trusted partners. I think at the same time, the vast majority of folks in the military and in the law enforcement community prefer the United States as their first partner of choice. I think that if you look at—and we mapped this out for SOUTHCOM and others over time—the level of high-level visits by the Russian and Chinese is about 17 times the level of U.S. visits to Latin America. I think that—well, I told them at the time—if Russia can find the time in the middle of a war to send its foreign minister around, we should be able to do a little better. We have a huge disadvantage with Russia in that they have a small cadre of highly experienced Ambassadors that rotate around the region and speak Spanish around all the time. We have major Ambassadors sitting without Ambassadors. In the case of Chile, almost 3 years. Now we're going into Colombia, we're going into the second year.

So I think there are multiple relatively easy fixes that engagement. I think we also need to do a better job of helping to explain the threats to their own democracies and rule of law that the Russian and Chinese involvement bring because they're directly tied to massive corruption and massive destruction of their own institutions.

Mr. MAGAZINER. Thank you. Mr. Blazakis, one final question. You notice that, see is a pattern that is developed at our hearings on the border where Members of both parties talk about the importance of cracking down on human smuggling, cracking down on drug trafficking. But when it comes to trafficking guns, there is a often deafening silence on the other side of the aisle. Can you talk about why this aspect of TCO activity is so important and something that we need to address?

Mr. BLAZAKIS. Just as you mentioned in your opening testimony, there is the illegal export of nearly 600,000 weapons going into Mexico. That's not insignificant. In many ways, it could be perceived as fueling this insurgency that's happening in Mexico that's taken so many civilians' lives in Mexico that Ms. Maldonado, and also the lives of Americans when the drugs come back into the United States. So in this case, we have to improve our border security going outbound as just one example, and using be AI technology, especially could be one way to get at this challenge.

Mr. MAGAZINER. My time has expired. Thank you, all.

Mr. PFLUGER. The gentleman's time has expired. The Chair now recognizes the gentleman from North Carolina, Mr. Bishop, for 5 minutes of questioning.

Mr. BISHOP. Thank you, Mr. Chairman. Mr. Blazakis, is that how you say it or Blazakis?

Mr. BLAZAKIS. Potato, potato. My grandmother will say Blazakis, I say Blazakis.

Mr. BISHOP. Blazakis. Thank you, sir. One point that you've made—you know, it is interesting, as I've listened to the witnesses, I think it sounds like a very tough—to crack. Now I understand this FTO designation thing has been out there for a while. I hope I come to that with you, Mr. Blazakis. But I want to first get at the last thing Mr. Magaziner was referring to and you have in your testimony, that the sentence says that you are to report information from Mexican authorities that—I don't know whether they are reliable or not—I can't tell from without further looking at it, but found that approximately 70 to 90 percent of guns found in criminal investigations are linked to the United States. In your next sentence: This figure tells us that the availability and accessibility of guns within the United States renders their feasible illicit transfer.

So I want to make sure I understand this. So are you saying just the fact that we have broad second amendment rights and Americans have, I have got a Glock 19, is that—I mean, we can't stop Mexican drug cartels because of that?

Mr. BLAZAKIS. That's certainly one component of it. There is no questioning that there are illegal weapons—weapons illegally being moved, and individuals may be purchasing these weapons legally in the United States. So there is a significant access to the weapons. There's no secret about that.

Mr. BISHOP. There certainly is access to guns in the United States. It's Constitutionally protected. The question now that I have for you. What are you saying then should be done about that? I mean, I didn't think it was a great idea when the Obama administration ran guns in the United States. I remember that big controversy. I wasn't here then. So that seems dumb. I think there are ways to stop trafficking guns across the border, southward, I'm for that. So what beyond that are you saying? Do you think we just need to repeal the Second Amendment? I just want to understand what you're proposing.

Mr. BLAZAKIS. No, no, not at all. Not repeal the Second Amendment. But I think careful consideration about who should have access to the guns is particularly important, and what kinds of weapons should be accessible to the American public. I mean, we've time and again, this is a separate issue, school shootings in this country, plaguing us just as the drug epidemic is plaguing us. Access to AR-15s, automatic weapons, you know, some of these things absolutely need to be explored and taken seriously. But in addition to that, as I mentioned before, the challenge of the border, these weapons going illegally, illegally across the border, there are things that you can do short of looking at arms control-related gun laws in America that would be helpful as I mentioned to responding to Mr. Magaziner of the use of AI technology, bolstering our border officials' capabilities to look at what's going outbound. A lot of that requires intelligence as well. Who are going across the border bringing these weapons? That's a thorny issue as well Constitutionally in terms

of the investigation of Americans here. So these are quite a few issues I would explore.

Mr. BISHOP. OK. I hope I have a chance to come back to you. Mr. Urben, I was interested in looking at your model that was on the diagram and your testimony, and I found myself sort-of surprised that with all the advances made, you know, the suspicious activity reports that financial institutions do, and they do them by the ton. That the success we've had in interdicting terrorists moving money, that this is really a model. They can money launder. Chinese money brokers can money launder proceeds from illicit drug transactions in huge quantities in order to supply Chinese who want to use money in the United States. Why are we not having success in breaking that up? It's classic money laundering, isn't it?

Mr. URBEN. I mean, the cash that's here that's bought by Chinese nationals after the Chinese broker receives the proceeds, it is disconnected from the financial system.

Mr. BISHOP. Oh, it does not go through the financial system?

Mr. URBEN. It does, but it's disconnected in a way where it's not linear, where the drug proceeds are smurfed into banks or smuggles or wire transferred. The cash stays in each country or location. So it is not traditionally like it's been required wired or moved or transfer. That's what you're talking about suspicious activity reports. This is the dollars stay in the United States, the pesos stay in Mexico, and RMB stays in China.

Mr. BISHOP. I would think the source of that money in those accounts would be suspicious to a financial institution handling it. So it may be something that acquires deeper than here. I want to get one more question in or one more comment. It does seem—you mentioned WeChat, though.

Mr. URBEN. Yes.

Mr. BISHOP. So you got that social media network. There's an article in the *Wall Street Journal* that comes out today. Instagram connects vast pedophile network. I didn't get a chance to read the entire article. It's really shocking.

Ms. Ford Maldonado, you talked about, of course, child trafficking is a phenomenon that we see—sex trafficking in the United States facilitated by cartels is something we've seen that at higher levels as ever. Maybe I'll ask you, are social media networks contributing to that illegal conduct? I've been concerned about U.S. officials, agencies suppressing free speech on social media networks and have fought that. Speaking of agencies doing that, but we ought to be doing everything we can to stop illegal conduct on Instagram that's promoting pedophilia and so forth, shouldn't we?

Mr. PFLUGER. The gentleman's time has expired, but please, quickly.

Ms. FORD MALDONADO. Yes, 100 percent. I think there's a lot of social media platforms that are very responsible for what's going on. We've also done a lot of search on social media platforms being used to recruit people to take place in trafficking and smuggling and all of the illegal activities.

Mr. PFLUGER. The gentleman's time has expired. The Chair now recognizes the gentleman from New York, Mr. Goldman.

Mr. GOLDMAN. Thank you, Mr. Chairman. I thank our witnesses for being here today. I want to follow up on a line of questioning

that my colleague, Mr. Bishop, was asking, because my experience as a prosecutor of Transnational Criminal Organizations makes it pretty clear to me that these organizations need some mechanism to maintain their power and their authority.

Mr. BLAZAKIS, when you were in your opening testimony, you talked a fair bit about that mechanism being assault weapons. I believe you say based on your research, which I've also seen, that approximately 70 to 90 percent of guns found during—by Mexican authorities during criminal investigations are linked back to the United States. Are you aware of how many legitimate gun stores there are in Mexico?

Mr. BLAZAKIS. I'm unaware, no.

Mr. GOLDMAN. One.

Mr. BLAZAKIS. Very little.

Mr. GOLDMAN. One. So there are nearly 500,000 guns that go across the border from the United States to Mexico illegally as you point out.

Mr. Urben, I am grateful for your service in the DEA with whom I worked with many of your colleagues. What impact do you think that the cartels having access to assault weapons and other weapons of war has on their ability to control the border, to control human smuggling, to control the opioid and Fentanyl trade?

Mr. URBEN. Well, certainly, the access of weapons by the cartels is a paramilitary organization, many of them are former members of the Mexican military, enables them to impose themselves in violence throughout the country and to determine how they want to smuggle drugs across the border. So the weapons obviously facilitate that.

Mr. GOLDMAN. Right. Without those weapons of war to maintain that control at the border, is it your experience—or based on your experience, would you believe that the Mexican government with support from the United States and other countries would be able to curtail the authority and power of the cartels?

Mr. URBEN. Is it concerns just weapons or in general, a joint partnership or relationship?

Mr. GOLDMAN. Well, right, I'm trying to understand the impact of this influx of assault weapons from the United States to Mexico, especially to the cartels, how that impacts the Mexican government's ability to crack down on the cartels as well.

Mr. URBEN. Sure. Them being well-armed makes it difficult to control them.

Mr. GOLDMAN. Would you say—and I'll turn to Ms. Ford Maldonado—you know, the Executive Order signed by the President in 2021 lays out Executive Order 14060 in December 2021 lays out objectives and mechanisms to fight these cartels and to fight the Fentanyl trafficking. What's your sense of how that has been implemented and whether that has had a material impact on the cartels across the border?

Ms. FORD MALDONADO. I think unfortunately the situation that we're seeing at the border is only getting worse and worse. So something new needs to happen, and we need to address the new problems that we're facing. I believe that every option should be on the table to fight these cartels. Because they're not a small threat anymore. I think they're the largest criminal threat to the United

States right now, and I think we should have every option on the table. Right now, I mean, we have a very strong robust military. They're employed in different missions around the world, which is honestly necessary. But our governance is threatened because we are not using the full force and weight of the United States to protect our own border and fight those that are coming in and basically declaring war against Americans. So we should be—

Mr. GOLDMAN. Well, I do think that, you know, one of the things that we are talking about here—and I'm sorry to interrupt you, I'm about out of time—you know, to the extent that my colleagues on the other side talk a lot about the control that the cartels have over the Fentanyl trade, over human smuggling, we have to look at this outflow of American-made guns to the Mexican cartels, which give them the control at the border and the power to oversee these trafficking networks. With that, I yield back.

Mr. PFLUGER. The gentleman's time has expired. The Chair now recognizes the gentleman from New York, Mr. D'Esposito.

Mr. D'ESPOSITO. Thank you, Mr. Chairman. Thank you to the panel for being here this afternoon sharing your time with us. Since the Biden administration's taken office, encounters at our Southwest Border have hit record numbers. The latest statistics of monthly border encounters on our Southwest Border show that the number of encounters is 10 times more than they were in 2020. To reach across our Southwest Border, illegal immigrants often rely on smugglers and cartels working for TCOs. The FAA recently signed off on plans to open a migrant shelter in a warehouse at JFK International Airport, just blocks from my Congressional district.

Ms. Ford Maldonado, what sort of risks are associated with housing unvetted migrants at a major international airport?

Ms. FORD MALDONADO. I can tell you that the problem is no longer just people coming in and looking for a better life. I have a stat right here. In the last 26 months, we've seen 6 million total encounters from 171 different countries, and we've had 1.7 million total gotaways. So we don't even know what threats they're posing to our country.

But I can tell you that it's not a victimless crime, right? The immigration that's going on, it's coming in. It's taking away from our resources that should be used to defend our country from all of these threats coming in.

In just the first 26 months of this administration, CBP has apprehended over 80,000 criminals at the border with the very few resources that are at the border right now. What's especially scary about that is 90 percent of our border resources aren't even on the front lines.

So I think that, among the 80,000 criminals, if you think about it, there were murderers. There were rapists, pedophiles, gang members. There's even a term, "angel families," for all the people that have lost their sons, their daughters, their family members to crime coming in from illegal immigration because we don't have control over our borders.

So I think—I think it's a massive threat. I think we need to get it into control. I think we've handed complete operational control at the border to the cartels, and we have no idea what else is coming in.

Mr. D'ESPOSITO. I agree. You know, not only is it a failure of the administration; it's a failure of our Secretary of Homeland Security. It's a failure of the American people, but it's also a failure of those seeking the American dream.

I've always said that I support people coming into this country but coming through the front door. Nobody comes to this country for a better way of life because they want to be stored in a vacant building at JFK Airport.

TCOs are decentralized and depend on multiple illicit businesses' support from adversarial and lawless nation-states and work together with other TCOs. Human traffickers use new technology such as cryptocurrencies to hide and obscure payments while trafficking these humans coming across our Southern Border.

The first question is, what techniques have law enforcement used to keep up with the evolving networks and techniques that are employed to traffic humans covertly? I'll leave that to anybody.

Mr. BLAZAKIS. I'll take that question.

I think the Department of Justice Federal investigators have done an excellent job charting the cryptocurrency flows, whether it's Bitcoin, Ethereum, you name the crypto. The Government has worked with groups like Chainalysis in the private sector and Ciphertrace amongst others to be able to track cryptocurrency.

Cryptocurrency is not anonymous. It's pseudonymous. There is a great capability that exists within the Government to track crypto as a general matter. We have seen billions of assets frozen of transnational groups who have thought that they were able to have secure transactions via crypto, and they've lost those forfeited funds to the United States.

So we are doing some good work in the crypto space. Great technology being leveraged by Department of Justice in conjunction with the law enforcement community and the private sector in this space.

Mr. D'ESPOSITO. Thank you.

Mr. Chairman, I yield back.

Mr. PFLUGER. The gentleman yields.

The Chair now recognizes the gentleman from Arizona, Mr. Crane, for 5 minutes of questioning.

Mr. CRANE. Thank you, Mr. Chairman. Thank you guys for coming. I appreciate you all being here.

I am going to start with Mr. Urben. Sir, why do you think—why do you think the cartels purchase chemicals necessary for the production of Fentanyl from China?

Mr. URBEN. There's obviously a budding relationship there, and there's an ease to get them, as well as there's a tremendous amount of chemical companies in China that produce the precursors that they need.

Mr. CRANE. That's a pretty long trip from China to Mexico, isn't it, sir? Doesn't that increase costs, shipment costs?

Mr. URBEN. Sure. It certainly would increase shipping costs. But, again, it's obvious that they are successful in acquiring the precursors from China, so they continue to do it.

Mr. CRANE. Thank you.

In a Communist-run country like China, you would think that they would be able to crack down if they wanted to on the supply

that's coming over and killing so many Americans. Would you agree with that? Or maybe do a better job of cracking down?

Mr. URBEN. I believe they can, yes.

Mr. CRANE. Sir, have you ever read the book "Unrestricted Warfare"?

Mr. URBEN. I have.

Mr. CRANE. What about anybody else on the panel?

Mr. Farah, have you read "Unrestricted Warfare"?

Ms. Maldonado.

Ms. FORD MALDONADO. No.

Mr. CRANE. Sir on the end?

It was written and published in 1999, authored by two PLA senior colonels, and it talks about China's plan to, you know, dominate and take out the United States of America using economic warfare, cyber warfare, elite capture, corporate espionage, intellectual property theft, asymmetric warfare on almost every aspect of our social, economic, and political life. Basically, take out the United States of America without firing a shot, if possible.

Does that sound—does that sound familiar to anybody on the panel?

Does that sound like something you're seeing in the headlines, Mr. Urben?

Mr. URBEN. I mean, certainly, they are finding ways to undermine various aspects of our country. In terms of my investigative efforts when I was with DEA, those investigative efforts took place outside of mainland China.

Mr. CRANE. Now, obviously this is a Homeland Security Committee, and we're talking about border security.

Reading that list and just knowing a little bit about the Chinese Communist Party, do you think it's feasible that they might use Fentanyl and the ingredients for deadly drugs to kill our own citizens?

Mr. URBEN. Again, in terms of my investigative efforts, I did not tie it back to mainland China and the CCP.

In terms of the question itself, is it feasible?

Mr. CRANE. Yes.

Mr. URBEN. I guess it is feasible.

Mr. CRANE. But you would acknowledge that ingredients are coming from China, right?

Mr. URBEN. Oh, I certainly—they are coming—precursor chemicals are coming from China to Mexico.

Mr. CRANE. OK. Thank you.

Ms. Maldonado, you were talking about the cartels—how effective they are, how powerful they've become. I think we can all acknowledge that. But I want to ask you a question.

Do you think that that's what initiated this surge that we're seeing on the Southern Border? What do you think the cause of what we're seeing on the Southern Border—what do you think initiated that surge that we're seeing right now?

Ms. FORD MALDONADO. The surge of immigrants?

Mr. CRANE. Yes.

Ms. FORD MALDONADO. I think it's a lot of reasons. Actually, I was just in Juarez about 3 weeks ago on the Mexican side of the border, and I was able to talk to a lot of the migrants that were



there. I think a big part of it is they're hearing that the border is open, right?

So people are traveling—I mean, there was people there that traveled 8,000 miles with no water, no medical care because they're hearing that the border is open. They're hearing that their family members, their friends got in. That's what's taking them straight into the hands of the cartels. So I think a lot of it is word of mouth.

Mr. CRANE. Yep.

Ms. FORD MALDONADO. They're hearing that there's an open invitation to come into the United States. Unfortunately, they're having to make it through incredibly difficult and horrendous circumstances to try and get here.

Mr. CRANE. Yes, ma'am. Do you think something that might contribute to that is when the future President of the United States says in a 2019 Democratic primary debate, "The United States is a country that tells people struggling under oppression or poor conditions," quote, "you should come"? "They deserve to be heard. That's who we are. We are a Nation that says you want to flee and you're fleeing oppression, you should come"?

Do you think that that's something that might initiate some of the surge that we're seeing?

Ms. FORD MALDONADO. I think absolutely. I think that that's what we're seeing happen. It hasn't always been the same problem that it is now. It's a problem that's continuously increasing, and it's being orchestrated by the cartels because they're making more money than ever.

But I think that a different policy would have different results, and that's why we need to look at new avenues that haven't been thought of before.

Mr. CRANE. I agree. I also think we should go back to some of the policies that were working in the past.

My time is up. I yield back. Thank you, Mr. Chairman.

Mr. PFLUGER. Thank you. The gentleman's time has expired.

We will now enter a second round of questioning and do the same process between Republicans and Democrats for 5 minutes.

I'd like to highlight the fact that I think I finally agree with one of my colleagues on the control of the border. When my colleague from New York mentioned that the cartels do in fact have control of the border, I do agree with that statement. They do have control of the border.

I'd also like to remind my colleagues on the other side of the aisle that Operation Fast and Furious under the Obama-Biden administration put hundreds of thousands of weapons into Mexico. One of those—two of those weapons actually were found at the crime scene where U.S. Border Patrol Agent Brian Terry was murdered.

So maybe this narrative that we need to turn our Border Patrol northward to protect Mexico from U.S. weapons—maybe we should just take a deep breath and protect the United States from the illegal and illicit activities that are entering our country.

I'd like to focus your attention on this chart. On the bottom rung is the year 2020, and then it goes 2021, 2022, and 2023. These are in pounds of drugs—illicit drug seizure by weight every single year from 2020 in red, to 2021 in gray, 2022 in blue.

Mr. Urben, with your 25-plus years in DEA, why do we see a doubling, tripling of the amount of drug seizures here in the United States that are coming from Mexico? I mean, is it—are these—is this success here, or is this actually an indicator of failed policies?

Mr. URBEN. Well, I mean, I'm not going to comment on the policy aspect in terms of—it's obviously an indication of more drugs coming across the border and more seizures. That's the way I look at it. So, to some degree, there is some success there if you're seizing the drugs.

With the amount of drugs coming over and the amount of deaths associated with overdoses or murder for taking, you know, pills that are laced with Fentanyl, that's not success.

Mr. PFLUGER. That's not success. I agree.

So what are the policies that need to be implemented to prevent the hundreds of thousands of deaths?

Mr. URBEN. It's obviously a broad question. I think the first component to that is there needs to be a joint cooperative relationship with Mexico in some way where you can action law enforcement or the military down there against the cartels. For us to disrupt the Mexican cartels, we have to start down there. That's, again, a broad issue. It's a State Department issue. It's a negotiated issue. But that's something that would have to happen to disrupt their capabilities.

In terms of the homeland, I think—again, what I talked about earlier was data, right? We need data analytics to leverage data for insight for law enforcement against the Mexican cartels and Chinese money launderers.

Mr. PFLUGER. You know, you have all mentioned working with the Mexican Government.

Mr. FARAH, do you see this administration doing anything to have accountability or relationships with the Mexican Government to push back?

Mr. FARAH. I think the relationship with Mexico as well as Colombia and many other countries is much more fraught than it was previously. I think we have fewer and fewer interlocutors that can be trusted that we can deal with.

I think—as I talked about the criminalized state structure emerging as different governments—and I think the AMLO government in Mexico is certainly moving this direction—they become more aligned on a strategic level with cartels than with United States and other groups, as I think Colombia will do under President Petro and as we've seen in Venezuela and as we've seen in Nicaragua.

You're facing an outlook where you have fewer levers because we have, over time, allowed those relationships—and I'm not saying—I think it goes back a decade at least—those relationships to deteriorate, and we have not been successful in engaging in on-going training because those—the units we train and work with are consistently dismantled. When different governments come in, they are more aligned with the criminal groups.

So you have well-trained, well-meaning people that are then dispersed to the wind. I think that that has made it more and more difficult over time to engage people who want to talk with us be-

cause they're not going to last in their own structures and for us to have people we can talk to down there.

Mr. PFLUGER. Thank you.

I look at one of the agreements that we had from 2016—or really 2017 to 2020—and that was migrant protection protocols, MPP, otherwise known as Remain in Mexico. I can't help but draw a distinction between the numbers that we're seeing here in 2020 in a policy like that that does limit the amount of malign activity that a cartel can do, that they can use people.

I have been to the border a dozen times. I've seen the destruction. I've seen what Ms. Ford Maldonado has described. The assaults, the sexual assaults, the amount of money that they're charging.

Ms. Ford Maldonado, what do you think about reinstatement and an actual implementation from this administration of MPP, Remain in Mexico? Would that have an effect on the amount of drugs that we're seeing come into this country?

Ms. FORD MALDONADO. I think it's possible. I think it would definitely have an effect on what's happening at the border. I think we also need to explore new avenues as to how we can secure the border and how we can stop the inhumane things that are happening.

You were just saying, we've also heard stories from Border Patrol who have interviewed little girls who were raped multiple times on their journey to Mexico. Little girls that came across with the morning-after pill because their parents sent them across expecting them to be assaulted on their journey.

So I think something needs to be done, not just because of what's happening at the border but what's happening beyond the border. I mean, Fentanyl is affecting absolutely everyone. I think that the most recent numbers we've seen is 107,000 people that were killed in the year ending in January 2022. That's 9,000 people every 30 days. That is the equivalent of a fully loaded 747 crashing into a mountain every single day of people that are dying because of this.

Mr. PFLUGER. It's tragic. Thank you for your testimony. My time has expired.

I recognize the gentleman from Rhode Island, Mr. Magaziner.

Mr. MAGAZINER. Thank you, Chairman. I have to—I wish that some of our colleagues were still here.

On this discussion about guns illegally trafficked across the Southern Border to the cartels, there are solutions here. They don't need to be partisan solutions. I wish our colleagues were here for this conversation.

But, you know, listen. I know that our colleagues across the aisle are not going to support an assault weapons ban. They're not going to support a high-capacity magazine ban. I support those things. They don't. Fine. Leave that conversation for another day.

As Mr. Blazakis said, the issue here is firearms often being purchased legally and then trafficked to the cartels illegally. There are things that we can do to crack down on that, like universal background checks; closing the gun show loophole so that when a gun is sold to an individual, wherever they are in whatever setting, there is a criminal background check to make sure that that firearm is not being sold to somebody with a record that suggests that they can't be trusted with it.

I have introduced a bill—or I'm introducing a bill soon to stiffen penalties for dealers that fail to conduct background checks that they are legally required to conduct. Because, unfortunately, right now, under our current laws—and this is not the vast majority of gun shop owners, most of whom follow the law and do the right thing—but those that don't, when they knowingly fail to perform a background check, get a slap on the wrist over and over again.

So there are things that are common sense that ought to be bipartisan that we ought to do, and we cannot minimize the fact that the source of the power of these TCOs, of these cartels, is their ability to inflict acts of violence on people because they are heavily armed, and that is part of the equation.

I also want to build off of something that Ms. Ford said correctly when she was asked—correctly, I believe. Why are people coming here? The obvious answer is, well, because they think they'll have an easy time getting across. One of the reasons that they think they have an easy time getting across is because the cartels and the traffickers are lying to them and telling them that U.S. asylum laws will let anybody come across; you'll have an easy time getting asylum, getting a green card, whatever the case may be.

So, again, one of the remedies to this is, let people apply for asylum at U.S. consulates or from their home countries so that they can see whether they are eligible or not. When people see themselves that they're not eligible, they'll be less likely to believe the lies that the cartels are telling them and make that dangerous, often deadly journey.

So, again, there are things here that ought to be common-sense, bipartisan solutions, and I do hope that—

Mr. PFLUGER. Will the gentleman yield? I'll give you additional time.

Mr. MAGAZINER. Sure.

Mr. PFLUGER. Is that not currently happening where you can apply for asylum at U.S. consulates? Is that not the standard protocol?

Mr. MAGAZINER. My understanding is that the legislation that the House just passed restricts the ability of people to use the CBP One app to get applications to have their asylum claims considered, that the number of places in other countries where people can apply for asylum in person is limited.

Again, I think, under the current administration, some of those policies are changing. I think that's a positive thing. But I do think that needs to be part of the conversation. We need to make it harder for the cartels to lie to people about their eligibility.

Mr. PFLUGER. Yes. I just think we need to check that—you know, the specificity of that particular asylum—when you're seeking asylum and doing it in another country, I think it is pretty much standard protocol that that happens, and I'm not sure that the law has been changed to reflect any difference.

You still have 2 minutes left. So I yield back.

Mr. MAGAZINER. Thank you. All right. Switching gears here.

We've focused most of our attention today on Mexican, Central American, and South American TCOs, and rightfully so because I think we are all in agreement that those are the TCOs that pose the most immediate risks to the homeland and to our citizens.

But there are other groups out there, some of which are operating in the United States that are dangerous, and I believe Mr. Farah and others have mentioned them. ISIS, the Iranian transnational network.

Can we just—and I'll open it up to any of you with my last couple minutes here. Would anyone like to spend a little bit more time highlighting the risks posed by some of those organizations and what we, as policy makers, should do to crack down on them?

Mr. FARAH. I think one of the real issues that we're seeing across the region is not just the traditional like Hezbollah threat network, Iranian threat network. It's—the Albanian mafia is now there. There are multiple parts of the Italian mafia structure now plugged in.

Because the market is—the cocaine market is shifting while our synthetic market here is rising. So the cocaine market in Europe and Russia and the former Soviet republics is much more lucrative than it is in the United States. Our cocaine consumption has been down while our synthetic consumption has been way up.

So I think that there are numerous new types of violence being introduced, numerous new types of money laundering being introduced. Numerous new types of trafficking structures are being introduced. It introduced these groups that have been in this hemisphere to a whole new set of African, European, Asian, and former Soviet republic structures that allow everyone to make a lot more money and make it much more difficult for us to crack down.

There's one case I'm sure Mr. Urben is familiar with. The case of the Gayane, which is a ship that ended up being busted in Philadelphia with 17 tons. That was—those are Eastern European crews, loading off the coast of Chile, passing through with a different group that switched—that loaded the cocaine in the Panama Canal and moved to Philadelphia. It was all external actors in a 17-ton cocaine shipment, which was busted almost by luck in Philadelphia. So I think that's the issue.

Mr. MAGAZINER. Would anyone else like to weigh in on any other TCOs that we should be focused on as well as a committee? Again, ISIS, Iran.

Mr. Blazakis.

Mr. BLAZAKIS. I'll just say, on the ISIS front, I think it's particularly important that we keep our eye on Afghanistan. We've had multiple senior officials within the Biden administration speak with great alarm regarding a possible resurgence of the so-called ISIS Khorasan Province in Afghanistan, so much to the point where the administration said that they worry about that group having the external operations capability within 6 months. That statement was from a senior Department of Defense official about 3 months ago.

I think it's particularly important that we continue to invest some level of resources as it relates to tracking ISIS Khorasan in Afghanistan, especially.

Mr. MAGAZINER. Thank you all.

Mr. PFLUGER. The gentleman's time has expired.

The Chair now recognizes the gentlelady from Nevada, Ms. Titus, for her questioning.

Ms. TITUS. Thank you very much.

I'd like to talk about an issue that maybe many people don't think of as connected to homeland security, but it's becoming more and more entwined with some of the issues that we have internationally. It's affecting major metropolitan areas, especially in a district like mine, which is Las Vegas. That's organized retail crime.

We've seen that it involves targeted, large-scale organized theft. It's run through international criminal networks. I think the Department of Homeland Security Investigations Unit issued a report saying the average American family will pay more than \$500 annually in additional cost due to the impact of organized retail crime, which has been used to finance on-going illicit operations like human trafficking and drug trafficking.

There was another DHS report that noted organized retail crime is leading to more brazen, more violent attacks in retail stores throughout the country, and many of the criminal rings orchestrating these thefts are also involved in other serious activities.

So I wonder—it's an incredibly complex issue, but should—can you make some suggestions of how we can better address it with more interaction among—across Government agencies or with different levels of government? Anybody?

Mr. URBEN. I mean, the first thing you'd want to do is prioritize it and put funding into that and have a local, State, and Federal response set up a task force to do—whether it be undercover operations to engage—you know, they're going to sell these products after they steal them.

Ms. TITUS. Right.

Mr. URBEN. There's a process associated with this, and they're doing it continually again and again and again.

The other component is if you could intercept their electronic communications. Obviously, if it's an international or a sophisticated organized crime group, they're communicating amongst other members. So I think that's the first thing.

I also think a deterrent—however you want to work with the private sector—to have a deterrent at that store, at that location, so it's not as easy to steal the goods.

Ms. TITUS. That was going to be my question.

Do you think a Federal task force would be something that would be useful in the Department of Homeland Security?

Mr. URBEN. On this specific topic? Yes. I do think the more sophisticated actors that are operating beyond State—from State to State doing—multiple States—I think a Federal task force would be the answer. Again, encompassing State and local resources and expertise.

Ms. TITUS. I've got a bill that's bicameral and bipartisan called Combating Organized Retail Crime to give more resources to Homeland Security to go after this. So we should look at having a task force as part of those resources.

Mr. URBEN. I've had task forces that I've supervised, and if you have proper leadership and resources, they can do amazing things. So I think the threat that you're discussing and you're talking about—that would be a solution with properly—properly resourced up.

Ms. TITUS. Thank you.

We could look at that, Mr. Chairman, Mr. Ranking Member.

Anybody else want to comment on that? I mean, they're stealing everything from eyelashes to power saws, you know, and reselling it, and then that money goes into other nefarious operations.

Well, let me ask you another question. This goes back to Mr. Goldman's talk about guns and—U.S. guns go to Mexico, and that's where they are used in the involvement of a lot of crime.

Mr. Blazakis, could you address how we could work better with Mexico to address this issue?

Mr. BLAZAKIS. So one of the most important things that we need to do with the government in Mexico is engage with them as it relates to implementing the bicentennial framework that was put in place by the Biden administration in agreement with the Mexican government.

On this front, it's still early days. But, in particular, there are three pillars where I think it's particularly important to spend our time. That is in the area of jointly working on a challenge of public health-related issues, which obviously is an impact that comes from the cartel work.

Doing more in the area of shoring up the border, particular in the context of using technology. I'm not a believer of building walls and moats. I think that's—you know, from times in the past, it didn't help the Chinese particularly when it comes to the creation of the Great Wall of China. It's certainly not going to work in the contemporaneous time that we live in today.

There's a cyber component to this that we have to explore to pursue these criminal networks as well, and I think the bicentennial framework is an important place to do this work.

But we can't alienate the Mexican government. I do think we run the risk of doing so if we consider certain other kinds of policy options, whether it's the FTO designation of the cartels, whether it's the use of authorized military force against cartel members across the border.

I think these things will push AMLO into the arms of our economic adversaries like China, our ideological enemies like Iran, and our military foes like the Russian Federation.

Ms. TITUS. Thank you.

Thank you, Mr. Chairman.

Mr. PFLUGER. The gentlelady's time has expired.

I'd like to thank the witnesses for your valuable testimony and for Members on this committee for your questions.

Just to close with a couple of thoughts, I mean, I think you heard Members on both sides of the aisle asking very similar questions. We may disagree on a couple of tactical points, but on the strategic problem that we have right now, the fact that Fentanyl—the trafficking of the opioids, the problem that we see in the United States is massive, and it's tragic.

I hope that, as a result of this hearing, what we will see is a push—not just in a bipartisan way but more in a whole-of-Government way, that we take your testimony, that we take your answers and your experience professionally, and that we're able to push this into action.

Because—on a point of personal privilege, my 12-year-old daughter was here listening to this. I have a classmate from the Air

Force Academy here with his daughter. I see many young people in the audience here today. The reason that we're having this hearing is to preserve the next generation from being inundated with—whether it's Fentanyl or other opioids crime or whatever else it may be.

I hope that the work on this subcommittee will really get at the heart of this, that our country can come together in a way that we can lower those numbers. Whatever the cause may be, this is not and should not be a partisan solution. It should be a bipartisan, bicameral—as Ms. Titus mentioned in her bill—solution to get after this and to see our communities safe.

The Members of the subcommittee may have additional questions for the witnesses, and we would appreciate and ask the witnesses to respond to these in writing. Pursuant to the committee rule VII(D), the hearing record will be open for the next 10 days.

Without objection, this subcommittee stands adjourned.

[Whereupon, at 3:33 p.m., the subcommittee was adjourned.]





**THE BORDER CRISIS: IS THE LAW BEING  
FAITHFULLY EXECUTED?**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION INTEGRITY,  
SECURITY, AND ENFORCEMENT

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

WEDNESDAY, JUNE 7, 2023

**Serial No. 118-25**

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An article entitled, "Listen to Children Who've Just Been Separated From Their Parents at the Border," June 18, 2018, ProPublica, submitted by the Honorable Veronica Escobar, Member of the Subcommittee on Immigration Integrity, Security, and Enforcement from the State of Texas, for the record

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Questions for Joseph Edlow, Managing Member, The Edlow Group

Questions and responses from the Hon. Chad Wolf, Executive Director and Chief Strategy Officer, America First Policy Institute

# THE BORDER CRISIS: IS THE LAW BEING FAITHFULLY EXECUTED?

Wednesday, June 7, 2023

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION INTEGRITY, SECURITY,  
AND ENFORCEMENT

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Subcommittee met, pursuant to notice, at 2 p.m., in Room 2141, Rayburn House Office Building, Hon. Tom McClintock [Chair of the Subcommittee] presiding.

*Present:* Representatives McClintock, Buck, Biggs, Tiffany, Roy, Van Drew, Nehls, Moore, Hunt, Jayapal, Lofgren, Correa, Escobar, Jackson Lee, Ross, Swalwell, and Nadler.

Mr. McCLINTOCK. The Subcommittee will come to order.

Without objection, the Chair will be authorized to declare a recess at any time.

The Subcommittee convenes today to examine the enforcement of our immigration laws. Prior to inauguration day, the border was secure. The laws were being enforced. The border wall was nearing completion. The Remain in Mexico policy had slowed illegal immigration to a trickle, and court ordered deportations were being enforced.

Of course, all that changed when the new administration took office and immediately canceled the border wall, ended the Remain in Mexico policy, and ordered ICE to stop enforcing deportation orders.

Since then, we have seen more than two million illegal immigrants deliberately released into this country, a population the size of the entire State of Nebraska. Meanwhile, more than million and a half known gotaways have also entered illegally, an additional population the size of Hawaii.

Our previous hearings have documented the unfolding human tragedy of the border crisis. For Americans, it means classrooms flooded with non-English-speaking students, hospitals overwhelmed with illegal immigrants demanding care, fentanyl poisoning our young people, catastrophic strains on the social safety net meant to help Americans in need, criminal cartels and their affiliated gangs introduced into our communities, working wages suppressed by a flood of cheap illegal labor. Now we observe the irony of offi-

cials in so-called sanctuary cities, like New York and Chicago, and sanctuary States, like California, warning that they cannot handle this influx.

For the illegal immigrants, it means a harrowing ordeal subjecting them to exploitation by the criminal cartels, including sex trafficking, drug trafficking, and labor trafficking, even of small children. Many arrive in physical distress, destitute, and deeply in debt to their human smugglers. Thousands never make it. They die horrific deaths along the way.

Well, now we raise the question why. Clearly our immigration laws are not being enforced by this administration. That fact is self-evident when we compare this administration to the last one.

The law specifically provides that any asylum claimant shall be detained while their claim is heard. This is now routinely ignored.

The law specifically provides that parole is to be granted only on a case-by-case basis for urgent humanitarian reasons or significant public benefit. This law is now being ignored, while parole is granted en masse to release many tens of thousands of immigrants illegally into our country.

The law requires deportation orders to be enforced, yet, despite record numbers of illegal entries, we see the lowest rate of deportations in our history with more than a million deportation orders simply ignored.

Federal courts have ordered this administration to enforce the law, yet time and again the administration seems reluctant to do so. Without enforcement, there is no immigration law. Without immigration law, there are no borders, and, without borders, we have no country.

This crisis now reaches into every community and constitutes a clear and present danger to our national sovereignty, prosperity, and security.

We Americans have always prided ourselves as being a Nation of laws and not of men, and yet it appears that our immigration laws are now routinely ignored, altered, or perverted by the whims of individuals within this administration. It's important in the inquiry today that we separate out policy differences from actual violations of law. The Founders anticipated that foolish people would sometimes occupy the offices of our government, and they left it to voters to correct maladministration at the ballot box. Lincoln put it this way: The voters are everything. If the voters get their back sides too close to the fire, they'll just have to sit on the blisters awhile.

Mayor Eric Adams of New York City seems to be a poster child for this phenomenon.

The more troubling question arises if this unprecedented illegal migration results not from incompetence and folly, but rather from a deliberate and calculated violation and subversion of the laws of the land.

We need to determine what laws have allowed this calamity to befall our Nation. As the Legislative Branch of government, it's our duty to correct them. We also need to determine what laws are being willfully violated by those commanded to faithfully execute them. In that case, we need to identify who is responsible and what remedies are available within our system of checks and balances.

With that, I am now pleased to recognize the Ranking Member for her opening statement.

Ms. JAYAPAL. Thank you, Mr. Chair.

Well, another week, another immigration hearing on the border. After using harmful rhetoric and fearmongering that ending the Title 42 public health policy would result in a high number of migrants coming to the border, we have seen a month where border numbers are down over 70 percent from their peak. As *Politico* put it, it is, quote: “The migrant crisis that still hasn’t arrived.”

Unable to stoke media fears any further around the end of Title 42, it appears that my Republican colleagues have shifted their focus to the next attention-grabbing headline, laying the groundwork for the impeachment of Secretary Mayorkis.

Despite this being our fifth immigration hearing in about five months, the majority is yet to call any witness from the current administration to testify before this Committee. It is no surprise that my colleagues have shifted to discussing if Secretary Mayorkis should be impeached. After all, extreme MAGA Republican Representative Marjorie Taylor Greene said just last week, in exchange for voting for the debt limit deal, she wanted some, quote, “sides and desserts.” Her, quote, “beautiful dessert” was that—and this is a quote from her: “Somebody needs to be impeached.” She specifically singled out Secretary Mayorkis as the, quote, “lowest-hanging fruit.”

Of course, my colleagues jumped at the chance to cater to the extreme MAGA Republicans in their party, and before the vote on the debt ceiling had even occurred, they noticed this hearing.

According to a report from *CNN* just a few weeks ago, the Chair of this Committee, which would be tasked with launching impeachment proceedings, and GOP leadership have an understanding that the impeachment of Mayorkis is inevitable. According to the article, quote: “It is not a matter of if; it is a matter of when.”

Anyone who tuned into last April’s Judiciary Committee hearing where Secretary Mayorkis testified as part of his oversight duties would not be at all surprised. Republicans on this Committee made their intentions quite clear. Mr. Johnson of Louisiana stated that Secretary Mayorkis had committed, quote, “impeachable offenses.” He went on to say, quote: “My advice to you is to begin your search for a different career very soon because there will be an election.”

Mr. Biggs of Arizona stated: “You should be impeached.”

Earlier this year, Mr. Biggs followed through on that statement and became the second Republican to file Articles of Impeachment against Secretary Mayorkis. That resolution is cosponsored by multiple Members of this Committee, including Mr. Gaetz and Mr. Nehls.

Mr. Roy of Texas, who is not one of those cosponsors, even has a 13-page memo from October 2021 entitled, “Case for Impeachment of Secretary Mayorkis.”

Representative Ben Cline from Virginia, who serves on the Full Committee, told *CNN* that he has communicated to Chair Jordan that, quote: “We need to start the process as soon as possible.”

Last, when our Chair, Mr. Jordan, was asked in an interview in October of last year if the Secretary should be impeached, he said:

“Mayorkis deserves it.” More recently, he said: “The Committee thinks it is,” quote, “warranted.”

Now, of course, the idea of impeaching the Secretary is ridiculous. You do not impeach a Cabinet Secretary over policy disagreements. The border is not, quote, “open.” No administration has ever had complete, quote, “operational control of the border, detained every asylum seeker, or not used parole in some form.”

As a former Chair of the House Committee on Homeland Security, Chair McCaul of Texas said: “Well, we talk a lot about operational control, and that’s having a better understanding of who’s coming in and who’s leaving and what that threat really is. We’re never really going to get that.”

The Biden Administration is continuing to try to clean up the mess left by the previous administration. They’re putting forward real workable solutions to manage migration and expand legal pathways. On top of the parole programs created by the Biden Administration earlier this year, the administration announced the creation of additional legal pathways that are intended to relieve pressure at the border.

Now, it’s not all perfect. In fact, some of my colleagues would argue that some of the administration’s policies are too heavy-handed. Recently, the administration put forward a regulation which limits asylum, something many people within our Democratic Caucus are justifiably concerned about.

Unfortunately, today’s hearing appears to be the start of a sad new chapter for this Committee. Certainly, I look forward to hearing from all our witnesses today and the perspectives they bring on this issue.

I yield back.

Mr. MCCLINTOCK. The gentelady leads back.

The Chair notes the presence of the Ranking Member of the Full Committee, Mr. Nadler, and recognizes him for an opening statement.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Chair, it took just over five months, but the day that so many of my Republican colleagues have waited for has finally arrived. Today Judiciary Republicans are laying the groundwork to impeach the Homeland Security Secretary Alejandro Mayorkis.

To be clear, they do not allege wrongdoing or malfeasance of any kind. They are simply catering to the most extreme Members of their caucus who have demanded impeachment of somebody, anybody, as the price of their support for the Speaker. They have decided to make their first target Secretary Mayorkis. Why? Because they have policy disagreements. No matter how much they may dislike him, that is not a basis for impeachment.

Republicans are so desperate to begin impeachment, however, that they’re evening jockeying for position on who gets to take the lead. Today’s hearing, just like the first immigration hearing we held, appears to be the latest spat in the ongoing turf war between Chair Jordan and Chair Green of the Homeland Security Committee.

Just a couple of weeks ago, Homeland Security noted that they are taking a lead role in building the case for impeachment



through a quote, “five-phase accountability plan before handing it off to the Judiciary Committee.”

In furtherance of this plan, just this morning, they noticed the Full Committee hearing entitled, quote, “Open Borders, Closed Case: Secretary Mayorkis Dereliction of Duty on the Border Crisis.” Not to be outdone, Chair Jordan raced to announce this hearing to ensure that we beat the Homeland Security Committee by a few days.

This is not a serious process. As Ranking Member Jayapal noted, we have still not had a single government witness come before the Committee on the issue of immigration. Instead, my Republican colleagues continue to hide behind the use of transcribed interviews to talk to agency officials, seemingly afraid to have public hearings. Despite all the evidence to the contrary, we are still hearing the same claims that we heard at our first immigration hearing this year, that the southern border is open, that President Biden and Secretary Mayorkis opened it deliberately, that it is mostly migrants who are smuggling drugs across our southern border.

Yet, as my colleagues and I have discussed for months, none of these statements are true. Far from having an open border, the Biden Administration used Title 42 to expel migrants with no due process for significantly longer than many of my colleagues on the committee felt was appropriate.

The administration also has recently enacted a new asylum regulation that we are concerned limits access to asylum. That regulation even earned the administration rare praise from Chair Jordan. These are not the policies of an open border. They are the opposite.

My Republican colleagues have not once let facts get in the way of their *Fox News* talking points, certainly not the fact that encounters at the border have plummeted by 70 percent in recent weeks, thanks to new policies put in place.

There is a lot that the Biden Administration is doing with immigration that I support. For example, the use of parole, expansion of legal pathways, revamping of the refugee program, and opening new regional processing centers in the hemisphere are all positive steps to repairing a broken immigration system.

There are some policies I do not like, but that is the point: We have policy disagreements.

You do not impeach a Cabinet Secretary because you do not like his policies. You work to pass legislation. You conduct oversight. You try to work in a constructive manner to convince your colleagues that you have the better argument. We need to work in bipartisan way to fix the immigration system, not just messaging bills that have no chance of being enacted into law and embark on a purely political impeachment process.

I would note that we now know for certain that the Republicans’ extreme, cruel, and unworkable border bill cannot pass the Senate. As part of the time agreement to ensure that we did not default for the first time in history, Senate Republicans demanded a vote on H.R. 2, the Republicans’ border bill. The bill got 46 “yes” votes and 51 “no” votes, encountering bipartisan opposition. That bill is a nonstarter. Are my colleagues on the other side ready to sit down and discuss how we move forward with bipartisan immigration legislation?

As I noted in our first hearing, Judiciary Committee Democrats stand ready to work on meaningful solutions to serious problems. Unfortunately, instead, it appears that the next side show is beginning today. Make no mistake, as the Ranking Member noted, it is clear that Chair Jordan and Members of the Committee have already made up their minds. Instead of serious solutions to solve complex problems, we will simply engage in more political theater.

I look forward to hearing from our witnesses today, and I yield back the balance of my time.

Mr. MCCLINTOCK. All right. Just to put my Democratic colleagues at ease, administration witnesses could be called by the Committee Democrats. To date, they have chosen not to do so. I believe Mr. Mayorkis is scheduled to appear before the Full Committee in late July. It is a very, very big leap for merely asking why our laws are not being enforced to advocating something like impeachment.

I would remind my friends that they are not our teachers. I, for one, would not seek to invent grounds for impeachment as the majority—or the former majority did in several proceedings. We're here to ask a very simple question: Why are our laws not being enforced?

Now, I will introduce today's witnesses.

The Honorable Chad Wolf is the Executive Director and Chief Strategy Officer at America First Policy Institute. He's also Chair of the Center for Homeland Security and Immigration at AFPI. Secretary Wolf was the Acting Secretary of the Department of Homeland Security. He's also a veteran of both Capitol Hill and the private sector. Secretary Wolf is a recipient of the U.S. Secretary of Transportation 9/11 Medal, the U.S. Secretary of Homeland Security Distinguished Service Medal, and the National Intelligence Distinguished Service Medal.

Mr. Joseph Edlow is the founder of the Edlow Group, a visiting fellow at the Heritage Foundation, and a former Acting Director of U.S. Citizenship and Immigration Services. Prior to that he served as the USCIS Chief Counsel and a Deputy Assistant Attorney General in the Office of Legal Policy at the Department of Justice. He is a veteran of Capitol Hill, serving as counsel on this Subcommittee and counsel to Congressman Raul Labrador. He began his immigration-related career as a trial attorney in the Baltimore Immigration Court. Mr. Edlow has a J.D. from the Case Western Reserve University School of Law and completed his undergraduate degree at Brandeis University in Waltham, Massachusetts.

Mr. Steven Bradbury is a distinguished fellow at the Heritage Foundation and was the general counsel of the U.S. Department of Transportation from November 2017–January 2021, where he oversaw all of DOT's rulemaking and enforcement actions. He is also Acting Deputy Secretary of Transportation and briefly served as the Acting Secretary of Transportation. He was the Principal Deputy and Acting Assistant Attorney General for the Office of Legal Counsel at the U.S. Department of Justice during the George W. Bush Administration. Mr. Bradbury is a veteran of private practice and served as a clerk on the Supreme Court of the United States, as well as on the U.S. Court of Appeals for the D.C. Circuit.

He earned a J.D. at Michigan Law School and a B.A. from Stanford University.

Finally, Mr. Aaron Reichlin-Melnick is currently the Policy Director at the American Immigration Council, where he has also served as Policy Counsel and a staff attorney. Prior to that, he was a justice fellow in the Immigrant Justice Corps and the Legal Aid Society in New York. He earned a J.D. from Georgetown University Law Center and a B.A. from Brandeis University.

I'd like to welcome all our witnesses today and thank them for appearing here. We'll begin by swearing you in.

Would you please rise and raise your right hand.

Do you swear or affirm, under penalty of perjury, that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect the witnesses have answered in the affirmative. Thank you.

Please be seated.

Please know that your written testimony will be entered in the record in its entirety. Accordingly, we would ask that you summarize your testimony in five minutes.

Mr. Wolf, we'll begin with you.

#### **STATEMENT OF THE HON. CHAD WOLF**

Mr. WOLF. Chair McClintock, Ranking Member Jayapal, thank you for the opportunity to testify today.

Today's hearing is titled, "The Border Crisis: Is the Law Being Faithfully Executed?" Unfortunately, the answer by any objective measure or metric is a resounding no. I understand the difficulty and the complexity of running the Department of Homeland Security, so I do not say this lightly. The U.S. Constitution requires the administration to, quote, "take care that the immigration and border security laws be faithfully executed."

It is clear to me and to millions of Americans that the Biden Administration has failed to do so.

Today's border security system is unrecognizable from the America First policies of the Trump Administration or even what was in place during the administrations of Presidents Clinton, Bush, or Obama.

In all candor, the Biden Administration is the first administration of either political party to deliberately take steps to diminish the security along our southern border. Therefore, it is my opinion that new leadership is needed at the department.

In contrast, under President Trump's leadership, the department established the most secure southern border in my lifetime by building the most advanced border wall system, reaching historic diplomatic agreements with Nations, and putting in place across-the-board policies that deterred illegal immigration, disrupted the Mexican cartels, disincentivized the deadly flow of fentanyl, and enforced the laws enacted by Congress.

I think the results are clear. During the Trump Administration, fraudulent asylum claims declined, those who qualified for humanitarian relief faster. Lives were saved as migrants stopped taking that dangerous journey North when they realized they would not be allowed and released into American communities.

In stark contrast, today we see a border not only in chaos but in crisis because the Biden Administration has dismantled all the proven policies. Recommendations and concerns by career Border Patrol experts were ignored, and political correctness and rank ideology supplemented common sense and adherence to our immigration laws.

To be clear, these laws did not change between the Trump Administration and the Biden Administration, just the decision by this one not to follow those laws. They have embraced destructive and unlawful policies that have made American communities dangerous and have enriched the Mexican drug cartels.

Here are a few examples:

*Nationwide catch and release.* The Biden Administration has intentionally decided to ignore its legal mandate to detain illegal aliens or to make them wait in Mexico throughout their immigration court proceedings, and a Federal District Judge has struck down this practice.

DHS was then unable to process the volumes of illegal aliens fast enough under this catch-and-release scheme, so it resorted to issuing Notices to Report. These are essentially an honor system document that asks illegal aliens to self-report to a local ICE office when they reach their final destination. Again, the courts have blocked the implementation of this practice.

*Next, a de facto amnesty.* On day one, the Biden Administration issued a 100-day deportation freeze on all illegal aliens, including those with criminal convictions. Let me say that again: Including those with criminal convictions. Again, a Federal judge has blocked the nullification of this interior enforcement.

*Another de facto amnesty* of this administration is when the DHS Secretary's enforcement priorities exempt 99 percent of illegal aliens from the threat of deportation, including the declaration that being here unlawfully is no longer grounds for removal.

Perhaps the most egregious example of violating the law is the unlawful use of parole authority. The INA could not be clearer that parole is a remarkably narrow authority and only allowable on a case-by-case basis. The numerous unlawful categorical parole programs that the department has implemented are not new, safe, or legal pathways, but a diversion of illegal aliens between ports of entry to ports of entry.

It is very clear that the current administration is lying to the American people about the severity of the problem, so here's the reality. Large-scale catch-and-release policy has resulted in more than 4.5 million illegal aliens, including 1.5 million gotaways, being allowed into American communities. That is a population larger than every major U.S. city, except for New York City. There have been more than 200 known or suspected terrorists apprehended at the southern border in the last two years, compared to just 11 during the four-years of the Trump Administration. The border is effectively controlled by the Mexican cartels who crave these open border policies to further their business model. More migrants have been found dead in the desert or have drowned in the river during the journey than ever before. According to *The New York Times*, the Biden Administration has lost contact with more than 85,000 children after releasing them to sponsors here in the U.S.

These are the results of a process that the administration calls safe, orderly, and humane. To whom exactly? Not to the migrants being abused, extorted, or dying along the journey, not to the American communities that have been overrun, and not to Border Patrol officers who have been assaulted. Instead, the processes that have been created over the last two years can be more accurately described as dangerous, corrupt, and inhumane. These policies are unlawful, and this is a crisis by design.

Thank you. Look forward to the questions.

[The prepared statement of the Hon. Wolf follows:]

HOUSE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON IMMIGRATION INTEGRITY,  
SECURITY, AND ENFORCEMENT

THE BORDER CRISIS: IS THE LAW BEING  
FAITHFULLY EXECUTED?

*JUNE 7, 2023*

**WRITTEN TESTIMONY OF CHAD WOLF  
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Chairman McClintock and Ranking Member Jayapal:

Thank you for the opportunity to testify today before the House Judiciary's Subcommittee on Immigration Integrity, Security, and Enforcement.

Today's hearing is titled, "The Border Crisis: Is the Law Being Faithfully Executed?" Unfortunately, **the answer, by any objective measure or metric, is a resounding No.** As someone who understands the difficulty and complexity of running the Department of Homeland Security (DHS), I do not say this lightly. It is clear to me and millions of Americans that the Biden Administration has failed in its constitutional duty to "take Care that the [immigration and border security] Laws be faithfully executed."<sup>1</sup>

I have reached this inescapable conclusion after having had the distinct privilege of serving at DHS at its inception under President Bush and throughout President Trump's Administration, including the last 14 months as Acting Secretary of Homeland Security. For the last 27 months since I left office, I have followed closely the national security and humanitarian crisis unfolding along the southern border and have been publicly critical of the Biden Administration's policies and operations. That criticism is not expressed because we are from different political parties but rather, it comes from my own experience as Acting Secretary and the apparent and deliberate destruction of what was, not so very long ago, the most effective border security in recent memory.

One of my philosophies as Acting Secretary was based on one simple axiom: If you do not have borders, you do not have a country. Sovereignty does not exist if you are not sovereign over your own borders—territorial, maritime, or aerial.

To that end, today's border security system is unrecognizable from the America First border security policies of the Trump Administration or even the border security apparatus in place during the administrations of Presidents Clinton, Bush, and Obama. In all candor, the Biden Administration is the first administration of either political party to actively take steps to diminish the security along our southern border.

In contrast, under President Trump's leadership, a talented group of professionals and I helped implement a body of policies that established the most secure southern border in my lifetime. In addition to building the most advanced border wall system, we put in place across-the-board policies that

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<sup>1</sup> U.S. CONST. ART. II, § 3 (cleaned up).

deterred illegal immigration, disrupted the Mexican cartels, disincentivized the flow of deadly fentanyl, and enforced the laws enacted by Congress.

In fact, when confronted with caravans of illegal aliens surging to the southern border in 2018-2019, we were honest with the American people that it was a crisis. So, we went straight to work to restore order and maintain America's sovereignty.

The Trump Administration utilized previously untapped legal authority found at section 235(b)(2)(C) of the Immigration and Nationality Act (INA) to put in place the highly successful Remain in Mexico policy, or Migrant Protection Protocols;<sup>2</sup> and President Trump struck historic Asylum Cooperative Agreements with the Northern Triangle countries to redirect illegal aliens to seek asylum closer to their home country under the authority provided by section 208(a)(2)(A) of the INA.<sup>3</sup> The Trump Administration also issued a third-country transit regulation under section 208(b)(2)(C) of the INA to thwart asylum forum shopping, bolstered internal relocation guidance for adjudicators,<sup>4</sup> streamlined asylum cases at the border to speed up deportations of those found ineligible, and restored the definition of refugee<sup>5</sup> to Congress's intent of requiring persecution by a government actor on one or more of the protected grounds. No Presidential Administration can do more under existing law—and none should do any less.

These policies were necessary because economic migrants and human traffickers were exploiting the loopholes in our laws by making fraudulent asylum claims to block their quick deportation under expedited removal.<sup>6</sup> Only between 10-15% of illegal aliens apprehended at the southern border who claim asylum actually qualify for this humanitarian relief.<sup>7</sup> The rest, to put it mildly, are trying to game the system. Under the Immigration and Nationality Act (INA), they need to—but they cannot—satisfy the appropriately rigorous “well-founded fear of persecution” standard in order to obtain humanitarian relief.<sup>8</sup> Such artful circumvention of the law is the same as breaking the law. And every President has a *bona fide* duty to stop the lawbreakers. Anything short is a contravention of the laws Congress has gone to all the trouble of enacting—repeatedly.

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<sup>2</sup> 8 U.S.C. 1225(b)(2)(C).

<sup>3</sup> 8 U.S.C. 1158(a)(2)(A).

<sup>4</sup> See 8 C.F.R. 208.13(b)(3).

<sup>5</sup> 8 U.S.C. 1101(a)(42).

<sup>6</sup> 8 U.S.C. 1225(b)(1)(A)(i).

<sup>7</sup> See DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim, *available at* <https://www.justice.gov/eoir/page/file/1062976/download>.

<sup>8</sup> 8 U.S.C. 1101(A)(42).



The Trump Administration utilized the fullest extent of its legal authority to combat this asylum fraud by making aliens wait in Mexico or detaining them in the U.S., the only two options permissible under section 235 of the INA and, importantly, quickly returning them when an immigration judge denies their claim. We never forgot the violence that illegal immigration cruelly inflicts on defenseless women and children, who are raped, trafficked, and scarred for life by the lawbreakers.

The evidence speaks for itself. During the Trump Administration: fraudulent asylum claims declined, those who qualified got humanitarian relief faster, lives were saved as migrants stopped taking the dangerous journey north when they realized they would not be allowed into American communities.

In stark contrast, today we see a border in chaos and crisis because the Biden Administration ideologically and arbitrarily **dismantled ALL of these successful policies** on Day One and sidelined career Border Patrol experts who continued to warn that a historic surge of illegal aliens would overwhelm the border in the absence of any deterrent policies. Political correctness and rank ideology supplanted common sense and the clear command of our immigration laws.

And even as the warnings of career Border Patrol experts came to pass, the Biden Administration sat idly by and did little to curtail this crisis. The result is that since President Biden was sworn into office, **nearly 5.5 million illegal aliens**—and counting—have unlawfully come into our country plus at least another 1.5 million “gotaways” who completely bypassed the Border Patrol and made it into American communities.<sup>9</sup>

To be clear - the laws didn't change between administrations, just the refusal of the current one to follow their legal obligations. Instead, they embraced destructive and unlawful policies that have made American communities less safe and enriched the Mexican cartels to new heights because open borders is a lucrative business.

But the abuse of the law doesn't end there. Here are some additional, non-exhaustive examples:

- **Nationwide Catch-and-Release:** The Biden Administration *intentionally* decided to ignore its legal mandate to detain illegal aliens or make them wait in Mexico throughout their immigration court proceedings. Instead, this Administration re-implemented the

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<sup>9</sup> See <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

dangerous catch-and-release policies ended by President Trump and instead began mass releasing illegal aliens into American communities.

Federal District Court Judge Wetherell struck down this practice, writing “The Court finds in favor of Florida because, as detailed below, the evidence establishes that [the Biden Administration] have effectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing ‘alternatives to detention’ over actual detention and by releasing more than a million aliens into the country—on ‘parole’ or pursuant to the exercise of ‘prosecutorial discretion’ under a wholly inapplicable statute—without even initiating removal proceedings.”<sup>10</sup>

- **Issuing Notices to Report (NTRs):** Unable to process the volume of illegal aliens out of DHS custody fast enough under catch-and-release, DHS early on under the Biden Administration resorted to issuing Notices to Report—essentially an honor-system document that asks illegal aliens to self-report to a local Immigration and Customs Enforcement (ICE) office when they reach their destination.

Unsurprisingly, few reported and now these illegal aliens lack immigration court dates because they were not issued a Notice to Appear (NTA), the formal charging document. This means that removal proceedings will not even begin until ICE encounters them in the future, further prolonging the amount of time these illegal aliens remain in the U.S. This process was discontinued for some time but as the administration scrambled to deal with the expiration of Title 42, they attempted to resume NTRs.

Again, the court blocked the implementation of this policy, holding that it “appears that DHS is preparing to flout the Court’s order,” noting that this policy “sounds virtually identical” to the catch-and-release policy he blocked in March 2023. The judge further explained, “In both instances, aliens are being released into the country on an expedited basis without being placed in removal proceedings and with little to no vetting and no monitoring.”<sup>11</sup>

- **Canceling Notices to Appear (NTAs):** For those illegal aliens who received NTAs, their court dates are multiple years down the road because the volume of illegal aliens the Biden Administration allowed

<sup>10</sup> State of Florida v. U.S., Case No. 3:21-cv-1066-TKW-ZCB (N.D. Fla. Mar. 8, 2023).

<sup>11</sup> State of Florida v. Mayorkas, Case No. 3:23-cv9962-TKW-ZCB (N.D. Fla. May 11, 2023).

into the U.S. has overwhelmed the immigration courts. Instead of ending catch-and-release and reinstating deterrence policies, the Biden Administration unilaterally canceled thousands of NTAs which removes them from the immigration court backlog. These illegal aliens still lack a lawful right to be in the U.S. and this unlawful action by the Biden Administration makes their future deportation nearly impossible.

As a broader point, such travesty of the Rule of Law dishonors not only our Nation and our law-abiding citizens—it also makes light of the sacrifices borne by countless *lawful* immigrants who patiently stood in line to come to this country the legal way. This Administration's message could not be more unambiguous—those who waited their turn, filled out applications, and paid fees for visas were foolish for obeying our immigration laws. The Biden Administration tells lawful immigrants that the enormous sacrifices they and their families made in coming to America by following the law count for nothing. When the current Administration arbitrarily excuses the contravention of our laws by some, it is diminishing and demeaning to us all.

- **Nullifying Interior Enforcement:** On Day One, the Biden Administration issued a 100 Day deportation freeze for all illegal aliens, including those with criminal convictions. Federal District Judge Drew Tipton enjoined this non-enforcement policy on the grounds that it was “arbitrary and capricious” and that the policy “fails to provide any concrete, reasonable justification for a 100-day pause on deportations.”<sup>12</sup> DHS has since issued “enforcement” priorities that exempt 99% of illegal aliens from the threat of deportation. The Biden Administration has sidelined ICE agents and effectively accomplished the goals of the extremist “Defund ICE” movement.
- **De Facto Amnesty:** President Biden campaigned on granting amnesty to all illegal aliens—a policy that even the previous Congress rejected. But the President was undeterred. Ignoring the Constitution's grant of the legislative power to the *Congress* (and not to the President), he decided to achieve in practice what Congress did not permit him to achieve in principle. As a result, the DHS Secretary implemented a *de facto* amnesty when he declared that being here unlawfully is not grounds for removal. The obvious remedy corresponding to a violation of the law was arbitrarily taken off the table.

This edict directly and incontestably contradicts the law and mocks our Nation's time-honored immigration court system. In keeping with that

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<sup>12</sup> Texas v. United States, Civil Action No.: 6-21-cv-00003 (S.D. Tex. Feb. 24, 2021).

policy choice, the current Administration's claims of prioritizing limiting resources are disingenuous, perhaps flatly risible. After all, there are over 1 million aliens with final orders of removal who are still in the U.S.; yet, the Biden Administration has removed the *lowest* levels of illegal aliens, including criminal aliens, in modern history.<sup>13</sup>

- **Giving USCIS Asylum Officers Jurisdiction over Border Asylum Claims:** Through an unlawful regulation, the Biden Administration has given U.S. Citizenship and Immigration Services asylum officers the ability to decide the asylum claims of illegal aliens apprehended at the border. Congress created DHS through the Homeland Security Act of 2002, with much—but not all—immigration jurisdiction that was held by the former Immigration and Naturalization Service within the Department of Justice transferred to DHS.<sup>14</sup> By this authorizing statute, only immigration judges have the legal authority to hear asylum claims of aliens in removal proceedings as this authority was not delegated to DHS.<sup>15</sup> It is apparent that the Biden Administration made this unlawful move under the belief that USCIS employees will be more like to grant relief. DHS data shows that USCIS asylum officers are granting asylum at nearly twice the historical rate of immigration judges.<sup>16</sup>
- **Categorical Parole:** Perhaps the most egregious example of violating the law is the DHS Secretary's unlawful use of the parole authority. Section 212(d)(5) of the INA could not be clearer that the right to grant this kind of parole comes from a remarkably narrow sliver of statutory authority, only allowable on a case-by-case basis for: (1) urgent humanitarian reasons or (2) significant public benefit.<sup>17</sup> DHS has ignored the statutory requirements and turned this limited authority into an override of the legal immigration system.

You know the law is not in your favor when you suddenly discover a slender reed in some old statutory provision that, *only* when it is totally divorced from context, gives you the slightest hope. That's why, as the Supreme Court reminded us less than a year ago in *West Virginia v. EPA*, when the Executive Branch "claims to discover in a long-extant

<sup>13</sup> See U.S. Immigration and Customs Enforcement, ICE Annual Report Fiscal Year 2022, fig. 20 (Dec. 30, 2022), available at <https://www.ice.gov/doclib/eov/iceAnnualReportFY2022.pdf>.

<sup>14</sup> Homeland Security Act of 2002, Pub. L. 107-296 (Nov. 25, 2002).

<sup>15</sup> *Id.*; see also Arthur, Andrew & Law, Robert, Public Comment Re: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protections by Asylum Officers (Oct. 18, 2021), available at [https://cis.org/sites/default/files/2021-10/JNPRM\\_Asylum\\_Procedures\\_FINAL\\_submitted\\_10-18-2021.pdf](https://cis.org/sites/default/files/2021-10/JNPRM_Asylum_Procedures_FINAL_submitted_10-18-2021.pdf)

<sup>16</sup> See Department of Homeland Security, Asylum Processing Rule Cohort Reports, available at <https://www.dhs.gov/immigration-statistics/special-reports/asylum-processing-rule-report>

<sup>17</sup> 8 U.S.C. 1182(d)(5).

statute an unheralded power representing a transformative expansion in its regulatory authority,” that’s usually a sign of desperation because the President and/or the agency know in their heart of hearts that they do not have the statutory authority they are claiming.<sup>18</sup> Everyone else knows it as well. As if that Supreme Court prescription wasn’t enough, the Court in *West Virginia* also said that when the Executive suddenly “locate[s] [its] newfound power in the vague language of an ancillary provision of the [law],” its claimed authority is on conspicuously shaky, and presumptively unsound, ground.<sup>19</sup>

So too here. The mass parole system devised by the Biden Administration turns our immigration law framework on its head. After all, statutes have to be interpreted, to the extent possible, as a harmonious whole, so why would Congress have enacted the rest of the INA if Presidents, operating whimsically, could circumvent it by issuing paroles *ad nauseam*? This question, like all such questions, answers itself.

Just think: The parole program for Cubans, Haitians, Nicaraguans, and Venezuelans allows up to 360,000 illegal aliens per year to fly into American communities and the separate unlawful program using the CBP One app near the southern border are not new, safe, lawful pathways but a diversion of illegal aliens from between ports of entry to the ports of entry. It is clear that these illegal categorical parole programs are designed to hide the optics of the border crisis from the American people.

What is more, this Administration’s abuse of the parole authority isn’t limited to the border. After the Biden Administration’s disastrous withdrawal from Kabul DHS unlawfully paroled into the U.S. nearly 100,000 unvetted Afghans, most of whom were military-aged males.

You needn’t take my word for it. Even the Inspectors General of both DHS and the Department of Defense have issued scathing reports on the national security vulnerabilities the homeland has been exposed to because of this reckless, senseless, dangerous, and of course unlawful decision.<sup>20</sup> There are a number of instances where these Afghan parolees have committed heinous crimes, include rape.

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<sup>18</sup> 142 S. Ct. 2587, 2610 (2022) (cleaned up and alterations made).

<sup>19</sup> *Id.* (cleaned up and alterations made).

<sup>20</sup> See, e.g., U.S. DEPARTMENT OF DEFENSE INSPECTOR GENERAL, Evaluation of the Screening of Displaced Persons from Afghanistan, Report No. DODIG-2022-065 (Feb. 15, 2022), available at <https://media.defense.gov/2022/Feb/17/2002940841/-1/-1/1/DODIG-222-065.PDF>.

By embarking on this nullification of immigration law by executive fiat, the Biden Administration is allowing into the U.S. millions of illegal aliens who do not qualify for a visa and thus creating a subclass of aliens who have no avenue for a legal immigration status and are in perpetual uncertainty and agony. That is not American leadership or humanity at its finest. Instead, this is just cynical, crass treatment by the current cadre of Executive Branch leadership and is the direct result of the Biden Administration's circumventing our border security and immigration laws.

In conclusion, I would suggest that one of the most important duties as the DHS Secretary is to be transparent and honest with the American people about security issues affecting the homeland. It is very clear to me that the current administration is lying to the American people about the severity of the problem, while at the same time absurdly attempting to lay blame on the Trump Administration, on Congress, or some other entity for their failed strategy.

Here is the reality:

- The border is not secure, it is in fact open to illegal aliens by the hundreds of thousands.
- A historic number of illegal aliens – nearly 5.5 million – have been apprehended at the southern border during the Biden Administration with approximately 3 million allowed into American communities—a population larger than every major U.S. city except for New York City and Los Angeles.
- Another 1.5 million observed “gotaways” who bypassed Border Patrol and pose severe national security and public safety threats.
- More than 200 known or suspected terrorists apprehended at the southern border compared to just 11 during the Trump Administration—and these are just the ones caught because they didn't realize we had them in the FBI database.
- The border is effectively controlled by Mexican cartels – who crave the predictability of these policies for their business model.
- More migrants have died during their journey than ever before.
- More Border Patrol agents have been assaulted by so-called asylum seekers than ever before.
- The Biden Administration has lost contact with more than 85,000 children after releasing them to sponsors, according to The New York Times.<sup>21</sup>

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<sup>21</sup> Dreier, Hannah, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, NEW YORK TIMES (Feb. 25, 2023).

- The Biden Administration is aware of tens of thousands of children being subjected to abusive work conditions, according to The New York Times.<sup>22</sup>
- And there is no operational control over large portions of the border. This is not just my assessment, but that of outgoing Border Patrol Chief Ruiz and other career U.S. Customs and Border Protection officials when questioned by Congress or in litigation challenging Biden Administration policies.

These are the results of a process the Biden Administration calls "safe, orderly, and humane." But to whom exactly? Not to the migrants dying along the journey; not to the migrants abused, extorted or worse by the Mexican cartels; not to American communities that have been overrun by this influx of illegal aliens and lethal fentanyl; and not to Border Patrol officers who have been assaulted and have pleaded with political leadership to solve this crisis.

Instead, the process that has been created over the last two years can be more accurately described as **dangerous, corrupt, and inhumane**. After 9/11, DHS was created to secure the homeland and protect our Nation's citizens. I was there to help get DHS up and running. Yet the actions of the Biden Administration have done the opposite of adhering to the DHS mission by eroding our institutions and diminishing the Rule of Law. **This is a crisis by design.**

Finally, a singular quote from Supreme Court Justice Louis Brandeis' from almost a century ago still rings true today:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperil[ed] *if it fails to observe the law scrupulously*. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. ... *If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.*<sup>23</sup>

<sup>22</sup> Dreier, Hannah, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, NEW YORK TIMES (Apr. 17, 2023).

<sup>23</sup> 277 U.S. 438, 485 (dissenting opinion) (emphases added).

Unfortunately, this is a message lost on the Biden Administration. Anarchy, I regret to say, is what we see today with the strategic refusal to implement our border security laws. Unless we course-correct immediately, our Rule of Law is in somber danger of being lost forever into the oblivion of history. That *is* a message worth remembering, and re-committing ourselves to, if we are to remain a nation of laws. Or even a nation at all.

Thank you and I look forward to answering your questions.



Mr. McCLINTOCK. Thank you for your testimony.  
Next is Mr. Reichlin-Melnick.

**STATEMENT OF AARON REICHLIN-MELNICK**

Mr. REICHLIN-MELNICK. Chair McClintock, Ranking Member Jayapal, and distinguished Members of the Subcommittee. My name is Aaron Reichlin-Melnick, and I'm Policy Director at the American Immigration Council, a nonprofit organization dedicated to the belief that immigrants are part of our national fabric and to ensuring that the United States provides a fair process for all immigrants, including those seeking protection.

I'm grateful for the opportunity to be here today to help provide some perspective on the complicated reality of the application of immigration law at the border.

At the council, we have long brought attention through research, advocacy, and litigation to ways in which the Executive Branch carries out immigration enforcement. We are intimately familiar with the complex legal and practical considerations involved in the processing of migrants and have brought successful litigation against both Democratic and Republican Administrations to ensure that DHS is following the law.

The Constitution charges the President with faithfully executing the laws. Unfortunately, for the President, Congress often passes law which impose competing legal requirements on the Executive Branch. Some laws are easier to execute than others, especially in a world of limited resources. These challenges are readily apparent for immigration enforcement.

As Justice Kavanaugh noted at oral arguments in *Texas v. U.S.* last November, there are never enough resources to detain every person who should be detained, arrest every person who should be arrested, or prosecute every person who's violated the law.

Because of this hard reality, immigration officials have always been imbued with broad legal authority and with broad discretion in carrying out immigration enforcement. None other than Justice Scalia said in 1999 that, at each stage of the removal process, the Executive has the discretion to abandon the endeavor.

At the border, these countervailing concerns are critical. CBP officers are charged with simultaneously carrying out enforcement laws and humanitarian laws such as asylum, and not every person can be treated the same. There is no one-size-fits-all legal process for migrants. For example, the options available for processing a single adult arriving from Mexico arriving alone are different than those available for processing an asylum seeker from Cuba arriving with a baby. Some people can be rapidly issued an order of removal and deported. Others may require a full asylum screening, which takes time and resources.

Beyond the law, Congressional appropriations are finite, so there are logistical limits that are just as important as legal mandates. The use of detention is a perfect example of this. Despite laws which on their face seemly mandate detention, Congress has never provided sufficient resources to detain every person who might be subject to mandatory detention. As a result, if there are 10 people who the law says should be detained and only five ICE detention beds available, CBP must by necessity release the other five. Thus,

immigration officials under Republican and Democratic Administrations alike have released some migrants, because, while a single law might suggest they be detained, the laws in total provide alternate options.

These limitations apply to all administrations. For example, data produced by the Department of Homeland Security revealed that over 1.1 million migrants were released under the Trump Administration in total, including over 500,000 released at the border by CBP. Like today, these releases do not represent a failure to execute the law; rather, they are a natural and lawful byproduct of competing legal and logistical considerations that all law enforcement agencies grapple with.

Faced with a growing global displacement crisis, the Biden Administration has undoubtedly struggled to manage with the resources they have. This struggle is not unique to the Biden Administration, nor is it a sign of administration undermining the law. Instead, it is a result of outdated laws and a funding model that is badly out of balance. There are two million cases in the immigration court backlog, yet today we spend \$8 on immigration enforcement for every \$1 we spend on immigration adjudication.

The last administration spent \$15 billion on a border wall. That's enough to pay for 17.5 years of the current immigration court budget. So, it's not a surprise then that the system is not functioning as designed and that it takes years for the government to determine who qualifies for asylum and who does not.

Moving forward, I urge Congress to undertake the difficult challenge of updating our immigration laws and providing enough resources to our adjudication systems to ensure that chaos at the border becomes a thing of the past. Congress cannot tell the Executive Branch to do three things, give them enough money to do none of them adequately, and then blame the Executive if it doesn't like the result.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Reichlin-Melnick follows:]



U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on Immigration Integrity, Security, and Enforcement  
"The Border Crisis: Is the Law Being Faithfully Executed?"

June 7, 2023

Testimony of Aaron Reichlin-Melnick  
Policy Director  
American Immigration Council

Chairman Jordan, Chairman McClintock, Ranking Member Jayapal, and distinguished members of the Subcommittee:

My name is Aaron Reichlin-Melnick, and I currently serve as the Policy Director for the American Immigration Council, a non-profit organization dedicated to the belief that immigrants are part of our national fabric and to ensuring that the United States provides a fair process for all immigrants, including those who are seeking protection at the border. The Council works to strengthen America by shaping how America thinks about and acts toward immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring.

The Council has long brought attention through research, advocacy, and litigation to ways in which the Department of Homeland Security ("DHS") has responded to migrants at the border and inside the United States. Under the Obama administration, we helped bring a successful lawsuit against the Border Patrol's Tucson Sector challenging unconstitutional conditions of confinement for adults and children.<sup>1</sup> Under the Obama and Trump administrations, we helped bring a successful lawsuit against U.S. Customs and Border Protection ("CBP") for its unlawful policy of turning away asylum seekers at ports of entry, in part through a practice known as "metering."<sup>2</sup> And under the Biden administration, we helped bring a lawsuit against Immigration and Customs Enforcement ("ICE") for adopting policies preventing people in immigration detention from accessing their attorneys.<sup>3</sup>

I am grateful for the opportunity to be here today to help provide some perspective on the complicated reality of the application of immigration law at the southwest border.

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<sup>1</sup> American Immigration Council, "Challenging Unconstitutional Conditions in CBP Detention Facilities," <https://bit.ly/2PhdT0z>.

<sup>2</sup> American Immigration Council, "Challenging Customs and Border Protection's Unlawful Practice of Turning Away Asylum Seekers," <https://bit.ly/32Fo4z5>.

<sup>3</sup> American Immigration Council, "Challenging the Government's Barriers to Access to Counsel in Immigration Detention Centers," <https://www.americanimmigrationcouncil.org/litigation/challenging-government-barriers-access-counsel-immigration-detention-centers>.

Testimony For “The Border Crisis: Is the Law Being Faithfully Executed?”

**Releases at the Border are Lawful and the Result of Longstanding Resource Limitations and Competing Legal Obligations**

The Constitution charges the President with faithfully executing the laws. But Congress has passed laws which impose competing legal requirements on the Executive Branch, requiring federal agencies to navigate a complicated web of statutory and Constitutional obligations. And some laws are easier to execute than others, especially in a world of limited resources.

Nowhere is this more true than in immigration law and enforcement. As Justice Kavanaugh said at oral arguments in *Texas v. United States* in November, “there are never enough resources or almost never enough resources to detain every person who should be detained, arrest every person who should be arrested, [or] prosecute every person who's violated the law.”<sup>4</sup>

Because of this fact, the Supreme Court and Congress have both empowered the Executive Branch with significant discretion to manage migration and migrants. As Justice Kennedy wrote in 2012, “A principal feature of the removal system is the broad discretion exercised by immigration officials.”<sup>5</sup> Congress itself not only acknowledged this “principal feature,” but it has expressly approved of it. The Homeland Security Act of 2003 provides that a core function of the Secretary is to “establish[] national immigration enforcement policies and priorities.”<sup>6</sup>

The discretion granted to immigration officials includes the decision whether to arrest a person who is removable, whether to initiate removal proceedings following an arrest, whether to detain someone, and even whether to let a person stay. Indeed, Justice Scalia himself wrote in 1999 that “at each stage [of the removal process] the Executive has discretion to abandon the endeavor.”<sup>7</sup>

At the border, this discretion is critical. DHS has the difficult job of satisfying the legal obligations imposed on it by Congress as well as it can, given finite resources. These legal obligations include both the obligation to carry out both immigration enforcement and humanitarian laws. Indeed, for nearly half a century, DHS has been legally required to provide individuals crossing the U.S.-Mexico border with the opportunity to seek asylum or similar humanitarian protections.<sup>8</sup> This duty, arising from the United States accession to the 1967 United Nations Protocol on Refugees, was first codified into U.S. law in the Refugee Act of 1980. It is also a core component of the 1984 United Nations Convention Against Torture, which has also been signed and ratified by the United States.

As the Supreme Court has held, “deportation is a particularly severe ‘penalty,’”<sup>9</sup> and Congress has long ensured that those facing deportation have rights that immigration officials must respect. The Constitution itself also applies key due process protections for individuals facing removal, including migrants arriving at the border. Thus, when processing a migrant for enforcement purposes, immigration officials are required to choose between different legal options available—some of which may not be

<sup>4</sup> Transcript of Oral Argument at 147, *United States v. Texas*, No. 22-58 (Nov. 29, 2022).

<sup>5</sup> *Arizona v. United States*, 567 U.S. 387, 396 (2012).

<sup>6</sup> 6 U.S.C. § 202(f).

<sup>7</sup> *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).

<sup>8</sup> 8 U.S.C. § 1158(a).

<sup>9</sup> *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010).

## Testimony For “The Border Crisis: Is the Law Being Faithfully Executed?”

possible to carry out due to factors outside of the official’s control. And where it is impossible to meet those obligations, or where the law makes multiple options available, discretion comes into play.

Detention is the classic example of this. Despite Congress’s passage of laws which would seem to mandate detention,<sup>10</sup> in a world where there are 10 people who the law says should be sent to detention and only five detention beds available, border authorities must by necessity pick and choose which five people get locked up and which five must be set free. This does not represent a failure to execute the law. Rather, it is a natural byproduct of the competing legal and logistical concerns that all law enforcement agencies grapple with.

The question of who to detain and who to release is itself governed by competing legal restrictions and equities. For example, Congress has mandated the detention of certain individuals while providing DHS with statutory authority to release others. But even mandatory detention is not always mandatory, as here, too, questions of resources and humanitarian concerns may come into play.<sup>11</sup>

If an immigration officer is deciding how to process two noncitizens subject to mandatory detention, one with a serious criminal history and one who has committed no crime, the officer may determine that it is in the public interest to allocate limited detention resources to detaining only the person with a conviction. This kind of decision is made by immigration enforcement officials every single day across the country; how to carry out their duties as best as they can in a world of limited resources. In addition, given the unique humanitarian and foreign affairs concerns implicated by immigration enforcement, over the last century the Executive Branch has always decided to pursue some cases more vigorously than others.

Crucially, at no point in history has Congress ever provided sufficient funds to detain every person who falls within the category of “mandatory detention,” let alone all migrants crossing the border. As a result, under Republican and Democratic presidential administrations dating back decades, immigration officers have been required to release some migrants instead of sending them to detention.

Over the last 20 years, the maximum number of average daily detention beds authorized by Congress was 45,274, in Fiscal Years (FY) 2019 and 2020 (see Figure 1). In FY 2019 alone, an average of 83,550 people were arrested by DHS each month, accounting for over a million arrests in total.<sup>12</sup> The average length of stay for a person held in ICE detention that year was 34.3 days, meaning that the average detention bed

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<sup>10</sup> See 8 U.S.C. § 1225(b)(1)(B).

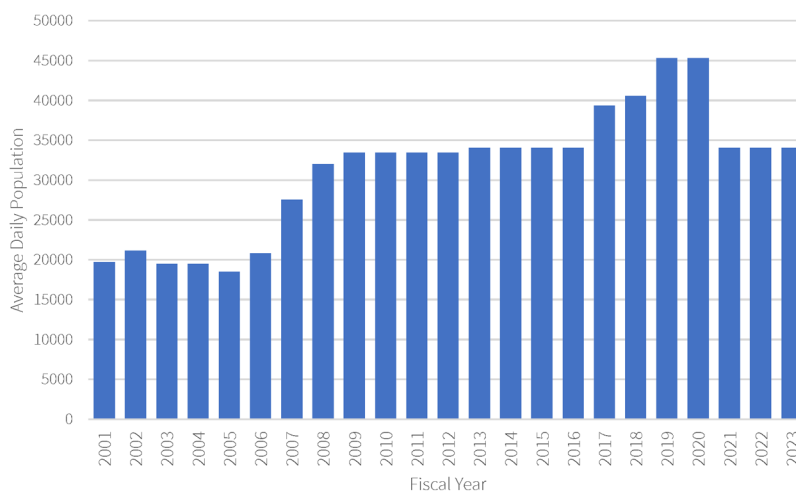
<sup>11</sup> See American Immigration Council, “Council Files Amicus Brief Supporting the Release of Individuals from Immigration Detention During the COVID-19 Pandemic,” May 12, 2020, [https://www.americanimmigrationcouncil.org/amicus\\_brief/council-files-amicus-brief-supporting-release-individuals-immigration-detention-during](https://www.americanimmigrationcouncil.org/amicus_brief/council-files-amicus-brief-supporting-release-individuals-immigration-detention-during).

<sup>12</sup> U.S. Border Patrol, “Nationwide Encounters Fiscal Years 1925 – 2020” (2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Apprehensions%20%28FY%201925%20-%20FY%202020%29%20%28508%29.pdf>; U.S. Immigration and Customs Enforcement, “U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report” (2020), <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

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only became available 10.6 times that year.<sup>13</sup> Thus, even in the year where ICE detention reached record capacity, it would still have been literally impossible to detain all migrants.

**Figure 1: Average Daily Beds Authorized by Congress for Immigration Detention**  
Fiscal Years 2001 to 2023



Indeed, data produced by the DHS Office of Immigration Statistics reveals that in each of the last three presidential administrations, tens of thousands of migrants encountered at the southwest border were released directly from CBP custody without ever being detained by ICE. In every year from FY 2013 to FY 2021, at least 33,000 people were directly released after crossing the southwest border (See Figure 2).<sup>14</sup>

From FY 2017 through FY 2020, over 1.1 million people encountered at the U.S.-Mexico border were eventually released into the United States, including over 500,000 people who were never detained and over 600,000 people who were initially detained and then subsequently released.<sup>15</sup>

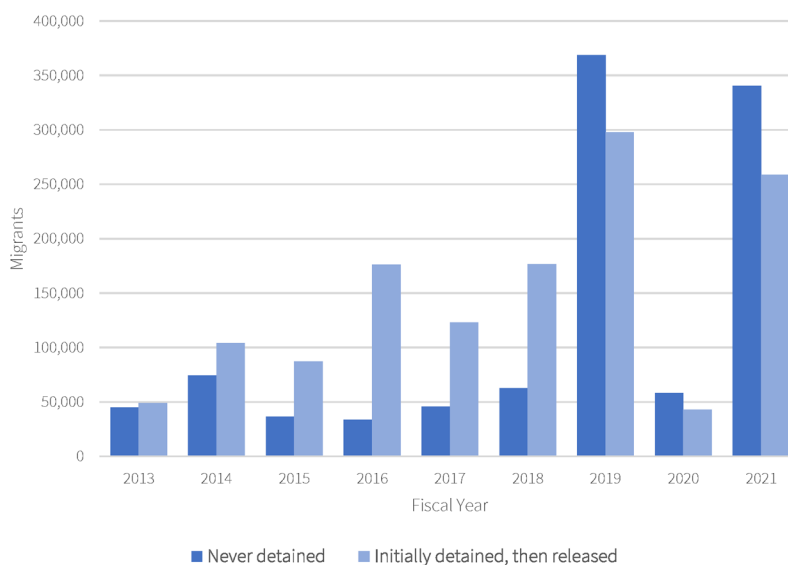
<sup>13</sup> U.S. Immigration and Customs Enforcement, “ICE Detention Data, FY2019,” <https://www.ice.gov/doclib/detention/fy19-detentionstats.xlsx>.

<sup>14</sup> Dep’t of Homeland Security, Office of Immigration Statistics, “FY 2021 Enforcement Lifecycle Report Appendix Tables,” available at <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>.

<sup>15</sup> Ibid. The latter figure includes unaccompanied children who were initially put in Office of Refugee Resettlement custody.

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**Figure 2: Migrants Encountered at the Southwest Border and Released into the United States**  
Fiscal Years 2001 to 2023



At the border, CBP officers are required to abide by more than just the laws relating to detention and removal. Multiple competing legal requirements and concerns apply, including legal obligations relating to the treatment of people in CBP custody. For example, DHS is required by law to transfer unaccompanied children to the care of the Office of Refugee Resettlement within 72 hours of taking them into custody.<sup>16</sup> CBP agents are also bound by the 2015 National Standards on Transport, Escort, Detention, and Search (TEDS), which provide that “Detainees shall generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.”<sup>17</sup> TEDS also mandates certain other standards around medical care, food, hygiene, and basic needs, all of which create additional resource and staffing requirements that may impact other aspects of border processing.

The Constitution also sets minimum standards for treatment of migrants in CBP custody, including the right to basic hygiene, medical assessments, and bedding.<sup>18</sup> As a result, there are hard limits to the number of migrants that the US government can detain in Border Patrol facilities before they become dangerously overcrowded and the government begins to violate its legal and constitutional obligations.

<sup>16</sup> 8 U.S.C. 1232(b)(3).

<sup>17</sup> U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search (2015), at 4.1.

<sup>18</sup> See *Unknown Parties v. Nielsen*, 611 F. Supp. 3d 786 (D. Ariz. 2020).

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When cells are overcrowded, the risk of people dying in custody increases significantly. This is not idle speculation; this is what has happened repeatedly in the past. In spring 2019, the DHS Office of Inspector General found multiple violations of government policy due to “dangerous overcrowding,” including people being held in “standing-room-only conditions for weeks.”<sup>19</sup> That spring, multiple people died in Border Patrol custody, including several children. In circumstances such as those, DHS is well within its legal rights to release people from custody through parole or through another authority to alleviate the serious risk of death involved with overcrowding at the border. The recent tragic death of 8-year-old Anadith Danay Reyes Alvarez is a reminder that these concerns are very real and the health and safety of vulnerable children must not be taken lightly.<sup>20</sup>

In addition, Border Patrol officials deciding how to process a migrant must take into consideration whether the person is seeking asylum. The asylum process provides extensive rights to individuals taken into custody at the border, which can’t simply be overridden at DHS’s whim. Limited resources play a role here as well, given that there are simply not enough asylum officers available to place every person seeking asylum through the credible fear process, requiring some people to be sent directly to court. As a result, it is no surprise that in times of high migration, Border Patrol officials often release migrants, either to alleviate overcrowding or because there are no other options available.

Congress itself has acknowledged the inevitability of releases and provided resources to respond to them. The “Alternatives to Detention” program has been congressionally authorized for decades and has been used for migrants apprehended inside the United States and at the border. Congressional funding for the program tripled from 2017 to 2020 under the Trump administration, coinciding with a significant increase in migrant encounters. And in 2019, Congress first authorized the provision of Federal Emergency Management Agency (FEMA) grant-based funding for migrants “released from the custody of the Department of Homeland Security.”<sup>21</sup>

Ultimately, it is only Congress which can fundamentally change how individuals are processed at the border. The current funding model is out of balance. Congress has poured billions of dollars into the front-end enforcement apparatus while systematically neglecting the back-end adjudication systems. In the last four years alone, Congress has authorized \$36.9 billion to Border Patrol and ICE’s Enforcement and Removal Operations, eight times more than the \$3.5 billion authorized for the immigration court systems and for U.S. Citizenship and Immigration Services’ Refugee, Asylum, and International Operations Directorate (See Figure 3). The end result of this is skyrocketing immigration court backlogs, delayed asylum adjudications, and ever-growing delays due to resource limitations. Unsurprisingly, the choice to spend eight dollars on immigration enforcement for every one dollar spent on immigration adjudication has led to a system which does not function properly.

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<sup>19</sup> Dep’t of Homeland Security, Office of Inspector General, “Management Alert - DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted),” OIG-19-46 (May 30, 2019).

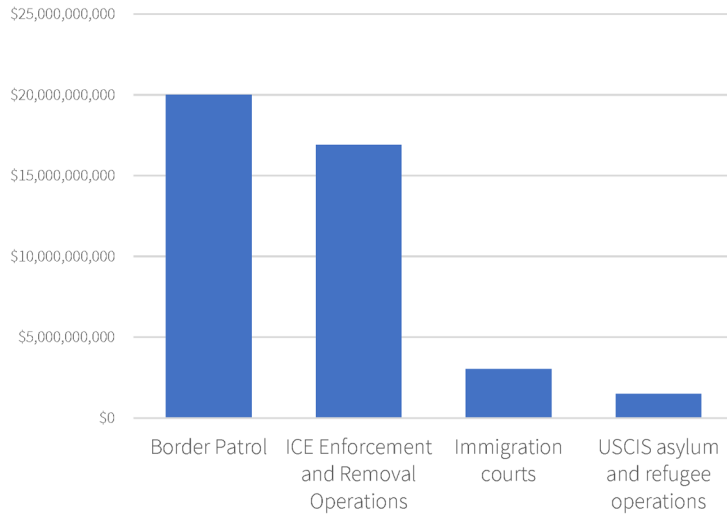
<sup>20</sup> U.S. Customs and Border Protection, “Update: Death in Custody of 8-Year-Old in Harlingen, Texas,” June 1, 2023, <https://www.cbp.gov/newsroom/speeches-and-statements/update-death-custody-8-year-old-harlingen-texas-0>.

<sup>21</sup> Pub. L. 116-26, Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019, 133 STAT. 1018, 1020 (2019).



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**Figure 3: Cumulative Appropriations and Spending Authorization, Fiscal Years 2020 - 2023**



The end result of this spending mismatch is that instead of an orderly, humane, and consistent approach to humanitarian protection and border management, we have been left with a dysfunctional system that serves the needs of no one: not the government, border communities, or asylum seekers themselves. Thankfully, it won't require a radical overhaul of U.S. immigration law to restore our humanitarian protection systems.

What's needed most is a major shift in thinking and policymaking. We must abandon a fantasy of short-term solutionism and acknowledge that only sustained investment over a period of time can realistically address these 21st century challenges. Rather than focus reactively only on temporary reductions of the number of people crossing the border, we need to address the longstanding shortfalls of the system and make the fixes necessary to bring order to the system in the long term.

**Processing Pathways Available to CBP Officers Come with Constraints on Use**

Broadly speaking, CBP officers who have taken a migrant into custody at the border have five “processing pathways” available to them under the law. As indicated in Table 1 and described in detail below, each of these processing pathways come with significant constraints on their use, including logistical/resource-based constraints, diplomatic constraints, policy-based constraints, and humanitarian constraints. As this table demonstrates, executing the law at the border requires consideration of not just the bare words in the Immigration and Nationality Act, but also the reality of carrying out those words in a complex world.

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**Table 1: Processing Pathways Available to CBP Officers and Constraints on Their Use**

Pathway	Legal Authority	Constraints on use (Logistical, Diplomatic, Policy, Humanitarian-Based)
Expedited Removal	8 U.S.C. § 1225(b)(1)	<ul style="list-style-type: none"> <li>- Some countries may not accept the return of their nationals following the issuance of an order of expedited removal.</li> <li>- Individuals placed into expedited removal who express a fear of persecution must be provided a credible fear interview.</li> <li>- The credible fear process, including immigration judge review, is likely to extend beyond seven days. During that time, DHS generally must hold the person in custody, either CBP or ICE. Both agencies have limited detention space and cannot hold an unlimited number of people for credible fear interviews.</li> <li>- There are a limited number of asylum officers to carry out credible fear interviews and a limited number of immigration judges to carry out appeals.</li> </ul>
Issuance of a Notice to Appear (NTA)	8 U.S.C. § 1229a, <i>Matter of E-R-M- &amp; L-R-M-</i> , 25 I&N Dec. 520 (BIA 2011)	<ul style="list-style-type: none"> <li>- Logistical constraints include processing time (90 minutes).</li> <li>- Eliminates the ability to use expedited removal.</li> <li>- Issuing NTA puts people into lengthy court backlogs.</li> </ul>
Parole	8 U.S.C. 1182(d)(5)	<ul style="list-style-type: none"> <li>- May only be used on a "case-by-case basis for urgent humanitarian reasons or significant public benefit," which has for decades included situations where officials determine that serious overcrowding represents an urgent humanitarian crisis.</li> <li>- Eliminates the ability to use expedited removal.</li> <li>- Parole backloads the issuance of a notice to appear onto ICE after the person checks in with ICE, which may lead to logistical problems at ICE due to limited capacity at ICE ERO.</li> </ul>
Contiguous territory return (Remain in Mexico)	8 U.S.C. 1225(b)(2)(C)	<ul style="list-style-type: none"> <li>- Requires the cooperation of a contiguous territory such as Mexico, which may impose its own numerical limitations.</li> <li>- Migrants expressing a fear of persecution must be provided a screening to avoid nonrefoulement, which requires both detention space to hold this screening and asylum officers to carry out the screenings.</li> <li>- Providing court hearings to migrants in Mexico requires subsequent extensive and disruptive multi-agency collaboration to provide mandated court hearings.</li> <li>- Subject to extensive litigation risk when used on a programmatic basis.</li> <li>- Human rights concerns led to extensive internal pushback among asylum officers required to carry out screenings.</li> </ul>
Release on order of recognizance/ notice to report	Inherent prosecutorial discretion authority. See <i>Reno v. Am.-Arab Anti-Discrimination Comm.</i> , 525 U.S. 471, 483 (1999).	<ul style="list-style-type: none"> <li>- NTR issuance backloads the issuance of a notice to appear onto ICE after the person checks in with ICE, which may lead to logistical problems at ICE due to limited capacity at ICE ERO.</li> <li>- Notices to report are likely to lead to increased failures to appear because they do not provide individuals with a clear process by which to reconnect with DHS.</li> </ul>

## Testimony For “The Border Crisis: Is the Law Being Faithfully Executed?”

**First**, CBP officers can put a person through the “expedited removal” process, which was created by Congress in 1996.<sup>22</sup> Under expedited removal, an individual CBP officer can issue a removal order within hours. But expedited removal has its own significant limitations. By law, those who are subject to expedited removal who express a fear of persecution must be screened for asylum.<sup>23</sup> Credible fear screenings generally take place in DHS custody, requiring an available bed to hold the person during the screening. DHS has never had sufficient detention bed space to hold all individuals who request asylum in detention for credible fear interviews.

Credible fear screenings also require an available asylum officer to carry out the interview and an available immigration judge to carry out any requested review of a denial. As with detention resources, in the last decade, DHS has consistently been unable to hire sufficient asylum officers to carry out credible fear interviews for every migrant crossing the border who wishes to seek asylum.

In addition, some individuals may come from countries which do not accept the return of their own nationals (so-called “recalcitrant countries”), making some orders of expedited removal difficult, if not impossible, to carry out. These factors, among others, significantly constrain the use of expedited removal at the border.

**Second**, CBP officers may choose instead to bypass the expedited removal process and instead issue a notice to appear in court. As the Board of Immigration Appeals held in 2011, the use of expedited removal is not mandatory, and DHS maintains the inherent authority to issue a notice to appear to individuals who are amenable to placement in expedited removal proceedings.<sup>24</sup> Once a person is in removal proceedings, the individual is permitted to remain in the United States until the conclusion of their removal proceedings. The issuance of notices to appear to individuals seeking asylum at the border has occurred for decades, even before the creation of expedited removal. Individuals issued notices to appear at the border are generally released, as has repeatedly occurred in 2014, 2016, 2018, 2019, and since 2021.

The primary constraint on the use of NTAs is time. According to Biden administration officials, issuance of a notice to appear may take roughly 90 minutes for a CBP officer. Although this may not seem like a significant amount of time, in times of high migration when thousands of migrants are crossing the border and seeking asylum, there may be significant staffing challenges involved in issuing notices to appear to all individuals while simultaneously ensuring that CBP facilities do not become overcrowded.

**Third**, CBP officers may choose to issue humanitarian parole to individuals in custody. Parole is an authority that the Executive Branch has long held which allows some individuals to temporarily enter the United States for urgent humanitarian reasons or for significant public benefit.<sup>25</sup> As the Supreme Court has noted, this authority may be used on individuals who would otherwise be subject to expedited

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<sup>22</sup> American Immigration Council, “A Primer on Expedited Removal,” July 22, 2019, <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>.

<sup>23</sup> 8 U.S.C. § 1225(b)(1)(B).

<sup>24</sup> *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011).

<sup>25</sup> American Immigration Council, “The Use of Parole Under Immigration Law,” January 10, 2023, <https://www.americanimmigrationcouncil.org/research/use-parole-under-immigration-law>.

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removal.<sup>26</sup> Immigration officers have long considered the health and safety concerns raised by overcrowding as an urgent humanitarian reason authorizing the use of parole.

Since at least 1992, various administrations have authorized the use of parole for arriving asylum seekers in certain circumstances.<sup>27</sup> The most extensive programmatic use of parole of the border occurred from 1995 to 2017, under the so-called “Wet Foot/Dry Foot” parole policy, which provided that nearly all Cuban nationals who managed to set foot on U.S. soil would be granted parole.<sup>28</sup>

The use of parole is also subject to some constraints, including the limitation on the use of parole only to circumstances involving significant public benefit or urgent humanitarian reasons. In addition, those granted parole must eventually be placed into immigration court proceedings, requiring ICE to dedicate its own limited resources to the issuance of notices to appear to individuals paroled at the border. Delays in issuing notices to appear may also make it more difficult for asylum seekers to meet the one-year filing deadline or obtain work authorization as an asylum applicant.

**Fourth**, CBP officers have the statutory authority to return individuals to Mexico through the contiguous territory return authority in 8 U.S.C. § 1225(b)(2)(C). This discretionary authority was first exercised on a broad programmatic basis under the Trump administration through the controversial “Remain in Mexico” program. As the Supreme Court recently held, the use of the authority requires the affirmative consent of Mexico.<sup>29</sup>

The Remain in Mexico program was subject to very high constraints throughout its use. Mexico strictly limited the number of individuals who could be returned to that country each day and limited the nationalities of those who could be returned. As a result, throughout the program’s first iteration, in no month were more than 20 percent of migrants crossing the border returned to Mexico. In addition, the program was subject to extensive litigation as to whether it was a valid exercise of the authority in 8 U.S.C. § 1225(b)(2)(C) and whether it provided sufficient protections for the vulnerable migrants put through it.

The program also significantly strained border immigration courts, with one Trump administration official telling Congress in June 2019 that the program had “broken the courts.”<sup>30</sup> The program also required significant logistical support from USCIS asylum officers, who were required to carry out “nonrefoulement” screenings for individuals who expressed a fear of persecution or torture in Mexico. In addition, the

<sup>26</sup> See *Jennings v. Rodriguez*, 138 S. Ct. 830, 834 (2018) (“There is also a specific provision authorizing temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or significant public benefit.’”).

<sup>27</sup> Memorandum from Gene McNary, Commissioner, Immigration and Naturalization Service, Subj: Parole Project for Asylum Seekers at Ports of Entry and INS Detention (Apr. 20, 1992).

<sup>28</sup> Congressional Research Service, “Rescission of the Wet-Foot/Dry-Foot Policy as to Aliens from Cuba Raises Legal Questions,” January 18, 2017, <https://sgp.fas.org/crs/row/wetfoot.pdf>.

<sup>29</sup> See *Biden v. Texas*, 142 S. Ct. 2528, 2543 (2022) (“The Executive [...] cannot unilaterally return [...] migrants to Mexico”).

<sup>30</sup> Mica Rosenberg, Kristina Cooke, Reade Levinson, “Hasty rollout of Trump immigration policy has ‘broken’ border courts,” *Reuters*, September 10, 2019, [https://www.reuters.com/article/us-usa-immigration-courts-insight/hasty-rollout-of-trump-immigration-policy-has-broken-border-courts-idUSKCN1W115?fbclid=IwAR0NTN4KhF6U7\\_GVAuqghaH09FYAq4OslRiXfoRtcZ3zqwdwnwY6Ky2Mo/](https://www.reuters.com/article/us-usa-immigration-courts-insight/hasty-rollout-of-trump-immigration-policy-has-broken-border-courts-idUSKCN1W115?fbclid=IwAR0NTN4KhF6U7_GVAuqghaH09FYAq4OslRiXfoRtcZ3zqwdwnwY6Ky2Mo/).

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human rights concerns caused by sending people back to dangerous border towns in Mexico led to extensive internal pushback within DHS and externally among human rights advocates.

Fifth, CBP officers may in some circumstances choose to directly release individuals without placing them in removal proceedings, expedited removal, or parole (although individuals placed through this pathway are still subject to security screenings). Notices to report are the fastest means by which CBP officers can process and release an individual at the border in times of dangerous overcrowding. Releases on orders of recognizance or through the "notice to report" process rely on the inherent discretionary authority acknowledged by Justice Scalia in 1999.<sup>31</sup>

As with releases on parole, the use of this authority at the border shifts the responsibility for issuance of a notice to appear onto ICE, which imposes its own significant logistical challenges. In addition, those who are released without an appointment to check in with ICE may not be aware of how to proceed with their case and may fall through the cracks.

While the majority of individuals released through the temporary use of the Notices to Report process in 2021 did eventually check in with ICE,<sup>32</sup> the confusion caused by this program cautions against its use.

### Conclusion

For generations, the United States has prided itself on being a beacon of safety and freedom for refugees around the world. In 1980, Congress passed the Refugee Act, codifying basic refugee protections into law and enshrining a global commitment to asylum which emerged from the tragedy of the Holocaust. Since that point, nearly 4 million people have been granted permanent status either through the U.S. Refugee Admissions Program or through our asylum system. These people have strengthened communities around the nation, contributed economically, and enriched our national fabric.

Today, a global displacement crisis is affecting nearly every country in the world. Over 100 million people are displaced worldwide, with more than 42 million outside their countries of origin. In the Western Hemisphere, authoritarianism, assassinations, natural disasters, powerful transnational criminal organizations, climate change, and the global socioeconomic shocks of the COVID-19 pandemic have caused millions of people to pick up and move to seek safety and better opportunities. The end result is humanitarian migration at levels far above what the 20th century system can handle.

Faced with a 21st century displacement crisis, the Biden administration has undoubtedly struggled to manage with the resources they have. But this struggle is the result of Congress's consistent failure to provide the resources necessary to fund a functioning humanitarian protection system. Crucially, there is still hope. Rebuilding a functional system does not require a radical overhaul of U.S. immigration law. Nor

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<sup>31</sup> *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).

<sup>32</sup> See U.S. Government Accountability Office, "Southwest Border: Challenges and Efforts Implementing New Processes for Noncitizen Families," GAO-22-105456, September 28, 2022, <https://www.gao.gov/products/gao-22-105456> ("As of March 1, 2022, about 75% of these family members had reported to ICE as required.").

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will it lead to open borders. Instead, creating and funding a flexible, orderly, and safe asylum system will reduce both irregular entries and unjust outcomes.<sup>33</sup>

Moving forward, I urge Congress to have a serious conversation about undertaking the difficult challenge of updating our immigration laws and providing sufficient resources to our adjudication systems to ensure that the chaotic situations we see at the border today are a thing of the past.

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<sup>33</sup> For more information, read the American Immigration Council’s report “Beyond a Border Solution: How to Build a Humanitarian Protection System That Won’t Break,” available at: <https://www.americanimmigrationcouncil.org/research/beyond-border-solutions>.

Mr. McCLINTOCK. Thank you very much.  
Next is Mr. Edlow.

**STATEMENT OF JOSEPH EDLOW**

Mr. EDLOW. Thank you.

Chair McClintock, Ranking Member Jayapal, and distinguished Members of this Subcommittee, thank you for the opportunity to present testimony regarding the ongoing crisis threatening the integrity of our immigration system.

As this Committee explores the underlying causes of the crisis, the question posed today can be answered only with a resounding no. The Biden Administration has seen fit to ignore the law, instead favoring poorly conceived and poorly executed policy decisions. Their actions, through Executive Orders, departmental memos, and rules, upend the INA and Congressional intent, have eroded our immigration system, and propelled the crisis to current levels.

Section 102 of the INA charges the Secretary of Homeland Security with administration and enforcement of the act and further vests in the Secretary the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens. The massive number of encounters recorded by CBP, the small number of alien removals by ICE, and the ever-increasing USCIS backlog, however, suggests that this Secretary has failed to faithfully execute the laws entrusted to him.

The sharp rise in unlawful entries and attempts along the Southwest border provide a critical litmus test of the crisis's scope, but it's an outgrowth of the departmental actions. Additionally, media often focuses on the border to the detriment of the other actions and inaction by ICE and USCIS, which we must also focus on.

Since day one of the administration, the department has taken aggressive action to undermine immigration enforcement. Nowhere is that clearer than Secretary Mayorkis' September 30, 2021, memorandum which outlined the appropriate instances in which DHS was authorized to take action against aliens either unlawfully present or lawfully present but removable.

Secretary Mayorkis outlined three main buckets for removal: Threats to national security, threats to public safety, and threats to border security. While in theory this would seem to encompass many aliens, in reality, the numerous carve-outs, loose definitions, and required factors for consideration made it nearly impossible for ICE to move forward with most enforcement actions. These poorly defined categories gave even some of the most serious of criminal aliens a free pass in the interest of equity.

This and other memos sought to redefine immigration enforcement by creating fictional priorities with no basis in law. Categorical prosecutorial discretion is not discretion at all. The department's failure to enforce the full INA in the name of prioritization and discretion is a dereliction of duty.

So, too, the department's regulatory agenda seeks to upend the credible fear process in the name of orderly processing. Starting with the presumption that every economic migrant is entitled to protection, in 2022, DHS issued an interim and final rule on credible fear screening. Under the new process, a positive credible fear

determination by an asylum officer will lead to a nonadversarial asylum interview before another DHS asylum officer. This impermissibly changes the process and undermines Congressional action by shifting adjudication authority from DOJ to DHS.

Even more concerning, written summary of the original credible fear interview doubles as an alien's asylum application rendering the requirement that an alien file one moot. This shifts the burden and also provides a path for fraud and renders anti-asylum fraud measures moot.

A second final rule issued last month appears to be tough on illegal border crossers making them eligible for asylum. However, the number of exceptions and the easily rebuttable presumption belie its stated purpose. This rule will have the opposite effect as it will ultimately incentivize aliens to make the dangerous trek northward with families in tow.

I would be remiss to not mention parole abuse. Regardless of the plain language of the statute limiting parole to case-by-case matters, parole has become a favorite tool of this administration. While first used as an alternative to detention, parole programs have subsequently played a large role in artificially decreasing border numbers. The expanded categorical parole programs that we're seeing now are wholly unlawful.

Last, vast number of pending matters presently before USCIS will only increase if border prioritization for adjudicators is not stopped. While the agency claims to want to reduce this number, actions speak louder than words. It was recently reported that USCIS adjudicators were being shifted from their assigned work to support operations along the Southwest border.

The Biden Administration has taken many measures in the past 2.5 years aimed at addressing the border crisis. However, it appears that no one thought to simply enforce the law as it is written. Instead, the department has, through its own actions, created the worst border crisis in American history.

A return to the rule of law is the only cure at this point, and it is incumbent on Congress to use its oversight and lawmaking authority to repair the damage done by the department.

Thank you. I looked forward to your question.

[The prepared statement of Mr. Edlow follows:]



**HOUSE JUDICIARY HEARING  
SUBCOMMITTEE ON IMMIGRATION INTEGRITY,  
SECURITY, AND ENFORCEMENT  
THE BORDER CRISIS: IS THE LAW BEING FAITHFULLY EXECUTED?  
JUNE 7, 2023**

**PREPARED TESTIMONY OF  
JOSEPH B. EDLOW  
FOUNDER, THE EDLOW GROUP LLC**

Chairman Jordan, Ranking Member Nadler, Subcommittee Chairman McClintock, Ranking Member Jayapal, and distinguished members of this subcommittee, thank you for the opportunity to present testimony regarding the ongoing crisis threatening the integrity of our immigration system.

As this committee explores the underlying causes of the crisis, the question posed in this hearing's title can be answered only with a resounding "No." This Administration has seen fit to ignore the law, instead favoring poorly conceived and even more so poorly executed policy decisions. The actions through executive orders, departmental memos, and rules seemingly upend the Immigration and Nationality Act (INA) and congressional intent. These decisions, implemented at each immigration agency, have eroded this country's immigration system and have propelled the crisis to its current levels.

The sharp rise in unlawful entries and attempted entries along the southwest border provides a critical litmus test of the crisis' scope but is an outgrowth of Administration and Departmental actions. The focus on the overwhelming numbers does not, in and of itself, provide insight into the reasons for the crisis. Additionally, media often focuses on the border to the detriment of the other actions and inaction by Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS). Regardless of the specifics, it is plainly obvious that since President Biden was inaugurated in January 2021, this country has witnessed an unprecedented border crisis.

*Executive Order and Memos*

Beginning on Day 1 of the Biden Administration, the Department of Homeland Security's (DHS) Acting Secretary, David Pekoske, halted all deportations for 100 days.<sup>1</sup> This was predicated on interim enforcement priorities that the Department wanted ICE to implement. In its view, the only way to

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<sup>1</sup> Memo. from David Pekoske, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021), available at: [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

sufficiently update priorities was to reset the entire system by halting all enforcement actions. This was followed up by ICE Acting Director Tae Johnson's memo of February 18, 2021. This memo was the first step to implement the priorities and included reporting requirements for enforcement actions and the need to justify any action to superiors through a pre-approval process.<sup>2</sup>

At the White House, on February 2, 2021, President Biden issued his "Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans."<sup>3</sup> The order required DHS, in conjunction with the Department of Justice and the Department of State to "identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers."<sup>4</sup> This was followed with an executive order that, among other things, created the battle cry of the Administration – removing barriers to immigration.

To that end, on September 30, 2021, Secretary Alejandro Mayorkas issued a memorandum entitled "Guidelines for the Enforcement of Civil Immigration Law" which outlined the appropriate instances in which DHS was authorized to take action against aliens either unlawfully present or lawfully present but removable.<sup>5</sup> <sup>6</sup> Specifically, Secretary Mayorkas outlined three main buckets for removal – 1) threats national security; 2) threats to public safety; 3) threats to border security. While, in theory, this would seem to encompass many aliens who should properly be targeted for enforcement actions by ICE, in reality, the numerous carve-outs, loose definitions, and required factors for consideration make it nearly impossible to move forward with most enforcement actions. These poorly defined categories could be seen to give even the most serious of criminal aliens a free pass in the interest of equity and "justice."

On April 3, 2022, ICE's Principal Legal Advisor, Kerry Doyle, issued a memo on prosecutorial discretion, aligning ICE action in immigration court with the Mayorkas Memo.<sup>7</sup> The April Memo provided that ICE attorneys were to exercise

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<sup>2</sup> Memo. from Tae D. Johnson, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* (Feb. 18, 2021), available at: [https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf)

<sup>3</sup> Exec. Order No. 14012, 86 Fed. Reg. 8277 (Feb. 5, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> Memo. From Alejandro N. Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021), available at: <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>6</sup> On June 10, 2022, the U.S. District Court for the Southern District of Texas vacated this memorandum.

<sup>7</sup> Memo. from Kerry E. Doyle, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (Apr. 3, 2022), available at: [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf).

prosecutorial discretion in cases that were not deemed priority cases. This could include dismissal as well as administrative closure (pausing the case indefinitely).

These memos all seek to redefine immigration enforcement by creating fictional priorities with no basis in law. Neither the INA's section on inadmissibility nor its section on removability suggest a prioritization of grounds for enforcement. Instead, it enumerates a list of grounds of inadmissibility and removability that the Department of Homeland Security is required to enforce. Its failure to do so in the name of prosecutorial discretion is a dereliction of duty and cannot be permitted to continue.

The results of these memos speak for themselves. In Fiscal Year 2022, ICE recorded a little more than 72,000 alien removals from the United States.<sup>8</sup> While that may appear to be large number, the Executive Office for Immigration Review (the immigration courts) reports that in just the first quarter of 2023, immigration judges have ordered almost 47,000 people removed and have affirmed credible or reasonable fear denials in more than 4,000 matters.<sup>9</sup>

During the period that these memos were in effect, and beyond, the number of encounters along the southwest border steadily climbed. In Fiscal Year 2022, U.S. Customs and Border Protection (CBP) recorded a staggering and unprecedented 2,378,944 encounters.<sup>10</sup> Thus far in Fiscal Year 2023, CBP has already recorded 1,431,964 encounters as of the end of April.<sup>11</sup> These are just the known and reported numbers and do not account for the thousands of "got aways" who were able to elude Border Patrol agents.

The numbers simply do not add up and even with the bulk of the Mayorkas and Doyle memos not in effect, the result is still lopsided enforcement compared to the record number of aliens entering.

### *The Regulations*

Under the guise of removing barriers, the Department, along with the Department of Justice, engaged in several rulemakings purportedly aimed at creating efficiency and expediency at the border.

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<sup>8</sup> U.S. Immig. and Customs Enforcement, *ICE releases FY 2022 annual report* (Dec. 30, 2022), available at: <https://www.ice.gov/news/releases/ice-releases-fy-2022-annual-report>.

<sup>9</sup> Exec. Off. For Immig. Review, *FY2023 First Quarter Decision Outcomes* (Jan. 16, 2023), available at: <https://www.justice.gov/eoir/page/file/1105111/download>.

<sup>10</sup> U.S. Customs and Border Protection, *Southwest Land Border Encounters* (May 17, 2023), available at: <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>11</sup> *Id.*

Under section 235(b)(1) of the Immigration and Nationality Act (INA)<sup>12</sup>, aliens apprehended by CBP entering illegally along the border or without proper documents at the ports of entry are subject to “expedited removal”, meaning that they can be quickly removed without receiving removal orders from an immigration judge (IJ).

If an arriving alien claims to fear harm or asks for asylum, however, CBP must hand the alien over to an asylum officer (AO) in U.S. Citizenship and Immigration Services (USCIS) for a “credible fear” interview.<sup>13</sup> Credible fear is a screening process to assess whether the alien may have an asylum claim, and thus proving credible fear is easier than establishing eligibility for asylum.<sup>14</sup> If an AO finds that the alien does not have credible fear (makes a “negative credible fear determination”), the alien can ask for a review of that decision by an IJ.<sup>15</sup> If the IJ upholds the negative credible fear determination, the alien is to be removed immediately.

When an AO or IJ makes a “positive credible fear determination”, on the other hand, the alien is placed into removal proceedings to apply for asylum before an IJ.<sup>16</sup> Most aliens who have claimed a fear of return in the past received a positive credible fear assessment (83 percent between FY 2008 and FY 2019)<sup>17</sup>, but less than 17 percent of those who received a positive credible fear assessment were ultimately granted asylum.<sup>18</sup>

In 2022, DHS issued an interim final rule entitled “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers.”<sup>19</sup> Under the new process, a positive credible fear determination by a DHS asylum officer will lead to a non-adversarial asylum interview before another DHS asylum officer. Asylum officers who find an alien eligible for a form of protection lesser than full-fledged asylum, such as statutory

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<sup>12</sup> Section 235(b)(1) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>13</sup> Section 235(b)(1)(A)(ii) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>14</sup> See section 235(b)(1)(B)(v) of the INA (defining “Credible fear of persecution”), available at:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>15</sup> Section 235(b)(1)(B)(iii)(III) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>16</sup> Section 235(b)(1)(B)(ii) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>17</sup> Credible Fear and Asylum Process: Fiscal Year (FY) 2008 – FY 2019, U.S. Dep’t of Justice, Executive Office for Immigration Review (generated Oct. 23, 2019), available at: <https://www.justice.gov/eoir/file/1216991/download>.

<sup>18</sup> *Id.*

<sup>19</sup> Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078 (Interim Final Rule Mar. 29, 2022) (to be codified at 8 C.F.R. parts 208, 212, 235, 1003, 1208, 1235, and 1240).

withholding of removal<sup>20</sup> or protection under the Convention Against Torture<sup>21</sup>, must still refer the matter to a DOJ immigration judge who may consider the entire case. That is hardly streamlining the process.

Even more concerning was that the written summary of the original credible fear interview doubles as an alien's asylum application, rendering the requirement that an alien file an asylum application moot. This shifts the burden to present and prepare a meritorious claim for protection. Aliens may rely on first-made claims of their story, changing or including relevant details in advance of the asylum interview or court proceeding, but without having to affirmatively file an application. While this, in and of itself, does not ensure an asylum grant, it certainly provides a path for fraud. It also renders a key anti-asylum fraud measure moot.

In addition to the practical problems associated with this rule, it impermissibly shifts authorities from the Department of Justice to the Department of Homeland Security. As Congress was creating the new DHS, it specifically determined which functions would be enumerated.<sup>22</sup> Regarding asylum officers, or USCIS in general, Congress specified which immigration functions would be transferred to the new created department.<sup>23</sup> Section 451 of the HSA established the Bureau of Citizenship and Immigration Services and provided its function as transferred from the DOJ.<sup>24</sup> By including a catchall provision for any functions that may have been missed in the paragraphs 1 through 4, it is apparent that the intent was to ensure that whatever adjudicative functions were being performed by INS

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<sup>20</sup> Statutory withholding of removal specifies that an alien may not be removed "to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

<sup>21</sup> Following the U.S. ratifying its signing of the Convention Against Torture in 1994, Congress implemented CAT protections in Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 aimed at not effecting the removal of a person who would be subjected to torture upon such removal. See Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. 105-277, Div. G, Tit. XII, chap. 3, subchap. B, section 2242(a) (1998).

<sup>22</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at §451(b), 116 Stat. 2135, 2196 (2002). ("(b) Transfer of Functions from the Commissioner. – In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization Services the following functions and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

- (1) Adjudications of immigrant visa petitions.
- (2) Adjudications of naturalization petitions.
- (3) Adjudications of asylum and refugee applications.
- (4) Adjudications performed at service centers.
- (5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.")

prior to the transfer, would be continued by USCIS subsequent to it. Nothing in the provision suggests that any further functions be transferred.

As additional evidence that EOIR functions were not transferred, the HSA affirmatively established EOIR within DOJ. This section, ultimately codified in INA, states:

(1) *In general.* – The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.<sup>25</sup><sup>26</sup>

This provision makes clear that the Attorney General retained the functions of EOIR to include the authority to order deportation from the United States. Nowhere in the HSA nor in the INA is there any reference to USCIS, exercising authority to order removal. As the former INS did not exercise such authority, and no such functions were specifically transferred to USCIS, the statute is not ambiguous or silent on the matter. Congressional intent is clear that such quasi-judicial functions would remain with EOIR where such functions have been exercised exclusively since 1983.

Accordingly, DHS, through USCIS, now taking on additional authorities aimed at processing in aliens faster and getting them full-fledged asylum interview, in a non-adversarial manner, without the benefit of immigration court or ICE trial attorney's input. This is rulemaking run amok as it is contrary to statute, contrary to long-existing policy, and directly encroaches on the Department of Justice.

Relevant to the border, a notice of proposed rulemaking was published on February 23, 2023.<sup>27</sup> Starting with the name, "Circumvention of Lawful Pathways," the proposed rule is an ineffective measure and empty gesture. Despite its perceived enforcement provisions, this rule, if implemented, would allow most aliens to arrive at or between ports of entry, make fraudulent claims of fear to enter the U.S. or continue to utilize unlawful mass parole programs to accomplish the same. As the Biden Administration continues to steadfastly grip to its executive

<sup>25</sup> 8 U.S.C. 1103(g).

<sup>26</sup> The Immigration Reform, Accountability and Security Enhancement Act of 2002 (S. 2444; 107<sup>th</sup> Cong.) was introduced in May of 2002 but was never passed. This language was retained for the Homeland Security Act of 2002, Pub. L. No. 107-296, § 1102, 116 Stat. 2135, 2273-2274 (2002).

<sup>27</sup> Circumvention of Lawful Pathways, 88 Fed. Reg. 11704 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

order on removing barriers to immigration,<sup>28</sup> this rule, finalized on May 16, 2023 will do exactly that.<sup>29</sup>

The rule may be framed as an enforcement tool to limit the number of aliens who will ultimately be able to receive asylum, however we are hard-pressed to find any examples of classes of aliens who will actually be kept out of the process under this rule.

The crux of the rule is the concept that a presumption of asylum ineligibility exists for any alien entering the United States who does not meet certain criteria. Specifically, the proposed rule requires that to be eligible for asylum one of three criteria must be met: (1) the alien must have appropriate documentation; (2) must present at a port of entry with a prescheduled appointment through the CBP ONE App; or (3) must have sought protection in a third country and received a final determination. The last criteria is akin to the Third Country Transit Rule, which likewise largely prohibited asylum eligibility for a non-contiguous alien who did not apply for protection in a country where such processes are available.<sup>30</sup>

The similarities to the previous rule end there, however. While this appears to be a strong measure to control migration along the southern border, it becomes apparent that the exceptions swallow the rule. We are left with the question of to whom this rule will actually apply once implemented. Of the three criteria, the one that we presume will most often be utilized is the prescheduled appointments. It is not likely that many aliens will suddenly obtain legitimate documentation and, if they were able to do so, they likely would not be applying for asylum but would be entering on a type of visa. This is an important distinction because credible fear procedures would not apply to an admitted alien (i.e. one that actually has a valid authorization). The third criterion may be used more often than the first but it is unclear to the extent that an alien would avail themselves of protection in Mexico and other nations in Central and South America. Whether they are being smuggled to the United States or make the journey on their own, the lack of resources and familiarity with the law will also make this criterion rarely met.

The rule is clearly encouraging aliens to use the second criterion. A prescheduled appointment through the CBP ONE App is the most available option

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<sup>28</sup> Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 86 Fed. Reg. 2877 (Feb. 5, 2021).

<sup>29</sup> Circumvention of Lawful Pathways, 88 Fed. Reg. 31314 (Final on May 16, 2023)(to be codified at 8 C.F.R. parts 208 and 1208).

<sup>30</sup> Circumvention of Lawful Pathways, 88 Fed. Reg. 11704, 11750-11752 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

for aliens with access to smart phones or other technology allowing them to contact the system. However, even this criterion is waived if the alien can demonstrate that “it was not possible to access or use the...system due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle.”<sup>31</sup> In essence, everything must align perfectly for this criterion to be the basis for the presumption of ineligibility. Relying on technology is itself a risky proposition as factors such as bugs within the app or lack of available cellular service or a reliable internet connection could all hamper an alien’s ability to successfully schedule an appointment. Additionally, while we do not have statistics on literacy rates of the English language. If language and literacy are included as prerequisites, this will likely include a far larger population of migrants who would overcome the rule’s presumption. Lastly, the catchall of “other or ongoing and serious obstacle” is left undefined in the regulatory text. As asylum officers and immigration judges will be trained on identification of the presumption, leaving a catchall which will seemingly be within the discretion of the adjudicator will allow virtually any reason to pass muster. This will result in the presumption being raised against hardly any alien crossing into the United States.

For those few aliens against whom the presumption will be raised, the rule has fashioned it as a rebuttable presumption. Again, the exceptions and now the rebuttals swallow the rule itself. An alien may rebut the presumption when proving that the alien has a medical emergency, “faces an imminent and extreme threat to life or safety,” or meets the statutory definition of trafficking victims.<sup>32</sup> Of the three, the most concerning is the threat to life or safety. It is well-established that the trek to the United States is dangerous with more migrants killed or kidnapped each year. The dangers of the journey are further exacerbated with the influence of cartels and other criminal organizations that view smuggling migrants as a for-profit business without regard to their safety. From FY17 through FY21, CBP has reported over 1,700 migrant deaths.<sup>33</sup> FY21 had the most in a single year with 568 deaths.<sup>34</sup> Additionally, in that same time period, Border Patrol rescued over 8,400 individuals.<sup>35</sup> FY21 again saw the most rescues in a single year with

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<sup>31</sup> Circumvention of Lawful Pathways, 88 Fed. Reg. 11704, 11750 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

<sup>32</sup> *Id.*

<sup>33</sup> U.S. Customs and Border Protection, *Border Rescues and Mortality Data* (Feb. 6, 2023), <https://www.cbp.gov/newsroom/stats/border-rescues-and-mortality-data>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



3,423.<sup>36</sup> These numbers only represent the deaths and emergencies reported by CBP, not other federal, state, and local agencies and it is unknown how many bodies have never been discovered. The journey to the southern border of the United States is inherently a journey where an alien will face extreme threats to life and safety from beginning to end. To add this as an exception is to exempt the entire population of migrants that have traveled with the assistance of smugglers and other criminal enterprises.

While the rule claims to disincentivize illegal border crossers, the Department's provisions have instead created additional incentives to make the perilous journey either as unaccompanied children or with children in tow. In addition to the fact that the NPRM does not apply to unaccompanied children, the Department of Justice rule requires granting asylum despite ineligibility in an effort to preserve family unity. In a relevant portion, the Department of Justice's regulation states that "[w]here a principal asylum applicant is eligible for withholding...and would be granted asylum but for the presumption...and where an accompanying spouse or child ...does not independently qualify for asylum or other protections...the presumption shall be deemed rebutted."<sup>37</sup> Caselaw has long held that grantees of withholding of removal cannot receive derivative benefits for their spouses and children.<sup>38</sup> This provision seeks to sidestep that issue by granting full asylum status to the principal and family even if the principal alien cannot otherwise rebut the presumption.

#### *Parole Abuse*

While the Department claims that a lack of available pathways has made the aforementioned rules necessary, that lack has not stopped the Department from abusing its parole authority. For a section of law meant to be used sparingly and in exceptional circumstances, the Department has relied heavily on its parole powers to permit aliens to enter the counter *en masse*, many without a notice to appear before an immigration judge. Section 212(d)(5) of the INA authorizes parole of aliens "into 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..."<sup>39</sup> Additionally, the legislative history of parole authority, cited by the former INS in its initial regulation, makes clear that the

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<sup>36</sup> *Id.*

<sup>37</sup> Circumvention of Lawful Pathways, 88 Fed. Reg. 11704, 11752 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

<sup>38</sup> *Matter of A-K*, 24 I. & N. Dec. 275 (BIA 2007).

<sup>39</sup> 8 U.S.C. § 1182(d)(5).

intent was to exercise the authority in a narrow and restrictive manner. The original rule stated:

The drafters of the Immigration and Nationality Act of 1952 gave as examples situations where parole was warranted in cases involving the need for immediate medical attention, witnesses, and aliens being brought into the United States for prosecution. H. Rep. No. 1365, 82<sup>nd</sup> Cong., 2d Sess. at 52 (1952). In 1965, a Congressional committee stated that the parole provisions ‘were designated to authorize the Attorney General to act on an *emergent, individual, and isolated situation*, such as the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside the limit of the law.’ 5 Rep. No. 748, 98<sup>th</sup> Cong., 1<sup>st</sup> Sess. at 17 (1965).<sup>40</sup>

Regardless of the plain language of the statute and the legislative history, parole has become a favorite tool of the Biden Administration. While first used as an alternative to detention, parole programs have subsequently played a large role in artificially decreasing numbers along the border.

When reviewing the Border Patrol monthly disposition and transfer statistics, it becomes apparent that parole was the path of choice to quickly process and move aliens northward. Border Patrol monthly disposition and transfer statistics for fiscal years 2022 and 2023 demonstrate just how commonplace parole has become. While Border Patrol suggests that the “processing disposition decision related to each apprehension is made on a case-by-case basis...”<sup>41</sup> the raw numbers belie that disclaimer. In fiscal year 2022, parole numbers steadily rose to culminate in over 95,000 paroles granted in September 2022.<sup>42</sup> That trend has continued in this fiscal year as Border Patrol recorded over 130,000 paroles in December 2022.<sup>43</sup>

More so than individual aliens, the Department has gone farther astray as it has implemented parole programs, contrary to law, for nationals of certain countries. Beginning in October, 2022, the Department announced that it was

<sup>40</sup> Detention and Parole of Inadmissible Aliens; Interim Rule with Requests for Comments, 47 Fed. Reg. 30044 (Jul. 9, 1982) (codified in 8 C.F.R. parts 212 and 235) (emphasis added).

<sup>41</sup> Customs and Border Protection, *Custody and Transfer Statistics FY2023* (May 19, 2023), available at: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>42</sup> Customs and Border Protection, *Custody and Transfer Statistics FY2022* (Nov. 14, 2022), available at: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

<sup>43</sup> Customs and Border Protection, *Custody and Transfer Statistics FY2023* (May 19, 2023), available at: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

utilizing new pathways to “create a more orderly and safe process for people fleeing the humanitarian and economic crisis in Venezuela.”<sup>44</sup> This was augmented in January, 2023, when the Department announced expanded parole programs for nationals of Nicaragua, Cuba, and Haiti.<sup>45</sup> The program permits nationals of those countries, and their immediate relatives, to seek parole when sponsored by someone with lawful status in the United States. It is worth noting that the sponsor need not be a relative of the beneficiary.

The result of these parole programs was a drop in border numbers and a marked decrease in parole utilized by Border Patrol. This is all smoke and mirrors however as it is supplanting one form of illegal entry for another. This is not to suggest that parole is akin to an illegal entry but a recognition that parole usage in this fashion, is unlawful.

#### *The Legal Immigration Backlog*

This committee is well aware of the vast number of pending matters presently before USCIS. As of December 31, 2022, USCIS reported a pending caseload of 8,841,152 matters. While the agency claims to want to reduce this number, actions speak louder than words. It was recently reported that USCIS adjudicators were being shifted from their assigned work in order to support operations along the southwest border.

While the extent of this shift is still relatively unknown, it is clear that any shift will have significant consequences for the adjudication of affirmative asylum cases as well as applications and petitions for immigration benefits. It is also important to remember that the latter group pays the fees that keep USCIS operational. Essentially, USCIS is taking resources away from the adjudications that fund the agency and thereby applicants for benefits are primarily funding, not their own adjudications, but the adjudication of credible fear matters along the border.

#### Conclusion

The Department of Homeland Security has taken many measures in the past two and a half years aimed at addressing the border crisis however it appears that no one thought to simply enforce the law as written. In an effort to remove barriers

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<sup>44</sup> Dep’t of Homeland Sec., *DHS Announces New Migration Enforcement Process for Venezuelans* (Oct. 12, 2022), available at: <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>.

<sup>45</sup> Dep’t of Homeland Sec., *DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes* (Jan. 5, 2023), available at: <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

and to create a subjectively orderly system, the Department has conflated law and policy and ensured that when the two were in conflict, that policy won the day. The memos that undermine grounds of inadmissibility and removability, the rules that undermine congressional action and established authorities, and the parole programs that are simply incongruous with the law paint a clear picture. The Department has, through its own actions, created the worst border crisis in American history. A return to the rule of law is the only cure at this point and it is incumbent upon Congress to use its oversight authority, in addition to its legislative authority, to repair the damage done by the Department.

Mr. McCLINTOCK. Great. Thank you for your testimony.  
Finally, Mr. Bradbury.

#### STATEMENT OF STEVE BRADBURY

Mr. BRADBURY. Thank you.

Chair McClintock, Ranking Member Jayapal, Mr. Nadler, and distinguished Members of the Committee. Far from faithfully carrying out its enforcement duties, the Biden Administration, with Secretary Mayorkis at the point, is flagrantly violating numerous provisions of our immigration laws, laws critical to the safety and security of the American people.

Here are some specific examples of the Secretary's violations of law. The use of parole to release tens of thousands of inadmissible aliens en masse into the U.S. each month violates INA's Section 212's express restrictions on parole, and it unlawfully circumvents the established procedures for refugee admissions under Section 207.

Further, because of lax vetting at our ports and an overstretched border force, there's no way to know how many of the millions allowed into the U.S., let alone the huge volume of gotaways who have evaded our Border Patrol, fall within the categories of dangerous aliens prohibited entry under Section 212.

Secretary Mayorkis has also ignored the mandatory detention and removal requirements of INA Section 235, and his directions to ICE not to take enforcement action against most deportable aliens defies Section 237. Under his watch, deportations have fallen to historic lows, while illegal immigration is at a record high.

In recent months, DHS has shifted to a new process equally unlawful of pre-registering aliens outside the U.S. for fast-track entry and release using the CBP One mobile app. This CBP One escort service is a shell game. It's a device for funneling the flow of illegal immigration through our ports of entry instead of between them. Meanwhile, unlawful entry overall remains unabated.

The claim that illegal border crossings have fallen 70 percent is a manipulated, distorted figure. It's a comparison to the highest week in the history of our country for illegal crossings, the week before the Title 41 program ended, when 10,000 illegals were encountered at the border. That's the comparison that gets to the 70-percent figure. It's false.

In sum, the Secretary is asserting power to overturn the laws Congress has enacted and replace them with new immigration pathways, as he calls them, of his own design, entirely new visa-like pipelines through which is streaming into our country an ever-rising flood of illegal immigration. This is a vast usurpation of law and of Congressional power by the Executive. These policies cannot be justified as an exercise of enforcement discretion.

Secretary Mayorkis' own actions have caused the crisis, and he's refused to employ the full scope of resources available to him, shuttering detention facilities, ending cooperation with border States, and abandoning the Remain in Mexico program. Not to be overlooked, he has also flouted his statutory duty as Secretary to protect the most vulnerable of migrant children from the scourge of human trafficking and abuse.

Together these violations of law have produced a colossal humanitarian disaster and a catastrophe for America. The victims include a sea of vulnerable migrants caught up in the horrendous grip of the cartels, the exploited children who are enslaved and abused within our own neighborhoods, and the everyday Americans across our land whose communities are ravaged by violence and crime, strained to the breaking point by unforeseen economic burdens, and infested with fentanyl. It's a grim picture for sure but one the American people must see.

We should all be grateful to you, Mr. Chair, for shining a bright light on these violations of law.

Thank you.

[The prepared statement of Mr. Bradbury follows.]

**Prepared Statement**

**For Hearing Entitled:**

**“The Border Crisis: Is the Law Being  
Faithfully Executed?”**

**Before the**

**Subcommittee on Immigration Integrity,  
Security, and Enforcement**

**of the**

**Committee on the Judiciary**

**U.S. House of Representatives**

**June 7, 2023**

**Steven G. Bradbury**  
*Distinguished Fellow*  
**The Heritage Foundation**

Chairman McClintock, Ranking Member Jayapal, and distinguished Members of the Committee, my name is Steve Bradbury, and I am a Distinguished Fellow at The Heritage Foundation.

Before joining Heritage, I served in the Trump administration as the Senate-confirmed General Counsel of the U.S. Department of Transportation, as the Acting Deputy Secretary of Transportation, and briefly as the Acting Secretary of Transportation.

Previously, during the administration of George W. Bush, I served as the Acting Assistant Attorney General and Principal Deputy Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice. In my position at the Justice Department, I advised the president and heads of executive departments on the requirements of federal law, including laws relating to immigration and homeland security.

The views I express in this statement and in my testimony before the Committee are my own and should not be construed as representing any official position of The Heritage Foundation.

I am grateful to the Committee for the opportunity to speak with you today about the important legal issues raised by the border security and immigration enforcement policies of the Biden administration.

### **Introduction**

Far from faithfully executing the laws they are charged with enforcing, Secretary Alejandro Mayorkas and the Biden administration have repeatedly violated and persist in violating numerous provisions of law central to the operation of our nation's immigration system and critical to the safety and security of the American people. No adverse court decision seems able to put an effective stop to these violations.

Through their ultra vires policies, Secretary Mayorkas and the president have arrogated to themselves the power to overturn the laws enacted by Congress and replace them with new and wholly unauthorized immigration "pathways" through which is streaming into our country an ever-rising flood of illegal immigration. Together, these violations have produced a colossal humanitarian disaster at our southern border and a generational catastrophe for communities across America.



Not to be overlooked, on top of his sweeping violations of the immigration laws, Secretary Mayorkas has also flouted his statutory duty to protect the most vulnerable of migrant children from the scourge of human trafficking and exploitation.

**The Available Pathways and Requirements for Lawful Immigration Are Defined by Congress, Not by the Executive Branch.**

Under Article I, section 8 of our Constitution, it is for Congress, not the executive branch, to establish the legal requirements governing immigration. Through enactment of the immigration laws, primarily the Immigration and Nationality Act, or INA, as amended by later enactments, Congress has established and defined the available pathways for lawful immigration. The executive branch does not have authority to create new pathways for foreign migrants to enter the U.S. that have not been expressly authorized by Congress. Rather, it is the duty of the executive faithfully to enforce the requirements of the immigration laws enacted by Congress.<sup>1</sup>

Congress has created various visa programs and defined other legal requirements for non-U.S. nationals to be allowed entry into the United States. Aliens seeking to enter the U.S. must have a visa or other proper documentation and must present themselves at a designated port of entry and be screened by officers of the Customs and Border Protection service, or CBP, of the Department of Homeland Security (DHS). Under sections 212 and 235 of the INA, if the alien does not have proper immigration documents or a legal basis for entry or if the alien attempts to cross the border illegally between ports of entry, the alien is inadmissible and must be turned away or removed from the United States.<sup>2</sup>

Under INA section 212(a), certain categories of aliens, including minors, who pose risks to the safety of Americans or to the security of the United States are inadmissible and, subject to very narrowly circumscribed waiver authorities, may not be granted entry even if they have proper immigration documents or a credible basis to claim asylum. These include, among others, persons with communicable diseases, violent criminals, gang members, repeat offenders, certain other categories of criminals, suspected terrorists, drug traffickers, smugglers, human traffickers, war

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<sup>1</sup> See *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (holding that Congress—not the president or executive branch officials—has the “complete and absolute power” over the subject of immigration and “plenary power” over the admission and exclusion of aliens).

<sup>2</sup> 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(7)(A)(i), & 1225(b)(1).

criminals, those who have committed immigration fraud or previously violated the immigration laws, and those affiliated with a Communist or other totalitarian party.<sup>3</sup>

Regarding *asylum*, under INA section 235(b)(1), any alien at the border who seeks to enter the U.S. by applying for asylum or by otherwise claiming a fear of persecution in his home country must be interviewed by an asylum officer, and if the officer finds that the alien lacks a credible fear of persecution within the meaning of the INA, the alien must be removed from the United States without further hearing, unless the alien appeals the credible-fear determination to an immigration judge.<sup>4</sup> Pending resolution of the alien’s asylum proceeding, the alien is subject to “*mandatory detention*”—specifically, section 235(b)(1)(B) declares that the alien “*shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.*”<sup>5</sup>

If the alien claiming asylum has arrived by land from a foreign territory contiguous to the U.S., such as Mexico, the Secretary “*may return the alien to that territory pending the resolution of the alien’s asylum proceeding.*”<sup>6</sup> This provision is the source of authority for the Migrant Protection Protocols (MPP), or so-called “Remain in Mexico Program,” put in place by the Trump administration and now largely abandoned by the Biden administration.

In contrast, aliens who are not already within the United States or physically at the U.S. border are not eligible to claim asylum status as a basis for entering the U.S. Rather, non-U.S. nationals who are outside the United States and who wish to enter based on claims that they face a fear of persecution in their home countries must apply for admission as *refugees*. In other words, asylum applicants and refugee applicants must both prove a similar fear of persecution, but the procedures available to each are different.

To be admitted to the U.S. as a refugee, the alien who is outside the U.S. must satisfy the established protocols for refugee admissions authorized by Congress under section 207 of the INA.<sup>7</sup> The U.S. Refugee Admissions Program (USRAP) is jointly administered by the Department of State and DHS, which work together with

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<sup>3</sup> See 8 U.S.C. § 1182(a).

<sup>4</sup> 8 U.S.C. § 1225(b)(1)(iii)(I).

<sup>5</sup> 8 U.S.C. § 1225(b)(1)(iii)(IV) (emphasis added).

<sup>6</sup> 8 U.S.C. § 1225(b)(2)(C) (emphasis added).

<sup>7</sup> See 8 U.S.C. § 1157(c).

the United Nations High Commissioner for Refugees, at locations around the world to identify, interview, and adjudicate applications for refugee protection.<sup>8</sup> Under the USRAP protocols, aliens applying for refugee protection are only allowed to travel to the U.S. and enter as refugees after they have been vetted by several law enforcement and intelligence agencies and DHS has granted their refugee applications. Generally, refugee admissions are subject to annual numerical limits, and, in addition to establishing the requisite fear of persecution, refugee applicants typically must show that they cannot secure safe haven in a third country.

Much has been made of the *parole* authority available to the Secretary of Homeland Security. Under INA section 212(d)(5)(A), the Secretary is given a very narrow authority to “parole” individual aliens into the United States for temporary periods but “*only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.*”<sup>9</sup> The recognized grounds for parole include, for example, situations where a particular alien needs to come into the United States temporarily to receive critical medical care or is needed to testify in the U.S. as a witness in an important criminal trial. These are situations, typically, where the alien parolee does not have time to obtain a visa.

Section 212(d)(5)(B), moreover, expressly prohibits the Secretary from paroling into the U.S. any alien who is a refugee—that is, who claims a right to enter the U.S. based on a fear of persecution—unless the Secretary determines that “*compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee.*”<sup>10</sup>

Finally, for aliens found within the interior of the country, INA section 237 governs *removal and deportation*. Section 237(a)(1) provides that any alien who is present in the U.S. in violation of the immigration laws or any alien found to have committed several types of crimes, terrorist activity, drug or human trafficking, or other misconduct “*is deportable.*”<sup>11</sup> Immigration and Customs Enforcement, or ICE, is the component of DHS responsible for arresting such aliens and initiating removal or deportation proceedings. Under section 236, ICE is required to take certain cate-

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<sup>8</sup> See U.S. Department of State, “Refugee Admissions: U.S. Refugee Admissions Program,” <https://www.state.gov/refugee-admissions>.

<sup>9</sup> 8 U.S.C. § 1182(d)(5)(A) (emphasis added).

<sup>10</sup> 8 U.S.C. § 1182(d)(5)(B) (emphasis added).

<sup>11</sup> 8 U.S.C. § 1227(a)(1) (emphasis added).

gories of deportable aliens into custody, including after they have served any sentence of incarceration, and is prohibited from releasing such aliens pending removal or deportation proceedings except in very narrow circumstances.<sup>12</sup>

**The Biden Administration Is Deliberately Violating Numerous Provisions of the Immigration Laws.**

Acting in pursuit of the President’s immigration policy agenda, Homeland Security Secretary Alejandro Mayorkas has purposefully violated and continues to violate every one of the INA provisions described above, including by purporting to create expansive new “pathways” for immigration that are illegal because they have never been approved by Congress and conflict with the express terms of the statutes Congress has enacted.

***Violations of INA Section 212’s Restrictions on the Scope and Use of Parole***

Let’s take parole first. Under Secretary Mayorkas’s supervision and at his direction, DHS has released and continues to release tens of thousands of aliens every month into the United States through mass parole in violation of the express requirements of INA section 212(d)(5)(A).

Among other questionable uses of categorical parole, Secretary Mayorkas created “Operation Allies Welcome” as a means of paroling 73,000 Afghan evacuees directly into the U.S. in the wake of the Biden administration’s chaotic abandonment of Afghanistan, rather than relocating them to a safe third country where they could apply for refugee protection through theUSRAP process.<sup>13</sup> Even if there were urgent humanitarian reasons and significant public benefits associated with the mass parole of Afghan evacuees, the Afghan parole program was not administered in a manner that would advance those interests. The DHS Inspector General reported that the Afghans were not adequately screened,<sup>14</sup> despite Secretary Mayorkas’s contrary assurances to Congress and the American public, and that DHS failed to track Afghan parolees who were allowed to walk away from the military bases where they

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<sup>12</sup> See 8 U.S.C. § 1226(c).

<sup>13</sup> See Department of Homeland Security, “Operation Allies Welcome,” <https://www.dhs.gov/allieswelcome>.

<sup>14</sup> Department of Homeland Security, Office of Inspector General, “DHS Encountered Obstacles to Screen, Vet, and Inspect All Evacuees During the Recent Afghanistan Crisis (Redacted),” OIG-22-64, September 6, 2022, <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-64-Sep22-Redacted.pdf>.

were initially housed.<sup>15</sup> The Inspector General further reported that DHS did not attempt to locate all Afghans who left the bases to verify their compliance with parole conditions.<sup>16</sup>

Following the flawed model used for the Afghan evacuees, Secretary Mayorkas created five additional nationality-based mass-parole programs to bring other large populations of aliens into the U.S. First, in April 2022, DHS announced the “Uniting for Ukraine” parole program, with a commitment to allow 100,000 Ukrainians entry into the U.S.<sup>17</sup> Then, in October 2022, DHS created a “Parole Process for Venezuelans” for up to 24,000 beneficiaries, modeled on the Uniting for Ukraine parole process.<sup>18</sup> Most recently, in January 2023, DHS established mass parole programs for Cubans, Haitians, and Nicaraguans, which, combined with the program for Venezuelans, was intended to bring to the U.S. up to 30,000 aliens per month from the four countries.<sup>19</sup> Even apart from the January announcement, CBP reported that it was already paroling many tens of thousands of aliens into the U.S. each month (designated as “humanitarian release”), including more than 140,000 in December 2022 alone.<sup>20</sup>

Secretary Mayorkas does not have authority to create what are effectively new visa programs for hundreds of thousands of aliens annually from Cuba, Haiti, Nicaragua, Venezuela, and elsewhere. Only Congress has such authority. These parole programs violate the law because they fail each of section 212(d)(5)(A)’s three required limiting factors: The parole decisions are not made for individual aliens on a case-by-case basis, they involve no real assessment of humanitarian need, let alone an urgent need, and they advance no significant public benefit. The purposes they

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<sup>15</sup> Department of Homeland Security, Office of Inspector General, “The Unified Coordination Group Struggled to Track Afghan Evacuees Independently Departing U.S. Military Bases,” OIG-22-79, September 29, 2022,

<sup>16</sup> *Ibid.*

<sup>17</sup> Department of Homeland Security, “Uniting for Ukraine,” <https://www.dhs.gov/ukraine>.

<sup>18</sup> Notice, Department of Homeland Security, “Implementation of a Parole Process for Venezuelans,” 87 Federal Register 63507 (October 19, 2022), <https://www.federalregister.gov/documents/2022/10/19/2022-22739/implementation-of-a-parole-process-for-venezuelans>.

<sup>19</sup> Department of Homeland Security, Press Release, “DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes,” January 5, 2023, <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

<sup>20</sup> U.S. Customs and Border Protection, “Custody and Transfer Statistics FY2023,” <https://www.cbp.gov/node/380450>.

serve are inconsistent with section 212: Mayorkas created these new streamlined channels, unauthorized by Congress, for the purpose of quickly processing vastly increased numbers of inadmissible aliens into the U.S. in furtherance of the Biden administration's policy goals.

In the course of an opinion addressing termination of the Remain in Mexico Program (a decision reversed on other grounds by the Supreme Court), the U.S. Court of Appeals for the Fifth Circuit condemned Secretary Mayorkas's parole policies in December 2021, calling them "the opposite of *case-by-case* decision-making,"<sup>21</sup> and concluding that they "ignor[e] the limitations Congress imposed on the parole power" and are best described as "*mis*enforcement, suspension of the INA, or both."<sup>22</sup> Notwithstanding the Fifth Circuit's strong condemnation, Secretary Mayorkas has continued to rely upon and, indeed, to expand his unlawful use of mass parole.

Texas and 20 other states have now filed suit challenging DHS's mass parole programs for Haitians, Cubans, Venezuelans, and Nicaraguans. The 21 states are seeking to enjoin these programs as a violation of law, and the case is currently scheduled for a bench trial in federal district court at the end of the summer.<sup>23</sup>

#### ***Violation of INA Section 212's Restrictions on Parole of Refugees***

Secretary Mayorkas is also mass-paroling aliens he himself characterizes as refugees or asylum seekers, in direct violation of section 212(d)(5)(B)'s prohibition on the parole of any refugee into the U.S. unless there are "*compelling reasons*" requiring that "*that particular alien*" be admitted by parole rather than going through the USRAP process for refugee admissions under INA section 207—a process Secretary Mayorkas is deliberately circumventing.

By treating the masses of aliens who illegally enter the U.S. as *de facto* refugees—calling them "asylum seekers" and "people fleeing humanitarian

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<sup>21</sup> *Texas v. Biden*, No. 21-10806 (5th Cir. 2021), p. 4 (emphasis in original).

<sup>22</sup> *Ibid.*, pp. 105-06 (emphasis in original).

<sup>23</sup> See *Texas v. U.S. Department of Homeland Security*, Case No. 6:23-cv-7 (S.D. Tex. 2023), [https://www.courtlistener.com/?type=r&q=docket\\_id:66754800](https://www.courtlistener.com/?type=r&q=docket_id:66754800); see also <https://www.courtlistener.com/docket/66754800/156/state-of-texas-v-us-department-of-homeland-security/> (latest joint proposed scheduling order).

crises”<sup>24</sup>—but without taking the steps necessary to establish that they actually qualify as refugees within the requirements of the INA, Secretary Mayorkas created the humanitarian disaster we have seen unfold at our southern border over the past two-plus years.

Publicly telegraphing that almost any alien coming to our border, particularly unaccompanied children,<sup>25</sup> would be welcomed into the U.S. if they asserted a fear of returning to their home countries, he personally encouraged millions of men, women, and children, including hundreds of thousands of unaccompanied minors, to make the dangerous trek to and through Mexico, putting themselves at the mercy of drug cartels, smugglers, and human traffickers.

Just as bad, he has telegraphed to millions of aliens who may consider making this trek in the future that they can enter the U.S. “lawfully” if they claim a fear of returning to their home country, thereby encouraging asylum fraud.<sup>26</sup> As the Secretary well knows, the overwhelming majority of the millions of illegal aliens encountered at our southern border due to the Biden administration’s policies<sup>27</sup> have come to the U.S. for economic reasons, not from any fear of persecution.<sup>28</sup>

Other countries have already offered and provided some of these same aliens safe haven, making them unlikely to qualify as refugees even if they had a true fear of persecution. For example, Ukrainians have been offered safe resettlement and

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<sup>24</sup> Secretary Alejandro Mayorkas, Remarks, “Secretary Mayorkas Delivers Remarks on DHS’s Continued Preparation for the End of Title 42 and Announcement of New Border Enforcement Measures and Additional Safe and Orderly Processes,” January 5, 2023, <https://www.dhs.gov/news/2023/01/05/secretary-mayorkas-delivers-remarks-dhss-continued-preparation-end-title-42-and>.

<sup>25</sup> Alejandro Mayorkas, Interview with Chris Wallace, Fox News Sunday, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>26</sup> Secretary Mayorkas stated that these parole programs “create additional safe and orderly processes for people fleeing humanitarian crises to lawfully come to the United States.” *Ibid.*

<sup>27</sup> Santiago Perez and Michelle Hackman, “Record Numbers of Migrants Arrested at Southern Border, With Two Million Annual Total in Sight,” *The Wall Street Journal*, August 15, 2022, <https://www.wsj.com/articles/illegal-immigration-arrests-hit-record-reasons-for-border-crossings-changing-11660599304>.

<sup>28</sup> U.S. Department of Justice, Executive Office for Immigration Review, “Adjudication Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim,” data generated October 13, 2022, <https://www.justice.gov/eoir/page/file/1062976/download>.

employment authorization in eastern European countries;<sup>29</sup> Chile and Brazil provided resettlement and documentation to Haitians for years.<sup>30</sup> Yet many Ukrainians bypassed eastern Europe for the U.S., and other aliens discarded their South and Central American resettlement documents after crossing our border to claim a fear of returning to their home countries, knowing that doing so was the way to enter and remain in the U.S. under Secretary Mayorkas's policies.

And some of these parolees have undoubtedly come for malign and illicit reasons, including drug trafficking for the powerful Mexican and Latin drug cartels, human trafficking, or terrorist purposes, which would render them inadmissible regardless of any claim of persecution.

In short, an overwhelming percentage of the aliens who have entered the U.S. under Mayorkas's parole programs neither qualify as refugees nor meet the strict standards for case-by-case parole into the U.S.

In deliberately paroling every month tens of thousands of illegal and inadmissible aliens he calls asylum seekers, Secretary Mayorkas is flagrantly violating section 212(d)(5)(B), and all decisions and actions taken to advance these mass-parole programs are unlawful.

#### ***Other Violations of INA Section 212***

Because he is not conducting adequate individualized vetting of the huge volume of mass-released aliens, Secretary Mayorkas is also violating the provisions of INA section 212(a) that declare various categories of dangerous aliens "inadmissible." There is simply no way of knowing how many of the millions of aliens Mayorkas has released into the U.S. (or of the estimated 2 million "got-aways" who have illegally crossed the southern border and evaded Border Patrol during Mayorkas's tenure<sup>31</sup>) fall into these categories of dangerous aliens that Congress has prohibited from entering the U.S.

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<sup>29</sup> Andreea Ofiteru, "Thousands of Ukrainians Seek Safety in Romania, Moldova, and Poland, as They Flee Russian Invasion," Radio Free Europe, February 25, 2022, <https://www.rferl.org/a/ukraine-refugees-russian-invasion-poland-romania-moldova/31723527.html>.

<sup>30</sup> Juan Montes and Santiago Perez, Haitian Migrants, Rebuffed by U.S., Cause Crisis for Mexico," *The Wall Street Journal*, September 23, 2021, <https://www.wsj.com/articles/haitian-migrants-rebuffed-by-u-s-now-cause-crisis-for-mexico-11632430460>.

<sup>31</sup> Stephen Dinan, Border Numbers Worsened in October; Historic Number of Gotaways, *The Washington Times*, November 5, 2022, <https://www.washingtontimes.com/news/2022/nov/5/border-numbers-wor->



For example, Secretary Mayorkas has repeatedly stated that unaccompanied alien minors will not be turned back from our border.<sup>32</sup> These statements have encouraged historic numbers of illegal alien minors to cross unaccompanied,<sup>33</sup> including teen-aged MS-13 gang members, who are then released into the U.S. One such 17-year-old gang member allowed into the country under Mayorkas's policies was arrested for strangling 20-year-old Kayla Hamilton to death in July 2022, only months after being released into the U.S.<sup>34</sup>

In fiscal year (FY) 2022, the U.S. Border Patrol encountered 98 aliens on the Terrorist Screening Dataset (TSDS) between the ports of entry.<sup>35</sup> In just the first seven months of FY2023, the Border Patrol has encountered 96 such aliens on the southern border and 2 on the northern border.<sup>36</sup> In FY 2021, the Border Patrol encountered 16 aliens on the TSDS.<sup>37</sup> By comparison, the Border Patrol had encountered only 3 in FY 2020.<sup>38</sup> Mayorkas must know that his policies have allowed some number of suspected terrorists to come into America's communities.

Similarly, in FY 2022, CBP arrested 40,359 individuals with criminal convictions or who were wanted by law enforcement,<sup>39</sup> and in FY 2021, CBP made 28,213 such arrests.<sup>40</sup> By comparison, CBP arrested 18,609 criminal aliens in FY

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[ened-october-historic-number-go/](#). Many additional got-aways have crossed the southern border since this article was published.

<sup>32</sup> CBS This Morning, Interview of Secretary Alejandro Mayorkas, March 18, 2021; Brooke Singman, "Biden DHS Secretary Promises US will Not Expel Unaccompanied Minors," Fox News, March 18, 2021, <https://www.foxnews.com/politics/biden-dhs-secretary-promises-us-will-not-expel-unaccompanied-minors>.

<sup>33</sup> U.S. Customs and Border Protection, "Southwest Land Border Encounters," <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>34</sup> Jon Feere, "MS-13 Member Suspect Entered as a UAC," Center for Immigration Studies, January 22, 2023, <https://cis.org/Feere/Scoop-MS13-Murder-Suspect-Entered-UAC>.

<sup>35</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, "CBP Enforcement Statistics Fiscal Year 2023."

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, "CBP Enforcement Statistics Fiscal Year 2023."

<sup>40</sup> *Ibid.*

2020.<sup>41</sup> Mayorkas knows or should know that he is allowing an increasing number of dangerous criminals to pass over the border and infiltrate cities and towns across our nation, putting America's families at risk.

***Violations of INA Section 235***

Secretary Mayorkas's policy of treating illegal aliens encountered at our southern border as asylum seekers, while knowing most are not eligible for asylum under the law, and his policy of promptly releasing these same aliens into the U.S. without restraint<sup>42</sup> defy the mandatory detention and removal requirements of section 235 and treat the statute with contempt.

The results of these policies are predictable. In just his first year in office, Secretary Mayorkas authorized the release of at least 47,000<sup>43</sup> known illegal aliens who were required to be detained under the INA, and he did so with certain knowledge that not all detention resources were being used and that those released aliens would disappear into the United States and would not likely be removed. Objective observers can only conclude that that was his intention. As of early this year, CBP reported that it was paroling tens of thousands of aliens with alternatives to detention (ATD) each month, including over 95,000 in September 2022.<sup>44</sup>

DHS itself has reported that illegal aliens who are continuously detained by DHS are highly likely (97%) to be successfully removed from the U.S.,<sup>45</sup> while the

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<sup>41</sup> *Ibid.*

<sup>42</sup> Memorandum to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement; Troy Miller, Acting Commissioner, U.S. Customs and Border Protection; Ur Jaddou, Director, U.S. Citizenship and Immigration Services; Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans; Katherine Culliton-Gonzalez, Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties; and Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, from Alejandro N. Mayorkas, Secretary, "Subject: Guidelines for the Enforcement of Civil Immigration Law," U.S. Department of Homeland Security, September 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> (hereafter "Mayorkas Memorandum, September 30, 2021").

<sup>43</sup> Anna Giaritelli, "47,705 Migrants Released with Instructions to Report to Ice Have Gone Missing Under Biden," *Washington Examiner*, January 11, 2022, <https://www.washingtonexaminer.com/news/47-705-migrants-released-with-instructions-to-report-to-ice-have-gone-missing-under-biden>.

<sup>44</sup> U.S. Customs and Border Protection, "Custody and Transfer Statistics FY2022," <https://www.cbp.gov/node/374051/printable/print>.

<sup>45</sup> Department of Homeland Security, "Fiscal Year 2021 Enforcement Lifecycle Report," November 2022, p. 3, [https://www.dhs.gov/sites/default/files/2022-12/2022\\_1114\\_plev\\_enforcement\\_lifecycle\\_report\\_fy2021.pdf](https://www.dhs.gov/sites/default/files/2022-12/2022_1114_plev_enforcement_lifecycle_report_fy2021.pdf); Department of Homeland Security, "Fiscal Year 2020 Enforcement Lifecycle Report," December 2020, pp. 17-18,

vast majority (82%) of those who are not removed directly by CBP or continuously detained by ICE end up remaining in the U.S. for years.<sup>46</sup> DHS has further reported that illegal aliens who are not removed within 12 months of being encountered are “rarely repatriated after that.”<sup>47</sup>

In March of this year, in a suit brought by the state of Florida, the U.S. District Court for the Northern District of Florida invalidated DHS’s “Parole Plus Alternatives to Detention” policy, concluding that it was an unlawful attempt to evade the mandatory detention requirements of section 235.<sup>48</sup>

In its opinion, the district court pointed out that even the witnesses for the Biden administration had acknowledged that “there is nothing inherently inhumane or cruel about detaining aliens pending completion of their immigration proceedings,” and the court found that detention “is the surest way”—in many cases, the only way—to guarantee that aliens “will not abscond” before the proceedings are finished.<sup>49</sup>

The court determined that the immigration policies pursued by the Biden administration, including the mass release of aliens, “were akin to posting a flashing ‘Come In, We’re Open’ sign on the southern border.”<sup>50</sup> This was an “appropriate analogy,” the court stated, “not only because it is a fair characterization of what” the administration is doing, but also because DHS had argued at trial that it “could not simply hang a ‘Closed’ sign on the border”—a claim the court found “disingenuous,” since federal law “specifically authorizes the President to ‘suspend the entry of all aliens’ whenever he finds that their entry would be ‘detrimental to the interests of the United States.’”<sup>51</sup>

According to the court, the evidence showed that the “unprecedented ‘surge’ of aliens that started arriving ... almost immediately after President Biden took office and that has continued unabated over the past two years is a predictable

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[https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special\\_Reports/Enforcement\\_Lifecycle/2020\\_enforcement\\_lifecycle\\_report.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special_Reports/Enforcement_Lifecycle/2020_enforcement_lifecycle_report.pdf).

<sup>46</sup> Fiscal Year 2021 Enforcement Lifecycle Report, p. 3.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Florida v. United States*, Case No. 3:21-cv-1066 (N.D. Fla. Mar. 8, 2023), <https://www.courtlistener.com/docket/60493921/157/state-of-florida-v-united-states/>.

<sup>49</sup> *Ibid.*, p. 8.

<sup>50</sup> *Ibid.*, p. 18.

<sup>51</sup> *Ibid.*, p. 18, footnote 12.

consequence of these actions.”<sup>52</sup> As the chief of the Border Patrol had testified at trial, such surges in immigration occur “when there are no consequences” to illegal entry and when aliens know “they will be released into the country.”<sup>53</sup> In this way, the court found, the Biden administration’s policies themselves had “incentivized” the mass influx of illegal migration to the U.S.<sup>54</sup>

DHS urged that the huge increase in the number of aliens being released was “attributable to something other than a change in policy (such as the post-pandemic increase in migration),” but the court found that claim “simply not credible” and “contrary to the weight of the evidence.”<sup>55</sup>

DHS also claimed that it was forced to release huge numbers of aliens because of a lack of sufficient detention capacity. This argument echoed Secretary Mayorkas’s own often-repeated refrain that our nation’s immigration system is “broken” because our laws, including section 235’s mandatory detention requirement, are outdated and were not designed to handle today’s immigration crisis. On that basis, Mayorkas and the Biden administration have asserted the ultra vires power to rewrite those laws.

But the district court in Florida found that, in contrast to the Trump administration, which had submitted budget requests for increased detention space, the Biden administration has been steadily closing detention facilities and reducing the appropriations requested for detention facilities. The court concluded that it was hard to take the claim of impossibility seriously when DHS had “elected not to use one of the tools provided by Congress” and had “continued to ask for less detention capacity.” As the court reasoned:

“The fact that DHS must make those ‘tough decisions’ does not mean that it has free rein to adopt policies that contravene the clear mandates in the INA or create ‘processing pathways’ that contort statutory language to effectuate its preferred policy of ‘alternatives to detention’ over actual detention.”<sup>56</sup>

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<sup>52</sup> *Ibid.*, pp. 18-19.

<sup>53</sup> *Ibid.*, p. 19.

<sup>54</sup> *Ibid.*, p. 21.

<sup>55</sup> *Ibid.*, p. 38.

<sup>56</sup> *Ibid.*, p. 12.

DHS also assured the court that “it is screening arriving aliens ... to determine if they are a public safety threat,” but the court found that “the more persuasive evidence establishes that DHS cannot reliably make that determination.” “DHS has no way to determine if an alien has a criminal history in his home country,” the court found, “unless that country reports the information to the U.S. government or the alien self-reports.” So DHS was “mainly only screening aliens at the border to determine if they have previously committed a crime *in the United States*”—a question of little to no value, since “many of these aliens are coming to the United States for the first time.”<sup>57</sup>

Following the court’s order, DHS attempted to put a variation of the challenged policy, relabeled “Parole with Conditions,” back into place. Florida quickly challenged it, and the district court entered an injunction blocking the replacement policy based on the reasoning of the court’s earlier decision.<sup>58</sup> DHS has now appealed both rulings to the Eleventh Circuit.

#### ***Creating Unlawful Immigration Pathways Using the CBP One Mobile App***

In recent months, Secretary Mayorkas has shifted to an even more unlawful process of pre-registering aliens outside the U.S. for mass entry and release using the “CBP One” mobile app. Through this app, DHS has orchestrated the pre-registration of tens of thousands of these aliens, including with the assistance of non-governmental organizations (NGOs) and foreign governments.<sup>59</sup> The aliens who have pre-registered using the app are then left to find their way to a U.S. point of entry, including along the southern border, in many cases presumably still with the assistance of drug cartels or smugglers.

Contrary to the Secretary’s misleading rhetoric, this new process is not an “enforcement measure.”<sup>60</sup> Instead, it furthers and facilitates Mayorkas’s existing policies of non-enforcement. While it has allowed Mayorkas and the White House to claim an improvement in the crisis at the border and a lessening of the strain on Border Patrol agents between the ports, as a legal matter, the CBP One process has

<sup>57</sup> *Ibid.*, p. 35 (emphasis in original).

<sup>58</sup> See *Florida v. Mayorkas*, Case No. 3:23-cv-9962 (N.D. Fla. May 16, 2023), Preliminary Injunction, <https://www.courtlistener.com/docket/67367309/30/state-of-florida-v-mayorkas/>.

<sup>59</sup> See Todd Bensman, *Biden’s Immigration Magic Trick*, Newsweek, January 24, 2023.

<sup>60</sup> See DHS Press Release, “Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures,” January 25, 2023.

only *institutionalized* DHS's violations of law by creating a new channel for attracting and enabling an ever-increasing stream of illegal immigration in violation of INA sections 212 and 235, which now must be handled by CBP inspectors at ports of entry.

Through this channel, tens of thousands of aliens from all over the world continue to flow into the U.S. each month without the procedures and individualized assessments required by law—albeit now they are coming via official ports of entry. And they continue to be released *en masse* into the interior, either by parole or as asylum applicants.<sup>61</sup> Once released, most are still being transported surreptitiously by DHS or through the agency of NGOs to every part of our nation, with no consideration for the effects this dispersion is having on the safety and resources of local communities.

The illegal flow of aliens into the U.S. remains unabated and, in fact, is increasing,<sup>62</sup> while the appearance of a more orderly processing system gives Mayorkas a greater ability to conceal his actions and the effect of his policies from the American people.<sup>63</sup>

It is clear that DHS will be applying this mass-release, pre-registration process to many more aliens than the four national groups (Cubans, Haitians, Nicaraguans, and Venezuelans) cited in the Department's January 25 press release.<sup>64</sup>

In proposing its recent rule misleadingly entitled "Circumvention of Lawful Pathways,"<sup>65</sup> DHS announced that it intended to apply a rebuttable presumption that an alien is ineligible for asylum in the U.S. if the alien had traveled through a third

<sup>61</sup> See Andrew R. Arthur, "What's Biden Doing with Migrants at the Ports of Entry?," Center for Immigration Studies, May 30, 2023, <https://cis.org/Arthur/Whats-Biden-Doing-Migrants-Ports-Entry>.

<sup>62</sup> See <https://datavisualizations.heritage.org/immigration/illegal-alien-encounters-surge-and-shift-under-biden/> (charts displaying the rising tide of illegal alien encounters at the U.S. border).

<sup>63</sup> See Mark Krikorian, "Biden hides the truth at the border—he's letting in thousands," *New York Post*, May 31, 2023, <https://nypost.com/2023/05/31/biden-hides-the-truth-at-the-border-hes-letting-in-thousands/>.

<sup>64</sup> *Ibid.* See Camilo Montoya-Galvez, "U.S. plans to admit nearly 40,000 asylum-seekers per month through mobile app," *CBSNews.com*, May 31, 2023, <https://www.cbsnews.com/news/asylum-seekers-cbp-one-mobile-app-u-s-plans-admit-nearly-40000-monthly/>; Andrew R. Arthur, "CBP One App Will Have Real Blood on Its Metaphorical Hands," Center for Immigration Studies, January 26, 2023, <https://cis.org/Arthur/CBP-One-App-Will-Have-Real-Blood-Its-Metaphorical-Hands>.

<sup>65</sup> <https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways>.

country on his way to the U.S. without seeking asylum protection unless one of several exceptions applies. Among the exceptions: the alien used the CBP One app to schedule an appointment for processing at a port of entry or the alien was unable to access the CBP One app because the app was not functioning properly or the alien had no mobile phone.

This rulemaking announcement confirms that DHS plans to rely on the CBP One channel as the main pipeline (or, as Mayorkas likes to say, “pathway”) through which it will unlawfully funnel into the U.S. the mass flow of aliens of any nationality that Mayorkas has described as “asylum seekers,” in addition to parolees.

For this reason, on May 23, 2023, the state of Texas filed a new lawsuit aimed at challenging the legality of DHS’s use of the CBP One app by challenging the “Circumvention of Lawful Pathways” rulemaking under the Administrative Procedure Act.<sup>66</sup> Similarly, 18 other states have filed a parallel suit in the U.S. District Court for the District of North Dakota, also challenging the Circumvention rule because of its key reliance on parole and the CBP One app—the so-called “orderly pathways” of immigration that DHS claimed in proposing the rule “are authorized separate from this rulemaking.”<sup>67</sup>

The indirect nature of the Texas and Indiana challenges to the CBP One process and the reliance on parole demonstrate how DHS under Secretary Mayorkas has persistently attempted to evade legal challenges to its immigration policies by not issuing those policies as formal agency actions that would be subject to immediate review in court. It is easy to see why: almost every time Mayorkas’s policies have been addressed in a court challenge, they have been rejected or condemned as unlawful. But through all his various judicial slap downs, Secretary Mayorkas remains a man on a mission, ever pushing forward the Biden administration’s open-border policies.

#### ***Violations of INA Section 237***

Secretary Mayorkas has also restricted ICE personnel from initiating removal or deportation proceedings against most deportable aliens who are in the U.S. He

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<sup>66</sup> See Rebecca Santana, “Texas sues Biden administration over asylum rule, saying phone app encourages illegal immigration,” *APNews.com*, May 24, 2023, <https://apnews.com/article/texas-paxton-cbpone-immigration-border-asylum-5ad591deb956bb192f84c13b64620fc0>.

<sup>67</sup> *Indiana v. Mayorkas*, Case No. 1:23-cv-106 (D.N.D. 2023), Complaint, p. 34 (quoting 88 Fed. Reg. at 31,410), [https://ago.mo.gov/docs/default-source/press-releases/lawful-pathways-filed-complaint.pdf?sfvrsn=f7a3f46f\\_2](https://ago.mo.gov/docs/default-source/press-releases/lawful-pathways-filed-complaint.pdf?sfvrsn=f7a3f46f_2).

issued a directive, the “Mayorkas Memorandum,” ostensibly based on “prosecutorial discretion,” taking the position that the fact that an alien is “removable” under the immigration laws “should not alone be the basis of an enforcement action against” the alien.<sup>68</sup> And he authorized and encouraged ICE attorneys to misuse prosecutorial discretion to dismiss or administratively close cases to avoid pursuing deportations and removals.<sup>69</sup> These actions have contradicted the plain terms of INA section 237(a)(1).

Mayorkas’s enforcement (or, rather, non-enforcement) directives had the intended effect: During Fiscal Year 2021, ICE carried out only 59,000 deportations,<sup>70</sup> the lowest total since 1995, even though the number of illegal aliens apprehended reached record highs in FY 2021.

The U.S. District Court for the Southern District of Texas invalidated the Mayorkas Memorandum in relevant part in June 2022,<sup>71</sup> but Mayorkas later replaced it with a new ICE “prosecutorial discretion” directive<sup>72</sup> that appears, based on deportation numbers, to achieve much the same result, allowing most removable aliens to remain indefinitely in the U.S.

While the number of deportations in FY 2022 rose to 72,177 following the adverse court ruling,<sup>73</sup> that number was still historically low. In FY 2020, for example, ICE deported 185,884 aliens, itself an unusually low number because of the COVID-19 pandemic.<sup>74</sup> Despite Mayorkas’s claim that he prioritizes DHS

<sup>68</sup> Mayorkas Memorandum, September 30, 2021.

<sup>69</sup> Memorandum for All OPA Attorneys from Kerry E. Doyle, Principal Legal Advisor, “Subject: Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion,” U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, April 3, 2022, [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf).

<sup>70</sup> U.S. Immigration and Customs Enforcement, “ICE Annual Report Fiscal Year 2021,” March 11, 2022, p. 9, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2021.pdf>.

<sup>71</sup> *Texas v. United States*, No. 6:21-cv-0016 (S.D. Tex 2022)

<sup>72</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor,” <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>.

<sup>73</sup> U.S. Immigration and Customs Enforcement, “ICE Annual Report Fiscal Year 2022,” December 30, 2022, p. 18, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

<sup>74</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2020*, December 23, 2020, p. 4, <https://www.ice.gov/doclib/news/library/reports/annual-report/iceReportFY2020.pdf>.



resources for the removal of the most serious criminal offenders, the number of removals of convicted felons dropped under his tenure from 36,000 in FY 2020 to 27,000 in FY 2021,<sup>75</sup> and his lax enforcement policies resulted in a 71% decline in removals of deportable aliens who came to ICE's attention as a result of a local criminal arrest.<sup>76</sup>

Secretary Mayorkas has championed all of these results publicly, touting that his policies have “fundamentally changed” interior immigration enforcement.<sup>77</sup> Indeed, Despite the court order vacating his underlying enforcement memorandum, Mayorkas has continued to encourage ICE attorneys to misuse prosecutorial discretion rather than prosecute cases, thereby ignoring Congress's will in section 237 and the intent of the court order.

### *De Facto Suspensions of the Laws*

Through these various policies, President Biden and Secretary Mayorkas have, in effect, arrogated to themselves a sweeping power to suspend key provisions of the immigration laws they are entrusted with faithfully enforcing. There is no justification for the Biden administration's lawlessness.

The Department of Justice has tried to defend Mayorkas's policies against challenge in court by arguing that he is acting within the scope of his enforcement discretion because of the extraordinary volume of illegal aliens attempting to enter the U.S., the humanitarian issues presented, and the Secretary's need to allocate and manage limited resources in response. But, as the U.S. District Court for the Northern District of Florida held, these arguments are unavailing.

It is Secretary Mayorkas's own actions that have attracted the record high number of inadmissible and deportable aliens to our border and that have enabled and facilitated the dispersion of this wave of illegal aliens into and throughout the U.S. Furthermore, he has closed down detention facilities and stopped cooperating with border states, thus making no effort to use the full scope of enforcement resources available to him. And, of course, the Biden administration's decisions to

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<sup>75</sup> Jessica M. Vaughan, “Interior Immigration Enforcement Decline Under Biden: State and Local Statistics,” Center for Immigration Studies, December 8, 2022, <https://cis.org/Report/Interior-Immigration-Enforcement-Decline-Under-Biden-State-and-Local-Statistics>.

<sup>76</sup> *Ibid.*

<sup>77</sup> Camilo Montoya-Galvez, “After 1 Year and Many Changes, Biden's Immigration Record Frustrates Opponents and Allies Alike,” *CBSNews.com*, updated January 20, 2022, <https://www.cbsnews.com/news/immigration-biden-first-year-title-42-ice-texas/>.

terminate the Remain in Mexico Program and to stop construction on the southern border wall have contributed greatly to the huge volume of asylum seekers who are subject to mandatory detention under INA section 235.

In requiring executive officers to carry out their legal duties “faithfully,” our Founders rejected any notion that the president or the heads of executive departments like Secretary Mayorkas could ever claim such power to suspend the laws they are responsible for enforcing when those laws are perfectly constitutional.

### *Violation of INA Section 103*

Secretary Mayorkas has also acted in contravention of section 103(g) of the INA, which states:

“The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of [the Homeland Security Act].”<sup>78</sup>

Since before enactment of the Homeland Security Act in 2002, the Executive Office for Immigration Review within the Department of Justice has been the agency with jurisdiction to review asylum officers’ findings of credible fear. The Homeland Security Act retained that jurisdictional arrangement. Notwithstanding the clear requirements of section 103, Mayorkas approved the promulgation of an interim final rule asserting asylum officer jurisdiction over asylum officer’s findings of credible fear, removing immigration judges, ICE attorneys, and the adversarial process from credible fear asylum cases.<sup>79</sup> In the interim final rule, Mayorkas generally adopted the discussion in his notice of proposed rulemaking, where he

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<sup>78</sup> 8 U.S.C. § 1103(g)(1); H.R. 5005, Homeland Security Act of 2002, Public Law 107-296, 107th Congress, November 25, 2002.

<sup>79</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office for Immigration Review, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” Interim Final Rule, *Federal Register*, Vol. 87, No. 60 (March 29, 2022), pp. 18078–18226, <https://www.govinfo.gov/content/pkg/FR-2022-03-29/pdf/2022-06148.pdf>.

used his own policy-created border crisis and surge of asylum cases to justify a need to “streamline” the credible fear asylum process.<sup>80</sup>

Without an adversarial process, the predictable outcome of this statutory and jurisdictional violation will be increased grants of asylum by DHS, which will encourage even more illegal aliens to submit fraudulent asylum claims.

**Secretary Mayorkas Has Violated Section 235 of the Trafficking Victims Protection Reauthorization Act of 2008.**

Finally, it is no stretch to conclude that Secretary Mayorkas has acted in contravention of section 235 (entitled “Enhancing Efforts to Combat the Trafficking of Children”) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (the TVPRA).<sup>81</sup> Among other things, that provision commands the Secretary of Homeland Security, along with the Secretary of Health and Human Services (HHS), the Attorney General, and the Secretary of State, to “establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.”<sup>82</sup>

Every time a child who has been brought into the country under his lax enforcement policies has become the victim of abuse and exploitation by sex traffickers or other criminals, Mayorkas has failed faithfully to carry out his obligations under the TVPRA.<sup>83</sup>

Although he likes to label his policies “humane,” Mayorkas well knows (or has willfully blinded himself to the fact) that these policies have enticed an uncontrolled stream of illegal aliens to cross into the U.S., including a record number of unaccompanied children. In FY 2021, CBP encountered approximately 147,000

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<sup>80</sup> *Ibid.*, p. 18079. See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office for Immigration Review, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” Notice of Proposed Rulemaking, *Federal Register*, Vol. 86 (August 20, 2021), pp. 46906, 46907-46909.

<sup>81</sup> H.R. 7311, Public Law No. 110-457, 110th Cong., December 23, 2008, <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>.

<sup>82</sup> *Ibid.*, p. 35, 122 Stat. 5077.

<sup>83</sup> See Kelly Laco, “HHS ‘Knowingly’ Transferred Migrant Children to Criminals, Sex Traffickers, GOP Senators Charge,” Fox News, December 6, 2022, <https://www.foxnews.com/politics/hhs-knowingly-transferred-migrant-children-criminals-sex-traffickers-gop-senators>.

unaccompanied children,<sup>84</sup> and in FY 2022, more than 152,000.<sup>85</sup> By comparison, CBP encountered just over 33,000 in FY 2020.<sup>86</sup>

It appears evident that there has been insufficient care exercised by DHS and HHS in the handling and placement of migrant children and little or no adequate follow up to ensure that those children who have been granted entry and placed with guardians in the U.S. are not becoming the victims of abuse in violation of the TVPRA. Quite distressingly, there is a growing body of evidence suggesting that many are.<sup>87</sup>

One whistleblower from HHS recently testified before this Committee that tens of thousands of migrant children “are being trafficked through a sophisticated network” that starts in their home countries and continues when they are smuggled to a DHS port of entry and then delivered by the Biden administration to sponsors in the U.S.—some of whom “are criminals and traffickers and members of Transnational Criminal Organizations” who “view children as commodities and assets to be used for earning income,” which is “why we are witnessing an explosion of labor trafficking.”<sup>88</sup> She concluded that the U.S. government seems to have “become the middleman in a large scale, multi-billion-dollar, child trafficking operation run by bad actors seeking to profit off the lives of children.”<sup>89</sup>

Regrettably, Secretary Mayorkas is only making this horrible problem worse. Under his leadership, CBP has now ended the practice, introduced by the Trump administration, of conducting DNA testing of migrant families at the border to

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<sup>84</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters..>

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> See Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warnings,” *New York Times*, April 17, 2023, <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>; Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 25, 2023 (updated February 28, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

<sup>88</sup> Testimony of Tara Lee Rodas, Presented to the Subcommittee on Immigration Integrity, Security, and Enforcement of the House Committee on the Judiciary, April 26, 2023, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/rodas-testimony.pdf>.

<sup>89</sup> *Ibid.*

identify instances of family fraud.<sup>90</sup> Without this testing, DHS will inevitably fail to catch cases—all too common—where child traffickers have paid or forced adult migrants to smuggle an unrelated child into the U.S. for abuse and exploitation.

### **Conclusion**

The long string of clear violations of law laid out above add up to something far more egregious than a mere zealous effort to push the bounds of statutory discretion. Rather, the Biden administration, with Secretary Mayorkas at the point, is obviously committed to a much vaster and more activist enterprise.

They are working every switch and lever to explode the established controls on immigration enacted by Congress and to outrun the latest judicial decree. The purpose is to construct all-new channels of their own design (visa-like “pathways”), crafted to achieve the maximum unrestrained inflow of extra-legal immigration for the duration of the president’s term in office. It is nothing short of a usurpation of law and congressional power by the executive.

And there is no true humanitarian objective in these policies. The victims of the enterprise include a sea of vulnerable migrants caught up in the horrendous realities of human chaos and exploitation under the grip of the cartels, the migrant children who are enslaved and abused within our own neighborhoods, and the untold cost on the everyday citizens of America whose communities are ravaged by violence and crime, strained by unforeseen economic burdens, and infested with fentanyl.

The picture is grim and disturbing, but I want to thank you, Mr. Chairman, for shining a bright light on these issues.

That concludes my statement, and I am happy to respond to questions from the Committee.

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<sup>90</sup> John Solomon, “Biden to end familial DNA testing at border, key deterrent to fraud and child trafficking,” *Just The News*, May 23, 2023, <https://www.sgtreport.com/2023/05/biden-to-end-familial-dna-testing-at-border-key-deterrent-to-fraud-and-child-trafficking/>.

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Mr. McCLINTOCK. Thank you.

We'll now proceed to questions from the Members.

We'll begin under the five-minute rule with Mr. Biggs.

Mr. BIGGS. Thank you, Mr. Chair.

I have to go fast because I think there's just so much that Secretary Mayorkis is responsible for and culpable for.

So, I will start with you, Mr. Bradbury. At the direction of Secretary Mayorkis, DHS has released and continues to release tens of thousands of aliens every month into the U.S. through mass parole and now categorical parole.

Is this a violation of law?

Mr. BRADBURY. Yes, it violates INA Section 212(d)(5)(A).

Mr. BIGGS. Secretary Mayorkis is also mass paroling aliens he himself characterizes as refugees or asylum seekers without demonstrating that there are compelling reasons requiring that particular alien may be admitted by parole rather than going through the USRAP process for refugee admissions.

Is that a violation of law?

Mr. BRADBURY. Yes.

Mr. BIGGS. What law?

Mr. BRADBURY. It's a violation of INA Section 212(d)(5)(B).

Mr. BIGGS. Because he's not conducting adequate individualized vetting of the huge volume of mass-released aliens, there's simply no way of knowing how many of the millions of aliens Mayorkis has released into the U.S. fall into these categories of dangerous aliens.

Is that a violation of law?

Mr. BRADBURY. Yes, of Section 212(a).

Mr. BIGGS. Secretary Mayorkis has instituted, as you've talked about and all of you have mentioned as the CBP One, preregistration, trying to funnel these illegal migrants to the U.S. ports of entry along our southern border.

Is that a violation of law?

Mr. BRADBURY. Yes, of 212, of 235, and I would say of 207.

Mr. BIGGS. All right. So, what's happened here, of course, is that just in this past week the U.S. Court of Appeals for the Eleventh Circuit halted two DHS efforts to release massive members of illegal migrants into the U.S. on parole.

So, this is what one of the judges said, this opinion right here, that what—his violations of the law. Secretary Mayorkis' violations of the law are, quote, akin to posting a flashing, "Come in, we're open sign" on the southern border. The unprecedented surge of aliens that have started arriving at the Southwest border almost immediately after President Biden took office, that has continued unabated over the past two years, was a predictable consequence of these actions. Indeed former—and I'll say "former"—former Border Patrol Chief Raul Ortiz credibly testified based on his experience that, "there have been increases in migration when there are no consequences and migrant populations believe they will be released into the country," close quote. I won't go into the additional case as well.

I'm going to ask Mr. Wolf this question. We've established that Secretary Mayorkis has engaged in conduct that violates his oath of office and the law. My question for you is, do you believe Sec-

retary Mayorkis is violating the law intentionally, willfully, or is it just some oversight on his part?

Mr. WOLF. So, I'm going to have to guess. I think it's all the above. I think they know exactly what they're doing; "they" being the department. This construct that they have put in place is not by happenstance or by chance. It's by design, and I think it's been very clear over the last two years.

So, everything that's going on at the border and the crisis that we see unfolding there was completely predictable, and we had talked to the incoming administration about some of the challenges that we had in the Trump Administration and warned them that, if they did half of what was campaigned on during 2020, that they would see a crisis at the border. So, presumably they knew that; presumably they heard that. Yet, they still went for it.

Mr. BIGGS. The Secretary of the new administration heard that, incoming Secretary. Right?

Mr. WOLF. Numerous briefings, again, mainly with transition staff.

Mr. BIGGS. OK. Mr. Edlow, I wanted to ask you this question, and it's related to testimony we heard yesterday about what's going on at the border and the impact on Border Patrol agents and morale, et cetera.

What are you hearing about what's going on because of the arrangements of this Secretary?

Mr. EDLOW. Sir, I've heard that morale is at an all-time low throughout Border Patrol and throughout other enforcement entities. I've spoken to some people who have been at the border recently. They've seen that exact same thing, that people are just very unhappy. They don't know whether they should be doing the job or whether they are supposed to be ignoring the law. A lot of it's being run by memos that are—or just oral guidance being passed on.

Mr. BIGGS. I'm going to ask you the same question that I asked, and this is with regards to Secretary Mayorkis, and that is, do you believe that what he's doing is intentional, willful, or is it just he's just an incompetent buffoon and can't learn his lessons?

Mr. EDLOW. I don't think he's incompetent, Congressman. Looking at the memos, looking at the departmental actions, the regulatory actions, this is all part and parcel of an intentional action.

Mr. BIGGS. Yes, I agree with that, and I think it's long past time for him to be impeached.

I yield back.

Mr. MCCLINTOCK. The Chair recognizes the gentlelady from Washington State, Ms. Jayapal for five minutes.

Ms. JAYAPAL. Thank you. Thank you, Mr. Chair.

Clearly, there is an agenda here, and it is about impeaching Secretary Mayorkis.

I want to take a step back and just say that it is quite stunning to have some of the witnesses here today that have the audacity to come before this Subcommittee and attack the current Homeland Security Secretary.

Mr. Wolf, who was Chief of Staff to Secretary Kirstjen Nielsen, was a key architect of the universally panned by majorities of Americans across the political spectrum, that very cruel and un-



lawful family separation that was perpetuated by the Trump Administration. Further, according to a Federal judge and the Government Accountability Office, Mr. Wolf served unlawfully as the Acting Homeland Security Secretary.

Mr. Edlow, as Acting Director of U.S. Citizenship and Immigration Services, helped to run that agency into the ground, to the point that it almost had to furlough over 13,000 USCIS employees. On his watch, USCIS also ignored the Supreme Court's decision in June 2020 stating that the Trump Administration's attempt to rescind DACA was unlawful, holding new DACA applications at processing facilities even after the Supreme Court mandate was formally entered.

These are the witnesses that the majority brings to this Subcommittee to discuss if, quote, "the laws are being faithfully executed"? Forgive my skepticism or, more bluntly, give me a break.

Mr. Reichlin-Melnick, let me turn to you. I want to discuss mandatory detention. As discussed in your testimony, Section 235(b)(1)(B) of the Immigration and Nationality Act states that if an officer determines an individual has credible fear of persecution, that person, quote, "shall be detained for further consideration of the application for asylum."

That makes it sound like asylum seekers must be detained. Can you explain why all asylum seekers are, in fact, not detained?

Mr. REICHLIN-MELNICK. Thank you, Congresswoman.

I think the main reason is resource based, though there's both resource and legal authorities I should note. The biggest issue here is resources. For example, if 50,000 asylum seekers show up at the border in any given month and every one of them asks for protection, there are not 50,000 detention beds. Even in 2019 when detention was at its highest, there were 55,000 detention beds, and that year 891,000 were encountered by the Border Patrol. If even half of those were seeking asylum, it would not have been physically possible to detain all of them, which is why, under the Trump Administration, hundreds of thousands of asylum seekers were released straight to court without going through the credible fear process.

So, at the end of the day, it is a resource issue. I will also note it is a legal issue because there are always exceptions to mandatory detention because Congress, generally speaking, can't enforce the Executive to enforce the law in certain circumstances where that is literally impossible.

Ms. JAYAPAL. Has any administration, Democratic, Republican, ever been able to detain every single individual as required by the section of the Immigration and Nationality Act?

Mr. REICHLIN-MELNICK. No. In fact, when Congress first passed that provision in 1996, there were actually fewer than 10,000 detention beds, and this is at a time when there were routinely 1.6–1.7 million Border Patrol apprehensions a year. So, it was not possible when Congress passed the law. It's not been possible anytime over the last 27 years. It's still not possible today.

Ms. JAYAPAL. It's correct, isn't it, that even at our highest levels of detention under the Trump Administration, it was never close?

Mr. REICHLIN-MELNICK. That's right. In 2019, the Trump Administration maxed out detention beds, about 55,000 in August 2019.

That month, there were more than 55,000 people who arrived. We also have to note that the average time that a person spent in detention was over a month, so the average detention bed in ICE detention only turned over about 10.7 times a year. So, there was a max capacity that they could hold, even at 55,000 beds, of less than a half a million, and that year about 900,000 people showed up. So, that's why the Trump Administration, in fact, released hundreds of thousands of people.

Ms. JAYAPAL. So, that's a lot of numbers. Let me just ask you bluntly. Many of my colleagues on the other side of the aisle like to claim the Trump Administration ended what they call catch and release and detained all asylum seekers or sent them back to Mexico.

Let me just ask you again, is that accurate? Just a simple "yes" or "no" answer is fine. If not, you've already given us some of the reasons, but is that accurate?

Mr. REICHLIN-MELNICK. It's not accurate. Even in 2020, after Title 42 went into effect, several thousand people were released according to data from DHS.

Ms. JAYAPAL. From your testimony, it appears there's a detailed chart which shows that the Trump Administration released over 500,000 migrants at the border during his four years as President. Is that correct?

Mr. REICHLIN-MELNICK. That is correct. That's directly from the border, and additional were released—were held in ICE detention and then released.

Ms. JAYAPAL. Thank you.

Mr. Chair, I yield back.

Mr. MCCLINTOCK. The gentlelady's time has expired.

Mr. Van Drew.

Mr. VAN DREW. Thank you, Mr. Chair.

Thank you all for being here today.

There's a very, very old saying of wisdom: You reap what you sow. God help us what we have reaped. It all started with the sanctuary cities, and they were wonderful. Everybody loved them. They were—not everybody, for God's sake. All these big city mayors and other folks thought, yes, this is a great idea to have sanctuary cities. Not so much anymore. We don't even know what to do in our big cities. From Portland, Maine, to San Francisco, California, the lack of leadership at having these sanctuary cities is now creating huge problems that even Democrats will recognize.

What else? What else is it that we've reaped? Well, we've done catch and release all throughout our Nation. Then the people who are listening here who are not in this room, but are around literally the country, they know that around the country there are people being released. We're paying for transportation. We're paying for healthcare. We're paying for a great deal of things that we don't even take care of our own people in the United States of America well enough.

Mr. Reichlin-Melnick, I respect you, but you said that immigration is part of the fabric of the United States of America. It is, legal immigration. I don't understand what is so difficult to understand about the difference of legal and illegal. Illegal means it's not true.

We talk about Mr. Mayorkis, and you could spend an hour and a half on his case. What I remember, I remember asking him when he was under oath—and behind him was almost like a green screen, one of these screens—and I said: “Is everything OK at the border? Is everything good? Do we have our borders intact?” He said: “Absolutely, Congressman.”

You looked at the pictures, you looked at the video, and you saw little kids being thrown over to try to get them into the United States, so that these adults would also be able to make their way in. You saw huge lines. You saw disease. You heard about fentanyl coming into our country, which it has. What are we doing to our country, man? Seriously. Sit down and think about this. What are we doing to the United States of America?

We used—no more, no more do we immediately expedite people back when you can. No more do we have Remain in Mexico. We misuse asylum for things it was never to be used for. Asylum doesn't mean, gee, I don't like where I live, and I don't make as much money as I would like, and it's a little bit tough going. I feel bad for those people. I feel bad for most of the world. If that's going to be our standard, then let's open every border everywhere in the United States of America and accept every human being who doesn't like their country, if you really want to do it if you think that's right.

We talked about impeaching Mayorkis. Well, you know what? He didn't tell the truth under the oath. He committed perjury. That alone really truly means something. He should be impeached. You're supposed to tell the truth or, for God's sake, at least want to tell the truth, try to tell the truth.

No more Title 42, and we didn't do a damn thing to try and save it, change it, or make it more applicable if it wasn't good the way that it was. What's happening to these children and babies, not only in our families, not only our children that are dying of fentanyl, the kids that are being brought across and now are beholden to the drug cartel forever, and the drug cartels establishing facilities, establishing a presence in the United States of America.

This is all true. Nobody is making this up. The statistics show it. We know we have millions upon millions, upon millions. What is it? Five million-plus?

Just some articles I would like for the record: “Influx of migrants in Massachusetts Continues to Overwhelm State Resources,” *Boston.com*. “1,500 Miles from the Southern Border, Immigration Fight Disrupts Michigan Town.” “Portland Overwhelmed By Growing Number of Asylum Seekers” in the *newscentermaine.com*. “Chatanooga, TN, Overwhelmed By Migrant Surge from Texas.” California decides unannounced illegal immigrant arrivals aren't so much fun, aren't so easy, and maybe it's not such a good idea to have sanctuary cities after all.

Come on. Everybody, let's really look at this in the eye and see what we've got here. We are out of control. Yes, we should review our immigration laws, and we should make them better. Yes, we should do more work.

I want to ask Mr. Wolf a question, and I'm going to ask it really quickly—

Mr. McCLINTOCK. No.

Mr. VAN DREW. No, I'm not. Sorry.

Mr. MCCLINTOCK. The gentleman's time has expired.

Mr. VAN DREW. Man, I'm mad, and I'm tired of it. How about that? That's how I'm going to end.

Thank you, Mr. Chair.

Mr. MCCLINTOCK. The Chair recognizes the Ranking Member, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair.

I want to followup on the Ranking Member's comment earlier and just note, not only did Mr. Wolf serve unlawfully as Acting Homeland Security Secretary and as the Chief Architect of the Unlawful Family Separation policy which literally kidnapped children from their parents, he also unlawfully defied a Congressional subpoena in September 2020 and refused to testify before the House Homeland Security Committee.

It is just shocking that my Republican colleagues who claim to believe so strongly in Congressional oversight would invite a witness who has so brazenly violated the law and so flagrantly violates our authority.

Mr. Reichlin-Melnick, I want to turn to you to discuss the issue of parole. Use of parole has become a big topic among my Republican colleagues. Can you discuss the history of parole and its bipartisan use over the last 70-plus years, and where's the authority for the Executive Branch to use parole?

Mr. REICHLIN-MELNICK. Parole has been part of the immigration law since 1952, so it has been around for decades. For many years, especially prior to the passage of the Refugee Act, parole was the primary way by which the U.S. admitted refugees. So, for example, from 1962–1969, more than 690,000 people came to the United States under parole from Cuba through various different parole programs.

Since then, Republican and Democratic Administrations alike have used parole to allow people to come to the United States in various categories that fit the national interest. These have been nearly every Presidential Administration, including the Bush Administration, the Obama Administration, and even under the Trump Administration, tens of thousands of people were admitted under various parole programs that were then extant when he took office.

Mr. NADLER. Some have criticized the Biden Administration for its use of parole saying it's not being done on a case-by-case basis.

Would you agree with that statement? If not, why not?

Mr. REICHLIN-MELNICK. I don't agree with that statement for the primary reason that they misunderstand what "case by case" means. A case-by-case adjudication just means taking every application on its own. It doesn't mean that you can only give it to a few people. In fact, in 1996 when Congress passed IRA, IRA which included the case-by-case requirement, the Congress actually rejected an amendment which would have made parole into a much more narrower program.

I think the best example of this is to sort of look at this as a metaphor. If I want to create a scholarship program, and I say this scholarship program is open to every child whose parents earn less than \$100,000 who can show compelling need for it, that is case by

case because each student has to individually show that they have a compelling need whereas if it just said this program is open to every person who earns less than \$100,000, that would be categorical. There would be no case by case involved.

Mr. NADLER. So, it appears that the administration is merely saying that certain categories of people are eligible to be considered for parole. Is that correct?

Mr. REICHLIN-MELNICK. That's right. I think very similarly the wet-foot/dry-foot parole program that ran from 1995–2017, under which about 40,000 Cubans came in through the border, that was also a similar circumstance.

Mr. NADLER. They still undergo a case-by-case determination to see if parole is appropriate?

Mr. REICHLIN-MELNICK. That's right. Every parole memo has required it to be case by case.

Mr. NADLER. Both Republican and Democratic Administrations have made use of categorical parole programs in the past?

Mr. REICHLIN-MELNICK. Well, I wouldn't call them categorical, but I would say parole programs that were open to certain individuals based on, for example, their nationality or their job.

Mr. NADLER. Did the Trump Administration use parole?

Mr. REICHLIN-MELNICK. Yes. I think the most prominent one is the Military Families Parole in Place program which operated under the Trump Administration.

Mr. NADLER. Now, the Trump Administration continued the use of parole as part of the Cuban Family Reunification Parole program. That sounds like a categorical program that my colleagues on the other side of the aisle have complained about.

Mr. REICHLIN-MELNICK. Yes. Cuba has in particular had multiple parole programs in use for their nationals over the last 20 years.

Mr. NADLER. Is this parole program similar to other family reunification parole programs recently announced by the Biden Administration for Colombia, El Salvador, Guatemala, and Honduras?

Mr. REICHLIN-MELNICK. My understanding, per DHS' announcements last week, is that the new parole programs will be virtually the same as the Cuban Family Reunification Parole program.

Mr. NADLER. Can you explain how those programs work? Who's eligible? Are these still granted parole on a case-by-case basis as the law requires?

Mr. REICHLIN-MELNICK. Yes.

So, the family reunification parole programs are open to individuals from certain countries who have family members who have pending immigrant visa applications already. So, they have been approved for a visa, but they are just in a backlog.

So there, if those individuals are invited to apply for the program from the National Visa Center, then they have to submit an application. They have to go through a vetting process. Then it is the exercise of discretion of the United States to determine whether or not to admit the person through this parole program.

Mr. NADLER. Thank you. I yield back.

Mr. MCCLINTOCK. Mr. Tiffany.

Mr. TIFFANY. Mr. Reichlin-Melnick, so the expansion of parole is legal?

Mr. REICHLIN-MELNICK. In my opinion, yes.

Mr. TIFFANY. Mr. Wolf, it says you served unlawfully. You want to share with us whether you served this country unlawfully?

Mr. WOLF. So, I've spent seven and a half years with the Department of Homeland Security. I was there shortly after 9/11 when they stood it up. I was there all four years during the Trump Administration. I've held eight executive positions at the department, including an assistant secretary position, an undersecretary position confirmed by the U.S. Senate, a deputy chief of staff position, a chief of staff position, and an acting secretary position.

I've been to the border dozens and dozens and dozens of times. I've talked to the men and women of the Border Patrol, ICE agents, and USCIS personnel.

So, my expertise in this, whether you want to call me an acting secretary, you want to call me a dogcatcher, my expertise is what it is. I was also very proudly part of an administration that actually secured the border, put policies in place to bring back the rule of law and to secure the border.

Mr. TIFFANY. So, we just heard that the Trump Administration paroled people into this country.

Did you parole over a million people into this country during the Trump years?

Mr. WOLF. No, we did not.

Mr. TIFFANY. Mr. Bradbury, I believe we have the largest human trafficking operation perhaps in the history of the world that is going on at this point.

Do you think the American people are aware of the role of NGO's driving these, running the pipeline to our border?

Mr. BRADBURY. No. I think that role has been sort of surreptitiously concealed by the way the administration has handled this. They are contracting with nongovernmental organizations to transport illegal aliens from the border to every district in the country.

Mr. TIFFANY. Do you think some people that donate to some of these sometimes faith-based organizations, NGO's, do you think they're aware that their money is being used as an accessory for human exploitation and trafficking?

Mr. BRADBURY. I seriously doubt most people are aware. They should be.

Mr. TIFFANY. Yes. I urge people that contribute to faith-based organizations, you should ask them.

In fact, I would say to you, Mr. Chair, I think we should have the head of Catholic Charities come before this Committee and explain what they're doing down on the border to facilitate this illegal immigration that's going on in this country.

Great work has been done by many of these faith-based organizations. I think the American people should fully understand what's going on there.

Mr. Bradbury, recent Florida lawsuits against the Biden Administration have shed considerable light on DHS, but also the Office of Refugee Resettlement and what they're doing.

Can you briefly explain how the NGO's and ORR are facilitating this unprecedented human trafficking, especially of migrant children?

Mr. BRADBURY. Well, of course, under the Trafficking Victim Protection Reauthorization Act there are special duties, that the Sec-

retary of Homeland Security has to ensure that migrant children who are brought into the country not from Mexico, but from other countries—are placed with guardians in a way through HHS that ensures that they're not abused, they don't become the victims of sex trafficking or forced labor. Unfortunately, we know that this is happening.

Mr. TIFFANY. Are you familiar with the—yes, it is happening. Are you familiar with the—let's see here—the Third Presentment of the Twenty-First statewide Grand Jury in Florida where they talked about trafficking children?

Mr. BRADBURY. I'm not. I'm sorry.

Mr. TIFFANY. I'd like to enter this into the record, if we may, Mr. Chair.

Everyone should read this about the horrific human trafficking that's going on that the State of Florida has identified.

Mr. TIFFANY. Have the court orders been followed by this Administration when they've been told they need to follow the law, Mr. Wolf?

Mr. WOLF. In several instances they have not.

Mr. TIFFANY. So, Mr. Chair, I would just close with this. We heard from the other side that these are just policy differences that we have between the two sides.

Tell that to Erin Rachwal from Pewaukee, Wisconsin, who was here a couple months ago. Remember her? Remember her son took, I think it was like a Percocet pill, something like that, Mr. Chair? Died in his dorm room.

Tell that to Kayla Hamilton's mother. She was just here in the last month, wasn't she, Mr. Chair? Strangled to death, autistic young woman, by someone who was here illegally.

Tell that to all the angel families out there.

I urge everyone here—a Democrat candidate for President just was at the border in the last couple days in Yuma, Arizona, and stood with farmers and said this cannot go on.

I urge Democrats who are of good faith across the United States of America to join us in supporting the Secure the Border Act. You can do that. It turns out there actually is a Presidential candidate you can follow if this issue is important to you to secure the border. You do have a candidate that will help us do it.

Yield back.

Mr. MCCLINTOCK. The gentleman's time has expired.

Ms. JAYAPAL. Mr. Chair?

Mr. MCCLINTOCK. The Ranking Member has a unanimous consent request.

Ms. JAYAPAL. Thank you, Mr. Chair.

I ask unanimous consent to enter into the record two district court decisions and a decision from the U.S. Government Accountability Office stating that Mr. Wolf served unlawfully as Acting Secretary of Homeland Security.

Mr. MCCLINTOCK. Well, you've lived down to all my expectations, my dear friend. Your ad hominem attacks have become quite common here. I will not—

Ms. JAYAPAL. Mr. Chair—

Mr. MCCLINTOCK. I will not object.

Ms. JAYAPAL. Mr. Chair, since you—

Mr. MCCLINTOCK. There ain't no objection.

Ms. JAYAPAL. Since you did reference my behavior, I would like to say that was a unanimous consent request to enter into the record factual documents. This is not a matter of opinion. This is a matter of fact.

Thank you, Mr. Chair.

Mr. MCCLINTOCK. Without objection, we will enter them into the record.

Mr. MCCLINTOCK. Ms. Lofgren.

Ms. LOFGREN. I think it looks to me that this hearing has been held to come up with some rationale for an impeachment of the Secretary for doing his job.

If the Congress—it's never been the case that every single person who's entered the United States without inspection is incarcerated. It's never happened.

If that's what the Congress wants to do, they ought to look in the mirror, because the estimate is it would cost \$35.7 billion to do that, and the Trump Administration requests 3.1 billion for detention.

So, we have the Immigration and Nationality Act, which is a law, but the appropriations process, that yields a bill, that's also the law. So, it is impossible to accomplish something, Congress needs to address that itself.

Getting back to the issue of parole, which I think is very interesting, that's been a part of the law for a very long time. I was thinking about its use, and sometimes its use depends on what's happening in the world.

I remember when Saigon fell, hundreds of thousands of Vietnamese fled communism. They had been our allies in the war. The bulk of them were admitted using parole authority. It was case by case, but it was a class of people who were escaping from communism.

Is that correct, Mr. Melnick?

Mr. REICHLIN-MELNICK. That's right. I believe the ultimate total is about 360,000 Indochinese came following the fall of Vietnam.

Ms. LOFGREN. Thinking back on other uses—and again, it's categories, that you look at each case within a broad category. We have tended, and I think appropriately so, to want to protect people who are fleeing from communism.

If you take a look at the Cuban Family Reunification Parole Program, those were people who had applications made for family members who were suffering under the yoke of communism. One by one, there was a determination on whether they should be given advanced parole to escape from that communist regime and join mainly American spouses.

Is that correct, Mr. Melnick?

Mr. REICHLIN-MELNICK. That's right. Parole has often been in fact a response to Cuba, because of course with Cuba, they do not accept deportations. So, we have had very little option for when Cubans arrived at our borders but to parole them in. We have created multiple parole programs under the Clinton Administration, the Bush Administration, and prior administrations for Cubans in particular.



Ms. LOFGREN. We have individuals even today, we have totalitarian regimes in Central America, including communist regimes in El Salvador and in Venezuela, and people are fleeing from communist oppression.

Now, not every person who's leaving that's the reason. So, it has to be case by case. You would agree with me that what's going on in Venezuela is a communist-like totalitarian regime, is it not?

Mr. REICHLIN-MELNICK. Venezuela and Nicaragua both, which I believe is what you were referring to, are both countries as well that do not accept, generally speaking, the returns of their nationals. One in four people have left Venezuela in the last decade.

Ms. LOFGREN. So, if we were looking at it on a case-by-case basis of people who were fleeing those regimes, it would really be in keeping with the proud tradition of this country of helping people who are fleeing from communist oppression. Wouldn't that be correct?

Mr. REICHLIN-MELNICK. I believe so, yes.

Ms. LOFGREN. I just wanted to mention one other thing.

There was parole in place for certain military families. As I recall, that was really stimulated by an American soldier who was killed in Afghanistan, and then his mother was going to be deported along with his wife. People, especially in the veteran's community, became outraged at that, the mother of this soldier who died for our country would be removed, wouldn't even be able to visit the grave of her son.

I think every recent administration, including the Trump Administration, has utilized the parole authority to take a look at the family members of American soldiers.

So, isn't that case, that this has been the modern tradition?

Mr. REICHLIN-MELNICK. That's right. Since 2010, the military family Parole in Place program has been in effect. Twenty thousand people under the Trump Administration were paroled in under that program—or, sorry, were granted parole in place under that program. Crucially, in 2020, in the National Defense Authorization Act, Congress said it was the sense of Congress that this program was valid and lawful.

Ms. LOFGREN. My time is up. I yield back.

Mr. MCCLINTOCK. The gentlelady's time has expired.

Without objection, the Chair would ask unanimous consent to include in the record the Homeland Security letter, August 17, 2020, refuting claims that Acting Secretary Wolf was acting or was appointed unlawfully, and providing the legal justification for his appointment. Without objection.

Mr. MCCLINTOCK. The Chair now recognizes Mr. Roy for five minutes.

Mr. ROY. I thank the Chair.

Mr. Reichlin-Melnick, let me ask you a question.

Is Joe Manchin, the Senator from West Virginia, is he is racist?

Mr. REICHLIN-MELNICK. I can't comment on that.

Mr. ROY. OK. What about Mark Kelly from Arizona?

Mr. REICHLIN-MELNICK. Similarly, cannot comment on that.

Mr. ROY. Maggie Hassan, Senator from New Hampshire?

Mr. REICHLIN-MELNICK. Also, cannot comment.

Mr. ROY. OK. Can't comment on their being a racist or not.

How about Senator Raphael Warnock from Georgia.

Mr. REICHLIN-MELNICK. Similarly, I'm not familiar.

Mr. ROY. OK. How about Catherine Cortez Masto from Nevada?

Mr. REICHLIN-MELNICK. Likewise, Mr. Roy.

Mr. ROY. OK. Can't comment on whether they're racist or not?

Mr. REICHLIN-MELNICK. I don't have an opinion as to the matter.

Mr. ROY. OK. Because you called me a racist, and you called me a racist because I said that Title 42 should be enforced—something, by the way, that this administration did to the tune of over a million people.

Mr. REICHLIN-MELNICK. I believe it's about 2.5 million people actually.

Mr. ROY. Right. So, this administration is racist?

Mr. REICHLIN-MELNICK. I believe this administration has made a number of failures on the racial justice front.

Mr. ROY. So, the Biden Administration is racist?

Mr. REICHLIN-MELNICK. I can't comment as to the administration in general.

Mr. ROY. Interesting. Good to know. Good to know the Biden Administration is racist and get that on the record.

The fact is, people who want to enforce Title 42 believe that there was a reason that Title 42 was put in place, but they also recognize that Title 42 is, in fact, a band-aid on a very broken system where the laws were not being enforced otherwise. To throw around words like racist—let me ask you a question.

Is my friend Henry Cuellar, is he a racist?

Mr. REICHLIN-MELNICK. I can't comment on that.

Mr. ROY. Right, because Henry Cuellar said the border community is very concerned about Title 42 being lifted. This message of lifting Title 42 is going straight to criminal organizations.

He stood up and said that Title 42 should be enforced. The administration stood up. The Senators I just listed said that Title 42 should have stayed in place.

Now, my personal view is that Title 42 wasn't the thing that needed to stay in place, that what ought to be in place is an actual border security that secures the border.

Mr. Wolf, in your position at the head of the Department of Homeland Security, notwithstanding what my colleagues want to throw around with the ad hominem attacks, you were, in fact, charged with securing the homeland, right, that was actually your task securing the homeland at the Department of Homeland Security?

Mr. WOLF. Yes. That's correct.

Mr. ROY. Right. Did you do that?

Mr. WOLF. Yes.

Mr. ROY. Right. Is the current administration securing the homeland?

Mr. WOLF. No.

Mr. ROY. No. In any measure, in any way, shape, or form, is the current Secretary of Homeland Security carrying out his duty faithfully under the Constitution to secure the homeland of the United States?

Mr. WOLF. He is not. As I've outlined in my written testimony and oral testimony, there's numerous instances where he is not faithfully executing the law as written.

Mr. ROY. I thank you, Secretary Wolf.

What I would say is, if you go back to April 2022, in a Judiciary Committee hearing, I read word for word the statutory definition of operational control under the Secure Fence Act. I read it sitting right over here. There was a chart.

I put up the chart, I put up the text, and the text says,

"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 asked Secretary Mayorkas, "Do you have operational control?" His response was,

I do. And, Congressman, I think the Secretary of Homeland Security would have said the same thing in 2020 and 2019.

In March 2023, however, at a Senate hearing, Secretary Mayorkas said,

With respect to the definition of operational control, I do not use the definition that appears in the Secure Fence Act, and the Secure Fence Act provides statutorily that operational control is defined as preventing all unlawful entries to the United States. By that definition, no administration has ever had operational control.

Just two weeks prior, United States Border Patrol Chief Raul Ortiz answered, "No, sir," when asked by Homeland Security Chair Mark Green, "Does DHS have operational control of the entire southwest border?"

So, the United States Border Patrol Chief Raul Ortiz says we do not have operational control of the border. He answered straight up truthfully, "No, sir."

Why was it that the Secretary of Homeland Security, when I asked him that question, he said, "Yes, we have operational control"? He said, "I do," to be more precise. Then in the Senate he comes back and says,

Oh, but no, I'm sorry, if you use that definition, you know the one in the statute, no, no one has ever had operational control.

What is your response to that, and how would you characterize having operational control of the border, as you would say in the previous administration, compared to current?

Mr. WOLF. Well, I would certainly talk about my time in the Trump Administration. If I were to get asked that question, whether we had operational control, the answer was, no, we did not. Neither was the border secure. I think words matter here. Those are very definitive statements.

I always talked about how we were making the border more secure, or it was the most secure in our lifetime. To say that you have complete operational control, to say that the border is closed, to say that it is secure, you're hiding the ball from the American people. You're not being transparent. It's for a purpose, I think you can only guess a political purpose.

It also defies what the men and women of the Border Patrol and others are doing down there. When they see their political leadership make these sorts of statements, it's so bad it's hard to find

words. They don't know what to think. Because they are on the line. They are on that border every single day, watching the hundreds of thousands of individuals walk past them that they have to process. They see that someone is saying that this border is secure. Or you see the 200 known or suspected terrorists that have come across this border in the last two years, that somehow that border is closed, it's secure, I don't understand it.

Mr. ROY. Yes. Kind of like accusing people of whipping migrants at the border.

I yield back.

Mr. MCCLINTOCK. I'm sorry. Your time's up.

Mr. Correa.

Mr. CORREA. Thank you, Mr. Chair.

Mr. Melnick, is the Secretary doing his job, Mr. Mayorkas?

Before you answer that, let me just say that General Kelly, former Secretary of Homeland Security, heard him say a couple of times that border security does not end or begin at the border. Today, as you look at the world, it's pretty safe to say, post-COVID, economies around the world are devastated. The only real game in town is the United States. Our economy, world record low unemployment rate, shortage of workers. Even China, I must say, is struggling to get back on their feet economically.

We have a worldwide refugee crisis.

[Chart.]

Mr. CORREA. If you look at this chart behind me from the U.N. Refugee Agency, it shows the number of displaced people just in the Americas alone. You can see countries across the region struggling.

It's not a U.S. problem, it's a regional problem. Mexico is dealing with this problem. Canada is dealing with this problem. Guatemala is feeling the effects and, of course, Europe.

Further South, Colombia. If you look at this chart, Colombia is really struggling.

I must say, refugees are braving that trip North, perilous situation.

I want to show you the picture of a little girl struggling to continue North through the Darien Gap. This little girl lost her mother, and another refugee going North is trying to help her survive.

If refugees are willing to do this, you can imagine the challenges at home.

Let me say, Title 42, we all talk about Title 42, I have to remind folks here, Title 42, the party in charge in Congress today, House of Representatives, voted to end the COVID-19 pandemic, and by operation of law they lifted Title 42.

Let me repeat. Party in charge voted to lift Title 42. Let me say, I agree with them. Title 42 should not be an immigration tool, but a health issue.

The administration has taken steps to prepare for Title 42's lifting. I was at the border numerous times before Title 42 was lifted. I would ask those officers in green and blue, "Are you ready?" They would tell me, "We're as ready as can be."

It wasn't just CBP. It was DHS, State Department, and the administration who did a pretty good job in anticipation of the lifting of Title 42.

In fact, if you look at the next chart, these are the numbers reported publicly by Border Patrol Chief Raul Ortiz: Fifty percent drop, 50 percent drop in the encounters after 42 was lifted. Unexpected.

It's not over, folks. The world is still suffering from major economic challenges, and these numbers may be temporary.

The fact of the matter is, we've got to focus on getting economies around the world back on their feet, and we also have to focus on the other issue, which is immigration reform.

Whether you like it or not, America is a massive draw, a big draw for workers from around the world. Fifty percent of our farm workers are undocumented. Every time one of those undocumented goes to a farm, to a ranch, they find a job.

We are also part of the problem, meaning we must pass immigration reform. Otherwise, we'll continue to be in the same situation.

Mr. Melnick, I asked you earlier, is the Secretary doing the job? We hear about operational control of the border. Was does that mean?

Mr. REICHLIN-MELNICK. There's a colloquial definition of operational control, which I think is—and then there's a legal statutory definition under the Secure Fence Act of 2006. As Mr. Wolf just noted, it's not anything that any administration has ever reached. In fact, the way Congress wrote the statute, it is physically impossible for any administration to ever get operational control.

Mr. CORREA. So, when we ask is there operational control at the border, the answer is there never has been operational control at the border.

Mr. REICHLIN-MELNICK. Statutorily, no. There are obviously opinions that some people may have as to their own views from a colloquial sense. Under the statutory definition, no, no administration has ever had it and none ever will.

Mr. CORREA. A political conclusion based on the times?

Mr. REICHLIN-MELNICK. Again, the reality is the job of DHS Secretary is extraordinarily complicated and difficult, especially today with more people arriving from countries further away, as you noted with Colombia and other migrants coming.

Under the Trump Administration, three out of every four migrants arriving came from four countries, Mexico, Guatemala, Honduras, and El Salvador. Today, in Fiscal Year 2023, less than half came from those countries. That is a hugely challenge for any Presidential administration, regardless of party.

Mr. CORREA. Thank you, Mr. Chair. I yield.

Mr. MCCLINTOCK. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chair.

I appreciate the witnesses being here today.

I've said it before, and I'll say it again: A controlled border is a compassionate border. We had Sheriff Daniels actually testify here in this Committee, and he said in four decades, Mr. Wolf, that he had never seen the border as secure as it was in 2018 and never as broken as it is now.

So, tell me, in just a few months, 24–25 months, what changed dramatically, and what do you think the reason we're having such an influx of encounters and others cross the border?

Mr. WOLF. Well, I think easy answer, Congressman, is everything. Everything changed. It started really from day one of this administration where they had a very successful border security regime in place that we had perfected over four years. We didn't get everything right the first time. Over four years, we put a regime in place that held individuals accountable for illegally breaking the law, that got those who needed those asylum protections under U.S. law, we got them those protections quicker than they have ever gotten before.

This administration, for a variety of different reasons, said, "No, we don't like it." So, what did they do? They stopped border wall construction, which I should just mention, when you talk about operational control, that's actually in the Secure Fence Act.

So, Congress back in 2006 thought that you would gain operational control by putting physical infrastructure along the border. Nevertheless.

You would also—they tore done MPP, or the Remain in Mexico Program, our asylum cooperative agreements, and the list goes on and on and on.

So, it doesn't take a rocket scientist to figure out what happens when you tear down those programs. You had the former Chief of the Border Patrol telling the administration at the time: This is what's going to happen when you tear down these programs and you don't put other deterrent immigration border security programs in place. This is what's going to happen.

Mr. MOORE. So, they gave them a heads-up, they said this is what's going to happen if you undo policies in place?

Mr. WOLF. I think numerous individuals did, yes.

Mr. MOORE. I say if you've got a water leak, you don't turn the pressure on to the house. It seems like in a lot of ways, we had some problems with immigration, and we have turned a tremendous amount of pressure on our border agents. Really now they're concierge. They're not really agents. They're there, but they're just processing people through, and they can't keep up.

Mr. Bradbury, I've heard that people South of the border are paying the cartel from four to five, six thousand just South of the border. Syrians were 20,000. Russians were paying 19,000, and I think Chinese nationals were paying \$80,000.

The administration, in my opinion, has basically created twofold for people coming across the border. That's why I say it's compassionate to have it controlled. Because you're either a drug mule, you're trafficking heroin, cocaine, or fentanyl. You're wearing carpet shoes. That's how you pay your passage into this country. Or you become an indentured servant, and you make installment payments.

Have you heard that as well?

Mr. BRADBURY. Yes, from some of the experts on immigration in the Heritage Center, of course, border security. What I understand is the cartels really effectively control our border at this point, certainly everything up to the border.

Mr. MOORE. So, the operational control is actually—the cartel has operational control. It's not us.

Mr. BRADBURY. Yes, more likely that than our government. They are making as much or more money off human trafficking now than the drug trafficking.

Mr. MOORE. That's my understanding.

So, Mr. Edlow, I've got one question for you as well, sir.

Considering this administration, do you think they're using the prosecutorial discretion correctly?

Mr. EDLOW. I do not. My colleague up here talked about how Justice Scalia in an opinion talked about prosecutorial discretion and how that is something that is useful and that every prosecutor and every police agency has. That is true. However, it is done on a case-by-case basis. We're back to talking about case-by-case bases.

A prosecutorial discretion done as a categorical prosecutorial discretion is not actual discretion. That's categorically saying we're not going to go after a group of people. That's not a case-by-case determination. When Justice Scalia was talking about it, he was talking about at any stage in the process for an individual, not for a group of people.

Mr. MOORE. Mr. Melnick, does your organization plan on suing the Biden Administration?

Mr. REICHLIN-MELNICK. We have sued the Biden Administration, as we have sued every administration going back 30 years.

Mr. MOORE. Thank you.

With that, Mr. Chair, I yield back.

Mr. MCCLINTOCK. Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chair.

I'd like to inform the witnesses that I am the only Member of Congress on this Subcommittee that actually lives on the border. I represent El Paso, Texas. I'm a third-generation border resident. My children are fourth-generation border residents.

I don't live hundreds of miles from the border. I live on the border literally. Nobody wants an orderly immigration process more than those of us who have built our lives on the border.

I'll tell you one way we're not going to get there. It's with performative hearings such as these.

If we truly want to address our Nation's immigration challenge and opportunity, we would do that through reasonable legislation, through compromise, and through comprehensive immigration reform.

I'd like to invite all my colleagues on this Subcommittee to look at a bipartisan immigration bill, the Dignity Act, that my colleague Maria Elvira Salazar and I introduced. That would be a first—a good way to begin talking about this.

Instead, here we are engaging in what is my Republican colleagues' first step in impeaching Secretary Mayorkas, not because of any reason that they have laid out, but simply because this is Speaker McCarthy's gift to the extremists in his conference.

Let's look realistically at the numbers.

Mr. Reichlin-Melnick, thank you so much, because the American Immigration Council actually has produced this great chart. I've altered it a little bit.

[Chart.]

Ms. ESCOBAR. What I'd like for the public, for the American public and our panelists to note is that actually numbers started increasing long before President Biden took office, long before the election even. There was only one time when there was a precipitous drop in immigration, in apprehension, and that was right when COVID-19 hits. That's when the border was shut down.

The chart that the American Immigration Council put together shows—and, Mr. Reichlin-Melnick, I believe you got these numbers directly from the Department of Homeland Security—and it demonstrates that not any of the deterrence measures that were put forth by the Trump Administration actually deterred immigration. COVID did, but shortly after the border was reopened those numbers started climbing right back up.

That would tell us that we should be acting together in a bipartisan way on reasonable solutions. Instead, again, here we are focused on performance.

Mr. Chair, I'd like unanimous consent to enter into the record a *ProPublica* article about family separation.

Mr. McCLINTOCK. Yes. Without objection.

Ms. ESCOBAR. I'd actually like to play the audio included in this article.

Mr. McCLINTOCK. You're welcome to do with your time as you please.

Ms. ESCOBAR. OK. All right. Well, I'll play it from my phone.

[Audio recording played.]

Ms. ESCOBAR. Mr. Wolf, do you recognize this audio?

Mr. WOLF. I recall that audio, yes.

Ms. ESCOBAR. You were working at DHS at the time that this audio was taken. Is that correct?

Mr. WOLF. I was at the department, yes.

Ms. ESCOBAR. This is audio from the horrific Trump Administration policy of separating children from their parents at the border, a policy that has caused immeasurable trauma on children.

Mr. Wolf, was Ms. Nielsen, when she was the Secretary and implemented this horrific policy, did the Republican Party attempt to impeach her?

Mr. WOLF. So, I would disagree with the premise of that question.

Ms. ESCOBAR. Is that yes or no? No?

Mr. WOLF. It's not a policy.

Ms. ESCOBAR. So, I will reclaim my time.

No, the Republican Party never tried to impeach her, nor did they try to impeach you, despite the fact that you were an architect of this policy, despite the fact that you were in place when the insurrectionists took over our Capitol.

You resigned because of the illegitimacy of the acting secretary role that you were playing on behalf of the Trump Administration, yet no one tried to impeach you.

I yield back.

Mr. McCLINTOCK. The gentlelady's time has expired. Since that was an ad hominem attack, I'll give Mr. Wolf—

Mr. WOLF. Can I respond to that?

Mr. McCLINTOCK. Yes.



Mr. WOLF. So, I think it's a useful conversation. So, let's talk about children. Let's talk about protecting children. Let's talk about the 360,000 children that have come across this border in the last two years.

Mr. NADLER. Point of order. On whose time is he speaking?

Mr. MCCLINTOCK. She made an attack on him.

Mr. NADLER. Point of order. On whose time is Mr. Wolf speaking?

Mr. MCCLINTOCK. Ms. Escobar's time.

Mr. NADLER. Ms. Escobar yielded back her time.

Ms. ESCOBAR. I yielded back.

Mr. NADLER. She yielded back her time.

Mr. MCCLINTOCK. She made an ad hominem attack on Mr. Wolf, and I thought it was important to give him an opportunity to respond.

Mr. NADLER. She yielded back her time. He can speak on someone else's time.

Mr. MCCLINTOCK. I will recognize the gentleman's point well taken and proceed to Mr. Nehls.

Mr. NADLER. Thank you.

Mr. NEHLS. Thank you, Mr. Chair.

I just want everybody in this room to know, everybody, every Member on this panel, this Committee, to know that I'm the only one, I'm the only one that has arrested an illegal alien, that has been deported six previous times, for killing one of my senior citizens when I was sheriff of Fort Bend County, Texas. I just want everybody to know that.

All right. I have several different things I would like to discuss in my five minutes.

Mr. Melnick, I'm paraphrasing some of your testimony. You said that in to effectively execute our immigration laws Congress must provide additional resources. Is that correct?

Mr. REICHLIN-MELNICK. That's right, especially when it comes to adjudication with a two million case backlog. We are not funding the immigration courts enough.

Mr. NEHLS. Today, I believe—I'll paraphrase again—I'm here to talk about complicated reality of enforcing immigration laws at the border.

Mr. REICHLIN-MELNICK. That's right.

Mr. NEHLS. What's complicated about 212(f)?

Mr. REICHLIN-MELNICK. Well, 212(f), in particular, is quite complicated because it cannot be applied to the border to turn away asylum seekers. The Trump Administration tried that in fall of 2018. That was struck down by a court in California, upheld by the Ninth Circuit, and the Supreme Court declined to overturn that decision.

Mr. NEHLS. We talk a lot about Title 42, and we talk about that Title 42 went away. It's my understanding—anybody on the panel can pipe in if you would like—Title 42 dealt with the COVID, the pandemic, public health emergency. Is that right?

Mr. REICHLIN-MELNICK. That's right. Title 42 was a CDC policy invoked in March 2020 when the pandemic hit.

Mr. NEHLS. Yes. When I look at 212(f)—and I guess I'm just a simple man—when I look at 212(f), it's been around since, I guess,

1956. It's been used many, many times. Actually, 1952. Every President since 1981 has used it at least once. Trump used it. They beat up on Trump when he did his little travel ban, but the Supreme Court upheld that and said he can do that, and he did.

It's been used by Trump. He used it in the first week of office. Obama used it 19 times, Bush used it six, Clinton used it 12, Bush before used it once, Reagan used it five times.

When you look at what that 212(f) is, this is it. Everybody takes a look at it. Let me read it. Section 212(f) of the INA:

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he deems necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions that he may deem appropriate.

It was used several times, 69 times in the past several years, dating back to 1980.

Mr. Wolf, how do you feel about 212(f)? Instead of providing all these resources and asking for more support, why can't we just say let's get 212(f), the Supreme Court has ruled that Trump used it when he had his travel ban, let's just shut down the border, use 212(f), until we can get some operational control?

Mr. WOLF. Well, Congressman, the Trump Administration, particularly when we talked about the travel restrictions, used 212(f) effectively to make sure that we got more information sharing than we ever got from basically every other country around the world.

Look, I think the conversation that I continue to hear is we need more resources, and we need Congress to fix this crisis, and that is just not correct.

This administration has all the authority and all the power that it needs to secure the border today. I know that because we did it during the Trump Administration.

It wasn't perfect. I'm not saying that it was. We did it effectively, and it became the most secure border in our lifetime.

So, they can talk about more resources. You can talk about how it's difficult and how it's hard and how we don't have enough resources. That does not mean that you exempt whole classes of individuals from law or you categorically parole individuals into the country.

If all these individuals that they are paroling in really need asylum protections, why aren't they bringing them in as asylees or refugees? They're bringing them in as parolees.

Mr. NEHLS. Yes. I've gotten 10 seconds. Thank you, Mr. Wolf.

I will say this. Donald Trump has been the best President in my lifetime. When he comes back in 2024, 212(f) needs to be used. We need to shut down our southern border until we have operational control and save America.

I yield back.

Mr. MCCLINTOCK. Ms. Jackson Lee.

Ms. JACKSON-LEE. I thank the Chair.

I have a lot of friends in this room, and some are all on one side and many are on the other side. I have heard some shocking things in here that will literally take my breath away, adding to the Canadian fires, literally take my breath away.

Someone offered up the Catholic Charities. The Republicans are known to introduce legislation and try to pass legislation to penalize the Pope, Catholic Charities, and other nonprofits for simply doing what the scriptures in their faith tell them to do.

In addition, the kind of self-righteous testimony that I've heard—and it is not ad hominem of anybody, I've said it generically—is unbelievable. It is simply unbelievable.

I've been on Homeland Security since 9/11, helped create the Committee and the department. I could turn around and blame the victims who jumped out of the building. That's how outrageous this testimony has been.

As it relates to Title 42, since it was lifted the number of unlawful crossings at the southwest border has dropped nearly 65 percent per the Biden Administration. The administration in the last two fiscal years, DHS has seized more fentanyl and arrested more criminals for committing crimes related to fentanyl and precursor chemicals than any previous five years combined. Fentanyl seizures are even higher in Fiscal Year 2023. I really don't know what you're talking about.

The administration has strategically placed more than 24,000 Border Patrol agents, officers, thousands of troops, and contractors, to the concern of many various positions, and over a thousand asylum officers along the border.

Let me be very clear. The Chair of this Committee said, as it relates to the impeachment of the Secretary, it's not a matter of if, it's a matter of when.

Someone tell me how we're going to, in a bipartisan way, do the job that the American people want us to do. We are all concerned.

The misrepresentation of what Border Patrol agents are saying, I don't know what you all are hearing. When I go, they are both collegial, congenial, factual, compassionate, and reasonable. They love their job. They believe that a lot of work is being done by Congress to give them resources. Someone just said they need no resources.

When there are issues that need to be addressed, we do need to address them in a bipartisan way, as opposed to condemnation.

For every visit you've been to the border, I've probably doubled it. I've walked the streets and seen the despair. I've been in the nonprofits. Yes, I have seen the horrors of the Trump Administration snatching children away from their parents and the complete disconnect that the children got in only months of separation when they tried to reunite them and the children were looking in shock at the mother and would not even go to the parent. That's how dysfunctional they had become.

I have a short time, Mr. Reichlin-Melnick. I know you have three names, but forgive me. Give me just a quick snippet of the fact that the world has changed with the amount of migration and people moving, *i.e.*, Venezuela, and it is enormous. Just quickly, because I have another question quickly for you.

Mr. REICHLIN-MELNICK. Yes. This is the big difference between the Biden Administration and the Trump Administration, is who is coming.

The Trump Administration, it was mostly Mexicans and Central Americans. Now, we are seeing far greater flows from other parts

of the Western Hemisphere, in particular, Venezuela, Cuba, and Nicaragua, which pose very different challenges to processing.

Ms. JACKSON-LEE. For those who say we're doing nothing, I know that the American Immigration Council has done some work on this.

Can you discuss what you found as it relates to arrests by Customs and Border Protection of individuals trafficking fentanyl?

Can you quickly distinguish—there is something called human smuggling, which is what the bulk of activity is going on with the cartels and the smugglers. It is different from human trafficking. I am a champion against human trafficking.

Please explain the fentanyl issue that you've been able to determine and how smuggling and trafficking is different, and how it is human smuggling that is going on at the border, and that the administration has its hand on trafficking, yes, sir.

Let me say Reichlin-Melnick. Thank you.

Mr. REICHLIN-MELNICK. Yes, really quickly, smuggling is usually people pay a smuggler to smuggle themselves. Trafficking is people who are being trafficked involuntarily, against their own will.

When it comes to fentanyl, I think there I look to what the law enforcement agencies say. CBP, ICE, his, the DEA, and the FBI all say the overwhelming majority of hard drugs, such as fentanyl, come into the U.S. at ports of entry, smuggled usually in passenger cars and most often by U.S. citizens.

Ms. JACKSON-LEE. They're catching them?

Mr. REICHLIN-MELNICK. The fentanyl seizures have increased every year, and I believe the deployment of nonintrusive inspection technology increases year by year.

Mr. MCCLINTOCK. The gentlelady's time has expired.

Mr. Hunt.

Ms. JACKSON-LEE. Thank you. I yield back, Mr. Chair.

Mr. HUNT. We are a Nation of laws, or we are not a Nation at all. We already have laws on the books that can prevent the catastrophic border crisis that we are seeing every single day today.

We know they work. Do you know how we know they work? Because they worked under President Trump. They worked because he and his administration—and you, Mr. Wolf—chose to enforce those laws.

Now, is this merely a failure to act, or is this intentional?

President Biden and Mayorkas act as if their hands are tied, like nothing can be done to fix this border crisis. Interestingly enough, almost every policy this administration has attempted to implement has been roughly a failure. Biden's Afghan withdrawal, Biden's foreign policy, Biden's economic agendas, failures.

Except for the border crisis. The border crisis is their only success. I say that because they have successfully created a chaotic situation to carry out a radical agenda. Problem. Reaction. Solution.

The administration created this problem, listened to the reaction, and I suspect they will present a solution. That solution, ladies and gentlemen, in the future will be an attempt at mass amnesty. There, I said it.

The real solution would have been to prevent this crisis from happening in the first place. The Biden Administration could have

done just that if we'd have kept simple laws on the books and enforced the laws of this country. Simple as that.

Do you know that over 200 people on the terrorist watch list have been arrested at the border since President Biden took office? That should be terrifying for you to hear. That's just the ones that we know of. How many have escaped into the interior of the United States?

Now, I served my country in combat, and I was actually a West Point cadet when 9/11 happened. My classmates and I stood about 60 miles North, just up the Hudson River, New York City, and watched 3,000 innocent lives evaporate from our world in 90 minutes. My fear is that, with our porous border, another 9/11 is imminent, and it will happen because this administration won't fulfill its basic responsibility, which is to secure our homeland.

The Biden Administration is making a deliberate choice to not secure our border. Do you know how I know this is a fact? Because three years ago we weren't having this conversation.

My first question is for you, Mr. Wolf. What has changed between these administrations that has caused this crisis to explode to what we've seen lately?

Mr. WOLF. It's the intentional destruction of a lot of effective policies that were put in place during the Trump Administration. Happy to name those one by one by one.

We've heard a lot of talk about detention capability. What I will say is, yes, it's difficult, it's hard to detain individuals. If you actually want to remove individuals from this country, you need to detain them. Under the Biden Administration, they have removed the lowest number of individuals in, I would say, decades, 39,000 removals of criminal illegal aliens. That is a drop of over 62 percent from Fiscal Year 2020, which was during COVID.

So, there's a lot of different policies that they have decided to tear down, very effective policies, and they did that without any analysis. They did it because they didn't like it. They didn't like the President. They didn't like whoever at the time. Forget about whether they were actually protecting Americans or they were protecting American communities.

I think lost in this whole discussion is what is best for Americans on our border security policy, our immigration policy. It's not what is best for illegal aliens. It's what is best for Americans. That should be our first duty.

Yes, we need to make sure that those that are coming here seeking protections, that qualify for our protections under law, get those protections. Absolutely. We need to think about Americans first, and I think that's where this administration is falling short.

Mr. HUNT. Another question for you, sir. If you were running the Department of Homeland Security right now the same way that Secretary Mayorkas is doing right now, what do you think President Trump would have done to your job?

Mr. WOLF. I would no longer be there.

Mr. HUNT. I kind of tend to agree with you on that, sir.

I want people to understand this. We've had over six million people, illegal aliens, enter our country since Biden's taken office—six million. We have conceded our border to the cartels. Fentanyl has killed enough Americans—enough fentanyl has poured into this

country to kill every single American five times. We have sworn enemies on the terrorist watch list in the United States, and we don't even know where they are.

If President Biden does not secure this border, we're going to have another 9/11. That's how serious this is. We must do our job and protect the American citizens.

Thank you all for being here, and God bless you.

Mr. McCLINTOCK. Thank you.

Ms. Ross.

Ms. ROSS. Thank you, Mr. Chair.

I just want to do a little reset here. To be very clear, President Biden inherited a disaster of a border from former President Trump. We all watched it on TV aghast. He did it in the middle of a global pandemic.

Now, the Biden Administration is not perfect, and I'm not here to defend every single thing that they've done. What they have done is work to correct course, to tighten security, while also expanding pathways to legal immigration.

These have been good faith attempts to enforce the law, which former President Trump rarely tried to do in a way that helped our immigration policy.

It was the Trump Administration that allowed unaccompanied children to cruelly be held in detention far longer than allowed by the law. It was his administration that designed and boasted about family separation. It was his administration that wasted resources illegally on inefficient enforcement mechanisms like the construction of the border wall.

Countless reports have demonstrated how the militarization of border security increases the number of unauthorized immigrants who remain in the United States because it disrupts historically circular-flowing migration and results in a net undocumented inflow.

This hearing is yet another example of my Republican colleagues' preference for partisan political hearings over engaging in good faith discussions about solutions that could actually work. There are bipartisan proposals for this on both the House and Senate side, yet we've had zero hearings on those.

As we've heard in the days after Title 42 ended, Border Patrol encounters have gone down. So, it is particularly ironic that we are having this hearing now. Now is the time that we should be working together on solutions.

We need legislation that enhances border security. Several of us recently visited the border, and we got lots of great suggestions about how to do that from the people who deal with this every single day.

We also need legislation that expands pathways to legal residency and citizenship and strengthens our economy.

You might have seen me step out briefly about a half an hour ago to meet with the home builders from North Carolina. One of their priorities for their legislative agenda is comprehensive immigration reform. Same priority for most of the businesses in my district in North Carolina, same priority for the agricultural community, same priority for the hospitality industry. Yet, we haven't had one hearing on doing that.

For two sessions of Congress, I've introduced bipartisan, bicameral legislation to help people who came to this country legally as dependents of visa holders. Because we have such a broken immigration system, they're being forced to self-deport and leave their families and the only country that they know because this Congress does not have the will to take that bill up.

Now, to the credit of the last Congress, it passed the House in two different vehicles.

We have a broken immigration system on many levels. It is time to get about the business of having hearings on real legislation that will solve real problems and help real people.

Thank you, Mr. Chair, and I yield back.

Mr. McCLINTOCK. Thank you.

Mr. Wolf, when you were Acting DHS Secretary the border was secure, was it not, for all intents and purposes?

Mr. WOLF. We worked every day to secure it, every day, every week, every month.

Mr. McCLINTOCK. We had reached a very low number of illegal border crossings, had we not?

Mr. WOLF. I think by a number of different metrics, and that's certainly one, the number of apprehensions fell.

Mr. McCLINTOCK. Since then, of course, we have seen a mass migration of unprecedented proportions, millions and millions flooding into the country.

Were there changes in law that occurred to account for this, or is it entirely a matter of not enforcing the law?

Mr. WOLF. There's been no changes in law that I'm aware of.

Mr. McCLINTOCK. Mr. Edlow, there have been a lot of instances now when the administration's been called out by the courts for failing to enforce the law. What's been the administration's response to these court orders?

Mr. EDLOW. Well, with the exception of the September 30 memo, which was enjoined and vacated in June 2022, to the extent that the administration has been able to get around the court orders, they have.

Mr. McCLINTOCK. Has anybody challenged them on that in court?

Mr. EDLOW. Some States have challenged them, yes.

Mr. McCLINTOCK. Has any court come back and issued a criminal contempt citation for failing to—

Mr. EDLOW. Not that I'm aware.

Mr. McCLINTOCK. Are there any pending?

Mr. EDLOW. I couldn't answer that, sir.

Mr. McCLINTOCK. All right.

Mr. Wolf, any thoughts on that?

Mr. Bradbury?

Mr. BRADBURY. I don't believe there are any pending. Obviously, Mr. Chair, it is difficult for a court to impose contempt.

Mr. McCLINTOCK. Right. What I'm trying to do is determine the difference between simple maladministration and deliberate violation of law. I think that's a very bright line that we need to define.

We spoke of detention. I think Mr. Reichlin-Melnick made a very good point. You've have ten illegal aliens, you have beds to detain five, what do you do with the other five?

Is that what's actually going on, Mr. Wolf?

Mr. WOLF. So, not only should you be detaining, but if you're unable to detain, then you can certainly have them wait, such as what we did under MPP.

I think that's an interesting point that was missed in this whole debate. We started talking about detention and how that's never achievable. I'm not here saying that you can detain everyone, but there is another option that Congress in the INA tells you to do. So, if you can't do that, then you can hold them in a third country, as we did under the Migrant Protection Protocols. Again, interesting that was not brought up.

So, there are other ways that you can enforce the law. This idea that if you can't detain them, that simply they're released into American communities, is not the law, and we shouldn't pretend that it is. Yet, that is what is occurring, what's been occurring for the last several years.

Mr. MCCLINTOCK. Well, is this actually a violation of law or is it just a very poor decision?

Mr. WOLF. I would say it's both.

Mr. MCCLINTOCK. Mr. Edlow, I'm told that all the capacity that we have right now isn't being used, and yet illegal aliens are being released into the country.

Mr. EDLOW. I don't believe it is being used, Congressman. For the most part there are more interest right now in—it was in paroling people, and now it's giving notices to appear at the border and letting people go along their way. There is not an interest in detaining as far as I can see.

Mr. MCCLINTOCK. Let's talk about parole authority. Congress did tighten the criteria for paroles back in the mid-1990's precisely because it was being abused in the manner that Mr. Reichlin-Melnick outlined.

Is it true that 20,000 mass paroles were done under the Trump Administration, Mr. Wolf?

Mr. WOLF. So, there are a number of parole programs that we administered, obviously, that we began—or we continued to administer that was going on during the Obama Administration and the like. Again, the important point here is, are you trying to secure the border, and are you trying to hold people accountable, and are you trying to get them the protections they need?

So, as they parole people into the United States, there's no asylum protections for them. They're not in asylum proceedings. So, if they truly need asylum, why aren't they being put into asylum proceedings? Instead, they're simply paroling them into the country to, again, have this status for a year, perhaps even two years at a time. It doesn't make any sense. It's a little smoke and mirrors of what the administration is trying to do at the border.

Mr. MCCLINTOCK. OK. Asylum hearings are designed to be adversarial in nature. They're presided over by immigration judges bound by the law. How does that differ from the administration's replacement of this process with USCIS asylum officers?

Mr. Bradbury?

Mr. BRADBURY. Well, it's completely different now because they're reviewing their own appeals of their own decisions. It's not an adversarial process.



Mr. MCCLINTOCK. Is there a provision of law that gives them this authority?

Mr. BRADBURY. No. It's in violation of Section 103 of the INA. It's the Attorney General and the immigration judges that have to hear those appeals.

Mr. MCCLINTOCK. Well, I see my time has expired.

I see Mr. Swalwell has arrived, so I recognize him for five minutes.

Mr. SWALWELL. Why is this hearing happening within the same week that we just learned that the Department of Homeland Security announces the average daily unlawful border crossings are down sharply relative to the period before Title 42 ended? We're seeing record number of fentanyl being seized by Border Patrol—seized, not getting passed them but successes because our law enforcement are doing their job and showing up every day. We don't congratulate them. Instead, we use that as a political tool to try and hit the Biden Administration.

Why is this hearing happening? It's because it's a part of a corrupt bargain, a dirty deal that allows Speaker McCarthy to stay in power. He's on an installment plan. He's got to pay an installment every week. He's got to give Tucker Carlson the January 6th sensitive police footage. He has to put Marjorie Taylor Greene on the Committee of Homeland Security, even though she said January 6th was a 1776 for our country and she goes and visits the terrorists of January 6th at the D.C. jail and dishonors the police officers. Another installment is we have to defund the effort to help Ukraine to satisfy the Putin bloc that is across the aisle.

This is an installment that Ms. Taylor Greene openly admitted when she said she's voting for the crazy idea that we pay America's bills to lift the debt ceiling because she's going to get some dessert out of it. That's what she said. She said: "I'm going to get some dessert out of this shit sandwich."

Those are her words. This is her dessert. We all have to sit here for her dessert.

Mr. MCCLINTOCK. The gentleman will suspend for a moment.

The gentleman is warned not to use vulgarities in this Committee room, and the gentleman is warned to restrain from making attacks on the motivations of Members.

Ms. JAYAPAL. Mr. Chair, point of order.

Mr. MCCLINTOCK. The gentlemen will proceed in order.

Mr. SWALWELL. Mr. Chair, I apologize for quoting your colleague.

Mr. MCCLINTOCK. Point of order. The gentlelady will State the point of order.

Mr. SWALWELL. No, no, Chair. I apologize for quoting your colleague. I won't quote her again if that's offensive to you.

Mr. MCCLINTOCK. You will refrain from questioning the motives of Members.

Mr. SWALWELL. So, we're here because that was a promise that my colleague told the public was made, that we get to impeach Mayorkis. So, this is the predicate to bring impeachment proceedings against the Secretary of Homeland Security who just announced last week that daily unlawful border crossings are down sharply.

Look, Kevin McCarthy may have the title of Speaker, but it's clear to me, because of this hearing today, he doesn't have the job. The job is by the person who's getting her dessert here today.

I also think, Chair, it's quite rich that the title of today's hearing is whether the law is being faithfully executed because your principal witness was declared to have been an unlawful Acting Secretary of Homeland Security and, on September 17, 2020, failed to honor his own subpoena, which puts him in good company because the Chair of our Committee is 400 days in to not honoring his own subpoena. We're calling this hearing a question of whether the laws are being faithfully executed with a witness who didn't honor a subpoena Chaired by a Committee Chair who did not honor his subpoena, very rich.

So my question, Mr. Reichlin-Melnick, is, considering that border crossings are down, we're trying our best with a party that doesn't want competence at the border—they want chaos; they want to declare there's open borders to try and incite people to come to the United States—do you see grounds at all, any predicate that would summarize why an impeachment of Secretary Mayorkis would be justified?

Mr. REICHLIN-MELNICK. Congressman, I'm not an expert on impeachment, but what I do know is that it's been 33 years since we last updated our illegal immigration laws and 27 years since we last updated our asylum laws.

We are operating a 20th century system, a system that in some cases came around before the worldwide web, and it's not a surprise that in, a 21st century global displacement crisis, the United States is struggling very hard to keep up.

So, I think what this shows is that we need to fix and update our laws, give the system the resources it needs to work, and ensure that the DHS can actually carry out the laws in a way that today in many ways it struggles with.

Mr. SWALWELL. Thank you.

I think the summary here is people want competence, they don't want chaos, on immigration, on the debt ceiling, on anything else. I yield back.

Mr. MCCLINTOCK. Thank you.

I think they also would like civility.

This concludes today's hearing. I want to thank all our witnesses for appearing before the Committee. I want to apologize on behalf of the Committee for the ad hominem attacks that were directed at several of our guests today.

Without objections, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record. I know I will have quite a few.

Without objection, the hearing is adjourned.

[Whereupon, at 4:04 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Immigration Integrity, Security, and Enforcement can be found at the following links: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=116066>.

**OPEN BORDERS, CLOSED CASE: SECRETARY  
MAYORKAS' DERELICTION OF DUTY ON THE  
BORDER CRISIS**

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**HEARING**

BEFORE THE

**COMMITTEE ON HOMELAND SECURITY**

**HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 14, 2023

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## **OPEN BORDERS, CLOSED CASE: SECRETARY MAYORKAS' DERELICTION OF DUTY ON THE BORDER CRISIS**

**Wednesday, June 14, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:02 a.m., in room 310, Cannon House Office Building, Hon. Mark E. Green [Chairman of the committee] presiding.

Present: Representatives Green, McCaul, Higgins, Guest, Bishop, Gimenez, Pfluger, Garbarino, Taylor Greene, Gonzales, LaLota, Ezell, D'Esposito, Lee, Luttrell, Strong, Brecheen, Crane, Thompson, Jackson Lee, Payne, Swalwell, Correa, Carter, Thanedar, Magaziner, Ivey, Goldman, Garcia, Ramirez, Menendez, Clarke, and Titus.

Chairman GREEN. The Committee on Homeland Security will come to order.

Without objection, the Chair may declare the committee in recess at any point.

Without objection, the gentlewoman from Texas, Ms. De La Cruz, is permitted to sit on the dais and ask questions to the witness.

Before I start my opening comments today, I would like to make a few administrative notes.

First, and most importantly, today is the United States Army's birthday. We have purchased a birthday cake to the United States Army and it is in the joint room for both parties, Members, and staff to enjoy. Please, as you are having a piece of cake, reflect on the 248 years of men and women who have served our great Nation in the United States Army.

Also, before we start today, I want to point out that this is an oversight hearing, and it is the beginning of several that will follow. I am guessing that the party that holds the White House will differ in their opinions to the party not in the White House. That is OK. I am certain we can all conduct ourselves without disrupting the decorum of this committee by using unparliamentary words to attack an individual's character. You can attack behavior, you can attack decisions, you can engage in debate, you can say doing this or that makes no sense, you can even say something is stupid, but you just can't say that an individual is stupid. I understand that it is a subtle difference, but it has been the standard of this committee for many Chairmen before me and it will be enforced by me too.

Last, next week we will hold our first joint meeting of all the cyber-related subcommittees. The intent is to begin a paradigm shift in how we approach cybersecurity in a bipartisan, multi-committee fashion. We need a whole-of-Government approach. We need to break down the silos in Government and in Congress, industry, and especially the administrations. Cyber folks love this idea. All Members of our Cyber Subcommittee should attend. It is a breakfast and we will host some of the Nation's brightest cybersecurity experts. I encourage all Members of the Committee of Homeland Security to engage and attend. The cyber border is just as important as any other border.

In July we are going to hold—another administrative note here—we are going to hold a substantive markup that we also hope will be bipartisan, tentatively aiming for the first week back in session in July. We need to move early in July to deal with the reauthorization of the Chemical Facility Anti-Terrorism Standards Statute, or CFATS. It is my hope we can do this and other legislation in a bipartisan way.

Now for the business of the day. The purpose of this hearing is to receive testimony on Secretary Mayorkas' dereliction of duty.

I now recognize myself for an opening statement.

On February 2, 2021, Alejandro Mayorkas was sworn in to be the United States Secretary of Homeland Security. He swore an oath to support and defend the Constitution of the United States and faithfully discharged the duties of his office. Since then, the American people have suffered from a national security, humanitarian, and public safety disaster at the Southwest Border. A disaster that has turned every city into a border city, and every State into a border State.

In just over 2 years, under Secretary Mayorkas, more people have entered our country illegally than in the 12 years of the Obama and Trump administrations combined. This includes more than 5.2 million apprehensions at the Southwest Border, more than 6.1 million apprehensions, factoring in America's Northern and Maritime Borders, and at least 1.5 million known gotaways, illegal aliens who slip across our border without being caught and are now at large in the United States. This should terrify every American.

Based on Border Patrol statistics of criminal aliens they do catch, those gotaways could include as many as 1,180 aliens guilty of DUIs, 285 guilty of sexual assault, and more than 3 dozen guilty of murder. Last fall, an illegal alien struck and killed Florida Sheriff's Deputy Mike Hartwick before fleeing the scene. The alien had entered the country illegally in October 2021 in Texas, and was sent back to Mexico. But at some point reentered our country as a gotaway.

An unknown number of national security threats are pouring across our border each and every day. Since October of last year, Border Patrol has reported nearly 10,000 arrests of Chinese nationals that have illegally crossed the Southwest Border, and the number continues to increase every month. I have confirmed that some of the Chinese nationals coming in have ties to the Chinese Communist Party and the People's Liberation Army. They have been released into the United States.



That is all I can share at this point. We will be holding a Classified briefing in the near future on this for all Members.

DHS has no way to verify the identities and backgrounds of these individuals. They are almost always quickly released into the interior of our country to do who knows what. This is the height of madness. Releasing unvetted individuals from our Nation's most dangerous adversaries into our local communities. That is what Secretary Mayorkas is doing with each and every one of these individuals Mayorkas is putting our national security at risk. U.S. law states that one of the foremost duties of the Secretary of Homeland Security is to control and guard the borders of the United States, but Secretary Mayorkas has surrendered control of our Southwest Border to the Mexican cartels. Today nothing comes in or out without the cartel's knowledge and tacit approval. They have seized full control, pushing not just historic numbers of illegal aliens across, but record amounts of drugs like fentanyl, which killed more than 71,000 Americans in 2021. A horrific new record. Fentanyl is now the leading cause of death for Americans ages 18 to 49. American children are attending the funerals of their friends who have died of fentanyl poisoning. According to one recent study, more than 1,500 kids under the age of 20 died from fentanyl poisoning just in 2021, more than 4 times as many as in 2018.

Secretary Mayorkas has put all families at risk, even families visiting from overseas. The Lavenir family from France tragically lost their 19-month-old daughter Enora to fentanyl poisoning when on vacation in Florida. This beautiful little girl was exposed to fentanyl left behind by the previous occupant of their rental unit. How can any family in America feel safe when a stay in a hotel or an Airbnb could end up with the death of a child?

The devastating consequences don't stop there. Some other highlights of the Secretary's open borders policy include the following: more than 350,000 encounters of unaccompanied minors. The administration has since lost control of at least 85,000 of these children. Tragically, many of them are being trafficked, abused, and exploited. According to a damning *New York Times* investigation, many of these children are being forced to do dangerous jobs that violate the U.S. child labor laws, all because of Mayorkas' decision to stop vetting the sponsors. From October 1 to 2020 to March 2023, Border Patrol recorded nearly 28,000 arrests of illegal aliens with criminal backgrounds, approximately 6,000 more total arrests than the previous 4 physical years combined. These numbers do not include data from States like Texas, which has apprehended hundreds of thousands of illegal aliens and recorded more than 27,000 arrests of criminal illegal aliens itself. In fiscal year 2021, Border Patrol discovered 568 dead migrants at the Southwest Border, nearly double the 254 found in fiscal year 2020. In fiscal year 2022, the number jumped to 853. More than 1,700 migrants have died on U.S. soil while trying to enter this country illegally on Mayorkas' watch—people he encouraged to make the journey. Mayor Adams of New York recently stated that more than half of the hotel rooms in New York City are now filled with illegal aliens. Cities like Chicago are putting illegal aliens ahead of their own citizens, allocating millions of dollars to house and care for those arriving to their city, infuriating residents and neighbors like

South Shore, who won't get those resources. In May, Chicago Mayor Lightfoot stated, we simply have no more shelters. Medicaid spending on emergency medical services for illegal aliens more than doubled in fiscal year 2020 to fiscal year 2021, from around \$3 billion to more than \$7 billion. This suffering and death falls squarely on the shoulders of the Secretary of the Department of Homeland Security, Alejandro Mayorkas, a man who has been derelict in his duty to protect America.

Since his first day in office, Secretary Mayorkas has intentionally undermined America's immigration laws and meaningful border security enforcement and in its place, implemented an extreme agenda of open borders. The vast majority of those crossing our borders illegally are coming not because of COVID-19, climate change, or because CBP doesn't have enough funding. They are coming for economic reasons, and they are coming in record numbers because Mayorkas left the door open, unlocked. Those individuals typically possess no legitimate claim to asylum, and under prior administrations, both Democrat and Republican, most would have been quickly deported. The difference now, Mayorkas and his policies. Yet not once has he taken responsibility for this mess.

The mountain of evidence this committee has gathered proves that Alejandro Mayorkas has been derelict in his duty as the Secretary of the Department of Homeland Security. Upon assuming office, he immediately went to work reversing and tearing down the effective border policies of the last two administrations, replacing them with an open borders policy of mass catch-and-release. He has also repeatedly violated laws passed by this Congress. To date, our investigation has uncovered nearly a dozen violations of statutes and court orders. Consider just a few examples. The evidence shows that Mayorkas has repeatedly violated the law that prohibits mass parole of aliens into the country. The statute makes clear parole is only to be granted on a case-by-case and temporary basis for an urgent humanitarian reason or significant public benefit. Instead, Mayorkas has done the opposite, directing and overseeing a release of hundreds of thousands of aliens via mass parole in just 2 years through various programs, including, more recently, his CBP One App. The evidence also shows Mayorkas has violated the clear language of the Immigration and Nationality Act, requiring illegal aliens to be detained while their claims are resolved. At his direction, millions of illegal aliens have been released into the country through a program called Alternatives to Detention, via other mass parole, or with a notice to appear in court. DHS's own data shows that when illegal aliens are not detained at all, or are only detained for a short time, then released into the interior, they are almost never removed.

Mayorkas and his defenders like to claim that we simply don't have detention space for the historic number of illegal aliens being drawn to the border by his disastrous policies, which is the epitome of circular reasoning. You don't get to break the law in order to fix the consequences of your reckless decisions.

The evidence further shows Mayorkas has also violated the laws regarding the deportation of illegal aliens. Illegally entering the United States is a criminal deportable offense. Mayorkas has decided enforcing that law is just optional. Passed by Congress but

he can just make it optional. First, he has issued guidance making it harder for ICE to detain and deport the vast majority of illegal aliens in this country. As a result, deportations have plummeted, and the number of illegal aliens on ICE's non-detained docket has grown by more than 2 million people in just 2 years. It gets worse. Mayorkas has flagrantly violated the laws requiring him to detain criminal illegal aliens. His own acting ICE director, Tae Johnson, told Congress in April that ICE had actually been releasing hundreds of criminal illegal aliens into the country, into our communities.

When I last checked, the United States was a Nation of laws. We expect our leaders to follow the laws that Congress passes, and those who fail to do so should be exposed and face the consequences. The Constitution is clear. Congress writes the laws, and officers like Mr. Mayorkas are sworn to enforce them. No one is above the law, not even the Secretary of Homeland Security. His failure to uphold his oath and follow the law has been the driving force behind the disaster at the border.

Mayorkas has consistently made statements to Congress and the American people that demonstrate either dishonesty or gross incompetence, perhaps even both. He said at least 19 separate times some variation of the border is secure, even telling Members of this committee in 2021 that the border was no less secure than previous. He also claimed to have operational control of the border per the definition of the Secure Fence Act of 2006. Border Patrol Chief Raul Ortiz confirmed to this committee in March that DHS, in fact, did not have operational control of the border. Only after this did Mayorkas backtrack and tell the Senate later in March that no Secretary has ever had such control per the definition.

Mayorkas has claimed his policies are not responsible for the crisis, but they are. He claimed he was handed a dismantled system—he wasn't. He claimed that DHS is promptly expelling illegal aliens—they aren't. Our investigation has unearthed nearly 80 occasions on which Mayorkas has been outright dishonest or misleading, and other instances in which he has displayed unacceptable ignorance about the basic aspects of the on-going crisis.

Dereliction of duty is a serious matter. I spent 24 years in the Army, I know what it means. It means someone has either wilfully or negligently failed to do their duty or has done such a poor job that there is no reasonable excuse. When that individual is the Cabinet Secretary who swore to defend the Constitution in the homeland, the charge is even more serious.

Again, today marks the United States Army's 248th birthday. As a West Point graduate, as I said, I served 24 years. I know what dereliction of duty is when I see it and as a commissioned officer, I was responsible for holding those guilty of it accountable. There is zero doubt in my mind that Secretary Mayorkas has been derelict of his duty.

As the people's elected representatives, this committee has a duty to investigate Mayorkas and bring any wrongdoings to the American people. What we have found thus far is damning. To date, our investigation has discovered that he has violated the laws of the United States, abused the authority of his office, and betrayed the public trust through repeated dishonest and misleading

statements to Congress and the American people, while also demonstrating gross incompetence. I cannot imagine why President Biden, who is charged with defending the American people as Commander-in-Chief, would continue to tolerate this.

Our investigation will show the President why he should fire Mayorkas immediately or own this failure himself.

This isn't about politics or policy or disagreements, it is about law and order and the safety of the American people. It is about whether a Cabinet Secretary has followed the law, upheld his oath, and been faithful to the public trust. The American people want answers to this crisis. They deserve the truth. Unfortunately, Alejandro Mayorkas has been derelict in his duty as the United States Secretary of Homeland Security. The cartels are thriving, migrants are suffering, and Americans are dying. Their blood is on Secretary Mayorkas' hands. I hope every Member of this committee works together to fix this disaster.

[The statement of Chairman Green follows:]

STATEMENT OF CHAIRMAN MARK E. GREEN, M.D.

SETTING THE STAGE

On February 2, 2021, Alejandro Mayorkas was sworn in as the United States Secretary of Homeland Security. He swore an oath to support and defend the Constitution of the United States and faithfully discharge the duties of his office. Since then, the American people have suffered from a national security, humanitarian, and public safety disaster at the Southwest Border—a disaster that has turned every city into a border city and every State into a border State.

RECORD CROSSINGS AND CONSEQUENCES

In just over 2 years under Secretary Mayorkas, more people have entered our country illegally than in the 12 years of the Obama and Trump administrations combined. This includes:

- More than 5.2 million apprehensions at the Southwest Border;
- More than 6.1 million apprehensions factoring in America's Northern and Maritime Borders; and
- At least 1.5 million known gotaways—illegal aliens who slip across our border without being caught and are now at large in the United States.

This should terrify every American.

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Last fall, an illegal alien struck and killed Florida sheriff's deputy Mike Hartwick before fleeing the scene. The alien had entered the country illegally in October 2021 in Texas and was sent back to Mexico, but at some point re-entered the country as a gotaway.

An unknown number of national security threats are pouring across our border each and every day. Since October of last year, Border Patrol has reported nearly 10,000 arrests of Chinese nationals that have illegally crossed the Southwest Border, and the number continues to increase every month. I've confirmed that some of the Chinese nationals coming in have ties to the Chinese Communist Party (CCP) and the People's Liberation Army (PLA).

That's all I can share at this point, but we'll be holding a Classified briefing in the near future on this for all Members. DHS has no way to verify the identities and backgrounds of these people. They are almost always quickly released into the interior of our country to do who knows what.

This is the height of madness—releasing unvetted individuals from our Nation's most dangerous adversaries into our local communities. That's what Secretary Mayorkas is doing.

With each and every one of these individuals, Mayorkas is putting our national security at risk.

## CARTELS AND FENTANYL

U.S. law states that one of the foremost duties of the Secretary of Homeland Security is to control and guard the borders of the United States. But Secretary Mayorkas has surrendered control of our Southwest Border to the Mexican cartels. Today, nothing comes in or out without the cartels' knowledge and tacit approval.

They have seized full control, pushing not just historic numbers of illegal aliens across, but record amounts of drugs like fentanyl, which killed more than 71,000 Americans in 2021—a horrific new record. Fentanyl is now the leading cause of death for Americans ages 18–49. American children are attending the funerals of their friends who have died of fentanyl poisoning. According to one recent study, more than 1,500 kids under the age of 20 died from fentanyl poisonings in 2021, more than four times as many as 2018.

Secretary Mayorkas has put all families at risk—even families visiting from overseas. The Lavenir family from France tragically lost their 19-month-old daughter Enora to fentanyl poisoning when on vacation in Florida. This beautiful little girl was exposed to fentanyl left behind by a previous occupant of their rental unit.

How can any family in America feel safe when a stay in a hotel or Airbnb could end up in the death of their child!

## OTHER CONSEQUENCES

The devastating consequences do not stop there. Some other “highlights” of this Secretary's open borders policies include the following:

- More than 350,000 encounters of unaccompanied minors. The administration has since lost track of at least 85,000 of these children. Tragically, many of these children are being trafficked, abused, and exploited.
- According to a damning *New York Times* investigation many of these children are being forced to do dangerous jobs that violate U.S. child labor laws. All because of Mayorkas' decision to stop vetting sponsors.
- From October 1, 2020, to March 2023, Border Patrol recorded nearly 28,000 arrests of illegal aliens with criminal backgrounds, approximately 6,000 more total arrests than the previous 4 fiscal years combined.
- These numbers do not include data from States like Texas, which has apprehended hundreds of thousands of illegal aliens, and recorded more than 27,000 arrests of criminal illegal aliens itself.
- In fiscal year 2021, Border Patrol discovered 568 dead migrants at the Southwest Border, nearly double the 254 found in fiscal year 2020.
- In fiscal year 2022, the number jumped to 853. More than 1,700 migrants have died on U.S. soil while trying to enter the county illegally on Mayorkas' watch—people he encouraged to make the journey.
- Mayor Adams of New York City recently stated that more than HALF of the hotel rooms in New York City are now filled with illegal aliens.
- Cities like Chicago are putting illegal aliens ahead of their own citizens, allocating millions of dollars to house and care for those arriving in the city, infuriating residents of neighborhoods like South Shore who won't get those resources. In May, Chicago Mayor Lightfoot stated, “We simply have no more shelters.”
- Medicaid spending on emergency medical services for illegal aliens more than doubled in from fiscal year 2020 to fiscal year 2021, from around \$3 billion to more than \$7 billion.

## MAYORKAS IS RESPONSIBLE

This suffering and death fall squarely on the shoulders of the Secretary of the Department of Homeland Security—Alejandro Mayorkas, a man who has been derelict in his duty.

Since his first day in office, Secretary Mayorkas has intentionally undermined America's immigration laws and ended meaningful border security enforcement, and in its place implemented an extreme agenda of open borders.

The vast majority of those crossing our borders illegally are coming not because of COVID-19, “climate change,” or because CBP doesn't have enough funding.

They're coming for economic reasons, and they're coming in record numbers because Mayorkas has left the doors of our country unlocked and wide open.

These individuals typically possess no legitimate claim to asylum and under prior administrations—both Democrat and Republican—most would have been quickly deported.

The difference now?

Mayorkas and his policies. Yet, not once has he taken responsibility for this mess.

## MAYORKAS' POLICIES/VIOLATIONS OF LAW

The mountain of evidence this committee has gathered proves Alejandro Mayorkas has been derelict in his duty as the Secretary of the Department of Homeland Security.

Upon assuming office, he immediately went to work reversing and tearing down the effective border security policies of the last two administrations, replacing them with an open-borders policy of mass “catch and release.”

He has also repeatedly violated laws duly passed by Congress.

To date, our investigation has uncovered nearly a dozen violations of statutes and court orders.

Consider just a few examples:

(1) The evidence shows Mayorkas has repeatedly violated the law that prohibits mass parole of aliens into the country. The statute makes clear parole is only to be granted on a case-by-case and temporary basis, for an urgent humanitarian reason or significant public benefit.

Instead, however, Mayorkas has done the opposite, directing and overseeing the release of hundreds of thousands of aliens via mass parole in just 2 years through various programs, including most recently his CBP One mobile app scheme.

(2) The evidence also shows Mayorkas has violated the clear language of the Immigration and Nationality Act requiring illegal aliens to be detained while their claims are resolved.

(3) At his direction, millions of illegal aliens have been released into the country through a program called “Alternatives to Detention,” via other mass parole, or with a notice to appear in court. And DHS's own data shows that when illegal aliens are not detained at all or only detained for a short time and then released into the interior, they are almost never removed.

Mayorkas and his defenders like to claim that we simply don't have detention space for the historic number of illegal aliens being drawn to the border by his disastrous policies, which is the epitome of circular reasoning. You don't get to break the law in order to fix the consequences of your reckless policy decisions.

(4) The evidence further shows Mayorkas has also violated the laws regarding the deportation of illegal aliens. Illegally entering the United States is a criminal, deportable offense. Mayorkas has decided enforcing that law is optional.

First, he has issued guidance making it harder for ICE to detain and deport the vast majority of illegal aliens in this country.

As a result, deportations have plummeted, and the number of illegal aliens on ICE's Non-Detained Docket has grown by more than 2 million in just 2 years.

It gets worse. Mayorkas has flagrantly violated the laws requiring him to detain criminal illegal aliens. His own acting ICE director, Tae Johnson, told Congress in April that ICE had actually been releasing hundreds of criminal illegal aliens into the country! Into our local communities!

When last I checked, the United States was a Nation of laws. We expect our leaders to follow the laws that Congress passes, and those who fail to do so should be exposed and face consequences. The Constitution is clear—Congress writes the laws, and officers like Mayorkas are sworn to enforce them. No one is above the law, not even the Secretary of Homeland Security.

His failure to uphold his oath and follow the law has been the driving force behind the disaster at the border.

## MAYORKAS HAS BEEN DISHONEST

Mayorkas has consistently made statements to Congress and the American people that demonstrate either dishonesty or gross incompetence. Perhaps even both.

He has said at least 19 separate times some variation of “the border is secure,” even telling a Member of this committee in 2021 that the border is “no less secure than it was previously.”

He has also claimed to have operational control of the border per the definition of the Secure Fence Act of 2006. Border Patrol Chief Raul Ortiz confirmed to this committee in March that DHS in fact did NOT have operational control of the border.

Only after this did Mayorkas backtrack and tell the Senate later in March that no Secretary has ever had such control per that definition.

Mayorkas has claimed his policies are not responsible for the crisis—THEY ARE. He claimed he was handed a “dismantled” system—HE WASN'T. And he claimed that DHS is promptly expelling illegal aliens—THEY AREN'T.

Our investigation has unearthed nearly 80 occasions on which Mayorkas has been outright dishonest or misleading, and other instances in which he has displayed unacceptable ignorance about basic aspects of the on-going crisis.

#### CONCLUSION

Dereliction of duty is a serious matter. It means someone has either willfully or negligently failed to do their duty or has done such a poor job that there is no reasonable excuse.

When that individual is the Cabinet Secretary who swore an oath to defend the Constitution and the homeland, the charge is even more serious.

Today marks the United States Army's 248th Birthday. As a West Point graduate, I proudly served for 24 years.

I know dereliction of duty when I see it, and as a commissioned officer, I was responsible for holding those guilty of it accountable.

There is ZERO doubt in my mind that Secretary Mayorkas has been derelict in his duty!

As the people's elected representatives, this committee has a duty to investigate Mayorkas and bring any wrongdoings to the American people. What we have found thus far is damning.

To date, our investigation has discovered that he has violated the laws of the United States, abused the authority of his office, and betrayed the public trust through repeated dishonest and misleading statements to Congress and the American people, while also demonstrating gross incompetence throughout his public statements.

I cannot imagine why President Biden, who is charged with defending the American people as commander-in-chief, would continue to tolerate this.

Our investigation will show the President why he should fire Mayorkas immediately or own this failure personally.

This isn't about politics or policy disagreements. It's about law and order, and the safety of the American people.

It's about whether a Cabinet Secretary has followed the law, upheld his oath, and been faithful to the public trust.

The American people want answers to this crisis. They deserve the truth.

Unfortunately, Alejandro Mayorkas has been derelict in his duty as the United States Secretary of Homeland Security.

The cartels are thriving. Migrants are suffering. And Americans are dying. Their blood is on Secretary Mayorkas' hands.

I hope every Member of this committee works together to fix this disaster.

Chairman GREEN. I now recognize the Ranking Member, the gentleman from Mississippi, Mr. Thompson, for his opening statement.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Mr. Chairman, Americans have gotten used to political theater from Congressional Republicans, but this hearing is a new low. You don't have to look further than the title to know that the hearing is a sham. Calling a hearing and saying case closed before you have heard any testimony is not legitimate oversight. It is obvious this hearing isn't really about border security. It is not even really about Secretary Alejandro Mayorkas or the Department of Homeland Security. It is about partisan politics. It is about House Republican leadership catering to its most extreme MAGA members who want to impeach someone, anyone at all. It is about trying to make good on GOP backroom deals to elect a Speaker, raise the debt ceiling, and stave off of mutiny in the Republican ranks.

If the hearing title alone doesn't make it obvious, just look at who the Majority has invited to testify. The last time this committee called Mr. Wolf to testify, he was serving in a role as Acting Secretary of Homeland Security. He was asked to testify to the committee's annual hearing on threats to the homeland, but he refused to appear. He was subpoenaed and ultimately defied that subpoena, Mr. Wolf was a no-show at a hearing to inform Congress on terrorist threats facing our Nation. But he comes to the Hill

twice in the last week to appear before the Judiciary Committee and here today to engage in political gamesmanship. Perhaps Mr. Wolf is also trying to distract from his abysmal tenure at DHS, a tenure that included the Department's intentionally taking children from their parents at the border, changing and delaying a report on Russian interference in the 2020 election, and misusing DHS personnel to crack down on peaceful protesters in Portland. As it turns out, he was even serving unlawfully as Acting Secretary, having been appointed outside the Department's succession orders. In fact, Mr. Wolf was the fifth person to run DHS and the second to do so unlawfully in less than 3 years under President Trump. A stark reminder of the chaos and dysfunction of that administration.

I expect that today's Republicans will try to rewrite the history of the Trump administration and its border security and immigration policies. But the truth is, under the last administration, DHS took children from their parents, forced individuals fleeing violence and persecution to wait in Mexico, and expelled unaccompanied children at our border. The truth is, the last administration dismantled our lawful immigration system to the point where it could barely function. The policies were not only terribly cruel, but also incredibly ineffective. They didn't address fundamental border security challenges, fix our broken immigration system, or respond to the on-going global migration phenomenon. Instead, they made the problem worse. For example, the number of encounters at the border jumped sharply after President Trump implemented Title 42, and they made vulnerable people suffer. That is the mess the Biden administration inherited. That is what Secretary Mayorkas has had to deal with since taking office.

Mr. Chairman, legitimate oversight follows the facts. The facts are that the Biden administration's plan to address these challenges are working. The number of Border Patrol encounters have plummeted by 70 percent since the Biden administration ended Title 42 last month, the number of overall border encounters have dropped by 50 percent in that time, due in large part to DHS's hard work under Secretary Mayorkas' leadership. The Biden administration has re-established lawful pathways for migrants to access the asylum system. It has also utilized parole on a case-by-case basis for those fleeing certain totalitarian or communist regimes in our hemisphere. At the same time, it has made clear that our borders are not open and those arriving outside lawful pathways will be sent home. Recent deportation and removal numbers reflect that hard reality for many.

Unlike its predecessor, the Biden administration is enforcing border and immigration laws in an orderly, humane way, consistent with precedents set by prior administrations of both parties. Some may not like that, but those are policy differences and nothing more. You don't impeach a Cabinet Secretary because you don't like their policies and you certainly don't impeach a Cabinet Secretary to appease extreme members of your political party. Secretary Mayorkas is fulfilling his duty under the law and to the American people. If the Republican Majority doesn't like what he is doing, they should work with Democrats to pass bipartisan border security and immigration reform legislation. Apparently, they



prefer political theater and sloppy, inaccurate, “report” instead. Mr. Chairman, I yield back.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

JUNE 14, 2023

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It’s about House Republican leadership catering to its most extreme MAGA Members, who want to impeach someone—anyone at all. It’s about trying to make good on GOP backroom deals to elect a Speaker, raise the debt ceiling, and stave off a mutiny in the Republican ranks.

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Mr. Wolf was a no-show at a hearing to inform Congress on terrorist threats facing our Nation. But he’s come to the Hill twice in the last week to appear before the Judiciary Committee and here today to engage in political gamesmanship. Perhaps Mr. Wolf is also trying to distract from his abysmal tenure at DHS—a tenure that included:

- the Department intentionally taking children from their parents at the border,
- changing and delaying a report on Russian interference in the 2020 election,
- and misusing DHS personnel to crack down on peaceful protestors in Portland.

As it turns out, he was serving unlawfully as Acting Secretary, having been appointed outside the Department’s succession order.

In fact, Mr. Wolf was the fifth person to run DHS and the second to do so unlawfully in less than 3 years under President Trump—a stark reminder of the chaos and dysfunction of that administration.

I expect that today Republicans will try to rewrite the history of the Trump administration and its border security and immigration policies. But the truth is, under the last administration, DHS took children from their parents; forced individuals fleeing violence and persecution to wait in Mexico; and expelled unaccompanied children at our border. The truth is, the last administration dismantled our lawful immigration system to the point where it could barely function.

These policies were not only terribly cruel, but also incredibly ineffective. They didn’t address fundamental border security challenges, fix our broken immigration system, or respond to the on-going global migration phenomenon. Instead, they made the problem worse—for example, the number of encounters at the border jumped sharply after President Trump implemented Title 42. They made vulnerable people suffer. That is the mess the Biden administration inherited, and that is what Secretary Mayorkas has had to deal with since taking office.

Legitimate oversight follows the facts, and the fact is that the Biden administration’s plans to address these challenges are working. The number of Border Patrol encounters have plummeted by 70 percent since the Biden administration ended Title 42 ended last month. The number of overall border encounters have dropped by 50 percent in that time, due in large part to DHS’s hard work under Secretary Mayorkas’ leadership.

The Biden administration has reestablished lawful pathways for migrants to access the asylum system. It has also utilized parole on a case-by-case basis for those fleeing certain totalitarian or communist regimes in our hemisphere. At the same time, it has made clear that our borders are not open and those arriving outside of lawful pathways will be sent home. Recent deportation and removal numbers reflect that hard reality for many.

But unlike its predecessor, the Biden administration is enforcing border and immigration laws in an orderly, humane way, consistent with precedent set by prior administrations of both parties. Some may not like that, but those are policy differences and nothing more.

You don’t impeach a Cabinet Secretary because you don’t like their policies. You certainly don’t impeach a Cabinet Secretary to appease extreme Members of your

political party. Secretary Mayorkas is fulfilling his duty under the law and to the American people.

If the Republican Majority doesn't like what he's doing, they should work with Democrats to pass bipartisan border security and immigration reform legislation. Apparently, they prefer political theater and a sloppy, inaccurate "report" instead.

Chairman GREEN. Thank you, Ranking Member.

Other Members of the committee are reminded that opening statements may be submitted to the record.

I would like, without objection, to enter into the record the DHS Order of Secession, which shows that Mr. Wolf had the authority to serve as Secretary.

Without objection, so ordered.

[The information follows:]

Order Designating the Order of Succession for the Secretary of Homeland Security

(a) By the authority vested in me as Acting Secretary of Homeland Security, including the Homeland Security Act, 6 U.S.C. § 113(g)(2), and notwithstanding any Department of Homeland Security (DHS) prior delegation, directive, instruction, policy, or any other document of any kind, including without limitation DHS Delegation No. 00106, I hereby designate the order of succession for the Secretary of Homeland Security as follows:

Order of Succession for the Secretary of Homeland Security  
*Pursuant to Title 6, United States Code, Section 113(g)(2)*

1. Deputy Secretary of Homeland Security;
2. Under Secretary for Management;
3. Administrator of the Federal Emergency Management Agency;
4. Administrator, Transportation Security Administration;
5. Under Secretary for Strategy, Policy, and Plans;
6. Commissioner of the U.S. Customs and Border Protection.

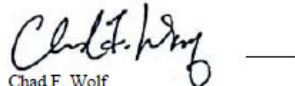
(b) No individual who is serving in an office listed above in paragraph (a) in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(c) DHS Orders of Succession and Delegations of Authorities for Named Positions, Delegation No. 00106, Annex A, is hereby amended to reflect the officials listed in order in the above designated order of succession for the Secretary of Homeland Security. Further the title for Annex A shall be amended to state as follows:

"Order of Succession for the Secretary of Homeland Security"  
"Pursuant to Title 6, United States Code, Section 113(g)(2)"

(d) This order designating the order of succession for the Secretary of Homeland Security is effective on January 11, 2021, at 11:59 p.m. Eastern Standard Time.

Dated: January 11, 2021 4 p.m.



Chad F. Wolf  
Acting Secretary of Homeland Security

Chairman GREEN. I am pleased to have a distinguished panel of witnesses before us today on this overdue discussion.

I ask that our witnesses please rise and raise their right hand.

Let the record reflect that the witnesses have answered in the affirmative.

[Witnesses sworn]

Please be seated. You are done. OK.

I would like to now formally introduce the witnesses. Mr. Chad Wolf serves as America First Policy Institute's executive director, chief strategy officer, and the chair for the Center of Homeland Security and Immigration. Prior to joining AFPI, Mr. Wolfe was the former Acting Secretary of the U.S. Department of Homeland Security. During his time at DHS, he successfully navigated numerous global and domestic challenges to the Nation's security, including COVID-19, civil unrest, numerous border and immigration crises, historic natural disasters, and threats to global aviation security. Prior to his service at DHS, he spent over 10 years in the private sector helping clients manage risks, and before that, worked here on Capitol Hill. He has received the U.S. Secretary of Transportation 9/11 medal, the U.S. Secretary of Homeland Security Distinguished Service Medal, and the National Intelligence Distinguished Service Medal.

Mr. Joe Edlow has an extensive distinguished background in immigration policy. He most recently served as acting director of U.S. Citizenship and Immigration Services. Prior to that position, he served as the chief counsel for USCIS. Before his time at USCIS, Mr. Edlow worked on immigration issues in various capacities under the Trump administration, including with the Executive Office of the President and the Justice Department's Office of Legal Policy. He served from 2008 to 2015 as assistant chief counsel for the U.S. Immigration and Customs Enforcement. He possesses significant experience on Capitol Hill as well, including stints with the House Judiciary Committee and former Representative Raul Labrador of Idaho.

Mr. Rodney Scott is a law enforcement officer and the former chief of the United States Border Patrol, where he served from January 2020 to August 2021, under both President Trump and President Biden. Scott has served in the Border Patrol and CBP since 1992. Throughout his career, Mr. Scott held roles such as assistant chief in CBP's Office of Anti-Terrorism in Washington, DC, as well as the division chief and director for the Incident Management and Operations Coordination Division at CBP headquarters.

Ms. Eleanor Acer is a senior director for Refugee Protection at Human Rights First, where she oversees Human Rights First's research and advocacy on issues relating to refugee protection, asylum, and the human rights of migrants. Ms. Acer served on the American Bar Association's Commission on Immigration as the vice chair of the Refugee Council USA from 2006 to 2008, and currently serves on its board. Ms. Acer received her JD from Fordham University School of Law and her BA in history from Brown University.

I thank all the witnesses for being here today, and I now recognize Mr. Wolf for 5 minutes to summarize his opening statement.

**STATEMENT OF CHAD WOLF, EXECUTIVE DIRECTOR & CHIEF STRATEGY OFFICER, AMERICAN FIRST POLICY INSTITUTE, FORMER ACTING SECRETARY OF HOMELAND SECURITY**

Mr. WOLF. Chairman Green, Representative Thompson, thank you again for the opportunity to testify today.

By any objective measure or metric, the United States is facing the worst humanitarian and national security crisis along our Southern Border in our Nation's history. Today's border security system is unrecognizable from the America First policies of the Trump administration, or even those in place during previous administrations. In all candor, this is the first administration of either political party to deliberately take steps to diminish the security along our Southern Border.

Here's the situation along the border today. This country has experienced the largest mass scale catch-and-release policy that has resulted in more than 4.5 million illegal aliens, including 1.5 million known gotaways, being allowed into American communities. That is a population larger than every major U.S. city except for New York City. There have been more than 200 known or suspected terrorists apprehended at the Southern Border, compared to just 11 during the Trump administration. The border is effectively controlled by the Mexican cartels. Fentanyl is coming across the border in record amounts and is the leading cause of death of young Americans. More migrants have died during their journey than ever before. Three hundred thousand eighty children and counting have been trafficked or smuggled across the Southern Border and abused physically, mentally, and in some cases sexually along the horrendous journey.

In the last 2 years, this administration has lost contact with more than 85,000 children after releasing them to sponsors, many of them unvetted. Tens of thousands of children have been subjected to indentured servitude and harsh forced labor situations.

Last, we are seeing a concerted effort to facilitate illegal aliens into the country at ports of entry through an unlawful parole program and a CBP One app to disguise or otherwise hide the extent of the crisis from the American people.

I understand the difficulty and complexity of running the Department of Homeland Security, but it is clear to me and to millions of Americans that this is a crisis by design and one that was avoidable. I'm here today as a veteran of DHS, having served at the Department in two Presidential administrations spanning over 7 years, holding 8 senior-level positions that culminated in serving as the acting secretary, but perhaps most importantly, earning the respect of the Department's law enforcement officials along the way. While I look forward to today's discussion, as you have already heard, some Members will choose to attack me because I am critical of the administration's actions surrounding this crisis.

This is what you will likely hear, this is what you have heard. They will claim I ignored a subpoena to appear before this committee in 2020. What they have failed to provide you is the relevant context, that I gave this committee over 2 months of dates for that hearing and for my availability, and that a hearing was never scheduled, or that it would have been improper for me to testify after President Trump nominated me to be DHS Secretary.

They will attack me because of questions surrounding the Department's order of succession and how it affected my role as Acting Secretary, a role that I am very proud of. To the extent they mention policies they will fixate over a short-lived zero tolerance from 5 years ago while staying completely silent about the historic and on-going migrant child trafficking crisis facilitated by this administration.

The reason we see a border in crisis, in chaos, is simple. The Biden administration has dismantled all of the proven and effective policies put in place under the last administration. That includes well-known policies like the Remain in Mexico and the Asylum Co-operative Agreements with the Northern Triangle. But it also includes more than two dozen lesser-known but effective policies, such as a third country transit asylum bar, a humanitarian asylum review process, a prompt asylum claim review, a regulation to end fake families and the cruel recycling of migrant children, having Border Patrol Agents conduct credible fear screenings, internal relocation guidance, expedited removal, ending Nation-wide catch-and-release, maxing out ICE detention capacity and exceeding annual deportation targets. The list goes on. Every one of those have been torn down.

By comparison, this administration has embraced ineffective and unlawful policies that have made American communities dangerous and have enriched the Mexican cartels. These policies include a Nation-wide catch-and-release scheme that incentivizes millions and millions of other illegal aliens to enter illegally, a 100-day deportation freeze for all illegal aliens, including criminals, releasing illegal aliens on an honor system to self-report to ICE field offices, exempting 99 percent of the illegal aliens from deportation, the lowest level of ICE detention capacity, the lowest deportations in modern history, terminating Remain in Mexico and fully exempting children from Title 42. This is dangerous and this is an inhumane approach that need not occur. The laws did not change between administrations, just the decision by this one not to follow the laws.

For the reasons cited here and others I'm happy to discuss, it is my professional opinion that this administration is derelict in its duty to faithfully execute the laws as written and protect American communities.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Wolf follows:]

PREPARED STATEMENT OF CHAD WOLF

JUNE 14, 2023

Chairman Green and Representative Thompson: Thank you for the opportunity to testify before the House Homeland Security Committee.

By any objective measure or metric, the United States is facing the worst humanitarian and national security crisis along our Southern Border in our Nation's history.

As someone who understands the difficulty and complexity of running the Department of Homeland Security (DHS), I do not state this lightly. It is clear to me and millions of Americans that the Biden administration has failed in its Constitutional duty to "take Care that the [immigration and border security] Laws be faithfully executed."<sup>1</sup> This is a dereliction of duty.

<sup>1</sup> U.S. CONST. ART. II, § 3 (cleaned up).

I have reached this inescapable conclusion after having had the distinct privilege of serving at DHS at its inception under President George W. Bush and throughout President Trump’s administration, including the last 14 months as Acting Secretary of Homeland Security. For the last 27 months since I left office, I have closely followed the national security and humanitarian crisis unfolding along the Southern Border and have been publicly critical of the Biden administration’s policies and operations. That criticism is not expressed because we are from different political parties but rather, it comes from my own experience as Acting Secretary and the apparent and deliberate destruction of what was, very recently, the most effective border security in recent memory.

One of my philosophies as Acting Secretary was based on one simple axiom: if you do not have borders, you do not have a country. Sovereignty does not exist if you are not sovereign over your own borders—territorial, maritime, or aerial.

To that end, today’s border security system is unrecognizable from the America First border security policies of the Trump administration or even the border security apparatus in place during the administrations of Presidents Clinton, Bush, and Obama. In all candor, the Biden administration is the first administration of either political party to actively take steps to diminish the security along our Southern Border.

In contrast, under President Trump’s leadership, a talented group of professionals and I helped implement a body of policies that established the most secure Southern Border in my lifetime. In addition to building the most advanced border wall system, we put in place across-the-board policies that deterred illegal immigration, disrupted the Mexican cartels, disincentivized the flow of deadly fentanyl, and enforced the laws enacted by Congress.

In fact, when confronted with caravans of illegal aliens surging to the Southern Border in 2018–2019, we were honest with the American people that it was a crisis. So, we went straight to work to restore order and maintain America’s sovereignty.

The Trump administration utilized previously untapped legal authority found in section 235(b)(2)(C) of the Immigration and Nationality Act (INA) to put in place the highly successful Remain in Mexico policy, or Migrant Protection Protocols;<sup>2</sup> President Trump also struck historic Asylum Cooperative Agreements with the Northern Triangle countries to redirect illegal aliens to seek asylum closer to their home country under the authority provided by section 208(a)(2)(A) of the INA.<sup>3</sup> The Trump administration also issued a third-country transit regulation under section 208(b)(2)(C) of the INA to thwart asylum forum shopping, bolstered internal relocation guidance for adjudicators,<sup>4</sup> streamlined asylum cases at the border to speed up deportations of those found ineligible, and restored the definition of refugee<sup>5</sup> to Congress’s intent of requiring persecution by a Government actor on one or more of the protected grounds. No Presidential administration can do more under existing law—and none should do any less.

These policies were necessary because economic migrants and human traffickers were exploiting the loopholes in our laws by making fraudulent asylum claims to block their quick deportation under expedited removal.<sup>6</sup> Only between 10–15 percent of illegal aliens apprehended at the Southern Border who claim asylum actually qualify for this humanitarian relief.<sup>7</sup> The rest, to put it mildly, are trying to game the system. Under the Immigration and Nationality Act (INA), they need to—but they cannot—satisfy the appropriately rigorous “well-founded fear of persecution” standard in order to obtain humanitarian relief.<sup>8</sup> Such artful circumvention of the law is the same as breaking the law. Every President has a bona fide duty to stop the lawbreakers. Anything short is a contravention of the laws Congress has gone to all the trouble of enacting—repeatedly.

The Trump administration utilized the fullest extent of its legal authority to combat this asylum fraud by making aliens wait in Mexico or detaining them in the United States, the only two options permissible under section 235 of the INA and, importantly, quickly returning them when an immigration judge denies their claim. We never forgot the violence that illegal immigration cruelly inflicts on defenseless women and children, who are raped, trafficked, and scarred for life by the lawbreakers.

<sup>2</sup> 8 U.S.C. 1225(b)(2)(C).

<sup>3</sup> 8 U.S.C. 1158(a)(2)(A).

<sup>4</sup> See 8 C.F.R. 208.13(b)(3).

<sup>5</sup> 8 U.S.C. 1101(a)(42).

<sup>6</sup> 8 U.S.C. 1225(b)(1)(A)(i).

<sup>7</sup> See DEPART OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim*, available at <https://www.justice.gov/eoir/page/file/1062976/download>.

<sup>8</sup> 8 U.S.C. 1101(A)(42).

The evidence speaks for itself. During the Trump administration: fraudulent asylum claims declined, those who qualified got humanitarian relief faster, lives were saved as migrants stopped taking the dangerous journey north when they realized they would not be allowed into American communities.

In stark contrast, today we see a border in chaos and crisis because the Biden administration ideologically and arbitrarily dismantled ALL of these successful policies on Day One and sidelined career Border Patrol experts who continued to warn that a historic surge of illegal aliens would overwhelm the border in the absence of any deterrent policies. Political correctness and rank ideology supplanted common sense and the clear command of our immigration laws.

And even as the warnings of career Border Patrol experts came to pass, the Biden administration sat idly by and did little to curtail this crisis. The result is that since President Biden was sworn into office, nearly 5.5 million illegal aliens—and counting—have unlawfully come into our country plus at least another 1.5 million “gotaways” who completely bypassed the Border Patrol and made it into American communities.<sup>9</sup>

To be clear—the laws didn’t change between administrations, just the refusal of the current one to follow their legal obligations. Instead, they embraced destructive and unlawful policies that have made American communities less safe and enriched the Mexican cartels to new heights because open borders is a lucrative business.

But the abuse of the law doesn’t end there. Here are some additional, non-exhaustive examples:

- *Nationwide Catch-and-Release.*—The Biden administration intentionally decided to ignore its legal mandate to detain illegal aliens or make them wait in Mexico throughout their immigration court proceedings. Instead, this administration re-implemented the dangerous catch-and-release policies ended by President Trump and instead began mass releasing illegal aliens into American communities.

Federal District Court Judge Wetherell struck down this practice, writing “The Court finds in favor of Florida because, as detailed below, the evidence establishes that [the Biden administration] have effectively turned the Southwest Border into a meaningless line in the sand and little more than a speed bump for aliens flooding into the country by prioritizing ‘alternatives to detention’ over actual detention and by releasing more than a million aliens into the country—on ‘parole’ or pursuant to the exercise of ‘prosecutorial discretion’ under a wholly inapplicable statute—without even initiating removal proceedings.”<sup>10</sup>

- *Issuing Notices to Report (NTRs).*—Unable to process the volume of illegal aliens out of DHS custody fast enough under catch-and-release, DHS early on under the Biden administration resorted to issuing Notices to Report—essentially an honor-system document that asks illegal aliens to self-report to a local Immigration and Customs Enforcement (ICE) office when they reach their destination.

Unsurprisingly, few reported and now these illegal aliens lack immigration court dates because they were not issued a Notice to Appear (NTA), the formal charging document. This means that removal proceedings will not even begin until ICE encounters them in the future, further prolonging the amount of time these illegal aliens remain in the United States. This process was discontinued for some time but as the administration scrambled to deal with the expiration of Title 42, they attempted to resume NTRs.

Again, the court blocked the implementation of this policy, holding that it “appears that DHS is preparing to flout the Court’s order,” noting that this policy “sounds virtually identical” to the catch-and-release policy he blocked in March 2023. The judge further explained, “In both instances, aliens are being released into the country on an expedited basis without being placed in removal proceedings and with little to no vetting and no monitoring.”<sup>11</sup>

- *Canceling Notices to Appear (NTAs).*—For those illegal aliens who received NTAs, their court dates are multiple years down the road because the volume of illegal aliens the Biden administration allowed into the United States has overwhelmed the immigration courts. Instead of ending catch-and-release and reinstating deterrence policies, the Biden administration unilaterally canceled thousands of NTAs which removes them from the immigration court backlog. These illegal aliens still lack a lawful right to be in the United States and this unlawful action by the Biden administration makes their future deportation nearly impossible.

<sup>9</sup> See <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>10</sup> *State of Florida v. U.S.*, Case No. 3:21-cv-1066-TKW-ZCB (N.D. Fla. Mar. 8, 2023).

<sup>11</sup> *State of Florida v. Mayorkas*, Case No. 3:23-cv9962-TKW-ZCB (N.D. Fla. May 11, 2023).

As a broader point, such travesty of the Rule of Law dishonors not only our Nation and our law-abiding citizens—it also makes light of the sacrifices borne by countless lawful immigrants who patiently stood in line to come to this country the legal way. This administration’s message could not be more unambiguous—those who waited their turn, filled out applications, and paid fees for visas were foolish for obeying our immigration laws. The Biden administration tells lawful immigrants that the enormous sacrifices they and their families made in coming to America by following the law count for nothing. When the current administration arbitrarily excuses the contravention of our laws by some, it is diminishing and demeaning to us all.

- *Nullifying Interior Enforcement.*—On Day 1, the Biden administration issued a 100-Day deportation freeze for all illegal aliens, including those with criminal convictions. Federal District Judge Drew Tipton enjoined this non-enforcement policy on the grounds that it was “arbitrary and capricious” and that the policy “fails to provide any concrete, reasonable justification for a 100-day pause on deportations.”<sup>12</sup> DHS has since issued “enforcement” priorities that exempt 99 percent of illegal aliens from the threat of deportation. The Biden administration has sidelined ICE agents and effectively accomplished the goals of the extremist “Defund ICE” movement.
- *De Facto Amnesty.*—President Biden campaigned on granting amnesty to all illegal aliens—a policy that even the previous Congress rejected. But the President was undeterred. Ignoring the Constitution’s grant of the legislative power to the Congress (and not to the President), he decided to achieve in practice what Congress did not permit him to achieve in principle. As a result, the DHS Secretary implemented a de facto amnesty when he declared that being here unlawfully is not grounds for removal. The obvious remedy corresponding to a violation of the law was arbitrarily taken off the table. This edict directly and incontestably contradicts the law and mocks our Nation’s time-honored immigration court system. In keeping with that policy choice, the current administration’s claims of prioritizing limiting resources are disingenuous, perhaps flatly risible. After all, there are over 1 million aliens with final orders of removal who are still in the United States; yet, the Biden administration has removed the lowest levels of illegal aliens, including criminal aliens, in modern history.<sup>13</sup>
- *Giving USCIS Asylum Officers Jurisdiction over Border Asylum Claims.*—Through an unlawful regulation, the Biden administration has given U.S. Citizenship and Immigration Services asylum officers the ability to decide the asylum claims of illegal aliens apprehended at the border. Congress created DHS through the Homeland Security Act of 2002, with much—but not all—immigration jurisdiction that was held by the former Immigration and Naturalization Service within the Department of Justice transferred to DHS.<sup>14</sup> By this authorizing statute, only immigration judges have the legal authority to hear asylum claims of aliens in removal proceedings as this authority was not delegated to DHS.<sup>15</sup> It is apparent that the Biden administration made this unlawful move under the belief that USCIS employees will be more like to grant relief. DHS data shows that USCIS asylum officers are granting asylum at nearly twice the historical rate of immigration judges.<sup>16</sup>
- *Categorical Parole.*—Perhaps the most egregious example of violating the law is the DHS Secretary’s unlawful use of the parole authority. Section 212(d)(5) of the INA could not be clearer that the right to grant this kind of parole comes from a remarkably narrow sliver of statutory authority, only allowable on a case-by-case basis for: (1) urgent humanitarian reasons or (2) significant public benefit.<sup>17</sup> DHS has ignored the statutory requirements and turned this limited authority into an override of the legal immigration system. You know the law is not in your favor when you suddenly discover a slender reed in some old statutory provision that, only when it is totally divorced from context, gives you the slightest hope. That’s why, as the Supreme Court re-

<sup>12</sup> *Texas v. United States*, Civil Action No.: 6–21–cv–00003 (S.D. Tex. Feb. 24, 2021).

<sup>13</sup> See U.S. Immigration and Customs Enforcement, ICE Annual Report Fiscal Year 2022, fig. 20 (Dec. 30, 2022), available at <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

<sup>14</sup> Homeland Security Act of 2002, Pub. L. 107–296 (Nov. 25, 2002).

<sup>15</sup> *Id.*; see also Arthur, Andrew & Law, Robert, *Public Comment Re: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protections by Asylum Officers* (Oct. 18, 2021), available at [https://cis.org/sites/default/files/2021-10/JNPRM\\_Asymlum\\_Procedures\\_FINAL\\_submitted\\_10-18-2021.pdf](https://cis.org/sites/default/files/2021-10/JNPRM_Asymlum_Procedures_FINAL_submitted_10-18-2021.pdf).

<sup>16</sup> See Department of Homeland Security, Asylum Processing Rule Cohort Reports, available at <https://www.dhs.gov/immigration-statistics/special-reports/asylum-processing-rule-report>.

<sup>17</sup> 8 U.S.C. 1182(d)(5).



minded us less than a year ago in *West Virginia v. EPA*, when the Executive branch “claims to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority,” that’s usually a sign of desperation because the President and/or the agency know in their heart of hearts that they do not have the statutory authority they are claiming.<sup>18</sup> Everyone else knows it as well. As if that Supreme Court prescription wasn’t enough, the Court in *West Virginia* also said that when the Executive suddenly “locate[s] [its] newfound power in the vague language of an ancillary provision of the [law],” its claimed authority is on conspicuously shaky, and presumptively unsound, ground.<sup>19</sup>

So too here. The mass parole system devised by the Biden administration turns our immigration law framework on its head. After all, statutes have to be interpreted, to the extent possible, as a harmonious whole, so why would Congress have enacted the rest of the INA if Presidents, operating whimsically, could circumvent it by issuing paroles ad nauseam? This question, like all such questions, answers itself.

Just think: The parole program for Cubans, Haitians, Nicaraguans, and Venezuelans allows up to 360,000 illegal aliens per year to fly into American communities and the separate unlawful program using the CBP One app near the Southern Border are not new, safe, lawful pathways but a diversion of illegal aliens from between ports of entry to the ports of entry. It is clear that these illegal categorical parole programs are designed to hide the optics of the border crisis from the American people.

What is more, this administration’s abuse of the parole authority isn’t limited to the border. After the Biden administration’s disastrous withdrawal from Kabul DHS unlawfully paroled into the United States nearly 100,000 unvetted Afghans, most of whom were military-aged males.

You needn’t take my word for it. Even the Inspectors General of both DHS and the Department of Defense have issued scathing reports on the national security vulnerabilities the homeland has been exposed to because of this reckless, senseless, dangerous, and of course unlawful decision.<sup>20</sup> There are a number of instances where these Afghan parolees have committed heinous crimes, include rape.

By embarking on this nullification of immigration law by Executive fiat, the Biden administration is allowing into the U.S. millions of illegal aliens who do not qualify for a visa and thus creating a subclass of aliens who have no avenue for a legal immigration status and are in perpetual uncertainty and agony. That is not American leadership or humanity at its finest. Instead, this is just cynical, crass treatment by the current cadre of Executive branch leadership and is the direct result of the Biden administration’s circumventing our border security and immigration laws.

In conclusion, I would suggest that one of the most important duties as the DHS Secretary is to be transparent and honest with the American people about security issues affecting the homeland. It is very clear to me that the current administration is lying to the American people about the severity of the problem, while at the same time absurdly attempting to lay blame on the Trump administration, on Congress, or some other entity for their failed strategy.

Here is the reality:

- The border is not secure, it is in fact open to illegal aliens by the hundreds of thousands.
- A historic number of illegal aliens—nearly 5.5 million—have been apprehended at the Southern Border during the Biden administration with approximately 3 million allowed into American communities—a population larger than every major U.S. city except for New York City and Los Angeles.
- Another 1.5 million observed “gotaways” who bypassed Border Patrol and pose severe national security and public safety threats.
- More than 200 known or suspected terrorists apprehended at the Southern Border compared to just 11 during the Trump administration—and these are just the ones caught because they didn’t realize we had them in the FBI database.
- The border is effectively controlled by Mexican cartels—who crave the predictability of these policies for their business model.

<sup>18</sup> 142 S. Ct. 2587, 2610 (2022) (cleaned up and alterations made).

<sup>19</sup> *Id.* (cleaned up and alterations made).

<sup>20</sup> See, e.g., U.S. DEPARTMENT OF DEFENSE INSPECTOR GENERAL, Evaluation of the Screening of Displaced Persons from Afghanistan, Report No. DODIG–2022–065 (Feb. 15, 2022), available at <https://media.defense.gov/2022/Feb/17/2002940841/-1/-1/1/DODIG-222-065.PDF>.

- More migrants have died during their journey than ever before.
- More Border Patrol agents have been assaulted by so-called asylum seekers than ever before.
- The Biden administration has lost contact with more than 85,000 children after releasing them to sponsors, according to *The New York Times*.<sup>21</sup>
- The Biden administration is aware of tens of thousands of children being subjected to abusive work conditions, according to *The New York Times*.<sup>22</sup>
- And there is no operational control over large portions of the border. This is not just my assessment, but that of outgoing Border Patrol Chief Ruiz and other career U.S. Customs and Border Protection officials when questioned by Congress or in litigation challenging Biden administration policies.

These are the results of a process the Biden administration calls “safe, orderly, and humane.” But to whom exactly? Not to the migrants dying along the journey; not to the migrants abused, extorted, or worse by the Mexican cartels; not to American communities that have been overrun by this influx of illegal aliens and lethal fentanyl; and not to Border Patrol officers who have been assaulted and have pleaded with political leadership to solve this crisis.

Instead, the process that has been created over the last 2 years can be more accurately described as dangerous, corrupt, and inhumane. After 9/11, DHS was created to secure the homeland and protect our Nation’s citizens. I was there to help get DHS up and running. Yet the actions of the Biden administration have done the opposite of adhering to the DHS mission by eroding our institutions and diminishing the Rule of Law. This is a crisis by design.

Finally, a singular quote from Supreme Court Justice Louis Brandeis’ from almost a century ago still rings true today:

“Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperil[ed] if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”<sup>23</sup>

Unfortunately, this is a message lost on the Biden administration. Anarchy, I regret to say, is what we see today with the strategic refusal to implement our border security laws. Unless we course-correct immediately, our Rule of Law is in somber danger of being lost forever into the oblivion of history. That is a message worth remembering, and re-committing ourselves to, if we are to remain a Nation of laws. Or even a Nation at all.

For the reasons cited here and for others I am happy to discuss, it is my professional opinion that the Biden administration has been derelict in its duty to faithfully execute the law, as written, and to protect American communities.

Thank you and I look forward to answering your questions.

Chairman GREEN. I now recognize Mr. Edlow for 5 minutes to summarize his opening statement.

**STATEMENT OF JOSEPH B. EDLOW, MANAGING MEMBER, THE EDLOW GROUP, FORMER ACTING DIRECTOR FOR U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

Mr. EDLOW. Thank you, Chairman Green, Ranking Member Thompson, and distinguished Members of this committee. I appreciate the opportunity to present testimony today regarding the continuing threats to the integrity of our immigration system caused by the Secretary of the Department of Homeland Security’s willful disregard of our country’s immigration laws.

The Biden administration, through the Secretary, has seen fit to ignore the law, instead favoring poorly-conceived and poorly-executed policy decisions. Actions through Executive Orders, Depart-

<sup>21</sup> Dreier, Hannah, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, NEW YORK TIMES (Feb. 25, 2023).

<sup>22</sup> Dreier, Hannah, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, NEW YORK TIMES (Apr. 17, 2023).

<sup>23</sup> 277 U.S. 438, 485 (dissenting opinion) (emphases added).

mental memos, and rules lay waste to the INA and Congressional intent, it has eroded our immigration system and propelled the crisis to current levels.

As the Chairman said, Section 102 of the INA charges the Secretary of Homeland Security with administration and enforcement of the Act, and further vests in the Secretary the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens. The massive number of encounters recorded by CBP and the small number of alien removals by ICE, however, suggest that this Secretary has failed to faithfully execute the laws entrusted to him.

Since Day 1 of the administration, the Department has taken aggressive action to undermine immigration enforcement. Nowhere is that clearer than Secretary Mayorkas' September 30, 2021 memorandum outlining the appropriate instances in which DHS was authorized to take action against aliens, either unlawfully present or lawfully present, but removable. Specifically, Secretary Mayorkas outlined three main buckets for removal, threats to national security, threats to public safety, and threats to border security. While in theory this would seem to encompass many aliens, in reality the numerous carve-outs, loose definitions, and required factors for consideration made it nearly impossible for ICE to move forward with most enforcement actions. These poorly-defined categories gave even some of the most serious of criminal aliens a free pass in the interest of equity. Let me be clear, there is a time and a place for prosecutorial discretion, which has been recognized by the Supreme Court. However, memos targeted at whole groups and not on a case-by-case basis do not comply with contours of such discretion. Categorical prosecutorial discretion is not discretion at all. It is instead an effort to undermine the enforcement mechanisms clearly found in the law. The Department's failure to enforce the full INA in the name of prioritization and discretion is a dereliction of duty.

The rampant parole abuse that we now witness is exactly why Congress saw fit to change the law in 1996. Replacing emergent reasons or for reasons deemed strictly in the public interest, with on a case-by-case basis for humanitarian reasons or significant public benefit, Congress signaled its intention to clamp down on the process. It specifically wanted to guard against ad hoc programs meant to supplement existing immigration programs. Regardless of the plain language as it currently stands, parole has become a favorite tool of the administration. While first used as an alternative to detention, parole programs have subsequently played a large role in artificially decreasing border numbers. The expanded categorical parole programs for nationals of Venezuela, Cuba, Nicaragua, and Haiti are wholly unlawful. While certainly the previous administration utilized programs, the number of parolees were a small fraction compared to what we have seen on a monthly basis over the past 2½ years.

I would be remiss if I did not mention the Department's regulatory agenda, which seeks to upend the credible fear process in the name of orderly processing, starting with the presumption that every economic migrant is entitled to protection. In 2022, DHS issued an interim final rule on credible fear screening. Under the new process, a positive credible fear determination by an asylum

officer will lead to a non-adversarial asylum interview before another DHS asylum officer. This impermissibly changes the process and undermines Congressional action by shifting adjudication authority from DOJ to DHS. Even more concerning, written summary of the original credible fear interview now doubles as an alien's asylum application, rendering moot the requirement that an alien file one at all. This shifts the burden to present and prepare a meritorious claim for protection. While this does not ensure an asylum grant, it certainly provides a path for fraud and renders certain anti asylum fraud measures moot.

A second final rule issued last month appears to be tough on illegal border crossers, making them ineligible for asylum. However, the number of exceptions and the easily rebuttable presumptions belie its stated purpose. This rule will have the opposite effect, as it will ultimately incentivize aliens to make the dangerous trek northward with families in tow.

Mr. Chairman, we would not be sitting here today if the Secretary and the Department simply enforced the law as written. Instead, the Department has, in an effort to remove barriers and to create a subjectively orderly system, conflated law and policy and ensured that when the two were in conflict, that policy won the day. A return to the rule of law is the only cure at this point and is incumbent upon Congress to use its oversight and lawmaking authority to repair the damage done by the Department.

Thank you and I look forward to your questions.  
[The prepared statement of Mr. Edlow follows:]

PREPARED STATEMENT OF JOSEPH B. EDLOW

JUNE 14, 2023

Chairman Green, Ranking Member Thompson, and distinguished Members of this committee, thank you for the opportunity to present testimony regarding the ongoing crisis threatening the integrity of our immigration system.

As this committee investigates the actions and inaction of the Department of Homeland Security, the conclusion that the administration and Department have failed to comply with the law, as written, and often times acted in contravention of the law, is inevitable. This administration has seen fit to ignore the law, instead favoring poorly-conceived and even more so poorly-executed policy decisions. The actions through Executive Orders, Departmental memos, and rules seemingly upend the Immigration and Nationality Act (INA) and Congressional intent. These decisions, implemented at each immigration agency, have eroded this country's immigration system and have propelled the crisis to its current levels.

The sharp rise in unlawful entries and attempted entries along the Southwest Border provides a critical litmus test of the crisis' scope but is an outgrowth of administration and Departmental actions. The focus on the overwhelming numbers does not, in and of itself, provide insight into the reasons for the crisis. Additionally, media often focuses on the border to the detriment of the other actions and inaction by Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS). Regardless of the specifics, it is plainly obvious that since President Biden was inaugurated in January 2021, this country has witnessed an unprecedented border crisis.

EXECUTIVE ORDER AND MEMOS

Beginning on Day 1 of the Biden administration, the Department of Homeland Security's (DHS) Acting Secretary, David Pekoske, halted all deportations for 100 days.<sup>1</sup> This was predicated on interim enforcement priorities that the Department

<sup>1</sup>Memo. from David Pekoske, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021), available at: [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

wanted ICE to implement. In its view, the only way to sufficiently update priorities was to reset the entire system by halting all enforcement actions. This was followed up by ICE Acting Director Tae Johnson's memo of February 18, 2021. This memo was the first step to implement the priorities and included reporting requirements for enforcement actions and the need to justify any action to superiors through a pre-approval process.<sup>2</sup>

At the White House, on February 2, 2021, President Biden issued his "Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans."<sup>3</sup> The order required DHS, in conjunction with the Department of Justice and the Department of State to "identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers."<sup>4</sup> This was followed with an Executive Order that, among other things, created the battle cry of the administration—removing barriers to immigration.

To that end, on September 30, 2021, Secretary Alejandro Mayorkas issued a memorandum entitled "Guidelines for the Enforcement of Civil Immigration Law" which outlined the appropriate instances in which DHS was authorized to take action against aliens either unlawfully present or lawfully present but removable.<sup>5</sup> <sup>6</sup> Specifically, Secretary Mayorkas outlined three main buckets for removal—(1) threats to national security; (2) threats to public safety; (3) threats to border security. While, in theory, this would seem to encompass many aliens who should properly be targeted for enforcement actions by ICE, in reality, the numerous carve-outs, loose definitions, and required factors for consideration make it nearly impossible to move forward with most enforcement actions. These poorly defined categories could be seen to give even the most serious of criminal aliens a free pass in the interest of equity and "justice."

On April 3, 2022, ICE's Principal Legal Advisor, Kerry Doyle, issued a memo on prosecutorial discretion, aligning ICE action in immigration court with the Mayorkas Memo.<sup>7</sup> The April Memo provided that ICE attorneys were to exercise prosecutorial discretion in cases that were not deemed priority cases. This could include dismissal as well as administrative closure (pausing the case indefinitely).

These memos all seek to redefine immigration enforcement by creating fictional priorities with no basis in law. Neither the INA's section on inadmissibility nor its section on removability suggest a prioritization of grounds for enforcement. Instead, it enumerates a list of grounds of inadmissibility and removability that the Department of Homeland Security is required to enforce. Its failure to do so in the name of prosecutorial discretion is a dereliction of duty and cannot be permitted to continue.

Prosecutorial discretion is a critical tool for any police or prosecuting agency, when used correctly. The Supreme Court has even upheld such measures. Writing for the Court, Justice Scalia found that a ". . . well-established tradition of police discretion has long coexisted with apparently mandatory arrest statutes."<sup>8</sup> In interpreting "seemingly mandatory legislative commands," the Court found that there exists a "deep-rooted nature of law enforcement discretion . . ."<sup>9</sup> However, that discretion is not absolute and cannot replace whole statutory text. Prosecutorial discretion should be viewed in the context of a case-by-case analysis in an individual matter. The use of prosecutorial discretion to exempt an entire class of individuals from law enforcement action, as is suggested in these memos, is not discretion at all.

<sup>2</sup> Memo. from Tae D. Johnson, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* (Feb. 18, 2021), available at: [https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf).

<sup>3</sup> Exec. Order No. 14012, 86 Fed. Reg. 8277 (Feb. 5, 2021).

<sup>4</sup> Id.

<sup>5</sup> Memo. From Alejandro N. Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021), available at: <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>6</sup> On June 10, 2022, the U.S. District Court for the Southern District of Texas vacated this memorandum.

<sup>7</sup> Memo. from Kerry E. Doyle, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (Apr. 3, 2022), available at: [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidance-Apr-2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidance-Apr-2022.pdf).

<sup>8</sup> *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 760 (2005).

<sup>9</sup> Id. at 761 (citing *Chicago v. Morales*, 527 U.S. 41 (1999)).

The results of these memos speak for themselves. In fiscal year 2022, ICE recorded a little more than 72,000 alien removals from the United States.<sup>10</sup> While that may appear to be large number, the Executive Office for Immigration Review (the immigration courts) reports that in just the first quarter of 2023, immigration judges have ordered almost 47,000 people removed and have affirmed credible or reasonable fear denials in more than 4,000 matters.<sup>11</sup>

During the period that these memos were in effect, and beyond, the number of encounters along the Southwest Border steadily climbed. In fiscal year 2022, U.S. Customs and Border Protection (CBP) recorded a staggering and unprecedented 2,378,944 encounters.<sup>12</sup> Thus far in fiscal year 2023, CBP has already recorded 1,431,964 encounters as of the end of April.<sup>13</sup> These are just the known and reported numbers and do not account for the thousands of “gotaways” who were able to elude Border Patrol agents.

The numbers simply do not add up and even with the bulk of the Mayorkas and Doyle memos not in effect, the result is still lopsided enforcement compared to the record number of aliens entering.

#### THE REGULATIONS

Under the guise of removing barriers, the Department, along with the Department of Justice, engaged in several rulemakings purportedly aimed at creating efficiency and expediency at the border.

Under section 235(b)(1) of the Immigration and Nationality Act (INA),<sup>14</sup> aliens apprehended by CBP entering illegally along the border or without proper documents at the ports of entry are subject to “expedited removal”, meaning that they can be quickly removed without receiving removal orders from an immigration judge (IJ).

If an arriving alien claims to fear harm or asks for asylum, however, CBP must hand the alien over to an asylum officer (AO) in U.S. Citizenship and Immigration Services (USCIS) for a “credible fear” interview.<sup>15</sup> Credible fear is a screening process to assess whether the alien may have an asylum claim, and thus proving credible fear is easier than establishing eligibility for asylum.<sup>16</sup> If an AO finds that the alien does not have credible fear (makes a “negative credible fear determination”), the alien can ask for a review of that decision by an IJ.<sup>17</sup> If the IJ upholds the negative credible fear determination, the alien is to be removed immediately.

When an AO or IJ makes a “positive credible fear determination”, on the other hand, the alien is placed into removal proceedings to apply for asylum before an IJ.<sup>18</sup> Most aliens who have claimed a fear of return in the past received a positive credible fear assessment (83 percent between fiscal year 2008 and fiscal year 2019),<sup>19</sup> but less than 17 percent of those who received a positive credible fear assessment were ultimately granted asylum.<sup>20</sup>

In 2022, DHS issued an interim final rule entitled “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers.”<sup>21</sup> Under the new process, a positive credible fear determination by a DHS asylum officer will lead to a non-adversarial asylum interview before another DHS asylum officer. Asylum officers who find an alien eligible

<sup>10</sup> U.S. Immig. and Customs Enforcement, *ICE releases fiscal year 2022 annual report* (Dec. 30, 2022), available at: <https://www.ice.gov/news/releases/ice-releases-fy-2022-annual-report>.

<sup>11</sup> Exec. Off. For Immig. Review, *Fiscal year 2023 First Quarter Decision Outcomes* (Jan. 16, 2023), available at: <https://www.justice.gov/eoir/page/file/1105111/download>.

<sup>12</sup> U.S. Customs and Border Protection, *Southwest Land Border Encounters* (May 17, 2023), available at: <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>13</sup> *Id.*

<sup>14</sup> Section 235(b)(1) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>15</sup> Section 235(b)(1)(A)(ii) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>16</sup> See section 235(b)(1)(B)(v) of the INA (defining “Credible fear of persecution”), available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>17</sup> Section 235(b)(1)(B)(iii)(III) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>18</sup> Section 235(b)(1)(B)(ii) of the INA, available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>19</sup> Credible Fear and Asylum Process: Fiscal Year (FY) 2008–fiscal year 2019, U.S. Dep’t of Justice, Executive Office for Immigration Review (generated Oct. 23, 2019), available at: <https://www.justice.gov/eoir/file/1216991/download>.

<sup>20</sup> *Id.*

<sup>21</sup> Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078 (Interim Final Rule Mar. 29, 2022) (to be codified at 8 C.F.R. parts 208, 212, 235, 1003, 1208, 1235, and 1240).

for a form of protection lesser than full-fledged asylum, such as statutory withholding of removal<sup>22</sup> or protection under the Convention Against Torture,<sup>23</sup> must still refer the matter to a DOJ immigration judge who may consider the entire case. That is hardly streamlining the process.

Even more concerning was that the written summary of the original credible fear interview doubles as an alien's asylum application, rendering the requirement that an alien file an asylum application moot. This shifts the burden to present and prepare a meritorious claim for protection. Aliens may rely on first-made claims of their story, changing or including relevant details in advance of the asylum interview or court proceeding, but without having to affirmatively file an application. While this, in and of itself, does not ensure an asylum grant, it certainly provides a path for fraud. It also renders a key anti-asylum fraud measure moot.

In addition to the practical problems associated with this rule, it impermissibly shifts authorities from the Department of Justice to the Department of Homeland Security. As Congress was creating the new DHS, it specifically determined which functions would be enumerated.<sup>24</sup> Regarding asylum officers, or USCIS in general, Congress specified which immigration functions would be transferred to the new created department.<sup>25</sup> Section 451 of the HSA established the Bureau of Citizenship and Immigration Services and provided its function as transferred from the DOJ.<sup>26</sup> By including a catch-all provision for any functions that may have been missed in the paragraphs 1 through 4, it is apparent that the intent was to ensure that whatever adjudicative functions were being performed by INS prior to the transfer, would be continued by USCIS subsequent to it. Nothing in the provision suggests that any further functions be transferred.

As additional evidence that EOIR functions were not transferred, the HSA affirmatively established EOIR within DOJ. This section, ultimately codified in INA, states:

*“(1) In general.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.”*<sup>27 28</sup>

This provision makes clear that the Attorney General retained the functions of EOIR to include the authority to order deportation from the United States. Nowhere in the HSA nor in the INA is there any reference to USCIS, exercising authority to order removal. As the former INS did not exercise such authority, and no such functions were specifically transferred to USCIS, the statute is not ambiguous or silent on the matter. Congressional intent is clear that such quasi-judicial functions would remain with EOIR where such functions have been exercised exclusively since 1983.

Accordingly, DHS, through USCIS, now taking on additional authorities aimed at processing in aliens faster and getting them full-fledged asylum interview, in a non-

<sup>22</sup> Statutory withholding of removal specifies that an alien may not be removed “to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social, or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

<sup>23</sup> Following the United States ratifying its signing of the Convention Against Torture in 1994, Congress implemented CAT protections in Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 aimed at not effecting the removal of a person who would be subjected to torture upon such removal. See Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. 105-277, Div. G, Tit. XII, chap. 3, subchap. B, section 2242(a) (1998).

<sup>24</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

<sup>25</sup> Id.

<sup>26</sup> Id. at § 451(b), 116 Stat. 2135, 2196 (2002). (“(b) Transfer of Functions from the Commissioner.—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization Services the following functions and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

- (1) Adjudications of immigrant visa petitions.
- (2) Adjudications of naturalization petitions.
- (3) Adjudications of asylum and refugee applications.
- (4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.”)

<sup>27</sup> 8 U.S.C. 1103(g).

<sup>28</sup> The Immigration Reform, Accountability, and Security Enhancement Act of 2002 (S. 2444; 107th Cong.) was introduced in May 2002 but was never passed. This language was retained for the Homeland Security Act of 2002, Pub. L. No. 107-296, § 1102, 116 Stat. 2135, 2273-2274 (2002).

adversarial manner, without the benefit of immigration court or ICE trial attorney's input. This is rulemaking run amok as it is contrary to statute, contrary to long-existing policy, and directly encroaches on the Department of Justice.

Relevant to the border, a notice of proposed rulemaking was published on February 23, 2023.<sup>29</sup> Starting with the name, "Circumvention of Lawful Pathways," the proposed rule is an ineffective measure and empty gesture. Despite its perceived enforcement provisions, this rule, if implemented, would allow most aliens to arrive at or between ports of entry, make fraudulent claims of fear to enter the United States or continue to utilize unlawful mass parole programs to accomplish the same. As the Biden administration continues to steadfastly grip to its Executive Order on removing barriers to immigration,<sup>30</sup> this rule, finalized on May 16, 2023 will do exactly that.<sup>31</sup>

The rule may be framed as an enforcement tool to limit the number of aliens who will ultimately be able to receive asylum, however we are hard-pressed to find any examples of classes of aliens who will actually be kept out of the process under this rule.

The crux of the rule is the concept that a presumption of asylum ineligibility exists for any alien entering the United States who does not meet certain criteria. Specifically, the proposed rule requires that to be eligible for asylum one of three criteria must be met: (1) The alien must have appropriate documentation; (2) must present at a port of entry with a prescheduled appointment through the CBP One App; or (3) must have sought protection in a third country and received a final determination. The last criteria is akin to the Third Country Transit Rule, which likewise largely prohibited asylum eligibility for a non-contiguous alien who did not apply for protection in a country where such processes are available.<sup>32</sup>

The similarities to the previous rule end there, however. While this appears to be a strong measure to control migration along the Southern Border, it becomes apparent that the exceptions swallow the rule. We are left with the question of to whom this rule will actually apply once implemented. Of the three criteria, the one that we presume will most often be utilized is the prescheduled appointments. It is not likely that many aliens will suddenly obtain legitimate documentation and, if they were able to do so, they likely would not be applying for asylum but would be entering on a type of visa. This is an important distinction because credible fear procedures would not apply to an admitted alien (i.e. one that actually has a valid authorization). The third criterion may be used more often than the first but it is unclear to the extent that an alien would avail themselves of protection in Mexico and other nations in Central and South America. Whether they are being smuggled to the United States or make the journey on their own, the lack of resources and familiarity with the law will also make this criterion rarely met.

The rule is clearly encouraging aliens to use the second criterion. A prescheduled appointment through the CBP One App is the most available option for aliens with access to smart phones or other technology allowing them to contact the system. However, even this criterion is waived if the alien can demonstrate that "it was not possible to access or use the . . . system due to language barrier, illiteracy, significant technical failure, or other on-going and serious obstacle."<sup>33</sup> In essence, everything must align perfectly for this criterion to be the basis for the presumption of ineligibility. Relying on technology is itself a risky proposition as factors such as bugs within the app or lack of available cellular service or a reliable internet connection could all hamper an alien's ability to successfully schedule an appointment. Additionally, while we do not have statistics on literacy rates of migrants, it would be fairly common to find migrants without a strong grasp of the English language. If language and literacy are included as prerequisites, this will likely include a far larger population of migrants who would overcome the rule's presumption. Last, the catch-all of "other or on-going and serious obstacle" is left undefined in the regulatory text. As asylum officers and immigration judges will be trained on identification of the presumption, leaving a catch-all which will seemingly be within the discretion of the adjudicator will allow virtually any reason to pass muster. This will

<sup>29</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

<sup>30</sup> *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 86 Fed. Reg. 2877 (Feb. 5, 2021).

<sup>31</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314 (Final on May 16, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

<sup>32</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704, 11750–11752 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

<sup>33</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704, 11750 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).



result in the presumption being raised against hardly any alien crossing into the United States.

For those few aliens against whom the presumption will be raised, the rule has fashioned it as a rebuttable presumption. Again, the exceptions and now the rebuttals swallow the rule itself. An alien may rebut the presumption when proving that the alien has a medical emergency, “faces an imminent and extreme threat to life or safety,” or meets the statutory definition of trafficking victims.<sup>34</sup> Of the three, the most concerning is the threat to life or safety. It is well-established that the trek to the United States is dangerous with more migrants killed or kidnapped each year. The dangers of the journey are further exacerbated with the influence of cartels and other criminal organizations that view smuggling migrants as a for-profit business without regard to their safety. From fiscal year 2017 through fiscal year 2021, CBP has reported over 1,700 migrant deaths.<sup>35</sup> Fiscal year 2021 had the most in a single year with 568 deaths.<sup>36</sup> Additionally, in that same time period, Border Patrol rescued over 8,400 individuals.<sup>37</sup> Fiscal year 2021 again saw the most rescues in a single year with 3,423.<sup>38</sup> These numbers only represent the deaths and emergencies reported by CBP, not other Federal, State, and local agencies and it is unknown how many bodies have never been discovered. The journey to the Southern Border of the United States is inherently a journey where an alien will face extreme threats to life and safety from beginning to end. To add this as an exception is to exempt the entire population of migrants that have traveled with the assistance of smugglers and other criminal enterprises.

While the rule claims to disincentivize illegal border crossers, the Department’s provisions have instead created additional incentives to make the perilous journey either as unaccompanied children or with children in tow. In addition to the fact that the NPRM does not apply to unaccompanied children, the Department of Justice rule requires granting asylum despite ineligibility in an effort to preserve family unity. In a relevant portion, the Department of Justice’s regulation states that “[w]here a principal asylum applicant is eligible for withholding . . . and would be granted asylum but for the presumption . . . and where an accompanying spouse or child . . . does not independently qualify for asylum or other protections . . . the presumption shall be deemed rebutted.”<sup>39</sup> Caselaw has long held that grantees of withholding of removal cannot receive derivative benefits for their spouses and children.<sup>40</sup> This provision seeks to sidestep that issue by granting full asylum status to the principal and family even if the principal alien cannot otherwise rebut the presumption.

#### PAROLE ABUSE

While the Department claims that a lack of available pathways has made the aforementioned rules necessary, that lack has not stopped the Department from abusing its parole authority. For a section of law meant to be used sparingly and in exceptional circumstances, the Department has relied heavily on its parole powers to permit aliens to enter the counter en masse, many without a notice to appear before an immigration judge. Section 212(d)(5) of the INA authorizes parole of aliens “into 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 . . .”<sup>41</sup> Additionally, the legislative history of parole authority, cited by the former INS in its initial regulation, makes clear that the intent was to exercise the authority in a narrow and restrictive manner. The original rule stated:

“The drafters of the Immigration and Nationality Act of 1952 gave as examples situations where parole was warranted in cases involving the need for immediate medical attention, witnesses, and aliens being brought into the United States for prosecution. H. Rep. No. 1365, 82d Cong., 2d Sess. at 52 (1952). In 1965, a Congressional committee stated that the parole provisions ‘were designated to authorize the Attorney General to act on an emergent, individual, and isolated situation, such as the case of an alien who requires immediate medical attention, and not for the im-

<sup>34</sup> *Id.*

<sup>35</sup> U.S. Customs and Border Protection, *Border Rescues and Mortality Data* (Feb. 6, 2023), <https://www.cbp.gov/newsroom/stats/border-rescues-and-mortality-data>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704, 11752 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. parts 208 and 1208).

<sup>40</sup> *Matter of A-K-*, 24 I. & N. Dec. 275 (BIA 2007).

<sup>41</sup> 8 U.S.C. § 1182(d)(5).

migration of classes or groups outside the limit of the law.’ 5 Rep. No. 748, 98th Cong., 1st Sess. at 17 (1965).<sup>42</sup>”

Regardless of the plain language of the statute and the legislative history, parole has become a favorite tool of the Biden administration. While first used as an alternative to detention, parole programs have subsequently played a large role in artificially decreasing numbers along the border.

When reviewing the Border Patrol monthly disposition and transfer statistics, it becomes apparent that parole was the path of choice to quickly process and move aliens northward. Border Patrol monthly disposition and transfer statistics for fiscal years 2022 and 2023 demonstrate just how commonplace parole has become. While Border Patrol suggestions that the “processing disposition decision related to each apprehension is made on a case-by-case basis . . . ”<sup>43</sup> the raw numbers belie that disclaimer. In fiscal year 2022, parole numbers steadily rose to culminate in over 95,000 paroles granted in September 2022.<sup>44</sup> That trend has continued in this fiscal year as Border Patrol recorded over 130,000 paroles in December 2022.<sup>45</sup>

Moreso than individual aliens, the Department has gone farther astray as it has implemented parole programs, contrary to law, for nationals of certain countries. Beginning in October 2022, the Department announced that it was utilizing new pathways to “create a more orderly and safe process for people fleeing the humanitarian and economic crisis in Venezuela.”<sup>46</sup> This was augmented in January 2023, when the Department announced expanded parole programs for nationals of Nicaragua, Cuba, and Haiti.<sup>47</sup> The program permits nationals of those countries, and their immediate relatives, to seek parole when sponsored by someone with lawful status in the United States. It is worth noting that the sponsor need not be a relative of the beneficiary.

While the previous administration did end parole programs, such as the Central American Minors (“CAM”) program, it is undeniable that some parole programs continued to exist and operate. These programs were far more limited in scope. The Filipino World War II Veterans Parole Program, the Haitian Family Reunification Parole Program, and the Cuban Family Reunification Parole Program only account for a fraction of the number of paroles granted by the Biden administration in just a single month. Additionally, the Cuban Family Reunification Parole Program stems from the Cuba Accords, something that cannot be said about the other countries currently enjoying broad parole.

The result of these parole programs was a drop in border numbers and a marked decrease in parole utilized by Border Patrol. This is all smoke and mirrors however as it is supplanting one form of illegal entry for another. This is not to suggest that parole is akin to an illegal entry but a recognition that parole usage in this fashion, is unlawful.

#### THE LEGAL IMMIGRATION BACKLOG

This committee is well aware of the vast number of pending matters presently before USCIS. As of December 31, 2022, USCIS reported a pending caseload of 8,841,152 matters. While the agency claims to want to reduce this number, actions speak louder than words. It was recently reported that USCIS adjudicators were being shifted from their assigned work in order to support operations along the Southwest Border.

While the extent of this shift is still relatively unknown, it is clear that any shift will have significant consequences for the adjudication of affirmative asylum cases as well as applications and petitions for immigration benefits. It is also important to remember that the latter group pays the fees that keep USCIS operational. Essentially, USCIS is taking resources away from the adjudications that fund the

<sup>42</sup> *Detention and Parole of Inadmissible Aliens; Interim Rule with Requests for Comments*, 47 Fed. Reg. 30044 (Jul. 9, 1982) (codified in 8 C.F.R. parts 212 and 235) (emphasis added).

<sup>43</sup> Customs and Border Protection, *Custody and Transfer Statistics Fiscal Year 2023* (May 19, 2023), available at: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>44</sup> Customs and Border Protection, *Custody and Transfer Statistics Fiscal Year 2022* (Nov. 14, 2022), available at: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

<sup>45</sup> Customs and Border Protection, *Custody and Transfer Statistics Fiscal Year 2023* (May 19, 2023), available at: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>46</sup> Dept of Homeland Sec., *DHS Announces New Migration Enforcement Process for Venezuelans* (Oct. 12, 2022), available at: <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>.

<sup>47</sup> Dept of Homeland Sec., *DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes* (Jan. 5, 2023), available at: <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

agency and thereby applicants for benefits are primarily funding, not their own adjudications, but the adjudication of credible fear matters along the border.

CONCLUSION

The Department of Homeland Security has taken many measures in the past 2½ years aimed at addressing the border crisis however it appears that no one thought to simply enforce the law as written. In an effort to remove barriers and to create a subjectively orderly system, the Department has conflated law and policy and ensured that when the two were in conflict, that policy won the day. The memos that undermine grounds of inadmissibility and removability, the rules that undermine Congressional action and established authorities, and the parole programs that are simply incongruous with the law paint a clear picture. The Department has, through its own actions, created the worst border crisis in American history. A return to the rule of law is long overdue and it is incumbent upon Congress to demand that corrective action be immediately taken.

Chairman GREEN. Thank you, Mr. Edlow.

I now recognize Mr. Scott for 5 minutes to summarize his opening statement.

**STATEMENT OF RODNEY S. SCOTT, SENIOR DISTINGUISHED FELLOW FOR BORDER SECURITY, TEXAS PUBLIC POLICY FOUNDATION, FORMER CHIEF OF U.S. BORDER PATROL**

Mr. SCOTT. Chairman Green, Ranking Member Thompson, Members of the committee, thank you for letting me testify here today.

The career professionals at DHS, and specifically Customs and Border Protection and U.S. Border Patrol, deserve our praise and admiration. I am confident that they are doing everything they can every day to protect this country, despite this administration's efforts to undermine their efforts.

The chaos at our Southwest Border and the consequences are a result of actions taken by the Biden administration. The perspectives that I provide are grounded in my professional experience, including my time as chief in the Biden administration.

Decades of bipartisan border security improvements were erased on January 2021, when the Biden administration announced actions that were heard around the world as the U.S. borders are now open. As predicted, the most secure border the United States had ever enjoyed disintegrated into chaos. The Biden administration's claims that they inherited a border in shambles, that surges in illegal immigration like this are normal, or that allowing more illegal aliens to go through a port of entry is solving the problem are not accurate. The crisis at our border is still raging. Don't get lulled into believing that 3,500 arrests a day should be cheered just because it is lower than the 11,000 a day we saw a few weeks ago. The Border Patrol remains overwhelmed, the cartels continue to control who and what is entering the United States, migrants are still being exploited, and children are still being trafficked.

CBP has recorded over 6 million encounters and over 1.4 million known gotaways—that's under the Biden administration. But numbers fail to convey the severity of the national security consequences. Some consequences are easier to measure than others before a bomb goes off. The 1.4 million known gotaways are a measurable consequence of agents being overwhelmed. But consider that hundreds of miles of border lack any persistent surveillance. When construction of the border wall system was terminated, the associated technology was also terminated. Every

minute that agents are not patrolling the U.S. border increases the probability of more unknown gotaways.

Most illicit narcotics, including the fentanyl that is readily available in your home town, originated outside of the United States. Every agent and officer taken away from inspection and patrol duties decreases our Nation's ability to interdict these poisons before they can hurt your family, your friends, and your neighbors.

Leaving hundreds of miles of border unmanned and unpatrolled is like leaving the doors of your home open when you go on vacation. You can replace things that get stolen, but the real threat is the unknown person hiding in your home when you return. Verifying any unknown person's identity or their story requires a face-to-face conversation. How many human trafficking incidents went undetected because our law enforcement personnel today are being instructed to process aliens like a fast-food drive through? How do we quantify the intelligence collection opportunities that were lost?

Additionally, when CBP officers are redirected to conduct immigration processing, legal trade and travel suffers. This further disrupts our supply chain, increases the cost of imported goods, and more.

As chief of the United States Border Patrol, my staff and I engaged and advised the Biden transition teams well before inauguration. The administration's laser focus on expediting, processing, and increasing opportunities for migrants to enter the United States never wavered. Advice from career professionals was ignored, policies were implemented that resulted in thousands of aliens being released into the United States. Illegal immigration intensified, overwhelmed Border Patrol, and effectively transferred control of our Southwest Border directly to the Mexican drug cartels. 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 United States. To think that terrorist networks and hostile nations are not exploiting this vulnerability is naive.

I'm not here testifying about policy differences. Policy is how you carry out your duties under the law. The Secretary of Homeland Security has a legal duty to prevent the illegal entry of aliens and to secure our border. Even if success is unattainable, he still needs to try. Instead, Secretary Mayorkas has chosen to expend Department resources to provide care for aliens that enter the United States illegally.

As detailed in my written testimony, I believe the Secretary is derelict in his duties to secure the border. I also believe that the Secretary has likely violated the Empowerment Control Act. Secretary Mayorkas is great at invoking understandable compassion for the plight of the migrants, and I too acknowledge our humanitarian responsibilities. But as Secretary of the United States Department of Homeland Security and the overseer of billions of tax dollars that are appropriated to protect America, if you look at that, this administration is clearly not doing their job.

[The prepared statement of Mr. Scott follows:]

## PREPARED STATEMENT OF RODNEY S. SCOTT

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 U.S. Customs and Border Protection (CBP), including the U.S. 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 U.S. 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 United States through official Ports of Entry. The aliens are allowed to schedule an appointment via the CBP One 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 U.S. 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 and what enters the United States. For context, from fiscal years 2015 through 2020, USBP averaged approximately 1,250 arrests each day. Fiscal year 2015 and fiscal year 2017 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 U.S. 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 encounters<sup>1</sup> and over 1.4 million known got-a-ways.<sup>2</sup>

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.

Third, 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

<sup>1</sup> Nationwide Encounters/U.S. Customs and Border Protection (cbp.gov).

<sup>2</sup> Public statements by USBP Chief Raul Ortiz.

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.

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

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 terrorists carried out the 9/11 attacks because the 20th terrorist was denied entry into the United States by an alert officer that had time to conduct an effective inspection interview.

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 United States. 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 U.S. 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 United States. 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 United States 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 United States, 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 U.S. 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 U.S. border directly to the cartels.

From Day 1, political leadership in the Biden administration ignored career professionals and increasingly made policy decisions that resulted in thousands of aliens being released into the United States. 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 under-

stand 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 United States. 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 first-hand 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 United States 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.

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 United States 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 policies 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 toward establishing operational control of the U.S. 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 Proclamation<sup>3</sup> 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 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.

Honor First!

Chairman GREEN. Thank you, Mr. Scott.

I now recognize Ms. Acer for 5 minutes to summarize her opening statement.

**STATEMENT OF ELEANOR ACER, DIRECTOR, REFUGEE PROTECTION, HUMAN RIGHTS FIRST**

Ms. ACER. Thank you.

Chairman Green, Ranking Member Thompson and distinguished Members of the committee, thank you for the opportunity to testify before you today.

Over the last few years, Human Rights First has documented the horrific harms inflicted on people due to the Remain in Mexico and Title 42 policies. I personally witnessed the first days of the implementation of Remain in Mexico from Tijuana under the Trump administration and the final days of the Title 42 policy from Matamoros and Reynosa last month. My testimony focuses on a few key areas.

First, our laws and treaties rightly allow people seeking protection from persecution to seek asylum, and asylum is both morally just and politically popular. Second, not only did Trump administration policies like Remain in Mexico and Title 42 evade and violate refugee law, but they spurred chaos and inflicted massive

<sup>3</sup>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.



human suffering. Third, the Biden administration should swiftly end its asylum ban, which endangers the lives of refugees and is inconsistent with the law, as were the Trump administration's bans on asylum. Fourth, as Human Rights First's experts on extremism and antisemitism have detailed, rhetoric painting migrants and asylum seekers as threats or invaders fuels white supremacist conspiracy theories and violence. It must be countered. Finally, Congress and the Biden administration should work together to implement effective strategies and provide the necessary resources to address challenges at the border and properly staff safe, effective, fair, asylum adjudications.

The crisis we're facing is a humanitarian one, and it's global. In my written testimony, I outlined the ways in which human rights situations have deteriorated in countries in the Americas, including Cuba, Guatemala, Haiti, Nicaragua, and Venezuela, pushing people to flee in search of protection, safety, and stability. The reality is that the vast majority of the world's refugees are hosted by other countries, and here in the Americas, other countries are hosting refugees as well. Six million of the 7 million Venezuelans who have fled are hosted in countries in Latin America and the Caribbean. The United States is more than capable of humanely receiving and fairly processing the claims of people seeking refuge here.

Under the Trump administration, Human Rights First tracked 1,544 reports of kidnappings, murder, torture, rape, and other violent attacks against people returned to Mexico under MPP. During the Court-ordered reimplementations of MPP in 2022, asylum seekers continued to be targeted. MPP hearings remained a due process farce. Many asylum seekers were abducted while traveling through border regions to attend hearings or directly outside U.S. ports of entry before or after their hearings. MPP also wasted Government resources. DHS's analysis concluded it diverted resources from other migration priorities. In June 2020, the Supreme Court confirmed the DHS Secretary had authority to end the policy.

Asylum seekers and migrants returned to Mexico under Title 42 similarly suffered kidnappings, rapes, and other attacks. The Trump administration returned well-known political activists from Nicaragua directly back to their country of persecution. Human Rights First has tracked over 13,480 reports of kidnappings, torture, and other attacks against asylum seekers and migrants during the Biden administration. Moreover, far from being an effective border management tool, the policy actually spurred increased crossings between ports of entry, inflated border apprehension statistics, and exacerbated cartel violence. Ending Title 42 does not mean that the U.S. border is open. It means U.S. immigration and refugee law can no longer be evaded by specious invocation of public health authority.

The Biden administration has taken important steps toward expanding refugee resettlement from the Americas and some regular pathways to the United States through parole. As outlined in my testimony, the Department of Homeland Security has authority, legal authority, to parole individuals into the country, and legal authority to release people from detention. The use of these legal authorities do not mean the border is open.

In conclusion, the Biden administration and Congress should work together to uphold refugee law at U.S. borders. Maximizing asylum at ports of entry after years of blockage is essential to end the counterproductive consequences of term policies that restricted and blocked access to asylum at ports of entry and pushed populations to cross between. We should enhance support for refugee hosting capacities in other countries, support for strong asylum systems and reception capacities ramp up, speed up, and strengthen regional resettlement, improve parole and other safe migration policies, implement humanitarian rather than punitive approaches to refugee protection, and take other steps that I've outlined in detail in my testimony.

We also need to press the Biden administration to end its asylum ban and to stop subjecting asylum seekers to fast track processing in CBP custody, as the Trump administration did.

Thank you so much.

[The prepared statement of Ms. Acer follows:]

PREPARED STATEMENT OF ELEANOR ACER

JUNE 14, 2023

Chairman Green, Ranking Member Thompson, and distinguished Members of the committee, thank you for the opportunity to testify before you today. My name is Eleanor Acer, and I serve as Human Rights First's senior director for refugee protection. I have over 25 years of experience monitoring and advocating for adherence to human rights and refugee law under both Democratic and Republican administrations. Human Rights First is an independent, non-profit organization that, for more than 4 decades, has pressed the United States to take a lead role in promoting, defending, and upholding human rights. It has partnered with human rights defenders in Cuba, El Salvador, Hong Kong, Russia, Saudi Arabia, Ukraine, and elsewhere around the world and, here at home, with attorneys, veterans, and many others.

Working with volunteer lawyers at many of the Nation's leading law firms, we have provided pro bono legal representation to refugees seeking asylum, helping thousands to receive protection in this country. These have included pro-democracy advocates and victims of religious persecution from China, journalists forced to flee Guatemala, Ethiopia, Honduras, Iran, and Nigeria, LGBTQ+ people seeking protection from persecution, victims of political repression from Venezuela, Syria, Egypt, and Nicaragua, and Indigenous and other families targeted due to their opposition to brutal armed groups with transnational reach in Honduras, El Salvador, and Guatemala.

Over the last few years, our human rights researchers have traveled repeatedly to Mexican border cities to speak with people seeking asylum who have been turned away or left stranded in danger by the Remain in Mexico and Title 42 policies, and we have tracked horrific accounts of human suffering inflicted by these policies. I personally witnessed the first days of implementation of the Remain in Mexico policy from Tijuana under the Trump administration, and the final days of the Title 42 policy from Matamoros and Reynosa last month. My testimony will focus on a few key areas:

- First, our laws and treaties rightly allow people fleeing persecution to seek asylum—and this right to seek asylum is both morally just and politically popular.
- Second, not only did failed Trump administration policies like Remain in Mexico and Title 42 evade and violate refugee law, but they spurred chaos and inflicted massive human suffering.
- Third, the Biden administration should swiftly end its ban on asylum, which endangers the lives of refugees seeking asylum and is inconsistent with the law.
- Fourth, orchestrated rhetoric painting migrants and asylum seekers as threats or “invaders” fuels white supremacist conspiracy theories and violence targeting Black, Brown, immigrant, Jewish, and other people. Lawmakers must refuse to provide a platform for this rhetoric and must swiftly call out racist fearmongering and counter disinformation with reliable and accurate data.
- Finally, Congress and the Biden administration should work together to implement and support effective strategies including strengthened regional refugee

resettlement and parole; provide the necessary resources to address adjudication and processing challenges; and properly staff safe, effective, and fair asylum adjudications. Parole and release from detention are legally authorized and mass detention would neither be humane nor fiscally responsible.

#### I. UPHOLDING ASYLUM IS MORALLY RIGHT AND POLITICALLY POPULAR ACROSS PARTY LINES

The right to seek asylum is a fundamental human right enshrined in the Universal Declaration of Human Rights. In the wake of World War II, the United States helped lead efforts to draft the Refugee Convention, which along with its Protocol, prohibits the return of people to persecution. United States law specifically provides for people in search of refuge to seek asylum at ports of entry and after entering the United States.

The majority of American voters, across party lines, believe that the United States should provide asylum to people fleeing persecution or violence in their home countries.<sup>1</sup> Many Americans are the children, grandchildren, and great-grandchildren of people who fled political, religious, and other persecution. Moreover, lawmakers of both parties also believe the right to asylum should be protected.

Proponents of unjust anti-asylum policies often refuse to acknowledge the factors pushing people to leave their countries in search of refuge, or the fact that the vast majority of the world's refugees are hosted by countries other than the United States. In reality, the human rights situations in many countries in the Americas have deteriorated in recent years, pushing people to flee in search of protection, safety, and stability. For example:

- In Cuba, where freedom of expression, association, and other basic human rights are sharply restricted, repression has increased over the last few years, as security forces responded violently with an extended wave of brutal repression to the country's historic protests against economic difficulties and lack of fundamental freedoms.
- In Haiti, violence and political instability escalated after the 2021 assassination of the president, and in late 2022 the U.N. High Commissioner for Human Rights, U.N. High Commissioner for Refugees, and the U.N. Humanitarian Coordinator for Haiti all warned that people should not be returned to the country due to the dire and dangerous conditions there.
- In Nicaragua, political persecution continued to escalate against civil society, journalists, activists, church leaders, nuns, and ordinary people—who live in fear and cannot safely engage in public assembly or religious worship—and further intensified during the year with a crackdown against civil society in connection with November 2022 elections. In January 2023 guidance, the U.N. Refugee Agency (UNHCR) stated this crackdown “may be characterized as a massive violation of human rights.”
- In Venezuela, the human rights situation has grown significantly worse in recent years due to harsh crackdowns on political opposition, the ruling party's reliance on widely condemned elections to control all branches of the government, horrific use of torture, and a severe humanitarian crisis.
- Human rights violations have continued or escalated in other countries as well, including in Guatemala where the rule of law has deteriorated, concerns of authoritarianism are rising, and persecution has escalated against journalists, Indigenous and human rights activists, and judicial officials combating impunity for human rights violations, as well as in Honduras, El Salvador, and other countries, as Human Rights Watch documented in its recent annual report.

The reality is that many people fleeing these and other places have fled to other countries in the Americas. In fact, of the 7.1 million people who have fled Venezuela in search of safety and stability, about 6 million are hosted in Colombia, Ecuador, Peru, and other countries in Latin America and the Caribbean. Costa Rica is hosting about 200,000 or more Nicaraguans, and experienced a five-fold increase in total asylum claims in the first 6 months of 2022, as compared to the year before. Mexico hosts about 500,000 refugees and asylum seekers, though many face grave threats to their safety there.

<sup>1</sup>In a November 2022 poll conducted by the U.S. Immigration Policy Center, 87 percent of Democrats, 74 percent of Independents and 57 percent Republicans expressed support for asylum. Another May 2022 poll found that a majority of voters across the political spectrum supported asylum and wanted the Biden administration to end the Title 42 policy. Voters “by a margin of 58 percent to 32 percent [said] that they would prefer a candidate who favors allowing people to legally request asylum at the Southern Border over a candidate who opposes doing so.”

The United States is more than capable of humanely receiving and fairly processing the asylum claims of the portion of people seeking refuge here from repression, violence, and persecution.

## II. FAILED TRUMP ADMINISTRATION POLICIES INFLICTED CHAOS AND HUMAN RIGHTS ABUSES

The Title 42 and Remain in Mexico policies were failed policies implemented by the Trump administration that violated and evaded immigration law, inflicted disorder and dysfunction at the border, and led to massive human rights abuses. These dysfunctional policies also spurred repeat entries, led to family separations, pushed people seeking asylum to cross outside ports of entry, and inflated border statistics.

### A. Remain in Mexico or “Migrant Protection Protocols” (MPP)

The Remain in Mexico policy—often referred to as “MPP”—was a blatant evasion of U.S. refugee law and asylum processes. Initiated by the Trump administration through a flimsy 4-page memorandum, the policy turned away people seeking asylum and other migrants awaiting immigration court hearings to “wait” in danger, in Mexico, for their U.S. hearings. The Remain in Mexico policy—and others like it that force asylum seekers to wait outside the United States for their cases to be heard—simply cannot be implemented lawfully, safely, fairly, or humanely.

Human Rights First tracked at least 1,544 publicly-reported cases of kidnappings, murder, torture, rape and other violent attacks against people returned to Mexico under MPP during the Trump administration. For example, after the Department of Homeland Security (DHS) returned them to Nuevo Laredo under MPP, a Guatemalan family with 2 young children, 5 Cuban asylum seekers, and 4 Venezuelan women and a girl were among those kidnapped and held captive in multiple separate incidents. Others were subjected to horrific sexual violence, including a 9-year-old disabled girl and her mother, who were kidnapped near the Tijuana port of entry and repeatedly raped. Another asylum seeker was kidnapped and raped in front of her 3-year-old son after DHS sent them to Matamoros. In yet another case, DHS forced a Nicaraguan mother and her 9-month-old baby to wait in Mexico under MPP; they were kidnapped by cartels, who punched the mother in the neck and forced her to call family members and beg for ransom money. A 7-year-old Honduran girl and her mother were abducted after DHS returned them to Nuevo Laredo under MPP. She told her mother “Mommy, I don’t want to die” after overhearing the kidnappers threatening to murder other migrants.

During the court-ordered reimplemention of MPP in 2022 (due to litigation brought against the Biden administration by Trump-aligned State attorneys general attempting to force the continuation of MPP), asylum seekers continued to report horrific kidnappings, rapes, and other violent attacks after DHS returned them to Mexico (under what was known as MPP 2.0). As Human Rights First detailed in a September 2022 report, these included: a Nicaraguan woman kidnapped and sexually assaulted; a Venezuelan asylum seeker beaten and shot at; a teenage girl sexually assaulted; and two Nicaraguans kidnapped by a cartel and forced to watch as cartel members put a gun in another man’s mouth and threatened to kill him.

MPP hearings also remained a due process farce under MPP 2.0. Only 5 percent of the people returned to Mexico under MPP 2.0 managed to find attorneys to represent them. Just to attend their U.S. immigration court appointments, asylum seekers were forced to risk kidnapping and violence. Many were abducted while traveling through border regions to attend hearings or directly outside U.S. ports of entry before or after hearings. Cartels extorted returned asylum seekers based on the date of their next MPP hearing, effectively imposing a tax on the time the U.S. Government forced them to wait in Mexico under the policy. For asylum seekers subjected to this process, the dangers, impediments to legal counsel, and abhorrent conditions forced many to give up on their requests for U.S. asylum protection.

MPP also wasted Government resources. DHS’s own analysis concluded that the personnel required for MPP diverted resources from other immigration priorities. DHS Secretary Mayorkas concluded that “there are inherent problems with the program that no amount of resources can sufficiently fix, and that other problems “cannot be addressed without detracting from key administration priorities and more enduring solutions.” In June 2022, the U.S. Supreme Court confirmed that the DHS Secretary had the authority to end the policy.

### B. Title 42

Beginning in March 2020, the Trump administration exploited Title 42, a public health authority, to block and expel people at the U.S. Southwest Border without due process, adherence to refugee law and treaties, or immigration law consequences. Federal courts have vacated and enjoined the Title 42 policy, including

in a November 2022 D.C. district court ruling that vacated the policy for violating U.S. law. A March 2022 ruling by the U.S. Court of Appeals for the D.C. Circuit prohibited DHS from using Title 42 to return asylum-seeking families “to places where they will be persecuted or tortured.”

Asylum seekers and migrants returned to Mexico under Title 42 endured kidnappings, rape, and other attacks. Under the Trump administration, these included a pregnant Honduran asylum seeker who had been repeatedly raped in Mexico and was expelled under Title 42 while experiencing contractions, a Guatemalan asylum seeker, who had been kidnapped for a month in Mexico and was beaten by a U.S. Customs and Border Protection (CBP) agent with a baton while being expelled to Nogales, Mexico, and a Honduran woman who was turned away from a shelter in Reynosa, Mexico, along with her 3-year-old toddler and 5-day-old baby after being expelled. The Trump administration also used Title 42 to deny Nicaraguan political activists opposed to President Daniel Ortega the ability to seek asylum and instead expelled them directly back to Nicaragua, as the *Washington Post* reported.

Human Rights First has tracked over 13,480 kidnappings, torture, and other attacks against asylum seekers and migrants impacted by the Title 42 policy during the first 2 years of President Biden’s administration. These included: a 34-year-old Haitian asylum seeker, Jocelyn Anselme, who was murdered in Tijuana in May 2022 while blocked from seeking asylum under Title 42; a Nicaraguan woman kidnapped with her 4-year-old child and raped, who remained stranded in danger in Mexico; a lesbian asylum seeker from El Salvador raped after being expelled to Mexico under Title 42; a 13-year-old girl who was nearly abducted at gunpoint in Juárez after her family fled political persecution in Venezuela but was expelled under Title 42; and a transgender Honduran asylum seeker who was kidnapped and raped after DHS repeatedly expelled her to Mexico.

In a December 2022 report, Human Rights First found that the court-forced continuation of the Title 42 policy (pursuant to a lawsuit brought by Trump-aligned attorneys general) and the Biden administration’s October 2022 expansion of the Title 42 policy to expel Venezuelans: inflicted terrible human rights abuses, including for Black, Brown, Indigenous, and LGBTQ+ persons, women, and children; subjected asylum seekers to refoulement to persecution and torture in the countries they fled; endangered faith-based, humanitarian, and legal aid workers assisting asylum seekers impacted by the policy; and pushed asylum seekers to attempt dangerous crossings to reach safety.

Proponents of the forced continuation of the Title 42 “public health” policy inaccurately and absurdly painted it as a tool needed for “controlling” migration at the Southwest Border. Far from being an effective border management tool, the Title 42 policy was a failed attempt at a border policy. The policy actually prevented U.S. agencies from enforcing immigration law, spurred increased crossings between ports of entry, inflated border apprehension statistics, exacerbated cartel violence and insecurity at the border, facilitated discriminatory asylum policies that target Black, Brown, and Indigenous asylum seekers, and subverted both U.S. and international law.

In a June 2021 report, the Government Accountability Office (GAO), for example, confirmed that Title 42 expulsions led to “some individuals trying to cross the border multiple times per day” and that the repeat crossing rate rose to 34 percent during the first quarter of fiscal year 2021, meaning that 1 in 3 people encountered at the border at that time had been previously expelled or deported. With respect to people seeking refugee protection, Title 42 and similar policies pushed asylum seekers—including Cubans, Haitians, and Venezuelans—who previously mostly approached official border posts to seek asylum, to instead attempt to cross into the United States between ports of entry.<sup>2</sup>

Counterproductive policies such as Title 42 and Remain in Mexico have also benefited the criminal cartels that control extensive territories. As Human Rights First detailed in a February 2022 report, cartels have adapted to turnback policies by targeting the very asylum seekers turned away by CBP—kidnapping them, purporting

<sup>2</sup>For instance, as Human Rights First explained in a June 2022 report, Government data confirms that in fiscal year 2017, 99 percent of Cubans and Haitians encountered at the Southern Border had arrived through a port of entry. But after years of “metering” restrictions and Title 42 expulsions, in fiscal year 2022 through May 2022, just 0.2 percent of Cubans and 14 percent of Haitians arriving at the Southern Border were able to present themselves at a port of entry. The percentage of Haitians arriving through ports of entry rose in April and May 2022, as some ports of entry processed limited numbers of Haitian asylum seekers through Title 42 exceptions. More limited data also shows that the percentage of Venezuelan asylum seekers presenting themselves at ports of entry followed a similar trend, plummeting from 56 percent in fiscal year 2020 to just 0.2 percent in fiscal year 2022 through May 2022.

to charge them for the right to remain in Mexico, torturing them and demanding ransom payments from their U.S. family members. Some of these organizations have worked to actively prevent asylum seekers from approaching ports of entry, as the restoration of port of entry processing for asylum seekers threatens the cartels' control and extortion efforts.

Ending Title 42 does not mean that the U.S. border is "open." It means that U.S. immigration and refugee law can no longer be evaded by the specious invocation of "public health" authority.

The last thing that Congress or the Biden administration should do is to attempt to force, prolong, codify, or resurrect policies that violate U.S. law and obligations under international refugee law and inflict disorder, family separation and massive human rights abuses on people seeking refuge. Such policies are not actual "solutions," but tools to deny access to this country to Black, Brown, Indigenous, LGBTQ+, and other people seeking asylum from persecution.

### III. INHUMANE, COUNTERPRODUCTIVE ASYLUM POLICIES REMAIN IN PLACE UNDER THE BIDEN ADMINISTRATION

Two-and-a-half years since President Biden took office, his administration has taken some important initial steps toward ending Trump administration policies that created chaos, subvert refugee law, and endanger the lives of people seeking asylum. These steps include President Biden's February 2021 Executive Order directing review of Trump administration policies, the Secretary of Homeland Security's termination and re-termination of the notorious Remain in Mexico (RMX) policy, and the termination of the Title 42 policy in May 2023. The Biden administration has also taken steps to expand refugee resettlement from the Americas and provide some regular pathways to the United States through parole.

The Biden administration wielded the Title 42 policy for over 2 years—in part due to lawsuits filed by State politicians aligned with the prior administration—and expanded it multiple times to expel additional nationalities to danger. Despite finally ending this inhumane and dysfunctional policy, the Biden administration has recently taken steps backward, implementing other Trump-era policies in the face of border arrivals and orchestrated, politically-driven anti-immigrant rhetoric. Other inhumane Trump administration policies remain on the books due to the slow pace of agency regulatory action.

In May 2023, the Biden administration DHS and DOJ issued a regulation promulgating an asylum ban—an approach repeatedly initiated by the Trump administration and repeatedly found unlawful by the courts.

- During the period that the Trump administration's transit ban was in effect, asylum seekers who were denied protection and ordered deported due to the ban included a Venezuelan opposition journalist and her 1-year-old child; a Cuban asylum seeker who was beaten and subjected to forced labor due to his political activity; a gay Honduran asylum seeker who was threatened and assaulted for his sexual orientation; and a Congolese woman who had been beaten by police in her country when she sought information about her husband who had been jailed and tortured due to his political activity.
- Asylum seekers who underwent credible fear interviews in CBP custody under the Trump administration—many of whom were also subjected to the asylum transit ban—were denied a meaningful opportunity to present their asylum claim and many were ordered deported, including a 16-year-old girl who fled trafficking and sexual exploitation, an Indigenous Guatemalan woman who was sexually assaulted because of her ethnicity, and a Central American woman fleeing domestic violence by an abuser who killed one of her children.

The Biden administration's asylum ban unlawfully makes refugees ineligible for asylum based on how they enter the United States and whether they applied for protection in a country they traveled through on their way to seek safety. It will return refugees to persecution, torture, and death in their home countries and other countries where their lives are at risk and leave other refugees in limbo in the United States without permanent status or a pathway to citizenship. During the year that the Trump administration's similar transit ban was in effect, it resulted in the denial of asylum to refugees with well-founded fears of persecution and deprivation of a path to citizenship for refugees left only with withholding of removal due to the transit ban. The Biden administration's misguided approach breaches President Biden's campaign promise to end restrictions on asylum seekers traveling through other countries and endangers many Black, Brown, Indigenous, LGBTQ+, and other asylum seekers. It also advances the agenda of anti-immigrant groups, including the Federation for American Immigration Reform, which was designated

a hate group by the Southern Poverty Law Center and praised the Biden administration's plans to impose an asylum ban as a "good first step."

In January 2023, Human Rights First joined a diverse<sup>3</sup> coalition of nearly 300 organizations in a letter to the Biden administration, urging it to abandon its plan to issue the asylum ban. Nearly 80 Members of Congress echoed that call, in a bicameral letter to President Biden. Faith-based organizations also called on the Biden administration to uphold asylum and abandon plans to propose an asylum ban. Nonetheless, in February 2023 the Biden administration published its proposed asylum ban, which met wide-spread opposition. Of the 51,000 comments received in response to the proposed rule after a mere 30-day comment period, the vast majority of comments opposed the ban, including comments from UNHCR, the union representing asylum officers who would be forced to implement the illegal ban, former immigration judges, 82 Members of Congress from the President's own party, Black-led, civil rights, and LGBTQ+ organizations, Catholic Bishops, rabbis, and Holocaust survivors and their family members. Despite the wide-spread opposition, the administration finalized the illegal ban in May 2023 and began wielding it against asylum seekers.

In addition, the Biden administration has been conducting fast-track asylum screenings through expedited removal in CBP custody at the border, undercutting any meaningful opportunity for an asylum seeker to explain their case, and applying the asylum ban in these screenings to rapidly deport asylum seekers without a hearing regardless of their risk of persecution. On June 5, 2023, 112 organizations wrote to the Biden administration warning that this practice has already produced systemic due process barriers, effectively denies asylum seekers any meaningful chance to consult with counsel, and rushes them through a sham process to quickly deport them. The National Immigrant Justice Center also issued a report finding that the Government is actively obstructing access to counsel and that the program "appears designed to rush people through to deportation without legal advice or representation." The conduct of credible fear interviews in CBP custody is similar to a Trump-era policy known as the "Prompt Asylum Case Review" program and "Humanitarian Asylum Review Program," or PACR/HARP.

PACR/HARP was also a due process, humanitarian, and refugee protection fiasco. Notably, President Biden directed DHS to terminate PACR/HARP in his February 2021 Executive Order. Asylum seekers detained in CBP custody have frequently reported being provided insufficient or inedible food and water; lack of access to showers and other basic hygiene; and inability to sleep because of lack of adequate bedding and cold conditions. Conducting credible fear interviews in CBP custody drastically exacerbates the deficiencies of the expedited removal process, which continues to result in the deportation of refugees to persecution and torture.

Over the last month or so, Human Rights First and other researchers have spoken with hundreds of asylum seekers stranded in the highly dangerous Mexican border cities of Matamoros, Reynosa, Nogales, and—this week—Ciudad Juárez. Findings include:

- The Biden administration's new asylum ban is stranding many people seeking asylum to wait in places where they are targets of brutal violence and kidnappings and left in horrendous conditions without access to basic services. Haitian and other Black people seeking asylum are targets of anti-Black discrimination and violence;
- Human Rights First has spoken to hundreds of people waiting in Mexico, and they overwhelmingly had no knowledge of the Biden administration's asylum ban;
- People seeking asylum continue to struggle to secure one of the limited CBP One appointments while they wait in danger—including an LGBTQI+ asylum seeker who was nearly kidnapped in Sonora, and two Haitian couples and a baby who escaped a potential kidnapping near the Nogales port of entry in late May;
- People seeking asylum who do not have appointments have been turned away from ports of entry by CBP officers and/or by Mexican authorities, and in other cases left to "wait" in a line that barely budes—some left waiting in their country of feared persecution.

<sup>3</sup>The diverse coalition of prominent labor, LGBTQ, faith, and civil rights signatories include: ACLU, Amnesty International, CHIRLA, Community Change Action, FIRM Action, HIAS, Haitian Bridge Alliance, Immigration Equality, Immigration Hub, Indivisible, International Mayan League, MoveOn, IRAP, IRC, NILC, National Immigrant Justice Center, PFLAG National, Refugee Council USA, The Leadership Conference on Civil and Human Rights, UndocuBlack Network, UnidosUS, and the Welcome with Dignity campaign.

Human Rights First issued reports in recent weeks in collaboration with some of the other organizations that are monitoring the implementation of the Biden administration's asylum ban including the Haitian Bridge Alliance and organizations participating in a delegation the Haitian Bridge Alliance led, the Florence Immigrant & Refugee Rights Project and the Kino Border Initiative.

There is a more humane, effective, and legal way forward, as Human Rights First has explained in its most recent set of recommendations, which are outlined below.

#### IV. ANTI-IMMIGRANT NARRATIVES ENDANGER COMMUNITIES AND DRIVE HARMFUL POLICIES

Anti-immigrant fear-mongering that paints migrants and people seeking asylum as threats and “invaders” fuels white supremacist conspiracy theories and violence targeting Black, Brown, immigrant, Jewish, and other people, as Human Rights First's experts on extremism and antisemitism have detailed in a recent fact sheet. By portraying immigrants as an existential threat to native-born Americans, this type of rhetoric makes violence more likely, as we have seen in recent years. Eleven people in Pittsburgh and 23 people in El Paso were murdered by white supremacists animated by fears of supposed immigrant “invaders.” As these horrifying attacks demonstrate, we cannot divorce this “invasion” rhetoric from its violent and racist origins.

These narratives often rely on a vitriolic combination of disinformation and bigoted stereotypes. For example, immigrants are often portrayed as criminal or violent, even when extensive research shows native-born Americans are much more likely to commit crimes than are immigrants. In recent years, immigrants have been increasingly blamed for the devastating growth of fentanyl usage across the country, despite the reality that fentanyl is most likely to enter the United States through legal points of entry by U.S. citizens.

In recent months, some Members of Congress have continued to promote this harmful rhetoric, including in advance of the lifting of Title 42. To prevent Congressional hearings from serving as vehicles to further popularize extremist rhetoric, lawmakers must effectively challenge the disinformation, bigoted stereotypes, and conspiracy theories on which these narratives rely. For example, 115 Members of Congress co-sponsored H. Res. 413, which condemns the white supremacist “great replacement” conspiracy theory and the terrorist attack targeting the Black community it inspired in Buffalo, New York. Representative Raskin, Ranking Member of the Committee on Oversight and Accountability, publicly called on his fellow committee Members to denounce white supremacy. Lawmakers, especially those in positions of leadership, can and must proactively and repeatedly counter such statements on the public record, ensure the voices of targeted communities have representation, and support efforts to protect the rights of migrants and asylum seekers.

#### V. THE USE OF PAROLE AND RELEASE FROM DETENTION ARE AUTHORIZED BY LAW

DHS has the legal authority to parole people into the country “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” The parole authority is spelled out in 8 U.S.C. 1182(d)(5)(A) of U.S. law. The use of parole for eligible people does not mean that the U.S. border is “open.” U.S. immigration authorities have used parole authority for decades to parole people into the United States—including people from the Soviet Union and Vietnam (1988), Cubans through the Cuban Family Reunification Parole Program (CFRP) (2007), and Ukrainians through Uniting for Ukraine (2022).

The Biden administration has also created programs to allow certain individuals from Cuba, Haiti, Nicaragua, and Venezuela to apply for parole if they meet requirements including having a sponsor in the United States. The existence of regular pathways can enable some people to travel safely and without resorting to irregular travel. The Biden administration should strengthen its use of parole including to improve access to it for highly vulnerable persons who are not eligible under current initiatives.

The use of parole however is not, and is no substitute for, asylum or refugee resettlement. People facing grave threats cannot wait to apply for parole, and many cannot afford or are not eligible to apply for these parole initiatives due to their requirements. Parole authority or other regular pathways to the United States should never be used as an attempt to justify the denial of access to asylum.

Moreover, it is not illegal to release people from immigration detention. U.S. law provides for ways to release people from immigration detention and custody. For instance, CBP has the discretion to put people it encounters into removal proceedings, with or without sending them to detention, or to use expedited removal. People



seeking asylum who are initially referred into expedited removal can for instance be released from immigration detention on parole under U.S. law—as both Democratic and Republican administrations have repeatedly confirmed through their actions and official guidance.

Human rights reports have documented the abuses suffered by people held in immigration detention, as well as the waste of Government resources inherent in the massive use of immigration detention. Detention costs on average \$144.42 per bed, per day. Studies have repeatedly confirmed that asylum seekers and migrants overwhelmingly appear for hearings after release from DHS custody, rendering the use of costly and harmful immigration detention unnecessary to ensure future appearance. It is both fiscally irresponsible and incredibly inhumane to endeavor to send all people awaiting asylum or other immigration court adjudications to detention centers. Detained asylum seekers and migrants are also cutoff from legal representation; only 37.6 percent of detained individuals with pending cases have been able to secure legal representation while 63.8 percent of all people released from detention who have pending cases are represented, according to data analyzed by Syracuse University’s Transactional Records Access Clearinghouse (TRAC). Legal representation is critical to ensuring that individuals understand our byzantine immigration laws and court proceedings (described by one immigration judge as “death penalty cases heard in traffic court settings”), and thus demonstrate they meet the criteria to receive asylum or other relief that they are eligible for under U.S. law.

#### VI. RECOMMENDATIONS FOR UPHOLDING REFUGEE LAW

Instead of seeking to prolong, use, or resurrect inhumane and counterproductive policies that were part of the Trump administration’s agenda, the Biden administration and Congress should work together to:

- Uphold refugee law at U.S. borders without discrimination, including to maximize (rather than restrict or “meter”) asylum at ports of entry, and ensure people seeking asylum have prompt access to ports of entry—not limited to CBP One, but also assured to people approaching ports of entry to seek asylum. Maximizing asylum at ports of entry after years of blockage is essential not only to uphold refugee law, but also to end the counterproductive consequences of Trump policies that, by restricting and blocking access to asylum at ports of entry, have long pushed populations that previously sought asylum at ports of entry to instead attempt to cross the border.
- Immediately rescind the Biden administration’s asylum ban, which punishes refugees and bars them from asylum, stop subjecting asylum seekers to expedited removal including through dangerously fast-tracked screenings in CBP custody where asylum seekers do not have meaningful access to counsel, and rescind remaining fatally-flawed policies of the Trump administration that ban refugees from asylum.
- Enhance support for human rights and refugee hosting capacity in other countries in the Americas, including through efforts to support development of strong asylum systems, reception capacities, access to employment, and protection of rights and safety of refugees and migrants in Mexico and other countries in the Americas.
- Ramp up, speed up, support, and strengthen regional refugee resettlement, improve parole and other safe migration pathways in the Americas, but never use the existence of such pathways to deny access to asylum.
- Implement a humanitarian, rather than a punitive and attempted deterrence-based, approach to refugee protection through effective, sustainable, humane refugee reception structures, coordination, funding mechanisms, and case support to address the lack of dedicated humanitarian and refugee protection structures that has long hampered the U.S. response to people seeking refuge at its own borders.
- Upgrade asylum adjudication processes so they are accurate, fair, properly staffed, and prompt, including: improve the new asylum rule process so it leads to efficiency rather than rushed and counterproductive inaccurate adjudications, fund sufficient asylum adjudication capacities to address asylum backlogs and ensure timely adjudication of new cases, and support and champion funding for legal representation.
- Stand firm against anti-immigrant rhetoric and efforts, and unequivocally reject attempts to exploit Congressional hearings as opportunities to platform dangerous anti-immigrant conspiracy theories. Reject and oppose anti-asylum Congressional proposals, including efforts to force continuation or enactment into law of the Trump administration’s cruel, racist, and counterproductive policies. Draconian policies will not appease perpetrators of xenophobic, racist rhetoric,

but will inflict massive human suffering, create more dysfunction, and subvert refugee law globally.

Human Rights First has detailed these steps in its comprehensive recommendations paper issued in January 2023. These strategies lay out a more humane and effective approach.

Let's be clear: we are not, by any stretch of the imagination, an "open borders" Nation. Any such assertion is patently false. For example, CBP conducts security checks of people seeking entry at ports of entry or otherwise encountered, and puts people into removal proceedings, expedited removal, and/or refers them to ICE for check-ins. Too often they send people seeking refugee protection to immigration jails. Human Rights First has issued countless reports documenting past and present asylum bans and the horrifying impact of Title 42. Unfortunately, our Government has repeatedly focused on harsh, rights-violating policies that attempt to deter and punish people seeking to migrate or request asylum at the border, only exacerbating bottlenecks and dangerous conditions along the Southwest Border and in detention.

Instead of prolonging, codifying, using, or resurrecting unjust, inhumane, and dysfunctional policies aimed at decimating asylum that were initiated under the Trump administration, the Biden administration, and Members of Congress should uphold U.S. refugee law, the human right to seek asylum, and U.S. commitments under international refugee law. This includes abandoning efforts to ban or deny asylum to refugees who are otherwise eligible for asylum under U.S. law.

The crisis we are facing is a global humanitarian crisis; people are fleeing their home countries due to a rise in political instability, authoritarianism, human rights abuses, climate change, and more. The United States is not meeting the moment, nor is it leading by example; other nations, including those with far less capacity than ours, are welcoming and hosting the overwhelming majority of the world's refugees. We can and must do better to uphold refugee law at home.

Chairman GREEN. Thank you for your testimony.

I now recognize myself for questions.

I want to talk about this claim that there has been a 70 percent decrease since Title 42 went away. It looks like they are counting the encounters at 3,500 compared to the peak of 11,000, the actual record number, which happened right before that. But what they are not counting—it is very interesting—confirm—I don't know any of the witnesses that can confirm this, but we are not counting the CBP One app appointments, as I understand it. Is that correct?

Mr. WOLF. That is correct. So the numbers that are being cited by the Department are Border Patrol numbers. Those are encounters between ports of entry. So they talk about, I believe, a 70 percent decrease. What they're not telling you, they're actually capturing the number, but they're not including it in their press release, is the number from of, which is the Office of Field Operations, they're at a port of entry are the number of inadmissibles that are showing up at ports of entry. What's happening is they're being shifted between the ports of entry to the ports of entry.

Chairman GREEN. It is a shell game. Basically, we are taking the numbers out of these and we are not reporting them over here, and we are allowing for appointments to be made through CBP One app and then saying that that is a lawful mechanism of entry.

Mr. Edlow, is that in congruence with the law? Is that a lawful entry just because you fill out an app on-line?

Mr. EDLOW. No. No, it's not.

Chairman GREEN. So it is a violation of the law?

Mr. EDLOW. It's a violation. Frankly, if somebody comes to the port of entry, has no documentation to get in, there is a lawful mechanism for them to claim credible fear and to move through that process. But to just allow them to come in to parole them, not

on a case-by-case basis, I might add, but as a group, is not within the confines of the law.

Chairman GREEN. Yes, it is against the laws passed by the U.S. Congress. OK.

So again, kind-of digging into this a little further. This group of—and I think the amount of the appointments are about 1,500 or so a day, add that to the 3,500, add that to the number that don't schedule an appointment, and come through that—we don't know that number because they are not reporting that number. Has there really been an appreciable decrease in your opinions since Title 42 went away?

Mr. SCOTT. I do not believe that there has been a decrease in the numbers. It is a shell game.

The other thing I want to point out, too, is it's very selective about what day they choose to compare the numbers to. You need to look at a little broader amount of time. The border for my entire career was systematically getting more and more controlled, and we are actually driving those numbers down. You have to look at it longer, not just 1 day in time.

Chairman GREEN. Mr. Wolf, on May 10, reporter and immigration analyst Todd Bensman reported ahead of the expiration of Title 42 that Mexican immigration officials were informing him that they were coordinating with DHS personnel on the other side of the border to move illegal aliens from the Mexico side of the Rio Grande to the American side. In other words, they were helping aliens illegally cross into the United States. This would violate, as I understand it, Section 274 of the INA, which prohibits aiding and abetting illegal immigration or helping someone enter the country. In your opinion, would such an intentional coordination on a high-profile stage have been conducted without the approval or foreknowledge of the Secretary of Homeland Security?

Mr. WOLF. No, you would need to have approval up and down the chain of command.

Chairman GREEN. So basically, again, violating the laws of the United States. You would think that authority—I mean, the Border Patrol guys would never do that without the authority of the Secretary. Is that what you are saying?

Mr. WOLF. It's hard for me to say whether the Chief of the Border Patrol was aware or whether that made it all the way to the Secretary or not. I'm not there, so I can't testify to that.

Chairman GREEN. OK. I can't imagine they would willfully break the law without the Secretary giving them approval. But we will dig further into that later.

The interim final rule that came out, Mr. Edlow, can you discuss a little bit about how this basically upends the entire intent of the laws of Congress from the INA?

Mr. EDLOW. Certainly, Mr. Chairman.

When the Homeland Security Act was signed and enacted in 2002, 2003, most powers that had been exercised by the former INS were moved over to the new DHS, specifically with asylum to USCIS, where asylum officers were conducting interviews. However, after a credible fear interview, the way it always had worked was that the alien would then go before the immigration judge. That powers were never transferred as part of the Homeland Secu-

rity Act. This rule does transfer, does shift that authority from DOJ to DHS, having a second bite at the apple to—

Chairman GREEN. Speed people into the country, basically not have to go through the immigration judge process.

Mr. EDLOW. Correct. But not only that, sir, but the fact that they do not require a new asylum application really does limit the ability for anyone to assess whether there's a valid claim or not.

Chairman GREEN. My time has expired.

I yield to the Ranking Member.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Ms. Acer, Republicans have constantly falsely accused Secretary Mayorkas of being derelict in his duty to secure the border, even though as I said in my opening statement, border encounters have dropped sharply since the Biden administration terminated Title 42 last month. Republicans don't like the Biden administration is returning to a more orderly, humane border and immigration policy after the cruelty and dysfunction of the Trump administration. They can't stand that these policies have been effective. So we are seeing this political theater play out with the Republican leadership trying desperately to appease its Members.

My Republican colleagues seem to be particularly upset about the Biden administration allowing people to present themselves at port of entry to seek asylum as provided under the law, just as every other administration had prior to this one. Actually, there seems to be some revisionist history going on because even President Trump's Secretary of Homeland Security, Kirstjen Nielsen, Mr. Wolf's former boss, acknowledged, in fact, encouraged migrants to come to ports of entry for processing, saying, and I quote, "So if a migrant comes to a port of entry, they haven't broken any laws". This is exactly why we tried encourage the migrants to go to a port of entry.

The Biden administration is being sued to force it to do more to restore access to asylum after the last administrations effectively cut it off.

Now, Ms. Acer, since you are an immigration attorney with vast experience and expertise in this field, I want to talk with you you and set the record straight. Claiming asylum at a port of entry is lawful, correct?

Ms. ACER. Absolutely.

Mr. THOMPSON. Claiming asylum after being encountered by Border Patrol is lawful too, correct?

Ms. ACER. Absolutely, yes.

Mr. THOMPSON. Paroling migrants, is lawful and within the authority of the Secretary of Homeland Security, correct?

Ms. ACER. Yes, sir.

Mr. THOMPSON. No administration has ever detained everyone encountered at the border, isn't that right?

Ms. ACER. That is right.

Mr. THOMPSON. That includes the Trump administration, correct?

Ms. ACER. Absolutely.

Mr. THOMPSON. So Title 42 caused terrible harm to asylum seekers, which you saw first-hand on your visits to the border. Title 42 was also detrimental to border security. Isn't that right?

Ms. ACER. Absolutely.

Mr. THOMPSON. Please explain that to the committee.

Ms. ACER. As I mentioned in my testimony, Title 42 encouraged repeat entries. It did not have immigration consequences. It also pushed populations that used to go and seek asylum at ports of entry to end up having to cross between ports of entry, because not just for weeks, but for months and months and years and years, there was no way to actually cross the border.

The change in numbers we've seen, I believe, is a confirmation of what an absolute disaster Title 42 was from so many ways. Asylum seekers that we met at the border were trying to use the CBP One app. How that works, for those of you who haven't seen it, is people provide information that the Government receives and actually reviews in advance. One of our concerns about the CBP One app is that it could be used to actually meter and limit the number of asylum seekers allowed to legally seek asylum.

In addition, I would say that we're also concerned about asylum seekers who are trying to approach ports of entry, who are not being allowed to do so now, either because of CBP or Mexican government authorities not letting them do so.

Mr. THOMPSON. Thank you.

Mr. Chair, I would like to include in the record a GAO decision that Mr. Wolf indeed served in that capacity of Secretary illegally. I would like to also include a review requested by the Department and affirmed by GAO again, that Mr. Wolf served in that capacity illegally. I would also like to submit for the record a fellow judge in Maryland also ruled that Mr. Wolf was serving illegally in that position.

Chairman GREEN. Without objection, so ordered.

Mr. HIGGINS. Mr. Chairman, I object.

Chairman GREEN. We have an objection.

Mr. HIGGINS. I object. I don't believe the Ranking Member is capable of presenting to this committee justification for claiming that Secretary Wolf served illegally. This is not a Court of Law, it is a committee in Congress. I object to the inclusion in the historical record.

Chairman GREEN. OK. I think we misunderstood the gentleman's motion. It was not objection to the insertion of the material into the record, it was, I think, just a statement of opinion about.

And so, so ordered. The GAO reports are entered into the record.  
[The information follows:]



## Decision

**Matter of:** Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security

**File:** B-331650

**Date:** August 14, 2020

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### DIGEST

The Federal Vacancies Reform Act of 1998 (Vacancies Reform Act) provides for temporarily filling vacant executive agency positions that require presidential appointment with Senate confirmation. 5 U.S.C. § 3345. GAO's role under the Vacancies Reform Act is to collect information agencies are required to report to GAO, and GAO uses this information to report to Congress any violations of the time limitations on acting service imposed by the Vacancies Reform Act. 5 U.S.C. § 3349. As part of this role, we issue decisions on agency compliance with the Vacancies Reform Act when requested by Congress. The Vacancies Reform Act is generally the exclusive means for filling a vacancy in a presidentially appointed, Senate confirmed position unless another statute provides an exception. 5 U.S.C. § 3347. The Homeland Security Act of 2002 provides an order of succession outside of the Vacancies Reform Act when a vacancy arises in the position of Secretary of the Department of Homeland Security (DHS). 6 U.S.C. § 113(g).

Upon Secretary Kirstjen Nielsen's resignation on April 10, 2019, the official who assumed the title of Acting Secretary had not been designated in the order of succession to serve upon the Secretary's resignation. Because the incorrect official assumed the title of Acting Secretary at that time, subsequent amendments to the order of succession made by that official were invalid and officials who assumed their positions under such amendments, including Chad Wolf and Kenneth Cuccinelli, were named by reference to an invalid order of succession. We have not reviewed the legality of other actions taken by these officials; we are referring the matter to the Inspector General of DHS for review.

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**DECISION**

This responds to a request from the Chairman of the Committee on Homeland Security and the Acting Chairwoman of the Committee of Oversight and Reform regarding the legality of the appointment of Chad Wolf as Acting Secretary of the Department of Homeland Security (DHS) and Ken Cuccinelli as Senior Official Performing the Duties of Deputy Secretary. Letter from Chairman, Committee on Homeland Security, U.S. House of Representatives and Acting Chairwoman, Committee on Oversight and Reform, U.S. House of Representatives to Comptroller General (Nov. 15, 2019). Specifically, we consider whether the appointments were authorized pursuant to the Secretary's designation of an order of succession under the Homeland Security Act of 2002 (HSA). Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002), as amended by National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 1903, 130 Stat. 2000, 2672 (Dec. 23, 2016), codified at 6 U.S.C. § 113(g)(2).

As explained below, we conclude that in the case of vacancies in the positions of Secretary, Deputy Secretary, and Undersecretary for Management, HSA provides a means for an official to assume the title of Acting Secretary pursuant to a designation of further order of succession by the Secretary. However, upon the resignation of Secretary Kirstjen Nielsen, the express terms of the then existing designation required the Director of the Cybersecurity and Infrastructure Security Agency (CISA) to assume that title instead of the Commissioner of Customs and Border Protection (CBP), Kevin McAleenan. As such, the subsequent appointments of Under Secretary for Strategy, Policy, and Plans, Chad Wolf and Principal Deputy Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli were also improper because they relied on an amended designation made by Mr. McAleenan.<sup>1</sup>

Under the Federal Vacancies Reform Act of 1998 (Vacancies Reform Act), GAO collects information agencies are required to report to GAO, and GAO uses this information to report to Congress any violations of the time limitations on acting service imposed by the Vacancies Reform Act. 5 U.S.C. § 3349. As part of this

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<sup>1</sup> We have only been asked to address the designation of Messers. Wolf and Cuccinelli, so we do not otherwise address the consequences of any official's improper service. We are referring that question to the DHS Inspector General for his review. In that regard, we are aware that certain actions taken by Acting Secretary Wolf and his authority to take them are currently the subject of litigation. See, e.g. *A.B-B v. Morgan*, Docket No. 1:20-cv-0846 (D.D.C. 2020); *Casa De Maryland v. Wolf*, Docket No. 8:20-cv-02118 (D. Md. 2020); *Don't Shoot Portland v. Wolf*, Docket No. 1:20-cv-02040 (D.D.C. 2020). We are also aware that in March, 2020, the U.S. District Court for the District of Columbia ruled that Mr. Cuccinelli's separate appointment as acting director of USCIS was illegal. See *L.M.-M v. Cuccinelli*, 442 F. Supp. 3d 1, 29 (D.D.C. 2020). That question was not before us.

role, we issue decisions on agency compliance with the Vacancies Reform Act when requested by Congress. Our practice when rendering decisions is to contact the relevant agencies and obtain their legal views on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 5, 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). We contacted DHS to obtain the agency's views. Letter from Managing Associate General Counsel, GAO, to General Counsel, DHS (Dec. 6, 2019). We received DHS's response on December 20, 2019. Letter from Associate General Counsel for General Law, DHS, to Managing Associate General Counsel, GAO (Dec. 20, 2019) (Response Letter).

#### BACKGROUND

The Vacancies Reform Act permits certain individuals to serve as acting officials in vacant presidentially appointed, Senate confirmed positions (PAS) for limited periods of time. 5 U.S.C. §§ 3345, 3346. The Vacancies Reform Act is generally the exclusive means for filling a vacancy in a PAS position unless another statute provides an exception.<sup>2</sup> Pursuant to the Vacancies Reform Act, the first assistant to a PAS position automatically becomes the acting official in case of a vacancy unless the President designates another individual who meets the Vacancies Reform Act's eligibility requirements. 5 U.S.C. § 3345.

HSA created DHS to prevent terrorist attacks within the United States and reduce the nation's vulnerabilities to such attacks, among other critical missions. Pub. L. No. 107-297, title I, § 101. At the head of the department, HSA created the position of Secretary of Homeland Security who is vested with all the functions of all officers, employees, and organizational units of DHS. HSA, Pub. L. No. 107-296, title I, § 102. HSA also created the position of Deputy Secretary and made the Deputy Secretary the first assistant for purposes of the Vacancies Reform Act. Pub. L. No. 107-297, title I, § 103.

On December 23, 2016, HSA was amended to establish an order of succession outside the Vacancies Reform Act for the position of Secretary. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, div. A, title XIX, § 1903, 130 Stat. 2000, 2672 (2016). Under the amendment, the Under Secretary for Management is next in line to be Acting Secretary in the case of absence, disability, or vacancy in the positions of Secretary and Deputy Secretary. 6 U.S.C. § 113(g)(1). Beyond this mandated order, "the Secretary may designate such other officers of the Department in further order of succession to serve as Acting

<sup>2</sup> A statute only qualifies as an exception if the statutory provision expressly authorizes the President or the head of an executive department to designate an official to perform the functions and duties of a specified office temporarily in an acting capacity or it designates an acting official. 5 U.S.C. § 3347(a)(1).



Secretary."<sup>3</sup> 6 U.S.C. § 113(g)(2). These succession provisions take effect "[n]otwithstanding" the provisions of the Vacancies Reform Act.<sup>4</sup> 6 U.S.C. § 113(g).

On December 5, 2017, Kirstjen Nielsen was confirmed as Secretary of DHS. On April 10, 2019, Secretary Nielsen resigned from her position. At this time, the Deputy Secretary position had been vacant since April 14, 2018, and the Under Secretary for Management resigned on April 10, 2019, as well, leaving that position vacant. GAO, *Federal Executive Vacancy System Database, available at* <https://www.gao.gov/legal/other-legal-work/federal-vacancies-reform-act>.<sup>5</sup> Upon the Secretary's resignation, the Commissioner of Customs and Border Protection, Kevin McAleenan, assumed the title of Acting Secretary.

On November 13, 2019, Acting Secretary McAleenan resigned, and the Under Secretary for Strategy, Policy, and Plans, Chad Wolf assumed the title of Acting Secretary. The same day, Mr. Wolf designated the Principal Deputy Director of USCIS, Kenneth Cuccinelli, as the Senior Official Performing the Duties of Deputy Secretary of Homeland Security (Deputy Secretary).<sup>6</sup>

#### DISCUSSION

Article II of the U.S. Constitution provides that "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law." U.S. Const. art. II, § 2. As noted previously, when there is a vacancy in these presidentially appointed, Senate confirmed (PAS) positions, the Vacancies Reform Act is generally the exclusive means for filling them temporarily with an acting official, unless another statute provides an exception.

<sup>3</sup> The amendment did not impose time limitations on an individual serving as Acting Secretary under HSA.

<sup>4</sup> HSA does not establish an order of succession outside the Vacancies Reform Act for the position of Deputy Secretary. However, HSA establishes the Under Secretary for Management as the first assistant to the Deputy Secretary for purposes of the Vacancies Reform Act. 6 U.S.C. § 113(a)(1)(F).

<sup>5</sup> Under the Vacancies Reform Act, agencies are required to report to GAO certain information regarding vacancies in PAS positions. 5 U.S.C. § 3349(a). GAO compiles the information from these reports and makes them available to the public through its Executive Vacancy System.

<sup>6</sup> Regarding Mr. Cuccinelli, this decision only addresses his service as the Senior Official Performing the Duties of Deputy Secretary and does not address any other positions which he may also hold.

Here, HSA provides such an exception. HSA requires the Under Secretary for Management to serve as Acting Secretary if there is a vacancy in the offices of Secretary and Deputy Secretary. 6 U.S.C. § 113. By providing an initial order of succession for the Secretary and allowing the Secretary to make further designations, HSA qualifies as an exception to the Vacancies Reform Act's exclusivity provision.

At the time the Secretary resigned, the positions specified in HSA were vacant as well, permitting DHS to turn to the Secretary's designation of further officials to serve as Acting Secretary when Secretary Nielsen resigned and the position of Secretary became vacant. 6 U.S.C. § 113(g)(1), (2). Hence, to determine whether Chad Wolf and Ken Cuccinelli are properly serving, we must examine whether DHS adhered to the order of succession in the Secretary's delegation in force at the time Mr. McAleenan and Mr. Wolf each assumed the title of Acting Secretary. As explained further below, we conclude DHS did not.

#### HSA Delegation 00106

In its response to us, DHS stated that Secretary Nielsen had exercised the HSA power to designate an order of succession through Delegation 00106. See Response Letter. Secretary Nielsen issued this delegation on February 15, 2019 (February Delegation).<sup>7</sup> In this February Delegation, there were two grounds for assuming the position of Acting Secretary. The first ground was in the case of the Secretary's death, resignation, or inability to perform the functions of the office. February Delegation § II.A. The second ground was if the Secretary was unavailable to act during a disaster or catastrophic emergency. *Id.* § II.B.

Each ground had its own order of succession. In cases of the Secretary's death, resignation, or inability to perform the functions of the office, the February Delegation stated the order of succession was governed by Executive Order 13753 (E.O. 13753). *Id.* § II.A. E.O. 13753 included an order of succession for officers who would act and perform the duties of the Secretary during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the Office of Secretary. In cases where the Secretary is unavailable to act during a disaster or catastrophic emergency, Annex A to the February Delegation governed the order of succession. *Id.* § II.B. At that time, the orders of succession found in E.O. 13753 and Annex A were the same. The figure in appendix 1 attached to this decision illustrates the legal framework that could be used to designate an Acting Secretary at the time of the February Delegation.

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<sup>7</sup> DHS, *DHS Orders of Succession and Delegations of Authorities for Named Positions*, DHS Delegation No. 00106, Revision No. 08.4 (Feb. 15, 2019).

Under E.O. 13753 and Annex A, the first four positions in the order of succession were as follows: (1) Deputy Secretary, (2) Under Secretary for Management, (3) Administrator of the Federal Emergency Management Agency (FEMA), and (4) Director of CISA.<sup>8</sup>

The February Delegation also listed positions in an order of succession for Deputy Secretary in Annex B. The first four positions were as follows: (1) Under Secretary for Management, (2) Administrator of FEMA, (3) Director of CISA, and (4) Under Secretary of Science and Technology.<sup>9</sup>

The February Delegation further stated acting officials in the listed positions are ineligible to serve and, therefore, the order of succession would fall to the next designated official in the approved order of succession. *Id.* § II.G.

#### Nielsen's Resignation

According to DHS, on April 9, 2019, the day before her resignation, Secretary Nielsen established a new order of succession. Delegation 00106 was updated the following day, reflecting the changes (April Delegation).<sup>10</sup> The April Delegation on its face maintained the two separate grounds for designation. Vacancies due to the Secretary's death, resignation, or inability to perform the functions of the office were still governed by the order of succession under E.O. 13753, and vacancies due to the Secretary's unavailability to act during a disaster or catastrophic emergency were still governed by Annex A to the Delegation. April Delegation §§ II.A, II.B. Secretary Nielsen did however amend the orders of succession for the Secretary and Deputy Secretary in Annexes A and B, respectively. The figure in appendix 1 attached to this decision illustrates the legal framework that could be used to designate an Acting Secretary at the time of the April Delegation.

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<sup>8</sup> Both E.O. 13753 and Annex A list more positions than those indicated here. However, they are not relevant for purposes of this decision. Public Law 115-278 renamed the position of Under Secretary for National Protection and Programs to be Director of the Cybersecurity and Infrastructure Security Agency. Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, § 2(a), 132 Stat. 4168, 4169 (Nov. 16, 2018), *codified at* 6 U.S.C. § 652(a), (b).

<sup>9</sup> The Secretary may provide for an order of succession for the Deputy position under general management authorities granted the Secretary in HSA. 6 U.S.C. § 112. However, any order of succession for the Deputy position must reflect that the Under Secretary for Management is the first assistant for purposes of the Vacancies Act, in accordance with HSA. 6 U.S.C. § 113(a)(1)(F).

<sup>10</sup> DHS, *Orders of Succession and Delegations of Authorities for Named Positions*, Delegation No. 00106, Revision No. 08.5 (Apr. 10, 2019).



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548Comptroller General  
of the United States

## Decision

**Matter of:** Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security—Reconsideration

**File:** B-332451

**Date:** August 21, 2020

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### DIGEST

The Department of Homeland Security's (DHS) request that we rescind our August 14, 2020, decision is denied, as DHS has not shown that our decision contains either material errors of fact or law, nor has DHS provided information not previously considered that warrants reversal or modification of the decision.

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### DECISION

The Department of Homeland Security (DHS) requests reconsideration of our decision in Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security, B-331650, August 14, 2020 (Decision), asking that we rescind the decision. Letter from Senior Official Performing the Duties of the General Counsel to General Counsel, GAO (Aug. 17, 2020). In our decision, we concluded that the appointments of both officials were issued under an invalid order of succession. GAO will modify or reverse a prior decision only if it contains a material error of fact or law. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <https://www.gao.gov/products/GAO-06-1064SP>. As explained below, DHS did not identify any material errors of fact or law and we decline to reverse or modify the decision.

### BACKGROUND

The Homeland Security Act (HSA) provides a means for an official to assume the title of Acting Secretary pursuant to a designation of further order of succession by the Secretary. 6 U.S.C. § 113(g)(2). Secretary Kirstjen Nielsen exercised this power on April 9, 2019, the day before her resignation, when she established a new order of

succession for Acting Secretary as reflected in DHS 00106 (April Delegation).<sup>1</sup> However, upon her resignation, the official who assumed the title of Acting Secretary—Mr. Kevin McAleenan—was not the official designated in the April Delegation order of succession to serve upon the Secretary's resignation. As a result, we concluded Mr. McAleenan's subsequent amendments to the April Delegation order of succession were invalid and the subsequent appointments of Chad Wolf and Kenneth Cuccinelli who assumed their positions under such amendments were also improper.

While we concluded the appointments were improper, we did not review or make conclusions regarding the consequences of actions taken by these officials. We referred this question to the DHS Office of Inspector General. In that regard, we specifically suggested consideration of whether actions taken by these officials could be ratified by properly serving individuals as designated in the April Delegation to be the Acting Secretary and Senior Official Performing the Duties of the Deputy Secretary.

#### DECISION

In its August 17, 2020, letter, DHS asserts that our decision is "fundamentally erroneous," but in doing so did not point to any facts which we relied upon that were in error or provide any new facts for us to consider. DHS does assert legal error, arguing that our decision failed to properly defer to its interpretation of the Memorandum which it relied upon to demonstrate that the Secretary designated Mr. McAleenan to serve as Acting Secretary. The memorandum to which DHS refers is the April 9, 2019 Memorandum to Secretary Nielsen from the then-General Counsel requesting the Secretary's approval of the revised order of succession for Annex A. DHS letter, at 5-6.

In our decision, we addressed DHS's focus on the Memorandum. Decision, at 8-9. DHS argues that the Memorandum introduces ambiguity and that this requires us to defer to its interpretation of the order of succession. However, given that the plain language of the April Delegation is clear, there is no need to refer to the Memorandum. Any contrary interpretation of the April Delegation by DHS would not be entitled to any deference given its clarity. An agency's interpretation is not entitled to deference unless the controlling language is ambiguous, nor is deference available to an agency's "post hoc rationalization advanced [to] defend past agency action." See, generally, *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415, 2417 (2019) (a court should not afford deference unless the regulation is genuinely ambiguous).

In addition to its insistence on deference, DHS accused this office of political partisanship. In our oversight role, GAO produces hundreds of written products annually, including legal decisions, that examine agency programs and operations throughout the government. DHS's demand for deference in these circumstances is not

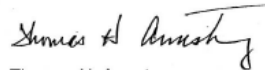
<sup>1</sup> The Secretary also changed the order of succession for Deputy Secretary pursuant to her general management authorities under 6 U.S.C. § 112.

only legally unsupported but also ignores the public and Constitutional imperative of oversight to ensure transparency and accountability of governmental actions.

Our August 14, 2020, decision and all of our written products represent the work of numerous professionals, each taking care to remain independent and mindful of GAO's obligation to provide nonpartisan service to the American people. All GAO products also undergo a multi-level review to assure they are intellectually sound and free from bias. Rather than trying to reach a particular conclusion, our legal decisions, this one included, are the result of a dispassionate application of the relevant law to facts, not advocacy, and are subject to rigorous legal review and signature of GAO's General Counsel.

#### CONCLUSION

GAO will modify or reverse a prior decision or opinion only if it contains a material error of fact or law. DHS has not demonstrated that our prior decision contains errors of either fact or law, nor has DHS presented information not previously considered that warrants reversal or modification of our decision. Therefore, we decline to reverse or modify the decision.



Thomas H. Armstrong  
General Counsel

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ARTICLE SUBMITTED FOR THE RECORD BY RANKING MEMBER BENNIE G. THOMPSON

JUDGE RULES CHAD WOLF LIKELY UNLAWFULLY SERVING AS HOMELAND SECURITY  
SECRETARY AND TEMPORARILY BLOCKS SOME ASYLUM RESTRICTIONS

*By Laura Ly and Paul LeBlanc, CNN*

*Updated 10:59 AM EDT, Tue September 15, 2020*

CNN—A Federal judge in Maryland has ruled that Chad Wolf is likely unlawfully serving as acting secretary of the Department of Homeland Security and temporarily barred the Trump administration from enforcing new asylum restrictions on members of two immigration advocacy groups.

Judge Paula Xinis, in a 69-page ruling issued Friday, wrote that the two groups are “likely to demonstrate (former acting Homeland Security Secretary Kevin) McAleenan’s appointment was invalid under the agency’s applicable order of succession, and so he lacked the authority to amend the order of succession to ensure Wolf’s installation as Acting Secretary.”

Subsequently, Wolf didn’t have the authority to impose the asylum rules that are being challenged, Xinis ruled. The new requirements, which court documents say took effect in late August, concern employment, and the case is ongoing.

Xinis’ ruling does not mean Wolf is leaving his position. The appointments of Wolf and his No. 2, Ken Cuccinelli, to the top leadership roles in the Department of Homeland Security have increasingly come under scrutiny, though both continue to serve in their posts. The Trump administration appealed a Federal judge’s ruling earlier this year that it was unlawful to appoint Cuccinelli to lead the agency responsible for processing US immigration requests, and he remains in that post more than 6 months later. The case before Xinis is ongoing.

CNN has reached out to the department for comment.

Last month, a coalition of 20 State attorneys general and 10 cities and counties challenged rules imposed by the Trump administration that they argued limited access to employment authorization for asylum seekers, New York Attorney General Letitia James’ office said Monday.

“The first rule would require asylum seekers to wait a year before applying for employment authorization, and bar many from obtaining authorization at all. The

second rule would eliminate the longstanding requirement that employment authorization applications be processed within 30 days, thus allowing such applications to sit untouched indefinitely," James' office said.

Xinis found that DHS "completely sidestepped this critical impact of the new rules" and "never wrestled with the fundamental implications of deferring or denying advance work authorization."

"Substantially limiting approval of work authorization for bona fide asylees will inevitably affect their ability to afford the costs of seeking asylum, including hiring legal counsel," Xinis wrote.

Xinis' order granted injunctive relief to only members of Casa de Maryland, Inc. and Asylum Seeker Advocacy Project, two of the lawsuit's plaintiffs that the judge found to have "demonstrated associational standing at this stage," finding the relief "both proper and necessary to avoid irreparable harm."

The organizations have approximately 100,000 and 4,000 members each, according to the judge's order.

James welcomed the ruling, calling Wolf a man with "no authority and no business sitting in the chair of the acting secretary of Homeland Security."

"Not only is this decision welcome news for asylum seekers who were unfairly targeted by the Trump Administration, but the courts have now found that Chad Wolf has no authority at the Department of Homeland Security," she said.

CNN has previously reported that the Government Accountability Office found that Wolf and Cuccinelli, the senior official performing the duties of deputy secretary, were appointed as part of an invalid order of succession.

"We vehemently disagree with what the GAO has put out," Wolf told CNN's Jake Tapper at the time.

Wolf has been at the forefront of a host of issues like immigration, civil unrest and the coronavirus pandemic response, and as a result, has come under criticism for his actions. During Wolf's tenure, the department has been marked by a focus on the border wall, a fight with New York over Global Entry and more recently, a deployment of Federal officers to Portland, Oregon, in opposition to local officials.

Wolf has been the acting secretary since November 2019. The department has not had a confirmed secretary since April 2019 when former Secretary Kirstjen Nielsen was forced to resign.

President Donald Trump last month announced that he would officially appoint Wolf to take over the role on a permanent basis, and his nomination was formally sent to the Senate last week.

This story has been updated with additional developments.

Chairman GREEN. I now recognize Mr. McCaul from Texas, Chairman McCaul from Texas, for his 5 minutes of questioning.

Mr. MCCAUL. Thank you, Mr. Chairman.

I served as Chairman of this committee for three terms, now the Foreign Affairs Committee. Mr. Edlow, good to see you. We worked together on these issues. Secretary Wolf, Mr. Scott, great State of Texas, and I was a Federal prosecutor charged with prosecutions at the border.

Political asylum is always the magnet, and it has been abused by the cartels for many years. Eighty-five percent of these claims are not legit, only 15 percent are. It is very simple, when they are allowed to enter the United States, because we don't have detention space, they are released into our society. They are given a notice to appear, and they disappear. I have seen this for 20 years in Congress. In fact, my first bill was the End Catch and Release and here we are today with the same program.

The Trump administration, through Secretary Wolf, Mr. Edlow, implemented what I thought was a very effective plan called the Migrant Protection Protocols, Remain in Mexico, because they had to remain in Mexico pending their adjudication. If it was legitimate, they were allowed in, if not, they were not allowed into the country. It brought the numbers down dramatically. So what happened when the Biden administration gets into power, nearly on Day 1 Secretary Mayorkas rescinds the order, rescinds Migrant

Protection Protocols, Remain in Mexico. What has happened since then? Nearly 100,000 young people died in this country due to fentanyl. Enough has been seized to kill billions of people, 5 million encounters, nearly 100 on the terror watch list, which used to frighten me as Chairman of this committee when I would hear of anybody on the terrorist watch list getting into the United States of America. There was a court order to force the administration to reimplement MPP. That court order, in my view, has not been fully complied with by this administration.

To make things worse, they took the vetting process away from sponsors of these aliens. What has that turned into? Children going to houses, 20–30 of them under one sponsor, not vetted, turns into a human trafficking enterprise, a criminal enterprise. Young girls being sex trafficked and young men going to MS–13 as they try to pay back the cartels. Cartels now are in operational control. When I was down at the border after the rescission of MPP, I asked the chief of Border Patrol, Mr. Ortiz, is there a direct cause and effect between the rescission of this program and what we are seeing at the border, totally out of chaos? He told me the answer was yes. Every Border Patrol officer will tell you that because they live it. My State, Mr. Scott, as you know, has spent \$4.5 billion just this session to deal with this problem, a Federal responsibility.

So my question is, do you believe, Mr. Wolf, Mr. Scott, Mr. Edlow, that Secretary Mayorkas is responsible for the consequences that followed of the rescission of MPP, and do you believe he is complicit with the consequences of what has happened to this country?

Mr. WOLF. So the answer to that is a resounding yes. Obviously, the Secretary ended MPP, Migrant Protection Protocols, so he's responsible for the actions that follow that.

I would just say, look, at the end of the day, it's OK to claim asylum. What's not OK is to simply be released into the country. Or it's not OK to say that there's an immense amount of fraud in the asylum system. DHS knows that, they have the numbers, we all use the numbers that come from DHS, but they simply put blinders on and say, we're OK with that amount of fraud. It's OK for the American people. That's why we implemented MPP and we did a number of other things. They're not doing any of that now. So all the folks that are claiming asylum at ports of entry, again, are being released into American communities. That's not OK.

Mr. MCCAUL. I agree.

Mr. Scott. Mr. Edlow.

Mr. SCOTT. I agree fully. I want to point out, MPP made sure people got due process, but they did not get what they want. Most of these people, from my experience, don't really care about asylum, they don't really care about the legal documentation or process. They want to be released into the United States. Once that was taken away, the flow immediately decreased because they couldn't commit fraud. Everybody knew that this administration got rid of that program intentionally. They're responsible for the results.

Mr. MCCAUL. Mr. Edlow.

Mr. EDLOW. I also agree. There's plenty I could say about MPP in terms of where it comes from, in terms of the INA. But I will just say this, when the court initially told the Secretary to re-



institute MPP, there was an attempt to do that, a half-hearted attempt to do that. But in the press release that did that, it also made it clear that the Secretary had every intention to fight that decision from the court and to take measures to end MPP in other ways. So it was really never an actual attempt to reinstate it.

Chairman GREEN. The gentleman's time has expired.

I recognize Mr. Correa of California.

Mr. CORREA. Thank you, Mr. Chairman.

What I would like to do is start out by submitting for the record, without objection, the press release mentioned by Chairman Green, if I may, where it says that there were 10,070 non-citizens processed on an average per day via the CBP One app. I would like to submit this for record, sir?

Chairman GREEN. Without objection.

[The information follows:]

PRESS RELEASE SUBMITTED BY HONORABLE J. LUIS CORREA

U.S. DEPARTMENT OF HOMELAND SECURITY

BORDER ENCOUNTERS REMAIN LOW AS BIDEN-HARRIS ADMINISTRATION'S  
COMPREHENSIVE PLAN TO MANAGE THE BORDER AFTER TITLE 42 IN EFFECT

*Release Date: June 6, 2023*

Since the CDC's Title 42 public health order lifted and the Biden-Harris Administration's comprehensive plan to manage the border went into full effect on May 12, DHS has continued to experience a significant reduction in encounters at the Southwest Border.

As a result of planning and execution—which combined stiffer consequences for unlawful entry with a historic expansion of lawful pathways and processes—unlawful entries between ports of entry along the Southwest Border have decreased by more than 70 percent since May 11. DHS has overseen significant expansions in lawful pathways even as we have repatriated a significant number of migrants.

From May 12 to June 2, 2023, DHS repatriated over 38,400 noncitizens under Title 8 authorities, including single adults and families, to more than 80 countries. This includes over 1,400 noncitizens from Cuba, Haiti, Nicaragua, and Venezuela who were returned to Mexico under Title 8 authorities—the first time in our bilateral history that the Government of Mexico has allowed the repatriation of non-Mexican nationals at the border under Title 8 authorities.

Thousands more are being detained by CBP and ICE and processed by USCIS to assess their asylum claims under the new Circumvention of Lawful Pathways regulation. Those found not to have a credible fear have been and will continue to be expeditiously removed.

Since May 12:

- CBP has averaged 3,400 U.S. Border Patrol (USBP) encounters in between ports of entry per day and fewer than 300 non-CBP One Office of Field Operations (OFO) encounters at ports of entry per day, for a total of approximately 3,700 unscheduled encounters per day.
- The top 3 nationalities encountered during this most recent period, which accounted for nearly 70 percent of encounters, were:
  - Mexico 1,200 encounters/day
  - Honduras 520 encounters/day
  - Guatemala 360 encounters/day
- Nearly 14,000 credible fear referrals were received by USCIS and over 11,500 credible fear interviews were completed. USCIS has already conducted a record number of interviews over the past 3 weeks, and these numbers will continue to increase as our processes further scale.
- Through CBP One, an average of 1,070 noncitizens presented in a safe and orderly manner at a port of entry each day to be processed during their scheduled appointment time. CBP has, as of June 1, expanded the number of appointments available to 1,250 each day.
  - The top 3 nationalities with CBP One appointments were: Haiti, Mexico, and Venezuela.

- An additional 23,000 vetted and sponsored Cuban, Haitian, Nicaraguan, and Venezuelan nationals arrived in the United States through the parole processes we announced in January 2023.

The Administration's plan is working as intended. We are cognizant, however, that the conditions in the hemisphere that are driving unprecedented movements of people are still present and that the cartels and coyotes will continue to spread disinformation about any potential changes to policies at the border in order to put migrants' lives at risk for profit. We will remain vigilant and continue to execute our plan, making adjustments where needed.

Surges in migration have been a regular occurrence for more than a decade under Republican and Democratic Administrations. Presidents of both parties have attempted to use their executive authorities to address these challenges—as we have. This, in turn, has invited litigation from both sides of the political spectrum and has resulted in courts across the country dictating border and immigration policy in ways that are contradictory and detrimental to our ability to manage the border.

It is abundantly clear that executive action cannot solve the entrenched challenge of migration in our region, and that neither party can address its impact on our border by itself. Until and unless Congress comes together in a bipartisan way to address our broken immigration and asylum system, we will continue to see surges in migration at our border.

Mr. CORREA. Ms. Acer, does that sound like hiding the data?

Ms. ACER. No, it's not hiding the data.

Mr. CORREA. I want to show you a quote by Secretary Nielsen, if I may. So we prefer Mr. Wolf, we prefer people showing up at ports of entry as opposed to between ports of entry? Yes, no?

Mr. WOLF. Absolutely. I would say—

Mr. CORREA. Thank you.

Mr. WOLF [continuing]. That that is accurate. What I would say is that the migrants are not breaking the law.

Mr. CORREA. Thank you. Thank you very much.

Mr. WOLF. DHS is breaking the law with the parole—

Mr. CORREA. You have got other people you can address here, but I just have 3 minutes left.

Ms. Acer, is it legal to come to ports of entry?

Ms. ACER. Absolutely.

Mr. CORREA. I want to show you a couple of pictures here of the refugee challenge we have in the Western Hemisphere. Tell you the United States is not No. 1. You have got other countries that are having it even worse than we do right now trying to address this human challenge the world is facing. I am going to show you also a picture of the Darien Gap and a young girl who separated from her mother. She is not coming to Disneyland. She is trying to survive.

Ms. Acer, let me ask you, did Secretary Mayorkas create the COVID-19 Pandemic?

Ms. ACER. No, sir.

Mr. CORREA. Is he responsible for the unprecedented violence, gang violence, extortions, assaults in Central America?

Ms. ACER. No, sir.

Mr. CORREA. How about for the on-going crisis in Haiti?

Ms. ACER. No.

Mr. CORREA. The economic instability in Venezuela?

Ms. ACER. No.

Mr. CORREA. Human rights violations in Cuba?

Ms. ACER. Absolutely not.

Mr. CORREA. Responsible for repression, poverty in Nicaragua?

Ms. ACER. No.

Mr. CORREA. Instability in Peru?

Ms. ACER. No.

Mr. CORREA. Central American economic crisis?

Ms. ACER. No, sir.

Mr. CORREA. China's economic challenges?

Ms. ACER. Absolutely not.

Mr. CORREA. Russian Ukrainian war and the ensuing refugees from Ukraine and Russia?

Ms. ACER. No, sir.

Mr. CORREA. African economic instability and food shortages?

Ms. ACER. No.

Mr. CORREA. America's stunning economic growth, strongest in the world?

Ms. ACER. No.

Mr. CORREA. Probably not. America's low unemployment rate?

Ms. ACER. No.

Mr. CORREA. America's insatiable demand for workers with or without documents?

Ms. ACER. No.

Mr. CORREA. Responsible for the private-sector farmers, ranchers, hiring of undocumented workers?

Ms. ACER. No, sir.

Mr. CORREA. Let's just clarify, Ms. Acer, is asylum legal?

Ms. ACER. Yes.

Mr. CORREA. Is approaching our ports of entry and asking for asylum, is that legal?

Ms. ACER. Absolutely.

Mr. CORREA. Is that legal under international law?

Ms. ACER. Absolutely.

Mr. CORREA. Thank you very much.

I just want to add the majority party here voted to end the COVID-19 health care emergency. In doing so, you voted to lift Title 42. What was left? Secretary Mayorkas has managed, he enlisted the help of our neighbors. No other time in the history of the United States and Mexico have we had such a great working relationship with Mexico and the others through Central and South America on the issue of the refugee crisis. So to say that Secretary Mayorkas has been derelict of his duty is misleading the American people and presenting misleading facts.

Ms. Acer, is Mr. Mayorkas lying to the American people?

Ms. ACER. No, sir, I don't believe to my knowledge. Though I do disagree with him on his asylum ban. I think he is absolutely wrong on that.

Mr. CORREA. I would probably disagree with him on that as well.

Thank you, Mr. Chair and I—

Mr. GOLDMAN. Will the gentleman yield? Mr. Correa.

Mr. CORREA. I yield, of course.

Mr. GOLDMAN. A few seconds.

I just want to point out, Mr. Wolf and all of our witnesses here, you may have a difference of opinion as to how the United States should process our asylum applicants, but the notion that that difference of a policy opinion would be the basis for "case closed" that Secretary Mayorkas violating his duty is preposterous and it is not any basis for impeachment.

I yield back.

Chairman GREEN. The gentleman's time has expired.  
I now recognize Mr. Higgins from Louisiana for his 5 minutes questions.

Mr. HIGGINS. Thank you Mr. Chairman.

Americans watching this or listening to the commentary you would have to be living under a rock in America to not recognize the disintegration of our sovereignty at the Southern Border over the last 2 years. You got 6 million illegals processed in some manner into our country, 1½ million known criminal runner gotaways. The border law enforcement is so overwhelmed estimates easily state that that number is doubled of unknown and uncounted criminal runner gotaways. All told, you are talking about 9 million people rolling into our country since President Biden was inaugurated.

Secretary Mayorkas' failure is difficult to calculate the impact upon our country, our entire country, generational trauma the man has brought upon our country. My colleagues across the aisle have a this is your Baghdad Bob moment when you witness clearly what the truth is, what everyone across the country recognizes as the disintegration of our Southern Border and horrific impact upon our country, and yet you drone on and on about how great things are, blame everything on Trump, good lord for years. Yes, a Ranking Member has a right to introduce a Government study into the record. But the insinuation was that former Secretary Wolf served illegally.

So I am going to give you an opportunity to respond to that, Mr. Wolf. I know you very well. Did you serve honorably and legally as Secretary of Department of Homeland Security, sir?

Mr. WOLF. I believe I did. I was asked to serve as that Acting Secretary by the President. I took my oath seriously. I'm very proud of the way that I led the Department. Lawyers can argue over the order of succession about the Acting Secretary before me, but I think what's clear is simply being confirmed doesn't make you capable of doing the job.

Mr. HIGGINS. Thank you for your response, sir, and I apologize on behalf of the committee for that insinuation. I think it was ugly, it was tainted by agenda. Over the course of the next several months perhaps they can develop a new script than just attacking the Trump administration, because we are going to expose what has happened to our country over the last 2 years.

Mr. Scott, would you explain to the committee in America how Secretary Mayorkas has intentionally shifted migrant numbers through the CBP One app to promote the appearance of decreasing illegal crossings?

Mr. SCOTT. Yes, as we discussed earlier, the numbers that are being reported publicly focus—they're selective. They've been focusing on the Southwest Border only and we need to focus on total encounters or what OFO calls as inadmissibles. If you go onto CBP.gov, their website, it's a nightmare, but you can slowly sort some of this stuff out, which is not open—

Mr. HIGGINS. Yes, sir. So to focus on a CBP One app, is it true that there is virtually no parameters disqualifying an applicant from applying for parole through the CBP One app?

Mr. SCOTT. That is my understanding.

Mr. HIGGINS. That is my understanding as well.

Mr. Wolf, in your opinion, sir, is an increased use of the CBP One app for parole application consistent with the app's original purpose?

Mr. WOLF. No, not the original purpose.

Mr. HIGGINS. Would you clarify that for America, please?

Mr. WOLF. Again, it was for foreigners. It was for industry on how to facilitate that trade across the border. It was for boating licensing—

Mr. HIGGINS. It was for legal commerce.

Mr. WOLF. Right.

Mr. HIGGINS. To speed legal commerce through ports of entry.

Mr. WOLF. Correct.

Mr. HIGGINS. Yet now it is being used for undocumented, legally identified as inadmissible, illegal migrants coming through our ports of entry using the CBP One app, and they are granted parole.

Is that your understanding?

Mr. WOLF. That's my understanding of how it's currently being utilized.

Mr. HIGGINS. Would you clarify how that is in violation of the law?

Mr. WOLF. Well, again, that's not how the CBP One app was originally. Again, it's not how you allow individuals to come in, paroling them in. There's so many different exemptions of using that CBP One app. If you can't access it, they allow you into the country. So it's another smoke and mirrors of how to bring in individuals, again, that have no legal right to be into the country. Whether you parole them in or put them into the asylum system, the end result is all the same. So we can talk about the different ways, the end result is that they are released into American communities, and that is what's fueling this crisis.

Mr. HIGGINS. Thank you, Mr. Wolf.

Mr. Chairman, my time has expired. I yield.

Chairman GREEN. The gentleman's time has expired.

I now recognize Mr. Magaziner for his 5 minutes questioning. From Rhode Island, by the way.

Mr. MAGAZINER. Thank you, Mr. Chairman.

I have to say, I am getting sick and tired of House Republicans politicizing the Department of Homeland Security. There are common-sense, bipartisan actions that this committee could be taking up to improve security along the Southern Border. But instead of advancing smart policies to keep Americans safe, the Republicans have resorted to the type of political theater and Biden-bashing that the American people are sick of. We know there are challenges at the border because poverty and political instability are causing millions of people to flee their home countries. But the notion that President Biden or Secretary Mayorkas are guilty of "dereliction of duty" are absurd. President Biden and Secretary Mayorkas have been proactive in taking steps to protect our homeland.

Here are the facts. April 27, 2021, just 2 months after taking office, Secretary Mayorkas launched Operation Sentinel to combat criminal organizations smuggling migrants across the border. June 7, 2021, Secretary Mayorkas launched Joint Task Force Alpha to crack down on trafficking groups in Mexico and the Northern Tri-

angle countries of Guatemala, El Salvador, and Honduras. November 2021, President Biden's infrastructure bill delivered \$430,000,000 to Customs and Border Protection above previously-budgeted levels for enhanced security at points of entry. Nearly every House Republican voted no. December 15, 2021, President Biden signed Executive Order 14060, establishing the U.S. Council on Transnational Organized Crime with a focus on enhancing operational and intelligence capabilities to disrupt transnational crime organizations. In 2022, the Biden administration and Congressional Democrats passed a Homeland Security funding measure that added 300 Border Patrol agents and 125 CBP officers. Every House Republican voted no because it had Joe Biden's name on it. In 2023, Secretary Mayorkas launched Operation Blue Lotus and Operation Four Horsemen to disrupt narcotics trafficking at and between points of entry. April 2023, the Biden Justice Department unsealed charges against 28 leaders of the Sinaloa cartel engaged in drug trafficking and other crimes.

The list goes on and on. This is just a sample of the actions that the administration has taken to improve security on the border. But, of course, you do not hear House Republicans talking about any of this because it doesn't fit their narrative. The only dereliction of duty here is House Republicans wasting time on political games instead of focusing on the real problems that we need to tackle to protect the homeland.

Let's look again at the record. House Republicans introduced a measure to impeach Secretary Mayorkas 2 years ago when he had only been in office for 6 months. Politics. A leader of this committee, in a closed door fundraiser months ago, announced that Republicans were going to impeach the Secretary and said, "Get the popcorn. It's going to be fun."

Chairman GREEN. Will the gentleman yield? That is not what I said. I want to correct the record. I never used the word impeachment, and I am tired of this continual narrative falsely quoting me. I won't allow it, Mr. Magaziner.

Mr. MAGAZINER. Listen.

Chairman GREEN. Continue your testimony.

Mr. MAGAZINER. I will continue.

Listen, another Member of this committee, Ms. Greene, just a few days ago, told the press that she voted on the debt ceiling bill only in exchange for "beautiful dessert," which is impeachment. So this has always been about politics and political games. The most important fact is this, since the expiration of President Trump's Title 42 policy, illegal border crossings are down 70 percent. Even when you include CBP One app appointments, which are legal, they are still down more than 60 percent since the expiration of Title 42. So there are a lot of things that we could be doing. Instead, we are wasting our time on theater.

Now, Mr. Wolf, during your time running the Department of Homeland Security, were you ever impeached?

Mr. WOLF. No.

Mr. MAGAZINER. No. During your time working at DHS in the Trump administration, did you prevent all unlawful entries into the United States?

Mr. WOLF. We worked every day to do that.

Mr. MAGAZINER. But did you prevent all unlawful entries, yes or no?

Mr. WOLF. No.

Mr. MAGAZINER. OK, well, I am confused, because I read Mr. Higgins articles of impeachment that he filed a few days ago. In short, they say that Secretary Mayorkas should be impeached because he failed to maintain operational control at the border defined as the prevention of all illegal entries into the United States. So I don't understand, why didn't we impeach the DHS director under the Trump administration or any prior administration if that is the standard that warrants impeachment? Political theater, that is why. That is all this is.

With that, I yield back.

Chairman GREEN. The gentleman yields.

I recognize Mr. Bishop from North Carolina.

Mr. BISHOP. I thank the Chairman.

I think this is interesting, and it begins to ferret out what really is the key issue that this Congress needs to focus on in regards to the matter that is being testified to. I appreciate the witnesses who are here. You are professional and dispassionate.

I think almost no one is brazen enough anymore to deny that there is a border crisis created by the Biden administration, Secretary Mayorkas. Border Chief Ortiz admitted such on the way out the door. FEMA announced yesterday the distribution of more than \$290,000,000 in Congressional funding to communities receiving migrants. You don't deploy FEMA resources when there isn't a crisis. But the issue here—and I agree it shouldn't be political theater, it is not about policy differences, can't be—the issue here is vindicating the rule of law and the Constitutional role and law-making power of Congress. Many claim the Trump indictment is about the rule of law. The Ranking Member says appropriately policy differences are of a different dimension. I agree with that. The appropriate response for Congress is different in each case.

I don't even think, with all respect to the Chairman, that our focus can be exactly on dereliction in the full sense articulated, because dereliction is willful or negligent. What we need to focus on here is whether this is not a case of negligence. If it were, the implications would be different, the remedy would be different. Incompetence in administering a Federal agency is maladministration, and the recourse falls to the people alone. But intentional sabotage of the rule of law is something entirely different. It is an affront to the separation of powers to the institutional authority of the Congress under the Constitution and it invites another remedy, and that is impeachment.

Secretary Wolf, the Ranking Member attacked actions by the Trump administration. But you point—you know, your statement really elegant, 10 pages, covers a lot of the ground. I urge people to look at it carefully. You point out that there—you were attacked for by the Ranking Member—these were exercises of authority specifically granted to Congress. Take Migrant Protection Protocols remain in Mexico. You cite 235B2C of the INA. In the case of an alien described in subparagraph A, that somebody who would have right otherwise to asylum, claim of asylum, who is arriving on land from a foreign territory contiguous to the United States, the Attor-

ney General may return that alien to that territory pending a proceeding under section 1229(a) of this Title. So that is exactly what you did. Whether somebody said you did it in exact way or if you want to challenge House, you are exercising an authority.

Same thing with safe Third Country Agreements under section 208(a)2(A). I won't read all that. But here is what you point out, the violations of law, several of these found by Federal district judges at this point in time, by the catch-and-release, ignores the mandate to detain or make them wait—an asylum applicant wait in Mexico. That has been judged by Judge Wetherell in Florida to be unlawful.

The use of notices—what are they called, NTRs, Mr. Wolf?

Mr. WOLF. Notices to report.

Mr. BISHOP. Notices to report. So you don't even have any formal commencement of removal proceedings, which a notice to appear would be setting a date even though you never get to them. They don't even do it, they just let them go with NTRs. The exercise of authority to adjudicate asylum by DHS officials—maybe, Mr. Edlow, you may have pointed this out in your testimony—instead of in the Department of Justice, where that power is reserved.

An interior non-enforcement policy. Mr. Wolf, you pointed out the 100-day deportation freeze. Judge Tipton said that was illegal. Subsequent enforcement priorities established that exempt 99 percent from the threat of deportation. Secretary Mayorkas declaring that illegal presence alone is not grounds for removal. More than a million in the country subject to final removal orders, and they said they are not going to remove them.

So I am just going to leave my last minute to you, Mr. Wolf. But I see what we are talking about is intentional sabotage of the rule of law as set by Congress. That is a different ballgame.

Mr. WOLF. It is different. It's not just about whether or not aliens, illegal aliens, can claim asylum, as was talked about here earlier. As you indicated, at least in my written testimony, there are seven different instances where I believe the law is not being faithfully executed, to include the categorical parole, which was the last one there.

Mr. BISHOP. I didn't get to that.

Mr. WOLF. Which is at ports of entry, which is at the heart of all of this. To have asylum, needs to be an urgent humanitarian benefit or advantageous somehow to the United States. Simply paroling up to 360,000 individuals, which is what they are on track to do per year, violates the letter of the law. It's very clear.

Mr. BISHOP. Final point here is that it does fall to Congress, as well as these judges, fall to Congress through the impeachment power to decide whether the law has been intentionally flouted.

I yield back.

Chairman GREEN. The gentleman yields.

I now recognize Mr. Swalwell from California.

Mr. SWALWELL. I have heard the phrase rule of law and accusations that the Biden administration is sabotaging the rule of law. The title of this hearing is "Secretary Mayorkas' Dereliction of Duty on the Border Crisis." But I think, in contrast to that, it is very interesting to me that the chief witness that the Majority has called here, Mr. Wolf, was found on November 14, 2020, by a Fed-



eral Judge to “not lawfully be serving as Acting Secretary.” Not lawfully serving as Acting Secretary. So a lot of considerations and concerns from my colleague across the aisle about the rule of law, but the witness that they called served unlawfully as the Acting Secretary of Homeland Security, where an accusation of dereliction of duty is being made today.

In addition to that, again, it is interesting that this is the chief witness that they have called today because on September 17, 2020, the unlawfully-serving Acting Secretary, Mr. Wolf, failed to honor his Congressional subpoena, didn’t show up, skipped the hearing. So you have someone who is acting unlawfully and somebody who skips a Congressional subpoena, and we are going to be lectured by the Majority about a dereliction of duty of the current lawfully-serving Senate-confirmed Secretary of Homeland Security. I think that is interesting and an important perspective that we should have as we consider what is going on at our Southern Border.

Ms. Acer, I want to speak with you just about what is going on at the Southern Border. If you were to think about the migrants who are fleeing the Northern triangle, who leave everything they know, their family, their livelihood, their culture, their homes, their community, their churches, and take the journey to America, do you believe that if we were to find a way, as a global alliance, public-private partnerships, to help invest in those countries in their economic security and their physical security and stand up and support a rule of law and go after corruption, that that would reduce the number of people who came to the United States?

Ms. ACER. Absolutely. The reason that people are coming here to seek protection is because they’re not being protected at home by their countries. There’s a lot more that the United States can do to increase respect for human rights and to otherwise assist in making sure that conditions allow people who can stay safely in their home countries to do so.

Mr. SWALWELL. I understand the counter to that will be, well, why would we invest money there if we have needs here? There is no doubt we have needs here, but if we are going to be spending the money anyway, either enforcement of the border or taking care of people who come here, to me it just seems like a better holistic investment to try and work private-sector, public-sector, non-profit, NGO’s in those countries to stand up. As I said, economic and physical security.

Also wanted to ask, what effect do you think it has, Ms. Acer, when my colleagues across the aisle and Republicans say that we have open borders? In fact, the title of the hearing today is “Open Borders, Closed Case.” Do you think if you are south of our border and you are looking for somewhere to go to keep your family safe and to find some livelihood, if you hear people falsely declaring that the border is open, do you think that makes you more or less likely to try and go to the United States because you think the border is open?

Ms. ACER. I don’t know how much migrants actually listen to these hearings, but you’re right in that I’ve heard Mexican officials say they wished that U.S. politicians would actually stop saying that the border was open because they thought that was really

sending the wrong message. Sometimes disinformation, inaccurate information does get into Facebook groups that many migrants do follow.

Mr. SWALWELL. Thank you, Ms. Acer.

I think the lesson here is that this issue is complicated. It involves human beings who are leaving everything. We have got our own struggles in the United States and clearly cannot take on a consistent flow from the Southern Border. But it needs solutions, not theater. I am afraid that my colleagues are interested in the crisis, but they are not interested in the solutions.

I yield back, gentlemen.

Chairman GREEN. The gentleman yields.

I now recognize Mr. Gimenez from Florida for his 5 minutes.

Mr. GIMENEZ. Thank you, Mr. Chairman.

Ms. Acer, you were quoted in the *Baptist News Global* referring to the end of Title 42, and you said that the dangers facing asylum seekers are more acute than they were years ago when the Trump administration started these policies and these policies have contributed to a worsening of the conditions that face migrants and people seeking asylum. Did you make that statement?

Ms. ACER. I don't remember my exact words, but I probably did.

Mr. GIMENEZ. OK. Thank you.

Mr. Wolf, I believe, like my colleagues, that I don't believe that Mr. Mayorkas is incompetent. I think that he is derelict in his duty because I think everything that he has done is actually done on purpose. Do you share that view?

Mr. WOLF. I do. This is by design.

Mr. GIMENEZ. Right. So I have been an administrator and when I have made mistakes and I listen to my folks and say, hey, why didn't that go the way that I wanted it to, I would listen and kind-of change things, but Mr. Mayorkas kind-of doubles down. So when in the first days of the Biden administration, a bunch of policies that the Trump administration had put in place in order to secure the border were overturned, and then things started to go south in a really big way.

Do you know first-hand, if people in the border—that Customs and Border Patrol agents actually advised Mr. Mayorkas that, hey, you need to reverse these policies to stop this tidal wave that is coming into the United States?

Mr. WOLF. Again, I wasn't there. It's my understanding that they did. Chief Scott was there in the Border Patrol advising the Biden administration, so I'm sure he can answer.

Mr. GIMENEZ. Well, Mr. Scott, can you answer that question?

Mr. SCOTT. Yes. He was informed verbally, he was informed in writing. I think it's important for everybody to understand everything fundamentally changed. When I worked for Secretary Wolf, we had team meetings, we were asked for our input. We were told over your career what works and what doesn't work. On January 20, 2021, that all got shut off. DHS, the Secretary even went to the step of shutting down the integrated teams of career professionals that were brought into DHS Ops to provide guidance. Our input was no longer solicited, and when my team and I gave it unsolicited, we were basically put in a box. They did not want to know what we had to say. They made it very clear, expedite processing

and find new ways to let migrants into the United States and that was the only agenda.

Mr. GIMENEZ. Exactly. Which is on purpose, really circumventing U.S. law.

Mr. SCOTT. One hundred percent on purpose, scripted out. The Secretary is not incompetent.

Mr. GIMENEZ. No, I know he is not incompetent. He is derelict, without a doubt.

Mr. Wolf, back to you. When you had the Remain in Mexico policy and people were told to remain in Mexico, and then they had their asylum hearings, what percentage of those that were seeking asylum were actually granted asylum?

Mr. WOLF. Again, it would have been under that about 10 to 15 percent. The number that grant asylum has been holding for years now. About 80 percent to 85 percent do not qualify, and about 10 to 15 percent do qualify. We saw that again under MPP as well.

Mr. GIMENEZ. All right, so those are the people that actually qualify to get into the United States, are granted parole into the United States, given some kind of legal status in your site, because they actually have a valid asylum claim. Now, when you get rid of that and you allow them to come into the United States and then you don't—well, the law also says that if you are seeking your asylum, you are supposed to be detained until your hearing, correct?

Mr. WOLF. Correct.

Mr. GIMENEZ. That is not happening right now, is it?

Mr. WOLF. It is not.

Mr. GIMENEZ. OK, so now you have got all the people are coming into the United States. They are actually being granted entry into the United States. So you are actually increasing the number of migrants entering the United States illegally because they don't really have a valid asylum claim by about 80 percent. Would you agree with that number?

Mr. WOLF. That sounds about right.

Mr. GIMENEZ. OK. So we don't even know where they are, we don't know where they're some of them are being tracked, some of them are not being tracked. We don't know where 85,000 children are at this point. I consider that to be a dereliction of duty. Children? 85,000? We don't know where they are. Did that ever happen under the Trump administration?

Mr. WOLF. Eighty-five thousand, no, absolutely not. Again, you have an unaccompanied alien child crisis at the moment, 380,000. So if you happen to go to the baseball game tonight, that fills National Stadium almost nine times, that's how many children that have come across that border that have no parent, have no guardian, that have been smuggled by these Mexican cartels at the best, sometimes of their parents, because they know that if they get across that border, they will remain here in the United States. It is a terrible journey. You are subjecting them to just horrific conditions. It needs to end.

Mr. GIMENEZ. The Democrats dare to call what happened during the Trump administration inhumane.

My time is up. I yield back.

Chairman GREEN. The gentlemen yields.

I now recognize Mr. Goldman of New York.

Mr. GOLDMAN. Thank you very much, Mr. Chairman.

Our witnesses were asked whether what Secretary Mayorkas has done is intentional. Obviously, it is intentional. He is not doing things unintentionally. He has testified before us and he has acknowledged repeatedly that we are dealing with a very difficult situation at the border.

I want to focus on, go back to what my colleague, Mr. Swalwell, was focusing on, which is my friend, Mr. Bishop's, quote that there is an intentional sabotage of the rule of law. Now, we have heard a couple of times today that the GAO and a Federal Court found that Mr. Wolf was acting unlawfully. To my understanding, that would be a violation of the rule of law.

But let's focus a little bit on some policies and some efforts. Mr. Gimenez mentioned that there are children who cannot be found, which brings up, of course, the Trump administration family separation policy. Mr. Wolf, when you were the chief of staff to the Secretary of Homeland Security, isn't it true that you supported the family separation policy?

Mr. WOLF. I was at the Department from 2017 to the end of the administration.

Mr. GOLDMAN. Well, did you not, according to an inspector general's report, urge the counselor to the Attorney General to implement the family separation policy to increase prosecution of family unit parents and separate family units?

Mr. WOLF. No, I don't believe—no.

Mr. GOLDMAN. OK. Well, I want to introduce into the record this inspector general's report on family separation, which includes an email by you to Jean Hamilton, the counselor to the Attorney general.\*

Mr. WOLF. So that email had a number of options—

Mr. GOLDMAN. Hold on, hold on.

Mr. WOLF [continuing]. For consideration. There was no direction, there was no directive.

Mr. GOLDMAN. Right. So you are saying right here, right now, that you did not support the family separation policy?

Mr. WOLF. That was not your question.

Mr. GOLDMAN. Is that your testimony?

Mr. WOLF. That was not your question.

Mr. GOLDMAN. I am asking it right now, is that your testimony?

Mr. WOLF. We implemented a number of policies in the administration. I agreed with President Trump when he ended zero tolerance in June, I believe, of 2018. Absolutely.

Mr. GOLDMAN. Did you support the family separation policy?

Mr. WOLF. We had no family separation policy at the Department.

Mr. GOLDMAN. Really? The Department did not—

Mr. WOLF. No. I'm happy to go through this. The Attorney General announced a zero—

Mr. GOLDMAN. All right, let's talk about this.

Mr. WOLF [continuing]. Tolerance policy that the Department—

\*The document has been retained in committee files and is also available at [https://oig.justice.gov/sites/default/files/reports/21-028\\_0.pdf](https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf).

Mr. GOLDMAN. That the—let’s talk about this.

Mr. WOLF [continuing]. Then implemented.

Mr. GOLDMAN. One sec, one sec. Let’s talk about this because the facts are that more than 5,000 children were forcibly separated from their parents at the border. The reason is because the Department of Justice for the first time used Title 8, United States Code, Section 1325, which makes it a misdemeanor offense to charge anyone crossing without lawful—without papers, et cetera. That had never been used before. Because the only point of that is to put parents who are charged with that in jail where they cannot actually be with their families.

Now, a Federal Court in 2018 ended the family separation policy, which this Court determined that there was because the Government’s policy, “shocks the conscience” and violates the Constitutional right to family integrity. There are still children who were separated at the border from their parents who have not been found because this zero tolerance policy, which ultimately ended up separating parents and children, did not create any mechanism to account for that separation in order to track the children. Now, that clearly, as a judge said was a violation of the rule of law. An intentional sabotage of the rule of law.

Let me go quickly to another one. According to a whistleblower complaint by the former head of the Department’s intelligence branch, Mr. Wolf ordered him to withhold an intelligence notification on Russian activities because it “made the President look bad”. The Office of Inspector General investigated it and found that the Department did not adequately follow its internal processes and policy standards when editing and disseminating an intelligence product regarding Russian interference with the 2020 Presidential election. The Acting Secretary, Mr. Wolf, participated in that review process.

Mr. Chairman, I know my time is up. I would like to introduce for the record that Inspector General’s report which my staff will give.

I would like to note that before we start attacking this intentional sabotage of the rule of law, we ought to look in our own glass house.

I yield.

Chairman GREEN. Without objection, so ordered.\*\*

Chairman GREEN. I recognize Mr. Pfluger from Texas for his 5 minutes.

Mr. PFLUGER. Thank you, Mr. Chairman.

How rich was that?

Mr. Wolf, how many apprehensions occurred in the Trump years combined? I mean, just round numbers.

Mr. WOLF. All 4 years?

Mr. PFLUGER. Yes.

Mr. WOLF. I don’t have a number for you. The chief may.

Mr. PFLUGER. Chief?

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\*\*The document has been retained in committee files and is also available at <https://www.oig.dhs.gov/sites/default/files/assets/2022-05/OIG-22-41-Apr22-Redacted.pdf>.

Mr. SCOTT. I don't have that number off the top of my head, to be honest. But it was less than a million a year and some years, less than 500,000.

Mr. PFLUGER. OK. How many since Biden has taken over?

Mr. SCOTT. You have to define whether they're arrests or encounters.

Mr. PFLUGER. Apprehensions.

Mr. SCOTT. The apprehensions would technically include encounters. There were over 6 million.

OK. Known, gotaways that has been reported?

Mr. SCOTT. Known gotaways over 1.5 million, plus or minus that's only the known.

Mr. PFLUGER. OK. Known or suspected terrorists?

Mr. SCOTT. There's been about 200. I think there's 98 this year.

Mr. PFLUGER. OK.

Mr. SCOTT. Again, those are just the ones that are known.

Mr. PFLUGER. Two hundred since January 2021.

Mr. Wolf, you guys reported known or suspected terrorists. Actually, it took us 6 months to get Mayorkas and the President to actually report known or suspected terrorists. What is the combined approximate total in the Trump years of known or suspected?

Mr. WOLF. I believe it was 11.

Mr. PFLUGER. Eleven. How rich is that discussion that we just heard about looking in a glass house? You know what the political theater here is? Over 5 million apprehensions at our Southern Border, over 200 known or suspected terrorists, over a million and a half known gotaways. I have constituents who are currently sitting in this committee hearing right now that live in west Texas and these folks are dealing with the unfunded mandate that my colleagues on the other side of the aisle are calling political theater. You are saying that 53 people that died in a tractor trailer south of San Antonio last summer is political theater? Give me a break.

This is insane that we continue to look at this administration anything less than a complete, abysmal failure.

Mr. Wolf, it looks like you might have a reply or something that was from the previous question.

Mr. WOLF. I would just say the previous question from the Congressman was probably false on all fronts. I think it's a naive view of the situation that occurred in 2018. Children are separated from adults who may or may not be their parents. Perhaps they're their parents that are abusing them. This happens every day along the border. You need to visit the border. You need to talk to Border Patrol to actually understand the border. This happens every day in the Biden administration, this happens in the Trump administration, Obama, and it goes on and on and on. I'm sure the chief can tell you more about that. But this idea that it only started in 3 weeks in 2018, it's a false narrative.

Mr. PFLUGER. Well, isn't it true that the Obama administration actually started family separation in all practicality? Mr. Scott, you served for four different Presidents, both sides of the aisle.

Mr. SCOTT. Correct. I'm really offended by the—not by you, but the statement family separation. DHS, United States Border Patrol, under various different administrations prosecute people for committing crimes, and we prosecute more people for committing

crimes of the percentage of the total population as the numbers go down. Over years, we found out consequences slow down the flow of illegal immigration. A consequence is a prosecution. That's what we were doing in the field. That happened way before the Trump administration. Some of you may be familiar with Operations Streamline. The Border Patrol reported on it all the time, and that was misdemeanor prosecution of illegal entry, and it has a direct result in improved border security. The track record is there, multiple administrations.

Mr. PFLUGER. Mr. Scott, when did you serve the Biden administration? What months or years?

Mr. SCOTT. For the Biden administration from the day of inauguration until August 14, 2021.

Mr. PFLUGER. OK, so for approximately 8 months.

Mr. SCOTT. Plus or minus.

Mr. PFLUGER. Was Secretary Mayorkas briefed on policy failures? Were there recommendations that were made to Secretary Mayorkas and President Biden from Border Patrol, from ICE, from Customs, from any of our DHS leaders?

Mr. SCOTT. I personally participated in numerous conference calls. The Secretary insulated himself a lot, but he had representatives on those calls, and occasionally he was in those calls himself. Yes, it was very clear, but the administration made it very clear deterrence was no longer our mission, and we weren't even allowed to talk about it. The minute you talked about trying to slow down the flow or putting any kind of a deterrent mechanism in place, we were immediately stymied.

Mr. PFLUGER. So this is a willful and complicit decision to turn away from the policies from 2017 to 2020 and go a different direction, which have resulted in the numbers that I previously said. They have been advised, and there have been recommendations made by yourself and others that they have completely ignored?

Mr. SCOTT. Absolutely. They're just carrying out their game plan that they said in the campaign.

Mr. PFLUGER. This is complete dereliction of duty.

I thank you, gentlemen, for your service to this country.

Mr. Chairman, the dereliction that we see from Secretary Mayorkas is unprecedented, and it has resulted in so many assaults, deaths, and drugs and chaos in this country. Thank you for holding this hearing.

I yield back.

Chairman GREEN. The gentleman yields.

I now recognize Mr. Ivey from Maryland.

Mr. IVEY. Thank you, Mr. Chairman. I appreciate that.

I wanted to say that when I arrived on the Hill this morning, I was surprised to find out that the committee had issued a report. It is titled "Causes, Costs, and Consequences." It is titled as Committee on Homeland Security Majority Report. It is, I don't know, around 55 pages long. What this document lays out is the Republican views with—I haven't had a chance to read it yet because I just got it. Actually it was waiting in my spot here when I sat down to begin the hearings. That is the first I have saw it and I didn't have a chance to go through it.

But I want to say a couple of things about it. I look forward to reading it and having a chance to digest it. I am deeply disappointed that a Majority Report didn't give the Minority any opportunity not only to review it, but to respond to it. I guess this isn't a formal report, but to the extent we are actually looking to try and do things together, to work together, to move the committee forward together to address the issues that are being addressed not only in this hearing, but in previous hearings, this kind of approach doesn't work. In fact, it is counterproductive, to say the least. I understand you guys have a view, and some of the points you have are different than ours, some of ours are different than yours. But if we are going to try and address this together, we actually have to work together, and it has to begin before the hearing starts.

What was especially disappointing about this one was I had a conversation with—I won't call a name, but a Member of the report, the Republican side on the House floor last night with respect to trying to move legislation in this committee. Part of it came out of the mark-up that we had a few weeks ago where there was recognition I thought by both sides that the Democrats had offered some amendments that might make sense. For example, with respect to the drones issue, we were told when we went to visit the border that there was a 17-to-1 deficit. We had offered an amendment to try and increase the number of drones and funding for it. The Republicans didn't take any amendments during the mark-up, and that is their prerogative. But there was a statement made at the time, well, maybe we can move amendments that you have offered that we find mutually acceptable that are beneficial. Another one, for example, was additional funding for Border Patrol agents. There are some provisions in the bill that passed, but not all that we talked about to provide additional funding, hire more agents, retention by paying them more and the like, since we are losing agents and it is harder to enforce the border with fewer agents than more agents. So we talked about actual legislation to try and address the problems that we are talking about here. I was assured, hey, yes, we can work together on this stuff. We got an oversight thing we got to do tomorrow, but we can work together on getting legislation done through the—I had no idea that the oversight thing—I knew the witnesses were coming. I mean we got the testimony just barely 48 hours in advance, but at least we did get it in advance. But this report is a blind-side. Hopefully that is not an indication of things to come.

But I also did remember at a previous hearing I raised this issue, the *New York Times* article that came out April 18. "Key Republican Tells Donors He Will Pursue Impeachment of Mayorkas." Now, I don't need to go through it again, we put it in the record previously. But basically it laid out a plan, a five-phase plan, quote, unquote, to set up the impeachment of Mr. Mayorkas. I was told that these were misquotes and the like. You know, we are really going to try and work together on this, we are going to file the—blah, blah, blah—in the hearing. This is on the record. Then I get this.

You know, I understand that that both sides differ. As I mentioned before, my first job here was 1987 on Capitol Hill working



for Congressman Conyers. I am sorry I missed earlier parts of the meeting because I had votes in Judiciary. But can we actually try and address some of these problems by working together? I know we have got different sides. I understand how hearings work. You guys get three witnesses, we get one. That is fine, but let's try and do things that—we can disagree without being disagreeable and try and move our points forward, I think. Because this is the Homeland Security Committee, our goal, I think, for all of us is to try and do what is best to help the American people. It is harder to do it when we are working at cross-purposes.

So with that, I yield back.

Chairman GREEN. The gentleman yields back.

The Chair now recognizes the gentleman from New York, Mr. Garbarino.

Mr. GARBARINO. Thank you, Mr. Chairman.

Mr. Edlow, what is the legal basis for asylum?

Mr. EDLOW. The INA Section 208 sets out exactly what asylum is.

Mr. GARBARINO. Is general economic hardship a legal basis for asylum?

Mr. EDLOW. A legal basis? No, it is not. There are five recognized grounds of asylum.

Mr. GARBARINO. Is general violence or crime alone a legal basis for asylum?

Mr. EDLOW. It is not, Congressman.

Mr. GARBARINO. Is political instability alone a legal basis for asylum?

Mr. EDLOW. Not alone, no.

Mr. GARBARINO. Does filing an asylum claim after entering illegally or improperly negate the fact that the individual entered illegally to begin with?

Mr. EDLOW. No, it doesn't. However, when someone comes in at the port of entry, claims credible fear, has a positive credible fear determination at that point, they are given the opportunity to present an asylum claim. Under Section 235 they are supposed to be detained. As we know, that's not been happening, but they are able to stay in the country to file that claim. They do not have legal status in the country, they are an asylum applicant at that point.

Mr. GARBARINO. Thank you. Are you aware that the CBP and Troy Miller, CBP acting commissioner, have recently tweeted that most of those claiming asylum at the border don't qualify for asylum as economic migrants?

Mr. EDLOW. I'm not aware of the tweet, but I would agree with it.

Mr. GARBARINO. Prior to the Biden administration, how were the words urgent humanitarian reasons and significant public benefit in a parole statute interpreted by DHS?

Mr. EDLOW. So I don't think there's necessarily been a change in the actual interpretation of the wording. But where I think there's a change is the sheer volume of categorical parole programs that we've seen. I'm not going to sit here and say there were not some categorical parole programs under the Trump administration, I, for the most part, would have liked to have seen them go away. I don't think that they are lawful. With the exception of maybe the Cuba

accords that allowed for the Cuban family reunification, the remainder of the programs probably should not have been there. However, we saw maybe 20-, 30,000 people over the course of the 4 years get paroled in under these types of programs. Whereas now, we're seeing mass parole where in the months prior to them stopping parole, given the court decisions and some other things, we saw months where there was over 100,000 people paroled in that month.

So, the sheer volume of parole numbers is astronomical now. Plus, they're doing it for specific countries, whole populations of those countries that they have a sponsor here that's not case-by-case. If they have humanitarian needs to get here, they can come through other means. They can come to the border and ask for credible fear. That's what we expected before. This is not an appropriate use of the parole authorities.

Mr. GARBARINO. Thank you very much. A lot of numbers going up. You are talking about paroles are going up. You know, we have seen numbers in migrants found dead on U.S. soil also go up. Mr. Scott, CBP personnel have reported informally that more than 1,700 migrants have been found dead on U.S. soil during this administration's watch, Biden and Mayorkas's watch. More than 500 were found dead in fiscal year 2021, and reportedly more than 800 found dead in fiscal year 2022. The 5 years prior to fiscal year 2021, the number had not exceeded 300 in any given year. Why is the number of dead migrants found on our soil increasing so much?

Mr. SCOTT. Because chaos kills people, and we've created a chaotic border situation. Additionally, Border Patrol has a search-and-rescue team that would normally just respond and be out in remote desert areas looking for people in advance. They're processing civil immigration cases. So, we're leaving vast sections of border open, and I would argue those numbers are probably underreported.

I was down at the border recently talking to some local sheriffs, and they're telling me that they're finding bodies on ranches. There are people dead along the border they believe have just crossed that are not included in CBP's numbers. But chaos kills people, and that's what we've created on our border.

Mr. GARBARINO. I appreciate that. I have 50 seconds left. I know people run out of time when they want to answer this question. So, I want to yield the rest of my time to Mr. Wolf, if there is anything you want to continue to say about, you know, this hearing and what you have experienced, I would appreciate it.

Mr. WOLF. No, again, I think what we did during the Trump administration is every day we weren't perfect, but every day we worked to install policies and operations that further secured that border that actually upheld the rule of law, day after day after day. Some we got right some we got wrong at the end of the day. I think if you look at the overall evidence of the past 27 months, that is not the case. They have specifically torn down policies and put others in place that make that border significantly less secure, not only from a humanitarian perspective, but also from a national security and a public safety perspective as well.

Mr. GARBARINO. Thank you very much. I ran out of time, so I yield back.

Chairman GREEN. The gentleman yields. The Chair recognizes Mr. Clark. All right, Mr. Garcia. I am sorry.

Mr. GARCIA. Thank you. Thank you, Mr. Chairman. Thank you to our witnesses for being here today as well. I want to just a couple of notes. I think that first, I just want to note that there has been a lot of attacks, of course, on the Biden administration on the work that is happening on the border. I think that obviously as a reminder that Democrats also want a safe and secure border. That is in the interests of everyone in our country.

I also want to note that there has been a bemoaning that, of course, that since the end of Title 42, that the chaos at the border that oftentimes many in this committee were rooting for just also did not happen. So, once again, it is very clear that we are getting another political hearing, another distraction from the real issues that are in front of our country.

I also want to note that there has been, once again, a repeating of things that have been debunked by witnesses, by experts, repeated over and over in this committee. We have been ignoring the facts about fentanyl. We want to blame the opioid epidemic on people that are seeking their legal right to asylum and not actually on the failures of our treatment system in the United States. Folks want to feed a narrative that if we just invade Mexico, things will get better in this country. All these things, along with false claims that our border is somehow open. The men and women of Department of DHS and our partnerships with NGO's and in Mexico are doing their jobs. Again, the border is not open. We continue to do that work in this country.

I also want to just remind Members of this committee there has been a lot of back-and-forth on the issues around family separation. I want to give Ms. Acer a chance to respond to this. We have heard a lot about family separation under the Trump administration and specifically, quite frankly, a rewriting of what actually happened and of history. Can you clarify the actual differences between what happened in the Trump administration to what is happening today?

Ms. ACER. Yes, absolutely. So, the Trump administration initiated policies that they knew would separate children from their parents. The decision to start prosecuting families for initial entries was done with full knowledge of what the impact would be. I actually met mothers in detention centers who had been separated from their children, had no idea where they were or how to find them. It was heartbreaking as a parent.

Mr. GARCIA. I want to note that I think that the differences between what has happened during the Trump administration and what is happening today, and the point of actually the whole process is completely different. So, I want to thank you for that clarification.

One other question. In this committee, we have had Members of the Majority work to defund programs with NGO's, particularly around with Catholic Charities, who is trying to support legal asylum, which is really shameful and really counterproductive to our work and our humanitarian work along the border. Can you explain why our partnerships with NGO's that are providing these

services are so important to the work that DHS does and across the border?

Ms. ACER. Yes, absolutely. Those partnerships are critical globally around the world as well as here at home. Faith leaders, faith volunteers, employees of faith organizations, and other NGO's, you know, are inspiring. You know, those who are motivated by their religions are trying to welcome the stranger day in and day out through their work. Refugees around the world are welcomed by faith-based and other organizations. That's critical to enable all the other countries to be hosting refugees. But here at home, we need more support for the organizations that are working to welcome refugees into our communities. There's also a disgraceful lack of support for the organizations in Mexico that are struggling to host refugees who are now waiting to seek asylum at our ports of entry.

Mr. GARCIA. Thank you. Finally, I just want to just note, I know there has been discussion about the One app application. I think one of the key reasons that conditions have improved and really we are focused on legal pathways is because the CBP One app after we all agree a difficult rollout has actually made things a lot better. So, I just want to thank everyone that worked on that, the entire Department, so many groups that have been involved in the rollout. Now over 1,000 migrants a day are able to use that app to exercise their legal right to asylum, which I think is really important. It is a legal right, even though some in the Majority choose to not see it that way. I yield back. Thank you.

Chairman GREEN. The gentleman yields. The Chair recognizes Ms. Greene of Georgia.

Ms. GREENE. Thank you, Mr. Chairman. It is interesting to me to listen to some Democrats here on the committee trying to harp on the very idea that Mr. Wolf is somehow illegitimate as the former Acting Secretary. We Republicans here, we are committed to searching for answers as to why this administration continues to inflict catastrophic damage to our country.

Here, I just want to remind you of a few things that are very important to understand. Not only is fentanyl poisoning the No. 1 cause of death of young Americans ages 18 to 49, nearly 83,000 Americans have died of opioid poisonings since the year 2022, and they die weekly in my district. Ninety-six individuals on the terrorist watch list have been apprehended. Crime has skyrocketed across the country, and we are missing 85,000 children, 85,000 children.

While Democrats across the aisle on this committee want to talk about families being separated under the Trump administration, I would like to introduce for the record, Mr. Chairman, a letter from Customs and Border Protection saying that the Biden administration is ending DNA testing, familial DNA testing, as of that was at the end of May, May 31, 2023. So, when you talk about separating—

Chairman GREEN. So ordered.  
[The information follows:]

1300 Pennsylvania Avenue, NW  
Washington, DC 20229



U.S. Customs and  
Border Protection

May 19, 2023

MEMORANDUM FOR: [REDACTED]

FROM: [REDACTED]

SUBJECT: End of Contract for Deoxyribonucleic Acid (DNA) Testing for  
Suspected Family Unit Fraud

The U.S. Customs and Border Protection (CBP) familial DNA contract with BODE Technologies will end on May 31, 2023 and all familial DNA testing will conclude on that date. Buccal swab samples may still be submitted to BODE Technologies through the end of the contract, but any samples submitted afterwards will not be analyzed.

Familial DNA collection and testing is separate from FBI (Federal Bureau of Investigations) booking DNA collection and the end of the BODE contract does not impact collections as part of the CODIS (Combined DNA Index System) program which should continue uninterrupted.

Please feel free to contact me with any questions, or a member of your team may contact [REDACTED]

Ms. GREENE [continuing]. Children, we have the Biden administration not even testing, testing who these adults and these children are. I can't comprehend it. Everyone in this room knows what an Amber Alert is. We all get them on our phones, right? This is when a child has been kidnapped. We are so concerned in this country about children who have been kidnapped that we have something called an Amber Alert notifying all of us that there is a missing child. Eighty-five thousand children missing, migrant children missing, in the United States is the same thing as 85,000 Amber Alerts. It is unbelievable.

Mr. Wolf, many of the children are brought to United States by coyotes and human smugglers. In your view, how is Secretary Mayorkas responsible for exasperating the unaccompanied children humanitarian crisis?

Mr. WOLF. Well, it's not just one action. It's obviously a culmination of a variety of different incentives. It's an incentive structure that has been created over the past 27 months. It allows individuals to come into the country and remain into the country. When you exempt UACs from Title 42, that sends a signal to the cartels and to everyone else to smuggle as many children across that border as humanly possible. We know they are going to stay in the United States. So, when you make these categorical pronouncements, the cartels are watching and they are paying attention.

Just to key off on your last point, not only did DNA testing going to end, about to end, the vetting of sponsors also ended at HHS under this administration. No more vetting detailed, in-depth vet-

ting of sponsors. We also increased vetting of other household members. We didn't just want to know who the sponsor was. We wanted to know other household members and dive into those backgrounds. That was eliminated as well. Site visits, not every home was visited, but random site visits to make sure that those children were where they said they would be, also eliminated under this administration. So, the idea that somehow they are protecting children because they needed to facilitate the flow out of HHS facilities quicker and quicker is a misnomer.

Ms. GREENE. Unbelievable. Mr. Scott, it has been reported that many minors at the Southwest Border are in fact related to adults with whom they are traveling. In fact, some of them are even recycled. I can't even comprehend using the term recycled when it comes to children. These kids are used again by different cartels and human smugglers to guarantee admission of family units. In your estimation, has this exploitation of minors exponentially expanded under the Mayorkas's policies?

Mr. SCOTT. I believe it has and this is why. Every one of those child recycling cases, and if you don't understand what that means, that means a child being teamed up with a fake family over and over again. So, he has to make that trip over and over again because that gets them to become a family unit. They get into that categorical exemption to get released. Every one of those cases was discovered by an agent interviewing the child and finding little cracks in the story. That takes time. The agents don't have that time today. Those conversations are no longer going on at all. They're being pumped through the system like fast food commodities.

Worse than that, now the DNA piece of it is being shut down as well. That was one of the last tools to be able to quickly be able to prove somebody was not related. That doesn't mean that there's not some kind of a connection there. But that gave the agents a tool. Most people broke immediately when they believed they were going to be subjected to the DNA. You didn't even have to do it.

This administration knows they're putting children at risk every day. They're enticing them to come to the country, and it defies common sense.

Ms. GREENE. Thank you. He should be impeached.

Chairman GREEN. The gentlelady yields.

Ms. GREENE. I yield back.

Chairman GREEN. The Chair recognizes Ms. Jackson Lee of Texas.

Ms. JACKSON LEE. Mr. Chairman, thank you very much. Let me thank the distinguished Ranking Member and Chairman and my colleagues and Members and the witnesses every time you put yourself forward. We certainly thank you very much. But this is a journey that I have taken now for 28 years, maybe a little shorter. It never fails that whenever Republican administration is in, my Republican friends are in the Majority, there is an enormous crisis, and the Executive does nothing. There is no effort to write legislation. There is no effort to correct what any one of you are saying. It is with all due respect, and admiration, and friendship, it is a broken record. It is literally a broken record.

Before the late John McCain passed, there was a gang of eight who had an enormous contribution to trying to do an overhaul over immigration reform. It was the party that is now in charge of the House that blocked it. I worked with on this committee a Chairwoman by the name of Candice Miller from Michigan. We worked on comprehensive immigration reform measures to address the U.S.-Mexico border, which was blocked by the Republican leadership at that time.

Do your homework. In years past, we have written legislation to provide the border personnel every manner of support we could give them. So, let me be very clear. The Remain in Mexico program was horrible because I went and visited the squalor that the people were sitting in. There was nowhere for them to go. It was misery. Nothing was happening. The border wall, you can get a nice comment and quote, our men and women at the border are very nice people. They will give you quotes. But it is well-known that most of fentanyl comes to the United States citizens through legal ports of entry. It is also well-known that even though you will say, well, that is because we need more border wall, that the border communities fight you for the border wall, not to have it. Smugglers and others find other ways.

As relates to the asylum cooperative agreements, we have agreements now with Venezuela, Haiti, Cuba, and Nicaragua. As relates to Title 42, the Republicans voted to end the public health provision that the President ended, and by its very essence, you ended Title 42. Let me quickly because I will be going to one witness, because all the other witnesses I know what you are going to say, but I do appreciate the work that Ms. Acer is doing. So, please be ready for a question. I am trying to get through.

I heard the word impeachment. I don't know whether it was going in direction of my President, the President of the United States, or whether it was going in terms of Secretary Mayorkas, an immigrant himself, who pulled himself up by the bootstraps and has more commitment in his tiny finger than what I would imagine some who advocate against him. I make that generic. But Secretary Mayorkas has done nothing contrary to his boss. He is a member of the Cabinet and his boss wants America to be safe, the President of the United States. In every aspect of work that we can do, from the increased resources, from adding to the additional personnel, to creating pathways for people to parole in, for creating the app, and the numbers have gone down. They surge up, they go down. It depends upon movements of people.

So, you have no more answers than anyone else. Mr. Wolf, you were in there for a year or 2 years, and I don't see anything that you did that has brought down anything that we are talking about. This is not a personal statement because I want to add and say I appreciate your service to the Nation. But everybody that is sitting there that is criticizing had their opportunity.

We have got to come together as a country and stop scaring our constituents because America is getting more diverse and they are contributing to the economy and to the culture of this Nation. The world watches as to whether or not we can make this experiment work. They are in awe of us. They come because they are in awe, because they are desperate, because they think this is the greatest

country in the world. It is. Its democracy, however challenged, is still standing. It bothers me to masquerade.

I have this question, Mr. Chairman, I ask your indulgence so she can answer it. I represent Catholic Charities and many others. I fought to get hostages back from Russia. I have dealt with the crisis of deportation, families separated. What does it do to our very dedicated non-profits who are innocent, who have the responsibility of taking care of people in streets, people who are separated, children who are separated, people who are traveling that you would assess them criminally or find them so that they are so scared that they cannot do the normal, humane things for individuals who even may be in here on a legal pathway coming into the United States? Mr. Chairman, I asked your indulgence for her to be able to ask that question—answer it.

Chairman GREEN. Just if you could make your answer short. Ms. Jackson Lee is already over her time, so I will allow it.

Ms. JACKSON LEE. OK, thank you.

Chairman GREEN. I will allow it.

Ms. JACKSON LEE. Thank you.

Chairman GREEN. Just make your answer as quick as possible.

Ms. JACKSON LEE. No basis for the Secretary to be impeached but go right ahead.

Ms. ACER. It's reprehensible. Not only does it punish people for acting on their humanitarian values, it also punishes them for acting on their faith beliefs as well. It's totally counterproductive. I mean, here in America, we need our faith-based organizations. We need our communities to step up and be part of the solution. Many Americans want to do that and are doing that as we speak. Thank you.

Chairman GREEN. Thank you. The gentlelady yields. I now recognize Mr. LaLota—

Ms. JACKSON LEE. I yield.

Chairman GREEN [continuing]. For his 5 minutes.

Mr. LALOTA. Thank you, Mr. Chairman. Thank you, sir, for your leadership and bringing this committee together in this hearing and for your efforts to make my constituents' lives safer for securing the Southwest Border. I appreciate the witnesses and your expertise being here.

I represent the First Congressional District of New York. The western edge of my district is about an hour or so east of New York City. Over the past several weeks, my constituents have heard how New York City's sanctuary city policies, coupled of course, with our country's non-secure and wide-open Southwest Border, have overwhelmed New York City's resources previously meant for the homeless, for folks suffering from substance abuse and veterans in need. Given the influx of migrants who are attracted to New York City because of those sanctuary city policies, the city can no longer handle the influx of those migrants. In response, Mayor, New York City Mayor Adams is now attempting to sending those same migrants who were attracted by those sanctuary city policies to suburban counties throughout the State who had expressly rejected those sanctuary city policies.

Mr. Wolf, that leads me to my first question, sir. Can you please explain what sort of costs, such as monetary, personnel, public



safety, are imposed on States, cities, and counties in dealing with the current crisis at the Southwest Border?

Mr. WOLF. Sure, there's a variety of different costs. You know, all of the children that we've talked about go into public education systems. English is usually not their first language. So, that's going to strain public education systems in every community that they go into. Certainly, the ones that they go to in a large amount.

Health systems, public safety systems. You now have public safety officers, law enforcement officers, having to deal with additional crimes and additional incidents, particularly along the border, that I've talked to sheriffs that are overwhelmed because of what's going on.

Then we talk about the money that DHS is sending to NGO's, right? Billions of dollars, I would say millions of dollars being sent to NGO's for a crisis that they created, that they're now using taxpayer dollars to send to try to solve the crisis. So, there's a lot of different costs, you know, that American taxpayers bear.

Mr. LALOTA. What, if anything, sir, can you say about the cost on public safety with a whole slew of unvetted young adult migrants, excuse me, adult migrants that are being shipped to suburban counties? What can you say as far as what public safety costs?

Mr. WOLF. I think there's a variety of different, you know, ways. If you talk to law enforcement officers along the border, they're dealing with crimes and they're dealing with incidents that they've never had to deal with before. When you talk of military-aged males, individuals coming over that are a certain age that are not being vetted, right? We talk about 1.5 million gotaways. These are individuals that obviously don't want to interact with law enforcement officers for a very specific reason. They're here to do bad things.

Or we talk about 100,000 Afghans that weren't properly vetted. We've seen and there's been reports of crimes and incidents that are occurring on that front.

So, I think there's a variety of different things that you could point to that says if the process was followed correctly and individuals are vetted as they should be, some of this should not have occurred.

Mr. LALOTA. Four billion, New York City has said that it will spend \$4 billion next year caring for and housing the illegal alien population that has come to New York City because of its sanctuary city policies. Eight billion, Texas is on track to spend more than \$8 billion on Operation Lone Star doing the job that Secretary Mayorkas won't do, securing the Southwest Border.

Another question for you, Mr. Wolf. How do these massive expenditures affect the cities and States who are forced to pay them? Is it fair for New York and Texas law-abiding taxpayers to have to suffer the burden that the open border and the sanctuary city policy have created?

Mr. WOLF. No, none of this is fair. None of this should be occurring. But this is what happens when the Federal Government refuses to do its job. We've never seen this before. As I testified, it's in my oral and written, every administration has progressively tried to make improvements along that border. I would argue that some administrations did more than others, but every administra-

tion, at least in my lifetime, has done that. This is the first that has not only taken one or two steps back, we've probably taken five to 10 steps backward.

So, you're going to—that's got to be picked up by someone. It's different States along the border, and it's different municipalities, cities, and officials that have to pick up the slack. They have to protect their communities.

Mr. LALOTA. Thank you. I appreciate you being here today with your expertise and your experience. Mr. Chairman, I yield back.

Chairman GREEN. The gentleman yields back. I now recognize Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman. Good afternoon, everyone. I just wanted to correct the record of my colleague, Mr. LaLota. These immigrants had no choice in where they ended up in this Nation. They crossed the Southern Border, yes, but it was Governors of the States of Texas and Florida that put these individuals on buses directed to New York City.

Mr. LALOTA. Not all of them.

Ms. CLARKE. So, having said that, we are currently, as my colleague Rep. Correa demonstrated in this line of questioning, witnessing an unprecedented human migration movement around the world of individuals seeking refuge, safety, and economic opportunity. Individuals are fleeing economic instability, governmental corruption and persecution, violence. Climate change has ravaged food and water supplies in their homes of origin, and this has been evident in many nations within the Western Hemisphere and especially in the Caribbean, in the island nation of Haiti, as individuals have been enduring far more dangerous means and methods to escape and to seek refuge here in the United States. This is not just a challenge for the United States, but a global challenge. We must step up to the plate to do our part.

So, my first question, my only question is to you, Ms. Acer. Would you agree that there is an unprecedented movement of vulnerable people in the Americas and world-wide? Can you speak about how that is affecting our border and how our Government should work with regional partners to address this challenge?

Ms. ACER. Yes, absolutely. There's been a significant increase in people fleeing in search of protection in the Americas in recent years. There's also been a shift with increasing numbers fleeing from Nicaragua, Venezuela, and Cuba. I'm sure some of you know, for example, about the crackdown on political opposition and faith groups in Nicaragua forcing many people to flee that country, for example. People who have fled from Venezuela are facing restrictions in some of the countries that they have been in, and they are seeking safety and stability as well.

So, there's been major regional shifts. But there's a lot that we can be doing and doing more of in the region. Incredibly important is to continue to support, and support as best we can the front-line countries that are actually hosting the vast majority of refugees. I mentioned, for example, that countries in Latin America and the Caribbean are hosting 6 out of the 7 million Venezuelans who left their country. It's certainly in the U.S. interest to continue to support those efforts. Critically important that we now have a commit-

ment to start long-overdue resettlement from the region, from the Americas that needs to be absolutely stepped up.

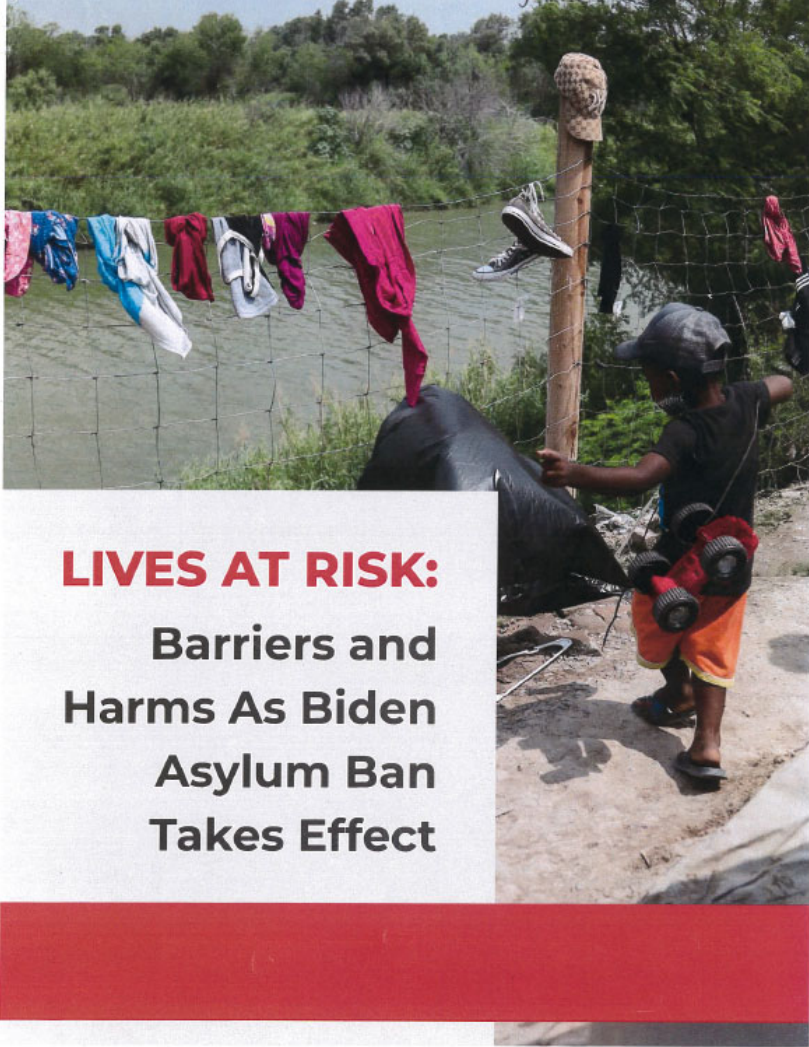
You mentioned the plight of Haitians who are facing such extreme dangers that the United Nations and the U.N. Refugee Agency said that it is too dangerous for people to be returned to Haiti right now. So, parole, for example, has been an incredible lifeline for some people from Haiti. But the parole processes are not as accessible as they should be for many people facing dire risks and the numbers are too small. You know, there's really no way often for Haitians to actually flee in search of refuge.

So, thank you so much for everything that some of you have been doing. I would really encourage bipartisan support, you know, for the programs that are helping refugees around the world, for the expansion of refugee resettlement from the region, and for these very legal parole initiatives.

Ms. CLARKE. I would like to thank you for the work that you are doing. Mr. Chairman, without objection, I would like to enter this report led by the Haitian Bridge Alliance with input from Ms. Acer and Human Rights First, which documents their observations on the Southern Border following the end of Title 42.

Chairman GREEN. Without objection, so ordered.

[The information follows:]



**LIVES AT RISK:**  
Barriers and  
Harms As Biden  
Asylum Ban  
Takes Effect

EXECUTIVE SUMMARY

From May 10-12, 2023, a delegation of human, civil, and immigrant rights leaders led by the Human Bridge Alliance visited the Texas Rio Grande Valley and the Mexican state of Tamaulipas to bear witness to the end of the Title 42 policy and the implementation of punitive policies along the border, including the Biden administration's new asylum ban. In Matamoros and Reynosa, Mexico and Brownsville, Texas, the delegation saw firsthand the difficulties that people seeking asylum face when attempting to secure appointments at U.S. ports of entry via the CBP One app; the barriers some face waiting and trying to seek asylum at ports of entry without a CBP One appointment; the squalid and inhumane living conditions of migrants at the border; and the violence and anti-Black racism that people seeking asylum endure while waiting in Mexico.

The delegation members spoke to hundreds of people waiting to seek asylum. It was clear that they wanted to follow the U.S. process to seek asylum at ports of entry, but face major impediments.

These barriers include:

- the lack of critical information about the highly complex U.S. immigration process;
- the lack of smart phones, internet, language access, and technical assistance to use the CBP One app;
- the weekly limited number of CBP One appointments;
- U.S. refusals to process many people waiting without appointments to request protection at ports of entry;
- Mexican government intervention to limit or prevent asylum seekers from waiting in line to seek U.S. protection at ports of entry;
- the absence of transparent and non-discriminatory process for asylum seekers without appointments to request protection at ports of entry as required by U.S. refugee law;
- the horrific human rights abuses suffered and called while left waiting in highly dangerous areas of Mexico;
- and the squalid, unsafe and inhumane conditions in many of the encampments and areas where asylum seekers are risk as they wait to try to follow processes to seek asylum at U.S. ports of entry.

U.S. officials ~~appear~~ to be touting their use of what they frame, in a disheartening approach, as the "gold" or "silver" of the asylum ban as the reason for reduced crossings after the end of Title 42, yet from the aid workers, faith leaders, legal services providers, and countless people seeking asylum we spoke with, it was clear there was little to no knowledge of the new asylum ban. Instead, people seeking asylum were struggling to comprehend the process on how to seek protection at ports of entry.

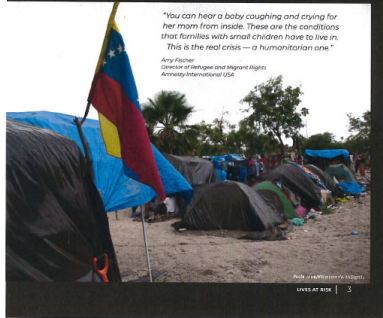
The use of the Biden administration's new asylum ban against people seeking asylum imposes yet another barrier. As detailed in the ~~many~~ public comments opposing the proposed rule, the asylum ban will lead to returns to persecution and chain refoulement that violate international law, denial of asylum to people who are otherwise eligible for it under U.S. law enacted by Congress, and the disappearance of a path to citizenship for

many refugees denied asylum due to the ban. UNHCR has warned that the asylum ban violates international refugee law binding on the United States and places refugees "at risk of persecution and/or death." A process that leaves refugees at risk in a long-term limbo and violates U.S. and international law is neither humane nor "orderly."

The delegation included leaders and experts from Human Bridge Alliance, the ACLU, Amnesty International, Amnesty International USA, Human Rights Fund, MLC, NLC, National Justice Center, UndocuBlack Network, and the International Women's Center for asylum rights and experts on the delegation drafted this report. The delegation thanks the refugees and migrants, humanitarian, faith based, shelter and other workers and volunteers it met on this visit.

"You can hear a baby coughing and crying for her mom from inside. These are the conditions that families with small children have to live in. This is the real crisis — a humanitarian one."

Amy Frazier  
Director of Refugee and Migrant Rights  
Amnesty International USA



FINDINGS



People seeking asylum turned away from ports of entry. Despite the end of the Title 42 policy on May 11, and after the initiation of the Biden administration's asylum ban, people seeking asylum who did not have CBP One appointments were in many cases turned away or not processed by Customs and Border Protection (CBP) officers, prevented from seeking asylum by Mexican officers, and turned away from U.S. ports of entry. These include a Honduran mother and a Mexican indigenous mother who reported that they were turned away by CBP on May 12 along with their young children. On the evening of May 22, a member of the delegation and other mission witnessed Mexican immigration officers and the Mexican military, in an ostensive show of force, direct about 160 adults and children, who had been waiting in an orderly manner to be let in by CBP to seek asylum, back to Matamoros. On May 23, a delegation member witnessed Mexican officers prevent two African asylum seekers from even approaching the CBP "link box" on the bridge. People who had managed to get CBP One appointments were permitted to enter the U.S. port of entry, as well as a limited number of other people seeking asylum.



People seeking asylum struggle to get limited CBP One appointments. While people are struggling to follow U.S. processes for seeking asylum and to use the CBP One app, the CBP One system is plagued by lack of phone and internet access, limited language services, tech glitches and other accessibility deficiencies. In addition, the Department of Homeland Security (DHS) has provided only a very limited number of appointments, leaving people seeking asylum frustrated at the process and stranded indefinitely in highly dangerous places.

Latinx and Black people seeking asylum are targets of anti-Black discrimination and violence: Attacks against Black people who are waiting to seek asylum are occurring in Matamoros, Reynosa and other nearby violent areas where they remain stranded while waiting. Black people waiting to seek asylum are often deprived of equal access to asylum processes, medical treatment, housing, safe shelters, humanitarian services, language access, and protection from law enforcement.

The Biden administration's new asylum ban, the Title 42 and Remain in Mexico, is leaving many people seeking asylum stranded in highly dangerous places where they are targets of violence and kidnappings. While they wait for scarce appointments in Matamoros and Reynosa, people seeking asylum are stranded in areas that the State Department assesses as too dangerous for U.S. travel, at risk of kidnappings and attacks, and in encampments that lack basic structures and safeguards needed to ensure the safety of those waiting, including women, children, and LGBTQ+ individuals. They are left to face the very same conditions and ~~harmful~~ ~~unsafe~~ ~~unsafe~~ conditions suffered under the former in Mexico and Title 42 policies. In fact, these policies have created, as well as the asylum ban, a market for cartels, gangs, and smugglers to exploit people seeking asylum who are forced to wait along the border.



FINDINGS (continued)

Shaming Lack of Governmental and International Support: Volunteers and aid workers struggle with few resources and little support to address some of the most urgent needs facing people seeking asylum who are left to wait in Mexico due to U.S. policies that block them from asylum or strand them in Mexico. On both sides of the border, many of the humanitarian, faith-based, shelter and other groups working to provide humanitarian aid to refugees and migrants are massively under-resourced and overwhelmed, and are struggling to continue to attempt to address reception, shelter, sanitation, water, food, medical, legal, know-your-rights education, protection, and other basic needs. Many confided to our delegation that without additional funding soon, they will need to close their offices and end the only services that most people receive.

Refugees, asylum seekers and migrants are living in squalid conditions without access to basic services. The delegation was shocked and deeply distressed by the poor living conditions of refugees, asylum seekers, and migrants, including children, pregnant people, people with disabilities, survivors of trauma, and individuals with significant health conditions. The delegation visited encampments where people are left to wait outside in makeshift tents made of tarp and blankets in abandoned gas stations, public parks, and on the banks of ravines filled with trash and raw sewage. When the rain comes, people's "homes" are flooded and their belongings are ruined, leaving them and their children with no place to sit or sleep.

Lack of information about the asylum ban: People who were waiting to seek asylum overwhelmingly had no information about the new asylum ban, its implementation, its presumptions, and its exceptions. The rule, its presumptions, and exceptions were confusing to many people seeking asylum (and even to delegation members) and are divorced from the reality of refugee experiences. The lack of information about the asylum ban rule, the final version of which had only been announced less than two days prior to its implementation, as well as the lack of transparency provided by DHS on key questions, including an access to asylum at ports of entry for people without appointments, made it difficult to impossible for people seeking asylum to make informed decisions as they struggled to understand potential long-term consequences while weighing immediate threats to their safety and that of their children. One Mexican indigenous woman who had been waiting at a shelter traveled to the port of entry with her children on May 13 to seek asylum, but when she asked CBP for information on whether she would be allowed to do so, they told her that they could not give her any information and did not know her by name.

Families continue to be separated by CBP: with delegation members meeting multiple people who had been separated from spouses or adult children in recent days and weeks without being provided any information about their family members' fates. A Haitian family remained separated after the children did not get CBP One appointments, and the mother remained behind with them in Mexico.



RECOMMENDATIONS

After hearing witness to human rights violations along the border, the delegation urgently calls on the Biden administration to uphold the legal right to seek asylum and due process, rescind its new asylum ban, and welcome people with dignity and respect for their human rights and racial justice. A humane border policy should instead focus on increased communication, coordination and support for humanitarian aid, shelter and reception at the border and in destination communities, with a focus on local organizations. Many organizations represented in the delegation have previously submitted detailed recommendations to the Biden administration. Delegation recommendations include:

Uphold refugee law and right to seek asylum: The Biden administration should uphold U.S. and international refugee law, rescind its asylum ban, maximize asylum capacity at ports of entry including for those without appointments, stop blocking or limiting the ability of people without appointments to seek asylum at ports of entry, including through collaboration with the Mexican government, ensure access for those without literacy or who speak languages other than the law employed by CBP (including indigenous languages), and refrain from penalizing or barring people seeking asylum due to irregular entry or transit routes. The U.S. should increase processing at ports of entry in a manner that is non-punitive, life-threatening harm to people seeking asylum in need of protection given the overwhelming evidence of kidnapping, trafficking, sexual assault, disappearance, robbery and extortion by organized criminal groups with the complicity and participation of Mexican authorities.

Ensure just and equitable access for Black and Indigenous people seeking asylum: including language access, asylum protection, shelter, and humanitarian and legal services. Law enforcement officers and other DHS staff that interact with people seeking asylum must receive anti-racism, discrimination training and written anti-racism policies.

Massively increase governmental and other aid to support humanitarian efforts in Matamoros, Reynosa, and other Mexican border cities where people are waiting to seek asylum to support humanitarian reception in the United States. The U.S. government, including the State Department, as well as the Mexican government, and international community, must take steps to ensure the accountability and oversight in the coordination and provision of protection and humane conditions that meet the requisite humanitarian standards for asylum seekers waiting in Matamoros and Reynosa, and to ensure phone and internet access for the CBP One process. If the Biden administration continues to have people stranded on the other side of the border instead of allowing them to enter the U.S. and seek asylum according to the law, it must increase support for necessary humanitarian assistance in the United States. DHS must shift funds away from over-funded detention, enforcement and surveillance accounts and surge funds toward reception services. The White House and DHS should immediately focus attention on convening the newly reorganized Shelter and Support Program as a centerpiece of the United States' approach to border reception. This newly created program offers an opportunity to remedy some of the border town NGOs currently face in utilizing limited federal grant funding, including, for example, disbursing funds in needed instead of a reimbursement model and removing limitations on the use of funds for transportation and shelter costs.

Stop separating families: DHS must ensure families are not separated once processed by CBP. The right to family unity requires that family members are not separated: DHS should not detain or remove family members without informing other family members of their status or outcome.

Struggling to Access Limited CBP One Appointments

The delegation and its members saw and spoke with hundreds of people who were struggling to access and get an appointment to seek asylum at a port of entry on the CBP One app, with many indicating they had been trying to obtain an appointment for several months, in addition to several months prior to the app's introduction. Members of the delegation met with a Venezuelan woman who had already been waiting for nine months, a Mexican woman with her children who had been waiting for six months, and many families who had been waiting for three months.

The CBP One app has contributed to family separations, and encourages users not to use it to land appointments and force people to wait for months in highly dangerous areas of Mexico. For example, we spoke with a Mexican indigenous mother living near the Matamoros encampment with her infant and three children. She explained that her partner had obtained a CBP One appointment two months prior, but was unable to get one for all of them. As a result of CBP's policy to only process individuals with appointments, she stayed behind in the camp with their children as she tried to request a CBP One appointment daily. She explained that others in the camp know how to now close with her child and told of an attempted sexual assault she experienced when a man entered her tent at night. She also told the delegation of another woman who had asked for her six elementary school-age daughter and the risk of kidnapping and trafficking their child, forcing them to flee the camp.

We also spoke with a Honduran mother who had been waiting in the precarious conditions of the Matamoros encampment since with her toddler son for 3.5 months. About 3.5 months ago, she requested the port of entry with a CBP One appointment in her name, but the CBP turned her and her toddler son away because the toddler did not have an appointment. They were turned away to highly dangerous conditions in the Matamoros encampment facing safety, crime, and other severe humanitarian standards. As the encampment, the single mother, residing in a makeshift tent with her toddler faced daily risk of sexual assault, and kidnapping while attempting again to obtain an appointment. The mother shared that while she finally obtained an appointment for the following week, it is at the highly perilous port of entry in Reynosa, Mexico. Now she will contribute the high dangerous trip with her young son from Matamoros to Reynosa through areas where cartel kidnappings and brutal violence are prevalent.

Confounded by significant delays and confusion with the CBP One app, many parents have surrendered their children to enter the United States as unaccompanied children, rather than having them wait in unsafe, life-threatening conditions at the border.

Lack of Phones: Many individuals who lack phones are unable to exercise their right to seek asylum under the asylum ban and are caught in a cycle to borrow devices. Phones are a day's wage, meaning their use of exploitation and abuse. Delegation members met many highly vulnerable people seeking asylum who do not have phones. In one troubling number of people recounted numerous incidents in which they were robbed and extorted along their journey, including by Guatemalan police, Mexican immigration authorities (INM), and brutal criminal groups that control vast territories in Mexico. Delegation members spoke with women of different nationalities who were traveling alone and now living in the Matamoros encampment who had been robbed of their phones and had no means to purchase another one. We also spoke with families with young children whose phones had been robbed, and with an LGBTQ+ and HIV+ young adult traveling alone who had been robbed of their phone had been robbed, and with an LGBTQ+ and HIV+ young adult traveling alone who had been robbed of their

**CBP One Appointments (Continued)**

phone, passport, medication, and belongings at ports. These individuals have essentially no safe means of accessing the CBP One app. People who are seeking asylum should not be forced to ask strangers they meet in encampments or shelters to use their phones to repeatedly try, day after day, to use a CBP One appointment. This is no solution and risks putting vulnerable women, young people, and others seeking asylum in even more vulnerable positions where they could be subjected to exploitation.

**Lack of internet access:** Thousands of individuals living in encampments lack internet access and electricity to charge their phones and are obliged to leave their encampments and venture into town daily in an attempt to locate internet and electricity, increasing their risk of sexual assault, kidnapping, robbery, exploitation, and abuse. In many of the encampments, and others that the delegation visited, people seeking asylum did not have access to daily internet or reliable phone service to

successfully make CBP One appointments. A few shelters did have some internet access provided by a small non-profit. Without reliable internet access, people struggle to access the appointment system. In many encampments, phone reception is tenuous, minimal, and inadequate to ensure reliable access to the appointment system. In some of these encampments, individuals are forced to walk the dangerous streets into town each day to try to get internet access or sufficient phone reception to request an appointment.

These are the very streets in which kidnappers of people seeking asylum are a daily occurrence. Thus, the requirement to receive a linked CBP One app obliges these people to place their lives at risk each day in order to seek asylum.

**Lack of tech knowledge and training:** Another impediment to the use of the CBP One app is its reliance on technology in a situation where many understandably lack tech training and savvy.



Indeed, many frustrated people walked up to us showing us their telephone screens, preparing us with questions as they often had no understanding of what the messages they saw meant, whether they had done something wrong, and what to do next. Many people showed delegation members error messages that said "request failed" or "location" ("The server took too long to respond" which "could be due to poor network connection.") The stakes are high to get these appointments, so confusion caused by the app process was extremely stressful for people wanting to seek asylum. Many had questions and were confused about group registration processes, and feared they would be separated from extended family members.



**Fairness and inequality of the app:** People seeking asylum shared frustrations about regularly receiving error messages when trying to use CBP One, and about the system appearing to crash. From delegation members who tried downloading the app on their phones, which were of higher quality and better service than asylum seekers' phones, still plagued with error messages blocking them from completing the process to even register (not to wait an actual appointment). The app is only available in a few languages (English, Spanish, and French), essentially excluding many people seeking asylum who do not speak these languages, as well as people who are not literate. Delegation members saw error messages in English, even if the person had used the Spanish or Kreyol version of the app because they do not speak English.

**Highly limited number of appointments:** Over and over again we heard from humanitarian and faith-based aid workers and from people seeking asylum that it was highly difficult to get appointments and that there were too few appointments available. At one makeshift shelter in Reynosa where several thousand people were staying, only one family

was known to have received an appointment on the day we visited. Indeed, CRS has indicated that, even with its slight increase of appointments post Title 42, it is providing only one thousand CBP One appointments across the entire border and other areas where the app is available. When the number of current appointments was shared with a large group of families waiting to seek asylum, there was an audible gasp across the group out of despair about the few appointments available in contrast to the numbers that have been waiting and waiting for appointments. Many other people seeking asylum also expressed frustration with the lack of appointments available. The highly limited number of appointments available, above with U.S. and Mexican government actions blocking people from seeking asylum without appointments at ports of entry, violates U.S. refugee law and amounts to unlawful mistreatment. Under both domestic and international human rights law, the United States is obligated to provide access to individualized fair assessments of all requests for protection by people seeking refuge at the border, in a way that does not discriminate based on manner of entry or immigration status.

**Turned Away at Ports of Entry After Title 8 Return**

After U.S. refugee and immigration law has been in effect, U.S. and Mexican authorities block entry to prevent many people without CBP One appointments from seeking asylum in the Gateway International Bridge between Matamoros and Brownsville. For example:

- On the afternoon of May 12, members of the delegation met with a Brownsville member housing with two minor children who had an appointment in Brownsville being presented in Brownsville but was not allowed to enter. She reported that she approached the CBP line to attempt to seek asylum and was turned away by CBP because she did not have a CBP One appointment.
- Members of the delegation also met with a Brownsville member who approached CBP officers at the land line on May 12 with her infant and three young children to ask whether she could seek asylum and was turned away by CBP and not provided with any information.
- On the afternoon and evening of May 12, members of the delegation observed people waiting in line in encampments and were waiting at the CBP One line. CBP officers there were not allowing those seeking individuals to seek asylum, though some may have been allowed to enter later. During the course of the day, people with CBP One appointments were allowed to go proceeding, as were a limited number of others without appointments.
- On the evening of May 12th, IBM officers walked directly onto the bridge and cleared the group of people who were waiting peacefully to return to CBP and request asylum at the land line. The IBM officers told the people who were waiting, kind and polite, accompanying them that they had to leave. As the people were departing, several Mexican officers walked the perimeter of the bridge while kidnapping them. Several asylum seekers were told they had to leave the bridge and get back at the port of the bridge. The atmosphere was frightening, especially for the many young children among those pushed off the bridge and left in the dark.
- On May 12th, a delegation member witnessed people seeking asylum from Oaxaca and Burkina Faso, including a woman who had just a 9-Minute a stroke, prevented by Mexican officers from accessing the Gateway Bridge. These people told the delegation member that they had not been heard of the CBP One application and that their phones and all their belongings had been stolen along the way, so they had no way to seek an appointment even if they had known about the appointment system. At points along their difficult journey, they were not asked that they would receive. They expressed feelings of desperation and devastation to have finally made it to the U.S. border only to be turned back without any explanation.
- Humanitarian workers in Matamoros report that since the delegation's departure, IBM has continued to restrict Black people seeking asylum without CBP One appointments from proceeding at the land line to seek asylum.
- In addition to the lack of ports of entry, an attorney with the Center for Gender & Refugee Studies reported on May 13 that three Mexican families waiting to seek asylum were told to "use the app" and turned back.

**Mexican government collaboration to denial of access to asylum:** The Mexican government is collaborating with the United States to turn away people seeking asylum who do not have CBP One appointments. From health families and adults were waiting in an orderly way on the bridge on May 12th to be allowed in by CBP to seek asylum. Mexican IBM officers blocked the waiting asylum seekers off the bridge that evening and the Mexican military initiated a show of force that was terrifying to the families, young children and others who had been waiting on the bridge. A member of the delegation along with two other monitors observed in Mexican officers told the waiting families and adults - which included about 100 people including many small children, a teenage girl with a severe disability, and a man in a wheelchair - to leave their line and get off the bridge, and witnessed the overwhelming show of force that terrified many of these people and their children. This show of force included armed Mexican military forces and two helicopters. Mexican officers, as noted above, have also prevented people seeking asylum from crossing the bridge in order to attempt to seek asylum from U.S. authorities.

**Forced to Wait in Highly Dangerous Areas After Perilous Transit through Central America and Mexico**

Many of the people who were seeking asylum that the delegation met with had been stranded in Reynosa and Matamoros by the Title 42 policy, and will now be left stranded in highly dangerous and difficult conditions by the new asylum ban restrictions. In these areas, the level of violence and danger is so severe that the U.S. State Department claims that they are too dangerous for Americans to visit. Recent reports of restricted access policies make the areas even more dangerous for refugees, migrants, and humanitarian workers.

**Black refugees and migrants in particular face violence, rape, and kidnapping** by drug cartels and compounded risks in Mexico just because of the color of their skin, as human rights groups have repeatedly documented. Human Rights First has tracked over 23,000 (83%) of violence, kidnappings, torture and other attacks against people pushed or stranded in Mexico under the Title 42 policy, with particularly harrowing accounts of violence targeting Black migrants. For instance:

- One Haitian couple in Reynosa had been kidnapped off of a boat by and held to ransom and beaten regularly for one day until their family paid their ransom. They witnessed the kidnappers kill other migrants who did not pay the ransom.
- Violence against so frequently against Black migrants that when **four Black migrants** were kidnapped in Matamoros in March 2023 - of whom two were killed - many presumed they were Black migrants, which caused many Haitian migrants to be Matamoros and go to Reynosa.



**Forced to Wait (continued)**

Local humanitarian workers informed members of the delegation that violence and kidnappings targeting refugees and migrants are a constant occurrence in these areas. People lined up to be processed by DHS officers are targeted for kidnappings right outside the port of entry, including by taxi drivers who wait for them just outside the port of entry and deliver people they pick up to kidnappers who hold them for ransom. In addition:

- Days prior to our visit, a group of families which included children were expelled by CBP under Title 42 through the Reynosa port of entry and immediately kidnapped.
- A migrant was kidnapped from outside a shelter where he had been staying in Reynosa just prior to our visit and was left being held by his abductors.
- A Venezuelan young woman traveling alone whom we spoke with in Reynosa obtained a CBP One appointment at the Nuevo Laredo port of entry, but was notified to travel to Nuevo Laredo alone to access that port of entry as she feared of three Venezuelan girls who had her same shelter in Reynosa and were kidnapped trying to reach the same port of entry.
- Three elderly migrants were nearly kidnapped outside another shelter in Reynosa but were rescued by an aid worker who intervened at great risk and was able to convince the kidnappers to leave the migrants alone.
- And in the makeshift camps, as explained below, none of the necessary safeguards and systems are in place to protect women, children, LGBTQ+, and other vulnerable people from being targets of abuse and violence. Certain members reportedly burned down tents and attacked some people in the Matamoros encampment several weeks ago, terrifying many of the families and others staying in the camps who became even more fearful for their safety.



**Stranded in Atrocious Conditions**

Members of the delegation visited the Matamoros encampment as well as six shelters and makeshift encampments in Reynosa. Members of the delegation also visited and were briefed on and/or observed reception efforts to the Rio Grande Valley including in Brownsville and McAllen, Texas. The delegation met with community, faith-based, humanitarian, shelter, legal, and other organizations, groups and volunteers working in tremendously challenging situations with a significant lack of resources and struggling to provide humanitarian aid to people seeking asylum in the United States. Delegation members witnessed the astounding commitment and work performed by these individuals and organizations, and their willingness to work with U.S. agencies and communities to resolve the U.S. approach to human rights commitments to welcome with dignity people fleeing persecution and violence.

The delegation and its members witnessed abysmal conditions in open-air encampments along the edge of the Rio Grande where thousands of women, men, and children were living in makeshift tents made of blankets and garbage bags, lacking minimum standards for sanitation, availability of shelter, water, sanitation and hygiene, nutrition, and health services. There were piles of garbage, burn pits to deal with waste,

limited numbers of porta-potties, and a dangerous lack of sanitation and clean water which can present a risk of cholera. Many had no access to showers or washing other than the river.

Humanitarian actors working to provide limited medical attention indicated that diarrheal diseases, upper respiratory infections, and skin infections were the most prevalent. In some large encampments, people battle the heat making them vulnerable to parasites and skin infections as a result of bathing in unsanitary river water. Delegation members learned of a two-month-old baby from Honduras who was suffering from diarrhea the past week, a condition that can be very dangerous in infants due to dehydration. One man in an encampment in Reynosa with several hundred Haitians estimated that 75 percent of the residents suffered from untreated skin infections, particularly the children. A 16-year-old child who had a fever for days had no access to medicine or medical care, except for some free medications left on a table by someone inside the encampment. The child's mother worried that more people would become ill with the coming rains. A father with a young daughter was struggling to access medication and appropriate food for his son. Many tents are located in areas that are at risk of being washed away due to rain or flooding. Haitian Bridge Alliance contributed tents to one encampment that had recently lost tent infrastructure due to a storm. The day after we left, many tents in the encampments we visited in Matamoros were washed away due to rain.



Members of the delegation spoke with many women and families who had been victims of kidnapping for ransom along their journey through Mexico, confirming that Mexico is not a country that should be considered safe for many people who transit through the country on their way to seek asylum in the United States. Women, adolescents, children, and LGBTQ+ individuals face increased risks of harm such as gender-based violence including sexual assault while traveling through and staying in Mexico. A local humanitarian worker emphasized that gender-based violence prevention, mitigation and response services are desperately needed. For example:

- A Mexican indigenous mother survived an attempted sexual assault and filed an attempted kidnapping of her daughters as an encampment.
- A local humanitarian worker reported the brutal sexual assault of a 16-year-old woman.
- A young Venezuelan woman traveling alone was kidnapped and held captive for one month in Veracruz, Mexico.
- An Ecuadorian woman traveling alone was kidnapped since for a total of four months in Mexico prior to arriving to Reynosa, Mexico.
- A teenage daughter of an multi-generational Honduran family experienced an attempted kidnapping while the family was in Salinas, Mexico.
- A Honduran woman explained that she had been kidnapped in Mexico, held for a month and sexually assaulted; and
- Several Venezuelan women traveling alone were nearly kidnapped at the bot of the international bridge after being notified by CBP under Title 42 to Reynosa, causing them to "run for their lives."

Many people seeking asylum also related accounts of mistreatment, harm, and extortion in their journey to the Mexican-U.S. border, including by Customian police officers. Mexican immigration authorities, and brutal organized criminal entities that prey on migrants throughout Mexico. One Venezuelan woman recounted an incident where Mexican immigration authorities (INM) tore up her Mexican migration permit in front of her; another indicated she was returned by INM from Mexico City to Tapachula four times.

Survivors of domestic violence, sexual assault, human trafficking, and other forms of gender-based violence are exposed to ongoing traumatization. Because of U.S. policies that force them to wait in danger to seek asylum, living in unstable conditions, far from family, unable to provide adequate food, sanitation, and health care for themselves and their children, survivors experience a loss of control and agency over their welfare that can trigger memories of abuse and exploitation. Without mental and physical health care, as well as opportunities to live in safety and security, survivors can become especially vulnerable to further violence. Without legal and psychological support, many may not be able to explain why they seek protection in the U.S. The section has combined with traveling through the faulty CBP One app and otherwise being conditions, make it highly likely that many survivors of violence who need asylum as a means to avoid further violence will instead be pushed back to the Latin region back into situations of abuse and exploitation.

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**Refugee Profiles**

While the Biden administration, in its justifications for its new asylum ban, improperly and inaccurately attempts to paint people who have traveled through other countries as less likely to be refugees eligible for asylum, members of the delegation spoke with many individuals of diverse nationalities in Matamoros and Reynosa who in need of asylum protection and whose fundamental human right to seek asylum under U.S. and international law has been and/or will be violated by the asylum ban, such as:

- A Venezuelan LGBTQ+ and HIV positive young adult fleeing persecution;
- A Honduran multi-generational family who fled brutal violence in gang-controlled territory after six members killed their 15-year-old daughter;
- A Mexican indigenous family fleeing persecution who were displaced from their home by an organized group that exercised control over vast stretches of territory;
- An Ecuadorian LGBTQ+ couple fleeing persecution on account of their sexual orientation and relationship;
- A Venezuelan fleeing persecution for having opposed the government;
- A Honduran single mother with two children fleeing death threats whose son was killed in Honduras;
- An elderly Venezuelan indigenous man fleeing death threats and attempted murder by his gang in El Salvador;
- A Mexican indigenous mother and four children fleeing gender-based violence by her ex-partner;
- A Honduran couple with two children whose home was attacked by gunfire due to their resistance against a gang that controlled territory. After fleeing Honduras and while in Tapachula, Mexico, the couple identified some of their persecutors in a local park and immediately fled;
- A Honduran LGBTQ+ couple who, along with their young child, have been wanting to seek asylum for three months already after fleeing death threats as well as harm on account of their sexual orientation and relationship;
- Members of the delegation spoke with well over 100 Haitians who are in need of asylum and/or international protection due to systematic violations of rights, including sexual violence, kidnappings, and murder by armed groups, resulting in the issuance of a 100+ court orders by UNHCR which states that forced return to Haiti where Haitians may face risk of persecution, torture, or other serious irreparable harm would amount to refoulement;
- Further, members of the delegation spoke with Venezuelans who are in need of asylum and international protection given the political, economic, human rights, and humanitarian situation in Venezuela and threats to their life, security, and freedom. Indeed, UNHCR has issued 60,000+ to not forcibly return nationals to Venezuela as UNHCR considers that the majority of Venezuelan nationals are in need of international protection under the Refugee Convention and/or the criteria contained in the Cartagena Declaration.



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FAMILIES SEPARATED

Delegation members met multiple people who had been separated from spouses or adult children by CBP in recent days and weeks without being provided any information about their family members' fates. For instance:

- Members of the delegation met with seven pregnant Haitian women in McAllen, Texas, who had all been separated from their husbands by CBP after crossing from Matamoros under Title 42. CBP did not inform the women what would happen to their husbands. The women did not know if their husbands had been expelled to Mexico, and if so, through which port of entry. They did not know if their husbands were sent to ICE detention, or whether they would be released en route to join them. They were separated from their husbands and provided no information about their fates.
- A 21-year-old young woman was recently separated from her parents and family by CBP after crossing from Matamoros while Title 42 was in effect. Her parents, who were stranded in and transferred to McAllen, Texas, along with her younger sibling, were desperately searching for her as she had no phone and CBP did not inform them whether she was paroled, detained by ICE, or expelled to highly dangerous parts of Mexico on her own.
- A 21-year-old Honduran woman, who had been killed in the tragic event outside the Brownsville shelter had been separated from his parents by CBP custody, and his mother had been transferred to Laredo by CBP. When killed at the bus stop, he was on his way to reunite with his family.
- One Haitian man was separated from his 17-year-old daughter, and now he struggles to get a CBP appointment as his daughter is being held at a detention center in Brownsville.
- A Haitian family of 4 (mother, father, and 2 children) had to separate since the mother and father received appointments and the children did not. The mother decided to stay behind with the children while the father kept his appointment.
- Members of the delegation met a Venezuelan man in the Matamoros encampment who had been separated from his wife by CBP after they had crossed the border into the United States. CBP granted her parole and expelled him to Matamoros.



18 LIVES AT RISK

Overwhelming Lack of Critical Information

Most people the delegation met, after having waited for months or years to seek safety, had already been waiting for many months in dangerous conditions. Overwhelmingly, they expressed confusion about America's U.S. ability that are now in place and how to best access their right to seek asylum. Delegation members were unable to answer many of their questions because of the lack of transparency and information provided by the U.S. government.

Everywhere we went, people seeking asylum had questions about the asylum process and how to access appointments via the CBP One app, including the fates of the application that took effect on May 20th. They had little to no information. A few aid workers and volunteers in the area had done their best to circulate or pass out some copies of flyers explaining the changes to the CBP One app. None of the people seeking asylum we encountered understood the changes that went into effect on May 12, with the lifting of Title 42 and the impact of the asylum ban, which was only finalized two days prior to taking effect on May 12 - on their right to seek asylum.

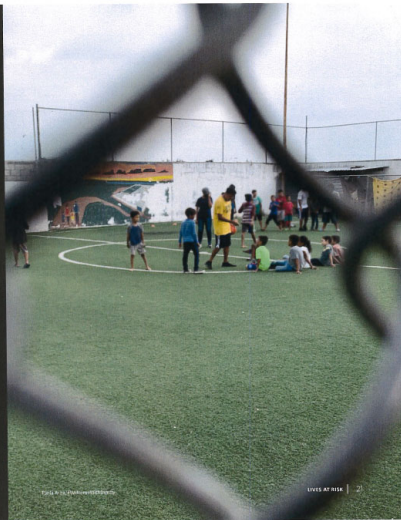
Delegation members explained the U.S. process for seeking asylum. CBP One and the new asylum ban at various shelters and encampments. Many people were confused by the new rule and procedures, and had more questions. A person seeking asylum from Cuba asked a delegation member "why does the relief nation on earth have to make it so hard to apply for asylum?" Upon hearing that use of the CBP One app with its highly limited number of appointments was necessary to any potential path for those to seek asylum, we were met with uniform despair by people living in highly vulnerable and precarious situations who had already been waiting months attempting to obtain an appointment to no avail. Because of the unique nature of the locations included in the asylum ban, members of the delegation who provided legal information were able to provide very little certainty to people seeking asylum trying to decide whether to proceed or post-wait in a CBP One appointment as to whether their circumstances (including medical emergency and disability) would overcome the asylum ban or if they would be barred to withholding of removal or Convention Against Torture eligibility.

The delegation noted a troubling lack of U.S. government information aimed at informing people how to seek asylum or the regular consequences imposed by the ban. For instance, people who were waiting at the border without appointments on May 12, understandably believing they could now seek asylum under U.S. and international law, did not receive any U.S. government advice about the potential impacts of the ban on their ability to seek asylum and several shared this lack of information to decent given the failure to inform them of the potential consequences of the ban and other negative consequences under the asylum ban. Without the necessary information - and death-knell legal consultations - they could not make an informed decision.

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CONCLUSIONS

The delegation observed the behavior of the Biden administration's asylum ban, and its observations raise grave concerns that the continued implementation of the ban will endanger the lives of people seeking asylum, discriminate against many of the most vulnerable people seeking asylum, and justify continued asylum adjudications done by ICE. The Biden administration should rescind the asylum ban immediately, and take the rights respecting recommendations outlined at the beginning of this report.



20 LIVES AT RISK

LIVES AT RISK | 21



**REPORT & DELEGATION LED BY:**

HAITIAN BRIDGE ALLIANCE  
**The Bridge**

**ACLU** **AMNESTY INTERNATIONAL**

**Human Rights First** **NATIONAL IMMIGRANT JUSTICE CENTER**  
A HEARTLAND ALLIANCE PROGRAM

**NATIONAL IMMIGRATION LAW CENTER** **TAHIRIH JUSTICE CENTER**

**UNDUCUBLACK NETWORK** **WELCOME WITH DIGNITY**

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Ms. CLARKE. I would also like to just say that for those who are Christians in the room, you know, I just find it very, I guess, disorienting that we see suffering around us as a Nation, one of the wealthiest in the hemisphere, and that today we sit here not looking for solutions, but creating problems. Jesus Christ was a refugee. I yield back.

Chairman GREEN. The gentle lady yields. I now recognize Mr. D'Esposito of New York for his 5 minutes.

Mr. D'ESPOSITO. Well, thank you, Mr. Chairman. Thank you to our panel. Thank you for those who have served this country and for all the work that you continue to do. I first want to start with,

I guess, a simple question to each of you and ask who Secretary Mayorkas was appointed by?

Mr. WOLF. The President.

Mr. D'ESPOSITO. Our current President.

Mr. WOLF. President Biden.

Mr. D'ESPOSITO. Thank you. Mr. Scott.

Mr. SCOTT. President Biden.

Mr. EDLOW. President Biden.

Ms. ACER. President Biden.

Mr. D'ESPOSITO. Thank you. I just wanted to make that clear. So, I guess my first question is going to be to Mr. Scott. There was a story that in response to a mounted Border Patrol agent in Del Rio, Texas, Secretary Mayorkas had stated about the images that were shared, that they "those images painfully conjured up the worst elements of our Nation's on-going battle against systemic racism." Now, I asked that question because on my multiple visits to the border and speaking to Customs and Border Patrol agents just recently, I visited JFK Airport, which is just blocks from my district. I am a retired NYPD detective. I feel that boots on the ground, having conversations, speaking cop to cop, you really get an understanding of how people feel.

So, how do Border Patrol agents who have legitimately made it their life's work to secure our border feel when their so-called leader, the Secretary of Homeland Security, rewards their hard work by slandering them as systemically racist?

Mr. SCOTT. It's a kick in the gut. I'd like to point out that that followed the Secretary going on national TV and declaring that the border was secure. So, his credibility was already challenged. But that second kick in the gut really damaged morale beyond anything that could be imagined.

Mr. D'ESPOSITO. Thank you. I think what was important, you said in your opening statement that this is not about policy, it is about his legal duty and the fact that he took an oath. I said when he was here that you take an oath to defend and protect the Constitution, you protect our Nation's borders. That is what he should be doing. From the moment he wakes up in the morning to the moment he closes his eyes in his bed, he should be working every second to protect this great Nation. I think it is clear from today's hearing that Secretary Mayorkas has been derelict in his duties to secure the homeland, but also derelict in his ability to protect CBP agents and DHS employees.

Both Border Patrol Chief Raul Ortiz and National Border Patrol Council Vice President Chris Cabrera recently told Congress that 17, 1-7, CBP personnel committed suicide in 2022, the highest total in over a decade. How has Mayorkas's unprecedented border crisis affected the lives and families of our Border Patrol agents?

Mr. SCOTT. I'm hesitant to blame the border crisis on any specific death or suicide, but I want people to think about this. Every law enforcement agency out there has to make decisions. He misses birthdays, he misses soccer games just because of the schedules they work. There's a lot of family tension. But historically, that agent, that officer, has been able to go home and say, I'm protecting America. I'm doing this so that our kids can have a better life.

This administration makes Border Patrol agents and many CBP officers feel like smugglers. They no longer have that intrinsic mission that they can justify to their spouse, to their kids, of why they miss those important events. I believe that has cascading effects in many areas and can potentially be a factor in the suicide.

Mr. D'ESPOSITO. I agree with you. I think that someone who came from law enforcement, there is nothing more important than knowing that your leader or so-called leader has your back. When you go to work every day and realize that the control at the border is no longer in your control, but now in the control of cartels, it makes your life more difficult.

Seventeen CBP suicides in 1 year is absolutely intolerable. Do you believe that Secretary Mayorkas has been derelict in his handling of the crisis among the Border Patrol agents? I don't just mean the policies along the border, but the way that he is treating the men and women who put on that uniform, the men and women who stand that line, the men and women who want to protect our points of entry?

Mr. SCOTT. I believe he's derelict. I'll go back to the horse patrol incident in Del Rio. You know, everybody focuses on the first allegation that was proved wrong very, very quickly. Yet, behind the scenes, Secretary Mayorkas still moved to take disciplinary action against those agents for doing nothing but trying to prevent the illegal entry of aliens into this country right in front of them, which is their job. When he disciplined those agents, that sent a resounding message throughout the entire work force that not only did he not have your back, he was out for you.

Mr. D'ESPOSITO. I agree. Listen, when so-called leaders, and we have seen it in the State where I am from, when you take the handcuffs from the police, when you take the handcuffs from their belt and actually handcuff the police and give criminals and in this case, cartels more resources, things need to change. I appreciate your service. Mr. Chairman, I yield back.

Chairman GREEN. The gentleman yields. I now recognize Mr. Menendez for his questioning. The gentleman is from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. You know, as I think others have alluded to, this is a bit of a frustrating day. We had Secretary Mayorkas here in front of this committee, and I think there was maybe only a handful of questions asked during that hearing from colleagues across the side. The opportunity to really engage with the Secretary that you are now looking to remove from office. There wasn't a lot of appetite to engage in that honest conversation.

Then today, we get this report, you know, shortly before this meeting. It took me no time to go through it because this is supposed to be an investigation, a report looking into what is happening at our border. But throughout it, using sources like *Fox News*, the Heritage Foundation, the *Washington Examiner*, the Center for Immigration Studies, an extreme think tank, the Daily Signal, all outlets that reaffirm what Republicans want to make the border seem instead of doing a real investigation, thoughtful about how we can improve the situation at the border, which Democrats have engaged in.

When we have talked with Chief Ortiz, he has talked about how the funding is working, that they have the funding that they need, but they need to continue to work on recruitment. He even spoke about how morale is high, which you don't hear from folks in this room because I feel like there is an attempt to paint a picture that is politically beneficial for folks, my colleagues, who I do have immense amount of respect for. But they have already made the decision about what they wanted this report to be.

You look at the sources throughout, you look at how statistics are framed, and it is all done to get to the destination that they had already decided they wanted to arrive on. To me, you know, that is extremely problematic, along with other things throughout this. Again, we only had minutes to review, and I was just in a T&I Committee on the FAA reauthorization. But there is a section called Empowering a Vast NGO Network to Facilitate Illegal Immigration. We are talking about groups like Catholic Charities. We are not talking about some sinister operation that the Federal Government is working with NGO's to move illegal aliens across. That is not what is happening. We are talking about people who are trying to help other human beings, organizations like the Catholic Charities. Here in this report, where we are making it seem sinister.

Also, just to be clear, this is not just about the border. There is a section, Rolling Back DACA. People who have lived here their entire lives. Rolling back DACA is one of the solutions that we should give consideration to. So, this is not just about the border. This is about, you know, an extreme policy toward the border, toward immigration, based on, you know, non-objective sources that aided this report to move in a way where it got to the destination I think a lot of people wanted to get to. That is disappointing. I do think people ask us and look to us to get to real solutions.

The last thing I will say is I think there has been an immense amount of talk about 85,000 unaccompanied minors who are lost. I don't believe any of the witnesses are with HHS or have worked at HHS, but as I understand it, the situation is that they place calls to these families, to these sponsors of these children, and there was 85,000 unanswered calls. I understand that as a fact, but there is no one here from HHS that can speak to that. But it is something that I think would course correct a lot of the conversation that has been had today. Obviously, if there is any migrant children that are unaccounted for, that is something we want to work on. That is absolutely something we would want to work on. But when you talk about the dereliction of duty, when you talk about all the things you try to cast upon this administration, upon this particular Secretary, you are doing so in a dishonest way.

That is just a disappointing thing for me, because I do have so much respect for our public servants, my colleagues, the staff of this committee. But this is not the direction we should be heading. This is not the result. If you want to take a real look at the border, this is really, to me, just political messaging now. I yield back.

Chairman GREEN. The gentleman yields. I now recognize Ms. Lee from Florida.

Ms. LEE. Thank you, Mr. Chairman, for having this important hearing and to our witnesses for being here today. It is undeniable

that we have a national security and a humanitarian crisis at our Southern Border. Under Secretary Mayorkas's leadership at the Department of Homeland Security, the number of illegal border crossings has reached a record high. Many of these crossings are unaccompanied children. These children are vulnerable to trafficking, exploitation, and other forms of abuse. Just last month, we saw a migrant child who arrived in Safety Harbor near my district without a parent or guardian, who died in Federal custody.

Tragedies like these are avoidable and preventable. Today we have heard testimony about decisions that are being made at the Department of Homeland Security that have facilitated this crisis. Mr. Wolf, I would like to return specifically to a line of earlier testimony you were providing about the decisions of Secretary Mayorkas to suspend certain policies that have had the net effect of endangering these unaccompanied children who are coming across our border. Specifically, you touched on a couple of things that the vetting of sponsors and household members for these children is not being done appropriately and that site visits have been eliminated. Would you tell us, please, a little bit more about those safety protocols and the significance of them not being done effectively?

Mr. WOLF. Sure. Once children come across that border and Border Patrol apprehends them, they are quickly transferred over to HHS facilities where they stay until they're able to find a sponsor. The sponsor comes, picks them up, and they do that. What we were finding was that individuals coming to pick them up, we didn't know who they were, and the background checks and the type of vetting that was done was not sufficient. We wanted to make sure that we were protecting those minors and that they were going into households that they wouldn't be trafficked, they wouldn't be further trafficked in.

But again, this administration, for a variety of different reasons, I think we could only guess, decided to reduce the amount of vetting on those sponsors that come and pick them up. But it's not only the sponsor it's again, it's the others in that household. So, it's not enough to do that background check on one adult, but if there's five other adults in that household, you want to know who they are as well. Again, they have reduced those vetting requirements, site visits as well.

My guess, and it's a guess, is because early on in this administration, the number of children coming across that border in such astronomically high numbers was backing up HHS facilities.

Ms. LEE. Is—

Mr. WOLF. There were too many children in there. So, the quickest way to get children out of those facilities is to reduce the amount of time they're in the facility, which is to say, reduce the amount of vetting, because vetting does take time. We need to make sure that we know who those individuals are that are picking up these children. But if you reduce that amount of vetting and you reduce the time, then the children can go through those facilities quicker and there's not lines and they're not backing up.

Ms. LEE. Mr. Wolf, is it correct to say that those protocols, those measures that you used to implement with checking the people, checking the sponsors, checking the people who are living in that

home, verifying that the sites are safe, and conducting that ongoing monitoring of the sites, was that an important part of ensuring that we are keeping these unaccompanied minors safe when they are here in our country?

Mr. WOLF. Well, absolutely. From the HHS perspective, Chief Scott talked about it earlier, DNA testing is something that Border Patrol could do. So, we actually tried to find it early in the system, as early in the system as humanly possible, which is when they cross that border and they go before that Border Patrol officer to do that questioning, that line of questioning. Again, as you reduce that, you're taking more and more protections away from trying to protect these children and trying to reduce the amount of trafficking that's going on.

Ms. LEE. Thank you. On that subject, Mr. Scott, would you please return to the subject of DNA testing and tell us what role does DNA testing, why is it important in our efforts to combat human trafficking and the exploitation of children?

Mr. SCOTT. It's very important for the simple reason you're trying to identify people and you're trying to make sure people's stories actually match. I left out of my statement earlier, in the INA, it mandates that we fingerprint and photograph anybody over 14 years of age. It's silent below, but Council has determined that you need reasonable, articulated facts above and beyond to do the fingerprinting and photographing of minors. So, most children because, again, Border Patrol doesn't have time right now to get those facts, aren't fingerprinted or photographed. So, there's no historic data to look at to figure out if the child is being recycled or not. Then on top of that, the massive flow.

So, the DNA testing, the real, actual rapid testing at the stations, and just the threat of that could take a potential 2- or 3-hour interview and make it into minutes. Because people broke left and right that it's not really my kid. Because we would tell them, you're going to be prosecuted. You can tell me the truth now.

But now they don't have the ability to do the threat. Then if someone sticks to their story, they don't have the ability to actually identify that there is no actual biological connection between these people. More children will be trafficked. More children are at risk.

Ms. LEE. Thank you, sir. Mr. Chairman, I yield back.

Chairman GREEN. The gentlelady yields. I now recognize Mr., well, we have Ms. Titus here. I recognize Ms. Titus from Nevada.

Ms. TITUS. Well, thank you, Mr. Chairman. I apologize for being late. I was in a mark-up. But it doesn't sound like I missed much because it is the same old points being hammered over and over again for political reasons and not trying to really look for a solution. Also, this committee just continues to look at this one topic. If you are talking about dereliction of duty, perhaps we should be looking at some of the other aspects of homeland security, like cybersecurity. That is such a major issue. Or real immigration reform, or domestic terrorism, those are all part of our charge. Not looking at those, I think, is a dereliction of duty.

In my district, we have a lot of mixed-status families. We have somebody who is a dreamer, somebody who is TPS, somebody who is a citizen, somebody who has no papers, and somebody who doesn't even know what they are. So, that is five problems all in

one. I would like to ask you, Ms. Acer, if you would comment a little bit about the TPS aspect of that, because it was just announced that the President was going to extend TPS for El Salvador, Honduras, Nicaragua, and Nepal. Can you talk about how that helps with humane immigration or accommodation of people here? We have got 6,000 TPS holders, mostly from El Salvador in southern Nevada. So, I would just like to hear more about where that is.

Ms. ACER. Yes, TPS is critical. It is, you know, a life-saving protection for people from places that, you know, are too dangerous or for other reasons people cannot be returned to. So, it's a life-saver. It could be improved, and there needs to be access for people to eventually, after a certain number of years, to really be able to stabilize their families, to be able to bring their kids to safety and, you know, ultimately to get onto a path to citizenship.

Ms. TITUS. Well, I know that the former President ended TPS, excuse me, for some of these countries. There were some people who had been here 20 years, had established a family, had a job, paying taxes, and then suddenly that is yanked away and they are sent back. So, maybe you could help us with some ways that we could actually put forward to improve the system, as you mentioned.

Ms. ACER. I'd be happy to suggest changes, and I think one of the most important ones is that people can actually get onto a path to citizenship at some point and also to bring their families together. We also need to make sure to be using redesignation authority, because sometimes a situation in a country triggers a need for TPS, and then, you know, time can change again, time goes on, but actually the situation is even worse. So, that TPS needs to be redesignated to make sure to protect people.

Ms. TITUS. Thank you. Also, I think you were on the ground when Title 42 was lifted. You know, there were some that were just so anxious to see these people rushed across the border, chaos, sending down troops. I don't know if they thought there was going to be some confrontation, but of course it didn't happen and the numbers have actually gone down. Would you talk about that a little bit for us?

Ms. ACER. Yes, so we were there, including on the first day after Title 42, we were in Matamoros, we also were in Reynosa. Everywhere we went, you know, we met asylum seekers. We spoke to, I think, hundreds of asylum seekers. I was part of a delegation with the Haitian Bridge Alliance and other NGO's, as well as just on our own, with our own researcher. You know, people were struggling to follow the process for seeking asylum at ports of entry. We were asked so many questions about the CBP One app. People were trying to use it, couldn't get an appointment. There were tons of glitches, as you've all heard. Some people with dark skin were having trouble actually being able to register for the system.

Many people don't have phones, asylum seekers. We spoke to many families who had been robbed of their phones or didn't have one to begin with. In some cases, there was a need for internet access. You know, people were walking around struggling, trying to get sufficient internet access to be able to actually use the app.

The other problem is that the number of appointments are really small when you look across the border and you have asylum seek-



ers who've been waiting and waiting, you know, for weeks and months. It's in the U.S. interest for people to actually go to ports of entry and seek asylum there, if possible.

I'd stress also, though, that it's so important for there to be access to asylum for people who can't use and access CBP One. Not everyone can. There are people who don't speak languages that are used by the system. As I mentioned, there are people without phones. We've got to make sure that our ports of entry are operational and that there's ways for people who are seeking asylum who don't have to have CBP One appointments to be able to do so and who can't get them. Asylum seekers from Mexico. There are asylum seekers from Mexico who have been waiting and waiting. It's the next-door country but can't get in at one of the ports of entry.

Ms. TITUS. Thank you, and I yield back, Mr. Chairman.

Chairman GREEN. The gentlelady yields. I now recognize Mr. Strong from Alabama.

Mr. STRONG. Thank you, Mr. Chairman. Mr. Wolf, under U.S. law, the Secretary of the Department of Homeland Security is, and I quote, "charged with a duty to control and guard the boundaries and borders of the U.S. against illegal entry of aliens." Mr. Wolf, would it be safe to say that it is a responsibility of this role to be apprised of strategies, tactics, and methods being employed to exploit our borders?

Mr. WOLF. Absolutely.

Mr. STRONG. Would you also say that a great deal of time at DHS is devoted solely to briefing and keeping the Secretary informed on such matters?

Mr. WOLF. Yes, there are numerous ways the Secretary stays informed about a number of things going on at the border.

Mr. STRONG. Thank you. On several occasions this year when he has appeared before Congress, Secretary Mayorkas has testified that he was unfamiliar with some of the tactics being employed by cartels at the Southern Border. Mr. Wolf, in what circumstance would you say it is understandable or acceptable for the Secretary of Department of Homeland Security to be unaware of what is happening at the border?

Mr. WOLF. In that particular instance, I can't imagine how he's not aware of those tactics.

Mr. STRONG. Is it a total failure at every level?

Mr. WOLF. Again, I can't imagine why he would not know that just by visiting the border, talking to Border Patrol agents, and understanding that, frankly, it's just common knowledge—

Mr. STRONG. I would—

Mr. WOLF [continuing]. That those are the tactics.

Mr. STRONG. I would think so also. Mr. Wolf, Mr. Scott, Mr. Edlow, whoever is comfortable, Secretary Mayorkas has had more than 2 years to observe the failure of his policies and either change course or resign if not allowed to by President Biden. He has done the opposite, doubling down on those policies, and implementing new unlawful programs. Does this strike you as someone helplessly responding to a crisis or someone intent on policies that caused the crisis?

Mr. SCOTT. I believe he's very committed to his policies. I don't mean to be out of order, but I'd like to comment on your last question for the Secretary.

Mr. STRONG. Please do.

Mr. SCOTT. I put in writing, as the chief of the Border Patrol what those tactics were in a memo that went through commissioner, Acting Commissioner Troy Miller, and it was addressed to Secretary Mayorkas. It's clearly outlined. That was while I was still chief of the Border Patrol. I—

Mr. STRONG. Thank you. Mr. Scott, I appreciate that. I want to come back to you with this question. Why would the Department of Homeland Security Secretary oppose the construction of more border wall system, especially when Border Patrol agents routinely say it is an important part of the toolkit?

Mr. SCOTT. Because the President campaigned on no more border wall.

Mr. STRONG. Thank you. Mr. Scott, since you are here, and I want to thank you again for coming back before us. I know I have met you several times. During the Trump administration, you looked—the big thing that I saw whenever you were there, Border Patrol apprehended, processed, and by ICE Air returned these illegal aliens to the country of their origin. What message did this send when you were there to those seeking to enter America illegally?

Mr. SCOTT. That is a huge deterrent. A couple of things happened, I think, and we keep talking about gotaways, but what people aren't really understanding is that every gotaway and then every person released into the United States does exactly what you would do. They call home and they tell their family and friends where they're at. They check in. Their friends and family hear that, that message gets out, and more come. When we put people on airplanes and they show up back in the home country after expending all these resources, they have horror stories about the trip, unfortunately, but they chose that trip. But they tell those stories and then they see them back home. That has a huge deterrent effect. That actually saves people's lives because people choose to stay where they're at and make things better as opposed to put themselves in the cartel's hands.

Mr. STRONG. Thank you. Mr. Wolf, Secretary Mayorkas has apparently turned off all the fiber-optic sensors embedded in the border fence that was built during the Trump administration to allow the Border Patrol to detect when and where people are trying to either climb the fence, which is not easy, or cut through the fence with welding equipment. Do you believe Secretary Mayorkas has played a role in directing the Department of Homeland Security to halt the completion of lights, post-construction, and/or turn off the fiber-optic sensors embedded in existing fences?

Mr. WOLF. So, I can't think of a reason why you would decommission or turn off capabilities that are already installed. The border wall system is much more than just that physical infrastructure. Lights, camera, roads, physical access, all the things that Border Patrol agents need to do their job, why you would turn those off, it's beyond me. I can't even think of a reason why you would do that.

Mr. STRONG. Thank you. With 8 seconds left, I know it was mentioned that illegals don't have internet access. I want to let everybody know that there are counties in Alabama that don't have internet access also. We need to work on America to solve that problem. Thank you. I yield back.

Chairman GREEN. The gentleman yields back. I now recognize Mr. Ezell from Mississippi.

Mr. EZELL. Thank you, Mr. Chairman. Fentanyl poisoning is now the largest leading cause of death for Americans 18 to 49. As a 42-year law enforcement officer and a sheriff, I saw the devastating effects of young teenagers and young adults dying as a result of this. It is heartbreaking. The death toll continues to climb. The rising power of the Mexican cartels continue to grow. This low-cost manufacturing of a drug is terrible to this open border. Mr. Scott, do you believe the current fentanyl crisis is the consequences of Mr. Mayorkas's open border policy?

Mr. SCOTT. I believe that in part it really is. I want to highlight some misinformation. People keep talking about seizures as if it was the total. More fentanyl is seized at the ports of entry than in between the ports of entry. But it's because CBP officers are there doing a fantastic job. They're ready to greet everybody every day. We're leaving hundreds of miles of border open every single day. No one patrolling it. But yet Border Patrol is still catching fentanyl between the ports of entry. The metric needs to be how much is available in our cities. There's no shortage.

Mr. EZELL. Mm-hmm. In your role as Border Patrol Chief, how you have seen cartels, tell us how you have seen the cartels capitalize on the border crisis and used the surges for migrants to smuggle their narcotics.

Mr. SCOTT. So, historically, the cartels have used any distraction they can. Honestly, a lot of people have a hard time picturing this. So, just think of sports. You fake a play to the right, you run the real play to the left. That's what the cartels have done. They've always done it. They've always tried to do it. When you've seen in El Paso a young child, I think the last one was basically like a several-month-old child being dropped over the fence in plain sight of cameras where they know it's going to be viewed that's because they know agents are going to prioritize taking care of that baby and they can push something else through.

Now unfortunately, we've given them millions of distractions. We've given them right now, what, 3,500 distractions a day that the Border Patrol is having to go deal with so that they can bring anything they want in. It's lowered their overhead. It's lowered their risk. It's a direct impact on the ability to get narcotics in cities in the United States and other threats.

Mr. EZELL. Thank you. Mr. Wolf, last year 850 migrants died at the border. This is the highest ever recorded. The average under the Trump administration was 280. If this is the case, why does the Biden administration continue to tout their immigration policies as safe, humane, and orderly?

Mr. WOLF. I'm not sure I have an answer for you, Congressman. The amount of deaths that are increasing in that desert and along that river are a factor of the amount of people coming across the border. We're seeing a huge spike, right? So, we were at 10,000 a

day. For a long time, we were at 7,000 a day. We're still at 3,500 to 4,000 a day, right? You only have to go back to Secretary Jeh Johnson under the Obama administration, who said 1,000 a day is a bad day for the Border Patrol. We're in crisis mode. We're still at 3,500.

So, this idea that somehow we have retracted from 10 and that we should pat everyone, ourselves on the back and say, good job, you're still losing the ballgame in a big way. So, I think that is something we need to look at.

Mr. EZELL. Absolutely. Thank you. Mr. Wolf, I keep thinking about these words safe, humane, and orderly. Do you believe that Secretary Mayorkas has been honest with the American people?

Mr. WOLF. I don't. Not only on those words, but, you know, when you talk about the border is secure, operational control, he talks about putting people in expedited removal. He knows what that means. The staff of this committee knows what that means. None of those individuals will likely be removed. All they have to do is claim asylum and they are pulled out of expedited removal.

So, he uses terms like these for the American people to try to explain away what's going on along that border. But those that work in the Department know immigration. They know something else. So, if you're a Border Patrol agent and you hear these words and you're saying, you know, your political leadership is saying, look, I'm removing all these folks under expedited removal, you know that's not the case.

Mr. EZELL. Mr. Scott, could you add anything to that?

Mr. SCOTT. I would agree to that 100 percent. The words very rarely match the actions. I'll just leave it at that.

Mr. EZELL. Thank you, Mr. Chairman. I yield back.

Chairman GREEN. The gentleman yields. I now recognize Mr. Brecheen from Oklahoma.

Mr. BRECHEEN. Thank you, Mr. Chairman. So, Secretary Mayorkas swore an oath to support and defend the Constitution against all enemies, both foreign and domestic. He swore that oath to defend against all enemies, foreign and domestic, to the Constitution. He did not swear an oath to support this administration's policies. By this Majority Membership's count, Secretary Mayorkas has chosen to ignore or refuse to enforce over 10 different Federal laws. This is a dereliction of duty and a violation of his oath.

The rule of law, which is a term that is thrown around oftentimes by Members of Congress, means that nobody is above the law. It means no Member of the Congress, it means no member of the Judiciary, it means no Secretary of Homeland Security. The rule of law matters. What the Constitution and what Federal law dictate matter. Speaking about the rule of law, Margaret Thatcher once said, any country or government which wants to proceed toward tyranny starts to undermine legal rights and undermine the law. President JFK, John F. Kennedy once said, certain other societies may respect the rule of force of law—we respect—rule of force, we respect the rule of law. Barack Obama, former President, said, one of the challenges of a democratic government is making sure that even in the midst of emergencies and passions, we make sure that the rule of law . . . prevail.

So, I want to talk about the Federal law, and I want to talk about the areas that have been violated. Section 103(a)(5) of the Immigration and Nationality Act says that, he, speaking of Mayorkas in his position currently, shall have the power and duty to control and guard the boundaries and borders of the United States against illegal entry of aliens. Mr. Scott, how is Mayorkas violating this?

Mr. SCOTT. He's not even trying. So, all you have to do is look at his words, any public statement. He continually talks about creating pathways for more migrants to come to the United States. CBP One app is nothing more than an invitation world-wide without any immigration documents or any right to come to the United States. You've never heard him once support any initiative the Border Patrol put out that actually allows them to increase their situational awareness and be able to stop the flow. He even disciplined agents for trying to stop the flow.

Mr. BRECHEEN. Mr. Wolf, I am going to read something, throw this to you. On May 10, a reporter, immigration analyst Todd Bensman reported ahead of the expiration of Title 42 that Mexican immigration officials were informing him they were coordinating with DHS personnel on the other side of the border to move illegal aliens from the Mexico side of the Rio Grande to the American side. In other words, Mexican DHS officials were helping illegal aliens cross into the United States. This would violate Section 274 of the Act we just cited, which prohibits aiding and abetting illegal immigration or helping someone enter the country illegally. What are your thoughts on this?

Mr. WOLF. I think it's concerning. Look, Border Patrol agents are in a difficult position. When they see hundreds of folks coming across that river, they want to make sure that they're safe and secure, but at the same time, they should not be facilitating that either. So, my guess is those decisions had some buy off from leadership somewhere in the department.

Mr. BRECHEEN. They would have to.

Mr. WOLF. Yes.

Mr. BRECHEEN. They would have to. No one would take that upon their authority without Mayorkas knowing about it. Mr. Wolf, Section 212 of the Immigration and Nationality Act, also just mentioned beforehand, says that parole can only be granted on a case-by-case basis, a temporary basis, for an urgent humanitarian reason, significant public benefit. How is Mayorkas's mass release of illegal aliens into the interior violating this U.S. law? Where is he deriving the authority to violate the clear language of the statute?

Mr. WOLF. So, we use that authority very differently. Urgent humanitarian need is if someone needs to come into the United States for a medical procedure of some kind, you allow them in, and then obviously you remove them as well. For a significant public benefit, you want to parole someone in to probably testify at a criminal trial, you parole them in, and then you ask them to leave. What you don't do is parole 360,000 individuals a year from four different nationalities, regardless of who you are, regardless of what you do, the simple fact that you come from that country, that you are somehow granted parole.

I think it's interesting that those individuals are not being put in the asylum system. So, the administration is either signaling that they don't qualify for asylum or the system's broken, which we know it to be. Instead, they're paroling them in, which is a different set of benefits. Again, it's a little bit of a shell game that they're using.

Mr. BRECHEEN. Is he adhering to Federal law?

Mr. WOLF. I don't believe he is.

Mr. BRECHEEN. No. Last question, Mr. Scott. Article IV, Section 4 guarantees to every State a Republican form of government and to protect those States against invasion. Five million people, more than the population of Oklahoma have come in illegally under the Biden administration. Do you believe that he is violating the Constitution, Article IV, Section 4?

Mr. SCOTT. I believe what we have at the Southwest Border currently is an invasion but for a slight different reason than most people understand. The illegal aliens themselves may not be the invader, but they are being used by a cartel that has nation-state power. People don't understand the power of the cartel in Mexico, the influence they have on the government, the weaponry they have, is equivalent to many, many countries. That cartel is using this massive illegal immigration every day to invade our country, the sovereignty of it, and to pose real threats. Through fentanyl alone, which is only one of the things they smuggle, they've killed more Americans than most wars. It's an invasion.

Mr. BRECHEEN. Thank you. I yield, Mr. Chairman.

Chairman GREEN. The gentlemen yields. I now recognize Mr. Crane from Arizona.

Mr. CRANE. Thank you, Mr. Chairman. I find it interesting that many of my colleagues continue to talk about how Republicans screaming about open borders is causing this invasion. I want to ask a couple of the panelists, weren't you guys paying attention back in the Presidential campaign back in September 2019, when then-candidate Joe Biden said, we are a Nation who says if you want to flee and you are fleeing oppression, you should come? Mr. Wolf, did you hear that?

Mr. WOLF. I did.

Mr. CRANE. Mr. Scott, did you hear that?

Mr. SCOTT. Yes, I did.

Mr. CRANE. Mr. Edlow.

Mr. EDLOW. I'll be honest, Congressman, I wasn't paying attention at that point.

Mr. CRANE. Darn it, Mr. Edlow, you broke the streak. Ms. Acer, how about yourself?

Ms. ACER. I don't recall the exact words, but certainly I've heard President Biden speak positively about the importance of seeking asylum.

Mr. CRANE. What do you think, Mr. Wolf, what kind of message do you think that sends to people that might want a better life?

Mr. WOLF. Well, I think it sends the message that the borders are open. Now is the time to come. If I'm elected, there's going to be a new security regime along those borders. I think that we saw the results of that.

Mr. CRANE. Absolutely. Absolutely. I wanted to double-tap on that because that is a massive part of the causation here. Next, you know, I just I find it interesting as I sit in this chamber and I continue to hear political theatre, political theatre. This is all political theatre.

I want to go through some of the political theatre that we continue to hear. Four-point-eight million encounters at the Southwest Border, 1.3 million known gotaways, 69 individuals just this year on the Terrorist Watch List, 71,238 fentanyl deaths in 2022. Does that sound like political theatre to you guys?

Mr. WOLF. It does not.

Mr. CRANE. No, it is not. How about this? Border town's only hospital running out of resources, on the brink of collapse caring for migrants. Yuma, Arizona in the State that I represent. Does that sound like political theatre? That is the problem. These are real lives. These are real issues. This is real infrastructure that is being overrun. This isn't political theatre.

The reason we continue to scream about it is because our colleagues don't really seem to care. Quite honestly, the American people sends us, Congressmen and -women representatives to represent them up here in Washington, DC and they are feeling the causation of these policies. They are feeling the causation of this plan.

I want to also go into the political theatre of what the American taxpayer feels, \$182 billion dollars reported to cover the costs incurred from the presence of illegal aliens. That is \$1,156 every year per taxpayer. Is that political theatre? Do people feel that, Mr. Wolf?

Mr. WOLF. I believe they do feel that. I think the most concerning thing is it's all avoidable.

Mr. CRANE. Absolutely. What about you, Mr. Scott? Do you think that American taxpayers feel that?

Mr. SCOTT. I spent most of my career along the Southwest Border. I work with Texas a lot right now, and they're double-paying for border security. It's a resounding yes. It's completely avoidable.

Mr. CRANE. Absolutely. How about five suspected MS-13 gang members in United States illegally charged with murder and death of Maryland 15-year-old? Is that political theatre? California MS-13 gang member accused of 10-year-old's torture and murder. How about that, political theatre? How about this one? Five MS-13 gang members who killed Virginia teenager sentenced to life in prison, *Washington Post*. More political theatre that we have to continue to scream about because nobody on the other side is listening. This administration continues to ignore it.

You know, one of the most interesting things, because I am the last person that gets to question anybody, Mr. Scott, I heard you testifying. How many administrations did you serve under, sir?

Mr. SCOTT. I was in the Border Patrol for about 6. I was in leadership positions in 5.

Mr. CRANE. Right. You know, you said something that really struck me as somebody who has been in the military before. You said that when you actually and members of your team actually brought up deterrence on phone calls with this Secretary, that you guys were shut down immediately.

Mr. SCOTT. Correct. Face-to-face, transition teams, phone calls, the entire time.

Mr. CRANE. That seems really odd, sir. It doesn't sound as if this Secretary wanted to hear what could stop these 71,000 fentanyl deaths, what could stop these hospitals from getting overrun, what could stop these children from getting murdered by MS-13 gang members? Does it?

Mr. SCOTT. No. We were prevented from talking about border security or threats at all.

Mr. CRANE. The last thing I want to say, Ms. Acer, I know you spent a lot of your life trying to help migrants, right? I read your bio, and I think a lot of Americans can identify with that and even appreciate it. What they don't appreciate is that your concern and care does not seem to extend to them whatsoever. That is a problem. Ma'am, I want to ask you one question. Has your organization ever taken money from the Soros Foundation?

Ms. ACER. Excuse me?

Mr. CRANE. The Soros Foundation, have you ever—

Ms. ACER. Yes, yes. We've received money from multiple, multiple foundations over many years.

Mr. CRANE. Do you know how much money—

Ms. ACER. And I—can I—

Mr. CRANE [continuing]. You guys have taken from the Soros Foundation?

Ms. ACER. No, I do not know how much money we've taken in from any foundation. I just am really troubled if you're somehow picking on one particular foundation. There's a long history of the Soros Foundation being targeted for antisemitic reasons.

Mr. CRANE. That has nothing—

Ms. ACER. And so, I—

Mr. CRANE [continuing]. To do, ma'am, with why we have an issue with it. Everybody knows that George Soros is a globalist and uses his money to often destroy the very things that protect Americans, our way of life, and our freedom. That is exactly why I asked you the question. Thank you. I yield back.

Chairman GREEN. The gentleman yields. We have a Member, an at-large Member, who has and we, of course, sought unanimous consent at the beginning to allow her to be here. Ms. De La Cruz, you are recognized from Texas.

Ms. DE LA CRUZ. Thank you, Mr. Chair, for hosting this meeting today and for allowing me to waive on today to this important hearing. I am Congresswoman Monica Del La Cruz. I am here on behalf of my constituents, on behalf of the RGV Border Patrol sector, the brave men and women who serve and defend this country. You know, Texas 15 is right along the border in South Texas. It includes McAllen, Texas. Over the last several years, I have seen the other side of the aisle, the current administration, demonize our hardworking Border Patrol agents. Not only demonize them, but cripple them with lack of resources, not only on the technology side, but lack of resources from being able to put current policies in place and do their job, which is to protect this country. But yet they get up day after day and still go to their work, long hours.

When I think about those brave men and women, I not only think about them, but I think about their spouses and their chil-



dren. Because the stories that you don't hear are the stories about how these men and women, when they go and pick up children who have been abandoned because the cartels, they just leave these children on lands, children at the age of 1, at the age of 2, of 3. Our Border Patrol men and women are carrying these babies. They are helping women to give birth on the banks.

The reason that I came today and asked to be waived on is because they need a voice. They need a voice to stand up for them, to show them that the people in Congress care. Well, at least some of them. Because when we look at this room, I can see people on the other side of the aisle are not here. Are not here to see what the crisis is at our borders, to see our national security and how there is a lack of security due to this administration.

That being said, I want to say that Chief Scott, you were here under the previous administration. My understanding from speaking to my friends in Border Patrol in the RGV sector is that you put together many processes and put them in place in order to be able to facilitate the immigrants coming through and how to properly put them through the borders. That being said, there were several various or there were various Executive Orders under the previous administration that seemed to work. Can you tell me how the Executive Orders from the previous administration and the Executive Orders from this administration have changed?

Mr. SCOTT. During the last administration—and the Trump administration gets labeled with a lot of this—but under Secretary Wolf's guidance and others, we put together integrated teams and we had a simple question put in front of us. Literally every week we had to go back to the White House and give answers. What can we do to secure the border and protect America?

In all the EOs that went in place, MPP, the asylum cooperative agreements, I was sending Border Patrol agents to countries down south, left and right, to build relationships with them and just simply get them to enforce their own laws. It was all about protecting America. Then on January 2021, everything switched. Every one of those policies that actually showed progress and improved and protected America was replaced with messages that said, speed up the processing as fast as you can. We're not into the deterrence business anymore, and we need to find new ways to get more migrants into the United States.

Ms. DE LA CRUZ. So, do policies work?

Mr. SCOTT. Policies do work. Rhetoric works short-time, but policies and actions work long-term. I believe Mr. Edlow is really a key into some of those policies, and he may have some more.

Ms. DE LA CRUZ. Before I go to you, let me ask you one last question. Mr. Scott, how many people did you personally parole into this country?

Mr. SCOTT. So, while I was chief of the Border Patrol, that authority was delegated to sector chiefs. Not to try to get out of it, but because that's how much we cared about it.

Ms. DE LA CRUZ. Mm-hmm.

Mr. SCOTT. There's 20 sector chiefs Nation-wide. So, when I was a sector chief, in a year, I think the most paroles I ever did was about 10. The things that people are missing is there was a very in-depth threat assessment done with every one of those individ-

uals. There was a plan to keep track of them. Then when whatever the reason was, was done, we physically made sure the person was removed from the United States consistent with the law.

Ms. DE LA CRUZ. That being said, how does that compare with the current administration and amount of paroles that are led into this country?

Mr. SCOTT. We were using it consistent with the law, case-by-case, individual determination. From my understanding, the way it's being used now is just a blanket way to get people out of stations, avoid the optics of people backed up in Border Patrol stations.

Ms. DE LA CRUZ. I think that is where this is of real concern is it all goes to optics when it is convenient to the Biden administration. With that, I yield back.

Chairman GREEN. The gentlelady yields. I now recognize the Ranking Member for his closing comments.

Mr. MENENDEZ. Thank you, Mr. Chairman. You know, we have had the opportunity to engage in a dialog about what we hope we can do together. You know, for me, I think today was challenging because it feels a move away from working together across the aisle on a lot of the challenges that we have to face, including the border. It is a move away from trying to come to a comprehensive approach to immigration reform.

The fact that the report was issued this morning without consultation with Minority, with the staff, I want to be clear about one thing. Secretary Mayorkas has not violated the law. He and the Department of Homeland Security have been working to secure the border every day. I have been to the border twice since January. I went with a delegation of Democrats from Homeland Security. So, we have an interest in dealing with this issue directly and availing ourselves of the opportunities to deal with people directly who are at the front lines. So, we are not running from this issue, but we are trying to work at it in a constructive manner.

If you talk about the administration, Secretary Mayorkas has increased efforts to go after smugglers. We talked about additional legal pathways to enter the United States. But that actually hurts the cartels' and smugglers' business model. So, by creating constructive, actual avenues for people to come here legally, it undermines what the cartels are trying to do at the border.

The numbers are what they are. Encounters at the border are down. We don't all have to agree with the administration's policies, but the facts show that they are in fact effective. I do hope that in the future we can have real substantive discussions on the threats facing our Nation. It is critically important that we do so. I hope we can do so under different circumstances. I look forward to doing that work because we are here to create solutions for all of our constituents and I look forward to those days. I yield back.

Chairman GREEN. The gentleman yields. I recognize myself for a few closing comments. First, I just want to reiterate that we are looking at a cause and effect. The cause is policies that were working. You can look at the numbers that were coming in and those policies were thrown away. Migrants listened to the President about granting asylum and all this stuff, granting, you know, permission to just basically come into the country. They came and

they tested the system. Those who got here made phone calls back home and the wave of people started.

This notion that a migration crisis has occurred and we are responding to it is wrong. We created a migration crisis by creating an incentive for people to come here. We opened our border. People tested it and they called home. Now more are coming. Not hurricanes, not earthquakes, not changes to our immigration law, not changes to the budget at CBP, not changes to the number of Border Patrol agents. What changed were policies. It has created a mass migration wave from 160 countries of people coming to the United States.

Tragically, the drug cartels have taken advantage of this. They seized on the opportunity to use people to pay them up to \$13 billion, transferred to some of the most heinous people. We have seen the images. We have seen the videos of them burning human corpses they have executed. Yet, we are trying to find, you know, some excuse for this. The cause and the effect is policies and a mass wave and cartels who are manipulating the situation.

Add to that the tactics and strategy of the cartel to overwhelm Customs and Border Patrol with mass waves of people, thinning of the line in order to process, frees up the cartels to come right across the border in their carpet shoe, wearing backpacks full of fentanyl. We have seen the piles of the backpacks in Arizona and Texas.

The effects, Americans are more unsafe, period. All you have to do is look at that little baby from France who was visiting the United States, crawling around on a VRBO carpet, and encountered fentanyl left from someone before and that baby died. How many Americans take their kids to the hotel? How many Americans go to a VRBO and say you don't know if you are safe in the United States of America because of the policies of this administration and this Secretary.

We know that rapists and murderers have been released and that is not counting the population of the gotaways. We have got percentages in the folks that have turned themselves in. Why would you be a gotaway by the way, if you are just here to get in for economic purposes or even asylum, just turn yourself in and you will get released into the country. Why would you be a gotaway? One-point-five million of them in the United States now. What percentage of that 1.5 million are murderers or rapists or drug dealers or cartel members? Mr. Mayorkas can't answer that question. We are going to have Mr. Mayorkas back here. No one can answer that question.

Americans are unsafe because of this open border. National security, 200-plus terrorists versus 11. That tells you that the terrorists are trying harder and harder to get into this country because they know the policy. The door is open. National security. This chart is incredible. You look at the past several years, there is not much statistical difference in those years, but suddenly in this year look at the Chinese nationals pouring into this country. We have reports from sector chiefs saying they are PLA-associated. They are taking a lesson from the Russians who infiltrated Ukraine before they invaded. Now, it is not to say that the Chinese are going to invade

the United States, but if we were to defend Taiwan, think about what those people might become.

It is interesting to think about. But Mr. Mayorkas can't guarantee us what they are. They are just being released into the United States. That is a national security issue. Migrants separated, you now, we are talking 85,000. I understand the phone call system. That means there were some, whatever the number is and probably in the thousands. Oh, by the way, the *New York Times* not known, and in the report, not a *Fox News*, not a *Newsmax*, the *New York Times* went and found some of those people. Found they were stacked in homes as much as 20 and were being used in forced labor. Should never happen in America. It happened because Mayorkas's decision, a dereliction of duty, as far as I am concerned, waived the background checks on those individuals. It is unconscionable.

It has been discussed the financial cost too, not just the human cost, an effect, and it will cost us. It is costing us. Your health insurance is going up because of the uncompensated care at the ER, period. Why? There are 7-plus million people.

Mr. Mayorkas broke the law. We have had witnesses cite the law, read the law, and describe the methodologies, which he is either subverting it or breaking it. He has refused to abide by at least two court orders. Fact. He made it lawful to enter the country in lawful pathways that don't exist in the law. That is breaking the law. That is violating the law.

He clearly lied to Congress. Chip Roy showed him the definition of operational control. He said, yes, according to that definition, we have operational control of the border. Then in the Senate, after Ortiz made his comment, he admitted no one's ever had control by that definition. Admitting that he lied when he was in front of the committee with Chip Roy. A Secretary of Homeland Security, a Secretary of any department in our Government cannot come to the U.S. Congress and lie to Congress under oath, period. That is a dereliction of duty. Whether you like the fact that we are, you know, helping people who are in need, he lied to Congress. That is unacceptable.

Oh, by the way, we went back and searched the record. All the pounding on Mr. Wolf here, which will tell you something, if you are not defending your own guy and just beating up on the witness, maybe you don't have a leg to stand on. But we went back and looked at your record, sir, and we can't find anywhere where you claimed to have had operational control.

At least you didn't lie. He admitted his own incompetence. In the Senate, he said he did not understand the strategies of the cartels. Now, Merrick Garland, the Attorney General, said, yes, that is the strategy of the cartels. The Attorney General gets it. The Secretary of Homeland Security doesn't understand the strategy of the cartel he has been asked to confront to protect Americans. That is admitting incompetence.

I want to correct the record on a few things, too. Asylum is the heart of our country trying to help people in need. I get it, appropriate. Abuse of asylum laws for a political purpose is wrong. Asylum is not granted to people, if you read the law, just because they are coming from a corrupt government, or from a crime-ridden

area, or poverty. Asylum is granted when a Government is pursuing an individual. The U.N. Charter is very clear when a refugee is seeking asylum and they go into another country, that country is supposed to take care of them and not pass them on to another country. That is in the United Nations Charter. Why is this happening all over Central America? Why are we accepting that that is OK? We signed the U.N. Charter. They signed the U.N. Charter. Let's enforce it. There are insinuations that because we want to see the rule of law in place, that we are somehow anti-migrant or anti-charity.

When I ran my health care company, I built a not-for-profit for a lot of reasons. I wanted to hire physicians to join my company that had a heart to serve people. So, we had a not-for-profit and we paid those doctors' expenses so that they could do foreign trips and we could run free clinics. I want to serve people, but the Government doesn't get to pick where my charity goes. The Government doesn't get to decide that I, Mark Green's taxpayer dollars are going to go for taking care of—maybe I want to give my charity to Gold Star families. The family members of dead Americans who fought for this country, maybe that is where I want my charity to go. Maybe I, you know, want to plant trees and save the environment. The best vacuum cleaner for CO<sub>2</sub> on the planet is a tree.

But I am having to pay taxes that the President gets to decide where that charity goes. No. There has been an accusation today the GOP has done nothing. We just passed a border security bill that addresses all these issues.

Ms. Acer, you said that we shouldn't say that the border is open because it might incentivize more people to come. I think that is what the implication of what you were saying. I couldn't agree more. That is why we are having the migration crisis, is we opened the border. The President said it in his campaign. People come and they call and now they are coming into the country. I agree. It creates an incentive and you apparently do too.

Immigration is not our committee. Here is another thing. Well, maybe I misunderstood you, but that is what I thought you said. But immigration is not our committee. We don't get to solve the immigration problems. People here today have talked about, hey, we got to fix immigration. Yes, we got to fix immigration. But if you create more of an incentive for people to come, they are going to come. You have to secure the border first. You secure the border, then we will fix immigration. I couldn't agree more on that.

NGO's, not all NGO's are bad. Not all NGO's are good. There are some that are doing great things and there are some that are incentivizing the migration that is harming people and there are some incentivizing people to break the law. That is just period. Just because you are looking into NGO's, it doesn't mean that you are anti-NGO. It means you want people taken care of appropriately.

We have talked about the CBP One app and the shell game that that is. We have been, you know, accused of not addressing other issues like cyber. We have many other subcommittees that are taking actions on cyber and maritime security and other things. That stuff's all going on. You can't make the accusation that we are just here prosecuting Mr. Mayorkas.

Congress has both an oversight requirement, an oversight obligation as much as it has a passing laws obligation. Oversighting this crisis is our duty and we are not going to shirk that duty. It is revealing that Democrats today spent far more time baselessly attacking Mr. Wolf than defending Secretary Mayorkas and his policies.

If you examine the facts, there is no defense for his dereliction of duty. This is just the beginning of a lot of hearings fulfilling that duty for oversight. We will get to the bottom of what is going on at our Southern Border. We will characterize the costs to the American people. We will inform them and hopefully inform the President. My hope is that the President is unaware of all this and that maybe he will do the right thing and fire a guy who has lied to Congress, broken the laws, and facilitated this mass migration that has resulted in the harm both of Americans and of the migrants.

I want to thank the witnesses for their valuable testimony today and all of our Members for their questions. As I said at the beginning, we were going to disagree. We did. But that is what this is all about. It is the sausage making, as they say.

Members of the subcommittee—the committee may have some additional questions for the witnesses and we would ask that the witnesses respond to those in writing. Pursuant to Committee Rule VII(D), the hearing record will be held open for 10 days for such purposes. Without objection, the committee stands adjourned.

[Whereupon, at 1:30 p.m., the committee was adjourned.]



COUNTERING THREATS POSED BY NATION-STATE  
ACTORS IN LATIN AMERICA TO U.S. HOME-  
LAND SECURITY

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HEARING

BEFORE THE

SUBCOMMITTEE ON  
COUNTERTERRORISM,  
LAW ENFORCEMENT, AND  
INTELLIGENCE

OF THE

COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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## COUNTERING THREATS POSED BY NATION-STATE ACTORS IN LATIN AMERICA TO U.S. HOMELAND SECURITY

Wednesday, June 21, 2023

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON COUNTERTERRORISM,  
LAW ENFORCEMENT, AND INTELLIGENCE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:01 a.m., in room 310, Cannon House Office Building, Hon. August Pfluger [Chairman of the subcommittee] presiding.

Present: Representatives Pfluger, D'Esposito, Crane, Magaziner, Correa, Goldman, and Titus.

Also present: Representative Jackson Lee.

Chairman PFLUGER. The Committee on Homeland Security Subcommittee on Counterterrorism, Law Enforcement, and Intelligence will come to order.

Without objection, the subcommittee may recess at any point.

The purpose of this hearing is to receive testimony from a non-Governmental panel of expert witnesses to examine the threats posed by nation-state actors in Latin America, like China and Russia to the United States homeland security.

I now recognize myself for an opening statement.

Good morning and welcome to the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence. Today, we are holding an important hearing on the threats posed by nation-state actors like the People's Republic of China, the PRC, Russia, Iran, and Venezuela in Latin America to our homeland security.

There is no doubt that we are facing a migration crisis caused by the administration's policy decisions. We are witnessing significant increases in encounters at the Southwest Border with individuals from countries of concern like the PRC and Russia. I am concerned that the chaos of the Southwest Border could be taken advantage of by anti-U.S. regimes—not just can, but has been. Meanwhile, the PRC and our foreign adversaries are expanding their spheres of influence in Latin America right in our backyard. As they grow their diplomatic, economic, and military activities in the region, there are clear implications for U.S. homeland security.

Recent data released by the United States Customs and Border Protection shows a steep increase in encounters with foreign nationals from the PRC, Russia, Cuba, and Venezuela, amongst others at our Southwest Border. For example, in the first 7 months

of fiscal year 2023, over 9,711 PRC nationals were encountered by U.S. Border Patrol along our Southwest Border, exponentially more than the previous 3 years. Restate that number: 9,711 PRC nationals. A similar trend involves encounters with Russian citizens. In 2021, CBP reported just 4,103 encounters of Russian citizens along our Southwest Border, however, that number jumped to 21,763 in fiscal year 2022, and it is over 33,000 for the first 7 months of fiscal year 2023. I have heard directly from sheriffs in my own district that they apprehended multiple individuals from the PRC who were deemed high-value targets and were taken into custody by the FBI.

While aliens may have legitimate claims to asylum, the increased flow of nationals from adversarial countries is concerning as these individuals blend into the much larger wave of illegal aliens flooding across the Southwest Border, already topping 1.4 million illegal alien encounters for the first 7 months of this fiscal year, 2023.

Meanwhile, Border Patrol agents at the Southwest Border are completely overwhelmed. There have been 1.5 million known gotaways at the Southwest Border since the start of this administration. This creates a gap in our homeland security intelligence that malign nation-states could exploit to send nefarious actors into the United States. It is important that this subcommittee fully understand the ways that malign nation-state actors could take advantage of the wide open Southwest Border. However, the problem is not just there. It stretches further than that. There is no doubt that we are facing an array of security challenges in the region and by extension, to homeland security.

In particular, the PRC has developed close economic and security ties with a number of Latin American countries, including Brazil and Venezuela. For example, the China Development Bank and the Export-Import Bank of China offered approximately \$137 billion to the region in loans to a multitude of sectors, with Venezuela as the most prolific beneficiary of PRC loans at roughly \$60 billion. However, the PRC's influence in the region goes beyond economic ties. It also includes military and security partnerships. For example, in approximately a 10-year period between 2009 and 2019, \$615 million in weapons were sold to Venezuela by the PRC. The PRC's increased influences in the region bolsters the CCP's geopolitical goals, which also includes strengthening other authoritarian regimes, leading to significant challenges to U.S. influence in the region, as well as security risks to the United States homeland.

Earlier this year, Melissa Dalton, the Pentagon's Assistant Secretary of Defense for Homeland Defense and Hemispheric Affairs, testified that the PRC and Russia now pose more dangerous challenges to the safety and security of the U.S. homeland. They are both, and I quote here from Ms. Dalton, "already using nonkinetic means against our defense, industrial base, and mobilization systems to subvert our ability to project power". This transcends the egregious example of when the PRC entered our sovereign airspace with a high-altitude balloon, which we know with certainty they intended to use to spy on sensitive U.S. military and critical infrastructure sites.

Then, just this month, the Biden administration confirmed the existence of a PRC-run electronic espionage facility in Cuba, rough-

ly 100 miles from the United States, that would allow the CCP intelligence services to collect signals intelligence throughout the southeastern United States. Less than 48 hours later, an anonymous Biden administration official confirmed to *Politico* that the CCP has actually been using a secret facility in Cuba to spy on the United States since at least 2019. My Republican colleagues and I are demanding answers on this latest nefarious action by the CCP from DHS Secretary Mayorkas and FBI Director Wray to ensure the homeland security response is robust and steadfast. I would love to have all of this committee in a nonpartisan way join that effort to understand those nefarious actions. This activity once again displays the CCP's willingness to use every tactic and technique to undermine U.S. sovereignty and shows that authoritarian regimes in Latin America can and will assist the CCP in attacking U.S. homeland security.

Additionally, Russia continues to demonstrate its intent and capability to conduct military and other strategic activities against the United States in the Western Hemisphere. Russia's influence in the region mainly comes from security ties on which it has colluded with anti-U.S. authoritarian regimes, including Venezuela, Nicaragua, and Cuba. For example, Russia has assisted Venezuela with sanctions evasion using Russian state-controlled companies to transport Venezuelan oil. Russia also uses the Wagner Group, a private military company, to protect power world-wide. The Wagner Group tries to undercut the United States and present itself as a mediator and security partner to anti-U.S. countries and gain military access rights and economic opportunities. For example, they are training Venezuela's armed forces.

Additionally, Iran plays a secondary role in the region. The recent docking of Iranian warships in Rio de Janeiro, Brazil indicate Iran is looking to assert its power across the region. Iran's backed militia, Hezbollah, continues to have a presence in the region with the transition from the triborder area of Paraguay to operations in Venezuela.

Whether it is the PRC, Russia, or Russia's proxies or Iran, it is vital that we understand the security challenges and threats posed by nation-state actors to U.S. homeland security and explore every avenue to address them head on.

This morning, we have a distinguished panel of expert witnesses to discuss this important topic with. I would just like to say that we are facing challenges all over the world. I personally think that this is one of the most challenging security environments that we have ever been in, including the World War II era. We know some of the threats and some of the threats we don't know. The nature and the face of these threats has changed. It is no longer just missiles in Cuba like we saw decades ago. The cyber threat is egregious, economically what these countries are doing to use their influence and to really hurt the people of countries, especially in our backyard in South America and Latin America.

So I am excited to hear from our witnesses, I am excited to have this conversation today because I hope it informs the rest of Congress that we must keep our eye on the ball. We must understand what the Chinese Communist Party is doing and the malign activities that they will use to undermine not just our influence and our

economic prowess around the world, but also our homeland security right here at home.

I thank all the witnesses for being with us this morning, and I look forward to our discussion.

[The statement of Chairman Pfluger follows:]

STATEMENT OF CHAIRMAN AUGUST PFLUGER

JUNE 21, 2023

Good morning, and welcome to the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence.

Today we are holding an important hearing on the threats posed by nation-state actors like the People's Republic of China (PRC), Russia, Iran, and Venezuela in Latin America to our homeland security.

There is no doubt that we are facing a migration crisis caused by the administration's policy decisions.

We are witnessing significant increases in encounters at the Southwest Border with individuals from countries of concern like the PRC and Russia.

I am concerned that the chaos of the Southwest Border could be taken advantage of by anti-U.S. regimes.

Meanwhile, the PRC and our foreign adversaries are expanding their spheres of influence in Latin America—essentially in our backyard.

As they grow their diplomatic, economic, and military activities in the region, there are clear implications for U.S. homeland security.

Recent data released by the United States Customs and Border Protection shows a steep increase in encounters with foreign nationals from the PRC, Russia, Cuba, and Venezuela, amongst others, at our Southwest Border.

For example, in the first 7 months of fiscal year 2023, over 9,711 PRC nationals were encountered by U.S. Border Patrol along our Southwest Border, exponentially more than the previous 3 years.

A similar trend involves encounters with Russian citizens. In 2021, CBP reported just 4,103 encounters of Russian citizens along our Southwest Border; however, that number jumped to 21,763 in fiscal year 2022 and is already over 33,000 for the first 7 months of fiscal year 2023.

I have heard directly from sheriffs in my district that they apprehended multiple individuals from the PRC who were deemed “high-value targets” and were taken into custody by the FBI.

While aliens may have legitimate claims to asylum, the increased flow of nationals from adversarial countries is concerning as these individuals blend into the much larger wave of illegal aliens flooding across the Southwest Border, already topping 1.4 million illegal alien encounters through the first 7 months of fiscal year 2023.

Meanwhile, Border Patrol agents at the Southwest Border are completely overwhelmed. There have been 1.5 million known gotaways at the Southwest Border since the start of this administration.

This creates a gap in homeland security intelligence that malign nation-states could exploit to send nefarious actors into the United States.

It is important that this subcommittee fully understand the ways malign nation-state actors could take advantage of the wide-open Southwest Border.

However, the problems stretch further than that. There is no doubt that we are facing an array of security challenges in the region and by extension to U.S. homeland.

In particular, the PRC has developed close economic and security ties with a number of Latin American countries, including Brazil and Venezuela.

For example, the China Development Bank and the Export-Import Bank of China offered approximately \$137 billion to the region in loans to a multitude of sectors—with Venezuela as the most prolific beneficiary of PRC loans at roughly \$60 billion.<sup>1</sup>

However, the PRC's influence in the region goes beyond economic ties. It also includes military and security partnerships.

<sup>1</sup>“China-Latin America Finance Databases,” The Inter-American Dialogue, Accessed June 16, 2022, [https://www.thedialog.org/map\\_list/](https://www.thedialog.org/map_list/).

For example, in approximately a 10-year period, between 2009 and 2019, \$615 million in weapons was sold to Venezuela by the PRC.<sup>2</sup>

The PRC's increased influences in the region bolsters the CCP's geopolitical goals, which also includes strengthening other authoritarian regimes, leading to significant challenges to U.S. influence in the region as well as security risks for the U.S. homeland.

Earlier this year, Melissa Dalton, the Pentagon's Assistant Secretary of Defense for Homeland Defense and Hemispheric Affairs testified that the PRC and Russia "now pose more dangerous challenges to the safety and security of the U.S. homeland."<sup>3</sup> They are both "already using non-kinetic means against our defense industrial base and mobilization systems to subvert our ability to project power."<sup>4</sup>

This transcends the egregious example of when the PRC entered our sovereign air space with a high-altitude balloon, which we know with certainty they intended to use to spy on sensitive U.S. military and critical infrastructure sites.<sup>5</sup>

And then, just this month, the Biden administration confirmed the existence of a PRC-run electronic espionage facility in Cuba—roughly 100 miles from the United States—that would allow the CCP intelligence services to collect signals intelligence throughout the southeastern United States.

Less than 48 hours later an anonymous Biden administration official confirmed to *Politico* that the CCP has actually been using a secret facility in Cuba to spy on the United States since at least 2019.

My Republican colleagues and I are demanding answers on this latest nefarious action by the CCP from DHS Secretary Mayorkas and FBI Director Wray to ensure the homeland security response is robust and steadfast.

This activity once again displays the CCP's willingness to use every tactic and technique to undermine U.S. sovereignty and shows that authoritarian regimes in Latin America can and will assist the CCP in attacking U.S. homeland security.

Additionally, Russia continues to demonstrate its intent and capability to conduct military and other strategic activities against the United States in the Western Hemisphere.

Russia's influence in the region mainly comes from security ties—on which it has colluded with anti-U.S. authoritarian regimes, including Venezuela, Nicaragua, and Cuba.

For example, Russia has assisted Venezuela with sanctions evasion, using Russian state-controlled companies to transport Venezuelan oil.

Russia also uses the Wagner Group, a private military company to project power world-wide. The Wagner Group tries to undercut the United States, present itself as a mediator and security partner to anti-U.S. countries, and gain military access rights and economic opportunities. For example, they are training Venezuela's armed forces.

Additionally, Iran plays a secondary role in the region. The recent docking of Iranian warships in Rio de Janeiro, Brazil indicate Iran is looking to assert its power across the region.

Iran's-backed militia, Hezbollah continues to have a presence in the region, with a transition from the tri-border area of Paraguay to operations in Venezuela.

Whether it is the PRC, Russia or Russia's proxies, or Iran, it is vital that we understand the security challenges and threats posed by nation-state actors to U.S. homeland security and explore every avenue to address them head on.

This morning, we have a distinguished panel of expert witnesses to discuss this important topic.

I thank all our witnesses for being with us this morning and I look forward to our discussion.

**Chairman PFLUGER.** I would now like to recognize the Ranking Member, the gentleman from Rhode Island, Mr. Magaziner, for his opening statement.

**Mr. MAGAZINER.** Thank you, Chairman.

We find ourselves in a time when, once again, democratic nations like the United States are in a competition for the hearts and

<sup>2</sup>Lara Seligman, "U.S. Military Wary of China's Foothold in Venezuela," *Foreign Policy*, April 8, 2019, <https://foreignpolicy.com/2019/04/08/us-military-wary-of-chinas-foothold-in-venezuela-maduro-faller-guaido-trump-pentagon/>.

<sup>3</sup><https://www.armed-services.senate.gov/hearings/to-receive-testimony-on-strategic-competition-and-security-cooperation-in-the-western-hemisphere>.

<sup>4</sup>Id.

<sup>5</sup>Id.

minds in the developing world, with autocratic competitors like the People's Republic of China, Iran, and Russia. It is more important than ever that we build strong relationships with our allies in Latin America based on mutual respect, fair commerce, and a shared commitment to security and human rights. If we make the mistake of driving away our allies in the region, Russia, the Chinese Communist Party, and our other competitors will gladly fill that void at the expense of our own security.

In Latin America today, the CCP and Russia are attempting to manipulate public discourse, discredit elections and the electoral system, influence policy, and disrupt markets, with the goal of undermining U.S. security and economic competitiveness. We cannot allow that to happen. Over the past 20 years, the CCP has spent heavily in Latin America. Chinese state industry now reaches deep into Latin America's energy, infrastructure, and space industries. In fact, China has surpassed the United States as South America's biggest trading partner. I will say it again, China has surpassed the United States as South America's biggest trading partner. China now has free trade agreements in place with Chile, Costa Rica, Ecuador, and Peru, and 20 countries in Latin America and the Caribbean participate in the CCP's Belt and Road initiative. The Chinese Communist Party is investing in soft power through cultural and educational programs in Latin America, which are building political goodwill and presenting China as a viable alternative partner to the United States and other democracies.

This is why it is so important that last year President Biden launched a new economic cooperation initiative with Latin America aimed specifically at countering the CCP's growing clout in the region. Under Vladimir Putin Russia cares less about competing with the United States economically and more about stoking chaos and political division to harm democracies like the United States. Russia has maintained decades-long relationships with Latin American authoritarian regimes. The Cuban, Venezuelan, and Nicaraguan regimes are heavily dependent on Moscow for political, economic, and security assistance. Russia actively spreads propaganda in Latin America to undermine U.S. interests and the interests of democratic allies, just as Russia did in the early days of its invasion of Ukraine, when Russia used its propaganda assets in Latin America to push conspiracy theories about Ukraine and the West to justify the invasion.

With the CCP, Russia, and other autocratic regimes so determined to build their presence in Latin America, it is vital that the United States strengthen our relationships with our neighbors in the region. The worst thing we could do for our own security is drive our Latin American neighbors into the arms of our adversaries. That is why it is disturbing to hear former President Trump and some of my colleagues from across the aisle, though of course not all, push reckless ideas like unilateral military action in Mexico, which would seriously endanger the strategic regional relationships we need to keep America secure.

It is also alarming that some House Republicans are calling for significant cuts to USAID, State Department, and Commerce Department budgets that are crucial to building American influence in Latin America at the same time that the CCP in particular con-



tinues to invest in aid and commerce to build their malign influence in the region.

As we go through the appropriations process in the coming months, we need to keep in mind that investing in aid and commerce in Latin America is not charity, it is in our national security interest.

So this is a time for engagement and partnership, not hyperpartisanship. Today's hearing, I hope, is an opportunity for this subcommittee to examine what we can do to counter the wider threat posed by autocratic nation-states that are setting up shop in the Western Hemisphere with the goal of undermining U.S. leadership in our own backyard. I hope that we can work together to counter their efforts and advance American interests.

With that, I yield back.

[The statement of Ranking Member Magaziner follows:]

STATEMENT OF RANKING MEMBER SETH MAGAZINER

JUNE 21, 2023

We find ourselves in a time when democratic nations, like the United States, are in a competition for hearts and minds in the developing world with autocratic competitors like the People's Republic of China, Iran, and Russia.

It is more important than ever that we develop strong relationships with our allies in Latin America, based on mutual respect, fair commerce, and a shared commitment to security and human rights. If we make the mistake of driving away our allies in the region, Russia, the CCP and our other competitors will gladly fill that void, at the expense of our own security.

In Latin America today, the CCP and Russia are attempting to manipulate public discourse, discredit elections and the electoral system, influence policy development, and disrupt markets with the goal of undermining U.S. security and economic competitiveness. We cannot allow that to happen.

Over the past 20 years, the CCP has spent heavily in Latin America. Chinese state industry now reaches deep into Latin America's energy, infrastructure, and space industries. In fact, China has surpassed the United States as South America's biggest trading partner. China has free trade agreements in place with Chile, Costa Rica, Ecuador, and Peru; and 20 countries in Latin America and the Caribbean participate in the CCP's Belt and Road initiative. And the Chinese Communist Party is investing in soft power through cultural and educational programs in Latin America, which are building political goodwill and presenting China as a viable alternative partner to the United States and democracies.

This is why it is so important that last year President Biden launched a new economic cooperation initiative with Latin America aimed specifically at countering the CCP's growing clout in the region. Under Vladimir Putin, Russia cares less about competing with the United States economically and more about stoking chaos and political division to harm democracies like the United States. Russia has maintained decades-long, strong relationships with Latin American authoritarian regimes.

The Cuban, Venezuelan, and Nicaraguan regimes are heavily dependent on Moscow for political, economic, and security assistance. And Russia actively spreads propaganda in Latin America to undermine U.S. interests and the interests of democratic allies—as Russia did during the early days of its invasion of Ukraine, when Russia used its propaganda assets in Latin America to push conspiracy theories about Ukraine and the West to justify the invasion.

With the CCP, Russia and other autocratic regimes so determined to build their presence in Latin America, it is vital that the United States strengthen our relationships with our neighbors in the region.

The worst thing we could do for our own security, is drive our Latin American neighbors into the arms of our adversaries. That is why it is disturbing to hear former President Trump and some of my colleagues from across the aisle push reckless ideas like unilateral military action in Mexico, which would seriously endanger the strategic regional relationships we need to keep America secure.

It is also alarming that some House Republicans are calling for significant cuts to USAID, State Department, and Commerce Department budgets that are crucial to building American influence in Latin America, at the same time that the CCP

in particular continues to invest in aid and commerce to build their malign influence in the region. This is a time for engagement and partnership, not hyper-partisanship.

Today's hearing, I hope, is an opportunity for this subcommittee to examine the wider threat posed by autocratic nation-states that are setting up shop in the Western Hemisphere with a singular goal—to undermine U.S. leadership in our own backyard.

Chairman PFLUGER. Thank you, Ranking Member Magaziner.

Other Members of the committee are reminded that opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

JUNE 21, 2023

I am grateful for Ranking Member Magaziner's leadership on this subcommittee and his effort to put today's hearing into focus. It was committee Democrats' understanding that the purpose of this hearing is to discuss foreign malign influence in Latin America and how the actions of our geopolitical adversaries in the region impact U.S. interests and homeland security. This is certainly an issue worth exploring.

However, the Republicans' media advisory for the hearing once again demonstrates that my colleagues across the aisle are focused on the Southern Border to the exclusion of other critical homeland security matters. According to the media advisory, the focal point of today's hearing for Republicans is Border Patrol's, and I quote, "encounters with individuals from authoritarian countries hostile to the United States, such as China, Russia, Cuba, and Venezuela."

It goes on to note that Republicans are unaware of the migrants' motives for seeking entry into the United States but does not mention using today's hearing to explore the root causes of migration. Perhaps because Republicans are uninterested in finding solutions and want to further their partisan agenda against Secretary of Homeland Security Alejandro Mayorkas—a case that they have stated is already "closed."

It is high time that this committee start doing oversight of pressing issues, like foreign malign influence in Latin America and how the actions of China, Russia, and others in our backyard undermine U.S. interests and democracy at large. I—once again—urge my Republican colleagues to forgo trying to score political points and join Democrats in seeking real solutions to threats to the homeland.

At the subcommittee's March 9 and May 23 hearings, Chairman Pfluger stated, and I quote, "This conflict is not with individual citizens of the PRC—this conflict is with the CCP, an authoritarian regime that commits genocide against its own people, censors free speech across the globe, and aims to end democracy as we know it." I could not agree more. Today, we ought to be examining the activities of malign nation-state actors in Latin America and the subsequent risks to the homeland, not vilifying individuals fleeing autocratic and oppressive regimes.

The Biden administration's National Security Strategy notes that the "Western Hemisphere impacts the United States more than any other region." It also recognizes the need for the United States to deepen partnerships with Latin American countries "to advance economic resilience, democratic stability, and citizen security," and to protect against external interference or coercion, including from China, Russia, and Iran.

So, I am thankful that under Ranking Member Magaziner's leadership, committee Democrats will use today's hearing to learn from witnesses about the scope of foreign malign influence in Latin America and how the United States Government can best work to help our allies deter such efforts.

Chairman PFLUGER. I am pleased to have a distinguished panel of witnesses before us today on this very important topic.

Let the record reflect that the witnesses have answered in the affirmative.

[Witnesses sworn]

Chairman PFLUGER. I would now like to formally introduce our witnesses.

Ms. Elaine Dezenski is the senior director and head of the Center on Economic and Financial Power at the Foundation for Defensive Democracies. With more than 2 decades of leadership in public, private, and international organizations, she is a globally-recognized expert and thought leader on geopolitical risk, supply chain security, anticorruption, and national security. She also held positions at the Department of Homeland Security under the Bush administration, including deputy and acting assistant secretary for policy and director of cargo and trade policy. In 2015, Ms. Dezenski launched LumiRisk LCC, a risk advisory practice. In 2017, she served as a senior fellow at the Jackson Institute for Global Affairs at Yale University and as a lecturer of business ethics in Yale's Program on Ethics, Politics, and Economics. In 2020 to 2021 she served on the newly-formed Chairman's Council on China Competition at the Export-Import Bank of The United States. Thank you for being here.

Mr. Christopher Hernandez-Roy is the deputy director and senior fellow of the Americas Program at the Center for Strategic and International Studies. Throughout his more than 25-year career, Mr. Hernandez-Roy has worked extensively to advance democratic governance, prevent and resolve conflict, strengthen the rule of law, respect human rights, ensure citizen security, and promote integral development across Latin America and the Caribbean. He has held various senior leadership positions at the Organization of American States, or OAS, having served as senior political advisor to two Secretaries General. In this capacity, he most recently documented the abuses of authoritarian regimes in Venezuela and Cuba, and co-led the organization's efforts to hold the Venezuelan regime accountable for possible crimes against humanity. He also was intimately involved in the peaceful resolution of border disputes between Honduras and Nicaragua, Belize and Guatemala, and Honduras and El Salvador. Thank you for being here.

Ms. Jessica Brandt is policy director for artificial intelligence and emerging technology initiative at the Brookings Institution and a fellow in the Foreign Policy Program's Strobe Talbot Center for Security Strategy and Technology. Her research interest in recent publications focus on foreign interference, digital authoritarianism, and the implications of emerging technologies for democracies. Ms. Brandt was previously head of policy and research for the Alliance for Securing Democracy and a senior fellow at the German Marshall Fund of the United States, a fellow in the Foreign Policy Program at the Brookings Institution, special advisor to the president of the Brookings Institution, and an international and global affairs fellow at the Belfer Center for Science and International Affairs at Harvard University.

I thank all of the witnesses for being here. I know you have submitted incredible testimonies and I would ask at this time that you summarize those and please try to keep to 5 minutes. We do have questions on those testimonies.

At this time I recognize Ms. Elaine Dezenski for your 5 minutes to summarize your opening statement.

**STATEMENT OF ELAINE K. DEZENSKI, SENIOR DIRECTOR AND  
HEAD, CENTER ON ECONOMIC AND FINANCIAL POWER,  
FOUNDATION FOR DEFENSE OF DEMOCRACIES**

Ms. DEZENSKI. Chairman Pfluger, Ranking Member Magaziner, thank you so much, distinguished Members of the subcommittee. I appreciate the opportunity to be part of today's conversation.

Latin America has become increasingly vulnerable to authoritarian encroachment. Instead of being filled with democratic friends and booming economies, America's backyard is home to Russian bombers and mercenaries, 29 Chinese-owned ports and port projects, a wide-spread Iran- and Russia-fueled anti-U.S. propaganda, Chinese enabled-fentanyl and money-laundering operations, wobbling and fallen democracies, and wide-spread economic and political instability.

In the aftermath of 9/11, DHS could count on and leverage the primacy of U.S. global leadership and economic influence to address a range of foreign threats to the homeland. Two decades later, our economic, trading, and monetary systems are being weaponized against us by foreign adversaries and competitors and in the process escalating the erosion of democratic rules and norms. These threats impact not only our physical borders, but our financial, digital, and trade borders.

Since 2008, Latin America has seen a greater decline of democratic indicators than any other region globally. Authoritarian regimes are driving migration to the Southern Border in tremendous numbers, with migrants from Cuba, Venezuela, and Nicaragua now outnumbering migrants from the Northern Triangle of Honduras, El Salvador, and Guatemala. If we seek to address root causes of migration and broader threats to the national and economic security landscape, addressing rising authoritarianism is a strategic imperative. But it also means fighting back against a false narrative designed to undermine the U.S. role in the region.

The challenge of authoritarian influence in Latin America presents critical questions about how the United States can use its economic and political power to drive stability, opportunity, investment, and democratic principles. DHS has a central role to play, but it requires an evolution of mindset and operational readiness. The Department needs to further prioritize its assessment of economic security threats, drive more effective deployment of both physical and digital boots on the ground, invest in securing new critical infrastructure, improve border management tools, and have more access to critical data. Finally, it requires a long-term commitment to mutual security and economic benefit for the region, with more purposeful engagement with allies and partners.

In my testimony I outlined several concrete actions that DHS and the administration could undertake. One is to identify and analyze a broader range of economic security threats as core drivers of homeland security vulnerability. We need to continue to shift the intelligence and analysis framework to encompass a wider range of actors, threats, and data sources.

Second, reengaging and expanding private-sector supply chain partnerships to improve information and data that supports better intelligence gathering and analysis. We need more and deeper partnerships with the private sector, especially those involved in manu-

facturing, transporting, importing, exporting, and investing in commercial operations throughout Latin America. Extension of mechanisms like the Authorized Economic Operator Program offers potential pathways to work with more private-sector actors and have more access to trade data.

Third, conducting a detailed review of China's multi-layered influence on ports and trade infrastructure is critical. DHS could lead or co-lead a comprehensive review of vulnerabilities at Latin American ports, including links to sanctioned entities, Chinese-made technology, assessment of 5G networks, trade data information, China's operations and maintenance strategies at ports, and assessing the risk of dual use infrastructure.

Fourth, expanding the effectiveness of Trade Transparency units. Trade Transparency Units, or TTUs, were established in 2004 to exchange trade data between the United States and trading partners to better understand the risks of trade-based money laundering. We really need to get at this problem, and TTUs are a good way to do it. Increasing investigative work to uncover Chinese money-laundering networks and financial institutions supporting them is absolutely critical. As my colleague Anthony Ruggiero and I have written, Congress should authorize the President to impose a range of sanctions on the facilitators who serve drug traffickers, including individuals who are grossly negligent concerning financial transactions or who export drug precursors.

Supporting legislation to counter kleptocracy and State-sponsored corruption is also critical. Legislation such as the Foreign Extortion Prevention Act, which was introduced in the last Congress, could help with expanding anticorruption enforcement tools and building on the Foreign Corrupt Practices Act.

Finally, a broader strategy to ally shore with regional partners can bring the benefit of new supply chains, emerging technologies, and opportunities to drive higher levels of U.S. and Western investment. DHS can help create the security framework that facilitates deeper trade, economic engagement, all of which is essential to protecting the homeland.

Thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Dezenski follows:]

PREPARED STATEMENT OF ELAINE K. DEZENSKI

#### INTRODUCTION

Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of this subcommittee, thank you for the opportunity to address you today on countering threats posed by nation-state actors in Latin America. I am pleased to provide relevant research and policy insights from FDD's Center on Economic and Financial Power (CEFP), where I serve as senior director and head.

CEFP, one of FDD's three centers on American power, was launched in 2014 to conduct cutting-edge research and promote strategies and policies to bolster an effective economic security framework that deters America's adversaries and protects U.S. national security objectives. Our lines of research and analysis focus on countering illicit finance, kleptocracy, and authoritarian corruption; economic warfare, including sanctions, export controls, and regulatory guard rails; new alliances for economic security; risks to USD primacy; and global supply chain risk.

Today, I will touch on several examples of how authoritarian states influence Latin America's political, economic, and security dimensions—impacting stability in the region and driving mass migration to the United States. Rising populism, slowing growth, hyperinflation, crime, endemic corruption, organized crime, and horri-

fyng violence are displacing populations and changing the economic and political dynamics. The influence of authoritarian regimes in Latin America continues to grow, especially China’s outsized economic and political influence.

In the aftermath of 9/11, the Department of Homeland Security (DHS) was created to take a more unified, “whole-of-Government” approach to counter new and emerging asymmetric terrorist threats to the homeland. I was honored to help stand up the Department as deputy and acting assistant secretary for policy development and as director of the DHS Office of Cargo and Trade Policy. Those first years forming a new Department were both exhilarating and immensely challenging. We didn’t have a playbook for most decision making. But we could count on and leverage the primacy of U.S. global leadership and economic influence, which allowed us to take essential steps at home and abroad to protect America from further attack.

Two decades later, we find ourselves in a new paradigm where elements of the U.S.-led global economic, trading, and monetary systems are being weaponized against us by foreign adversaries and competitors, and in the process, escalating the erosion of democratic rules and norms. The traditional terrorist threats evolved and persist, but now we face additional and fundamentally different sets of threats to the homeland that require new strategies and tactics—threats that are attacking not only our physical borders but our financial, digital, or trade borders as well.

#### OVERVIEW: RISING AUTHORITARIAN THREATS THROUGHOUT THE HEMISPHERE

A lack of a compelling and comprehensive U.S. vision for productive engagement with Latin America has left our hemisphere vulnerable to authoritarian encroachment and weakening economies. America’s backyard, instead of being filled with democratic friends and booming economies, is home to Russian bombers and mercenaries, 29 Chinese-owned ports and port projects, a wide-spread Iran- and Russia-fueled anti-U.S. propaganda machinery, Chinese-enabled fentanyl and money-laundering operations, wobbling and fallen democracies, and wide-spread economic and political instability.

Over the last two decades, Latin America has seen wild swings from left-wing populists to right-wing populists and back, all of which have enabled corruption, disappointed their populations, and left the United States with fewer stable partnerships across the region. In response, Washington has settled into a hands-off approach to the region—allowing Venezuela and Nicaragua to slide into dictatorships and largely ignoring chaos in Bolivia, Peru, Argentina, and El Salvador. Since 2008, Latin America has seen a greater decline in democratic indicators than any other region in the world.

In addition to rising internal autocratic forces within Latin America, external autocratic forces are imposing their will upon the region with little in the form of a coordinated American response. Russia and Iran are increasingly active throughout the Americas, providing military assistance to Venezuela, evading sanctions in Cuba, or pushing misinformation and destabilizing democracy. The rising influence of authoritarianism throughout Latin America is pushing the region toward totalitarianism and away from the stable and interdependent democracies that would benefit both local citizens and the hemisphere at large.

The true autocratic behemoth in the region, however, is China, which has ramped up its economic investment throughout the hemisphere, driving deep debt dependency while pushing an anti-democratic vision of surveillance states and crumbling, corruption-driven infrastructure. Ecuador has already discovered “thousands” of cracks in its new \$3 billion Chinese-built and -financed hydroelectric dam. Chinese organized crime, with tacit state support, is infiltrating Central American drug trafficking and money-laundering operations—supercharging both. China has become deeply interwoven in Latin America’s energy grids and critical infrastructure, putting basic services at risk to the whims of Beijing. And China is increasing its military engagement throughout the hemisphere, from booming weapons sales and anti-riot police gear to joint exercises and training. The United States needs a concrete strategy to address Chinese encroachment throughout the region, whether through its illegal overfishing off of South America’s Pacific coast or its growing fentanyl operations throughout Latin America.

America’s cool relations with Central and South America have, meanwhile, failed to capitalize on the tremendous promise of the region and its critical role in American economic and national security. A prosperous Latin America lowers the pressure on immigration to the United States, offers critical supply chain advantages, and is rich with resources and human talent that should catalyze 21st Century technologies. Mexico has frequently benefited from U.S. efforts to locate supply chains closer to home, but so much more could be done. “Ally shoring” shifts of U.S. manufacturing from Asia to Latin America could promote prosperity throughout the re-

gion, lower costs for American businesses, and reduce pressures contributing to political instability and mass migration.

CORRUPTION, TRADE, CRITICAL MINERALS, AND INFRASTRUCTURE: THE BRI'S BAD DEAL

Trade between China and Latin America has skyrocketed over the last two decades, increasing more than 25 times in that span. Over the next decade, trade between China and the region is projected to double again to over \$700 billion. Chinese loans have also increased the debt burden of Latin American countries by \$138 billion. Much of that debt has come from China's Belt and Road Initiative (BRI)—a program that promises quick infrastructure and election-friendly megaprojects for which leaders in the region have been eager to sign up. Latin America trails only Asia in terms of BRI funding, having received more funding between 2005 and 2021 than Africa.

BRI projects are particularly appealing to the rulers of overindebted countries with weak governance standards since BRI loans provide no protection against corruption or limitations on indebtedness. Unfortunately, while BRI mega-projects are appealing to political leaders and their cronies, they have left a troubling legacy of corruption, broken promises, substandard infrastructure, opaque contractual terms, and mountains of debt.

In Ecuador, the \$3.4 billion Coca Codo Sinclair hydroelectric project was supposed to provide 1,500 megawatts of electricity for Ecuador's people. Instead, Ecuadorian officials, including former President Lenin Moreno, received more than \$75 million in bribes, and the citizens of Ecuador received a dam with at least 17,000 known cracks—putting the entire project and the lives of locals living downstream at risk. A million Ecuadorians were displaced to build the dam. Now there is major doubt that it will ever be fully operational.

Still, the Chinese debt continues to get paid under opaque terms that let Beijing walk away with 80 percent of Ecuador's oil—its most valuable export. On top of that, China gets the oil at a massive discount, allowing Beijing to resell the oil on the open market for a profit that should be going to Ecuador.

China has been aggressive in its attempts to exploit Latin America's abundant natural resources as it seeks to monopolize critical supply chains vital to the world's energy future. China controls around 65 percent of global lithium processing and refining capacity. In South America's Lithium Triangle of Argentina, Bolivia, and Chile, home to over half of the world's known lithium reserves, China is working to corner the market in all three countries.<sup>1</sup>

American companies, meanwhile, are being sidelined under suspicious circumstances. The U.S. company EnergyX, the only bidder in Bolivia to successfully demonstrate its technology with a pilot plant on-site, was disqualified from bidding after missing a deadline by 10 minutes. The project was ultimately awarded to a consortium of Chinese companies.

Finally, a positive trading relationship between the United States and Latin America has slowly been eroded and replaced with substantial Chinese engagement. This has spurred Brazil to push to resurrect the BRICS alliance as a non-America alternative trading and economic engagement bloc. In particular, Brazil has been vocally promoting the idea of pursuing a BRICS-based currency as an alternative to U.S. dollar primacy and dollar-based trade, with others in Latin America, such as Argentina and Venezuela, actively looking to join the alliance.

The United States, mobilizing its innovative private sector, has much more to offer Latin America than an alliance with a moribund Russia and a corrupting China can provide. To date, however, commercial risk-aversion and U.S. Government disinterest has allowed China to carve out a dominant economic relationship throughout the region, much to the detriment of economic security in the Americas. The current "Americas Partnership for Economic Prosperity" is an important initiative that focuses on enhancing trade in this critical region, but it needs resources. The United States must do more to engage economically with others in the hemi-

<sup>1</sup>Diana Roy, "China's Growing Influence in Latin America," *Council on Foreign Relations*, June 15, 2023. (<https://www.cfr.org/background/china-influence-latin-america-argentina-brazil-venezuela-security-energy-bri>); "Ganfeng Global Layout," *Ganfeng Lithium*, accessed June 16, 2023. ([http://www.ganfenglithium.com/about3\\_en.html](http://www.ganfenglithium.com/about3_en.html)); "Zijin Mining Completes Acquisition of Neo Lithium," *ZiJin*, February 5, 2022. (<https://www.zijinmining.com/news/news-detail-119227.htm>); Ward Zhou, An Limin, Luo Guoping, and Lu Yutong, "China consortium to develop lithium deposits in Bolivia," *Caixin* (China), January 27, 2023. (<https://asia.nikkei.com/Spotlight/Caixin/China-consortium-to-develop-lithium-deposits-in-Bolivia>); Antonio De la Jara, "Tianqi buys stake in lithium miner SQM from Nutrien for \$4.1 billion," *Reuters*, December 3, 2018. (<https://www.reuters.com/article/us-chile-tianqi-lithium/tianqi-buys-stake-in-lithium-miner-sqm-from-nutrien-for-4-1-billion-idUSKBN10217F>).

sphere, expanding and reinvigorating free trade agreements and de-risking the environment for private capital and companies. Strong private-sector engagement combined with a U.S. reprioritization of the rule of law and transparency in Latin America has the potential to substantially stabilize conditions in the hemisphere and diminish the conditions that contribute to U.S.-bound migration.

#### PORTS, LOGISTICS, DATA, AND SURVEILLANCE: LOGINK, CRANES, AND 5G

China's 29 ports in Latin America control vast swaths of regional trade, but China also manufactures 96 percent of all shipping containers and 80 percent of the world's ship-to-shore cranes, and they lead the world in shipping capacity. Ships, containers, and cranes are only the beginning. Chinese-operated ports not only commercially link Beijing to the world but also act as outposts for data gathering and surveillance on a massive scale. China's port companies are legally required to collect information for the Chinese Communist Party.

Data collection is happening everywhere in the ports and providing China with a significant asymmetric advantage. Seemingly mechanical shipping cranes are being investigated as spying tools. China's logistical software system, LOGINK, is being used at ports around the world and tracks a wide range of trade, market, and maritime information, including: vessel and cargo status, customs information, billing and payment data, geolocation data, price information, regulatory filings, permits and driver's licenses, trade information, and booking data—information that gives Beijing critical commercial and geopolitical advantages. Chinese ports have 5G towers providing Wi-Fi to cruise ship tourists, and China provides the operating systems for the ports facility computers.

China's information advantage could permit Beijing to pinpoint economic attacks on critical U.S. trade and supply chain vulnerabilities. Even worse, China has knowledge and control over vast amounts of maritime infrastructure that underlies the shipping of Western military supplies, equipment, and components—cornering logistical data that could severely undermine U.S. and allied military capabilities in any potential conflict.

China's high-powered navy—now the largest in the world—also maintains critical advantages by having access to a global web of state-owned ports. Chinese commercial ports routinely host ships from China's navy and could act as critical resupply points—providing a massive tactical advantage in any potential conflict. China is, moreover, actively pursuing civilian/military interoperability to make infrastructure, such as its ports, even more militarily valuable.

Foreign ownership or control of global ports and their informational infrastructure is not an intrinsic hazard. However, given China's aggressively adversarial economic and geopolitical posture toward the West, it is critical that risks of China port-ownership are fully understood and mitigated. This must begin with understanding what exactly China knows: what information it is collecting, what data streams it has access to, and what state-sponsored intelligence gathering is linked to its port operations.

The United States should also work closely with Canada and Mexico to ensure that China's logistical advantages do not allow Beijing to manipulate trade information in ways that undermine North American security, such as promoting trade-based money laundering, disguising fentanyl operations, aiding human trafficking, or contributing to other national security trade risks. In the same vein, the United States has an opportunity to collaborate with global allies that also face Chinese port-related risks to comprehensively examine and test operations and logistical systems to make sure that trade data is not being compromised or weaponized.

#### FENTANYL AND MONEY LAUNDERING: TWO SIDES OF THE SAME COIN

The fentanyl crisis has tremendous consequences for the United States. One hundred thousand Americans are dying from drug overdoses a year—the vast majority of those from synthetic drugs like fentanyl. That is more than all the deaths from car crashes and gun violence combined. While most Americans understand the impact of fentanyl on our communities, what is less understood is the sophisticated network of internationally organized criminal syndicates, illicit precursor supply chains, and Chinese money-laundering operations that underpin this tragedy.

Fentanyl is unique, both in its lethal nature and in terms of the victims it targets. By and large, fentanyl is not being used by the general addict population but is much more likely to be used, unknowingly, by children and first-time users that believe they are buying legitimate pharmaceuticals, like Adderall or Vicodin . . . with deadly consequences. By disguising fentanyl (which costs as little as 10 cents a pill to produce) as more profitable pharmaceuticals, Mexican cartels make a killing by killing American kids.



Tragically, fentanyl is a drug crisis that is simultaneously a money-laundering crisis, chewing up American children in the process. Fentanyl, manufactured in Mexico from precursor chemicals imported openly from China, is just one link in a money-laundering process that is primarily designed to allow Chinese nationals circumvent China's strict controls on taking cash out of the country. Chinese money launders take dollars from the drug cartels, sell them to Chinese expats for yuan, trade the yuan to Mexican businesses that trade with China, taking pesos back, and then they sell the pesos back to the drug cartels—with the money launderer taking a cut at every transaction. One anonymous U.S. source described the Chinese operation as “the most sophisticated form of money laundering that's ever existed.”

We can no longer consider our border a physical barrier between the United States and Mexico. Increasingly, our trade and financial borders reach world-wide—and China is taking advantage, breaching those borders at will. As Admiral Craig Fuller, commander of U.S. Southern Command, said in 2021, Chinese money laundering is “the No. 1 underwriter of transnational criminal organizations.” As another expert pointed out, China launders roughly half of the world's illicit money, responsible for cleaning approximately \$2 trillion in illicit proceeds a year.

Fortunately, the illicit finance backbone of the fentanyl trade is also its greatest weakness. While interdicting tiny pills at the physical border is nearly impossible, truckloads of cash are passing right under our noses, running through our financial system and, often, operating in plain sight. Building a strategy to follow and attack the money, therefore, will do far more to stem the dramatic rise in overdose deaths than any other drug enforcement strategy.

#### MISINFORMATION AND RISING AUTHORITARIANISM

Authoritarian regimes are driving migration to the Southern Border in tremendous numbers with migrants from Cuba, Venezuela, and Nicaragua now outnumbering even migrants from the Northern Triangle of Honduras, El Salvador, and Guatemala. If we are seeking to address the root causes of migration, addressing rising authoritarianism is a strategic imperative. It also means fighting back against a false narrative designed to undermine the U.S. role in the region.

Authoritarianism throughout the hemisphere is increasingly supported and enabled by a sophisticated misinformation campaign by a new Axis of Authoritarianism, most notably Russia, Iran, and Venezuela. As Southern Command Administrator General Laura Richardson stated in her 2022 Posture Statement to Congress, “Russia intensifies instability through its ties with Venezuela, entrenchment in Cuba and Nicaragua, and extensive disinformation operations.”

Russia's main conduits for propaganda throughout Latin America are Russia Today's Spanish language channel, Actualidad RT, and Sputnik's Spanish channel, Sputnik Mundo. These are channels are then amplified by the Venezuelan-led channel, TeleSur and the Iranian channel, HispanTV, whose broadcasts to Spanish-speaking audiences are closely intertwined with Russia's.

As pointed out by my colleague, Emanuele Ottolenghi, “the Spanish language media networks controlled by Iran, Russia, and Venezuela push out conspiracy theories, fake news, whataboutism, and disinformation,” whereby authoritarian governments package “their imperialism as resistance, their terrorism as anti-terrorism, and their authoritarianism as democracy.”

Russia itself is transparent in its attempts to use propaganda as a weapon of war to promote its narrative throughout Latin America and build consensus for pro-authoritarian, anti-American policies. As the editor-in-chief of Russia Today stated “. . . not having your own foreign broadcasting is like not having a Ministry of Defense. When there is no war, it seems to be unnecessary. But damn, when there is a war, it's downright critical.”

The reach of this propaganda is tremendous. RT's Spanish Twitter account has 3.4 million followers. Its YouTube account has 5.9 million subscribers. TeleSur's Twitter has 2 million followers.

The United States has not sanctioned any of these channels. It should.

Canada, the European Union, and the United Kingdom have already blocked RT and Sputnik with sanctions. After ordering the removal of Russian state-owned media from internet search results, the European Union imposed sanctions on RT and Sputnik in March 2022, and in May 2022, it banned additional Kremlin-backed media platforms, such as RTR Planeta, Russia 24, and TV Centre.

But RT and Sputnik are still available on cable, the internet, and social media, across the United States and throughout Latin America, with significant, negative impact on global audiences. U.S. sanctions could change that, severely degrading a key weapon to promote authoritarian disinformation.

Hispanic TV is owned by the Islamic Republic of Iran Broadcasting authority, or IRIB. The U.S. Department of Treasury has sanctioned IRIB. As an IRIB subsidiary, HispanTV, should also be sanctioned.

Russian and Iranian regimes further boost Latin American authoritarianism with military sales, joint exercises, direct funding, and commercial engagement. Iranian warships were recently welcomed to Rio de Janeiro, and 2 weeks ago, Iranian and Venezuelan officials signed 25 separate memoranda of understanding on issues that could be used for military cooperation or sanctions evasion. The United States must do more to push authoritarian regimes out of Latin America.

#### RECOMMENDATIONS

The challenge of authoritarian interference in Latin America presents critical questions about how the United States can use its vast economic and political power to drive stability, opportunity, investment, and democratic principles. Most critically, we must determine how we can leverage diplomatic and operational engagement in the region to secure our borders, convey benefit to more people throughout our hemisphere, and reinvigorate true democracy in the process. The U.S. Government, in close and aligned partnership with the private sector, must present a compelling vision for new economic alliances and democracy-reinforcing engagements that push back against the malign and corrupting influence of foreign authoritarian governments from Asia, Europe, and the Middle East.

DHS has a central role to play. DHS and its relevant components can implement a more effective strategy to understand, address, and mitigate threats to the homeland emanating from Latin America. But it requires a shift in mindset and thinking more creatively about the tools available and new ones required. In general terms, this demands that DHS:

- *Have a plan.* DHS should implement a more robust economic security threat assessment process that prioritizes foreign adversaries and strategic competitor interests.
- *Show up.* A risk-based approach to economic security threats can drive more effective deployment of both physical and digital boots on the ground for gathering intelligence and information, especially at ports, and establishing core relationships with government counterparts and private-sector actors.
- *Bring resources.* DHS must invest in its own critical security infrastructure in the region and more directly support USG efforts to bring more capital and private-sector partners to strategic regional investments, especially in critical supply chains, foreign commercial port operations, and other strategic vectors where we have known vulnerabilities.
- *Commit.* Long-term responses will send the right message to partners and allies. The post-9/11 operational readiness and investment strategies have largely fallen by the wayside. We need to send a stronger message to friends and partners in the region that we are committed to long-term partnerships. Otherwise, China and other malign actors will wait us out.

More specifically, DHS can undertake the following concrete actions to strengthen its efforts to combat malign authoritarian influence in Latin America:

- (1) *Identify and analyze a broader range of economic security threats as core drivers of homeland security vulnerability.*

New and emerging threats across Latin America—from rising authoritarianism, high-tech surveillance tactics, weaponized corruption, and increasingly deadly drugs—leave our borders, and our regional economic and security objectives, vulnerable to the malign influence of adversaries and competitors, from both within and outside of the Western Hemisphere. DHS must shift its intelligence and analysis framework to encompass a wider range of new actors, threats, and data sources to ensure that its intelligence and analysis anticipate a range of interrelated national and economic threats in Latin America as drivers of risk, vulnerability, and migration. The threat picture is complex and nuanced, but, at the same time, these actors also exploit existing mechanisms. Smuggling, trafficking, intellectual property violations, illicit trade, disinformation campaigns, and money laundering are flourishing and increasingly used by both transnational criminal organizations (TCOs) and authoritarian state actors. These tools are leveraged as mechanisms for strengthening criminal networks, advancing anti-American political and economic objectives, and exerting malign influence on the homeland. Meanwhile, threats from China's massive infrastructure investment strategy and growing trade relationships have dented U.S. economic leadership in the region while co-opting foreign officials willing to go along with Beijing's wishes and create unprecedented access to valuable natural resources, commercial infrastructure, and military engagement. These new and evolving vectors of risk should be more tightly woven into DHS's existing threat analysis.

*(2) Re-engage and expand private-sector supply chain partnerships to improve information and data that supports better intelligence gathering and analysis.*

We need more and deeper partnerships with the private sector, especially those involved in manufacturing, transporting, importing, exporting, and investing in commercial operations and key supply chains in Latin America. Much like the immediate post-9/11 environment, it is critical to take a more collaborative approach to risk-based targeting and effective use of data to maintain a real-time view at the ports and across vital economic interests. But we need to evolve beyond legacy terrorist threats. Extension of mechanisms like the Authorized Economic Operator (AEO) program and additional Mutual Recognition Arrangements (MRAs) offers potential pathways. Created after 9/11 as part of the Bali Trade Facilitation Agreement, AEO is the equivalent of the Customs Trade Partnership Against Terrorism, or C-TPAT, for non-U.S. entities. Programs like AEO, if used effectively, can improve our “ground game” by connecting DHS with critical foreign-based private-sector organizations willing to provide more advanced trade data and information to CBP in exchange for expedited access at the borders. We need more connectivity to information and engagement with supply chain actors and operators that have access to valuable data streams. In some cases, additional private sector-driven link analysis and analytics can provide a much deeper view into the actions of individuals, entities, competitors, and adversaries and our global supply chain vulnerability. Working with AEOs and helping to grow private-sector participation in such programs could be a significant contributor to better informational and intelligence analysis.

*(3) Conduct a detailed review of China’s multi-layered influence on ports and related critical trade infrastructure in Latin America and strategies to counter that influence.*

DHS and CBP should lead a comprehensive review of potential vulnerabilities at Latin American ports, including mapping Chinese ownership and links to the sanctioned entities; the implementation of Chinese-made technology, including cranes, screening devices, logistics software, and the security data associated with these capabilities; an assessment of 5G network access and ownership, cyber risks, relevant trade data information; understanding China’s operations and maintenance strategies and influence; assessing the risk of potential dual-use infrastructure; and investigating illicit actors and entities associated with critical infrastructure.

*(4) Expand and enhance the effectiveness of Trade Transparency Units.*

Trade Transparency Units (TTUs) were established in 2004 to exchange trade data between the United States and its trade partners on a bilateral basis and improve the understanding of trade-based money laundering. TTUs should be resourced and supported as part of a broader effort to counter the illicit financial pathways favored by authoritarians.

As of 2020, the United States has trade transparency agreements—the mechanisms that allow for the exchange of information between jurisdictions—with over a dozen countries and their Trade Transparency Units (TTUs), primarily in Central and South America. An April 2021 GAO report recommended that DHS expand the number of agreements and “develop a strategy for the TTU program to ensure ICE has a plan to guide its efforts to effectively partner with existing TTUs, and to expand the program, where appropriate, into additional countries.”

Concurrently, Congress must work with the administration to strengthen the effectiveness of our own TTU. Another GAO report released in December 2021 identified two critical deficiencies:

1. The establishment of an “interagency collaboration mechanism to promote greater information sharing and data analysis between Federal agencies and with relevant private-sector entities on issues related to trade-based money laundering and other illicit trade schemes”; and
2. Ensuring that ICE take “steps to enable and implement sharing of the Trade Transparency Unit’s trade data—including for the purposes of trade data analysis about patterns or trends of illicit activity related to trade-based money laundering and similar schemes—with U.S. agencies with roles and responsibilities related to enforcing trade laws and combating illicit financial activity, as appropriate.”

As of today, these recommendations remain unresolved, with ICE officials noting that the “data-sharing agreements with foreign countries prohibit the sharing of their information, and data-sharing agreements among U.S. law enforcement agencies provide a mechanism to request access and authorization if an agency needs access.” Congress should review DHS’s authorities to find a way to streamline the exchange of information between the United States and partner TTUs.

(5) *Increase investigative work to uncover Chinese money-laundering networks and the financial institutions supporting them.*

As my colleague Anthony Ruggiero and I have written, Congress should authorize the President to impose a range of sanctions on the facilitators who serve the drug traffickers, including individuals who are grossly negligent concerning financial transactions or export drug precursors. DHS can play a role in this effort by surging its investigative resources to identify entities involved in producing and shipping precursor chemicals and supporting surge capacity with law enforcement counterparts to investigate U.S.-based and foreign money-laundering networks and associated persons and entities.

Congress should also enact so-called secondary sanctions targeting those who do business with the primary targets of fentanyl sanctions. Specifically, the law should impose sanctions on foreign financial institutions that knowingly conduct or facilitate significant financial transactions on behalf of a sanctioned person.

(6) *Support legislation to counter kleptocracy and state-sponsored corruption, such as the Foreign Extortion Prevention Act (FEPA).*

Corruption preys on weak regimes throughout Latin America, boosting authoritarianism, destroying lives and livelihoods, undermining U.S. interests, pushing out law-abiding U.S. companies, and facilitating China's bribe-fueled incursions throughout the hemisphere. U.S.-based and U.S.-listed companies face major consequences for bribing foreign officials under the Foreign Corrupt Practices Act. Corrupt officials, however, get off scot-free, as do the Chinese companies and officials bringing gift boxes filled with cash.

China is sidelining American companies in the race for critical resources, partnerships, and contracts largely because corruption and opacity are central features of Chinese engagement. In order to raise the stakes for crooked foreign officials and narrow the window for Chinese interference, Congress should consider expanding anti-corruption law enforcement tools such as those found in the Foreign Extortion Prevention Act (FEPA)—which would parallel the FCPA by criminalizing bribe demands made of U.S. and U.S.-listed companies.

FEPA had strong bipartisan support in the last Congress, is supported by the U.S. Chamber of Commerce and a broad coalition of civil society, and reflects a commitment included in the National Security Council's Strategy on Countering Corruption.

Chairman PFLUGER. Thank you, Ms. Dezenski.

The Chair now recognizes Mr. Hernandez-Roy for his opening statement of 5 minutes.

**STATEMENT OF CHRISTOPHER HERNANDEZ-ROY, DEPUTY DIRECTOR AND SENIOR FELLOW, AMERICAS PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES**

Mr. HERNANDEZ-ROY. Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence, thank you very much for allowing me to testify today on this important subject.

The democratic, relatively prosperous, and largely pro-U.S. nature of Latin America and the Caribbean has been a strategic asset for the United States for decades. Yet the region today is at a tipping point. There is a significant risk that it could become a liability in strategic competition with China, to a lesser extent Russia in the next decade.

In particular, the influence of extra regional authoritarians, to include also Iran, has been on the rise throughout Latin America. These actors pose an interlocking challenge to regional and by extension, U.S. security. While each possesses different capabilities and long-term objectives, they often coordinate both informally and formally to challenge U.S. influence in the region. It is therefore important to view these three actors not in isolation, but how their behaviors reinforce and interrelate.

Moscow, Beijing, and Tehran each espouse different geopolitical goals and world views, yet they have shown an alarming degree of convergence when it comes to effort efforts at fomenting discord and disruption within the United States' shared neighborhood. Such efforts come both through support for overt authoritarians, especially the dictatorial regimes of Cuba, Nicaragua, and Venezuela, but also where they cannot totally pull countries out of the U.S. orbit. These regimes seek to peel away once staunch U.S. allies and convert them into comparatively neutral bystanders. This can be seen with the rhetoric of the government of Brazil ascribing blame to both Ukraine and Russia for the war. In Argentina, Brazil and longstanding ally Colombia's refusal to sell Soviet legacy weapons to help Ukraine defend itself. It is noteworthy that no Latin American country, save Costa Rica, has joined the international sanctions effort against Russia. Russia's brutal and illegal invasion of Ukraine has caused autocracies the world over to close ranks and sharpen their competition with the United States and with fellow democratic allies.

From a Russian nuclear capable strategic bomber visiting Caracas a few years ago to more recent developments, such as the docking of Iranian warships in Brazil, to possible Iranian drone manufacturing in Venezuela for use against Ukraine, to revelations about Chinese espionage activities against the United States from Cuba and reported overtures to Haiti by the notorious Russian Wagner group. All have plainly illustrated the risks to U.S. security that come from allowing dictatorships to proliferate and coordinate their activities.

I should just add that yesterday it was revealed that China and Cuba are also discussing military training on the island, which might bring Chinese troops to the island.

Another comparatively underappreciated dimension is the role authoritarian alliances in helping dictators remain in power and repress their populations more effectively, accelerating mass irregular migration to the detriment of the region at large. The most dramatic example, of course, comes from Venezuela, where over 7.3 million people have left the country to escape Nicolas Maduro's gross mismanagement, misery, and repression. He remains in power, shored up by arms and intelligence from Russia, China, and Cuba and his sanctions evading oil trade with Iran.

Nicaragua has also seen a dramatic uptake in outward migration, with 600,000 people fleeing since the murderous state crackdown in 2018, creating an acute crisis in neighboring Costa Rica, while U.S. apprehensions of Nicaragua at the Southern Border have multiplied by a factor of more than 50 in the last 2 years. Cuba, the longest-standing dictatorship in the hemisphere continues to send migrants as the country's economy reels and as the regime further clamps down on dissent following the massive protests held on the island in July 2021.

The regime in Venezuela has taken advantage of the mass exodus of its people and the generous humanitarian responses from neighboring countries to send its spies abroad to continue to harass and persecute Venezuelan opposition figures in Colombia, for instance. Thus a U.S. adversary has taken advantage of this human wave to conceal the entry of spies into a traditional U.S. ally. This

begs the question of what more sophisticated U.S. adversaries like China and Russia might be doing to take advantage of the historic migration flows across the U.S. Southern Border.

The presence of dictatorial regimes within the Western Hemisphere offers a springboard for extra hemispheric authoritarians to expand their influence, co-opting, coercing, and manipulating other countries in the region to undermine their relations with the United States, often empowering antidemocratic forces in the process.

These challenges should not cause us to estimate the considerable advantages we still possess when it comes to geopolitical competition in the Hemisphere. Latin America, on the whole, still looks to the United States as its preferred partner. If the United States seizes the opportunity to present a comprehensive, well-resourced counteroffer, the region will consider it seriously. Crafting such a response, however, will require a sustained and forward-looking strategy for engagement, which to date has unfortunately appeared lacking from the U.S. Government, which has long turned to the region only in response to crisis and neglected it at other times.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hernandez-Roy follows:]

PREPARED STATEMENT OF CHRISTOPHER HERNANDEZ-ROY

JUNE 21, 2023

Chair Pfluger, Ranking Member Magaziner, and distinguished Members of the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence, I am very grateful for this opportunity to testify before you today. The views represented in this testimony are my own and should not be taken as representing those of my current or former employers.

The democratic, relatively prosperous and largely pro-U.S. nature of Latin America and the Caribbean (LAC) has been a strategic asset for the United States for decades. Yet, the region today is at a tipping point; there is a significant risk that it could become a liability in strategic competition with China and to a lesser extent Russia in the next decade. In particular, the influence of extra-hemispheric authoritarians, including Iran, has been on the rise throughout LAC. These actors pose interlocking challenges to regional, and by extension U.S. security. While each possesses different capabilities and long-term objectives, they often coordinate both informally and formally to challenge U.S. influence in the region. It is therefore important to view these three actors not in isolation, but how their behaviors reinforce and interrelate. Moscow, Beijing, and Tehran each espouse different geopolitical goals and world views, yet they have shown an alarming degree of convergence when it comes to efforts at fomenting discord and disruption within the United States' shared neighborhood. Such efforts come both through support for overt authoritarians, especially the dictatorial regimes in Cuba, Nicaragua, and Venezuela, but also where they cannot totally pull countries out of the U.S. orbit, these regimes seek to peel away once staunch U.S. allies and convert them into comparatively neutral bystanders. This can be seen with the rhetoric of the government of Brazil, ascribing blame to both Ukraine and Russia for the war, and in Argentina, Brazil, and long-standing ally Colombia's refusal to sell Soviet legacy weapons to help Ukraine defend itself. It is noteworthy that no LAC country, save Costa Rica, has joined the international sanctions effort against Russia for its war of aggression.

Russia's brutal and illegal invasion of Ukraine has caused autocracies the world over to close ranks and sharpen their competition with the United States and fellow democratic allies.<sup>1</sup> Indeed, recent developments in the region, from the docking of Iranian warships in Brazil, to revelations about Chinese espionage activities in Cuba, and overtures to Haiti by the notorious Russian Wagner group, have plainly illustrated the risks to U.S. security that come from allowing dictatorships to proliferate and coordinate their activities. Another comparatively under-appreciated di-

<sup>1</sup> Carlos Solar, "Is Russia's War in Ukraine Aiding the Survival of the Venezuelan Regime?", *The RUSI Journal*, 2023, 1–12, <https://doi.org/10.1080/03071847.2023.2195751>.

mension is the role of authoritarian alliances in helping dictators remain in power and repress their populations more effectively, accelerating mass irregular migration to the detriment of the region at large.

The most dramatic example of this comes from Venezuela, where over 7.3 million people have left the country as a result of the profound economic, security, and humanitarian crises brought on by the regime of Nicolás Maduro's gross mismanagement and repression.<sup>2</sup> Maduro nevertheless remains in power, shored up by arms and intelligence from Russia and China, and a sanctions-evading oil trade with Iran. Nicaragua has also seen dramatic upticks in outward migration, creating an acute crisis in neighboring Costa Rica, while U.S. apprehensions of Nicaraguans at the Southern Border have multiplied by a factor of more than 50 between fiscal years 2020 and 2022.<sup>3</sup> Even Cuba, the longest-standing dictatorship in the hemisphere, has seen record-setting levels of migration as the country's economy continues to reel and as the regime further clamps down on dissent following the massive protests on the island in July 2021.<sup>4</sup>

Furthermore, the presence of dictatorial regimes within the Western Hemisphere offers a springboard for extra-hemispheric authoritarians to expand their influence, co-opting, coercing, and manipulating other countries in the region to undermine their relations with the United States, often empowering anti-democratic forces in the process.

These challenges should not cause the United States to underestimate the considerable advantages it still possesses when it comes to geopolitical competition in the hemisphere. LAC on the whole still looks to the United States as its preferred partner. If the United States seizes the opportunity to present a comprehensive, well-resourced counteroffer, the region will consider it seriously. Crafting such a response however will require a sustained, and forward-looking strategy for engagement with LAC which to date has unfortunately appeared lacking from a United States Government which has long turned to the region only in response to crisis and neglected it at all other times.

#### RUSSIA: THE GREAT DISRUPTOR

Facing resource constraints which have only grown more acute in the wake of its 2022 full-scale invasion of Ukraine, Russia nevertheless evidences a brazen disregard for international norms and law in its efforts to disrupt the security of the United States and allies, including in the Western Hemisphere. While Russia cannot compete with China or the United States in provision of raw economic assistance, it makes up for this through the sheer diversity of avenues in which Moscow seeks to advance its interests by any means necessary.

Russian influence in the region primarily comes from security ties, fostered through Moscow's global arms industry which countries across Latin America have relied upon in the past to fill their armories with cheap, reliable weapons and equipment. In June 2022, Nicaragua renewed the mandate for Russian military forces to operate within its borders. Russia also maintains a number of GLONASS satellite positioning stations, with one outside of Managua and another scheduled to be deployed in Venezuela.<sup>5</sup> The infamous Wagner private military contractor has also set up shop in Venezuela, providing security for Maduro and training the Venezuelan armed forces.<sup>6</sup> The role of this shadowy state-affiliated mercenary group is cause for elevated concern especially as leaked U.S. intelligence reports have indicated the group also explored contracts to provide security in Haiti. More recently, reports have circulated of Cuban citizens living in Russia signing up to fight in Ukraine,

<sup>2</sup>"Refugees and Migrants from Venezuela," R4V, accessed June 16, 2023, <https://www.r4v.info/en/refugeeandmigrants>.

<sup>3</sup>Charles G. Ripley III, "Crisis Prompts Record Emigration from Nicaragua, Surpassing Cold War Era," Migration Policy Institute, March 7, 2023, <https://www.migrationpolicy.org/article/record-emigration-nicaragua-crisis>.

<sup>4</sup>Ed Augustin and Frances Robles, "Cuba Is Depopulating: Largest Exodus Yet Threatens Country's Future," *The New York Times*, December 10, 2022, <https://www.nytimes.com/2022/12/10/world/americas/cuba-us-migration.html>.

<sup>5</sup>Julietta Pelcastre, "Russia to Install Satellite Navigation System in Venezuela," *Diálogo Américas*, September 22, 2022, <https://dialogo-americas.com/articles/russia-to-install-satellite-navigation-system-in-venezuela/#.ZBuGhHbMJPY>.

<sup>6</sup>Brian Katz, Seth G. Jones, Catrina Doxsee, and Nicholas Harrington, "The Expansion of Russian Private Military Companies," CSIS, September 2020, <https://russianpmcs.csis.org/>.

while Havana and Russian client state Belarus recently inked a deal for Cuban forces to help train the Belarussian military.<sup>7</sup>

Cybersecurity is another vulnerability which Russia has proven adept at exploiting. This in some respects can be traced to a lack of awareness across the region as to the vulnerabilities faced from infiltration by malign foreign actors. This extends even to regional ministries and national defense institutions. The Brazilian military for instance relies on Russian firm Kaspersky Lab for data protection services, even to the point of renewing its contract the summer of 2022 as the war in Ukraine raged.<sup>8</sup> Russian cyber actors have also used their technologies to interfere in elections in Chile, Colombia, Ecuador, and Peru, among others. This has mostly taken the form of disinformation and amplifying polarizing voices and showcases Moscow's well-developed mis- and disinformation tactics. Such capabilities are further augmented by ostensibly aboveboard news outlets. RT en español and Sputnik Mundo, Russia's Spanish-language mouthpieces, have over 30 million viewers in Latin America and the Caribbean, with media agreements to operate in 11 countries.<sup>9</sup> Russia's ability to exploit mis- and disinformation opportunistically was on display recently when images from Mexico of cartel soldiers wielding U.S.-made AT-4 anti-tank missile launchers began circulating on social media. Russian sources, amplified by Moscow's embassy in Mexico City, seized on the narrative that these launchers were redirected from U.S. arms shipments to Ukraine, pushing false claims that the war there was fueling Mexico's internal security challenges.<sup>10</sup>

Russia's on-going war has also touched off a wave of migration, as thousands of mostly young, educated Russians flee the country by increasingly circuitous and dangerous routes to avoid being drafted to fight in Ukraine. The number of Russian nationals encountered at the United States' border quadrupled between 2021 and 2022. Russians seeking entry to the United States often transit through Mexico due to significantly easier visa requirements.<sup>11</sup> While these outflows underscore the unpopularity of Moscow's war, they create novel challenges for North American security as well. Rising levels of Russian migrants through Mexico open new revenue streams for criminal groups engaged in human smuggling. Those fleeing Russia are not the only newcomers to Mexico, which, according to U.S. Northern Command, is home to the largest concentration of GRU agents outside of Russia.<sup>12</sup> Weaknesses in screenings of Russians seeking asylum may therefore present new avenues for Moscow to infiltrate and disrupt the United States itself, to say nothing of the corrosive effects on regional security Russian espionage has already produced.

#### CHINA: CIVIL-MILITARY FUSION

The People's Republic of China (PRC) engages with LAC first and foremost through an economic framework. Between 2000 and 2020, the PRC's share of trade with the region grew eightfold, and China's signature Belt-and-Road Initiative (BRI) has successfully garnered some 21 signatories in the hemisphere. Nevertheless, viewing Beijing's relationship to the Western Hemisphere solely as one of trade obscures many of the more nefarious activities which have emerged as part and parcel of expanded PRC engagement.

The PRC's interests in LAC are manifold. Broadly speaking, LAC is vital to China's economic development, as it is home to extensive deposits of natural resources, including minerals and metals such as copper and lithium, as well as petroleum products. LAC is also key for China's food security, with the region representing

<sup>7</sup>Evan Dyer, "Cornered in Ukraine and isolated by the West, the Kremlin returns to Cuba," *CBC*, June 3, 2023, <https://www.cbc.ca/news/politics/russia-cuba-ukraine-putin-missiles-1.6863359>.

<sup>8</sup>"Kaspersky: 'Now we have to explain the political issues'," *BNamericas*, June 15, 2022, <https://www.bnamericas.com/en/news/kaspersky-now-we-have-to-explain-the-political-issues>.

<sup>9</sup>Calos Malamud, Mira Milosevich-Juaristi, and Rogelio Nuñez, "Latin America in the Ukraine crisis: a pawn in the game for Putin's resurgent Russia," *Real Instituto Elcano*, March 3, 2022, <https://www.realinstitutoelcano.org/en/analyses/latin-america-in-the-ukraine-crisis-a-pawn-in-the-game-for-putins-resurgent-russia/>.

<sup>10</sup>"Propaganda: Russian Embassy in Mexico Accuses Ukraine of Arming Mexican Cartels with US Weapons," *Puerto Vallarta Daily News*, June 2, 2023, <https://www.vallartadaily.com/propaganda-russian-embassy-in-mexico-accuses-ukraine-of-arming-mexican-cartels-with-us-weapons/>.

<sup>11</sup>Yulia Vorobyeva, "Entrepreneurial newcomers: Russian-speaking migrant smugglers on the U.S. southern border," *Global Initiative Against Transnational Organized Crime*, May 11, 2023, <https://globalinitiative.net/analysis/russian-migrant-smugglers-us-southern-border/>.

<sup>12</sup>MDN Staff, "More Russian spies in Mexico than any other country: US defense official," *Mexico News Daily*, March 25, 2022, <https://mexiconewsdaily.com/news/more-russian-spies-mexico-us/>.



much of the PRC's food imports.<sup>13</sup> Increasingly, as China's economy cools off from its previous red-hot growth, China is turning toward LAC countries not merely for their raw materials, but as a base of consumers eager to purchase Chinese-manufactured products. Geopolitically, China has long been fixated on the region as home to the majority of sovereign states that continue to recognize Taiwan. The PRC has assiduously chipped away at this number, and three Central American countries—Panama, El Salvador, and Nicaragua—have switched diplomatic recognition from Taiwan to China since 2017. So too has the nearby Caribbean Island nation of Dominican Republic, and in March 2023, the government of Xiomara Castro in Honduras recognized the PRC, opening an Embassy in Beijing on June 11; a move which brought the total number of Taiwanese diplomatic allies in the region down to just 7 countries. In Guatemala as well, which is headed toward Presidential elections at the end of June, outward support for Taiwan may nevertheless belie an internal calculus where recognition is far more contingent. Should recognition of Taiwan slip further in the hemisphere, the PRC will in all likelihood be further emboldened in its rhetoric and provocations directed toward the island.<sup>14</sup>

While the PRC has clear strategic interests underpinning its focus on LAC, China's engagement in the hemisphere is largely regime-agnostic. Nevertheless, high levels of PRC engagement have been associated with worrying trends in recipient countries' democratic health. China often acts as a "lender of last resort," bankrolling authoritarian governments when other sources of financing will not touch these. The China Development Bank and the Export-Import Bank of China offered in excess of USD \$137 billion to the region in loans to various sectors, Venezuela being the single greatest recipient of Chinese loans at USD \$60 billion.<sup>15</sup> Furthermore, China's public security initiatives have raised concerns after the PRC's "safe cities" surveillance technology was associated with crackdowns on opposition parties in countries like Ecuador under the Correa government, to say nothing of China's assistance with social control and digital monitoring in Venezuela.<sup>16</sup>

Military and security collaboration is also a growing aspect of Chinese activity in LAC. China has sold equipment to military and police forces from countries historically opposed to the United States—such as Venezuela, Cuba, and Bolivia—as well as close American partners like Colombia, Chile, and Ecuador. Venezuela, however, is by far the region's largest buyer of PRC arms. Between 2009 and 2019, \$615 million in weapons was sold to Venezuela.<sup>17</sup> China could be poised to make greater arms sales to fill a vacuum left by Russia needing to keep supplies at home due to its invasion of Ukraine. In addition to military sales, the People's Liberation Army has a burgeoning presence in the region, which it maintains through training and visits, permitting it greater familiarity with countries' operational frameworks and preparedness, as well as their strategic doctrine and training routines. China has furthermore exploited a paucity of U.S. police assistance in the region, coupling this with the dire security crises faced by countries throughout the hemisphere, to advance its own model of security assistance.<sup>18</sup>

While China leads with trade and investment, security concerns are never far off, as one report by the Asia Society outlines how China employs "civil-military fusion" in its development projects, ensuring that they are designed to specifications that offer both commercial and military advantages.<sup>19</sup> In Latin America, this manifests in projects like the Espacio Lejano space research station in Argentina, which is effectively off-limits to inspection by Argentine authorities. Analysts have noted that, while certainly capable of its stated purpose of deep space scientific research, the

<sup>13</sup>Ryan C. Berg, and Thiago de Aragão "Is Latin America Important to China's Foreign Policy?" CSIS, CSIS Commentary, September 9, 2021, <https://www.csis.org/analysis/latin-america-important-chinas-foreign-policy>.

<sup>14</sup>Leland Lazarus and Ryan C. Berg, "What Taiwan Can Learn from Honduras's Switch to China," *Foreign Policy*, March 31, 2023, <https://foreignpolicy.com/2023/03/31/latin-america-taiwan-china-honduras-united-states-diplomacy-tsai/>.

<sup>15</sup>"China-Latin America Finance Databases," The Inter-American Dialogue, Accessed June 16, 2022, [https://www.thedialog.org/map\\_list/](https://www.thedialog.org/map_list/).

<sup>16</sup>Jaime Moreno, "China Seen Backing 'Digital Authoritarianism' in Latin America," VOA, January 14, 2022, <https://www.voanews.com/a/china-seen-backing-digital-authoritarianism-in-latin-america-/6398072.html>.

<sup>17</sup>Lara Seligman, "U.S. Military Wary of China's Foothold in Venezuela," *Foreign Policy*, April 8, 2019, <https://foreignpolicy.com/2019/04/08/us-military-wary-of-chinas-foothold-in-venezuela-maduro-faller-guaido-trump-pentagon/>.

<sup>18</sup>Brian Fonseca and Leland Lazarus, "China Is Exploiting a U.S. Police Void in Latin America," *Foreign Policy*, April 27, 2023, <https://foreignpolicy.com/2023/04/27/cities-summit-americas-united-states-china-police-safe-city-bri/>.

<sup>19</sup>Daniel R. Russel and Blake H. Berger, "Weaponizing the Belt and Road Initiative," The Asia Society Policy Institute, September 2020, <https://asiasociety.org/policy-institute/weaponizing-belt-and-road-initiative>.

station could readily be used for satellite telemetry tracking and control, collecting signals intelligence, and even potentially missile guidance, tools which would serve China well in a potential conflict scenario.<sup>20</sup> Even further south, the PRC is seeking to expand its presence with a new agreement between Chinese state-owned Shaanxi Chemical Industry Group Co. Ltd. and the province of Tierra del Fuego to begin construction on a port in Ushuaia, a key gateway to the Antarctic, and strategic chokepoint along the Drake Passage and Strait of Magellan.<sup>21</sup> In Peru, a mega-port is being built by a state-owned company from China which will become a key link between China and Latin America, ensuring Chinese supply chains of metals, critical minerals and agricultural products.<sup>22</sup> General Laura Richardson in recent testimony before Congress has also raised concerns that Chinese-constructed infrastructure along the Panama Canal could be easily turned to military purposes in the event of a conflict or crisis scenario.

Finally, approximately 100 miles off the coast of Florida, the White House has now confirmed the presence of a PRC-run base, replete with long-range radars and other electronic surveillance equipment directed toward the United States.<sup>23</sup> The revelations underscore how the PRC utilizes its economic heft to extract far more expansive geopolitical advantage. Cuba, undergoing its most severe economic crisis since the collapse of the Soviet Union, reportedly accepted billions of dollars from China to take over and upgrade the facility in a trade which was likely too good to refuse for Havana.<sup>24</sup>

As with Russia, a growing trend of Chinese nationals seeking respite from repressive policies at home have been pursuing circuitous routes to the United States by way of LAC countries. According to U.S. Customs and Border Patrol data, more than 4,000 Chinese nationals were encountered between October 2022 and February 2023 at the Southern Border, a dramatic uptick from the 421 encounters reported during the same period from 2021 and 2022.<sup>25</sup> Typically, these individuals arrive via countries like Ecuador which does not have a visa requirement for Chinese citizens to visit. From there, they travel a long and often dangerous road, together with tens of thousands of Latin American and Caribbean migrants transiting the Darién Gap between Colombia and Panama.

#### IRAN: OPPORTUNISTIC ENCROACHMENT

Often viewed as a secondary, or even tertiary player in the hemisphere, Iran's engagement with LAC exacerbates many of the challenges outlined above. The continued global sanctions regime against Iran limits its tools for influence and has largely relegated Iranian influence in the hemisphere to Venezuela, Nicaragua, and Cuba, which are already willing to flaunt U.S. sanctions. Here, Iranian engagement has a complementary effect to more well-established and substantive Russian and Chinese efforts.

The docking of Iranian warships in Rio de Janeiro in March 2023 and high-level visits by Iranian officials to Caracas and Managua and Havana suggest Iran is seeking to project military power throughout the region in addition to economic benefit. Diplomatically, it appears Iranian Foreign Minister, Hosein Amir Abdolhahian's February 2023 tour of the hemisphere's dictatorships was a preview for an even greater engagement, as President Ebrahim Raisi began making the same circuit of visits on

<sup>20</sup> Matthew P. Funairole, Dana Kim, Brian Hart, Joseph S. Bermudez Jr., "Eyes on the Skies: China's Growing Space Footprint in South America," CSIS, Hidden Reach no. 1, October 4, 2022, <https://features.csis.org/hiddenreach/china-ground-stations-space/>.

<sup>21</sup> Laureano Pérez Izquierdo, "Avanza el puerto de China en Tierra del Fuego: el gobernador ratificó con un decreto el memorándum con el régimen," *Infobae*, June 8, 2023, <https://www.infobae.com/politica/2023/06/08/avanza-el-puerto-de-china-en-tierra-del-fuego-el-gobernador-ratifico-con-un-decreto-el-memorandum-con-el-regimen/>.

<sup>22</sup> Tibusay Zea, "A state-owned company from China is building a massive commercial port in Peru," *PRI The World*, September 20, 2022, <https://theworld.org/stories/2022-09-20/state-owned-company-china-building-massive-commercial-port-peru>.

<sup>23</sup> Dave Sherwood and Matt Spetalnick, "Las imágenes de la base cubana que China utiliza para espiar a Estados Unidos y el testimonio de los vecinos: 'Aquí se sabe todo,'" *Infobae*, June 14, 2023, <https://www.infobae.com/america/america-latina/2023/06/14/las-imagenes-de-la-base-de-espionaje-china-en-cuba-y-el-testimonio-de-los-vecinos-aqui-se-sabe-todo/>.

<sup>24</sup> Walter Russell Mead, "Russia, China, and Iran in America's Backyard," *The Wall Street Journal*, June 12, 2023, <https://www.wsj.com/articles/adversaries-in-americas-backyard-china-russia-cuba-spy-base-iran-monroe-9504c189>.

<sup>25</sup> Alicia Chen, "Growing numbers of Chinese citizens set their sights on the US—via the deadly Darién Gap," *The Guardian*, March 8, 2023, <https://www.theguardian.com/world/2023/mar/09/growing-numbers-of-chinese-citizens-set-their-sights-on-the-us-via-the-deadly-darien-gap>.

June 12.<sup>26</sup> In the past, Iran allegedly sent members of its Quds Force to help Nicolás Maduro stay in power, including with arms shipments.<sup>27</sup> Informed observers have speculated that in return, Maduro may be shipping Venezuelan-made kamikaze drones, or their parts, on regular triangular flights between Venezuela, Tehran, and Moscow.<sup>28</sup>

Another security concern is the continued presence of Hezbollah in Latin America. The group's origins in the region extends back decades, where they were originally concentrated around the Southern Cone, especially the tri-border area of Paraguay. Today, Hezbollah operations have shifted northwards, mainly to Venezuela where they have a sympathetic backer in the form of the Maduro regime.<sup>29</sup> The group has been responsible for helping Maduro launder gold as well, with Israeli intelligence revealing in February 2023 the existence of a gold smuggling operation between Caracas and Tehran facilitated by Hezbollah.<sup>30</sup>

#### CROSS-CUTTING THEMES

All three extra-hemispheric authoritarian regimes recognize that their goals in Latin America are aligned for the time being, and all have a vested interest in sustaining anti-U.S. regimes, and disrupting U.S. security. In many cases, there is strong complementarity between the interests of these authoritarians. China for instance has high demand for cheap oil, while both Iran and Venezuela need to find clients willing to buy their energy exports in the face of sanctions. At other times, cooperation among autocrats gives different regimes the ability to defray costs and deflect responsibility. Russia for example can supply Nicaragua with arms and equipment while entrusting the training of its repressive apparatus to Venezuelan and Cuban officials.<sup>31</sup>

Accordingly, it must be understood that autocrats around the world follow a similar “playbook” of policies for how to take and hold power, clamp down on dissent, and survive in the face of international pressure. Nicaragua’s Foreign Agents Law for instance was closely modeled after Russia’s, allowing it to clamp down and expel dissenting voices.<sup>32</sup> Cybersecurity and the information space more broadly represent key vulnerabilities that malign authoritarians view as entry points for influence, many countries in the region still do not take their data security seriously enough.

Another common thread is the linkage between authoritarian regimes and migration. Dictatorships are associated with a number of push factors for migration, the most basic of which is the simple reality that most people do not wish to live under unaccountable and repressive governments. This is evidenced today by the thousands of Russian and Chinese nationals who have uprooted and risked their lives in an attempt to find better conditions oceans away. Autocracies also drive migration by adopting poor economic policies and channeling resources to inner circles while the rest of the country languishes. Venezuela is perhaps the archetypical case of such gross economic mismanagement producing the world’s largest migration crisis outside of an active war zone. Authoritarianism is part and parcel of the root causes of migration, and ought to be treated as such in any U.S. response.

<sup>26</sup> Arturo McFields, “Latin America’s tyrants open their arms to Iran,” *The Hill*, June 11, 2023, <https://thehill.com/opinion/national-security/4043440-latin-americas-tyrants-open-their-arms-to-iran/>.

<sup>27</sup> Michael R. Gordon and Ian Talley, “Iranian Arms, Fighters Bolster Maduro Government in Venezuela, U.S. Says,” *The Wall Street Journal*, December 2, 2020, [https://www.wsj.com/articles/iranian-arms-fighters-bolster-maduro-government-in-venezuela-u-s-says-11606946275?mod=lead\\_feature\\_below\\_a\\_pos1](https://www.wsj.com/articles/iranian-arms-fighters-bolster-maduro-government-in-venezuela-u-s-says-11606946275?mod=lead_feature_below_a_pos1).

<sup>28</sup> Farzin Nadimi, “Iran May Be Outsourcing Kamikaze Drone Production to Venezuela,” *The Washington Institute for Near East Policy*, November 17, 2022, <https://www.washingtoninstitute.org/policy-analysis/iran-may-be-outsourcing-kamikaze-drone-production-venezuela>.

<sup>29</sup> Matthew Levitt, “Iranian and Hezbollah Operations in South America: Then and Now,” National Defense University, *PRISM* 5, no. 4 (2016): [https://cco.ndu.edu/Portals/96/Documents/prism/prism\\_5\\_4/Iranian%20and%20Hezbollah.pdf](https://cco.ndu.edu/Portals/96/Documents/prism/prism_5_4/Iranian%20and%20Hezbollah.pdf).

<sup>30</sup> Amir Bohbot, “Secret Hezbollah gold trade in South America foiled by Israeli intelligence,” *The Jerusalem Post*, February 26, 2023, <https://www.jpost.com/middle-east/iran-news/article-732802>.

<sup>31</sup> Julieta Pelcastre, “Cuban Agents Advise Nicaraguan Military,” *Diálogo Américas*, August 10, 2019, <https://dialogo-americas.com/articles/cuban-agents-advise-nicaraguan-military/#.ZBuL93bMJPY>.

<sup>32</sup> Ryan C. Berg, “Nicaragua’s Upcoming Election Highlights Need for Long-Term Forms of Pressure on the Ortega Regime,” *CSIS, CSIS Commentary*, August 6, 2021, <https://www.csis.org/analysis/nicaraguas-upcoming-election-highlights-need-long-term-forms-pressure-ortega-regime>.

## RECOMMENDATIONS

The 2022 National Security Strategy notes that “No region impacts the United States more directly than the Western Hemisphere.”<sup>33</sup> Unfortunately, resources and political capital have not been commensurate with the scale of the threat posed by the interlocking efforts of Russia, China, and Iran, along with regional authoritarians. A comprehensive resource-backed approach to LAC is urgently needed if the region is to be secure, democratic, and prosperous. This would include, as one example, revising Development Finance Corporation rules to allow financing of projects in middle income counties of the region, especially given the huge disparities in development within different LAC countries.

*Strengthen Regional Migration Responses.*—Irregular migration remains one of the most profound challenges affecting the entire Western Hemisphere. As authoritarian regimes the world over contribute to mass outflows of people, the United States has an important leadership role to play in identifying and advancing solutions to manage migration, protect the security and rights of individuals in transit, and support host countries. At the same time, the United States should encourage countries with visa-free entry policies for Russian and Chinese nationals to reexamine their screening processes to prevent the espionage apparatuses of these regimes from gaining access to the United States and allies under the guise of humanitarian need. The opening of new migration processing centers in Colombia and Guatemala in this respect represents an important step forward. Reports of Russian efforts to negotiate visa-free entry with Mexico and a number of Caribbean states should also come as cause for concern, and the United States should be active in opposing measures which could facilitate the entry of Russian government agents into the region.

*Invest in Digital Capabilities.*—Cyber vulnerabilities not only create practical information security risks that damage the national security of Latin American and Caribbean countries, but a lack of general knowledge on cybersecurity opens the door to malign foreign powers offering facile solutions. SOUTHCOM, in partnership with CYBERCOM, and the Cybersecurity and Infrastructure Security Agency (CISA), can lead training with partner countries to outline key risks, and the elements of a better strategy to counter cyber threats.

*Counter the Dictator’s Playbook.*—As it becomes increasingly apparent that autocrats both within LAC and beyond are borrowing from a shared “playbook” of policies and tactics for maintaining their grip on power, the United States must double down on efforts to coordinate a response among like-minded democracies to counter instances of autocratization. Such a “democratic playbook” should include measures such as helping to strengthen democratic institutions, early warning signs for civil society watchdogs to track, forums like the Summit for Democracies which allow international coordination to pressure dictatorships, as well as a reexamination of how U.S. sanctions policy can be more effectively deployed against dictators and would-be autocrats.

Chairman PFLUGER. Thank you, Mr. Hernandez-Roy.

The Chair now recognizes Ms. Brandt for her opening statement of 5 minutes.

**STATEMENT OF JESSICA BRANDT, POLICY DIRECTOR, ARTIFICIAL INTELLIGENCE AND EMERGING TECHNOLOGY INITIATIVE, FELLOW, FOREIGN POLICY, STROBE TALBOTT CENTER FOR SECURITY, STRATEGY, AND TECHNOLOGY, THE BROOKINGS INSTITUTION**

Ms. BRANDT. Thank you, Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of the subcommittee for inviting me to address you today on the threat posed by nation-state actors in Latin America to U.S. security.

With geopolitical competition resurgent, considerable attention has been paid to Russian and Chinese playbooks and authoritarianism more broadly. As has been widely documented,

<sup>33</sup> White House, National Security Strategy, 22. White House. National Security Strategy of the United States of America. Washington, DC: White House, October 2022, <https://www.whitehouse.gov/upload-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

Moscow and Beijing use a suite of low-cost deniable tools and tactics to conduct influence operations designed to undermine their democratic competitors and make the world safe for illiberalism. But Russia and China each apply the tool kit differently in Latin America than in their respective home regions. Within Latin America, they operate distinctly from one another in ways that reflect their unique capabilities and goals. Developing a coherent strategy to push back on Russia and China's coercive activities depends on an appreciation of these nuances.

Importantly, although Moscow and Beijing share certain near-term objectives, the two are operating on different trajectories and time horizons toward different long-term aims. Russia is a declining power by many measures, which seeks to disrupt the partnerships and institutions of its mostly Western competitor states here and now as a means of gaining relative advantage. With little to lose and perhaps something to gain for exposure from its asymmetric activities, it's not particularly sensitive to attribution. Seeing the benefits of chaos abroad, its efforts tend to be destructive.

China, by contrast, is a rising power with a great deal to lose from having its coercive activities laid bare. It does not seek disorder, but rather a new order more conducive to its interests, and so its efforts to change the status quo have tended to be more patient.

These nuances carry over into the ways that Russia and China have conducted information operations targeting audiences in the region. Whereas for Russia, building influence in Latin America is a means to the end of disrupting Western alliances and institutions, for China, it's a means of building support for Beijing's way of doing business. Where Moscow has a long history of this sort of activity abroad, China is just beginning to experiment with information manipulation far afield. Russian state media almost never covers Russia. Chinese state media covers China a great deal.

With that in mind, a word about Russia specifically. As you're likely aware, Moscow has made a concerted effort to promote its state media properties to Latin American audiences on-line, often with remarkable success. The Twitter account of RT en Espanol has more followers than RT's primary English language account, and it's retweeted nearly twice as often. On Facebook RT en Espanol has more than twice the followers of RT's English language version and more followers than any other Spanish language international broadcaster. On TikTok, it's more popular than BBC Mundo, El Pais, and Univision.

As it wages its assault on Ukraine, the Kremlin is putting these assets to use to erode support for Western countermeasures among Latin American publics, where opinion about the conflict appears up for grabs. For months, it has blamed Western sanctions for food and fuel shortages affecting the region.

I know themes related to immigration are of interest to the committee. Interestingly, at least within the overt space, there's limited apparent evidence that the Kremlin proactively stokes chaos at the border. The top 5 most retweeted Spanish language Russian state-backed messages on Twitter covering migration thus far this year offer praise for the Mexican president's handling of the issue. Immigration topics have surfaced in known covert information oper-

ations targeting the United States. That activity seems aimed at weaponizing politically divisive issue to exacerbate discord. It's not surprising, then, that some state-backed content on migration boosts domestic criticism of U.S. policy from both left and right.

Unlike Russia, China's ultimate objective is to frame itself as a responsible global power. So its information operations primarily seek to build a positive view of Beijing and its leadership. Its propaganda casts democracy as feckless or hypocritical and highlights the strength of its governance model. Beijing uses immigration policy to cast the United States as hypocritical and its advocacy for human rights around the world. This is in keeping with its strategy of deploying whataboutism to deflect criticism of its own rights record.

Distinguished Members, the United States needs a strategy for pushing back on Russia and China's asymmetric activity in Latin America. It should reflect these nuances, be rooted in the United States' own considerable asymmetric advantages, and uphold democratic values, recognizing that those values are strengths. To that end, there are numerous steps that Washington can take to position the United States for success. Let me propose three.

First, recognizing the range and reach of Russia's information manipulation activity in Latin America, Washington should focus attention and resources on public diplomacy in the region. This could entail investing in U.S. AGM outlets targeted to Latin American audiences, ensuring that the Global Engagement Center is optimally equipped to track Russian propaganda activity there, and supporting research on related themes. It could also entail facilitating best practice exchanges with independent journalists, researchers, fact checkers from across the hemisphere, and engaging democratic governments in the region to build resilience to a shared challenge.

There are more than 40 million Spanish speakers in the United States, and U.S. security interests are directly tied to events in the region. Washington cannot afford to cede the information environment to its competitors.

Second, Washington should conduct messaging campaigns grounded in truthful information to highlight the failures of oppression to audiences in Latin America. These campaigns could build on the successes of the administration's novel strategy of downgrading intelligence related to the war in Ukraine. They could call attention to the fact that although Russia and China position themselves as anti-imperialist powers, both are pursuing an expansionist foreign policies. They might also highlight the costs of China's Belt and Road initiative to the region. Doing so is in keeping with the strategy of exploiting Putin and Xi's fragility to open information.

Third, Washington must equip itself to see across the full threat picture, recognizing that Russian and Chinese coercive activities in Latin America and elsewhere are multidimensional. It's good then that Congress has established the Foreign Malign Influence Center within DNI to consolidate analysis of this problem set. It's also good that the Center appears a resource to look at the full range of threats which go beyond elections.

As it does all this, Washington should coordinate with partners and allies, because ultimately, this is a contest over principles, and Washington’s strong network of partners is perhaps its greatest advantage.

Distinguished Members, by drawing on a sophisticated picture of the complicated ways that Russia and China deploy coercive tools in Latin America, and taking these steps that flow from it, Washington can position itself to protect its interests and the American people.

Thank you.

[The prepared statement of Ms. Brandt follows:]

PREPARED STATEMENT OF JESSICA BRANDT

JUNE 21, 2023

Thank you Chairman Pflugar, Ranking Member Magaziner, distinguished Members of the committee, for inviting me to address you today on the threats posed by nation-state actors in Latin America to U.S. security.

With geopolitical competition resurgent, considerable attention has been paid to Russian and Chinese “playbooks” and authoritarianism more broadly. As has been widely documented, Moscow and Beijing use a suite of low-cost, deniable tools and tactics to conduct influence operations designed to undermine their democratic competitors and make the world safe for illiberalism. They wage these operations using at least four non-military, asymmetric tools: Economic coercion, political subversion, information manipulation, and cyber operations.<sup>1</sup>

Importantly, Russia and China each apply the toolkit differently in Latin America than in their respective home regions. And within Latin America, they operate distinctly from one another, in ways that reflect their unique capabilities and long-term objectives. As I recently argued in the *Washington Quarterly*, together with AEI’s Zack Cooper, developing a coherent strategy to push back on Russia and China’s coercive activities in Latin America—and elsewhere—depends on an appreciation of these nuances. Many of the observations in this testimony are drawn from that work.<sup>2</sup>

#### RUSSIAN COERCION IN LATIN AMERICA

Russia takes a different approach to applying the authoritarian toolkit in Latin America than it does in its own region. Within Europe, Moscow endeavors to weaken political leaders and institutions to gain a relative edge over its competitors—in other words, as an end unto itself. In Latin America, Moscow’s influence activities aim to dent the prestige of mostly Western liberal governments and institutions and the political model they represent. Which is to say, its activities are largely instrumental—a means to the ends of eroding cohesion within liberal democracies and among them, and to undermining their soft power. Throughout Latin America, the Kremlin works to frustrate relationships between the United States and its partners, deepening relationships with leaders that share Putin’s desire to create alternatives to governance institutions that are dominated by the United States and Europe. As analyst Paul Stronski has argued, “Moscow hopes to embarrass Washington, and show that it too can make a foray into its main global adversary’s backyard.”<sup>3</sup>

#### *Economic Coercion*

As elsewhere around the world, Russia uses commercial deals, primarily within the energy sector, as an avenue of influence in the region. To bolster Kremlin ally Nicolas Maduro, Russian state-controlled oil firm Rosneft poured roughly \$9 billion into projects in Venezuela between 2010 and 2019. “From the very beginning,” con-

<sup>1</sup>For definitions, see: *Authoritarian Interference Tracker*. Alliance for Securing Democracy, <https://securingsdemocracy.gmfus.org/toolbox/authoritarian-interference-tracker/#methodology>.

<sup>2</sup>Brandt, J. & Cooper, Z. (2022). Sino-Russian Splits: Divergences in Autocratic Coercion, *The Washington Quarterly*, 45:3, 23–46, <https://doi.org/10.1080/0163660X.2022.2124016>.

<sup>3</sup>Stronski, P. and Sokolsky, R. (2017). *The Return of Global Russia: An Analytical Framework*, Carnegie Endowment for International Peace, <https://carnegieendowment.org/2017/12/14/return-of-global-russia-analytical-framework-pub-75003>.

ceded an executive involved in the effort, “it was a purely political project.”<sup>4</sup> More recently, in order to build support for its confrontation with Western governments over Ukraine, the Kremlin softened the terms of loans it had made to Cuba worth more than \$2 billion. Both countries were among the five that abstained from or declined to participate in a U.N. vote last year denouncing Russia’s brutal invasion.<sup>5</sup>

#### *Political Subversion*

Because the Kremlin’s activities in Latin America are designed to strengthen ties with illiberal partners, rather than weaken the cohesion of liberal competitors, the Kremlin does not appear focused on undermining democratic political processes in Latin America, as it does closer to home. Moscow has, though, deployed private-security contractors linked to the Wagner group to prop up its ally in Caracas in opposition to U.S. interests, and its mercenaries have looked for opportunities to expand their presence in the region, from Haiti to Mexico.<sup>6</sup> Russia’s economic and political influence activities in the region are by no means the primary driver of migration to the United States. However, to the extent that they facilitate corruption, make governments less responsive to their citizens, erode the rule of law, and otherwise undermine good governance, they contribute to migration’s root causes.

#### *Information Manipulation*

Within the information domain, Moscow has made a concerted effort to promote its state media properties on-line, often with remarkable success. The Twitter account of RT en Español (@actualidadRT) has more followers than RT’s primary English-language account (@RT\_com) and is retweeted nearly twice as often. Of the five most frequently retweeted Russian state media and diplomatic accounts on Twitter thus far this year, three target Latin American audiences (@ActualidadRT, @mae\_russia, @SputnikMundo).<sup>7</sup> Last year, Russian Ministry of Foreign Affairs’ Spanish-language account (@mae\_russia) was more frequently retweeted than its Russian-language one (@MID\_rf), even though the latter tweeted more than five times as frequently.<sup>8</sup> The same is true on other platforms. On Facebook, RT en Español has more than twice the followers of RT’s English language version, and more followers than any other Spanish-language international broadcaster. On TikTok, it is more popular than BBC Mundo, El Pais, Telemundo, and Univision.<sup>9</sup>

As it wages its unprovoked assault on Ukraine, the Kremlin is putting these assets to use to erode support for Western countermeasures among Latin American publics, where opinion about the conflict appears up for grabs. For months, it blamed Western sanctions for food and fuel shortages affecting the region. “The Russian military operation in Ukraine does NOT threaten the food supply,” argued the Russian MFA on Twitter in Spanish, for example, asserting that the the “real reasons” for shortages include “myopic U.S. and European policies” and “illegitimate sanctions against Europe.”<sup>10</sup> Spanish is the fourth most spoken language in the

<sup>4</sup>Lowe, C. & Sagdiev, R. (2019). “How Russia sank billions of dollars into Venezuelan quicksand.” *Reuters*, <https://www.reuters.com/investigates/special-report/venezuela-russia-rosneft/>.

<sup>5</sup>Others included Bolivia, El Salvador, and Nicaragua. Resolution A/RES/ES-11/1, “Aggression against Ukraine: resolution/adopted by the General Assembly,” <https://digitallibrary.un.org/record/3959039>.

<sup>6</sup>Roth, A. (2019). “Russian mercenaries reportedly in Venezuela to protect Maduro,” *The Guardian*, <https://www.theguardian.com/world/2019/jan/25/venezuela-maduro-russia-private-security-contractors>; Tsvetkova, M. and Zverev, A. (2019). “Kremlin-linked contractors help guard Venezuela’s Maduro,” *Reuters*, <https://www.reuters.com/article/us-venezuela-politics-russia-exclusive/exclusive-kremlin-linked-contractors-help-guard-venezuelas-maduro-sources-idUSKCNIPJ22M>; De Luce, D. (2023). “Leaked documents: Russian Wagner Group mercenaries look for business close to U.S.,” *NBC News*, <https://www.nbcnews.com/politics/national-security/leaked-documents-russian-wagner-group-mercenaries-haiti-rcna79440>; Banco, E., Aarup, S.A., and Carrier, A. (2023). “Inside the stunning growth of Russia’s Wagner Group,” *Politico*, <https://www.politico.com/news/2023/02/18/russia-wagner-group-ukraine-paramilitary-00083553>.

<sup>7</sup>*Hamilton 2.0 Dashboard* (2023). Alliance for Securing Democracy, <https://securingdemocracy.gmfus.org/hamilton-dashboard/>.

<sup>8</sup>Brandt, J., & Wirtschafter, V. (2022). *Working the Western Hemisphere*. Brookings. <https://www.brookings.edu/research/working-the-western-hemisphere/>.

<sup>9</sup>*The Global Information Wars: Is the U.S. Winning or Losing?, Before the Subcommittee on State Department and USAID Management, International Operations, And Bilateral International Development of the Senate Foreign Relations Committee, 118th Congress* (2023) (Statement of Jessica Brandt, Brookings Institution). [https://www.foreign.senate.gov/download/05/04/2023/050323\\_brandt\\_testimony](https://www.foreign.senate.gov/download/05/04/2023/050323_brandt_testimony).

<sup>10</sup>Cancillería de Rusia (@mae\_russia), Twitter, June 21, 2022, c; RT en Español (@ActualidadRT), Twitter, June 6, 2022, <https://twitter.com/ActualidadRT/status/1533947341811638272>. For additional sample content see [https://www.brookings.edu/wp-content/uploads/2022/12/FP\\_20221216\\_russia\\_propaganda\\_brandt\\_wirtschafter.pdf](https://www.brookings.edu/wp-content/uploads/2022/12/FP_20221216_russia_propaganda_brandt_wirtschafter.pdf).



world, and Russian content targeting the region could have significant global reach.<sup>11</sup>

Interestingly, at least within overt space—among state media and diplomats on Twitter, and on state-backed news websites—there is limited apparent evidence that the Kremlin proactively stokes chaos at the border. The top five most retweeted Spanish-language Russian state-backed messages on Twitter covering migration thus far this year offer praise for Mexican President Lopez Obrador’s handling of the issue.<sup>12</sup> Immigration topics have surfaced in known covert information operations targeting the United States, but that activity seems aimed at weaponizing a politically divisive issue to exacerbate discord.<sup>13</sup> Unsurprisingly, some Russian state-backed content focused on immigration boosts domestic criticisms of U.S. policy.<sup>14</sup>

#### *Cyber Operations*

In its own region, Moscow conducts cyber operations to punish entities that expose Russian malfeasance, steal information that it can later weaponize in an information operation, and to disrupt critical infrastructure, making it more difficult for democracies to govern themselves.<sup>15</sup> Because its activities in Latin America primarily aim to foster friendships, there is little evidence that Russia penetrates computer networks to alter or collect data, or to disrupt institutions or political processes in the region.

#### CHINESE COERCION IN LATIN AMERICA

China, like Russia, takes a different approach to applying the authoritarian toolkit in Latin America than it does in its own region. Closer to home, Beijing has been considerably more assertive in undermining its opponents than elsewhere around the world, including in Latin America, where target countries have at times benefited from Beijing’s efforts to build influence using positive inducements.

#### *Economic Coercion*

Boycotts, tariffs, import restrictions, and export quotas—these are among the mechanisms that China has used to coerce its neighbors in response to actions Beijing perceived as undermining its interests, exercising its leverage as the top trading partner of most countries in its home region. In Latin America, by contrast, Beijing is focused on building leverage that it can apply in the future, using the Belt and Road Initiative (BRI) to expand its engagement with more than 20 countries in the region.<sup>16</sup> These coercive economic activities foster dependences that make Latin American governments less responsive to their citizens, and therefore undermine good governance. Thus, they too may contribute to the root causes of migration.

#### *Political Subversion*

In Latin America, Beijing uses some of the same political inducements that it does to cultivate influence among China’s neighbors, but with less of an emphasis on direct subversion. China tends to use carrots, rather than sticks, to build sway, using BRI funding as an incentive to tow Beijing’s line. This difference primarily stems from the goal of China’s activities in the region: to position itself as helpful to Latin

<sup>11</sup> Brandt & Wirtschafter (2022).

<sup>12</sup> RT en Español (@ActualidadRT), Twitter, May 6, 2023(a), <https://twitter.com/i/web/status/1654737760018898944>; RT en Español (@ActualidadRT), Twitter, May 6, 2023(b), <https://twitter.com/i/web/status/1654828357140336644>.

<sup>13</sup> S. Rept. 116–290—*Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Volume II*. (2023, June 20), <https://www.congress.gov/congressional-report/116th-congress/senate-report/290/1>; “Senate Intel Committee Releases Bipartisan Report on Russia’s Use of Social Media” (2019), U.S. Senate Select Committee on Intelligence, <https://www.intelligence.senate.gov/press/senate-intel-committee-releases-bipartisan-report-russia-%E2%80%99s-use-social-media>.

<sup>14</sup> Ekimenko, S. (2022). “Texas’ Greg Abbott Slams ‘Hypocrite-in-Chief’ Biden After WH Dubs Migrant Transport ‘Illegal Stunt’,” *Sputnik International*, [https://sputnikglobe.com/20220916/texas-gov-abbott-slams-hypocrite-in-chief-biden-after-wh-calls-migrant-bussing-illegal-stunt-1100838329.html?utm\\_source=dlvr.it&utm\\_medium=twitter](https://sputnikglobe.com/20220916/texas-gov-abbott-slams-hypocrite-in-chief-biden-after-wh-calls-migrant-bussing-illegal-stunt-1100838329.html?utm_source=dlvr.it&utm_medium=twitter); RT en Español (@ActualidadRT), Twitter, May 11, 2023, <https://twitter.com/i/web/status/1656522016995041280>.

<sup>15</sup> Brandt, J. and Taussig, T. (2020). “Europe’s Authoritarian Challenge,” *The Washington Quarterly*, 42:4, 133–153, <https://doi.org/10.1080/0163660X.2019.1693099>.

<sup>16</sup> Roy, D. (2023). *China’s growing influence in Latin America*. Council on Foreign Relations. <https://www.cfr.org/background/china-influence-latin-america-argentina-brazil-venezuela-security-energy-bri#:~:text=As%20of%202023%2C%20Beijing%20has,agreement%20with%20-Uruguay%20are%20ongoing.>

American societies in their battle against hypocritical, over-reaching democracies, led by the United States.

#### *Information Manipulation*

Because China's ultimate objective is to frame itself as a responsible global power, Beijing's information operations primarily seek to build a positive view of China and its leadership. In Latin America, as elsewhere, Beijing's propaganda apparatus promotes narratives that cast democracy as feckless or hypocritical and highlights the strength of its governance model.<sup>17</sup> In the global south, during the height of the COVID crisis, Beijing undertook a tailored messaging campaign arguing that its Sinovac vaccine, which does not require cold chain storage, should be the option of first resort.<sup>18</sup> In its propaganda targeting overseas audiences, Beijing uses U.S. immigration policy to cast the United States as hypocritical in its advocacy for human rights elsewhere around the world.<sup>19</sup> "For a long time, the United States has been giving lessons to other countries on human rights," China's People's Daily recently tweeted in Spanish, "But the way the U.S. treats migrants and refugees at home highlights their hypocrisy on this issue."<sup>20</sup> This is in keeping with Beijing's strategy of using whataboutism to deflect criticism of its own rights record.

#### *Cyber Operations*

While in Asia, there is considerable concern about the use of information networks designed and run by Chinese companies, amid concerns that equipment sourced from vendors in China could contain back doors that enable surveillance by Beijing, that is not as much the case in Latin America.<sup>21</sup> Within the region, China has provided surveillance systems to at least 9 countries, including Argentina, Chile, Brazil, Mexico, and Venezuela.<sup>22</sup> To the extent that these systems undermine political and human rights, they too may contribute to the root causes of migration.

#### DIFFERENCES BETWEEN RUSSIAN AND CHINESE APPROACHES TO COERCION IN THE REGION

Although Putin and Xi work from the same playbook, their approaches reflect their unique capabilities, as well as their distinct goals. Moscow and Beijing share certain near-term objectives, but the two are operating on different trajectories and time horizons, with different points of leverage and long-term aims. Russia is a declining power by many measures, which seeks to disrupt the partnerships and institutions of its mostly Western competitor states here and now as a means of gaining relative advantage. With little to lose and perhaps something to gain from exposure, it is not particularly sensitive to attribution for its coercive activities. Seeing the benefits of chaos abroad, its efforts tend to be destructive. China, by contrast, is a rising power with a great deal to lose from having its coercive activities laid bare. It does not seek disorder, but rather a new order more conducive to its interests, and so its efforts to change the status quo have tended to be more patient.<sup>23</sup> Both countries are most active in their own regions. For Russia, building influence in Latin America is a means to the end of disrupting Western alliances and institutions. For China, it is a means of building support for Beijing's way of doing business.

These nuances carry over into the ways that Russia and China conduct economic coercion in the region. For Russia, this activity leverages its status as a commodity

<sup>17</sup> Brandt (2021).

<sup>18</sup> Schafer, B., Frankland, A., Kohlenberg, N., & Soula, E. (2021). *Influence-enza: How Russia, China, and Iran have shaped and manipulated coronavirus vaccine narratives*. Alliance For Securing Democracy. <https://securingdemocracy.gmfus.org/russia-china-iran-covid-vaccine-disinformation/>.

<sup>19</sup> Lan, L. (2021). "Whipping migrants shows US human rights hypocritical." *Global Times*, <https://enapp.globaltimes.cn/article/1234865>; China News [ . . . ] (@Echinanews), April 28, 2023, <https://twitter.com/Echinanews/status/1652129574145097728/photo/1>.

<sup>20</sup> Pueblo En Línea (@PuebloEnLinea), June 9, 2022, <https://twitter.com/PuebloEnLinea/status/1534823562699104257>.

<sup>21</sup> Brands, H. (2021). "Huawei's Decline Shows Why China Will Struggle to Dominate," *Bloomberg*, <https://www.bloomberg.com/opinion/articles/2021-09-19/huawei-s-decline-shows-why-china-will-struggle-to-dominate>.

<sup>22</sup> *AI Global Surveillance Technology*. Carnegie Endowment for International Peace, <https://carnegieendowment.org/publications/interactive/ai-surveillance>.

<sup>23</sup> Brandt, J. (2021). How Autocrats Manipulate Online Information: Putin's and Xi's Playbooks, *The Washington Quarterly*, 44:3, 127–154, DOI: 10.1080/0163660X.2021.1970902; Brandt, J. (2023). *AidData: Autocratic approaches to information manipulation: A comparative case study*. AidData, a research lab at William and Mary. <https://www.aiddata.org/publications/autocratic-approaches-to-information-manipulation-a-comparative-case-study>.

exporter, with energy amounting to half of its exports.<sup>24</sup> For China, its coercive economic practices primarily draw on the size of its market, which gives it leverage over trading partners, as well as its relative wealth, which it uses to support friendly politicians.

Russia and China differ significantly in their use of political subversion as well. Moscow's intelligence agencies are much better equipped at understanding how to influence foreign systems than those of Beijing, since the Kremlin has made the use of asymmetric tools a leading component of its foreign policy for decades. The Kremlin has a high tolerance for risk and is comfortable deploying security services abroad. China, by contrast, has less experience with political subversion far afield. To the extent that Chinese operatives have been involved in subversion, they have tended to focus on China's neighbors.<sup>25</sup> But the differences don't just stem from different capabilities. Political subversion is a tool more fit for Russia's purposes (undermining the cohesion of democratic societies and their institutions) than China's (building a new international order).

Russia and China have both conducted information operations targeting audiences in the region, but likewise, in different ways and toward different ends. Where Moscow has a long history of this sort of activity abroad, China is just beginning to experiment with information manipulation far afield. Where Moscow aims to tarnish the appeal of Western systems, China works to position itself as an attractive alternative. Russian state media almost never cover Russia; Chinese State media cover China a great deal.<sup>26</sup>

#### IMPLICATIONS FOR POLICY MAKERS

The United States needs a strategy for pushing back on Russia and China's asymmetric activity in Latin America. It should reflect these nuances, be rooted in the United States's own considerable asymmetric advantages, and uphold democratic values, recognizing that those values are strengths. To that end, there are numerous steps that Washington can take to position the United States for success. Let me propose three.

First, recognizing the range and reach of Russia's manipulation activity in Latin America, Washington should focus attention and resources on public diplomacy in the region. Concerns over terrorism and resurgent geopolitical competition have driven attention to the Middle East and Asia, and as a result, U.S. public diplomacy financing overseen by the State Department has deprioritized the Western Hemisphere.<sup>27</sup> Washington could make new investments in entities like Voice of America (VOA) targeted at Spanish language audiences. Of the 12 overseas bureaus currently operated by VOA, none are in Latin America.<sup>28</sup> This should change. Such an approach could also include ensuring that the Global Engagement Center (GEC) is optimally equipped to track Russian information manipulation activity in Latin America. There are more than 40 million Spanish speakers in the United States and U.S. security interests are directly tied to events in the region. Washington cannot afford to cede the information environment to its competitors.<sup>29</sup>

Second, Washington should conduct messaging campaigns grounded in truthful information to highlight the failures of repression to audiences in Latin America. These campaigns could build on the success of the administration's novel strategy of downgrading intelligence related to the war in Ukraine to shape how it is perceived.<sup>30</sup> They could call attention to the fact that although Russia and China position themselves as "anti-imperialist" and "anti-colonial" powers, both are pursuing expansionist foreign policies. They might also highlight the costs of China's BRI to

<sup>24</sup> "Russia (RUS) Exports, Imports, and Trade Partners," *Observatory of Economic Complexity*, last modified January 2022, <https://oec.world/en/profile/country/rus>.

<sup>25</sup> Schrader, M. (2020). *Friends and Enemies: A Framework for Understanding Chinese Political Interference in Democratic Countries*. Alliance for Securing Democracy, <https://securingdemocracy.gmfus.org/wp-content/uploads/2020/05/Friends-and-Enemies-A-Framework-for-Understanding-Chinese-Political-Interference-in-Democratic-Countries.pdf>.

<sup>26</sup> Brandt (2021).

<sup>27</sup> Custer, S., Burgess, B., Baehr, A., & Dumont, E. (2022). *AidData: Assessing U.S. Historical Strategic Communications: Priorities, Practices, and Lessons From the Cold War Through the Present Day*. AidData, a research lab at William and Mary. <https://docs.aiddata.org/reports/gf01/gf01-02/Assessing-US-Historical-Strategic-Communications-Priorities-Practices-and-Lessons-from-the-Cold-War-through-the-Present-Day.html>.

<sup>28</sup> Brandt. *Testimony on The Global Information Wars* (2023).

<sup>29</sup> Brandt. *Testimony on The Global Information Wars* (2023).

<sup>30</sup> Brandt, J. (2022). Preempting Putin: Washington's Campaign of Intelligence Disclosures is Complicating Moscow's Plans for Ukraine. Brookings. <https://www.brookings.edu/blog/order-from-chaos/2022/02/18/preempting-putin-washingtons-campaign-of-intelligence-disclosures-is-complicating-moscows-plans-for-ukraine/>.

the region. Many publics have soured on the environmental destruction and unsustainable debt that too often come along with Chinese investments.<sup>31</sup> Many of the region's recipient countries are democracies, and drawing attention to those shortcomings can better inform their voters. Doing so is in keeping with a strategy of exploiting Putin and Xi's weaknesses, recognizing their fragility to open information.

Third, Washington must equip itself to see across the full threat picture, recognizing that Russian and Chinese coercive activities in Latin America and elsewhere are multidimensional. It is good, then, that Congress established a Foreign Malign Influence Center (FMIC) within the Office of the Director of National Intelligence to consolidate analysis of adversary use of all four tools of interference. It is also good that FMIC appears to be resourced to look at the full range of threats, which as I and others have documented, go beyond elections.<sup>32</sup> As it undertakes its work, FMIC should aim to cut across traditional stovepipes within Government, and share information where appropriate and feasible with private-sector partners and the public.

As it does all of this, Washington should coordinate with partners and allies to share best practices, standing shoulder to shoulder with other democratic societies to counter foreign interference threats. Ultimately, this is a contest over principles, and Washington's strong network of partners is perhaps its greatest advantage.

Distinguished Members, by drawing on a sophisticated picture of the complex ways that Russia and China deploy coercive tools in Latin America and taking these steps that flow from it, Washington can position itself to protect its interests and the American people.

#### APPENDIX A

Brandt, J. & Cooper, Z. (2022). Sino-Russian Splits: Divergences in Autocratic Coercion, *The Washington Quarterly*, 45:3, 23–46, <https://doi.org/10.1080/0163660X.2022.2124016>.

Chairman PFLUGER. Thank you, Ms. Brandt.

Of note, this is the subcommittee's sixth hearing on homeland security on what we as a subcommittee are looking at.

I thank you all for your testimony.

Members will now be recognized by order of seniority for their 5 minutes of questioning. An additional round of questioning may be called after all Members have been recognized.

I now recognize myself for 5 minutes of question.

Mr. Hernandez-Roy, a lot of interesting things that were said. Recent reports have indicated that the PRC has established and been operating a signals intelligence collection center in Cuba since 2019. Florida is home to a variety of military installations, sensitive military installations, becoming an emerging technology leader, a financial services hub. There is so much going on there. Can you discuss what type of implications, security implications, that the PRC's collusion with Cuba, if these reports are true, what it actually means to the United States?

Mr. HERNANDEZ-ROY. Well, the reports of some sort of spying activity in Cuba have been confirmed through a number of public sources. So I think we can take that for granted. The extent of the spying, we don't know yet. At least we who look at it through the public information space.

Having a signals intelligence operation in Cuba, it's based just south of Havana, 150 miles from U.S. mainland, is a significant threat, as it can collect information from the whole southeastern

<sup>31</sup> Shepard, W. (2021). How China's Belt and Road became a "Global Trail of Trouble," *Forbes*. <https://www.forbes.com/sites/wadeshepard/2020/01/29/how-chinas-belt-and-road-became-a-global-trail-of-trouble/?sh=2bc0da0a443d>.

<sup>32</sup> Foreign Malign Influence Center. 50 U.S.C. §3059 (2023). <https://uscode.house.gov/view.xhtml?req=%28title%3A50+section%3A3059+edition%3Aprelim%29>.

United States, in particular, all of SOUTHCOM's activities in the south and also CENTCOM in Tampa. So this would represent a significant threat, a significant gain for the Chinese in terms of their ability to monitor intelligence and monitor traffic of naval operations in the Caribbean, things of that nature. It should be seen as a significant threat and a significant escalation on the part of the Chinese.

Chairman PFLUGER. Thank you.

This committee will be very active in understanding the depth of that threat and what it means to our homeland security, and I appreciate that.

Ms. Dezenski, I would like to focus on a couple of things when it comes to the Southwest Border.

No. 1, when we look at the fentanyl issue and understanding—we had a hearing recently, we examined the relationship between Mexican TCOs and Chinese crime syndicates and how these relationships enable the flow of fentanyl. Do you believe that the PRC is using America's fentanyl crisis as a gray zone tactic?

Ms. DEZENSKI. Thanks for the question.

I think that at a minimum, there's passive engagement on the part of the PRC. They are well aware of the fentanyl challenge, and they're not doing much to help us stop that. Coordination from previous years has pretty much disappeared, even though there's a mound of evidence about the role of Chinese money-laundering networks and manufacturers of precursor chemicals. So it's hard to understand why we can't engage more specifically on that issue, except that I think it's being viewed by the PRC as a strategic weapon against our country.

Chairman PFLUGER. Wow. You don't believe—in your recent article in the *Miami Herald*, you asserted that the United States must expose Chinese hidden hand in America's deadly fentanyl crisis, which you just alluded to the money-laundering aspect. So you believe we should be doing more as a whole-of-Government approach?

Ms. DEZENSKI. Yes, exactly.

The money-laundering piece of this is critical. If we follow the money, I think we'll actually have an easier time addressing some of these challenges because it's so hard to interdict at the border. Fentanyl pills are small, they're mistaken for other types of commodities. It's extremely difficult to find them. Having said that, I know our Border Patrol is doing a better job, and our Customs interdiction is doing a better job locating it. But having said that, following the money is probably the most important thing that we can do. There's been quite a bit written about the complexity of these money-laundering operations. What's unique about it is that there's this flow, this seamless flow between China, Mexico, and the United States and the role of money launderers here, Chinese money launderers working in the United States and selling U.S. dollar proceeds to Chinese nationals who want access to that money. It's incredible.

So I'm happy to go into more detail on how that works, but I do think that this is the most important vector for us to look at.

Chairman PFLUGER. Let me quickly jump to a related subject.

There is no question in my mind that the PRC is exploiting the crisis at our Southern Border. It was reported yesterday that in

this fiscal year, 127 people have entered this country—apprehended, that is not gotaways that have matched the terror watch list. Is the PRC exploiting the crisis at our Southern Border for their own personal gain?

Ms. DEZENSKI. I think we should assume that any vulnerabilities at our Southern Border are open for authoritarian influence of many kinds. I think that's a safe assumption. If the gaps are there, then those who are working against us are going to use them to their advantage.

Chairman PFLUGER. Thank you.

My time has expired.

I will now recognize the Ranking Member for his 5 minutes of questioning.

Mr. MAGAZINER. Thank you, Chairman.

There is a lot to cover here, but first and foremost, we are in a competition for hearts and minds across the region. For the last two centuries, and particularly during the Cold War, America succeeded by maintaining strong relationships with allies in Latin America that allowed us to counter authoritarian threats and we need to strengthen those relationships now.

So, Ms. Brandt, can you just expand a little bit on what are some of the ways that Russia and China in particular are trying to win hearts and minds in Latin America? Then how can we as a Nation best counter their efforts?

Ms. BRANDT. Both Russia and China bring large propaganda apparatuses that promote content that portrays their preferred narratives of polarizing political events. Both of them use other assets to try to—for Russia, I think most of its activity is aimed, as I said, at driving polarization and division within the United States. Its activities, I think, in Latin America are instrumental to its broader aim of weakening us from within. I think that's in part to prevent us—if we're distracted and divided, it prevents us from playing a more forward-leaning role in the world that promotes our interests.

I think there is also an interest on the part of Russia in denting our soft power, making it harder again for us to exercise leadership in the world.

For China, China comes in behind Russia's efforts to sort-of fracture the cohesion and the unity and appeal of democracies in order to present their model as a viable alternative. Both of these countries are doing that in the region.

Mr. MAGAZINER. Will they ever use U.S. voices to amplify their rhetoric? So, for example, if there are prominent U.S. individuals that talk about military strikes in Mexico or talk about—repeat Russian talking points with regard to the Ukraine invasion, will China or Russia take clips of Americans repeating those false and dangerous narratives and use them to try to win hearts and minds for China and Russia in Latin America?

Ms. BRANDT. Both Russia and China amplify domestic voices. I mean, as I said, for Russia, this is primarily about stoking division and polarization within our country. For China, it's about sort-of boosting the reach and resonance of its message, finding fellow travelers that add a sort-of degree of legitimacy to these messages and also eliminate a layer of culpability.

Mr. MAGAZINER. Thank you.

Ms. Dezenski, you wrote in your testimony about the significance of the CHIPS and Science Act and other investments that the United States have made to try to bring more manufacturing and other economic activity back to this hemisphere. Can you just expand a little bit on that, on the importance of investments like those that are made in the CHIPS and Science Act? Also how we can better engage with our regional partners again to win hearts and minds through commerce here in our hemisphere?

Ms. DEZENSKI. Sure. Thank you very much.

There's no doubt that there's huge potential to utilize trade relationships and the potential for economic integration with both Mexico and into Latin America. As companies think about whether they want to stay in China, and the government considers new mechanisms around outbound investment and other policies that might encourage pivoting out of China, supply chains, particularly critical ones, need to go somewhere. The idea that we could have them closer to home is both valuable and attractive from an economic integration perspective.

So it's almost like a perfect opportunity to look at new strategies to build those economic alliances, but mindful of the economic security objectives in doing so, that we want mutual benefit, we want security, we need trade facilitation, we want access to critical goods, particularly in the time of global shocks. Mexico is fairly well-positioned for this, although not entirely. But as you go further south in the hemisphere, there's the chance I think that we'll miss this opportunity if we don't have the right security backbone in place.

This is a point that I wanted to make about the role of DHS and how important it is to ensure that we have that secure footprint which allows trade and commerce to be facilitated and ultimately has the right objective in terms of creating environments where people don't feel that they have to come to our border.

Mr. MAGAZINER. I know I am running low on time, but I will just emphasize again, if China is going to Latin America and offering money and infrastructure and security, the United States has to counter that with more than rhetoric. We need to invest in these partnerships, otherwise our adversaries will be happy to fill that void.

So I thank you all and I yield back.

Chairman PFLUGER. The gentleman's time has expired.

The Chair now recognizes the gentleman from New York, no stranger to law enforcement, former detective for the NYPD, Mr. D'Esposito.

Mr. D'ESPOSITO. Well, thank you, Mr. Chairman, and good morning, everyone.

I am going to just take a minute to follow up on the Chairman's remarks. I know he only had a few seconds left, but I think it is important to discuss and talk about.

So obviously it is no secret that authoritarian regimes relish in the opportunity to shine a spotlight and even encourage challenges for the United States of America. How might authoritarian regimes, including Venezuela, Cuba, Russia, and the PRC, take advantage of the current border crisis created by Joe Biden and Sec-

retary Mayorkas that our Nation is experiencing? I will really leave that for any of you.

Mr. HERNANDEZ-ROY. Thank you, Congressman.

I think there's a number of ways they can take advantage of what's happening at the Southern Border. First of all, just encourage migration from their own countries by cracking down on their populations, sending more people, creating more chaos, sowing more division within the United States on how to effectively respond. That is one way they're clearly doing it.

The other way, presumably, which I've provided an example in the Venezuelan context, and one of my colleagues has said it's a distinct possibility, is they can be taking advantage of the massive amounts of people, 2.4 million interventions last year. Within that space of 2.4 million people you can try to get people that are undesirable, that are going to work for the interests of these regimes in the United States. So I think that's a vulnerability. I have no direct evidence of that happening. I have mentioned direct evidence of that happening in the Venezuelan context, sending spies to Colombia. It's a distinct possibility that the United States needs to be taking seriously.

Ms. DEZENSKI. I'll just add one angle to this that I think we need to consider.

So as we see increased engagement in places like Venezuela, with Iran, Russia, we should be mindful of the potential that local populations may become part of extremist movements, and that could be fueled by this increasing engagement from authoritarian interests in these countries. How do we relate that to what's happening at the Southwest Border? Well, it's much as Chris has identified, which is with the massive inflow of people, we have the needle in the haystack problem again to try to figure out who those extremists might be. We have an identity management problem at the border, and somehow we need to figure that out because it's going to become more and more difficult as we're trying to manage an influx of legitimate economic migrants and political migrants from a place like Venezuela. How do we know if we're allowing for extremist threats to come into the country? So we're going to have to be more sophisticated about figuring that out.

Mr. D'ESPOSITO. I agree. I am sorry.

Ms. BRANDT. Well, I was just going to add from my analysis, which again, is focused on the open source space, I see this less as Russia trying to drive populations to the border as much as it is to weaponize the polarizing nature of debates within this country around migration. But again, we don't know what we don't know. I think the challenge for us I think is to sort-of think capaciously about the challenges so that we can get ahead of them without also making Russia 10 ft tall.

Mr. D'ESPOSITO. So obviously there are real threats, whether it is the regimes, whether it is our open border. I know some would like to argue that climate change is our biggest threat, but I think these pose a bigger threat to our country and our freedoms than anything else.

Just to follow up on what we talked about, because I truly believe that this is also a threat, what is your thoughts on the CCP and the fact that there have been stories that they would embed



assets into larger groups of nationals making the journey from China to Mexico or other areas along our Southwest Border?

Mr. HERNANDEZ-ROY. Well, since I mentioned that was a possibility, I guess I'll try to answer that.

I have, like Ms. Brant, we work on public information, so I have no direct information on that. But I go back to the example that has happened in other cases.

I just wanted to add something to my previous intervention, which is that Venezuela has been known publicly to have sold passports to Hezbollah operatives and to bring people out of Syria as well with Venezuelan passports. So that's another potential vulnerability. People from that part of the region using Venezuelan passports. Where are they going?

Mr. D'ESPOSITO. Right? Probably not going there to do good things.

My time has expired, Mr. Chairman. I yield back.

Chairman PFLUGER. The gentleman's time has expired. The Chair now recognizes gentleman from California, my good friend, Mr. Correa.

Mr. CORREA. Thank you, Mr. Chairman. Appreciate this hearing. It is very timely and very important. Thank the witnesses for being here today.

I hear your statements. Latin America, there are challenges and we talk about an open border, we talk about regimes. I didn't hear a lot of talk about poverty, the challenges in Latin America, and in alternatives.

Talk about history a little bit. The Pan American Highway was built in 1920's, 1930, and through the 1950's, and we essentially financed the construction of that highway south of Mexico through Panama—almost to Panama—except for the Darién Gap—because of our strategic interest in fighting against communism. Honduras has a four-lane highway. You know who paid for that? The United States of America. We have forgotten the role that we played in the Americas throughout history. That has been our area of national interest. Today we wake up, last 3 years, China has signed more than 30 agreements with Latin America, free trade agreements. Twenty Latin American nations signed on to China's Belt and Road Initiative.

I am trying to figure out what is going on. Is our private sector asleep at the wheel? We have this challenge of these precious metals that China is controlling around the world. They are part of Latin America and nobody is discussing these issues. I am at a loss here.

Ms. Dezenski, you mentioned DHS stepping up. Apparently, our private sector is not doing a good job. So I guess we as legislators need to take your recommendations and move forward because China, Russia, Iran, I don't care what those folks are doing, I care about what is in our power to do. Our power is to move forward. We are sitting here pointing fingers at them. If you want to win a race, you focus on your lane, don't be chasing the other person. Focus, then we can do the best.

In Latin America, 20–30 years ago, when you would see a food box that said donations from America, the goodwill that was there

was tremendous—tremendous. Where is that going today? Have we forgotten the lectures? The lessons of history?

I only have 2 minutes, but I want to give you an example. We talk about the Cuban electronic espionage base by China. My understanding, please fact check me, that was actually started operating in 1999, and that was actually upgraded in 2019. Let's think about history of Cuba, OK. Obama lifted some of the restrictions, trade with Cuba. Cuba's private sector exploded. Two-thousand seventeen, Trump administration reversed that position and added additional few other restrictions. President Biden has essentially followed the Biden model. I am trying to figure out what are the incentives that we are giving folks in this hemisphere to work with the United States.

I am going to open it up to the three of you in the 1 minute that I have to help us figure out a road map here, because I don't like the fact that our American influence in our backyard is going down the drain.

Thank you.

Ms. DEZENSKI. Thank you so much.

There's so many things to bring up in response to all of your good points. I would just make the following.

No. 1, with regard to the private sector, we need to do a better job of—

Mr. CORREA. I mean, you know, and I will give you here an example. Venezuela, you can throw rocks at what is going on in Venezuela. I don't like the fact that probably the world's largest oil reserves are now under the influence of China and Russia. What are we doing to counter that? Very quick, specific question, what are we doing to get back our influence in that area of the world? More sanctions?

Ms. DEZENSKI. I would suggest that we need to de-risk to make it easier for Western companies and Western investment to go into the region. Part of that—

Mr. CORREA. Is that in our power, is that in Venezuela's power, Russia's power, or China's power?

Ms. DEZENSKI. Oh, it's absolutely in our power. It's a very positive step that we could take.

Mr. CORREA. Thank you.

Mr. Chairman, I am out of time. Thank you very much for indulging me, sir.

Chairman PFLUGER. The gentleman's time has expired.

The Chair now recognizes the gentleman from Arizona, a Navy SEAL, Mr. Crane, for his 5 minutes of question.

Mr. CORREA. Mr. Chairman, if I may interrupt you. I wanted to ask unanimous consent that Ms. Jackson Lee be permitted to sit with us in this subcommittee and be part of the questioning. Thank you.

Chairman PFLUGER. Yes, the Chair will entertain that. Thank you, Ms. Jackson Lee, for showing up.

Now, Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman. Thank you to all our guests and panelists who have come here today.

I wanted to know if any of you guys saw the article in yesterday's *Associated Press* titled, "Pentagon Accounting Error Provides

Extra \$6.2 Billion for Ukraine Military Aid". Anybody see that headline? Anybody read that story? No? OK.

Are you guys aware that to date, the United States has sent \$113 billion to Ukraine? Anybody? OK. Does it surprise you guys when you see stories like that? Accounting error, \$6.2 billion to Ukraine? Accounting error up here to the tune of \$6.2 billion. Mr. Roy, does it surprise you when you see errors to that extent?

Mr. HERNANDEZ-ROY. An error of that magnitude could only be justified if the economy of the United States was hundreds of trillions of dollars. It's a rather surprising headline, I would say.

Mr. CRANE. Thank you.

As I listen to your testimonies and knowledge about some of the unrestricted and asymmetric warfare right here in our own Western Hemisphere, down in Latin America by the Chinese, Russians, and Iranians, I want to ask you guys, does it bother any of you when we see all this money going to someplace over in Europe that happens to be a very corrupt country that most Americans can't even point to on a map, when we have all this nefarious activity going on right in our own backyard?

I want to start with you, Ms. Brandt.

Ms. BRANDT. I think we have to be able to walk and chew gum at the same time. I mean, I think the challenges that we face in our hemisphere are enormous. As I've argued, we need to pay more attention there. I also think Ukraine is on the front lines of the conflict between democracies and authoritarian challengers.

Mr. CRANE. Yes, that seems to be the general consensus in this town. The problem is, ma'am, when you talk about walking and chewing gum at the same time, you have to take into account that the United States of America has about \$32 trillion in debt, right? So we don't even have this money that we continue to send over in Ukraine. Do you see that as a problem, ma'am?

Ms. BRANDT. As I said, I think our support for Ukraine is important and consequential to our national security interest. It's fundamental.

Mr. CRANE. OK. What about our national debt? Do you think that is important?

Ms. BRANDT. That's beyond my expertise.

Mr. CRANE. It is actually pretty common-sense.

What about you, Ms. Dezenski? What do you think about our national debt and this idea up in this town that we can continue to spend hundreds of billions of dollars of the American taxpayers' money that we don't even have, yet let alone when you look at some of these threats that we are talking about in Latin American countries, right in our backyard, we don't seem to have the resources to make sure that our own border security is in order and secure?

Ms. DEZENSKI. I think the most challenging thing about the threats in Latin America, and perhaps even at the Southwest Border, is that for years, we've probably underestimated it. It seems like what we're dealing with now is the equivalent of a soft underbelly in the Western Hemisphere. That will require us to think a little bit more strategically and creatively about what Latin America policy should be, how we bring together more resources around

economic security, and how we balance that out with what we have to do in the rest of the world.

Mr. CRANE. Thank you, ma'am.

Mr. Hernandez-Roy, are you familiar with the saying peace through strength?

Mr. HERNANDEZ-ROY. Pardon me? Could you repeat that, please?

Mr. CRANE. Are you familiar with the saying peace through strength?

Mr. HERNANDEZ-ROY. Vaguely, yes.

Mr. CRANE. What do you think the opposite of that would be, Mr. Hernandez-Roy?

Mr. HERNANDEZ-ROY. War through weakness.

Mr. CRANE. Yes. War, chaos through weakness. That is exactly where we find ourselves right now. War, chaos because of weakness. We are facing a world on fire because of weakness, incompetence, and internal corruption.

I want to read this for the American people that might be watching this. Hard times create strong men, strong men create good times. Good times create weak men, and weak men create hard times. We are all aware that our current leadership is pretty weak, falls in public regularly, struggles to put sentences together, and is embroiled in multiple layers of corruption.

My point is this. Elections have consequences. If we want to continue to see this global dumpster fire continue, then we should, by all means, keep this current administration in place. If we want to return to peace through strength, we must reinstall somebody who projects strength and puts America and Americans first.

Thank you all for coming.

I yield back.

Chairman PFLUGER. The gentleman's time has expired.

The Chair now recognizes the gentleman from New York, Mr. Goldman.

Mr. GOLDMAN. Thank you very much, Mr. Chairman. Thank you for having this hearing.

I certainly hope my colleague from Arizona will look to reduce our deficit by examining our \$860 billion defense budget.

I want to focus a little bit right now on what gives China and Russia the opportunity to have such significant influence in Latin America. I am not actually sure which one of you is sort-of the foremost expert among the panel in terms of the upheaval, disarray, and cratering governmental issues that are going on in Latin America, especially Central America.

But in the last 2 to 4 years—Ms. Dezenski, you seem to be focused on this—can you describe a little bit about what has been going on in terms of upheaval in governments in Central and Latin America.

Ms. DEZENSKI. Thank you for the question.

Let me talk a little bit about China. You've asked about China and Russia in the region and how they're exerting that influence and how that came to be and maybe what the implications are for governments in the region. I'll take on the China piece of this, which is very much driven by their brilliant use of their trade relationships.

Mr. GOLDMAN. I am sorry, I just want to interrupt because I think we have a lot of attention and you all have spoken very much on how China infiltrates and influences, and they are doing the same thing in Africa as well. But I want to talk a little bit about the political situation, the governmental upheaval in the countries, in Nicaragua, Honduras, El Salvador, Guatemala, to name a few. There are others.

Maybe Mr. Hernandez-Roy, you want to talk a little bit about what has been going on in the last 2 to 4 years in that region that has also caused so many more citizens from there to seek refuge in other countries?

Mr. HERNANDEZ-ROY. I think there's a couple of points to be made that aren't necessarily totally related. But why so many people are seeking refuge is because they're living under dictatorial regimes. They're being oppressed, they're being persecuted, they're being arbitrarily detained. People who have nothing to do with political activism, just because they might be in the wrong place at the wrong time, are being imprisoned. Venezuela for the last 10 years has had a revolving door of at least 300 political prisoners. Since the massive protests in 2014 and again in 2017, something like 16,000 or 17,000 people have been detained in Venezuela. In Nicaragua, since 2018, during the protests of 2018, there were 355 people that were murdered by the by the regime. Since then, journalists, civil society activists, students, over 400 NGO's have lost their legal personality, 600,000 people have fled the country. That's what's going on in those regimes.

But going back a little further, talking about the political upheaval, if you go back 20 years, Latin America 20 years ago and today is a profoundly unequal part of the world. Probably the most unequal if you look at gini coefficients. Populists in that part of the world, particularly Hugo Chavez, were able to leverage that discontent and use Venezuela's massive oil wealth at the time—this was before the economic collapse in Venezuela and when oil prices were sky-high—to spread the wealth around, to keep like-minded politicians, both in Venezuela and in friendly countries abroad in power, to create friends through corruption. There's a well-known PetroCaribe and Petrofraude scheme where billions, if not hundreds of billions of Venezuelan petrodollars were spread around the region. If you look at the region 10 years ago, there was one dictatorship. You look at the region today, there's three dictatorships. There's at least two semi-authoritarian regimes that are on the way to becoming dictatorships.

There's one completely failed state, which is Haiti. Against the backdrop of all that chaos, Russia and China have multiple opportunities to get involved. They have ideological—at least the Russians have ideological affinity with many of these populist movements. The Chinese are more pragmatic. They're really primarily interested in business and making money and securing primary commodities for their economy. But I think all of that history, both 20 years ago and more recent, is what is the upshot of what you're seeing today.

Mr. GOLDMAN. Thank you for that explanation.

Ms. Brandt, I just have a couple of seconds, but I am curious how you would view that vacuum to provide the opportunity, espe-

cially—I know your expertise is more Russia, how Russia can interfere and influence those regimes.

Chairman PFLUGER. We will do about 20 seconds here.

Ms. BRANDT. I guess I would just say very quickly, to the extent that Russia's and China's coercive economic activity and political subversive activity make governments less responsive to their citizens, they undermine rule of law, they facilitate corruption I think they—speaking to your question, I think they contribute to the root causes of migration and so—

Mr. GOLDMAN. They exacerbate the situation that already exists.

Ms. BRANDT. Yes. I think Russia's by no means responsible, but it's not helping.

Mr. GOLDMAN. Right.

Thank you, Mr. Chairman, for indulging me.

I yield back.

Chairman PFLUGER. The gentleman's time has expired.

The Chair now recognizes the gentle lady from Texas, Ms. Jackson Lee, for her 5 minutes of questioning.

Ms. JACKSON LEE. Mr. Chairman, first of all, let me thank you and the Ranking Member for your courtesies. I am deeply involved and interested in this long-running story of our interaction with those who have become adversaries.

Let me say to Mr. Christopher Hernandez-Roy, you view it as important for us to be engaged with South and Central America, do you not?

Mr. HERNANDEZ-ROY. Yes, ma'am.

Ms. JACKSON LEE. We have adversaries, but we need to be a major positive force in those regions. Would you agree that this era of our time is one of the greatest migrations that any of us may have seen coming from that part of the hemisphere?

Mr. HERNANDEZ-ROY. I would agree, ma'am, that we are at historic times in terms of migration in the entire region, not necessarily just from Central America.

Ms. JACKSON LEE. Absolutely. I said Central and South America.

Mr. HERNANDEZ-ROY. Yes, ma'am.

Ms. JACKSON LEE. Yes. I appreciate that because we are actually in an era, in a decade, maybe 2, of the greatest migration, at least of this current era around the world. I mean, I have watched flows of traffic going from many different places. I make that point as I pursue my line of questioning. I thank this committee for this hearing, because we do need to counter bad guys in Latin America, in Iran, Russia, and otherwise other places as well.

I was really baffled by a filing of articles of impeachment for what is really both a historical fact and will not be solved by impeachment. The late John McCain tried to solve it, as we did, joining with him by comprehensive immigration reform. You do note that that is valuable? I will just answer my own question on that.

Let me pursue important line of reasoning for China and Russia. Let me ask Ms. Brandt, if you would, in Iran—and I thought we had Iran in this discussion, but if not, I am going to add it to the discussion—we have countries like France and Albania stopping freedom-loving Iranians from peacefully protesting or having meetings suggesting that Iran now is spreading its wings to intimidate those nations that have to receive its oil products. What is your in-

terpretation of that power that they are using to denounce democracy around the world and as a tyrannical nation?

Ms. BRANDT. Well, Russia, China, and Iran I think are all interested in denting the prestige of liberal democracy around the world. It's a part of a tactic to I think make democracy less appealing to would-be rights advocates at home and so helping autocrats to tighten their grip on power, which I think is fundamentally in their self interest. Then again, it's about sort-of weakening their global competitors.

You mentioned comprehensive immigration reform and I would say there's another way that this connects with the conversation that we're having today, which is—I'm mindful of Kennen's sort-of admonition that we need to sort-of resist the temptation to become that against like which we are coping, or something to that effect. The idea here is that we need to lead into our own asymmetric strengths in this asymmetric competition and our vibrant, open society is one of them. And this—

Ms. JACKSON LEE. I have another question, so—allow you to finish your point on that.

So basically we should lean in when these countries are trying to tamp down democracy and we should lean in our friends in France and Albania in terms of denying that free speech for those Iranians. I would hope that would be the case.

But let me also talk about some of the tactics that Russia has used. Certainly the Ukraine war is dastardly and devastating, not instigated by the United States or the Western world. They have taken to using hostages to extract and strangle relationships with foreign countries. Would you comment on this hostage approach so that America knows we shouldn't be intimidated by that and we should fight hard for our hostages to be returned? I guess this way you can finish your overall point.

Then with China it is all about the technology and artificial intelligence. The meeting of Secretary Blinken. How do we frame our lean-in to those issues and those countries?

Ms. BRANDT. Yes, I think that's where I was going, which is that there's another layer to this competition which is not just within the information domain, but within the technology domain. There it's essential that we again lean into our strengths, which is our vibrant, open, innovation economy. Our immigration policy is relevant to that because we want to make sure that we are the top. We have an edge in talent. It's critically important. We want to make sure that we maintain that edge by being an attractive place for talent to come.

Ms. JACKSON LEE. Well, the hostages situation?

Chairman PFLUGER. The gentlelady's time has expired.

Ms. JACKSON LEE. Thank you.

Chairman PFLUGER. The Chair now recognizes the gentlelady from Nevada, Ms. Titus.

Ms. TITUS. Well, thank you very much.

I apologize for being late. I hope I don't repeat something.

I sit on the Foreign Affairs committee and so we hear a lot about the malign influences of China and Russia. Russia more politically, China more economically. In fact, we just heard about China build-

ing the port in Lima. So we know the Belt and Road extends all over the world.

But I would like to ask you about China's relations with Taiwan and how they respond to other countries in Latin America as they in turn have different affairs with Taiwan.

Recently, I believe that Secretary Blinken said that we don't support independence of Taiwan. I don't know how that is going to play in Latin America, but we know that Latin America's support for Taiwan has been waning. It is now down to seven countries, I think. Coupled with China's authoritarian regime, relations with such governments as Cuba and Venezuela, I wonder how this is going to impact our push for democracy in Latin America or our just even trade relations between the United States and Latin American countries as they tend to lean more in the direction of China over the Taiwan issue.

Anybody.

Mr. HERNANDEZ-ROY. Yes. There's no doubt that—as you correctly said, there are still—the the largest number of Taiwan allies are in Latin America globally. You're correct about the number of seven. Taiwan recently lost one ally. In March, Honduras switched allegiance from Taiwan to the PRC, which had been a campaign promise of that country's president. The largest two countries that are still allies of Taiwan are in the Western Hemisphere, Guatemala and Paraguay. Guatemala is about to have an election. The issue of whether it will continue to recognize Taiwan is, I think, up in the air. Paraguay did recently have an election and I think for the time being, it is secure in its continuing relationship with Taiwan and not the PRC.

But this is clearly one of the objectives of the PRC in the region, is to continue to peel away Taiwan's allies.

Ms. TITUS. Anybody else.

Well, thank you. I think that is something we ought to keep a look at.

The question is about regime change. China and Russia are using different tactics, overt and covert, to influence countries in Latin America. The United States doesn't have a very good history of this. If we don't like them, we have gone in and tried to throw them, overthrow them. This is particularly true again for Cuba, Venezuela, and Nicaragua. So how do we try to counter China's influence, offer an alternative, and still deal with that history of meddling that many people have long memories about?

Ms. DEZENSKI. Thank you for the question.

I think this is a particularly challenging problem for us. When China engages with countries, particularly in the global south, they typically employ their policy of non-interference, which means they come ostensibly to engage in economic integration. They'll work with whatever regime is in power. They'll often play by local rules, which could facilitate how China uses opaque contracts, employs corruption, any number of tools that cater particularly to weak democracies or authoritarian regimes, where there's more likelihood that opacity will kind-of drive the conversation and rule the day. So I think we have a real challenge in terms of how to counter that. We need to get at those issues first and foremost by protecting our own interests, our own capital, our engagement, staying



true to our democratic values, pushing on anticorruption, stopping the money laundering, calling out the bad behavior. Because if we don't do that, we've really lost the game. We really need to focus on these governance principles. But then we need to take it a step further, which is show up in the region for the long term with the right kind of economic commitments to drive that kind of economic security that we were talking about earlier, and maybe in the process keep some supply chains closer to home.

Ms. TITUS. We don't want to force them to make a choice. We don't want to put it in those contexts, but we want to let them know they have options in countries.

Thank you. I think my time is up.

I yield back.

Chairman PFLUGER. The gentlelady's time has expired.

We will now enter a second round of questioning, again, alternating sides based on seniority.

The Chair now recognizes myself for 5 minutes of questioning.

I think it has been a great discussion so far. I am incredibly worried about what the PRC is doing. The Chinese Communist Party not only is right at our doorstep, I mean, they are literally inside of our country in a lot of different ways. I think the Chinese spy balloon highlighted that this subcommittee held a hearing on that. We are hearing today the vast array of initiatives that the CCP is using, economic militarily, influence and information operations campaigns. The fact that we now know, which is completely unacceptable, that they have a surveillance and spy machine that is ongoing inside Cuba, which is less than 100 miles away from our shores. I think for all these reasons, it really is incredibly important that we focus on it.

Ms. Dezenski, in your written testimony, as well as in your responses to questions here, you talk about the true autocratic behemoth in the region, China, which has ramped up its economic investment throughout the hemisphere, driving debt dependency, antidemocratic vision of surveillance states. You talk about the critical minerals that they are acquiring inside Latin America, you talk about the 29 different ports that they have established. I mean, they are literally knocking at our doorstep. I would like to really further investigate your ideas.

Previously in your testimony, you talked about you were there when we stood up DHS. It was created to have a more unified whole-of-Government approach to counter new and emerging asymmetric terrorist threats. These threats are right there. So what is that approach economically, specifically, and also militarily? If you have any thoughts on that.

Ms. DEZENSKI. Thank you so much.

The approach is, for certain, a multifaceted one. We really need to think about this from a whole-of-Government picture. We'll never have the centralized industrial policy focus that China has, but arguably we don't need it if we use all of the tools in our own toolkit to bring a combination of security, investment, economic integration, better political engagement with allies and friends and partners in the region. All of this needs to work together. We need a big strategy around this.

In terms of the more specific actions that could be taken around some of these threats that we've identified around port security, for example, we really need to get a handle on these nodes of commerce where we see this layering of technology, surveillance, infrastructure investment, the potential to use commercial operations to support military, the transport of military supplies, for example. There are a lot of vulnerabilities in this commerce structure, this commerce ecosystem that connects into the DHS agenda very, very closely. But I'm not sure that we've really made the pivot around that operational readiness, that we've taken the analysis and the intelligence, that big picture. Then is it being driven by the right boots on the ground, the right engagement?

So there's multifacets to this, but I think we need to get at an asymmetric approach where we identify what those most critical elements of Chinese influence are and go after them. We're not going to compete in terms of the size of our trade relationships. We just won't be everywhere that China is. Frankly, we don't have to be. We don't have to spend as much money through some equivalent of the Belt and Road initiative, but we need to use those tools that we have in a much more effective way.

Chairman PFLUGER. Ms. Brandt, it seems to me over the past 10 to 20 years that we have been ignoring our neighbors to the south in many ways. It seems that during that time, the People's Republic of China, led by the Chinese Communist Party, have just inched their way into that territory with a goal of influencing those countries in a way that undermines our own national security. Are you seeing something similar to that?

Ms. BRANDT. Yes. Concerns about terrorism and resurgent geopolitical competition have shifted the focus to the Middle East and to Asia. To some extent, we've deprioritized engagement in our own region. As all of us have described here today, I think we're the poorer for it.

Chairman PFLUGER. Mr. Hernandez-Roy, I have got 12 seconds left.

Mr. HERNANDEZ-ROY. I think that Chinese motivation is primarily economic, but it's from a power that is obviously a Communist dictatorship. With that comes corruption, comes antidemocratic practices, and that leads to it opens up spaces for all sorts of nefarious things to go on.

Chairman PFLUGER. Those nefarious things are killing 100,000 Americans a year through fentanyl. They are creating chaos, money laundering, criminal organizations, destabilizing the region just to the south of us.

I appreciate your testimony here. I hope that this committee can urge our colleagues throughout the rest of Congress to take the actions that you are recommending and to do more when it comes to securing our own country through the stabilization in South and Central America.

With that, my time has expired.

I recognize the Ranking Member for 5 minutes.

Mr. MAGAZINER. Thank you, Chairman.

Another aspect of this that I would like to focus on for a moment is the importance of rare earth minerals, particularly lithium and others. No coincidence that we are seeing China make investments

in commerce and diplomacy in areas around the world that are rich in these rare earth minerals, including in South America in particular. Ms. Dezenski, I noticed that you touched on this in your testimony and others. Could you just expand on that a bit more? What is happening with rare earth minerals in South America? What should we as a Nation be doing in order to prevent our adversaries from cornering the market essentially, for these important rare earth minerals?

Ms. DEZENSKI. Thank you very much.

Yes, we have a big challenge in Latin America. As I've noted in my testimony, the so-called Lithium Triangle of Argentina, Bolivia, and Chile is home to over half of the world's known lithium reserves. China has been working to corner that market. U.S. companies have had, to date, somewhat limited success. There was a bid put forward by a U.S. group of companies in the last year or so, and it was beat out by a Chinese conglomerate and under some strange circumstances where the U.S. bid was knocked out because it was submitted 10 minutes late or something strange like that. So there's a lot of competition going on right at the source of this. We have not been in an ideal position to address it from a political perspective because China has really leveraged its relationships, its trade relationships, to support its interests. Because China is the processing behemoth with 65 percent of the refining capacity around lithium in particular, it's very difficult to break that.

One thing that we will need to look at is how to do so. Whether it's moving some processing to the United States or working with partners in the region to identify other areas of processing, this could be an asymmetric opportunity for us. We need to get at the kind-of the point in the supply chain that is most critical, and processing is really a key part of that.

Mr. MAGAZINER. Thank you.

Switching gears a bit, Mr. Hernandez-Roy, in an article that you co authored, you remarked that among U.S. presidents, President Biden has shown some of the most knowledge and appreciation for Latin America. One of the examples that you cited in the article was the decision to invite the Brazilian and Colombian presidents to the United States within their respective first years in office. Brazil and Colombia historically have been two of our most important allies in the hemisphere.

Can you talk a little bit about what more we could be doing to strengthen our relationships with Brazil and with Colombia in particular, and why those relationships are so important in the context of competition with our autocratic competitors?

Mr. HERNANDEZ-ROY. Absolutely. If I may, just very, very quickly on your last question, with regard to critical minerals and Argentina specifically, and its lithium deposits, which are some of the largest. Argentina is exporting about 9 percent of its lithium to the United States, and something like 49 percent, if memory serves, to China. I've been told by representatives of that government that they prefer it to be the other way around, but that's just the way the economics are right now. The IRA Act provides incentives to members, to countries that have FTA agreements with the United States in terms of critical minerals. Argentina does not have an FTA agreement and is seeking an exemption under that. So that's

one thing that the United States could do to counter Chinese influence.

With regard to your other question, Brazil and Colombia, Colombia, as you've pointed out correctly, is a long-standing U.S. partner and ally dating back to the 1990's when Colombia was at risk of being overrun by narco-trafficking. The United States invested heavily in that country and it became one of its closest allies, beating back the security threat to Colombia and building up its democracy. It remains a key ally in the United States, despite a change of posture by this particular government in terms of its outlook.

Brazil is the largest economy in Latin America, and obviously is an important trading partner with the United States, but it's also an important trading partner with China. Therefore, in fact, I think the Chairman earlier alluded to the fact that—well, he said Latin America as a whole, I'm not sure that's entirely accurate, but I'm pretty confident at this point that China is is Brazil's largest trading partner, and therefore we have an interest to strengthen relationship with Brazil, to find ways to compete with China in Brazil.

Mr. MAGAZINER. My time has expired.

Thank you.

Mr. D'ESPOSITO [presiding]. The gentleman's time has expired.

I now recognize myself for 5 minutes.

Mr. Hernandez-Roy, as was mentioned by some of my colleagues, our weakness, or the view of this country being weak or administration being weak, has led to threats. The PRC's role in Latin America has grown rapidly since 2000. The PRC state firms are major investors in Latin America's energy, infrastructure, and space industries. Just want to give you some numbers. By 2021, PRC trade in the region totaled \$450 billion, and economists predict that it could exceed \$700 billion by 2035. Of particular concern, and as was discussed, the PRC's infrastructure in the region has displayed dual use that could have security implications for this great country.

Could you explain the concept of dual-use infrastructure and the impact the facilities could have on homeland security?

Mr. HERNANDEZ-ROY. Sure. I can mention at least three specific examples.

The Chinese now control the loading and unloading facilities in the Panama Canal. They're building, and it's almost finished, a very large port in Peru. Last week, if I'm not mistaken, they inked an agreement with the regional government of Tierra del Fuego in the very southern tip of Argentina to build a port that would control the Drake Strait—I think that's the name of the Strait—that would control access to the fishing fields off of Antarctica. Then again in Argentina, it has a space port in Argentina that's ostensibly for research and to track Chinese satellites. It is essentially a piece of sovereign Chinese territory within Argentina. The Argentine authorities cannot even set foot on this property. Each one of those things has a dual use. They have a peaceful use for commerce, for research, for scientific research, and for the movement of trade goods. But each one of them can also be used in a second capacity—this is where the term dual-use comes from—for military capacity. The Chinese space station can be used to track U.S. sat-

ellites, it could be conceivably used to track intercontinental ballistic missiles. Ports can be used as refueling and supply and logistics hubs for Chinese warships. Ports can be closed, facilities can be sabotaged in the event of a conflict. The Panama Canal is obviously one of the most strategically important areas in the hemisphere.

So each of those investments, each of those pieces of infrastructure that the Chinese have either bought or built, has a dual use.

Mr. D'ESPOSITO. Thank you.

So, obviously, it is a real threat. What do you believe that this committee and our colleagues in this Congress could do to deter and to really get a handle on the dual-use infrastructure that is causing a threat to this Nation?

Mr. HERNANDEZ-ROY. That's not an easy solution.

Mr. D'ESPOSITO. Not in a minute and 44 seconds.

Mr. HERNANDEZ-ROY. I think the easiest thing to do is to prevent it before it happens. So in that sense, the United States can do a number of things. It can provide new mechanisms or fix old mechanisms to have more development financing in the region. For instance, the DFC is prevented from providing financing to middle-income, middle- and upper-income countries. It can only provide financing to lower- and lower-middle-income countries. There's only five countries that qualify as lower- and lower-middle-income countries in Latin America. They're all in Central America. However, it's well-known that there are huge disparities within a country in terms of their economic development. So changes to those rules, for instance, could allow more financing to some of the South American countries to counter some of the infrastructure financing from China. The United States can replenish the capital in the Inter-American Development Bank. That's another large multilateral institution that can provide more lending for infrastructure in the region. There's examples like that in my—I'm over the time. But those are kinds of the kinds of things that the United States can do to prevent these dual-use things from being built in the first place.

Mr. D'ESPOSITO. Thank you very much.

I now recognize Mr. Correa from California for 5 minutes.

Mr. CORREA. Thank you, Mr. Chairman.

I wanted to, in my 5 minutes that I have, let me ask all of you for your opinion. It is a big topic, a lot of ways we can go, but specifically, how does Department of Homeland Security, what are some of the actions that we can take to begin to turn the ship around, so to speak? You mentioned, and I agree with, the investment in the area. I would prefer a Marshall Plan that is accompanied by some economic reform, anticorruption. But that is the big picture. Specifically here today, homeland security. I am going to ask each one of you, what can we do to begin to address, to begin to bring attention to what I believe is 20–30 years of being asleep at the wheel?

Ms. Dezenski.

Ms. DEZENSKI. Thank you.

One thing that really strikes me about where we are now facing these economic security threats, a broader range of threats to the

homeland, is how much of what was built after 9/11 has kind-of fallen by the wayside.

Let me give you an example. After 9/11, we spent a lot of time thinking about how to secure the ports, we had something called the Container Security Initiative, we had the Customs Trade Partnership Against Terrorism, we had a number of international engagements that exerted U.S. leadership and provided a basis for much more strategic engagement with partners around the world. Some of that we've lost. I think we need to get back to a more strategic footprint, whether we're putting people on the ground or we're using the "digital boots" on the ground, some combination of these things. We need more eyes and ears, and we need to drive that footprint based on a better analysis of where the threats are and where we need to have that deeper engagement. We have the opportunity to do that at ports. We can do that with key players in the supply chain. We can do that through better interagency coordination. All of these things need to happen.

Mr. CORREA. Mr. Hernandez-Roy.

Mr. HERNANDEZ-ROY. Thank you, Congressman.

The commenting on DHS is really beyond my expertise. But what I will say—you mentioned a couple of things. You mentioned a Marshall Plan. The U.S. influence in Latin America was probably at its highest in the 1960's after President Kennedy launched something called the Alliance for Progress, which was essentially a Marshall Plan for the region. It provided development assistance on a massive scale. At the time, it was the largest development assistance package that the United States had ever implemented, and it had significant effects on reducing poverty in the region, which is something you mentioned earlier. I would also say that what the United States needs to do is create better conditions in the region to prevent threats from washing up on our shores. So that it goes back to this idea of an Alliance for Progress. We have argued, we at CSIS, some of us have argued that the United States should entertain a new Alliance for Progress, or 2.0 at some point.

Ms. Brandt.

Ms. BRANDT. I said in my testimony that China and Russia both apply the course of toolkit in Latin America differently than in their home regions. China in particular, at home, closer to home, it's really weaponizing the leverage that it has as its own region's largest trading partner. But abroad, it's really patiently building leverage that it can sort-of use later. So we're closer to home, those countries have sort-of faced the sharpest or like the brunt, the sharpest elements of China's toolkit. Farther abroad, I think they've really benefited in some ways from China's use of inducements, positive inducements.

So I think the task for us is to both provide alternatives, as you've suggested, and then also to tell a more compelling story about what we offer, right. Ultimately, competition is about the pursuit and use of advantages. So just sort-of rather than a tit-for-tat reactive approach to authoritarian moves, we need to do an assessment of what our own strengths are and I think go at authoritarians, where they're weak. I think one such fragility is to open information.

Mr. CORREA. One final quick question here to all of you.

You mentioned the popularity of TikTok social media. I think probably 90 percent—excuse me, about 70 percent of the world uses a smartphone. Latin America is the same thing. Great communication device. You have a lot of Latin Americans living in the United States. You have a lot of cross-cultural influence. How can you use that, what I would call continuing American goodwill, to really influence and try to continue to integrate this continent the way it was before, I should say?

Please.

Ms. BRANDT. Yes. I mean, we have 40 million native Spanish speakers in the United States and some of the best content creators in the world. So we should be leveraging those assets, especially in our communication in the region. Right. I'm thinking about, like, low-cost content distribution agreements that would allow some of our content to be shown in the region, for example.

Mr. CORREA. In my last 25 seconds, in your opinion, three of you, kind of a yes-or-no question, is Congress doing enough to make sure that we are present in Latin American countries? That is, are we visiting enough, are we paying enough attention? Yes, no—5 seconds?

Ms. BRANDT. Yes. I would just say it's incredibly important that we focus attention and research.

Mr. CORREA. Are we putting enough attention? Yes, no—

Ms. BRANDT. I think there's more we can do.

Mr. CORREA. Sir?

Mr. HERNANDEZ-ROY. I think there's more we can do. Not just Congress, but also the Executive.

Mr. CORREA. Ms. Dezenski.

Ms. DEZENSKI. There's more that we can do.

Mr. CORREA. Thank you very much.

Mr. Chair, I yield.

Mr. D'ESPOSITO. Thank you, sir. The gentleman's time's expired. I now recognize my friend from Arizona, Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

Again, I realize we are talking about Latin American countries today and the influence of China, Russia, and Iran down there. That being said, I do want to ask a question. Is anybody on the panel aware how many men conducted the attacks on the World Trade Center during 9/11? Anybody? Anybody know the number?

Mr. HERNANDEZ-ROY. Could you repeat the number of? Pardon me, the number of what?

Mr. CRANE. The number of men who conducted the attacks on the World Trade Center. Anybody know the answer to that? How many men? How many terrorists?

Mr. HERNANDEZ-ROY. That was somewhere in the neighborhood of 12 to 20, I believe.

Ms. DEZENSKI. It was about 17.

Mr. CRANE. Yes, it was around that—19 men. The reason I bring that up is because in 2021 CBP reported 4,103 encounters of Russian citizens along our Southwest Border. It continues to increase. Following the start of the war in Ukraine, this number jumped from 21,763 in 2022 and then in 2023, it rose again to 33,000.

Now let's go to China. In the first 3 months of 2023, we saw 9,711 individuals coming from China encountered at our Southern

Border. That obviously doesn't count the number of gotaways, which we can't count, but it is substantially more than the 3 years. Since again we are in homeland security, does it concern anybody on the panel knowing the current state of our Southern Border, to see these numbers increasing from the very countries that we are talking about in our Southern Hemisphere?

Mr. ROY, does it concern you to hear those numbers increasing?

Mr. HERNANDEZ-ROY. I think there's a two-part answer to that. The numbers are increasing in part, in large part because there are freedom-loving people in those countries—

Mr. CRANE. Absolutely.

Mr. HERNANDEZ-ROY [continuing]. Who also want to leave their repressive regimes and come to the United States.

Mr. CRANE. We understand that. We all understand that. But does it concern you, just knowing how I opened with only it only took 19 individuals to conduct one of the greatest attacks on the United States ever?

Mr. HERNANDEZ-ROY. It is a concern of mine, given my experience within the region and what other dictatorships have done in the region to infiltrate spies into neighboring allies.

Mr. CRANE. Absolutely. Do you guys think that either China or Russia might be smart enough to figure out that our Southern Border is pretty porous? Even our own President, while he was a candidate, said, if you want to come to the United States, come? Does that concern you? How about you, Ms. Dezenski? Sorry if I pronounce that wrong.

Ms. DEZENSKI. No, it is fine. Thank you. Yes, it is a concern. When the vulnerabilities are known, they can be exploited. As the immigration flow continues to grow, it becomes a more difficult challenge to figure out the very small number of people within a very large number coming across the border that are actually of security interest and concern. This is a problem we've had for a very long time.

Mr. CRANE. Yes. Let me ask a follow-on, ma'am. Do you think we should finish the wall that we started building on our Southern Border?

Ms. DEZENSKI. It's probably outside of my scope to comment specifically on the wall because I'm not following where things are at, but I do firmly believe that we need to be able to control the border.

Mr. CRANE. OK.

Ms. Brandt, what about you?

Ms. BRANDT. Like Ms. Dezenski, that's sort-of beyond the focus of my research. I will say, of course, I think we should have a secure Southern Border. Also, as I said, one of our greatest advantages is our open, welcoming, being an attractive destination for talent. So we need to ensure that we continue to be that kind of place that bolsters freedom-loving people around the world.

Mr. CRANE. It is interesting when I hear people come up here and they testify before this committee and they say—I ask about should we complete a wall and you guys say, oh, that is outside of my scope. I know you guys are very smart or you wouldn't be here. I read your bios. You are both very smart. You guys both have a lot of common sense. Do you guys have walls around your house?



Do you guys have walls in your backyard? Do you know why there are walls at prisons? Do you know why most schools have walls? Do you know why most castles have walls? I am asking a question. It as a pretty simplistic question, and the American people are tired of it.

Ms. BRANDT. I think our openness is a competitive advantage. I mean, not the openness of our border like literally, but our open welcoming environment. The openness of our society.

Mr. CRANE. Well, Ms Brandt, I would love to see you tell that to some of the people in my district who have lost their loved ones to fentanyl. Do you think that is an advantage to have parents that are losing their kids to fentanyl?

Ms. BRANDT. I don't mean the literal—no, of course not. Of course not.

Mr. CRANE. Because that is a byproduct of what you are talking about, ma'am.

Ms. BRANDT. Of course not. I'm not speaking about the literal openness of the border, but our—

Mr. CRANE. That is what you said, openness.

Ms. BRANDT. I'm clarifying that I mean the openness of our society.

Mr. CRANE. Thank you. I yield back.

Mr. D'ESPOSITO. The gentleman's time has expired.

I want to thank the witnesses for their valuable testimony, the Ranking Member and Members for their questions.

The Members of the subcommittee may have some additional questions for the witnesses and we would ask the witnesses to respond to those in writing.

Pursuant to committee rule VII(D), the hearing record will be open for 10 days.

Without objection, the subcommittee stands adjourned.

[Whereupon, at 11:46 a.m., the subcommittee was adjourned.]



**PROTECTING THE U.S. HOMELAND: FIGHTING THE  
FLOW OF FENTANYL FROM THE SOUTHWEST  
BORDER**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
BORDER SECURITY  
AND ENFORCEMENT**

OF THE

**COMMITTEE ON HOMELAND SECURITY**

**HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JULY 12, 2023

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**PROTECTING THE U.S. HOMELAND: FIGHTING  
THE FLOW OF FENTANYL FROM THE  
SOUTHWEST BORDER**

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**Wednesday, July 12, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON BORDER SECURITY AND ENFORCEMENT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:21 p.m., in room 310, Cannon House Office Building, Hon. Clay Higgins (Chairman of the subcommittee) presiding.

Present: Representatives Higgins, Gonzales, Luttrell, Brecheen, Correa, Jackson Lee, Thanedar, Garcia, and Ramirez.

Also present: Representatives D'Esposito, Ivey, and Goldman.

Mr. HIGGINS. The Committee on Homeland Security Subcommittee on Border Security and Enforcement will come to order.

Without objection, the subcommittee may recess at any point.

The purpose of this hearing is to receive testimony from Government experts on the elaborate drug operations conducted by the transnational criminal organizations along the United States-Mexico border which threaten the safety and security of American communities.

From the importation of precursor chemicals for production from China to the distribution of fentanyl in the United States, transnational criminal organizations are wreaking havoc on American communities, and the Committee on Homeland Security seeks answers.

I now recognize myself for an opening statement.

Good afternoon, gentlemen. Thank you for being here, and welcome to the Subcommittee on Border Security and Enforcement hearing on fighting the flow of fentanyl from the Southwest Border.

The purpose of today's hearing is to examine the Biden administration's failures and perhaps to examine some areas of shared success with previous administrations.

We welcome our witnesses from the Office of the National Drug Control Policy, the Department of Homeland Security, the Drug Enforcement Administration, and I thank you all for being here today.

I'd like to begin by thanking our Customs and Border Protection front-line agents and officers who work tirelessly every day to protect our country despite the negligent policies that they're subject to and the lack of support that they have reported from the Biden administration.

Every day, transnational criminal organizations use America's complex highway systems to smuggle illicit drugs, such as deadly fentanyl, and human beings into our country. These criminal organizations pose an enormous threat to the United States, as they undermine our public safety and flood our streets with drugs.

The Centers for Disease Control and Prevention, the CDC, cites drug poisoning as the leading cause of mortality due to injury in the United States. Over 150 people die in our Nation every day from overdoses related to synthetic opioids like fentanyl.

Fentanyl has poured across our borders and into the streets of America while the Biden administration continues to implement policies that have, in fact, emboldened and enriched these transnational criminal organizations.

It would be impossible to discuss the free flow of fentanyl at our borders without mentioning China's significant role in the shipping of precursor chemicals to the Mexican cartels. The cartels and China have a complicated money- and drug-laundering operation. This operation kills Americans every day. In fact, according to the CDC, fentanyl is the leading cause of death of Americans age 18 to 45.

As the flow of illegal immigrants continues to overwhelm Customs and Border Protection, it's inevitable that more and more drugs will slip through our defenses and into our country. As long as the Biden administration continues to fail enforcement of our immigration laws, the cartels will continue to reap the benefits.

Secretary Mayorkas has been derelict in his duties and has failed this country. He's continuously refused to enforce immigration law. He refused to prosecute illegal entries and refused to utilize previous immigration tools that had been proven effective. These actions have increased the flow of illegal aliens into this country, enriched the Mexican cartels, and overwhelmed our front-line agents and officers, which has led, of course, to more and more drugs flowing into the United States.

There's quantifiable impact of this destruction on our country. As drugs have poured into the United States, overdose deaths have increased every year, from 92,000 in 2020 to 109,680 in 2022. These are our brothers, our sisters, our family, our friends and neighbors. The Biden administration must reconcile with this devastation, and it's our job in Congress to hold the administration accountable.

The cartels have quickly learned to outmaneuver the system we had in place. With the help of the Chinese Communist Party and the Biden administration's ineffectiveness, they've smuggled an unprecedented amount of fentanyl and trafficked these dangerous and deadly drugs into our country, have taken a record number of American lives, and brought in regular billion-dollar profits. They've torn countless scores of thousands of American families apart.

This subcommittee will not allow the Biden administration, nor Secretary Mayorkas, to sweep their failures under the rug.

Today, this hearing will expose the arterial bleed at our Southern Border and the ensuing fight against synthetic opioids that has made its way to the forefront of all of our lives.

I yield back the balance of my time, and I look forward to hearing from our witnesses.

[The statement of Chairman Higgins follows:]

STATEMENT OF CHAIRMAN CLAY HIGGINS

JULY 12, 2023

Good afternoon and welcome to the Subcommittee on Border Security and Enforcement hearing on fighting the flow of fentanyl from the Southwest Border. The purpose of today's hearing is to examine the Biden administration's haphazard fight to disrupt the flow of fentanyl into the United States. I would like to welcome our witnesses from the Office of National Drug Control Policy, Department of Homeland Security, and the Drug Enforcement Administration for being here today.

Most recently, I was appointed by Speaker McCarthy to serve on the Task Force to Combat Mexican Drug Cartels. The purpose of the task force is to examine cartel operations, educate the American people on the impacts of cartel violence, provide legislative recommendations, and most importantly help save lives. I look forward to working with my colleagues in this crucial endeavor.

Every day, Transnational Criminal Organizations uses America's complex highway systems to smuggle illicit drugs, such as deadly fentanyl, and humans into our country. These criminal organizations pose an enormous threat to the United States as they undermine our public safety and flood our streets with drugs.

The Centers for Disease Control and Prevention (CDC) cites drug poisoning as the leading cause of mortality due to injury in the United States. Of the more than 105,000 drug poisoning overdose deaths in 2022, more than 75 percent involved opioids including fentanyl.

Under the Biden administration, America has been suffering from wave upon wave of misery flooding across our Southwest Border. Fentanyl has poured across our borders and into the streets of America while the Biden administration continues to implement policies that embolden and enrich these Transnational Criminal Organizations.

Mexican cartels rely on China for the precursor chemicals used to make synthetic opioids. The Sinaloa and Cártel de Jalisco Nueva Generación (CJNG) are the two biggest importers of synthetic opioids into the United States, and both rely on a complex system with partners in China to import fentanyl precursors. The precursors are then processed in labs in Mexico and then smuggled into the United States.

We would be mistaken not to mention China's significant role in the shipping of precursors and laundering of money. It is vital that the Biden administration recognize China's role in providing the vital ingredients used in illicit products that are killing United States youth. In fact, according to the CDC, fentanyl is the leading cause of death of Americans ages 18–45.

As the flow of illegal immigrants continues to overwhelm Customs and Border Protection, it is inevitable that more and more drugs will slip through our defenses and into our country.

Secretary Mayorkas has been derelict in his duties to this country and has continuously refused to enforce immigration law, refused to prosecute illegal entries, and refused to utilize previous immigration tools at his disposal. These actions have increased the flow of illegal aliens into this country, enriched Mexican cartels, and overwhelmed our front-line agents and officers, which has led to more and more drugs flowing into the United States.

The reckless open-border policies set by President Biden and Mayorkas have greatly benefited the Mexican cartels. The cartels quickly learned to outmaneuver the system, and with the help of the Chinese Communist Party, they have smuggled an unprecedented amount of fentanyl, taken a record number of American lives, brought in billion-dollar profits, and have torn families apart.

Secretary Mayorkas' blatant disregard for the security and sanctity of the American people has wounded our great nation deeply. This subcommittee intends to hold Secretary Mayorkas and the Biden administration accountable for their actions.

With that, I yield back the balance of my time and look forward to hearing from our witnesses.

Mr. HIGGINS. Without objection, I'd like to waive on the gentleman from New York, Mr. D'Esposito.

Mr. D'Esposito will be permitted to sit on the dais for this subcommittee hearing and ask questions of the witnesses.

I recognize the Ranking Member.

Mr. CORREA. Thank you, Mr. Chairman.



Again, thank you very much for holding this most important hearing on transnational criminal organizations and, of course, fentanyl.

Mr. Chairman, I want to ask also unanimous consent that Mr. Ivey and Mr. Goldman be permitted to sit with the subcommittee and question today's witnesses.

Mr. HIGGINS. Without objection.

Mr. CORREA. Again, Mr. Chairman, thank you for holding this most important hearing.

We also need to dismantle fentanyl supply lines. The surging resources to conduct inbound inspections are badly needed. We need to work collaboratively to make sure that these seizures lead to arrests and prosecutions of those engaged in these illegal, dangerous businesses.

That's why I'm glad to hear about the Department's recent successes in operations like Blue Lotus, the Four Horsemen—both of these that have seized nearly 10,000 pounds of fentanyl that were destined to go to our communities. Of course, these operations also resulted in almost 300 arrests. I understand the Department has used the intel from these successes to move to the next phase, which is to target and prevent other fentanyl from entering the United States.

I hope our witnesses today will share about—a little bit of information about the two new operations being moved ahead, which are Operation Artemis and Operation Rolling Wave.

For today's witnesses from the White House, DEA, CBP, and Homeland Security Investigations, or HSI, I want to hear in your testimony about how the administration has been working to mitigate these threats to our country as well as to Main Street.

We know transnational criminal organizations and the illicit supply of fentanyl are not new challenges. In fact, the number of fentanyl seizures began to increase in the summer of 2020 under the previous administration. As you know, the threat of fentanyl does not begin or end at our Southern Border.

We need to also improve our public health care response to this crisis and address the addiction plaguing our communities, while providing support for those that are trying to recover from drug addiction.

Of course, to tackle transnational criminal organizations and fentanyl, we can't just focus on seizures alone. We also need to go after their profits and supply chains. Again, let me repeat: We also need to go after their profits and supply chains.

I'm glad to hear that, under this administration, Homeland Security Investigation has continued Operation Pelican Bones, which seeks to disrupt the financial tools used by transnational criminal organizations to launder money; as well as Operation Hydra that goes after the precursors needed to create fentanyl; and, of course, Operation Chain Breaker that targets the equipment needed to manufacture pills.

Initiatives like these, gentlemen, to dismantle illicit networks and limit TCOs' financial accesses are needed. Yet we also need to recognize that this is a global threat, a world-wide threat. Strong and collaborative partnerships with international partners are critical to dismantling transnational criminal organizations.

That's why this morning the Chairman and I introduced the bipartisan Cooperation on Combating Human Smuggling and Trafficking Act, which would direct Homeland Security Investigations to expand its Transnational Criminal Investigative Units. These vetted and trained units of foreign law enforcement work with HSI to investigate transnational criminal organizations. They need to stop human smuggling and the flow of dangerous drugs before they reach our borders.

I hope my colleagues across the aisle will continue to join me in calling for responsible action, like expanding these transnational criminal investigative units and putting more resources toward our ports of entry, instead of throwing around harmful rhetoric about invading Mexico, our second-largest trading partner and, of course, a critical partner in fighting transnational crime.

While I have focused primarily on the law enforcement action we can take to dismantle transnational criminal organizations, we must also recognize that this isn't the only border issue. It's also a public health care challenge. These criminals across the world seek to make record profits at the cost of lives—American lives on Main Street. There is wide-spread, untreated drug addiction in our streets, leading some individuals to consume dangerous substances that may be laced with fentanyl.

Hope our witnesses today from the Office of National Drug Control Policy can speak also to the administration's strategy to reduce the demand for illicit drugs on our streets.

Again, I want to thank the witnesses for taking time from your very busy schedules to talk to us today. I welcome your suggestions how we in Congress can help you better accomplish your job.

Thank you very much, and I now turn it back to Chairman Higgins for today's proceedings.

[The statement of Ranking Member Correa follows:]

STATEMENT OF RANKING MEMBER J. LUIS CORREA

JULY 12, 2023

I would like to start by thanking Chairman Higgins for holding today's hearing on transnational criminal organizations and fentanyl. For today's witnesses from the White House, DEA, CBP, and Homeland Security Investigations (HSI), I look forward to hearing your testimony about the administration's actions to mitigate these threats.

We know transnational criminal organizations and the illicit supply of fentanyl are not new challenges. In fact, the number of fentanyl seizures began to increase in the summer of 2020 under the previous administration. But the threat of fentanyl does not begin or end at the Southern Border.

We need to improve our public health response to this crisis and address the addiction plaguing our communities while providing support to those recovering. We also need to dismantle fentanyl supply chains, surging resources to conduct inbound inspections, and working to indict, arrest, and prosecute those engaged in this illegal business. That's why I was glad to hear about the Department's recent successes in Operations Blue Lotus and Four Horsemen, which seized nearly 10,000 pounds of fentanyl headed for our communities and resulted in 284 arrests.

I understand that the Department has used the insights gained from these two operations to launch the next phase of its campaign to target and prevent fentanyl from entering the United States. I hope our witnesses will share more about the two new operations, Operation Artemis and Operation Rolling Wave. To tackle transnational criminal organizations and fentanyl, we can't just focus on seizures. We also need to go after their profits and supply chains.

I am glad that, under this administration, Homeland Security Investigations has continued Operation Pelican Bones—which seeks to disrupt the financial tools used

by transnational criminal organizations to launder money—as well as Operation Hydra, which goes after the precursor chemicals needed to create fentanyl, and Operation Chain Breaker, which targets the equipment needed to manufacture pills. Initiatives like these are critical to dismantle illicit networks and limit TCOs’ financial access. But we also need to recognize that this is a global threat, and strong, collaborative partnerships with international partners are critical to dismantling transnational criminal organizations.

That’s why this morning the Chairman and I introduced the bipartisan Cooperation on Combatting Human Smuggling and Trafficking Act, which would direct Homeland Security Investigations to expand its Transnational Criminal Investigative Units. These vetted and trained units of foreign law enforcement work with HSI to investigate transnational criminal organizations, aiming to stop human smuggling and the flow of dangerous drugs before they reach our borders.

I hope my colleagues across the aisle will continue to join me in calling for responsible action, like expanding these transnational criminal investigative units and putting more resources toward our ports of entry, instead of throwing around harmful rhetoric about invading Mexico—one of our closest trading partners and a critical partner in the fight against transnational crime.

While I have focused primarily on the law enforcement actions we can take to dismantle transnational criminal organizations, we must recognize that this isn’t only a border security challenge or law enforcement challenge. It’s a public health challenge, as transnational criminal organizations seek to make record profits at the cost of American lives. There is wide-spread untreated addiction for drugs, leading some individuals to consume dangerous substances that may be laced with fentanyl. I hope our witness from the Office of National Drug Control Policy can speak to the administration’s strategy to reduce the demand for illicit drugs in our communities.

Again, I appreciate all of witnesses’ willingness to appear today to discuss how we can increase our efforts to combat this serious threat. I welcome any suggestions about how Congress can help you accomplish your missions.

Mr. HIGGINS. I thank Ranking Member Correa.

All the Members of the committee are reminded that opening statements may be submitted for the record.

[The statements of Ranking Member Thompson and Hon. Jackson Lee follow:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

JULY 12, 2023

Let me start by saying that tackling the drug crisis is one of our most pressing national security, law enforcement, and public health challenges, and we must do more to protect American lives. Fentanyl presents the newest iteration of a drug problem that America has had for decades.

One way Congress can help protect Americans is to allocate resources to aggressively target the source of drug trafficking—Transnational Criminal Organizations or TCOs. We must understand that these organizations, including cartels south of our border, operate as a business. They are profit-driven. They are violent and criminal. But they are not political or ideological. Transnational criminal organizations profit from the demand for illicit drugs and at the expense of American lives.

The Biden administration, through the agencies testifying today among others, are working tirelessly to combat the TCOs and drug traffickers. Rather than waste resources building a wall or using migrants as scapegoats, the Biden administration has made historic investments in border security and in fighting the scourge of fentanyl. The administration has directed resources to the places where the drugs are actually entering this country.

We know that about 90 percent of fentanyl is trafficked in cars and trucks through ports of entry, not between them. Even the fentanyl caught between ports of entry is mostly seized in vehicles at checkpoints or out at sea—not on the backs of migrants. In addition, it’s important to recognize that U.S. citizens, not undocumented migrants, represent more than 85 percent of convictions for fentanyl trafficking.

The Biden administration has invested in technology at the ports of entry to scan travelers, vehicles, and cargo entering the United States with the intent to distribute illicit drugs. With these investments, seizures are now at a record high. Unfortunately, CBP is only able to scan about 2 percent of passenger vehicles and just 15 percent of commercial vehicles. Imagine the amount of drugs we could stop from

coming into the country if we invested as much in non-intrusive inspection technology as Republicans want to spend on more border wall.

This whole-of-Government approach led to the administration to establish Operations Blue Lotus and Four Horsemen this spring. Under these initiatives, CBP, HSI and State and local partners stopped nearly 10,000 pounds of fentanyl from entering our communities and conducted 284 arrests for fentanyl-related charges in just 2 months. These operations are just a couple measures in the Biden administration's multi-pronged strategy to combat TCOs and curtail the flow of illicit fentanyl.

I want to commend Customs and Border Protection and other agencies for their coordinated efforts to increase the number of seizures and related investigations. I can't help but note that just a few years ago my Republican colleagues touted drug seizures as a measure of success under the Trump administration.

Now that the Biden administration has record seizures due to its investments and its commitment to detection and interdiction efforts, my Republican colleagues are criticizing the administration. This is the height of hypocrisy.

While I appreciate the administration's efforts to stop fentanyl and other drugs from entering our communities, it's important to recognize that this is just one part of the solution. Law enforcement and border security alone will never be enough. We must also tackle this crisis with treatment and recovery options to restore people's health and break the devastating cycle of addiction.

I urge my Republican colleagues to work together to provide the necessary resources to Federal agencies to combat TCOs and prevent fentanyl trafficking.

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STATEMENT OF HONORABLE SHEILA JACKSON LEE

JULY 12, 2023

Thank you, Chairman Higgins and Ranking Member Correa, for the opportunity to speak today and thank you to the witnesses who are here.

My thanks to our hearing witnesses:

- Mr. Kemp Chester, senior advisor of National Drug Control Policy
- Mr. Steven Cagen, assistant director of Homeland Security Investigations
- Mr. James Mandryck, deputy assistant commissioner, Office of Intelligence, CBP
- Mr. George Papadopoulos, acting chief of operations, DEA
- Mr. Tyrone Durham, director, Nation-State Threat Center.

As a member of the House Judiciary and Homeland Security Committees I have a unique view on the threat that fentanyl poses to our children, families, communities, and our Nation.

As the Ranking Member of the Judiciary Committee's Subcommittee on Crime and Federal Government Surveillance I introduced The Stop Fentanyl Now Act of 2023.

The Stop Fentanyl Now Act, a is important bill that will protect children and youth from fentanyl, fentanyl-related synthetics, and fentanyl-laced substances.

As illicit fentanyl floods our communities, fentanyl-related deaths continue to increase at a devastating rate—claiming nearly 200 lives each day in every corner of the country.

No community is safe from this public health crisis.

As illicit fentanyl floods our communities, fentanyl-related deaths continue to increase at a devastating rate—claiming nearly 200 lives each day in every corner of the country.

TEXAS STATISTICS

In my home State of Texas, fentanyl was linked to more than 1,600 fatal overdoses in 2021 while the CDC reports that there were more than 70,000 fentanyl-related deaths in the United States in that same year, including roughly 1,500 individuals under the age of 20.

In 2022, more than 2,000 people died from fentanyl in Texas, killing more than 5 Texans aged 18–45 per day.

I want to again reiterate unintentional fentanyl use, given that 97 percent of the 870 unintentional synthetic opioid deaths in Texas in 2022 were fentanyl-related.

NATIONAL STATISTICS

Fentanyl is now the leading cause of accidental death for young Americans, killing more people than suicide, car accidents, or gun violence.

No community is safe from this public health crisis.

It is found in every part of the United States.

Every drug purchased on the internet, on the street, or from people can contain fentanyl regardless of the form (powders, capsules, pills, and more).

The U.S. Drug Enforcement Administration found that 1 in 3 counterfeit pills on the market contained a potentially lethal dose of fentanyl.

Kids of color have been the hardest hit by the fentanyl crisis, with the highest increase in deaths among Native American, Latinx, and Black youth.

More than 5,000 children and teens have died from overdoses involving fentanyl in the past two decades, according to data published in the *Journal of American Medical Association (JAMA) Pediatrics* (on May 8, 2023).

More than half of those deaths occurred in the first 2 years of the COVID-19 pandemic.

Fentanyl was involved in 1,557 adolescent deaths in 2021, a thirty-fold increase since 2013; when the wave of overdose deaths involving synthetic opioids started in the United States.

A surge that began in 2018 led to a nearly three-fold increase in deaths among older adolescents and a nearly six-fold increase among children younger than 5.

In 2021, 40 infants and 93 children ages 1 to 4 died from a fentanyl overdose. Specifically, fentanyl has been mistaken by children as candy and chalk.

According to the DEA, bright-colored fentanyl pills designed to hook children have been spotted in nearly two dozen States.

The DEA also suggested cartels are coloring blocks of the drug so that it resembles sidewalk chalk.

These fatal pediatric overdoses involving fentanyl mirror trends seen in adults.

In 2021, nearly 70,000 U.S. adults fatally overdosed on fentanyl, the biggest spike in overdose deaths in the country's history.

Since 1999, however, the vast majority of pediatric deaths from fentanyl have been among older teens ages 15 to 19 (89.6 percent).

Teen deaths from fentanyl have surged over the past few years—tripling overall and increasing 5 times for Black teens—according to provisional data from the Centers for Disease Control.

In 2021, 77 percent of all teen overdose deaths involved fentanyl.

The FDA also recently warned of “rainbow fentanyl” manufactured to look like candy to appeal to children.

Experts agree the surge of fentanyl deaths is overwhelmingly traceable to social media, where children can easily buy prescription and other drugs, many of which are counterfeit and contain lethal doses of fentanyl.

For all ages, 43.8 percent of deaths occurred at home, and 87.5 percent were unintentional.

And the drug is now the primary agent noted in the pediatric opioid crisis.

In particular, accidental exposures to fentanyl patches continue to be deadly to children.

According to the FDA, children can overdose on new and used fentanyl patches by putting them in their mouth or sticking the patches on their skin.

This can cause death by slowing the child's breathing and decreasing the levels of oxygen in their blood.

#### H.R. 4272, THE STOP FENTANYL NOW ACT OF 2023

The *Stop Fentanyl Now Act of 2023* is a necessary response to the recent surge in overdoses and death that is claiming thousands of young lives each year.

My bill would:

- Provide training and resources to ensure schools and teachers can administer opioid overdose reversal drugs or devices;
- Stop the on-line sale of little pink pills and other brightly-colored pills that have been used to target and drive addiction among youth—and have contributed to the recent surge in fentanyl-related overdoses and deaths;
- Require HHS and DOJ to develop and implement a national strategy to educate the public about fentanyl, fentanyl-related synthetics, and fentanyl-laced substances;
- Provide grants to States to develop and implement treatment programs for individuals addicted to these substances;
- Decriminalize fentanyl test strips and provide grants to States that adopt similar legislation;
- Encourage DOJ to increase resources available to law enforcement agencies to combat the trafficking of these substances;
- Require DOJ to establish an interagency task force to coordinate Federal, State, and local efforts to combat the trafficking of these substances;

- Require HHS to conduct research to better understand the effects of these substances, develop new treatments for individuals addicted to them, and determine best practices for prevention; and
- Enhance penalties for offenses involving the distribution or manufacture of adulterated or misbranded drugs, doing so with the intent to defraud or mislead, as well as promotion or sale of adulterated or misbranded drugs on-line.

The *Stop Fentanyl Now Act of 2023* is comprehensive legislation that broadly covers distribution of fentanyl-related synthetics and fentanyl-laced substances by seeking to break the supply chain that is now on-line and more available to our youth while punishing those who are criminally engaged in such activity that is aimed at destroying young Americans.

The bill also addresses demand for these drugs by educating the public, including parents, teachers, and teens, and providing treatment to those who suffer from substance use disorders.

The *Stop Fentanyl Now Act of 2023* rejects the urge to criminalize drug usage in order to address the problems caused by fentanyl and recognizes that non-illicit fentanyl has medical uses.

And while we must stop the criminal production and distribution of fentanyl and fentanyl-related synthetics, we must also recognize that mass criminalization and incarceration will never solve the problems associated with drugs of any kind.

We cannot incarcerate our way out of the country's latest epidemic of drug abuse, especially when they involve mandatory minimum sentencing schemes that fall hardest on low-level offenders and do nothing to promote public safety or get drugs off the street.

While we must be committed to securing our border, if we want to protect our children and stop the senseless loss of life caused by fentanyl, fentanyl-related substances, and fentanyl-laced substances, the Federal response must focus on prevention and education, treatment, interdiction, and enforcement.

We must pass this legislation to truly protect Americans from the scourge of fentanyl-related deaths.

This multi-disciplinary, whole-of-Government approach is doable and should be done.

Failure to do so could be the cost of saving more lives.

Thank you, I yield back the remainder of my time.

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ATTACHMENT.—DEA TRAFFICKER-QUANTITIES OF “RAINBOW FENTANYL” ARRIVE IN  
NEW YORK

October 04, 2022

<https://www.dea.gov/press-releases/2022/10/04/trafficker-quantities-rainbow-fentanyl-arrive-new-york>

One person was arrested and approximately 15,000 fentanyl pills were seized as part of an ongoing investigation into a fentanyl trafficking organization. The fentanyl pills, in various colors, were destined for distribution throughout New York City and had been concealed in a LEGO box to deter law enforcement attention. The fentanyl pills were also imprinted with “M” and “30” to resemble “30 M”, Oxycodone Hydrochloride 30 mg pills.

This significant seizure, the largest to date in New York City, signals more widespread distribution of these dangerous colorful pills. The case highlights Mexican cartels' most recent tactics to attract the public while deceiving them about the lethal drugs. The Sinaloa Cartel and Jalisco New Generation Cartel are mass-producing fentanyl pills in rainbow colors to not only brand their products, but use colors and dyes to mimic candy and/or legitimate prescription drugs.

Frank A. Tarentino III, Special Agent in Charge of the U.S. Drug Enforcement Administration's New York Division, Bridget G. Brennan, New York City's Special Narcotics Prosecutor, New York City Police Commissioner Keechant L. Sewell and New York State Police Superintendent Kevin P. Bruen announced the seizure and arrest following the arraignment of Latesha Bush.

“Rainbow fentanyl is a clear and present danger, and it is here in New York City,” said DEA Special Agent in Charge Frank Tarentino. “Approximately forty percent of the pills we analyze in our lab contain a lethal dose; and in a recent 15-week enforcement operation, DEA New York seized half a million lethal pills. These staggering statistics underscore the importance of reminding the public that just one pill can kill; and this operation alone removed the equivalent of 500,000 lethal doses of fentanyl from circulation in the Empire State. In the same reporting period, DEA seized the equivalent of over 36 million lethal doses nationally.”

NYC Special Narcotics Prosecutor Bridget G. Brennan said, “Using happy colors to make a deadly drug seem fun and harmless is a new low, even for the Mexican cartels. Fentanyl is already involved in more than 80 percent of overdose deaths in the city. If you take any drug sold on the street or through the internet, regardless of its medicinal markings or festive appearance, you risk your life. My office and our partners are committed to intercepting lethal fentanyl and ensuring that these rainbow-colored pills don’t lead more people down a sad path of substance use and overdose death.”

“Disguising fentanyl as candy—and concealing it in children’s toys—will never hide the fact that fentanyl is a deadly poison that harms our communities, our families, and our city,” said Police Commissioner Keechant L. Sewell. “The criminal complaint unsealed today is another example of the NYPD’s relentless commitment to never stop working to rid New York city of illegal drugs and I want to thank the Special Narcotics Prosecutor for the city of New York, the DEA New York Division, the New York State Police, and everyone else involved in this case for their exceptional work.”

New York State Police Superintendent Kevin P. Bruen said, “I want to thank our members and law enforcement partners for their unwavering work in stopping the flow of illegal drugs throughout our State. The arrest of Latesha Bush and the seizure of these lethal drugs are the direct result of a commitment to aggressively target and pursue criminals who perpetuate the distribution of these narcotics. Together, we will continue to eliminate these operations and those who seek to destroy the quality of life within our communities.”

A criminal complaint filed by the Office of the Special Narcotics Prosecutor (SNP) charges Bush, of Trenton, N.J., with Criminal Possession of a Controlled Substance in the First and Third Degrees.

Bush was arraigned in Manhattan Criminal Court on Friday, September 30, 2022. Bail was set at \$25,000 cash/\$150,000 insurance company bond/\$100,000 partially secured surety bond.

The investigation was conducted by DEA’s New York Drug Enforcement Task Force (NYDETF) Group T–12, which is comprised of agents and officers with DEA New York Division and the New York City Police Department. SNP’s Investigators Unit assisted in the investigation.

On Wednesday, September 28, 2022, at approximately 7:11 p.m., members of NYDETF Group T–12 were conducting surveillance as part of an ongoing investigation into narcotics trafficking when they allegedly observed Bush carrying what appeared to be a black tote bag wrapped around a large object as she entered a vehicle in front of 475 10th Avenue in Manhattan.

Upon stopping the vehicle, agents and officers allegedly found Bush in the rear seat, with two black tote bags and a yellow LEGO container also in the rear seat. Inside the LEGO container were several brick-shaped packages covered in black tape lying next to LEGO blocks. The black tape covering one of the packages had been partially opened, exposing multi-colored pills inside. A subsequent examination of the packages revealed they contained approximately 15,000 pills.

During the investigation, agents and officers learned that just prior to the arrest, Bush had travelled from New Jersey to the vicinity of 475 10th Avenue in a rental car. Agents and officers also learned that the multi-colored fentanyl pills allegedly originated in Mexico.

DEA laboratory analysis of the narcotics seized in New York is pending. Preliminary testing indicated the presence of fentanyl.

Last week the DEA announced the results of the third phase of the One Pill Can Kill initiative focused on combatting the fake pill threat which led to the seizure of more than 10.2 million fentanyl pills and approximately 980 pounds of fentanyl powder during the period of May 23 through Sept. 8, 2022. The amount of fentanyl taken off the streets during this surge is equivalent to more than 36 million lethal doses removed from the illegal drug supply. Additionally, 338 weapons were seized, including rifles, shotguns, pistols, and hand grenades. There were 390 cases investigated during this period, 51 cases are linked to overdose poisonings and 35 cases link directly to one or both of the primary Mexican cartels responsible for the majority of fentanyl in the United States—the Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG). In addition, 129 investigations are linked to social media platforms, including Snapchat, Facebook Messenger, Instagram, and TikTok.

Special Agent in Charge Frank A. Tarentino thanked the New York City Office of the Special Narcotics Prosecutor, the New York City Police Department, the New York State Police, SNP’s Special Investigations Bureau and Investigators Unit and Group T–12 of the New York Drug Enforcement Task Force.

Mr. HIGGINS. I'm very pleased to have a distinguished panel of witnesses before us today on this very important topic, and I ask that our witnesses please rise and raise your right hands.

[Witnesses sworn.]

Mr. HIGGINS. Let the record reflect that the witnesses have answered in the affirmative.

Thank you, gentlemen. Please be seated.

I'd now like to formally introduce our witnesses.

Mr. Kemp Chester is a senior advisor to the director of National Drug Control Policy. Previously, Mr. Chester served for 27 years as a United States Army officer, serving in a number of command and staff positions within the United States and abroad. In his current role, Mr. Chester directs policy focused on addressing the production and trafficking of illicit drugs, including the United States counternarcotics relationships with China and India.

Our witness seated at the table next to Mr. Chester is Mr. Steven Cagen. He serves as the assistant director of the Countering Transnational Organized Crime Division for Homeland Security Investigations, where he leads a wide array of operations investigating TCOs and narcotics trafficking. Mr. Cagen comes with 25 years of Federal law enforcement experience, including combating drugs and arms trafficking in Mexico City and working his way through the ranks of Senior Executive Service.

Thank you for being here, sir.

Mr. James Mandryck is deputy assistant commissioner in the Office of Intelligence at the United States Customs and Border Protection. In his role, Mr. Mandryck supports the day-to-day operations of CBP's intelligence enterprise, including the tactical and operational analysis that drives law enforcement operational activities. Mr. Mandryck previously served as a senior executive overseeing the National Border Security Intelligence Watch.

Thank you for being here, good sir.

Our next witness is Mr. George S. Papadopoulos, who was most recently appointed as United States Drug Enforcement Administration's principal deputy administrator. That's quite a title. Prior to this role, Mr. Papadopoulos served as the agency's acting chief of operations, where he oversaw all operational and enforcement matters for the DEA.

Thank you for being here today, good sir.

Mr. Tyrone Durham is the acting director of the Nation-State Threat Center in the Office of Intelligence and Analysis at the Department of Homeland Security.

I thank you, Mr. Durham, for joining us today.

I thank all the witnesses for joining us.

I now recognize Mr. Chester for 5 minutes to summarize his opening statement.

**STATEMENT OF KEMP L. CHESTER, SENIOR ADVISOR TO THE  
DIRECTOR OF NATIONAL DRUG CONTROL POLICY, OFFICE  
OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE  
OF THE PRESIDENT**

Mr. CHESTER. Chairman Higgins, Ranking Member Correa, and Members of the subcommittee, thank you for the opportunity to testify today on the very real challenge we confront from the pro-



duction and trafficking of deadly synthetic opioids across our borders and into our communities.

I know I don't need to remind anyone here that someone in America dies from a drug overdose or poisoning about every 5 minutes of every hour of every day. That is why the President made ending the opioid epidemic a key pillar in his unity agenda, challenging us to change the trajectory of this crisis and save American lives.

Not long ago, the dominant model of drug trafficking involved plant-based drugs like cocaine or heroin or methamphetamine made from crude chemicals, moved through a hierarchical drug-trafficking organization and eventually sold in a face-to-face cash transaction somewhere in the United States. While that structure still exists, it has been joined by a synthetic opioid production and supply chain that operates as a global business and exploits the structure of legitimate commerce to obtain precursor chemicals, move funds, and make internet-based sales of raw materials and finished drugs using both fiat and cryptocurrency.

Today, the ability of an American teenager to find illicit drugs is literally in the palm of their hand and as simple as opening a social media app.

We are in the midst of a strategic transition between two eras, where the cultivation and production of large volumes of plant-based drugs has not ended, but the era of small-volume, high-potency synthetic opioid production has clearly begun.

This problem does not start at our border and it will not end at our border. It is a national security and economic prosperity problem, as much as it is a law enforcement and public health one.

In April of this year, the administration announced its strategic approach to disrupt the global illicit fentanyl supply chain. We call this approach commercial disruption, which focuses and synchronizes all the tools of national power to simultaneously attack four key vulnerabilities in the supply chain: precursor chemicals; the pill presses, dye molds, and encapsulating machines used to create counterfeit pills; the commercial shipping that moves these items around the world; and the flow of financial benefits and operating capital to those involved in the illicit drug industry.

As part of this, we maintain close and mutually-beneficial partnerships with key countries, such as Mexico and India, who play a role in preventing the proliferation of these dangerous synthetic drugs and in advancing our efforts to disrupt their supply chain.

So for an issue in which United States and PRC interests align, we are disappointed that they have chosen not to substantively engage with the United States on counternarcotics for more than a year. But this is a global problem, and the United States leadership is essential.

Under our leadership, the international community has scheduled nearly a dozen precursor chemicals, and we've raised global awareness of the illicit synthetic drug supply chain.

Last week, Director Gupta joined Secretary of State Blinken for the first meeting of the global coalition against synthetic drugs. More than 80 countries convened at the ministerial level to accelerate efforts against synthetic drugs.

Our efforts to reduce the presence of these drugs in our communities must be closely linked with our equally strong efforts to decrease their use. The administration is committing a historic level of resources to lower the demand for these drugs and keep Americans safe from their harms. The simple truth is it cannot be easier to get illicit drugs in America than it is to get treatment.

We are seeing some signs of progress. Just today, the CDC released new data on provisional drug overdose deaths, showing a continued flattening of drug overdose deaths through early 2023, halting a period of rapid increase from 2019 to 2021.

But that is not enough. Now is the time to redouble our efforts, accelerate our work, and move this Nation and the world beyond a crisis that has vexed us for the better part of a decade. People in the throes of addiction are in a fight every day, and they should expect nothing less from us as well.

On behalf of Dr. Gupta and the hard-working people at the Office of National Drug Control Policy, I would like to thank this subcommittee and your Congressional colleagues for your leadership and bipartisanship on this incredibly difficult issue. Ending the opioid and overdose epidemic demands the best efforts of us all, and we look forward to continuing our work with you.

Thank you, and I look forward to your questions.  
[The prepared statement of Mr. Chester follows:]

PREPARED STATEMENT OF KEMP L. CHESTER

WEDNESDAY, JULY 12, 2023

Chairman Higgins, Chairman Pfluger, Ranking Member Correa, Ranking Member Magaziner and Members of the Subcommittees, thank you for the opportunity to testify today on the very real challenge we confront from the production and trafficking of deadly synthetic opioids across our borders and into our communities. I am honored to join my colleagues from the Departments of Homeland Security and Justice, who are vital partners in implementing the National Drug Control Strategy, and in keeping our country and our communities safe.

INTRODUCTION

I am sure I do not need to remind anyone in this room that over a 1-year period we have lost more than 109,000 Americans to a drug overdose or poisoning, more than 69 percent of which can be attributed to a synthetic opioid like illicit fentanyl and other substances that are structurally similar to fentanyl. That is someone in America dying from a drug overdose or poisoning about every 5 minutes, every hour, of every day.

Alongside those we have lost are those who have suffered a non-fatal overdose. It is estimated that for every fatal overdose there are 14 non-fatal overdoses—more than 1.5 million in 2022 alone. Additionally, 46 million people in America, almost 14 percent of the population, are currently suffering from substance use disorder. Too many Americans—those we have lost to overdoses, those who have overdosed but did not lose their lives, and those living with a substance use disorder—have either succumbed to drug use or carry the burden of it in some way.

This is why the President made ending the opioid and overdose epidemic a key pillar of his Unity Agenda, challenging us to reduce the number of drug overdose deaths, put quality public health services within reach for people with substance use disorder, and strengthen public safety by disrupting the drug production and trafficking pipeline that profits by harming Americans.

THE ENVIRONMENT OF DRUG PRODUCTION AND TRAFFICKING

There was a time, not very long ago, that drug production was limited to processing poppy, or harvesting coca, or manipulating over-the-counter pharmaceuticals with crude chemicals to make methamphetamine. Those finished drugs were moved through a hierarchical drug trafficking organization to a street-level retailer, and eventually sold in a face-to-face cash transaction on a street corner somewhere in

the United States. That was the dominant model of drug trafficking we saw for decades.

While that drug production and trafficking structure still exists, it has been joined by a synthetic opioid production and supply chain that is, in essence, a global business enterprise that demonstrates access to huge capital resources, conducts routine collaboration among raw material suppliers across international borders, uses advanced technology to fund and conduct business, and possesses the capacity for product innovation and strategies to expand markets.

These synthetic opioid producers and traffickers operate as free-riders on the back of the 21st Century global economy that moves products, ideas, and money across borders with incredible speed, and they exploit that legitimate economic structure to sustain and enhance their illicit business. This includes key activities such as the provision of precursor chemicals, some of which are unregulated, and their finished products that can be shipped in plain sight around the world; physically dislocated payments that include the movement of funds across borders; and the internet-based sales of raw materials and finished drugs using both fiat and cryptocurrency.

And these synthetic opioids—principally fentanyl and its analogues, though there are others—that are killing Americans are manufactured outside of the United States and brought across our borders and into our communities by a variety of means. Today, an American teenager can find illicit drugs in the palm of their hand, and simply by opening a social media app.

We find ourselves in the midst of a strategic transition between two eras, where the cultivation and production of large volumes of plant-based drugs like heroin and cocaine has not ended, but the era of small volume, high-potency, synthetic drug production has clearly begun.

While we need to address the on-going plant-based drug problem that continues to harm our citizens, we must simultaneously develop and implement the means necessary to confront the emerging synthetic opioid production and trafficking environment that is defined by complexity, dynamism, and resiliency. This requires increased effort, a more sophisticated approach, better use of the tools available to us, and the application of new tools we have not traditionally employed against the illicit drug problem. We cannot simply charge into the future by doing the exact same things we have been doing, but just trying to do them better, and we cannot address the most dynamic and complex drug production and trafficking environment in history with the same strategies that may have served us well in the past but are insufficient for the challenges we face today.

While the administration is aggressively pursuing investments in non-intrusive inspection equipment, artificial intelligence, machine learning, and more, to prevent these drugs from crossing our geographic borders, we must bear in mind that this problem does not start at our border and it will not end at our border. It starts with the illicit synthetic opioid production in another country and ends in an emergency department or morgue somewhere in America. For the United States, it is a national security and economic prosperity problem as much as it is a public safety and public health one, and we must face it head-on with the bold, comprehensive, and determined strategic approach it deserves.

Doing so requires strong leadership from the White House providing unity of both purpose and effort across the Federal Government; strong bilateral relationships with key countries that share responsibility to address the problem and must be part of the solution; and perhaps, most importantly, the United States' global leadership.

#### THE ADMINISTRATION'S STRATEGIC APPROACH

The President has declared “that international drug trafficking, including the illicit production, global sale, and widespread distribution of illegal . . . fentanyl and other synthetic opioids . . . constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.” In April of this year, the administration announced its Strengthened Approach to Crack Down on Illicit Fentanyl Supply Chains, a whole-of-Government approach to save lives by disrupting the trafficking of illicit fentanyl and its precursors into American communities. We call this approach Commercial Disruption, and it focuses and synchronizes our national security and public safety capabilities, including innovative approaches, against criminal facilitators and enablers, and attacks four key vulnerabilities in the illicit fentanyl supply chain to maximize our impact across the drug producers' and traffickers' spectrum of capabilities:

- The precursor chemicals, including unregulated chemicals that can be used to create immediate precursors.

- The pill presses, die molds, and encapsulating machines used to create the pills that are killing far too many Americans.
- The drug producers' ability to move raw materials like precursors and manufacturing machinery around the world via commercial shipping.
- The flow of financial benefits and operating capital to individuals and groups directly and indirectly involved in the illicit drug industry.

Targeting those four critical elements will allow us to remove the advantages fentanyl producers and traffickers currently enjoy, disrupt their production and supply chains, and reduce the availability of these dangerous substances in America's communities.

As part of this approach, we are also working much more closely with our private-sector partners. The vast majority of the physical and virtual terrain on which drug traffickers operate such as the dark web, e-commerce sites, mail and express consignment shippers and freight forwarders, banks, cryptocurrency vendors, legitimate chemical suppliers, and pill press and die manufacturers, are private-sector entities. And some of them likely have no idea they are a constituent part of an illicit business enterprise.

We must raise a sophisticated awareness of this environment with the commercial sector around the world, and engage with them in a full partnership, so we can sift out the unwitting from the knowing and intentional actors here in the United States and abroad, and then focus our efforts on the latter in a more precise way.

#### BILATERAL RELATIONSHIPS WITH KEY COUNTRIES

A second significant aspect of addressing this challenge is maintaining close and mutually beneficial partnerships with key countries who not only play a role in preventing the global proliferation of these dangerous synthetic drugs, but will also play a role in advancing our global efforts to disrupt the global supply chain.

*Mexico.*—We have redoubled our efforts with the government of Mexico, working alongside it as it does more to address fentanyl production and trafficking. President Biden has stressed the importance he places on this issue with President Lopez Obrador, and our two governments are working more closely than ever on the fentanyl problem to establish tangible goals, assess progress, and follow-through on mutual commitments.

Given the combination of our shared border, our two-hundred-year bilateral relationship, and the negative effects that drug producers and traffickers in Mexico have on both sides of the border, it is vitally important that our bilateral relationship be characterized by mutual respect, and a sense of the shared responsibility we have to address the shared threat of drug trafficking and its associated criminality. Further, we have strengthened all of North America in our work with Mexico and Canada through the trilateral North American Drug Dialogue.

Just as the United States does not have to lose 109,000 people to drug overdoses or poisonings every year, the people of Mexico can have a future free from an expectation of unaccountable criminality and the scourge of drug production that corrupts their towns, victimizes their families, and pollutes their natural spaces.

*The People's Republic of China.*—As we are leading the global effort to disrupt the production and trafficking of these drugs, we look forward to the People's Republic of China (PRC) joining us in that effort.

However, no one should mistake our willingness to engage for an acceptance of the status quo, especially on an issue felt so acutely in the United States and when so many lives have been impacted. Years of seizure and law enforcement data show that unscrupulous elements within the PRC have been a major source for precursor chemical shipments, pill presses, and die molds entering the Western Hemisphere.

This is also an issue in which the interests of the United States and China align, and our past engagement on the counternarcotics issue has brought some impressive results, including the domestic scheduling of fentanyl as a class, which had an immediate impact on reducing the flow of fentanyl and its analogues directly from the PRC. The United States will work with the PRC whenever possible to fully address the grave and growing problem of illicit synthetic drug production and trafficking at the global level.

Given the gravity of this issue, it is disappointing that the PRC has chosen to not take substantive steps to counter illicit synthetic drug production and trafficking for more than a year. With leadership comes accountability, and while the PRC plays a major role in this global problem, it has thus far declined to play a constructive role in helping to solve it. Last week, as nearly 100 countries and international organizations gathered in a demonstration of deep concern and a desire for tangible solutions to the grave and growing problem of illicit synthetic drug production and trafficking, the PRC declined its invitation to participate in the virtual ministerial

meeting to launch the Global Coalition to Address Synthetic Drugs. We sincerely hope that the PRC can find the political will to address this problem commensurate with its capability to do so.

*India.*—The United States and India have been growing our counternarcotics relationship since 2020 through a bilateral counternarcotics Working Group, addressing the law enforcement, multilateral, regulatory, and drug demand reduction dimensions of this problem with a focus on tangible results and mutually beneficial outcomes.

During Prime Minister Modi's recent visit to the White House, the two leaders committed to work toward a broader and deeper bilateral Drug Policy Framework for the 21st Century. Under this new framework, we will look to expand cooperation and collaboration to disrupt the illicit production and international trafficking of illicit drugs, including synthetic drugs, such as fentanyl and amphetamine-type stimulants, and the illicit diversion of their precursors within India's chemical industry. They also committed to a holistic public health partnership to prevent and treat illicit drug use, address workforce shortages and skilling requirements across both countries, and showcase a secure, resilient, reliable, and growing pharmaceutical supply chain as a model for the world.

The world's oldest democracy, working in close partnership with the world's largest, cannot only achieve tangible and positive results, but will model for the rest of the world how great nations can work together to counter threats, seize opportunities, and demonstrate sincere partnership in addressing one of the most significant global issues we face.

#### STRONG UNITED STATES GLOBAL LEADERSHIP

Finally, as important as our bilateral relationships are, this is a global problem, and global problems require global solutions. The United States has learned a great deal from its opioid epidemic, and no other country has the depth of experience, expertise, or political wherewithal to lead on this issue. And that leadership involves not only sharing every single lesson we have learned the hard way over the past several years with our partners, but also serving as an example of how we are navigating this complex problem with care for those suffering from the disease of addiction, while systematically dismantling the global infrastructure of those who continue to reap obscene profits through the suffering and death of Americans.

The international community has successfully scheduled nearly a dozen precursor chemicals with global partners through the United Nations Commission on Narcotic Drugs, including 5 fentanyl precursors at the request of the United States.

We have led in raising global awareness of the nature of the global illicit synthetic drug supply chain, and are working to make common-sense and responsible measures to disrupt the exploitation of legitimate commerce a global norm.

And we have led by example, by committing billions of dollars, more than half our Federal drug control budget, to public health measures to prevent our youth from falling into the cycle of drug use and addiction, reduce the harms caused by these drugs and save lives, extend treatment services to everyone who needs and wants them, and making our communities and workplaces recovery-ready.

It is an unfortunate fact that there are three kinds of countries in the world: those who have a synthetic opioid problem and are dealing with it; those who have the problem but do not yet know it; and those who will have a problem with fentanyl or another synthetic opioid in the coming years. Too much illicit fentanyl production occurs, generating too much money, and absent decisive action this illicit market will expand exponentially around the world. It is important for all nations to put into place, now, the protective measures that will prevent this expansion and protect their people.

On July 7, Director Gupta joined Secretary of State Blinken for the first meeting of the Global Coalition to Address Synthetic Drug Threats. This ministerial-level meeting, hosted by the United States, brought together nearly 100 countries and international organizations to accelerate efforts against illicit synthetic drugs by: (1) Preventing the illicit manufacture and trafficking of synthetic drugs, (2) detecting emerging drug threats and drug use patterns, and (3) promoting public health interventions and services to prevent and reduce drug use, overdose, and other related harms. This first-of-its-kind global coalition will develop concrete solutions, drive national actions, and leverage the collective effort of like-minded countries who agree that countering illicit synthetic drugs must be a global policy priority.

COMPLEMENTING OUR PUBLIC SAFETY EFFORTS WITH A STRONG PUBLIC HEALTH  
RESPONSE

Because there is a complex interplay between the availability of drugs in the United States and their use, our public safety efforts to reduce their presence in our communities must be closely linked with our equally strong public health efforts to reduce their use. Traffickers are not going to import products no one wants, and individuals cannot overdose on drugs that are not available for them to purchase.

Therefore, disrupting the flow of drugs into the United States is not only vital to keep drugs from harming our citizens, but is especially important as the means to relieve the pressure of the steady flow of drugs into our communities and to allow our historic investments in public health interventions to take hold. The simple truth is that if it is easier to get illicit drugs in America than it is to get treatment, we will never bend the curve.

The administration has been working to greatly expand access to addiction treatment, harm reduction interventions, youth substance use prevention programs, and recovery support services. Much of this work is being done in partnership with Congress, and I want to thank the Members of this committee and the Congress at large for your support of numerous pieces of legislation in helping to address this crisis. These include the bipartisan omnibus Government funding bill, which included key provisions to help lower barriers to treatment and deliver necessary tools and resources to our communities to address the overdose crisis, such as the bipartisan Mainstreaming Addiction Treatment Act and the Medication Access and Training Expansion Act. Thanks to these provisions, prescribers across the country will be able to treat their patients who have opioid use disorder with buprenorphine, a medication proven to help people achieve recovery, without obtaining additional Federal licensing.

The Office of National Drug Control Policy has also funded the development of a number of model State laws to help local jurisdictions across the country expand access to naloxone, improve treatment in jails and prisons, and deploy settlement funds from the various opioid lawsuits effectively, among others. Similarly, ONDCP has worked with its partners across the Government to make permanent the COVID-19-related flexibilities that expanded access to treatment, and support people in recovery.

We are seeing signs of progress. The latest report on 12-month rolling data shows the number of drug poisoning deaths in the United States flattened in 2022 after a period of sharp increase from 2019 to 2021, and the number of fatal drug overdoses has decreased from its peak of 110,378 projected for the 12-month period ending March 2022.

But that is not enough. Now is the time to redouble our efforts, accelerate our work, and move this Nation, and the world, beyond a crisis that has vexed us for the better part of a decade. People in the throes of addiction are in a fight every day, and they should expect nothing less from us as well.

CONCLUSION

The administration's leadership on this critical issue, the close collaboration among partners within the United States and around the world, and the work of the Members of this committee and your colleagues in Congress have kept this issue at the forefront of our national consciousness and are changing the trajectory of this particularly complex national security, public safety, and public health challenge. We have much work ahead of us, and your partnership will be as critical in the months ahead as it has been thus far.

On behalf of Dr. Gupta and the hard-working people at the Office of National Drug Control Policy, I would like to thank the committee and your Congressional colleagues for your foresight and leadership on this incredibly difficult issue. Ending the opioid and overdose epidemic demands the best efforts of us all: The entirety of the Federal Government; States, Tribes, and local communities; private-sector partners and stakeholders; and the Congress, which has time and again demonstrated a strong spirit of bipartisanship on this issue.

The Office of National Drug Control Policy looks forward to continuing its work with this committee, the Congress, and our other partners to disrupt the production and trafficking of these dangerous drugs, prevent drug overdoses and poisonings, and save American lives.

Mr. HIGGINS. Thank you, Mr. Chester.

I now recognize Mr. Cagen for 5 minutes to summarize his opening statement.

**STATEMENT OF STEVEN W. CAGEN, ASSISTANT DIRECTOR,  
HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOME-  
LAND SECURITY**

Mr. CAGEN. Thank you, Chairman.

Chairman Higgins, Ranking Member Correa, and distinguished Members of the committee, thank you for the opportunity to be here today to discuss Homeland Security Investigations' efforts to disrupt and dismantle transnational criminal organizations and combat the flow of illicit fentanyl into the United States.

As a principal investigative component of Department of Homeland Security, HSI combats transnational criminal organizations at every critical location within an illicit supply chain: internationally, where TCOs operate and manufacture illicit narcotics; at our Nation's physical borders, where smugglers attempt to exploit America's legitimate trade, travel, and financial systems; and domestically, where the criminal organizations earn substantial profits from selling this poison to our friends, neighbors, and family members.

The threat posed by TCOs is pervasive. These organizations do not limit themselves to a single criminal enterprise and have evolved beyond narcotics smuggling into poly criminal organizations involved in weapons trafficking, cyber crime, human smuggling, money laundering, and more, all of which HSI investigates.

HSI combats TCOs by using its unique, broad investigative authorities to enforce over 400 Federal laws and target TCOs from multiple investigative angles. Simply put, HSI attacks the entire illicit network.

Mexican cartels have taken over fentanyl production and operate on an industrial scale, where they obtain precursor chemicals from China and synthesize these chemicals in Mexico to produce the deadly poison.

Chinese criminal organizations further facilitate the trafficking and distribution of fentanyl pills through the sale of industrial pill press equipment to Mexican cartels.

The Mexican cartels' ability to traffic deadly fentanyl into the United States is greatly enhanced by Chinese money-laundering organizations. Chinese money-laundering organizations have developed sophisticated networks in the United States, Mexico, China, and throughout Asia to facilitate their money-laundering schemes. These organizations have a vast global infrastructure to clean illicit proceeds for various criminal organizations, mostly including Mexican cartels.

HSI's counter-TCO efforts begin abroad, where we have the largest international investigative presence within DHS, comprised of hundreds of HSI special agents, strategically assigned in 93 offices in 56 countries. This includes offices located in Mexico, where the vast majority of fentanyl is produced; and throughout the Asian-Pacific region, where the precursor chemicals originate.

HSI's international efforts are greatly enhanced by our Transnational Criminal Investigative Units, or TCIUs, comprised of vetted foreign law enforcement officials and prosecutors, who lead some of HSI's most significant and mutually beneficial extraterritorial investigations and prosecutions targeting TCOs.

At our Nation's physical borders, HSI works with our DHS partners to combat TCO movements of illicit goods. HSI's Border Enforcement Security Task Force, or BEST task forces, represent one of the agency's premiere tools for turning border seizures into TCO-topping investigations.

HSI's partnerships, including task force officers from CBP and DEA, are integral to the whole-of-Government approach in countering TCOs that traffic narcotics that threaten public safety of the United States.

There are currently 90 BESTs comprised of law enforcement officers from more than 200 agencies and National Guard units.

HSI is simultaneously attacking the illicit narcotic supply chain through an intelligence-based counternarcotics operation that blends traditional investigative and analytical techniques with interagency collaboration, industry partners, and computer-based tools to disrupt and dismantle the chemical supply chain. The interdiction of precursor shipments plays a key role in disrupting the TCOs' ability to produce a finished product before it even gets to our borders.

HSI's Operation Hydra has seized or disrupted the delivery of more than 3 million pounds of precursor chemicals that were destined for narcotics production in labs in Mexico.

HSI has also launched a targeted enforcement campaign to combat fentanyl. This year, HSI and CBP initiated Operation Blue Lotus, which surge resources to key locations, both domestically and internationally, to target fentanyl and develop criminal cases along the Southwest Border. Operation Blue Lotus resulted in the seizure of more than 8,200 pounds of fentanyl, thereby decreasing the flow of illicit fentanyl smuggled into the United States from Mexico, while simultaneously illuminating TCO networks.

Working alongside our partners here today, HSI remains dedicated to stemming the flow of illicit narcotics at every critical location within the supply chain.

Thank you again for the opportunity to appear before you today and your continued support for HSI in our enduring effort to attack the flow of illicit fentanyl into the United States.

I look forward to your questions today.

[The prepared statement of Mr. Cagen follows:]

PREPARED STATEMENT OF STEVEN W. CAGEN

WEDNESDAY, JULY 12, 2023

Chairman Higgins, Ranking Member Correa, and distinguished Members: Thank you for the opportunity to appear before you today to discuss Homeland Security Investigations' (HSI) efforts to disrupt and dismantle transnational criminal organizations (TCOs) and combat the flow of illicit fentanyl into the United States. With more than 6,800 special agents located in hundreds of offices throughout the United States and the world, HSI investigates, disrupts, and dismantles terrorist, transnational, and other criminal organizations that threaten our Nation's security. My statement today will focus on the broad spectrum of illicit activities perpetrated by TCOs, HSI's collaborative efforts to combat TCOs, and the resources needed to ensure continued success in the disruption and dismantlement of TCOs domestically and internationally.

As the principal investigative component of the Department of Homeland Security (DHS), HSI is responsible for investigating transnational crime. In collaboration with its partners in the United States and abroad, HSI special agents develop evidence to identify and advance criminal cases against TCOs, terrorist networks and facilitators, and other criminal elements that threaten the homeland. HSI works



with prosecutors to arrest and indict violators, execute criminal search warrants, seize criminally-derived money and assets, and take other actions with the goal of disrupting and dismantling TCOs operating throughout the world. These efforts help protect the national security and public safety of the United States.

TCOs flood the United States with deadly drugs, including illicit fentanyl and other opioids. HSI conducts Federal criminal investigations at every phase of the illicit drug supply chain: internationally, where TCOs operate and manufacture illicit drugs; at our Nation's borders and ports of entry (POEs), where smuggling cells attempt to exploit America's legitimate trade, travel, and transportation systems; and in communities throughout the United States. HSI combats TCOs through multiple avenues of criminal enforcement. Not only does HSI target the narcotics smuggling activities of the TCOs, it also targets the financial networks they utilize to fund and profit from their illegal activity. HSI also targets the various other illegal activities the TCOs employ to fuel their criminal organizations, including human smuggling and trafficking, cyber crime, intellectual property rights violations, and fraud.

#### EVOLUTION OF TRANSNATIONAL CRIMINAL ORGANIZATIONS

Criminal organizations in the 21st Century do not limit themselves to a single criminal enterprise. These criminal organizations have expanded beyond narcotics smuggling and have morphed into poly criminal TCOs involved in the associated crimes of weapons trafficking, human trafficking, human smuggling, money laundering, and other crimes—all of which HSI investigates. Rather than narrowly focusing on a single element of the TCOs, HSI combats TCOs by using its unique and broad investigative authorities to enforce over 400 Federal laws. Investigative efforts must be broad in scope to fully dismantle enterprises that transcend borders.

TCOs have also evolved beyond insular entities and have sought out partnerships with competing TCOs in furtherance of their criminal activities. For example, the illicit collaboration between Chinese TCOs and Mexican cartels has created a complex criminal ecosystem that is fueling money laundering and narcotics trafficking operations, specifically illicit fentanyl, into and within the United States. Chinese money-laundering organizations have developed sophisticated networks in the United States, Mexico, China, and throughout Asia to facilitate money-laundering schemes. These organizations utilize their vast global infrastructure to clean illicit proceeds for various criminal organizations, including Mexican cartels. Moreover, as Mexican cartels have taken over fentanyl production and operate on an industrial scale, they are obtaining precursor chemicals from China and synthesizing these chemicals in Mexico to produce fentanyl. Mexican cartels then smuggle the fentanyl into the United States in either powder or pill form for distribution. HSI is attacking this illicit narcotics supply chain through an intelligence-based counternarcotics operation that blends traditional investigative and analytical techniques with inter-agency collaboration, industry partnerships, and computer-based tools.

Chinese TCOs also facilitate the trafficking and distribution of illicit fentanyl pills by providing the Mexican cartels with the pill press equipment to make the fake oxycodone pills. They are made to look identical to prescription oxycodone but are laced with deadly fentanyl. These fake pills are the most common type of illicit fentanyl pill, and are responsible for thousands of overdose fatalities, as the user believes they are taking a real oxycodone pill. In order to manufacture these pills, Mexican cartels require industrial pill press equipment to turn powdered fentanyl into pill form. The Mexican cartels are purchasing these pill presses directly from Chinese manufacturers that are producing the equipment specifically for illicit activity. HSI is actively disrupting the pill press supply chain, and to date has seized over 1,500 pill presses and parts used to make deadly fentanyl-laced pills.

#### HSI INTERNATIONAL EFFORTS

HSI's efforts to combat TCOs and illicit fentanyl begin abroad. HSI has the largest international investigative presence within DHS, comprising hundreds of HSI special agents assigned to 93 offices in 56 countries. These include offices in Mexico, where the vast majority of illicit fentanyl is produced, and throughout the Asia-Pacific region, where synthetic drug precursor chemicals often originate.

HSI special agents abroad develop and foster relationships with host Government law enforcement partners to exchange information, coordinate and support investigations, and facilitate enforcement actions and prosecutions to disrupt and dismantle TCOs. HSI and its counterparts in other countries identify and disrupt sources of illicit drugs, transportation and smuggling networks, and money-laundering operations. These efforts by HSI and its partners aim to prevent dangerous

narcotics and other illicit goods from reaching our borders and also stop illicit out-bound flows of illegally derived currency and weapons.

*Transnational Criminal Investigative Unit Program*

The effectiveness of our international counternarcotics efforts is greatly enhanced by HSI's Transnational Criminal Investigative Unit (TCIU) Program. TCIUs are comprised of vetted foreign law enforcement officials and prosecutors who support some of HSI's most significant extraterritorial investigations and prosecutions targeting TCOs. HSI has established 15 TCIUs around the world. These consist of more than 600 vetted and trained law enforcement officers across North, Central, and South America, the Caribbean, the Middle East, and Asia. In fiscal year 2022, TCIU efforts world-wide resulted in 3,800 criminal arrests and the seizure of nearly \$18.6 million and over 350,000 pounds of narcotics and precursor chemicals.

Targeting the fentanyl precursor chemical supply chain is an integral element of HSI's approach to stopping the production of illicit drugs. HSI blends interagency and foreign collaboration, industry partnerships, financial intelligence, and computer-based tools to identify, target, and interdict precursor chemical shipments destined for Mexican cartels. Disruptions to the procurement phase can have an outsized impact on the narcotics production supply chain. Mexican cartels operate on an industrial scale when procuring precursor chemicals, and many interdiction efforts are led by investigators and prosecutors in the Mexican Attorney General's office who comprise the HSI Mexico City TCIU. In fiscal year 2022, efforts by the TCIU resulted in more than 120 criminal arrests and the seizure of approximately \$1.1 million and 18,200 pounds of precursor chemicals. The TCIU also leads investigations targeting the labs where the chemicals are synthesized into illicit drugs.

*National Targeting Center—Investigations*

HSI's National Targeting Center—Investigations (NTC-I) was established in 2013 in collaboration with U.S. Customs and Border Protection's (CBP) National Targeting Center to further our shared border security mission. NTC-I supports the entire border security continuum, from CBP interdictions and HSI investigations, to the joint exploitation of intelligence. Through NTC-I, HSI supports all of DHS's domestic and international offices by targeting illicit precursor chemical movements within the commercial air and maritime transportation systems.

The combination of NTC-I targeting and foreign action through HSI's TCIUs is critical to stopping the flow of illicit drugs and dismantling TCOs. Using these resources, HSI targets the supply chains responsible for foreign origin shipments of precursor chemicals destined for Mexico. Thus far, this methodology has resulted in the seizure of approximately 3.3 million pounds of dual-use precursor chemicals intended for making illicit fentanyl and methamphetamine.

HSI DOMESTIC EFFORTS

HSI's ability to conduct complex large-scale investigations represents one of DHS's best weapons for dismantling TCOs. Part of HSI's mandate is to turn individual border seizures and arrests into multi-jurisdictional, multi-defendant investigations to disrupt, dismantle, and prosecute high-level members of TCOs. HSI special agents work every day with CBP officers and in coordination with other Federal, State, local, and Tribal law enforcement partners to identify and investigate drug-smuggling organizations attempting to introduce illicit contraband into the United States.

CBP's expansion of non-intrusive inspection (NII) scanning at Southwest Border POEs is poised to increase the number of CBP-origin seizures, which HSI special agents are required to investigate. To keep pace, HSI will require additional staffing to support the investigation and prosecution of individuals associated with POE seizures. Recent HSI Congressional appropriations tied to NII expansion represent an important initial step. HSI is moving quickly to deploy these new resources to Southwest Border POEs receiving NII augmentation. Given the required NII expansion to all land border POEs, additional staffing will be essential to ensure HSI retains adequate personnel to respond to these seizures and to conduct the complex investigations intended to degrade and remove TCO threats to the homeland.

*Border Enforcement Security Task Forces*

The Jaime Zapata Border Enforcement Security Task Force (BEST) Act was signed into law in December 2012. The Act was named in honor of Jaime Zapata, an HSI special agent who, while working to combat violent drug cartels, was killed in the line of duty in Mexico. This law amended the Homeland Security Act of 2002 to formally establish the BEST program, with the primary mission of combating emerging and existing transnational organized crime by employing a threat-based/risk mitigation investigative task force model that recognizes the unique resources

and capabilities of all participating law enforcement partners. In June 2022, the Bipartisan Safer Communities Act provided HSI with statutory authority to reimburse the salaries for State and local law enforcement task force officers who participate in BESTs.

BESTs eliminate the barriers between Federal and local investigations, close the gap with international partners in multinational criminal investigations, and create an environment that minimizes the vulnerabilities in our operations that TCOs have traditionally capitalized on to exploit our Nation's borders. There are currently 90 BESTs located across the United States, including Puerto Rico and the U.S. Virgin Islands, comprising approximately 1,000 law enforcement officers and personnel representing Federal, State, local, Tribal, and international law enforcement agencies, as well as National Guard units. In fiscal year 2022, BESTs initiated more than 5,300 investigations resulting in more than 6,000 criminal arrests and seizures of more than 317,000 pounds of narcotics, more than 480,000 pounds of precursor chemicals, and more than \$206 million of illicit proceeds and assets.

#### *Operation Blue Lotus*

HSI has also launched targeted enforcement campaigns to combat illicit narcotics, particularly fentanyl. Between March 13, 2023 and May 10, 2023, CBP and HSI launched Operation Blue Lotus to facilitate and increase fentanyl interdictions at and between the POEs and develop criminal cases along the Southwest Border. Focusing operations at the ports of San Ysidro and Otay Mesa, California, and Nogales, Arizona, Operation Blue Lotus aimed to curtail the flow of illicit fentanyl smuggled into the United States from Mexico, while simultaneously illuminating TCOs networks. Operation Blue Lotus successfully resulted in the combined seizures of over 8,200 pounds of fentanyl.

Building upon the success of Operation Blue Lotus, on June 12, 2023, HSI launched Operation Blue Lotus 2.0 to strategically leverage its administrative, civil, and criminal law enforcement authorities to attack fentanyl distribution. Operation Blue Lotus 2.0 focuses operations along the border and interior facilities, including express consignment and international mail locations, to combat fentanyl trafficking nodes and target the smuggling of fentanyl and other illicit narcotics in the United States.

#### CYBER-RELATED EFFORTS

TCOs have become increasingly tech-savvy. For example, many have adopted anonymous cryptocurrency transactions through darknet marketplaces. These transactions may involve foreign vendors, but the result is the shipment of illicit drugs to or within our country.

#### *Cyber Crimes Center*

To keep pace with rapidly-evolving criminal techniques, HSI created the Cyber Crimes Center (C3) to provide investigative assistance, training, and equipment to support domestic and international investigations of cyber-related crimes for DHS. C3 supports HSI's mission through the programmatic oversight and coordination of investigations of cyber-related criminal activity and provides a range of forensic, intelligence, and investigative support services across all HSI programmatic areas.

C3's cyber investigators and analysts support HSI on-line undercover investigations targeting market site operators, vendors, and prolific buyers of opioids and other contraband on the darknet. C3 also supports tracing and identifying illicit proceeds derived from criminal activity on the dark web and investigating the subsequent money-laundering activities. Digital forensics play an ever-increasing role in investigating complex multinational narcotics organizations, and C3's Computer Forensics Unit and the HSI Computer Forensic Program are critical tools in combating the flow of drugs into the United States. C3's Computer Forensics Unit also provides forensic training and support to our Federal, State, local, Tribal, and international law enforcement partners.

A top priority for HSI is to improve collective law enforcement capabilities by providing training to partner law enforcement agencies. For example, C3 developed a cyber-training curriculum with a focus on darknet investigations and illicit payment networks associated with opioid smuggling and distribution. Since 2017, HSI has delivered this training course to more than 12,000 Federal, State, local, and international law enforcement personnel in over 70 locations world-wide.

#### ILLICIT FINANCE—FOLLOWING THE MONEY

One of the most effective methods for dismantling TCOs engaged in narcotics trafficking is to attack the criminal financial networks that are the lifeblood of their operations. HSI special agents work to identify and seize the illicit proceeds and in-

strumentalities of crime and target financial networks that transport, launder, and hide such proceeds. As a customs agency with significant access to financial and trade data, HSI is uniquely positioned to identify TCO schemes to hide illicit drug proceeds within legitimate commerce. HSI's financial efforts in fiscal year 2022 resulted in 2,607 arrests, 1,600 criminal indictments, 1,028 convictions, and the seizure of more than \$4.2 billion in illicit currency and other assets (as valued at the time of seizure).

#### *National Bulk Cash Smuggling Center*

Despite the rise of alternative stores of value, such as virtual assets, bulk cash smuggling remains a key mechanism for TCO repatriation of drug proceeds. Criminal actors often avoid traditional financial institutions, which must comply with Bank Secrecy Act reporting requirements—instead repatriating their illicit proceeds through conveyances such as commercial and private aircraft, passenger and commercial vehicles, and maritime vessels, as well as via pedestrian crossings at our land borders.

Established in 2009, HSI's National Bulk Cash Smuggling Center (BCSC) is a critical component of the agency's and overall U.S. Government's efforts to combat bulk cash smuggling by TCOs. The BCSC operates strategic programs that leverage advanced data analytics, interagency partnerships, and law enforcement technology systems to identify complex money-laundering networks and provide support for HSI financial investigations. The criminal intelligence functions of the BCSC provide operational analysis in support of HSI-led interdiction efforts, including port profiles highlighting cash-flow activity at targeted POEs and corridor analyses to assist in planning the timing, location, and strategy for interdiction operations. The BCSC also administers a targeted, investigation-focused license plate reader program to identify larger criminal networks and a warrant-based GPS tracking program that provides valuable intelligence on the behaviors of criminal groups engaged in bulk cash smuggling. Since its inception through fiscal year 2022, the BCSC has initiated or substantially contributed to the seizure of bulk cash totaling over \$1.73 billion.

TCOs are increasingly augmenting bulk currency smuggling with use of alternate value platforms in response to financial regulations and law enforcement efforts to identify money-laundering networks. A single movement of TCO proceeds may involve bulk cash, stored value cards, money orders, cryptocurrency, wire transfers, funnel accounts, and trade-based money laundering (TBML). HSI adapts to evolving criminal methodologies by leveraging new law enforcement technologies to identify money-laundering activity through these emerging alternate value platforms and seize criminal assets.

#### *Trade-Based Money Laundering*

TBML is the process of disguising criminal proceeds through international trade to hide their illicit origins. As the U.S. Government's primary law enforcement agency that investigates TBML, HSI utilizes data resources—maintained by DHS encompassing trade, travel, and financial information—to identify TBML schemes. HSI has established several national initiatives that target specific TBML schemes and provides subject-matter expertise, analytical support, and enforcement-related support to HSI special agents. Specifically, HSI has the ability to intercept and interdict trade and individuals associated with TBML that have a nexus to the borders of the United States and provide the necessary information to initiate criminal investigations targeting this activity.

Integral to these efforts are HSI-established Trade Transparency Units (TTUs), which combat the growing threat of international money laundering by TCOs via trade-based money laundering. The TTUs accomplish this mission using partner country data-sharing programs and the Data Analysis & Research for Trade Transparency Systems program. Through established partnerships, the TTUs have access to foreign trade, travel, and financial information used to support on-going criminal investigations and to address TBML on a global scale. These partnerships are based on bilateral agreements between the United States and 19 partner countries for the sharing of trade and financial information. Through the TTUs, HSI field offices can request information pertaining to companies and individuals that would otherwise be unavailable without the bilateral agreements.

#### *Cryptocurrency*

Cryptocurrencies are increasingly used to facilitate domestic and cross-border crime. They can be exploited by any criminal organization, and this is especially true as it pertains to on-line distribution of fentanyl, methamphetamine, and other illicit drugs.

Cryptocurrencies are attractive to TCOs because they offer a relatively fast, inexpensive, and pseudonymous system of transactions. HSI investigations related to cryptocurrency have risen from one criminal investigation in 2011 to over 530 criminal investigations in fiscal year 2023 to date. In fiscal year 2022, HSI seized nearly \$4 billion (valued at the time of seizure) in cryptocurrency. This substantial increase signifies growing confidence in cryptocurrency use by criminals and criminal networks.

#### CONCLUSION

Thank you again for the opportunity to appear before you today and for your continued support of HSI and our efforts to use our unique authorities and global footprint to dismantle TCOs and combat the flow of illicit fentanyl into the United States. I look forward to your questions.

Mr. HIGGINS. Thank you, Mr. Cagen.

I now recognize Mr. Mandryck for 5 minutes to summarize his opening statements.

#### **STATEMENT OF JAMES MANDRYCK, DEPUTY ASSISTANT COMMISSIONER, OFFICE OF INTELLIGENCE, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. MANDRYCK. Chairman Higgins, Ranking Member Correa, and distinguished Members of the subcommittee, thank you for the opportunity to testify here today about the fentanyl threat and CBP's intelligence and data-driven response and approach to combating this proliferation of this dangerous drug.

CBP uses multifaceted approaches to counter fentanyl. Our approach includes advanced detection capabilities, such as specialized canines and nonintrusive inspection equipment; intelligence collection; research and analysis; laboratory testing and scientific analysis; domestic and foreign partnerships; and most importantly, the experience, expertise, and dedication of the CBP work force.

This enforcement posture has led to record-level seizures, including over 22,000 pounds of fentanyl so far this fiscal year, the equivalent of over 90 million doses and over a billion dollars in cartel profits.

Today I'd like to provide a little more information about the composition of the fentanyl seized by CBP, current production and smuggling trends, and the significance of our enforcement efforts within this threat landscape.

When it comes to composition, this fiscal year, 88 percent of the fentanyl seized by CBP has been in pill form, continuing the trending shift away from powder. The concerning shift indicates an increased sophistication of the transnational criminal organizations to control production and mimic legitimate pharmaceuticals that ultimately target unsuspecting end-users.

Another growing trend we've witnessed is the expanded use of xylazine as an adulterant in fentanyl to extend the user's high. Xylazine, a central nervous system depressant, is not an opioid, so naloxone does not reverse its effects, making this dangerous synthetic combination even more deadly.

The production of illicit fentanyl entering the United States shifted back in 2020. At that time, fentanyl was produced as a finished product in China, then smuggled into Mexico, and then onward to the United States. Over the past 3 years, production has shifted to Mexico-based TCOs that infiltrate supply chains to import pre-

cursor and pre-precursor chemicals, primarily from China, and then recruit or coerce scientists to produce metric tons of finished fentanyl.

Through intelligence-led operations such as Operation Artemis, CBP has identified previously unknown logistical supply chains, some of whom that transship to the United States before arriving in Mexico, discoveries that have led to changes in cargo inspections and processing and resulted in significant seizures of precursors, pill presses, and dye molds, as well as the identification of unknown criminal actors.

Within Mexico, we continue to see elevated levels of violence between cartels along lucrative smuggling corridors, especially in Mexico's northern border states.

TCOs involved in trafficking synthetics have begun to expand from historic strongholds in western Mexico to access additional smuggling corridors in eastern Mexico through newfound alliances. These types of alliances have always been driven by monetary gain. What has changed is how profits from these illicit activities are transferred and distributed.

Historically, CBP saw a major portion of illicit proceeds depart the United States as bulk cash currency. However, TCOs are increasingly taking advantage of technologies like cryptocurrency and informal value transfer systems, such as the Chinese underground banking system, to reduce their risk of cross-border interdiction.

Exploitation of these systems allows for immediate transfers of illicit profits into the—from the United States to the TCO hierarchy in Mexico. In many cases, these money transfers are done cheaper than historic laundering options and, in most cases, with guaranteed success for the customer.

Furthermore, TCOs continue to seek opportunities to move their illicit profits from the United States without currency or monetary instruments, including trade-based money laundering and the acquisition of firearms in the United States that are smuggled into Mexico to help control those corridors.

The complex challenges require strong and deliberate partnerships across the Government at all levels, as well as with our international partners.

Exemplified by the success of recent intelligence and data-driven operations such as Operation Blue Lotus, Four Horsemen, Rolling Wave, and Operation Artemis are CBP's hand-in-hand work with our investigative partners becoming critical disrupting and dismantling the networks behind fentanyl synthesis. In just 2 months, Operation Blue Lotus and Operation Four Horsemen resulted in the seizure of nearly 10,000 pounds of fentanyl and almost 300 arrests.

CBP is currently executing Operation Artemis and Operation Rolling Wave, which target the illicit procurement, manufacturing, and trafficking of fentanyl and precursor chemicals by leveraging investigative, prosecutorial, and regulatory resources, and enhancing law enforcement information sharing and coordination.

In addition to our close work with U.S. partners, CBP has strong relationships with foreign and industry partners across the globe to further detect, disrupt, and dismantle criminal organizations. The consistent evolution of technology and the adaptability of

transnational criminal groups requires us to become more adaptable and combat these challenges.

I thank you for your continued support for CBP and the opportunity to testify in this important topic today. I look forward to your questions.

[The prepared statement of Mr. Mandryck follows:]

PREPARED STATEMENT OF JAMES MANDRYCK

JULY 12, 2023

INTRODUCTION

Chairman Higgins, Ranking Member Correa, and distinguished Members of the subcommittee, thank you for the opportunity to discuss U.S. Customs and Border Protection's (CBP) efforts to combat the dynamic threat of transnational criminal organizations (TCOs) and prevent the entry of dangerous illicit drugs, including fentanyl, into the United States.

The reach and influence of TCOs continues to expand across and beyond the Southwest and Northern Borders. These criminal organizations are sophisticated and operate with immense capability, capacity, and nearly unlimited resources. TCOs increasingly demonstrate the intent and ability to produce and modify synthetic drugs, making detection and identification difficult. They also continually adjust their tactics, techniques, and operational procedures to circumvent detection and interdiction by law enforcement, including transporting smaller quantities of drugs and improving concealment techniques.

As others have testified,<sup>1</sup> synthetic opioids like fentanyl—a synthetic opioid that is 80–100 times stronger than morphine—and its analogues are produced using precursor chemicals made available by criminal elements, often in the People's Republic of China. The precursor chemicals are shipped to Mexico where TCOs use these precursors to finish production. This fentanyl is either sold in powder form or pressed into pills. These drugs are then smuggled across the Southwest Border, most often through ports of entry (POEs).<sup>2</sup>

Because there is no single tool or capability that can detect all suspected threats in all situations and environments, CBP uses a multifaceted, intelligence-driven approach that combines advance targeting, sophisticated detection capabilities, specialized canines, non-intrusive inspection technology (NII), laboratory testing, scientific analysis, domestic and foreign partnerships, and information sharing. Most importantly, we also have dedicated, highly-trained officers, agents, and intelligence research specialists whose experience and expertise are essential components of all CBP's efforts to combat transnational threats and prevent the entry of illegal drugs into U.S. communities.

Our enforcement approach enables the agency to nimbly shift resources and swiftly respond to emerging threats, such as the deadly threat posed by illicit fentanyl, fentanyl analogues, other synthetic opioids, and methamphetamine, as well as the precursors and other chemicals used in illicit drug production.

DRUG TRENDS AND INTERDICTIONS

As noted above, most illicit drugs, including fentanyl, enter the United States through our Southwest Border POEs, hidden in passenger vehicles or belongings, concealed in commercial trucks, and carried by pedestrians. In fiscal year 2022, for example, nearly 66 percent of illicit drugs seized by weight by CBP at the Southwest Border were seized at POEs.<sup>3</sup>

<sup>1</sup> See, e.g., Written testimony, Kemp Chester, Senior Advisor, International Relations and Supply Reduction, Office of National Drug Control Policy, for a February 1, 2023, House Energy and Commerce Committee Hearing. [https://d1dth6e84htgma.cloudfront.net/Witness\\_Testimony\\_Chester\\_HE\\_02\\_01\\_2023\\_487130aade.pdf?updated\\_at=2023-02-01T14:37:29.433Z](https://d1dth6e84htgma.cloudfront.net/Witness_Testimony_Chester_HE_02_01_2023_487130aade.pdf?updated_at=2023-02-01T14:37:29.433Z).

<sup>2</sup> <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

<sup>3</sup> Of the 288,287 pounds of drugs CBP seized at the Southwest Border in fiscal year 2022, 189,682 pounds were seized at POEs. Excluding marijuana, CBP seized 202,631 pounds of illicit drugs at the Southwest Border, of which 179,317 pounds (88.5 percent) were seized at POEs. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>. CBP Air and Marine Operations also contributed to drug seizure events with other agencies. These operations resulted in the seizure of approximately 270,000 pounds of drugs in fiscal year 2022. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/air-and-marine-operations-statistics>.

CBP seizures of fentanyl have been escalating for several years.<sup>4</sup> In fiscal year 2022, CBP seized nearly 15,000 pounds of fentanyl Nation-wide, with the majority—12,500 pounds—seized at POEs. We have already exceeded that amount this fiscal year. At our POEs alone, fentanyl seizures increased more than 200 percent in fiscal year 2022 compared to fiscal year 2019 and fiscal year 2020 totals combined. In fiscal year 2023 to date, CBP seizures at POEs already exceed more than 17,600 pounds of fentanyl.<sup>5</sup> These seizures permanently removed these drugs from the illicit supply chain, kept them out of our communities, and denied drug trafficking organizations profits and operating capital.

Marijuana, methamphetamine, heroin, and cocaine remain the top-seized drugs by weight but shifting trends over recent years produced significant increases in synthetic drugs like fentanyl. Fentanyl is the most frequently seized illicit synthetic opioid, but CBP has also encountered 31 substances that are chemically similar to fentanyl, as well as 44 unique synthetic opioids that are not from the fentanyl class.<sup>6</sup>

Although our statistics measure drug seizures by weight, CBP estimates it interdicted 1.1 billion potential doses of illicit fentanyl in fiscal year 2022. By the measure of potential doses, CBP fentanyl seizures were only second to methamphetamine, of which an estimated 16 billion doses in fiscal year 2022 were seized.<sup>7</sup> For reference, Earth's population is approximately 8 billion people.

CBP's enforcement efforts focus on detecting and interdicting suspected illicit drugs; quickly anticipating and adapting to changing tactics and techniques used by cartels, traffickers, smugglers, and their networks; enhancing collaboration among key partners; producing actionable intelligence to target the illicit opioid supply chain; and protecting our personnel from exposure to opioids.

#### DETECTION AND INSPECTION

CBP, with the support of Congress, continues to make significant investments and improvements in our drug detection capabilities and interdiction technology. Our highly-trained officers use narcotic detection canines and a variety of technologies to detect the presence of illicit drugs, including illicit opioids, in all operating environments.

CBP's canine program continues to demonstrate its significant contribution to our efforts to intercept dangerous illicit drugs and disrupt TCO activity. In fiscal year 2022, CBP canine teams assigned to the Office of Field Operations and U.S. Border Patrol assisted in the seizure of more than \$19 million in undeclared or illicit drug-related currency, more than 400 firearms, and nearly 290,000 pounds of drugs, including nearly 13,000 pounds of fentanyl—approximately 87 percent of CBP's fentanyl seizures—valued at more than \$2.5 billion. The effectiveness of our canine teams is demonstrated daily. For example, in a single event on April 18, 2023, a canine team in Otay Mesa, California, aided in the seizure of 776 pounds of fentanyl pills valued at more than \$21 million.<sup>8</sup>

CBP canine teams often work alongside officers conducting other inspection activities. CBP has deployed more than 350 large-scale and 4,500 small-scale NII X-ray and gamma-ray imaging systems to detect the presence of illicit substances, including synthetic drugs such as fentanyl. This technology enables detection of these illicit substances hidden within passenger belongings, cargo containers, commercial trucks, rail cars, and privately-owned vehicles, as well as express consignment carrier and international mail parcels. In fiscal year 2022, CBP officers used large-scale NII systems to scan more than 7.6 million conveyances, which resulted in the interdiction of more than 100,000 pounds of narcotics and approximately \$2 million of undeclared U.S. currency.

Canine teams and NII technology are complementary detection and inspection capabilities that are critical to the continued success of CBP's interdiction operations at the POEs. At the core of these efforts are specially-trained officers and specialists using their expertise and experience to maximize technological capabilities and resources. Every seizure we make at the border is important. It stops the flow of drugs into our communities, contributes to investigations, and increases our awareness of emerging trends and illicit networks.

<sup>4</sup><https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

<sup>5</sup>As of May 31, 2023.

<sup>6</sup>A complete list can be made available by CBP Laboratories and Scientific Services.

<sup>7</sup>CBP would be happy to brief the subcommittee on its illicit drug dose estimation tool and how it derived these estimates.

<sup>8</sup><https://www.cbp.gov/newsroom/local-media-release/we-re-spilling-beans-211-million-worth-fentanyl-pills-concealed-within>.



## ADVANCE INFORMATION AND TARGETING

CBP's interdiction efforts begin well before a conveyance or shipment arrives at a POE. Advance electronic shipping information,<sup>9</sup> actionable intelligence, and information-sharing partnerships are critical components of CBP's ability to quickly identify, target, and deter the entry of dangerous illicit drugs in all operational environments.

All advance shipment information is automatically fed into the National Targeting Center's (NTC) Automated Targeting System (ATS), an enforcement and decision support system. At CBP's NTC, advance data converges with law enforcement and intelligence records to facilitate the targeting of persons, conveyances, and items of cargo that pose the highest risk to our security in all modes of transportation. Advance information is a critical and effective component of CBP's targeting and interdiction efforts. We continue to pursue solutions to expand advance information opportunities to the land POEs, where—unlike travel processes over air and sea—CBP often receives no advance traveler information, limiting traveler vetting conducted before an individual arrives at a land POE.

In addition to targeting illicit substances directly, CBP and Homeland Security Investigations (HSI) target precursor chemicals shipped through the United States to destinations in Mexico and other countries. While many of the precursor chemicals used to synthesize methamphetamines and synthetic illicit opioids such as fentanyl have legitimate uses, CBP and HSI coordinate with the Drug Enforcement Administration (DEA) to intercept and seize precursors if they can be identified as having been brought into the United States in violation of U.S. law, such as Title 21 of the U.S. Code. CBP also targets production-related equipment such as pill presses and tableting machines. The DEA regulates pill press/tableting machines, and the HSI diversion coordinator works on behalf of DHS to coordinate the investigations of pill press/tableting machine imports being diverted for illicit uses. The HSI diversion coordinator works closely with the NTC to identify and target individuals importing and diverting pill press/tableting machines to produce illicit fentanyl and other synthetic drugs.

The increasing ability of TCOs to produce sophisticated forms of synthetic drugs and develop new ways to smuggle is a challenge to CBP's counter-narcotic efforts. In addition to CBP's advance detection and targeting efforts, CBP's laboratory testing and analysis capabilities are invaluable to the timely identification of suspect substances and the disruption of drug-trafficking networks. These capabilities not only contribute to our targeting and interdiction success, but also aid our intelligence and investigative partners in their criminal prosecution efforts.

## ANALYSIS AND INTELLIGENCE

Just as TCOs rapidly evolve their illicit production and smuggling operations, CBP must advance its capabilities to quickly and reliably identify the dangerous substances it encounters and provide analysis for targeting and other enforcement and investigative actions.

Sound analytical methodology centers on providing timely and actionable intelligence to our front-line officers and agents, decision makers, and partners. To strengthen our intelligence posture in responding to this complex threat environment, CBP's Intelligence Enterprise (IE) was established in 2017 as a cohesive, threat-based, data-driven, and operationally-focused effort to leverage the collective intelligence capabilities and expertise across CBP's operational components.

To enhance its intelligence capacity, CBP IE established investment priorities that support a whole-of-agency approach to countering various border threats, such as the use of a common reporting platform to timely share and disseminate threat information to disparate offices. CBP's IE was also responsible for launching the CBP Watch, a situational awareness facility that provides trend analysis and real-time feedback to better support the agency's operational front line 24 hours a day, 7 days a week.

*Laboratory Testing*

CBP's ability to swiftly and accurately identify suspect substances is a critical part of our ability to determine new production trends and seize illicit drugs, but also a critical tool for partner investigative agencies, such as HSI, to make law enforcement-controlled deliveries that could lead to arrests and the shutting down of criminal networks. CBP officers use various field-testing devices and leverage CBP's

<sup>9</sup>See section 343 of the Trade Act of 2002 (Pub. L. 107-210), as amended; the Security and Accountability for Every Port Act or SAFE Port Act of 2006 (Pub. L. 109-347); and the Synthetics Trafficking and Overdose Prevention (STOP) Act (Pub. L. 107-210) of 2018.

24/7 Narcotic Reachback program to obtain a swift, presumptive identification of a suspect substance from a CBP Laboratories and Scientific Services (LSS) scientist. CBP has also positioned Forward Operating Labs (FOL) at strategic locations where new or emerging substances enter the United States. At the FOLs, LSS can triage quickly if a potentially new analogue of an illicit substance or designer drug is encountered and send it to the LSS INTERDICT Science Center for comprehensive testing. These newly-encountered substances, particularly synthetic opioids or other significant chemicals of interest, are added to the user libraries of the handheld field-testing devices used by CBP officers and agents to rapidly screen suspected substances. Since January 2022, 170 new spectra have been added to the equipment's factory library. Since the start of the designer drug wave in 2009, LSS has identified over 550 new substances.

CBP scientists participate in weekly operational roundtable discussions with intelligence personnel and law enforcement partners from Federal, State, and local agencies to share information on the latest analysis on encountered substances. Based on pollen analysis and suspected controlled substance analysis results, CBP develops intelligence products to share with CBP officers and agents, intelligence analysts, policy makers, and relevant external partners at Federal, State, local, and international organizations to maintain a consistent understanding of the fentanyl threat picture nationally, not just at the borders.<sup>10</sup>

#### COLLABORATION AND INFORMATION SHARING

Shifting trends and sophisticated TCO tactics mean that now, more than ever, efforts to counter TCO activity require coordination and cooperation across the law enforcement community. CBP leverages collaboration with our Federal, State, local, Tribal, and international partners to address drug trafficking and other transnational threats across all our operational environments. This includes working closely with the Office of National Drug Control Policy's High-Intensity Drug Trafficking Area program and continuous work with other laboratories and the medical community, including coroners and medical examiners, to identify emerging drug threats.

CBP works closely with key partners, including HSI, DEA, the United States Postal Inspection Service, the Federal Bureau of Investigation, and other Federal, State, local, Tribal, and international partners, to share information, coordinate enforcement actions, and facilitate investigations regarding intelligence and seizures. For seizures that do not meet a Federal threshold, intelligence and information derived from these seizures are provided to local, State, and regional task forces for situational awareness and further investigative and prosecutorial actions.

CBP regularly hosts briefings with Federal, State, local, territorial, and Tribal partners regarding the current State of the border, providing a cross-component, multi-agency venue for discussing trends and threats. Engagements focus on interdictions and arrests at both the border and interior areas within the United States. These briefings also include participants from the governments of Canada and Mexico.

Strong international partnerships are a critical part of CBP's ability to respond to the global challenges that affect our border operations. CBP works closely with our foreign partners and contributes to multilateral forums by sharing information and leveraging partner capabilities to combat transnational threats and advance our national security.

CBP also participates in joint operations and multi-agency enforcement teams composed of representatives from international and Federal law enforcement agencies. Working together with State, local, and Tribal agencies, these operations target drug and transnational criminal activity, and often contribute to investigations involving national security and organized crime.

Our partnerships are also invaluable to our enforcement efforts. For example, CBP and HSI recently concluded Operation Blue Lotus, a 2-month, multi-agency effort led by CBP and HSI focused on narcotics smuggling attempts at POEs in Arizona and California. Through targeted inspections at border crossings, cross-border investigations, and the leveraging of advanced analytics and intelligence capabilities, approximately 8,000 pounds of fentanyl, more than 4,600 pounds of methamphetamine, more than 1,050 pounds of cocaine, and more than 72 pounds of heroin were seized—leading to more than 250 arrests by CBP and HSI. U.S. Border Patrol ran a complementary operation between POEs and at checkpoints near the border, leading to additional seizures of approximately 2,500 pounds of fentanyl,

<sup>10</sup> <https://www.cbp.gov/document/fact-sheets/cbp-fentanyl-factsheet>.

6,500 pounds of methamphetamine, 330 pounds of marijuana, 620 pounds of cocaine, and 60 pounds of heroin.

Following the success of these enforcement efforts, DHS recently announced the next special operations of its surge campaign to target and prevent fentanyl from entering the United States.<sup>11</sup> Operation Artemis, led by CBP and supported by HSI, will leverage intelligence and investigative information derived from Operation Blue Lotus to focus on critical junctures in the illicit production and international trafficking of fentanyl and other synthetic drugs by targeting precursor chemicals, pill presses and parts, movement of finished substances, and illicit proceeds. Concurrently, Operation Rolling Wave will surge inspections at U.S. Border Patrol checkpoints along the Southwest Border, covering every sector and leveraging predictive analysis and intelligence sharing. CBP will run a parallel intelligence and analysis operation, Operation Argus, to provide trade-focused analysis in support of Artemis.

In collaboration with multiple Department of Justice components, in particular the Bureau of Alcohol, Tobacco, Firearms, and Explosives, CBP and HSI also lead Operation Without a Trace, a joint platform for our personnel to target and investigate smuggling networks to disrupt and dismantle their illegal gun trafficking operations. Since the initiative's inception in fiscal year 2020, Operation Without a Trace has achieved significant success preventing Mexico-bound gun trafficking, resulting in the initiation of 803 investigations, the execution of 555 arrests, and the seizure of 1,213 firearms, more than 723,203 rounds of ammunition, and \$16.5 million in illicit currency.<sup>12</sup>

Finally, CBP established the Southern Border Intelligence Center in April 2023. The Southern Border Intelligence Center, located in Tucson, Arizona, will integrate CBP's Southwest Border Intelligence Enterprise through collaboration within CBP and with the interagency into a single intelligence focal point. The Southern Border Intelligence Center will build and maintain a trans-regional intelligence understanding of the entire Southern Border by integrating CBP's intelligence efforts and collaborating with the interagency.

#### CONCLUSION

With continued support from Congress, CBP, in coordination with our partners, will continue to deploy critical resources to our Nation's borders to refine the effectiveness of our detection, interdiction, and identification capabilities and combat transnational threats and the entry of illegal drugs into the United States.

CBP will continue investing in our front-line and intelligence capabilities, which are vital to all our law enforcement efforts. CBP will also pursue new partnerships and innovative technology to aid in our layered enforcement strategy to support our fight against this ever-evolving threat.

Thank you for the opportunity to testify today. I look forward to your questions.

Mr. HIGGINS. Thank you, Mr. Mandryck.

I now recognize Mr. Papadopoulos for 5 minutes to summarize his opening statement.

#### **STATEMENT OF GEORGE PAPADOPOULOS, ACTING CHIEF OF OPERATIONS, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE**

Mr. PAPADOPOULOS. Good afternoon, Chairman Higgins, Ranking Member Correa, and distinguished Members of the subcommittee.

On behalf of the Department of Justice and, in particular, the more than 9,000 employees of the Drug Enforcement Administration, it's my honor to appear before you today.

Today's hearing comes at a critical moment in our country's history, and I thank the committee for bringing attention to this important topic.

Our Nation is in the midst of a devastating drug poisoning epidemic that claimed the lives of nearly 110,000 people in 2022. That's about one death every 5 minutes, or more than 300 mothers

<sup>11</sup> <https://www.dhs.gov/news/2023/06/22/next-phase-dhs-campaign-stop-fentanyl-will-focus-interdiction-and-supply-chain>.

<sup>12</sup> As of March 28, 2023.

and fathers, sisters, and brothers, and most tragically, children dying every day, with countless more nonfatal drug poisonings.

I've had the privilege of being a DEA special agent for 27 years, and have served in locations as diverse as Detroit, Michigan and Athens, Greece. I worked at the DEA Special Operations Division and, most recently, was deputy chief for operations, responsible for all foreign offices. I can assure you that the drug poisoning epidemic that our country is facing today is unprecedented.

In 2022, DEA seized more than 58 million fentanyl-laced pills and 13,000 pounds of fentanyl powder. That's nearly 400 million deadly doses that didn't reach American streets and more than enough to kill everyone in the United States.

The men and women of the DEA are relentlessly focused day in and day out on saving lives by combating the deadly drug poisoning epidemic and bringing those responsible to justice.

As the primary U.S. Government agency responsible for investigating drug trafficking, the DEA leads and coordinates the whole-of-Government law enforcement response to defeat the two cartels responsible for flooding the United States with fentanyl: the Sinaloa and Jalisco cartels.

This is our top operational priority, because these cartels pose the greatest criminal drug threat that the United States has ever faced. They are ruthless and violent global criminal enterprises with members, associates, facilitators, and brokers in all 50 States and in at least 100 countries throughout the world.

The cartels use treachery and deceit to drive addiction and deaths in our country. They mix fentanyl with other drugs, like cocaine, heroin, and methamphetamine, and press it into pills that look like legitimate prescription medication. But the pills that look safe and familiar do not contain any prescription medication. Instead, they contain deadly fentanyl. Many people that died didn't even know they were taking fentanyl. Instead, they believed they were taking a different drug or a real prescription pill.

To save lives and defeat these cartels, the DEA created two counterthreat teams, one for the Sinaloa Cartel and one for the Jalisco Cartel. These teams synthesized DEA intelligence for a data-driven approach to mapping and strategically targeting the cartels' entire network and infrastructure, and to identify key nodes that can be exploited. Our counter-threat teams regularly send target packages to DEA offices across the country and around the world that are used to initiate or enhance investigations.

Along with our interagency partners, we've had some recent success against the cartels. In April, we announced the results of an 18-month undercover investigation, Operation Royal Flush, which resulted in the indictment of 28 members of Sinaloa Cartel, including Chapo Guzman's sons.

The indictment describes the cartel's entire network and supply chain from China to Mexico to Main Street. During this investigation, which included 32 DEA offices around the world and operational activities in 10 countries, we seized more than 22 million potentially deadly doses of fentanyl.

In May, we announced the results of Operation Last Mile, which focused on the cartel's U.S. distributors. During this year-long effort, we arrested more than 3,300 people in the United States,

seized more than \$104 million in cash and assets, and took nearly 8,500 guns off the street. Most importantly, we stopped more than 193 million potentially deadly doses of fentanyl before they reached U.S. communities.

Just last month, we announced the results of Operation Killer Chemicals, which focused on the precursor chemicals needed to manufacture fentanyl. We charged 8 Chinese nationals and, for the first time, 4 Chinese companies with conspiracy to manufacture and import fentanyl into the United States. These individuals and companies sold enough precursor chemicals to produce millions of potentially deadly doses of fentanyl.

While we've had some success, there is clearly more work to do. The men and women of the DEA are committed to saving lives and defeating the Sinaloa and Jalisco cartels and will relentlessly pursue cartel leaders, members, associates, and facilitators to ensure that they face justice for their crimes.

Thank you for the opportunity to testify before you today on this important topic. I look forward to your questions.

[The prepared statement of Mr. Papadopoulos follows:]

PREPARED STATEMENT OF GEORGE PAPADOPOULOS

JULY 12, 2023

Chair Higgins, Ranking Member Correa, and distinguished Members of the committee: On behalf of the Department of Justice (Department), and in particular the over 9,000 employees working at the Drug Enforcement Administration (DEA), thank you for the opportunity to appear before you today to discuss DEA's work to save lives and to combat the deadly drug poisoning epidemic in our country.

Americans today are experiencing the most devastating drug crisis in our Nation's history. This is because one drug—fentanyl—has transformed the criminal landscape. Fentanyl is exceptionally cheap to make, exceptionally easy to disguise, and exceptionally deadly to those who take it. It is the leading cause of death for Americans between the ages of 18 to 45, and it kills Americans from all walks of life, in every State and community in this country. The criminal organizations responsible for bringing fentanyl into this country are modern, sophisticated, and extremely violent enterprises that rely on a global supply chain to manufacture, transport, and sell fentanyl, and rely on a global illicit financial network to pocket the billions of dollars in revenue from those sales.

DEA has been hard at work to undertake a transformation of its own to meet this moment. DEA has acted with urgency to set a new vision, target the global criminal networks most responsible for the influx of fentanyl into the United States, and raise public awareness about how just one pill can kill. We have transformed our vision by focusing on fentanyl—the drug killing the most Americans—and the criminal organizations responsible for flooding fentanyl into our communities—the Sinaloa Cartel and the Jalisco New Generation (Jalisco) Cartel. We have transformed our plan by building an entirely new strategic layer—our counter-threat teams for the Sinaloa Cartel and the Jalisco Cartel—that map the cartels, analyze their networks, and develop targeting information on the members of those networks wherever they operate around the globe. We have transformed our execution by providing that targeting information to our 334 offices world-wide, drawing from our global intelligence and law enforcement teams here and abroad, and working as One DEA to take the networks down. And we are seeing results—as demonstrated earlier this year with the indictment of 28 members and associates of the Chapitos network of the Sinaloa Cartel; the arrest of 3,337 associates of the Sinaloa and Jalisco Cartels in the United States who were responsible for the last mile of fentanyl and methamphetamine distribution on our streets and through social media; and the indictment of 4 chemical companies and 8 individuals in the People's Republic of China (PRC) for providing criminal actors in the United States and Mexico with the precursor chemicals and scientific know-how necessary to make fentanyl.

## THE DRUG POISONING EPIDEMIC

In 2022, nearly 110,000 people in the United States lost their lives to drug poisonings. Countless more people are poisoned and survive. These drug poisonings are a national crisis.

A majority of the drug poisoning deaths in the United States involve synthetic opioids, such as fentanyl, that are being distributed in new forms. Fentanyl is being hidden in and being mixed with other illicit drugs such as cocaine, heroin, and methamphetamine. Drug traffickers are also flooding our communities with fentanyl disguised in the form of fake prescription pills. These fake pills often are made to appear legitimate using pill presses and marketed by drug traffickers to deceive Americans into thinking that they are real, diverted prescription medications. In reality, these pills are not made by pharmaceutical companies, but drug trafficking organizations; they are highly addictive and are often deadly. DEA lab testing reveals that 6 out of 10 of these fentanyl-laced fake prescription pills contain a potentially lethal dose.

The availability of fentanyl throughout the United States has reached unprecedented heights. In 2022, DEA seized more than 58 million fake pills containing fentanyl, and 13,000 pounds of fentanyl powder, equating to nearly 400 million deadly doses of fentanyl. This is enough fentanyl to supply a potentially lethal dose to every member of the U.S. population. These seizures occurred in every State in the country.

## THE DRUG ENFORCEMENT ADMINISTRATION

As the single mission agency tasked with enforcing our Nation's drug laws, DEA's top operational priority is to relentlessly pursue and defeat the two Mexican drug cartels—the Sinaloa Cartel and the Jalisco Cartel—that are primarily responsible for driving the current fentanyl and drug poisoning epidemic in the United States.

In April of this year, the administration announced its Strengthened Approach to Crack Down on Illicit Fentanyl Supply Chains, a whole-of-Government approach to save lives by disrupting the trafficking of illicit fentanyl and its precursors into American communities. This approach synchronizes all the tools of national power to use more effectively against criminal facilitators and enablers. The administration has also increased its collaboration with key international partners to address security concerns that impact North America. For example, under the Bicentennial Framework for Security, Public Health, and Safe Communities between the United States and Mexico, the administration established a cooperative, comprehensive, and long-term approach with specific actions to promote the safety and security of our societies.

DEA is the lead agency on the law enforcement elements in the administration's whole-of-Government response to defeat the cartels and combat the drug poisoning epidemic in our communities. DEA's role in leading the law enforcement response to the fentanyl epidemic protects the safety of agents, officers, and sources. Importantly, a unified response to the fentanyl epidemic ensures that the whole-of-Government is moving in one direction that protects the safety and health of Americans.

DEA operates 30 field divisions with 241 domestic offices, 93 foreign offices in 69 countries, and 9 forensic labs. DEA's robust domestic and international presence allows it to map and target the entire Sinaloa Cartel and Jalisco Cartel networks.

In addition, DEA has launched two cross-agency, counter-threat teams to execute a network-focused operational strategy to defeat the Sinaloa and Jalisco Cartels. The two teams are mapping, analyzing, and targeting the cartels' entire criminal networks. The teams are composed of special agents, intelligence analysts, targeters, program analysts, data scientists, and digital specialists. This network-focused strategy is critical to defeating the Sinaloa and Jalisco Cartels.

We already are starting to see results from our new strategy. As part of the network-focused strategy, DEA investigations recently resulted in charges against 28 members and associates of the Sinaloa Cartel, including leaders, suppliers, brokers, smugglers, and money launderers in multiple countries, for operating the global criminal enterprise that manufactures and traffics most of the fentanyl that comes into the United States.

DEA is simultaneously focused on American communities. We are targeting the drug trafficking organizations and violent gangs located in the United States that are responsible for the greatest number of drug-related deaths and violence. DEA's Operation Overdrive uses a data-driven, intelligence-led approach to identify and dismantle criminal drug networks operating in areas with the highest rates of violence and drug poisoning deaths. In each of these locations, DEA is working with local and State law enforcement officials to conduct threat assessments identifying the criminal networks and individuals that are causing the most harm. DEA works

with State, local, Tribal, and Federal law enforcement and prosecutorial partners to pursue investigations and prosecutions that will reduce drug-related violence and drug poisonings. Phase one of Operation Overdrive took place in 34 locations across the United States, and phase two is currently occurring in 57 locations. So far in Operation Overdrive, DEA and its partners have made over 1,700 arrests, seized over 1,300 firearms, and seized over 13 million potentially deadly doses of fentanyl.

In 2021, DEA launched the “One Pill Can Kill” enforcement effort and public awareness campaign. Through that, DEA and our law enforcement partners have seized millions of fake fentanyl-laced prescription pills and hundreds of pounds of fentanyl powder—equating to millions of potentially lethal doses of fentanyl, which could have entered our communities. Hundreds of these cases were linked to social media platforms, including Snapchat, Facebook, Instagram, and TikTok.

DEA is combating the sale of fentanyl on social media. Drug traffickers are using social media platforms to recruit associates, find customers, and sell fentanyl and other deadly drugs. In particular, drug traffickers use social media to deceptively advertise fake prescription pills—pills that look like Xanax, Percocet, or Oxycodone but actually contain fentanyl—directly to young people and teenagers. DEA has investigated more than 150 cases directly linked to the sale of fake pills containing fentanyl on social media.

DEA also works closely with families who have lost loved ones to drug poisonings. These families are often brave advocates for change, and help ensure that people in their communities are aware of the dangers of fentanyl and fake pills.

DEA is working closely with our local, State, Tribal, territorial, Federal, and international counterparts to target every part of the illegal drug supply chain and every level of the drug trafficking organizations that threaten the health and safety of our communities. To succeed, we must use every tool to combat this substantial threat that is being driven by the Sinaloa and Jalisco Cartels, as well as the Chinese-sourced precursor chemicals and global money-laundering operations that facilitate the cartels’ operations.

#### MEXICAN CARTELS AND DRUG TRAFFICKING

The Sinaloa and Jalisco Cartels pose the greatest criminal drug threat the United States has ever faced. These ruthless, violent, criminal organizations have associates, facilitators, and brokers in all 50 States in the United States, as well as in more than 100 countries around the world.

The Sinaloa Cartel and the Jalisco Cartel and their affiliates control the vast majority of the fentanyl global supply chain, from manufacture to distribution. The cartels are buying precursor chemicals in the PRC; transporting the precursor chemicals from the PRC to Mexico; using the precursor chemicals to mass produce fentanyl; using pill presses to process the fentanyl into fake prescription pills; and using cars, trucks, and other routes to transport the drugs from Mexico into the United States for distribution. It costs the cartels as little as 10 cents to produce a fentanyl-laced fake prescription pill that is sold in the United States for as much as \$10 to \$30 per pill. As a result, the cartels make billions of dollars from trafficking fentanyl into the United States.

The business model used by the Sinaloa and Jalisco Cartels is to grow at all costs, no matter how many people die in the process. The cartels are engaging in deliberate, calculated treachery to deceive Americans and drive addiction to achieve higher profits.

##### *The Sinaloa Cartel*

The Sinaloa Cartel, based in the Mexican state of Sinaloa, is one of the oldest drug-trafficking organizations in Mexico. The Sinaloa Cartel controls drug-trafficking activity in various regions in Mexico, particularly along the Pacific Coast. Additionally, it maintains the most expansive international footprint of the Mexican cartels. The Sinaloa Cartel exports and distributes wholesale amounts of fentanyl, methamphetamine, heroin, and cocaine in the United States by maintaining distribution hubs in cities that include Phoenix, Los Angeles, Denver, and Chicago. Illicit drugs distributed by the Sinaloa Cartel are primarily smuggled into the United States through crossing points located along Mexico’s border with California, Arizona, New Mexico, and Texas. The Sinaloa Cartel reportedly has a presence in 19 of the 32 Mexican states. It has been identified that there are currently more than 26,000 members, associates, facilitators, and brokers affiliated with the Cartel in more than 100 countries.

##### *The Jalisco Cartel*

The Jalisco Cartel is based in the city of Guadalajara in the Mexican state of Jalisco, and was originally formed as a spin off from the Milenio Cartel, a subordi-

nate to the Sinaloa Cartel. The Jalisco Cartel maintains illicit drug distribution hubs in Los Angeles, Seattle, Charlotte, Chicago, and Atlanta. Internationally, the Jalisco Cartel has a presence and influence through associates, facilitators, and brokers on every continent except Antarctica. The Jalisco Cartel smuggles illicit drugs such as fentanyl, methamphetamine, heroin, and cocaine into the United States by accessing various trafficking corridors along the Southwest Border that include Tijuana, Mexicali, Ciudad Juárez, Matamoros, and Nuevo Laredo. The Jalisco Cartel's rapid expansion of its drug-trafficking activities is characterized by the organization's willingness to engage in violent confrontations with Mexican government security forces and rival cartels. The Jalisco Cartel reportedly has a presence in 21 of the 32 Mexican states. It has been identified that there are currently more than 18,800 members, associates, facilitators, and brokers affiliated with the Cartel in more than 100 countries.

#### PEOPLE'S REPUBLIC OF CHINA AND PRECURSOR CHEMICALS

Chemical companies within the PRC produce and sell the majority of precursor chemicals that are used today by the Sinaloa and Jalisco Cartels to manufacture fentanyl and methamphetamine. These precursor chemicals from companies within the PRC are the foundation of the fentanyl and methamphetamine that are manufactured and transported from Mexico into the United States and that are causing tens of thousands of drug-related deaths in our country.

According to the State Department's 2023 International Narcotics Control Strategy Report, there are at least 160,000 chemical companies in the PRC. Chemical companies within the PRC distribute and sell precursor chemicals that are used in fentanyl and methamphetamine production around the world. Some companies within the PRC, for example, engage in false cargo labeling and ship chemicals to Mexico without tracking the customers purchasing the chemicals from the PRC and elsewhere.

In recent weeks, DEA has had productive engagements with Chinese counterparts in Beijing and Washington, DC focused on increasing cooperation between our countries. DEA remains ready to work with the PRC and all willing partners to reduce the flow of precursor chemicals and the deadly synthetic drugs they produce.

#### CHINESE MONEY-LAUNDERING OPERATIONS AND THE CARTELS

The Sinaloa and Jalisco Cartels utilize Chinese Money-Laundering Organizations (CMLOs) in the United States and around the world to facilitate laundering drug proceeds. CMLOs use mirror transfers, trade-based money laundering, and bulk cash movement to facilitate the exchange of foreign currency. The use of CMLOs by the cartels simplifies the money-laundering process and streamlines the purchase of precursor chemicals utilized in manufacturing drugs.

These money-laundering schemes are designed to remedy two separate issues: (1) the desire of Mexican cartels to repatriate drug proceeds into the Mexican banking system, and (2) wealthy Chinese nationals who are restricted by the PRC's capital flight laws from transferring large sums of money held in Chinese bank accounts for use abroad. To address these issues, CMLOs acquire U.S. dollars held by Mexican cartels as a means to supply their customers in the PRC.

#### RECENT ENFORCEMENT ACTIONS AGAINST THE SINALOA AND JALISCO CARTELS AND PRC-BASED CHEMICAL SUPPLIERS

##### *The Chapitos Network of the Sinaloa Cartel*

On April 14, 2023, DEA announced indictments against the Chapitos—the leaders of the Sinaloa Cartel—and their criminal network.

The Sinaloa Cartel supplies the majority of the fentanyl trafficked into the United States, which has resulted in the United States' unprecedented fentanyl epidemic. The Chapitos, the sons of the cartel's notorious former leader Joaquin "El Chapo" Guzman, currently lead the most violent faction of the Sinaloa Cartel. El Chapo was once the world's most dangerous and prolific drug trafficker. Now his sons have stepped in to fill their father's void by flooding the United States with deadly fentanyl and leaving a wake of destruction across families and communities throughout the United States.

Following their father's arrest and subsequent extradition and conviction, we allege that the Chapitos expanded their enterprise with sophisticated fentanyl laboratories in Culiacan, Mexico. We allege that the Chapitos now run the largest, most violent, and most prolific fentanyl trafficking operation in the world. The cartel is highly organized and sophisticated, employing military-grade weapons and vehicles and hundreds of people who protect the cartel and its leadership at all costs. In ad-



dition, we allege that the Chapitos use extreme violence and intimidation, including murder, torture, and kidnapping, to ensure dominance and expand their territory.

The Chapitos pioneered the manufacture and trafficking of fentanyl, and are responsible for the massive influx of fentanyl into the United States over the past 8 years. The Chapitos oversee and control every step in their fentanyl trafficking process and will stop at nothing to ensure the expansion of their operations and the flow of fentanyl into the United States. From procuring fentanyl precursors from illicit sources of supply in the PRC; to distribution in the United States, and, ultimately, reaching the hands of Americans; to the surreptitious repatriation of massive proceeds through money launderers to avoid detection, the cartel has direct involvement—and culpability. Investigations found that even when test subjects died as a result of high-potency fentanyl, the cartel sent the deadly batch to the United States anyway—knowingly poisoning Americans for their own profit.

The indictments charged 28 members of the Chapitos network. These include suppliers of fentanyl precursor chemicals based in the PRC, a broker based in Guatemala assisting with the transport of those chemicals from the PRC to Mexico, managers of clandestine fentanyl laboratories based in Mexico converting the precursor chemicals into fentanyl pills and powder, weapons traffickers and assassins perpetuating extreme violence in Mexico to protect and expand the fentanyl production operation, smugglers transporting the fentanyl from Mexico into the United States, and illicit financiers laundering the proceeds of fentanyl sales from the United States back to Mexico through bulk cash smuggling, trade-based money laundering, and cryptocurrency.

These indictments reflect the work of 32 DEA offices in the United States and abroad, as well as our law enforcement partners and other Department of Justice components, such as the U.S. Attorney's Office. As part of the investigation, the DEA conducted operations in ten countries and seized staggering amounts of illicit materials, including 2,557,000 fentanyl-laced pills, 105 kilograms of fentanyl powder, and 37 kilograms of fentanyl precursor chemicals, amounting to 22,747,441 potentially lethal doses of fentanyl.

Seven of the charged defendants were arrested pursuant to the investigation—in Colombia, Greece, Guatemala, and the United States—with the assistance of DEA's law enforcement partners in the United States and abroad. Ovidio Guzman-Lopez was arrested earlier this year by military officials in Mexico.

Simultaneously with the announcement of these indictments, the Department of State has announced up to nearly \$50 million in monetary rewards for information leading to the capture of the defendants who remain at large, and the Department of the Treasury Office of Foreign Assets Control announced sanctions against 2 chemical companies that operate in the PRC, and 5 individuals associated with those companies, for supplying precursor chemicals to drug cartels in Mexico for the production of illicit fentanyl intended for U.S. markets.

#### *Operation Last Mile*

On May 5, 2023, DEA announced the results of Operation Last Mile, a year-long national operation targeting operatives, associates, and distributors affiliated with the Sinaloa and Jalisco Cartels who were located in the United States and responsible for the last mile of fentanyl and methamphetamine distribution on our streets and on social media.

In Operation Last Mile, DEA tracked down distribution networks across the United States that are connected to the Sinaloa and Jalisco Cartels. The Operation shows that the Sinaloa and Jalisco Cartels use violent local street gangs and criminal groups and individuals across the United States to flood American communities with huge amounts of fentanyl and methamphetamine, which drives addiction and violence and kills Americans. It also shows that the Cartels, their members, and their associates use social media applications—like Facebook, Instagram, TikTok, and Snapchat—and encrypted platforms—like WhatsApp, Telegram, Signal, Wire, and Wickr—to coordinate logistics and reach out to victims.

Operation Last Mile comprised 1,436 investigations conducted from May 1, 2022 through May 1, 2023, in collaboration with Federal, State and local law enforcement partners, and resulted in 3,337 arrests and the seizure of nearly 44 million fentanyl pills, more than 6,500 pounds of fentanyl powder, more than 91,000 pounds of methamphetamine, 8,497 firearms, and more than \$100 million. The fentanyl powder and pill seizures equate to nearly 193 million deadly doses of fentanyl removed from communities across the United States, which have prevented countless potential drug poisoning deaths. Among these investigations, more than 1,100 cases involved social media applications and encrypted communications platforms, including Facebook, Instagram, TikTok, Snapchat, WhatsApp, Telegram, Signal, Wire, and Wickr.

*Operation Killer Chemicals*

On June 23, 2023, DEA announced Operation Killer Chemicals and the indictments of 4 chemical companies and 8 individuals—all based in the PRC—for knowingly providing customers in the United States and Mexico with the precursor chemicals and scientific know-how to manufacture fentanyl. These indictments are the first-ever charges against fentanyl precursor chemical companies. Two PRC nationals were taken into custody pursuant to the investigation. DEA also seized more than 200 kilograms of precursors in these investigations alone, enough to make millions of deadly doses of fentanyl.

As alleged, these Chinese chemical companies, and the individuals working for them, not only provided customers with the ingredients for fentanyl, they also gave advice on how to mix and substitute ingredients to more efficiently make fentanyl, and employed chemists to troubleshoot and provide expert advice when customers had questions. The individuals also spoke freely about having clients in the United States and Mexico and, specifically, in Sinaloa, Mexico, where the Sinaloa Cartel is based.

The companies went to great lengths to conceal the chemicals during transport. They falsified shipping labels and customs paperwork, claiming the shipments were “dog food” or “raw cosmetic materials” rather than fentanyl precursors. They even disguised the chemicals at a molecular level—adding a molecule to “mask” the precursors so they would not be detected as banned substances during transport, and teaching their customers how to remove that molecule after receipt.

Operation Killer Chemicals made clear that fentanyl precursors are exceptionally cheap. Fentanyl precursors cost less than one cent per deadly dose of fentanyl. In just one example, a defendant sold two kilograms of fentanyl precursors for approximately \$1,000, which can make 1.75 million lethal doses of fentanyl. The amount of fentanyl that can be made depends only on the amount of chemicals that can be purchased.

The Operation also showed that fentanyl precursors are easily bought on-line. Although based in the PRC, the chemical companies and individuals reached customers across the world because they advertised fentanyl precursors on social media (on Facebook and LinkedIn), used encrypted applications like WhatsApp to speak with customers and coordinate shipments, and took payment in Bitcoin and other cryptocurrencies.

## CONCLUSION

DEA will continue our relentless pursuit of the Sinaloa and Jalisco Cartels—the criminal networks most responsible for fentanyl-related deaths in our country—and we will continue to work tirelessly to defeat these cartels and dismantle every part of their global supply chain, in order to protect the American people. Thank you again for the opportunity to appear before the committee today. I look forward to answering your questions.

Mr. HIGGINS. Thank you, Mr. Papadopoulos.

I now recognize Mr. Durham for 5 minutes to summarize his opening statement.

**STATEMENT OF TYRONE DURHAM, DIRECTOR, NATION-STATE THREATS CENTER, OFFICE OF INTELLIGENCE AND ANALYSIS, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. DURHAM. Good afternoon. Chairman Higgins, Ranking Member Correa, and distinguished Members of the subcommittee, thank you for the opportunity to appear before you today.

I’m honored to be here representing the Department of Homeland Security’s Office of Intelligence and Analysis and the dedicated intelligence professionals working diligently to keep the homeland safe, secure, and resilient.

As previously stated, the fentanyl drug overdose crisis in the United States, which is fueled by Mexican transnational criminal organizations and their Chinese suppliers of precursor chemicals, continues at epidemic proportions.

As you know, the drug overdose deaths rose from 2019 to 2021, with more than 100,000-plus deaths reported in 2021. Those deaths

specifically involving synthetic opioids, primarily fentanyl, continued to rise during the same time period with more than 70,000 overdose deaths reported at that same time period.

So let's talk about who's responsible. You previously heard about the two Mexican cartels responsible for the activity, the Sinaloa Cartel and the Jalisco New Generation Cartel. These cartels supply U.S.-based affiliates with fentanyl for further distribution and retail-level sale. U.S.-based traffickers then sell fentanyl to users seeking the synthetic opioid. They mix fentanyl with other controlled substances, and they distribute it in the form of counterfeit prescription pills to drive addiction.

China's role in the global fentanyl trade is also a serious concern. China is the source of most of the precursor chemicals required for fentanyl production. A cartel associate brokers the sale and shipment of fentanyl precursor chemicals from China to clandestine labs in Mexico, where the fentanyl is manufactured.

Moreover, as law enforcement scrutiny or legal restrictions increase, suppliers adapt by modifying or changing chemical compounds of precursors, subsequently falling outside the purview of existing controls, to mimic the desired effect. Some Chinese chemists have focused on precursors to precursors, many of which have legitimate uses and are therefore hard to regulate.

There are several reasons why China is such a major source of fentanyl production. First, China has a large and sophisticated chemical and pharmaceutical industry that can produce its precursor chemicals at will and at scale. Second, China has a lax regulatory environment for chemicals, making it easy for traffickers to acquire the precursors they need for fentanyl manufacturing. Third, China's borders are porous, making it easy for fentanyl precursors to be smuggled out of the country, ultimately making their way to Mexico.

The Office of Intelligence and Analysis is producing finished intelligence on drug trafficking and other transborder threats to strengthen engagement between U.S. officials and foreign partners. Specific to drug trafficking threats, our analysis is aimed at identifying key transnational criminal organized crime leadership figures, organizational networks, logistical supply chains, smuggling routes, and the efforts of corruption that stand in the way of dismantling these organized crime groups.

Intelligence products draw upon national-level reporting from the intelligence community fused with DHS-unique data from components, as well as information from our law enforcement partners across all levels of government. This finished intelligence product related to TCOs are written at the widest possible dissemination level for distribution to our Federal, State, local, Tribal, and territorial partners and, when appropriate, shared with our foreign partners in Mexico.

I&A has deployed intelligence personnel, worked closely with DHS components, State and major urban area fusion centers, and other law enforcement agencies to gather, analyze, and report information that is uniquely available from these partners.

Thank you again for the opportunity to appear before you today to discuss this critical threat and for your continued support of the Office of Intelligence and Analysis.

We remain committed to keeping the homeland safe, secure, and resilient, and will continue our efforts at home and abroad to uphold the national security and public safety of the United States. I look forward to your questions.

Mr. HIGGINS. Thank you, Mr. Durham.

Members will be recognized by order of seniority for their 5 minutes of questioning. An additional round of questioning may be called after all Members have been recognized.

I now recognize myself for 5 minutes of questioning.

Mr. Papadopoulos, I'd like to ask you: In your opening statement, you cited that you've identified major distribution hubs in cities, including Phoenix, Los Angeles, Denver, and Chicago. Is that in your opening statement?

Mr. PAPANDOPOULOS. Yes, sir.

Mr. HIGGINS. OK. So a general question would be: Obviously without revealing on-going law enforcement investigations and operations, if you've identified the major hubs of narcotics distributions in these cities—Phoenix, Los Angeles, Denver, and Chicago—can we look forward to major arrests in Phoenix, Los Angeles, Denver, and Chicago?

Mr. PAPANDOPOULOS. Yes, sir. As you know, the DEA is constantly working these investigations. I mentioned Operation Last Mile, which was announced in May, which is a year-long effort focusing on the U.S. distributors of these cartels, where we arrested over 3,300 people, seized \$104 million in cash and assets, and took about 8,500 guns across—off the street. That was across the entire United States.

Mr. HIGGINS. Understood. The American citizenry asked common-sense questions, and we're sworn by our oath to convey those questions, and it's a good question. If you've identified a narcotics hub and you—that means you're watching it. So we expect those people to be arrested.

The volume of drugs seized and the arrests made is reflective of the realities of effective law enforcement, but also the overwhelming amount of trafficking that we're dealing with and the criminal activity. It's at a level we've not seen in America, and we expect—we expect large numbers of arrests. If we identify these guys, we've got to break their back, make them hate each other. It's just fine with me.

Director Cagen, last Congress, I introduced the Homeland Security Fentanyl Enforcement Act. You're familiar, sir, this bill is written to expand Homeland Security Investigations' authority to investigate narcotics cases under Title 21. Can you explain why HSI is currently unable to conduct independent narcotics investigations?

This gets into some jurisdictional authority that Congress should be involved in, so I—I ask you to clarify.

Mr. CAGEN. Mr. Higgins, thank you for the support on this topic.

HSI enjoys a great, long history and long relationship with the DEA, 25 years-plus, and we look forward to the next 25 years.

Right now, our authority is derived from DEA's designation, which allows us to work together, us to focus on our foreign counterparts, our foreign customs authorities, working with our TCIUs overseas, and to continue to work—actually, Mr. Papadopoulos and

I worked in the same fusion center building together here in the District of Columbia a long time ago and had a great relationship. So we'd just look forward to having that continued relationship moving forward.

Mr. HIGGINS. We—we understand and we appreciate the fact that long-standing relationships have been developed between the law enforcement agencies and working on the ground. But we must ensure that you have the legal pathway—statutory pathway to conduct your investigations, sometimes in cooperation with other agencies but with an independent capability that we must ensure.

So I look forward to speaking with my colleagues more about the Homeland Security Fentanyl Enforcement Act.

Mr. Chester, China is the main country of origin for precursor chemicals for synthetic opioids. These chemicals are then taken by the cartels, who make drugs like fentanyl. We all understand that. You've made that clear.

Can you characterize the coordinated effort between the cartels and China to create and distribute illicit drugs like fentanyl, and how is that changing as we speak?

Mr. CHESTER. Thank you for the question, Congressman. So the first major change happened in 2019, when China scheduled—at the United States' request, scheduled fentanyl as a class. What that did was it had the effect of reducing finished fentanyl from China to the United States to almost zero, and the traffickers got into the precursor business selling those to Mexican cartels for production.

The coordination happens on a couple of different levels. The first one is there's—there is a broker, usually located in Mexico, that works with a broker in the PRC in order to order the chemicals, often from a legitimate chemical company, who fills the bill. Those chemicals are transported and shipped, usually on an unwitting carrier, to one of the ports in Mexico or via air where at the port of entry it is delivered—diverted and then delivered to the drug manufacturers. That's the raw materials.

Then the payment for that is usually done through—through illicit finance enablers and brokers located in the PRC and in Mexico. It is this network of brokers between the drug producers and the raw material suppliers that gives this entire global illicit supply chain its life.

Mr. HIGGINS. Thank you, Mr. Chester. It's a massive network. We intend to break it.

My time has expired.

I recognize the Ranking Member, my friend and colleague, Mr. Correa, the gentleman from California.

Mr. CORREA. Thank you, Mr. Chairman.

I wanted to follow up on the Chairman's last comment on China, their role.

Their cooperation, has it been better in the past? Two-thousand-nineteen, they helped us, classified fentanyl, stopped it. Now you've got the issue of precursors, precursors to precursors, harder to regulate.

Has China helped us over the last year or two? Have you seen that level of cooperation maybe not as good as it's been in the past?

Mr. CHESTER. Thank you for your question. Your question is very prescient, and the answer is cooperation in the past actually has brought results. In fact, in the—in the words of Chinese diplomats, counternarcotics cooperation between the United States and the PRC has been a bright spot.

We were able to do—there was routine law enforcement cooperation. We were able to get fentanyl scheduled as a class. As of late, over more than a year, for a variety of reasons, the PRC has decided not to engage with the United States on—on counternarcotics and a number of other issues.

The United States would like that level of cooperation again, and we have made it clear to the PRC a few things. The first one is we're not blaming the PRC government for this. There are criminal elements within China and Mexico and the United States who keep this global illicit supply chain alive. That's the first thing.

The second thing is our cooperation is absolutely essential in order to help us with that, and we have made some very specific asks of the Chinese government that they could implement very easily in order to be able to help us to do that.

Mr. CORREA. Gentlemen, I just want to say thank you for your good work. You've done a stellar job of doing what you're paid to do.

We talk about commercial disruption, precursors, pills, shipping. It's as though every time you stop one place, something else explodes. I've heard lately that—there is intel now a lot of the precursors are coming in through our ports of entry, pill presses coming into the United States. So every time you bottle something up, another source, another supply seems to emerge.

The one issue that I think probably holds everything together is the finances, the laundering of this money. What can we do to better enable you to stop the flow of these profits?

HSI, you talked about—you know, the Chairman asked you about maybe some other tools you may need. But I would ask all of you: What else can we do as Members of Congress to strengthen your hand to stop the flow of the profits? Because, you know, you dry up the money and the whole machine comes to a stop.

You know, right now, what we are witnessing in this country is a massive transfer of wealth from American pocketbooks to somewhere around the country—excuse me—around the world.

Please, open it up for comments.

Mr. CAGEN. Since you mentioned HSI, I'll—I'll take that.

You know, money is moved in multiple ways, and they're ever-evolving. You just mentioned the fact that—you know, that we stop one thing that the Chinese are doing, and they move in a different way. The same thing happens with money laundering. It's bulk cash, it's trade-based money laundering, it's cryptocurrency movement of money right now.

One thing—and I come back to, you know, begin and end in China. China has taken over. Chinese money-laundering organizations have taken over the network, the money movement network, which we're all focused on as—you know, everybody sitting up here is focused on that. They're able to charge much lower percentages than other people have in the past because of their vast network around the world.

But we are—HSI is—that’s what we do. We like to go after their money. We like to go after their toys. Because when you take their money away, then they can’t flourish. So we’re continuing to—

Mr. CORREA. I asked you directly—I called you out because I’ve seen you work, and I’ve seen some of your results. When I’ve been down to San Isidro, I’ve taken a tour of your operations.

Mr. CAGEN. Yes, sir.

Mr. CORREA. All of you are doing a stellar job. In the half minute that I have left, I would just ask you all as a challenge to let us know what we can do as Congress to strengthen your hand when it comes to money laundering. It’s not an easy solution.

You’ve got 20 seconds. You’re not going to give me the answer. But I’d love all of you to go back and give us some, you know, wish lists, legislatively what tools and what resources you need to stop the flow of drug money.

In my opinion, that’s the best punch you can give these folks when it comes to fentanyl.

Thank you, Mr. Chairman. Time is up. I turn it over back to you.

Mr. HIGGINS. The gentleman yields.

The gentleman from Oklahoma, Mr. Brecheen, is recognized for 5 minutes for questioning.

Mr. BRECHEEN. Thank you, Mr. Chairman.

I appreciate you all being here today. There is no doubt this is a crisis. Just in Oklahoma alone, the State that I’m a Representative for, we’ve seen a 735 percent increase in fentanyl deaths, and that has occurred from 2018 to 2022: 326 deaths in 2022 in Oklahoma. In 2018, it was 39.

I think probably every Member of this committee has some personal point of contact with somebody that they know of who has lost their life or has a direct connection. It’s really sad.

I guess what I want to zero in on—and I’ll open this up to anyone—if you—if 6 out of the 10 pills that you all are looking at—one of your testimonies a minute ago—are containing lethal overdose elements to the point that you take it unsuspectingly, it can kill you, why are they doing that?

There’s an addictive element, right. You’re trying to use the addictive element, 10 cents to make, and \$30—10 to \$30 sold, massive increase in profit.

So can you—I’d be interested in some comments if you—if you can help bring about why they are enabling such a lethal concoction in their pills?

Mr. CHESTER. Congressman, I can start, and then I can turn it over to my colleagues.

I think—I think the first thing is that—that our image of these drug producers and traffickers, I think, traditionally has been that they’re evildoers who are out to hurt people when in reality they are disinterested businesspeople who really only want a few things. They want to lower their production costs. They want to lower their risk of detection and interdiction. They want to increase their customer base and increase their profits.

By—and—and a mechanism to do that is to provide the drug user an experience that they did not expect. This is what we saw back in 2015 when we started to see synthetic opioids like fentanyl introduced into the heroin supply chain. This is—this was the door

that opened this up for the United States. What it did, it provided the individual a qualitative effect that they did not expect, and it was used as kind-of a branding.

Because these things are so potent and because they are so potentially lethal, a milligram in the wrong direction will take you from having a qualitative experience that you didn't expect to an overdose death. In a lot of cases, these things are not uniformly mixed, and they're not done well, and it's a lot of cross-contamination that actually leads to the overdose deaths.

The last thing I'll tell you is, in a lot of cases, the unwitting user who may not have an active substance use disorder or does not intend to take fentanyl gets it in another counterfeit pill that they did not expect, like Xanax or Adderall or something like that. This is done in the interest of making money with a casual disinterest as to whether people are harmed or not.

Mr. BRECHEEN. So I want to pivot, because I think somebody else maybe on the panel can answer this. Are you seeing it utilized as a revenge element to—so you're saying, you know, that there's nothing that's in this more than profit margin, but there's a—an evil intent that can lead to murder purposefully.

In your investigations, are you seeing that?

Mr. PAPADOPOULOS. Sir, I can jump in.

So the answer is yes. We have evidence in some of the char—previous cases I mentioned where the cartels knew that there was deadly fentanyl. The amount of fentanyl that they were sending to United States was deadly, because they tested it on human beings in Mexico, and they still sent it anyway.

As Mr. Chester was saying, these are not mixed in labs. They're not sterile situations. We've seen pills with less than a milligram of fentanyl all the way up to 8 milligrams of fentanyl. The average dose is 2.4 milligrams, and 1 milligrams is considered a potentially deadly dose.

Mr. BRECHEEN. In regards to human trafficking, "Sound of Freedom" is a movie that's, you know, getting a lot of attention right now nationally, and you can sell a drug one time, common—commonly being discussed is—as the human trafficking element, that you can sell an individual multiple times.

What are you seeing with the human traffic—in all of your investigations, where are you seeing the overlap with those that are engaged in human trafficking, prostitution, also alongside the fentanyl trade?

Mr. MANDRYCK. Thank you for the question, sir. So, historically, we had seen the transnational criminal groups focus on narcotics, were solely focused on narcotics. They would charge a piso, or a tax, for migrants to cross.

At the beginning of COVID, where we started to see some of the closures at the ports of entry for nonessential travel, we started to see those criminal groups become more involved in the process holistically. So it wasn't just a couple-hundred-dollar tax; it was a multi-thousand-dollar program to move them throughout the whole chain.

That's what we've continued to see, is that control of the plazas along the border and that full-scale facilitation from start to finish.



Mr. BRECHEEN. Mr. Chairman, would you allow—would you allow if anybody else has any—I know my time has expired. Does anybody else have any—any comments on that?

Mr. CAGEN. I can draw a distinction a little bit between the human smuggling and human trafficking aspect, which I think is where your question was going.

We don't see a direct link between your large-scale criminal organizations that are operating and moving people trafficking-wise, human trafficking-wise, across the border like the transnational criminal organizations. A lot of those folks are already here. People are smuggled into the United States. Then, once in the United States, transnational—or organizations prey on vulnerable populations, and that's when they're turned into trafficking victims.

Mr. BRECHEEN. Thank you.

Mr. HIGGINS. The gentleman yields.

Mr. Thanedar is recognized for 5 minutes for questioning.

Mr. THANEDAR. Thank you, Chairman Higgins. Thank you, gentlemen, for your testimony.

I have heard from both sides of the aisle that transnational criminal organizations and the smuggling of illicit drugs like fentanyl is not just a U.S. problem; it is a global issue. There are bad actors all over the world looking to profit from these deadly drugs. That's why it is important to foster relationships with law enforcement partners and international governments to disrupt and dismantle transnational criminal organizations.

Mr. Cagen, you mentioned this point in your testimony. So my question is for you, Mr. Cagen, and also for Mr. Papadopoulos. Can you—and, in fact, I have three questions. Let me just state those and allow you, either of you, to comment on.

Can you discuss how HSI and the DEA are working and sharing information across the Federal Government, as well as State and local law enforcement partners, to investigate and prosecute these criminal organizations?

No. 2, can you discuss how HSI and DEA are fostering relationships internationally to prevent these deadly drugs from reaching our borders?

No. 3, in April 2023, the Justice Department announced charges against Federal leaders of the Sinaloa Cartel. What role did this partnership play in these critical investigations?

Mr. CAGEN. Thank you very much for the question. I think it's a fantastic question.

I've mentioned it in my opening statement and in a statement already before, HSI and DEA have a long history of working together. I mentioned that we both worked together in the same building, which is actually a fusion center, where we bring in information, intelligence, and 30-plus Federal agencies sit in this building where we share information and ensure that we're taking a whole-of-Government approach toward attacking the cartels and the transnational criminal organizations.

We both have very similar tactics as well when we're working with our international partners. Both have investigative units. Ours is called a Transnational Criminal Investigative Unit. Very different but the same structure. Ours, we've got the ability to work with the Mexican Customs, where we can stop things that are

coming over the ports, like precursor chemicals that are shipped from China over the sea, things like that.

I think that we have a very good international relationship with Mexico and other countries on the working level, which is how we all get our job done to go after transnational criminal organizations.

Mr. THANEDAR. Thank you.

Mr. PAPADOPOULOS. Thank you for the question, sir. So as far as information sharing, we are in, as I mentioned, unprecedented times right now, which I think calls for unprecedented collaboration across the Federal, State, and local governments. We are committed to that. We are using every tool that we have available, including sanctions and rewards for justice, to get the word out.

As far as our international relationships, we have a big international presence also, and that's because we want to be proactive. Most drugs are manufactured outside of the United States, and then they need to be transported here through other countries. So when we're outside of the United States working with our international counterparts, we are being proactive, instead of reactive, waiting for the drugs to get here.

As far as the case that you mentioned, we did work closely on that investigation with other districts and other agencies to put that case together.

Mr. THANEDAR. Thank you so much.

Mr. Chairman, my time is up, so I yield back.

Mr. HIGGINS. The gentleman yields.

My colleague from Texas, Mr. Gonzales, is recognized for 5 minutes for questioning.

Mr. GONZALES. Thank you, Chairman, and thank you for holding this hearing.

I want to talk—I want to use my time to talk about fentanyl as it relates to drones. I think this is an area that the landscape is changing.

If you're watching the war in Ukraine, you're seeing that drones are the future of conflict, and that's no different from fentanyl. What I'm seeing is I'm seeing on a regular basis cartels are using drones to penetrate the United States air space, and they're dropping off packages of fentanyl. Remember, you don't need large quantities in order to make a lot of money off of this. Then they're taking that and they're moving it around.

Well, let me just set the tone. Imagine if you're in a soccer field and all of a sudden there's a drone that flies over with fentanyl and it doesn't drop it to get picked up and get sold somewhere, it just drops it in the stadium. Could we live in that world? Well, guess what? We already live in that world.

So I'm very concerned with the drones that are happening, in particular in the cartels and how it's all related to fentanyl.

My first question is for Mr. Mandryck. Can you speak to any trends or observations you have seen with the recent rise in the use of drones to smuggle drugs across the border?

Mr. MANDRYCK. Thank you, sir. Historically, we have seen drones almost entirely used for surveillance along the border, whether that's at a port of entry or between ports of entry, where

scouts located on the Mexican side would monitor the movements and then facilitate cross-border movement from there.

We have started to see an increased number of sUAS incursions crossing the border, some of which are for surveillance purposes, but we have seen increased use of smuggling of some narcotics, primarily hard narcotics, those that, as you mentioned, don't require larger quantities for movement. We have in place a very strong counter-UAS program with our U.S. Border Patrol and our Air and Marine Operations Center that we would love to give you a more in-depth briefing on the specific capabilities of that.

Mr. GONZALES. Great. Thank you.

I was just in El Paso a few weeks ago, and I visited two areas. One, I visited the Clint Station, Border Patrol station. This is an area in the El Paso Sector, but it's not the main one. It's not what you see on TV. It's one of the sectors that is in the Lower Valley, and it is historically known that this is the area that is most trafficked.

So I was asking the agents there, I was like, How many agents do you have on duty at one time? The answer was two agents. OK.

My next question was, How much contraband have you apprehended this year? Guess what the answer was? Zero. OK.

So the most trafficked area in El Paso County, you only have two agents on duty, and they've apprehended nothing. OK.

Go a little further. You know, outside the city limits of El Paso is a brand-new soft-sided facility. It's like going to the Dallas Cowboys Stadium. OK. It's like Disneyland: 360,000 square feet, larger than six football fields. It's costing taxpayers \$400 million a year. Guess how many agents were in that facility? Two hundred eight.

What I'm getting at is we're putting all our resources into the humanitarian piece of it, and there's nobody on the field to actually stop some of the traffic that's happening.

One of the agents told me, Hey, look, I see drones—Tony, I see drones coming back and forth all the time, and I feel powerless. There is nothing I can do as a field agent down on the ground.

What I'm also seeing too is all these procedures—you have to go through all these procedural to be able to go all the way up the chain in order to get a response back.

Once again, we are living in a different environment where things are tactical. You've got to be able to give the agent the tools that they need to succeed in a real-time environment if we're going to save lives.

I've got 1 minute left. Let me ask one more question. Once again for you, Mr. Mandryck. What can the committee do to ensure that CBP and other appropriate agencies have what they need to combat drones that are illegally crossing our border?

Mr. MANDRYCK. Sir, what a lot of it comes down to is just the adaptability of where we are with the technology, the speed at which that grows. They're very cheap to collect, to produce, so it's kind of a twofold effort. So it's actually attacking logistical supply chains behind those to prevent those being moved into the hands of TCOs to use for facilitation, but also support in the technology to, not just detect, but also safely bring down those pieces of aircraft, and then the exploitation after that significant investment from a technology and an expertise standpoint.

Mr. GONZALES. Well, I'd love to take you up on your offer and sit down and walk through this, in particular to these UAS vehicles that we can defeat, and talk about it, not only in regards to the Homeland Security Committee, but I also sit on the Appropriations Committee. How can we give real money to real programs that work? I'm very interested in that. Would love to follow up with you.

Mr. Chairman, I'm out of time. I yield back.

Mr. HIGGINS. The gentleman yields.

The gentlewoman, Mrs. Ramirez, is recognized for 5 minutes for questioning.

Mrs. RAMIREZ. Thank you, Chairman Higgins and Ranking Member Correa, of the Border Subcommittee for convening today's hearing.

However, I do wish that we could be focused on addressing the root causes of migration rather than having to debunk myths and respond to Republican fearmongering. I sincerely hope we can look beyond the politics and work together to achieve comprehensive immigration reform and address the causes and the concerns we have around this opioid crisis.

We know that nearly 90 percent of hard drugs, such as fentanyl, heroin, and methamphetamines, are seized by CBP at our ports of entry rather than between them. Even when hard drugs are seized between ports of entry, the vast majority are seized at vehicle checkpoints.

Mr. Mandryck, can you confirm that nearly 90 percent of hard drugs seized are at ports of entry? Is that a yes or no?

Mr. MANDRYCK. Yes, ma'am.

Mrs. RAMIREZ. Thank you. Mr. Mandryck, is it true that the vast majority of opioids seized between ports of entry are seized at vehicular checkpoints?

Mr. MANDRYCK. That's correct, ma'am.

Mrs. RAMIREZ. Thank you.

Mr. Mandryck and Mr.—I'm going to do my best because pronunciation is important to me—Mr. Papadopoulos—Papadopoulos. Did I get it right? My understanding is that more than 85 percent of the people convicted for smuggling fentanyl are U.S. citizens. Is that accurate?

Mr. MANDRYCK. So, ma'am, I can talk about the seizures and the turnover for the actual prosecutions. When we look at those encounters at the ports of entry, so Office of Field Operations, there's two ways to look at that. That's by weight and by number of events. If we look at it from events, so individual encounters, this fiscal year we're at 73.1 percent are U.S. citizens, the balance being Mexican nationals. If we look at that by weight, we're looking at about 56 percent U.S. citizens. The delta between those two is a lot of the U.S. citizens we see are very small quantity personal use.

Mrs. RAMIREZ. What about convicted for smuggling fentanyl? Is it U.S. citizens, the majority?

Mr. PAPADOPOULOS. Ma'am, I'm going to have to get back to you on that. I don't know the answer to that, but I'll be happy to get back with you.

Mrs. RAMIREZ. Yes, I appreciate it. Thank you.

So, Mr. Mandryck, would it be fair to say that the majority of seizures in between ports of entry, because even with the percent-

ages you gave me, are also from U.S. citizens and U.S. persons more so than from Mexican nationals?

Mr. MANDRYCK. It's a fairly close breakdown. We will have to get back with you on specifics.

Mrs. RAMIREZ. Thank you. Mr. Mandryck, can you also share the percentage of opioids CPB seized on migrants not in vehicles during the fiscal year? Do you have that information?

Mr. MANDRYCK. It's a very small percentage of those who were actually on migrants for opioids. We don't have the firm percentage. We can get back to you.

Mrs. RAMIREZ. So a very small percentage, correct?

Mr. MANDRYCK. Yes, ma'am.

Mrs. RAMIREZ. That's what I thought.

So just to clarify, Mr. Mandryck, would you agree that undocumented persons traveling on foot between ports of entry represent a very small fraction of the people trafficking opioids across our borders?

Mr. MANDRYCK. Yes, ma'am. There's a variety of reasons behind that: the ability to exploit illegal travel with, you know, millions of people each day back and forth, easy concealment techniques, operational security with a countersurveillance of individuals.

Mrs. RAMIREZ. Thank you. Thank you.

We know the alarming number of fentanyl overdoses is emblematic of a larger drug abuse public health crisis that our country is experiencing and has been for decades. I deeply sympathize with the losses that many families, including in the Third Illinois District, are facing. But this issue is broader than one of border security. In the words of Mr. Chester, and I quote, you said that the—hold on 1 second. I want to get it right. Ending the opioid crisis doesn't start at the border and it won't end in the border.

We need—and so I think we need to treat the demand driving this epidemic, and we need comprehensive health care and access to education, treatment for everyone.

Mr. Chester, knowing that, what initiatives is this administration pursuing to prevent substance abuse in our communities and support these in recovery?

Mr. CHESTER. Thank you very much. You stated it correctly, right, the efforts that we take to keep these drugs out of our country have got to be complemented by strong public health efforts in order to be able to reduce their demand. It really starts with prevention, particularly youth prevention. We out of ONDCP manage the drug-free communities program, which is enormously successful, more than 700 coalitions funded around the country, focused at the local level in order to prevent drug use.

The second thing is reducing barriers to treatment, whether those barriers are monetary or regulatory, ensuring that everyone who needs treatment is able to get it. Sadly, about 8 out of 10 Americans who need treatment don't have access to it.

Then the final thing is to create communities and workplaces that are recovery ready, so that individuals in recovery can continue their sustained recovery, stay with their families, get a good job, and not tragically enter back into the population of those using drugs.

Mrs. RAMIREZ. Thank you for your time.

I yield back.

Mr. HIGGINS. The gentlewoman's time has expired.

Mr. D'Esposito, my colleague from New York, is recognized for 5 minutes.

Mr. D'ESPOSITO. Well, thank you, Mr. Chairman, and thank you for allowing me to waive on to the subcommittee this afternoon.

To all of you, thank you for being here.

Prior to serving as a Member of Congress, I was even prouder, I think, to be a Member of the New York City Police Department, retiring there as a detective. I know that just working in the five boroughs of New York City you get to see different district attorneys and what their priorities are, their prosecutorial priorities.

So I guess this is really a question for Mr. Papadopoulos, but it's really open to all of you. Do you see that the people that you're arresting and hopefully eventually prosecuted, are you dealing with different prosecutors with different priorities, and is that hindering your ability to take illegal narcotics?

Mr. PAPAPOULOS. Sir, thank you for the question. As you know as former law enforcement, you know, we collect the evidence, we gather the evidence, and present it to a grand jury or to a prosecutor's office, and they decide the most appropriate charges. So we don't factor into that, other than collecting the evidence.

Mr. D'ESPOSITO. Right. But what I'm asking is, have you seen it become more difficult with different prosecutors, the effective—really the prosecution of drug arrests? Has it become more difficult as we see different prosecutors having different priorities?

I mean, we see it throughout the United States of America, whether it's in cities like New York or places like California where, you know, crime is rampant, because we see over and over again repeat offenders, people that are—they're being arrested, they're being sometimes prosecuted, and then they are let out to commit more crimes. One of the biggest things that we've seen is repeat offenders.

So have we seen—and the issues on our Southwest Border when we're dealing with, specifically in this hearing, the trafficking of narcotics and fentanyl, have we seen repeat offenders, and has the ability of prosecutors and perhaps their priorities had an effect on the way that you guys are able to really take criminals off the street, and I think most important, keep them off the street?

Mr. PAPAPOULOS. Yes, sir. So for the border, I'll defer to DHS on what they're seeing there. I will say that, you know, DEA strives to prosecute Federally, not at the local level.

Mr. D'ESPOSITO. Of course.

Mr. PAPAPOULOS. What we see when we do that is that—more of an impact in terms of crime reduction and sentencing.

Mr. D'ESPOSITO. Right. But even Federal prosecutors, different offices have different priorities, and sometimes we see things headed in a different direction.

So I guess for the border, I'll hand it over to you guys.

Mr. CAGEN. I don't oversee our domestic operations branch, but I will tell you that I don't believe that we have seen much of a change. There's a consistent cadre who works day in and day out on the law enforcement, either CBP or HSI side, that works continuously with U.S. attorneys to take cases to the Federal level.

I can take that as a get-back. If there's something different, I can let you know.

Mr. D'ESPOSITO. OK. Perfect.

Mr. MANDRYCK. Sir, I'd have to go with our DEA and HSI colleagues. When we get seizures, they're turned over to them for the prosecution.

Mr. D'ESPOSITO. Great.

I yield back. Thank you, Chairman.

Mr. HIGGINS. The gentleman yields.

My colleague, Mr. Ivey, is recognized for 5 minutes for questions.

Mr. IVEY. Thank you, Mr. Chairman.

Before I start asking questions, I'd like to commend the Chair for putting this hearing together. I waived in to the committee today and had just come over from another hearing, so I just picked up the witness testimony. I came in and asked—I looked at the list, and I asked staff, Well, who are their witnesses and who are our witnesses? They said, Well, this looks like it's pretty much straight down the middle.

I must agree. I appreciate the fact that you put together a balanced hearing that's been very informative. It's the first one I've had like this since I got to Congress.

Mr. HIGGINS. You're always welcome.

Mr. IVEY. Thank you, sir.

I did want to follow up on Mr. Gonzales' questions about the drones issue. Because when we went down to—I guess it was in Brownsville, and we were talking with some of the Border Patrol agents, they were echoing what he said. They said there's a lot of drones, that it's increased a lot, that more of them are being used to now ship the drugs, and that they were outnumbered. The ratio of 17:1 sticks out in my mind for some reason.

I think, Mr. Correa, we were trying to get some—and I don't know if it happened or not—but some language in the bill that we passed to try and see if we could get additional funding to increase your capability to get drones to try and respond to the amount that they're using. I know they're very well-funded, they're keeping up with technology, and we have to hustle to keep up with them.

But I did want to make sure that that's something that would be helpful to you. We—you know, resources are short, but if you need additional help with the drone counter push on our part, you know, I would like to hear what your position is on that.

Mr. MANDRYCK. Absolutely, sir. Drones are something that's not going away. We're going to continue to see those, whether it's surveillance or narcotics movement.

We also support the vast majority of seer activities that take place, so Super Bowl, large-scale events with the counter-UAS approach. So it's a holistically beneficial program.

Mr. IVEY. Yes. I think there's legislation that's coming through the House, but it's got multiple committees because there's multiple types of jurisdiction. So that means it's got a hard path to travel, but hopefully we can get there. With your push, it might help to move it forward. So thank you for that.

I wanted to ask you too about China and some of their activities. I think one of you said that they have porous borders, and so it's easy for, you know, bad actors to ship precursors and the drugs

out. Then I believe it was Mr. Chester who mentioned that, to the extent China is being cooperative, it can really enhance our efforts to reduce the drug flow.

What kinds of additional steps can we take, in your view? I know this is ticklish. You're not State Department necessarily. But what can we do to help to address that? Because if we can help to cut it off at the source, that would really help our issues here.

Mr. CHESTER. You know, thanks very much. I work with my State Department colleagues on this literally every day, and they do a remarkable job, help managing this relationship.

I think the first thing is we need dialog with the PRC government, routine collaboration like we've had in the past. That's the first thing.

The second thing that we've specifically asked them to do is we've presented them with what we call the three asks. The first one is implement quality know-your-customer standards, so that the shippers of precursors, pill presses, dye molds, encapsulating machines know that they're going to go to a legitimate business and they're just not filling every single order. The second one is to properly label those items in accordance with World Trade Organization standards, so that pill press parts are labeled as pill press parts, so that they can be inspected, and motorcycle parts are labeled as motorcycle parts. The third thing is to agree with the United States and other countries on the—and it's a finite list, of legitimate uncontrollable chemicals because they have so many legitimate uses that can be combined and turned into precursor chemicals for making synthetic opioids or other synthetic drugs.

Three things that are really just due diligence on the part of any responsible country that not only the PRC but all countries—and we've talked to all countries about doing this—in order to be able to help dry up this permissive environment in which these items can move around in plain sight.

The last thing is the PRC needs to join with us in partnership at the global level, and this is particularly true in light of the establishment of this global coalition. They hold a major role in this problem, and they should, as any great nation, hold a major role in its solution as well. We look forward to them engaging with us and doing that.

Mr. IVEY. I thank you for that.

I yield back the balance of my time. Thank you again, Mr. Chairman.

Mr. HIGGINS. The gentleman yields.

My colleague from Texas, Ms. Jackson Lee, is recognized for 5 minutes for questioning.

Ms. JACKSON LEE. Let me thank the Chairman and Ranking Member. I was just in Judiciary, so I'm somewhat delayed and may be asking questions that have already been asked.

But let me start with the principal deputy administrator of the DEA, Mr. Papadopoulos, and really hone in on the DEA's work with respect to opioids and the fact that fentanyl, which is synthetic, is found in drugs for medical use, and it is sometimes used to lace other drugs, and as well sold on-line, come in pink pills, multicolored pills.



How difficult is the fight for fentanyl, and what are the elements the DEA uses? I know there's some on the criminal side. You deal with scheduling of drugs, not yet scheduled fentanyl. But how difficult is this fight?

Mr. PAPAPOULOS. Yes. Thank you, ma'am. So we are using all the tools that we have available and the authorities that we have been given to battle this unprecedented epidemic that we're facing right now. As you mentioned, we are having millions of pills come into the United States. Six out of 10 have a potentially lethal dose. That's up from 4 out of 10 last year. So we are committed to doing everything we can to prevent the overdose deaths that are happening throughout the country.

Ms. JACKSON LEE. Well, what is your—let me get you to be more extensive. Everything you can. But what are the—are you targeting certain areas? How do you incorporate the fact that there's medical uses? You know, are you seeing a criminal element that is separate and apart from the cartels? Because fentanyl is everywhere. Can you comment on that, please?

Mr. PAPAPOULOS. Yes. So we are—domestically, I mentioned Operation Last Mile, which resulted in the distributors—cartel distributors arrests in the United States. Also, we have Operation Overdrive, which is data-driven, and it focuses on areas of the country that have high number of overdose deaths and drug-related violence. We're working with our State and local partners to identify those areas.

Most recently, we are in 57 cities in 36 States. Phase 1, which ended last year, resulted in significant decreases in fatal shootings and homicides in Philadelphia in the Kensington area. Phase 2 is on-going, and phase 3 is coming soon. So we're doing that.

We also have Operation Overdose Justice, which focuses on deaths resulting from fentanyl, where we partner with local counter—State and local counterparts to bring the most appropriate charges when somebody does die either through a fake prescription pill or if it's fentanyl that's mixed with another drug.

Ms. JACKSON LEE. Let me thank you very much. I am in the business of stopping fentanyl and particularly the impact that it's had on our children. I want to ask Mr. Chester what is being done as relates to research or treatments on opioid addiction, but particularly the impact on school children.

At this time, Mr. Chairman, I'd like to introduce into the legislation—my legislation, which is Stop Fentanyl Now Act of 2023. I hope that there will be an opportunity for this legislation to be reviewed in this committee, Judiciary, and I know that there's an Energy and Commerce component. But included in here is the ability for more institutions to use the strips. Some States outlawed them as being a criminal element.

So, Mr. Chester, you want to comment particularly focused on school children and the crisis we have?

Mr. CHESTER. Yes, Congresswoman. Thank you very much. The first thing is our strong emphasis, and particularly in the National Drug Control Strategy, on youth prevention. This is not only preventing at the individual level but looking at the environmental factors that may lead to eventual substance use. That's the first thing.

The second thing, as you mentioned, fentanyl test strips. I would also like to mention naloxone and increasing the availability of naloxone to get it in the hands of everyone who needs it so that anyone who suffers an opioid overdose, who doesn't need to die, that overdose can be reversed with the use of naloxone. Those are two important components of harm reduction. In the National Drug Control Strategy, this is the first time that harm reduction has been mentioned in a National Drug Control Strategy.

The last thing, when you talk about treatment, we have wonderful professionals at the National Institutes of Drug Addiction, at NIDA, who do research on this. I think the most important thing that we can do now is reduce barriers to treatment, particularly medication treatment for opioid use disorder, to ensure that everyone who needs treatment has access to it. That's probably the most critical important thing that we can do in order to take the oxygen out of this illicit supply that's being pulled across our borders.

Ms. JACKSON LEE. Mr. Chester, thank you. But I wanted to end on your testimony, because if we can cut the desire, then the supply has nowhere to go. It is in our schools. My legislation, Stop Fentanyl Now Act, does naloxone, does the strips, and you have indicated it is a holistic approach.

I just want to end, Mr. Chairman, by—I'm not sure if I did get a answer, but I'm asking unanimous consent to introduce in the record the Stop Fentanyl Now Act.

Mr. HIGGINS. Without objection.

[The information follows:]

(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R. 4272**

To provide public awareness and outreach regarding the dangers of fentanyl, to expand the grants authorized under the Comprehensive Opioid Abuse Grant Program, to expand treatment and recovery services for people with opioid addictions, and to increase and to provide enhanced penalties for certain offenses involving counterfeit pills.

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IN THE HOUSE OF REPRESENTATIVES

Ms. JACKSON LEE introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To provide public awareness and outreach regarding the dangers of fentanyl, to expand the grants authorized under the Comprehensive Opioid Abuse Grant Program, to expand treatment and recovery services for people with opioid addictions, and to increase and to provide enhanced penalties for certain offenses involving counterfeit pills.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Stop Fentanyl Now  
3 Act of 2023”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The United States is in the midst of the  
7 worst opioid epidemic in history.

8 (2) Illicit fentanyl is typically mixed into heroin  
9 or pressed into counterfeit pills made to look like  
10 controlled prescription drugs such as oxycodone,  
11 hydrocodone, and Xanax.

12 (3) From September 29 through December 15,  
13 2021, the DEA seized more than 1,500 pounds of  
14 substances containing fentanyl and 8.4 million  
15 fentanyl-laced, fake prescription pills. The seizures  
16 were directly linked to at least 39 overdose deaths  
17 and included at least 76 cases that involved buying  
18 and selling drugs on social media apps. Over the  
19 course of that year, the DEA seized over 15,000  
20 pounds of substances containing fentanyl and 20.4  
21 million fake pills, with roughly four out of every 10  
22 pills containing lethal doses of fentanyl.

23 (4) The widespread availability of illicit  
24 fentanyl, the proliferation of counterfeit pills resem-  
25 bling prescription drugs but containing illicit  
26 fentanyl or other illicit drugs, and the ease of pur-

1 chasing pills through social media have increased  
2 fatal overdose risk among adolescents.

3 (5) According to the Centers for Disease Con-  
4 trol, overdose deaths reached a historic high of more  
5 than 90,000 drug overdose deaths in 2020, a 31  
6 percent increase compared with the previous year  
7 and in 2021, there were more than 106,000 reported  
8 drug overdose deaths in the U.S., with deaths involv-  
9 ing synthetic opioids (primarily fentanyl) numbering  
10 70,601.

11 (6) Between 2019 and 2021, more than 2,200  
12 adolescents overdosed, 96 percent of whom were be-  
13 tween the ages of 15 and 19. Fentanyl was involved  
14 in 84 percent of the deaths. While counterfeit pill  
15 evidence was present in 25 percent of adolescent  
16 overdose deaths, this is likely an underestimate be-  
17 cause pills present at the scenes of the overdose  
18 deaths were not always tested.

19 (7) Many overdose deaths are preventable with  
20 public health interventions such as education, harm  
21 reduction, and treatment access.

22 (8) Public education campaigns can teach teen-  
23 agers, parents, and others on the dangers of  
24 fentanyl and counterfeit pills and educating individ-  
25 uals on mitigating practices can be beneficial, in-

1 cluding emphasis on not initiating drug use, not  
2 using drugs while alone, using fentanyl test strips,  
3 and having overdose reversal drugs readily available.

4 (9) Opioid antagonists, such as naloxone, can  
5 be used during emergencies to reverse opioid  
6 overdoses and are effective at preventing fatal drug  
7 overdoses.

8 (10) The Centers for Disease Control and Pre-  
9 vention reported that despite an increase in prescrip-  
10 tions for emergency opioid antagonists, not enough  
11 of the medication is getting into the hands of those  
12 who need it most.

13 (11) Expanding access to emergency opioid an-  
14 tagonists and encouraging people to obtain emer-  
15 gency opioid antagonists are in the best interest of  
16 the health and safety of the public.

17 (12) Increasing access to medications like meth-  
18 adone and buprenorphine that effectively treat opioid  
19 use disorder can save lives.

20 (13) Greater access to drug detection tools such  
21 as fentanyl strips are a low-cost method of helping  
22 prevent drug overdoses and reducing harm.

1 **SEC. 3. COMPREHENSIVE OPIOID ABUSE GRANT PROGRAM.**

2 Section 3021 of title I of the Omnibus Crime Control  
3 and Safe Streets Act of 1968 (34 U.S.C. 10701(a)) is  
4 amended—

5 (1) in subsection (a), by adding at the end the  
6 following:

7 “(11) Developing, implementing, or expanding a  
8 program that provides training and resources for  
9 teachers and other school officials in public or pri-  
10 vate middle schools, high schools, institutions of  
11 higher education (as such term is defined in section  
12 101 of the Higher Education Act of 1965), or area  
13 career and technical education schools (as such term  
14 is defined in section 3 of the Carl D. Perkins Career  
15 and Technical Education Act of 2006) on—

16 “(A) carrying and administering an opioid  
17 overdose reversal drug or device approved or  
18 cleared by the Food and Drug Administration;  
19 or

20 “(B) acquiring such a drug or device for  
21 teachers and other school officials who have re-  
22 ceived such training to so carry and administer  
23 such a drug or device.”; and

24 (2) by adding at the end the following:

25 “(g) PREFERENTIAL CONSIDERATION.—In awarding  
26 grants under this part, the Attorney General may give

1 preferential consideration to an application from an appli-  
2 cant in a State that—

3           “(1) has in effect a law that exempts from  
4 criminal and civil liability teachers and other school  
5 officials who carry or administer in good faith an  
6 opioid overdose reversal drug or device approved or  
7 cleared by the Food and Drug Administration if  
8 trained to carry or administer such drug or device;  
9 or

10           “(2) has in effect a law that exempts from  
11 criminal or civil liability the possession, sale, or pur-  
12 chase of fentanyl drug testing equipment, including  
13 fentanyl test strips.”

14 **SEC. 4. PREVENTION AND TREATMENT OF FENTANYL-**  
15 **LACED SUBSTANCE USE.**

16           (a) PREVENTION.—The Secretary of Health and  
17 Human Services, in consultation with the Attorney Gen-  
18 eral, shall develop and implement a national strategy to  
19 prevent the use of fentanyl, fentanyl-related substances,  
20 and fentanyl-laced substances. The strategy shall include  
21 the following elements:

22           (1) Education and outreach to the public about  
23 the dangers of fentanyl, fentanyl-related substances,  
24 and fentanyl-laced substances.



1           (2) Development of treatment programs for in-  
2           dividuals who are addicted to fentanyl and fentanyl-  
3           related substances.

4           (b) TREATMENT.—The Secretary of Health and  
5           Human Services shall provide grants to States and local-  
6           ities to support the development and implementation of  
7           treatment programs for individuals who are addicted to  
8           fentanyl and fentanyl-related substances.

9           **SEC. 5. ENHANCED LAW ENFORCEMENT EFFORTS.**

10          (a) INCREASED RESOURCES.—The Attorney General  
11          shall increase the resources available to law enforcement  
12          agencies to combat the trafficking of fentanyl, fentanyl-  
13          related substances, and fentanyl-laced substances. The At-  
14          torney General shall prioritize the following activities:

15               (1) Investigation and prosecution of individuals  
16               who traffic fentanyl, fentanyl-related substances, and  
17               fentanyl-laced substances.

18               (2) Disruption of the supply chain for fentanyl,  
19               fentanyl-related substances, and fentanyl-laced sub-  
20               stances.

21               (3) Prevention of the importation of fentanyl,  
22               fentanyl-related substances, and fentanyl-laced sub-  
23               stances into the United States.

24          (b) INTERAGENCY COORDINATION.—The Attorney  
25          General shall establish an interagency task force to coordi-

1 nate the efforts of Federal, State, and local law enforce-  
2 ment agencies to combat the trafficking of fentanyl,  
3 fentanyl-related substances, and fentanyl-laced sub-  
4 stances.

5 **SEC. 6. RESEARCH.**

6 The Secretary of Health and Human Services shall  
7 conduct research on the following topics:

8 (1) The effects of fentanyl, fentanyl-related  
9 substances, and fentanyl-laced substances on human  
10 health.

11 (2) The development of new treatments for in-  
12 dividuals who are addicted to fentanyl and fentanyl-  
13 related substances.

14 (3) The best practices for preventing the use of  
15 fentanyl, fentanyl-related substances, and fentanyl-  
16 laced substances.

17 **SEC. 7. INCREASE IN PUNISHMENT.**

18 Section 303(b) of the Federal Food, Drug, and Cos-  
19 metic Act (21 U.S.C. 333(a)) is amended by adding at  
20 the end the following:

21 “(9)(A) Notwithstanding subsection (a)(1), any  
22 person who violates subsection (a), (b), (c), or (g) of  
23 section 301 with respect to any drug, if such viola-  
24 tion results in—

1           “(i) serious bodily injury, shall be impris-  
2           oned not more than 10 years, fined not more  
3           than \$1,000,000, or both; or

4           “(ii) death, shall be imprisoned for any  
5           term of years or for life, fined not more than  
6           \$5,000,000, or both.

7           “(B) Notwithstanding subsection (a)(2), any  
8           person who violates subsection (a), (b), (c), or (g) of  
9           section 301 with respect to any drug with the intent  
10          to defraud or mislead, if such violation results in—

11          “(i) serious bodily injury, shall be impris-  
12          oned not more than 20 years, fined not more  
13          than \$5,000,000, or both; or

14          “(ii) death, shall be imprisoned for any  
15          term of years or for life, fined not more than  
16          \$10,000,000, or both.

17          “(C) Any person who violates subsection (a),  
18          (b), (c), or (g) of section 301 with respect to any  
19          drug promoted or sold online shall, in addition to the  
20          punishment provided for such violation, be sentenced  
21          to a term of imprisonment of not more than 5  
22          years.”.

1 **SEC. 8. EXCLUSION OF FENTANYL DRUG TESTING EQUIP-**  
2 **MENT FROM TREATMENT AS “DRUG PARA-**  
3 **PHERNALIA”.**

4 Section 422(f) of the Controlled Substances Act (21  
5 U.S.C. 863(f)) is amended—

6 (1) in paragraph (1), by striking “or” at the  
7 end;

8 (2) in paragraph (2), by striking the period at  
9 the end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(3) the possession, sale, or purchase of  
12 fentanyl drug testing equipment, including fentanyl  
13 test strips.”.

14 **SEC. 9. SENSE OF CONGRESS.**

15 It is the sense of Congress that fentanyl deaths  
16 should be addressed by—

17 (1) increasing funding for prevention and treat-  
18 ment programs, including—

19 (A) programs that provide education and  
20 treatment for people who are at risk of opioid  
21 addiction or overdose; and

22 (B) school-based programs, community  
23 outreach programs, and treatment centers;

24 (2) expanding access to naloxone (a medication  
25 that can reverse the effects of an opioid overdose)

1 such as by making naloxone available over-the-  
2 counter or by providing subsidies for its purchase;

3 (3) cracking down on the trafficking of  
4 fentanyl, including—

5 (A) increased efforts both domestically and  
6 internationally;

7 (B) increased funding for law enforcement  
8 agencies;

9 (C) increased penalties for fentanyl traf-  
10 ficking; and

11 (D) working with other countries to stop  
12 the flow of fentanyl across borders;

13 (4) improving data collection and analysis, in-  
14 cluding the improvement of Federal data collection  
15 and analysis on fentanyl deaths, to better under-  
16 stand the scope of the problem and identify effective  
17 prevention and treatment strategies; and

18 (5) supporting research on new treatment op-  
19 tions, including—

20 (A) support for research on new treatment  
21 options for opioid addiction and overdose; and

22 (B) funding for research on new medica-  
23 tions, new delivery methods, and new ap-  
24 proaches to treatment.

Ms. JACKSON LEE. Additionally, I want to introduce into the record, “Fentanyl is dominating headlines, but there’s a more comprehensive drug problem happening in Texas.” It goes on to talk about the broader crisis, synthetic opioids are not taken alone, and so health care and law enforcement officials are dealing with multiple deadly drugs at once. That means we must cut into the desire. I use that term because it’s desire because you’re addicted.

[The information follows:]

SUBMITTED FOR THE RECORD BY HONORABLE JACKSON LEE

FENTANYL IS DOMINATING HEADLINES, BUT THERE'S A MORE COMPREHENSIVE DRUG PROBLEM HAPPENING IN TEXAS

*Lawmakers are passing laws in an attempt to slow the rise in fentanyl overdoses, but drug advocates warn the opioid is mostly a booster for other illegal drugs.*

*by Stephen Simpson*

*June 19, 2023, 5 AM Central*

Fentanyl has been in the headlines across Texas, grabbing the attention of State leaders worried about the drug crossing over the State's border with Mexico and overdose deaths among young people.

But often left out of the discussion is that the drug is one part of a broader addiction crisis in the State. The synthetic opioid is rarely taken alone, and health care and law enforcement officials are dealing with multiple deadly drugs at once.

The illicit use of fentanyl began increasing in Texas around 2015, quickly sparking a crisis. Obtained with a doctor's prescription, the synthetic opioid can be an effective pain reliever. But there's been a rise both in the illegal use of the drug and now the manufacture of counterfeit prescription drugs that contain fentanyl but are packaged to look like something else, in an effort to cause addiction and generate repeat buyers.

"It's certainly, at this moment, the drug and the drug supply that is the most dangerous," said Katharine Neill Harris, a drug policy fellow at Rice University's Baker Institute for Public Policy.

Opioids, including heroin, prescription pills, and fentanyl, have caused the most overdose deaths in Texas, according to a Texas Health and Human Services report that studied death certificate data from 2010 to 2019.

And because opioids are often mixed with other drugs, there's been a rise in deaths known as polysubstance overdoses. The most recent state data shows those deaths reaching a rate of four per 100,000 people in 2019.

The most prevalent drug combinations were commonly prescribed pills, like hydrocodone and oxycodone, mixed with depressants like benzodiazepines and psychostimulants that include amphetamine and methamphetamine.

"That is the reason I caution very much against focusing on one drug," Neill Harris said. "Fentanyl is certainly a big problem. But I don't think it's necessarily the last drug crime crisis that we are going to face."

The role of methamphetamine in the illegal drug market has been pushed aside in headlines as images of drug use in the South turned from exploding meth labs to potentially deadly fentanyl pills. But drug experts say meth has made an unwanted comeback as meth manufacturers have begun making a stronger product.

"Meth is eating everybody's lunch and nobody's talking about it. Meth is crawling up on everybody," said Peter Stout, president and chief executive officer of the Houston Forensic Science Center. "Meth fatalities are way up even if you look at the Texas numbers."

Experts say if Texas wants to solve the overdose problem, officials here must fully realize the state has an overall drug issue that goes beyond fentanyl. Here's a look at the broader drug situation across Texas.

#### WHAT ARE THE DRUG TRENDS?

When the University of Texas at Austin's Addiction Research Institute studied calls made to poison control centers, admissions to drug treatment programs and drug seizures in 2021, researchers found the most common drugs flowing across the State's southern border from Mexico were methamphetamine, heroin, cocaine, marijuana, fentanyl, benzodiazepines like Xanax, and synthetic cannabinoids more commonly known as "spice" or K2.

While marijuana is still popular in Texas, its role in the illegal drug market has diminished greatly as 25 states across the country so far have passed laws to legalize it. When Texas legalized hemp in 2019, the prosecution of low-level pot cases declined due to the costly testing needed to determine if a vape pen liquid or a gummy contains marijuana or hemp because both come from the same plant species.

But hemp contains less than 0.3 percent of tetrahydrocannabinol, or THC, the ingredient in marijuana that gets you high. Anything with less THC is hemp.

Synthetic narcotics like fentanyl, meanwhile, have shot up the ranks of causes of overdose deaths. In the past 5 years, deaths from synthetics have surpassed deaths from other opioids, heroin and depressants.

## WHAT IS FENTANYL?

Illegally manufactured fentanyl is a perilous chemical experiment, a stew of synthetic opioids.

Opium derived from poppies has long been used as a painkiller and recreational drug. Opioids like fentanyl or oxycodone are chemical concoctions that duplicate those effects.

Fentanyl was created in 1960 and approved for use in America in 1968. It's most commonly used as a sedative and pain reliever for patients. Legally obtained fentanyl is usually administered to patients through pills, intravenous therapy, skin patches or nasal spray.

But it can also be distilled and blended to produce a fine powder that can be easily added to other drugs.

Its potent molecules scurry straight to the brain, where thousands of receptors, similar to tiny satellite dishes, pull in signals from cells in the body. They have different jobs, some gathering information to control organ functions, others emotions or moods.

Fentanyl latches on to the receptors that signal pain and shuts them down. And when those receptors are turned off, the human body reacts in ways that can be fatal, including shutting down lungs and other vital organs.

The drug is considered 100 times more potent than morphine and 50 times more potent than heroin.

Fentanyl isn't the only drug mixture that has the Federal Drug Enforcement Administration concerned as the growing threat of xylazine is starting to make its way into Texas.

## XYLAZINE: A NEW THREAT

Xylazine is a tranquilizer, as opposed to a painkiller, doing its work by numbing nerves rather than switching off receptors in the brain. It targets the central nervous system, the nerve highways running in and out of the spinal column that carries messages to the rest of the body.

Developed in 1962, it's used by veterinarians to keep elephants and horses calm enough to be examined or have their teeth cleaned. It mostly comes in liquid form and is sold in vials or preloaded syringes.

When tranquilizers are used, the spinal column sends messages to the brain to slow down a bit. This produces a sense of calm and elation, which is why tranquilizers are also used to treat anxiety, panic attacks and sleep disorders.

The Drug Enforcement Administration reported the first instances of this tranquilizer being used in illegal drug activity in the early 2000's by drug dealers in Puerto Rico when they began mixing it with other substances. The practice has now spread across the United States and has been found recently in Texas mixed with fentanyl.

Xylazine has been found in a growing number of overdose deaths across the country and is commonly encountered in combination with fentanyl, cocaine, heroin and a variety of other drugs.

## METH

Methamphetamine is a white, odorless, crystalline powder that was developed early in the 20th century from its parent, amphetamine, and was originally used in nasal decongestants and inhalers. It can come in liquid form, which is easily made into a crystal form by drug traffickers. The highly addictive stimulant outpaced all others in the 2021 UT study of Texas drug trends.

The drug targets the brain and the spinal cord to create a sense of well-being or euphoria. Symptoms can include talkativeness, decreased appetite and a pleasurable sense of well-being. Meth also speeds up the body's systems to sometimes lethal levels by increasing blood pressure and heart and respiratory rates.

Texas drug labs have recently started seeing meth being placed in counterfeit Adderall pills, meaning a segment of meth users might be unaware they are even addicted to the drug.

## HEROIN

Heroin is made from morphine, a natural substance taken from the seed pod of an opium poppy plant typically grown in Asia, Mexico and Colombia. It's often portrayed in film and television as a needle drug, but the substance can also be snorted or smoked. In the past, heroin was often mixed with crack cocaine, but fentanyl has become the primary substance being added to poppy plant extract. Dealers will often "cut" heroin with other substances to allow them to sell more of it at a higher price.

The 2021 UT study of drug trends showed that Texas has avoided the heroin overdose crisis seen in other states because Mexican black tar heroin is the most common version of the drug found in the state. Black tar heroin tends to have an average purity of 28 percent and cannot be easily mixed with fentanyl.

“Tar” heroin is usually sold in small balloons from which the user extracts the sticky substance from the balloon by mixing it with water over heat.

#### COCAINE/CRACK

Cocaine, the highly addictive stimulant made from coca leaves, was used more than a century ago to treat a wide variety of illnesses and was often used by early surgeons to block pain before local anesthetics were developed. Frequent use can alter brain structure and function. Users can inject or snort the powdered version of cocaine. “Crack” is the term often given to cocaine after it has been refined into a smokable substance.

#### WHAT CAN BE DONE?

Lawmakers in Texas have recently tried to tackle the state’s overdose problem by aggressively attacking fentanyl distribution and use by means of enforcement and awareness.

Last week, Gov. Greg Abbott signed four bills to combat the growing fentanyl crisis, including House Bill 6, which classifies overdoses from the synthetic opioid as “poisonings,” triggering murder charges for those convicted of giving someone a fatal dose of the synthetic opioid.

“These four laws will forever change Texas through new protections that will help save lives,” he said in a press release. “In 2022, more than 2,000 people died from fentanyl in Texas—more than five a day. It is the No. 1 killer of Americans ages 18–45.”

Other measures signed by Abbott will establish a Fentanyl Poisoning Awareness Month in October and require public schools to provide students with staff to assist with fentanyl abuse prevention and drug poisoning awareness. A fourth law will allow the distribution of Narcan or other opioid antagonists to Texas colleges and universities.

However, bold substance abuse measures like legalizing test strips were once again rejected by lawmakers.

Neill Harris, the drug policy fellow at Rice University’s Baker Institute for Public Policy, said to combat fentanyl and the next impending drug crisis, the state must increase access to medical substance abuse treatments over enforcement measures.

“Until we have policies that address the demand, we’re going to continue to have a problem with drug use,” she said. “Law enforcement has always had problems with reducing the drug supply. We look back over decades and it has never been effective at slowing down the supply. Because there’s always a demand. It’s just simple economics.”

Michele Steeb, a senior fellow at the Texas Public Policy Foundation, a conservative think tank, said their organization views addiction as a complex brain disorder disease.

“Well-supported scientific evidence shows that brain disruptions reduce brain function which inhibits the ability to make decisions and regulate one’s actions, emotions, and impulses,” she said. “. . . Diseases require treatment.”

If the State can’t control the supply, Neill Harris said, it’s time to focus on reducing the harm of drug use by legalizing testing strips, making substitute drug treatment like methadone more available and giving more substance use options to the uninsured.

Ms. JACKSON LEE. So I thank you, Mr. Chairman. I hope you will consider—and the Ranking Member, your courtesies—but I hope you will consider the legislation because we have to find a multiple level of dealing this.

To the other witnesses, my time is gone, so I just want to express my recognition of your presence here, Mr. Cagen, Mr. Mandryck, Mr. Durham. I did not get a chance, but I’m well aware of the work that you’re doing and the challenges that we all have.

I yield back.

Mr. HIGGINS. Yes, ma’am. The gentlewoman yields.



The Ranking Member and I and perhaps our colleague, Ms. Lee, have other questions. So I'm going to open for a second round of questioning and recognize myself.

Mr. Papadopoulos, some things are law and some percentages and statistics are law enforcement-sensitive, so I recognize that. But I'm going to ask you to share with America, to the extent that you can, so that the citizenry can comprehend just what an overwhelming challenge we face regarding the fentanyl that's already in our country.

As we consider the volume seized, which is an unprecedented amount. You guys are pretty much seizing everything you have operational capability to seize, and it's an incredible job that you're doing. But regarding the volumes seized, regardless of at ports of entry or between ports of entry, can you share with America what you would consider to be a number that the public could consume and would not interfere with the operations—what's the percentage of seizures versus the totality of volume that has come into our country?

Mr. PAPAPOULOS. Sir, thanks for the question. I don't—I think DEA strives to seize as much—as many drugs as possible. We don't find any acceptable amount of drugs entering the United States.

Mr. HIGGINS. Of course.

Mr. PAPAPOULOS. So we continue to do whatever we can.

Mr. HIGGINS. Of course. You're seizing all you—I would imagine if you had twice the staff, you'd be seizing twice the volume that you have right now. There's so much out there.

A drug dealer told me last year, he said, Cap, we have so much fentanyl, we're giving it away. It's why people are dying. They want their product to be more popular on the streets, so they're making it heavier. This is a guy who's been in the game for quite some time, is incarcerated. He said that they essentially are giving volumes away, and when people start dying, they reel it back. He said that they abandoned volumes of fentanyl if they're going to cross State lines, if they're moving an operation to another State, because it's so much cheaper to replace the fentanyl than it is to risk the inter-State trafficking.

So you're seizing unbelievable volumes of fentanyl. But how does that volume compare with what, in your estimation, would be the total? Are you seizing 25 percent, 50 percent, 15?

Mr. PAPAPOULOS. Sir, I'd like to consult our intelligence division on that. I don't know that—I would want to give you a more precise answer.

Mr. HIGGINS. Right next to you.

Mr. PAPAPOULOS. This is DHS, but yes.

Mr. MANDRYCK. Sir, so a little explanation first. The challenge with something like fentanyl is being synthetic, there's no agriculture-based place to get an initial estimate. So unlike cocaine or marijuana where we can kind of do an oversight to see general cultivation estimates, we can't do that with synthetics like fentanyl or methamphetamine.

When we look at it holistically from an intelligence perspective, it's probably within that 25 percent mark based off demand.

Mr. HIGGINS. Thank you. I think that's an honest answer. That's an honest answer, and this will paint the picture for America of the challenge that we face.

I yield the balance of my time and recognize the Ranking Member for additional questions.

Mr. CORREA. Thank you, Mr. Chairman.

I'm going to follow up on your question from a different perspective. Ports of entry, Mr. Mandryck—and correct me if I'm wrong here—but only 2 or 3 percent of our passenger cars are actually inspected right now with nonintrusive technology. Fifteen to 17 percent of our commercial vehicles are inspected, and you have these record volumes of seizures. It's—the Biden administration now is talking about going to 40 percent inspection of vehicles coming through and maybe 70 percent of commercial vehicles by 2026.

I'm going to ask you to straight line and speculate. What's it going to do to the seizures at the border?

Mr. MANDRYCK. Sir, as part of the layered approach, the non-intrusive inspection has become a key part of it. With that, you know, 2 percent in the passenger vehicles, that's yielded a significant volume of overall seizures. So that extrapolation from that 2 percent to 40 percent, we'll have significant increase in seizures. Once you layer in things like the officer intuition, the canine capabilities, those seizure volumes are going to continue to increase.

Mr. CORREA. Again, if I heard you earlier, all of you, your testimony, you're looking at drones now being a way, by the way, of actually bringing in fentanyl into the United States. Is that correct?

Mr. MANDRYCK. There certainly is that potential, yes, sir.

Mr. CORREA. I mean, I don't know what a drone costs, and I don't know what the value of a payload would be. But if we do a cost-benefit analysis, I'd imagine you can just flood any part of our border or borders to come up with a very profitable situation.

Mr. MANDRYCK. Yes, sir. The majority of the drones we've seen commercially available, things like the DJI, a couple hundred dollars to a thousand dollars of payload capacity is, you know, 5-ish kilograms, plus or minus, depending on what you're willing to pay.

Mr. CORREA. How much would that be in terms of value of fentanyl?

Mr. MANDRYCK. Depending on if it's—

Mr. CORREA. You've got a \$200 drone. What's the value of the payload?

Mr. MANDRYCK. You could easily have, you know, a million dollars' worth per flight and continuous flights throughout the day.

Mr. CORREA. How much?

Mr. MANDRYCK. Easily have a million dollars per—

Mr. CORREA. A million dollars. So that's a pretty good return on your investment.

I know, this last week I was in my district, and I took a tour of a contractor that's about to put out a manu—manufacturing really a system, not only of radar, but radar to interfere with the controls of drones as they move forward. I would imagine that's also in your horizon in terms of investing for our national defense and border defense? Yes? No?

Mr. MANDRYCK. Yes, sir.

Mr. CORREA. Again, gentlemen, I would just come back to my earlier statement and challenge that I made, which is, let us know what we, the Members of Congress, need to look at to help you do a better job of defending our country against fentanyl and other negative things that come in. You're the experts. You know, we look at little patterns, little tidbits of what's going on, but you're the experts, and you need to let us know what it is that you need.

So thank you, Mr. Chairman. I yield the rest of my time to you.

Mr. HIGGINS. The gentleman yields.

The gentlewoman, Ms. Lee, is recognized for additional questions.

Ms. JACKSON LEE. I thank the Chairman.

I want to just follow the line of questioning that I did not get a chance, and it might be redundant, redundant, redundant, but maybe asked in a different way.

Whether it's the DEA or whether it's CBP and others, can I get—was it said—total amount in dollar value that's coming into the United States? Second, is most of it coming through the ports of entry, legal ports of entry?

Mr. MANDRYCK. Ma'am, I can begin to answer that question for you. So, so far in fiscal year 2023, we're at just about 20,000 pounds of fentanyl seized by CBP along the border, 18,000 pounds of that with our Office of Field Operations at our ports of entry, and a little over 2,000 pounds with the U.S. Border Patrol.

Ms. JACKSON LEE. Would you be able to capture what that might be in street value or any value?

Mr. MANDRYCK. It's a little bit tougher, depending on the purity levels, powder versus pill format. With Operation Blue Lotus, as I had mentioned, alongside Four Horsemen, we've seized about 10,000 pounds that had a street value of about \$90 million.

Ms. JACKSON LEE. DEA, do you have a different number of what you've been able to deal with?

Thank you. Thank you very much.

Mr. PAPADOPOULOS. Ma'am, we've seized, this fiscal year, approximately 57 million pills, which is about the same amount that we seized last year, and about 13,000 pounds of fentanyl powder. Again, the amounts vary. Pills can run anywhere from a few dollars if you're buying wholesale, all the way up, you know, if you're just buying a single pill, \$10 to \$20 a pill. So it's hard to estimate.

Ms. JACKSON LEE. What have you found—how difficult is the—first of all, to say what you've seen, if you're working with collaborative agencies of on-line sales and how difficult it is to catch the on-line sales. I give the example that is so tragic and so difficult, loving parents, great athlete, middle schooler, high schooler, A student, or average student, loved by all. One moment they're going upstairs to go to bed, and the next moment, in the morning hours, they are not with us. Pink pills, the on-line sales, the sale to children.

Mr. PAPADOPOULOS. Yes, ma'am. Social media and on-line sales are an increasing problem that we are keeping a very close eye on. The cartels are advertising and selling on social media. In Operation Last Mile, which I mentioned earlier, which was the U.S. distributors, it was over 1,400 cases. About 40 percent of them in-

volved social media. So it is a certain issue that we are keeping an eye on.

As you mentioned, all these deaths are tragedies, of course. I would point out that we had family members last summer come into DEA headquarters and tell us their stories, and they shared stories similar to what you just mentioned. We started the Faces of Fentanyl, which is in our lobby. It started with a couple of hundred pictures. It is now up to 5,000 pictures. It covers 8 walls in the DEA headquarters lobby that every DEA employee has to walk past to get to work that works at headquarters. The youngest person on that wall is 17 months old and the oldest person is 70 years old. A lot of them did buy the pills that ended up killing them over social media.

Ms. JACKSON LEE. This—our approach to getting that—again, my legislation deals with enhanced penalties that's on the back side of it for those utilization on social media to sell pills. So it's on the criminal end, it has the treatment end, as Mr. Chester emphasized. But, anyhow, you know how do we do an eagle eye on that, those sales on that phone or that iPad or when you're alone and you order them and they come in whatever package or you send it to somebody else and you have pink pills and you take them?

Mr. PAPADOPOULOS. Yes, ma'am. That goes back to getting the word out. Public awareness is a big part of this, in addition to enforcement. The social media companies, frankly, have to do more.

When I was growing up, if you wanted to buy drugs, you needed to know somebody that had them or where to go to get them. Right now, everybody with a smartphone knows a drug dealer, unfortunately, and that includes our kids. So getting the word out is going to help with that.

I mentioned earlier, we're in an unprecedented crisis which requires unprecedented collaboration, including with social media companies, because with that collaboration we will save lives.

Ms. JACKSON LEE. Thank you very much. I think you're absolutely right. I am a rabid supporter of the First Amendment, but we have a crisis of—you've got 5,000 and growing. We have a crisis around children, and there is a level of responsibility that we must demand. I thank you for these numbers.

Thank you. I yield back.

Mr. HIGGINS. The gentlewoman yields.

I thank the witnesses for their valuable testimony and Members for their questioning.

Members of the subcommittee may have some additional questions for the witnesses and we would ask that the witnesses respond to these in writing. Pursuant to committee rule VII(D), the hearing record will be held open for 10 days.

Without objection, the subcommittee stands adjourned.

[Whereupon, at 4:04 p.m., the subcommittee was adjourned.]

# OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

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## HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

WEDNESDAY, JULY 12, 2023

**Serial No. 118-32**

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WEDNESDAY, JULY 12, 2023

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A tweet from Matthew Foldi dated July 12, 2023, submitted by the Honorable Mike Johnson, a Member of the Committee on the Judiciary from the State of Louisiana, for the record

A press release entitled, "31 Individuals Involved in a Drug Trafficking Organization in Marion County and Lorain County Indicted," June 22, 2023, U.S. Attorney's Office, Northern District of Ohio, submitted by the Honorable Mary Gay Scanlon, a Member of the Committee on the Judiciary from the State of Pennsylvania, for the record

An email thread discussing FBI SAR product ideas before inauguration day 2021, Jan. 15, 2021, submitted by the Honorable Jerrold Nadler, Ranking Member of the Committee on the Judiciary from the State of New York, for the record

Materials submitted by the Honorable Harriet Hageman, a Member of the Committee on the Judiciary from the State of Wyoming, for the record

A letter to the Honorable Jim Jordan, Chair of the Committee on the Judiciary, from the Honorable Rand Paul, Ranking Member of the Senate Committee on Homeland Security & Governmental Affairs from the State of Kentucky, July 11, 2023

A letter to Susan Ferencic, Assistant Director of Weapons of Mass Destruction Directorate of the FBI, from the Honorable Lindsey Graham, Ranking Member of the Senate Committee on the Judiciary from the State of South Carolina, and the Honorable Rand Paul, Ranking Member of the Senate Committee on Homeland Security & Governmental Affairs from the State of Kentucky, April 20, 2023

A letter to Christopher Wray, Director of the FBI, the Honorable Lindsey Graham, Ranking Member of the Senate Committee on the Judiciary from the State of South Carolina, and the Honorable Rand Paul, Ranking Member of the Senate Committee on Homeland Security & Governmental Affairs from the State of Kentucky, June 20, 2023

An image of a text message from Hunter Biden, submitted by the Honorable Matt Gaetz, a Member of the Committee on the Judiciary from the State of Florida, for the record

An email thread discussing FBI SAR product ideas before inauguration day 2021, submitted by the Honorable Jerrold Nadler, Ranking Member of the Committee on the Judiciary from the State of New York, for the record

An article entitled, "Jan 6 protestor Ray Epps reveals he's forced to live in RV hiding after death threats over FBI informant conspiracy: Feds confirm he's NEVER worked for them as he slams right-wing theorists using him as scapegoat," April 24, 2023, Daily Mail, submitted by the Honorable Henry C. "Hank" Johnson, a Member of the Committee on the Judiciary from the State of Georgia, for the record

Materials submitted by the Honorable Glenn Ivey, a Member of the Committee on the Judiciary from the State of Maryland, for the record

An article entitled, "All the Ways Trump, not his foes, sought to 'weaponize' the Government," July 10, 2023, The Washington Post

An article entitled, "A Deeply Ironic Reinforcement of Right-Wing Misinformation," The Washington Post

An article entitled, "Restricting the Government from Speaking to Tech Companies Will Spread Disinformation and Harm Democracy," July 5, 2023, Just Security

A letter to Chair Jason Smith, Chair of the House Committee on Ways and Means, from Abbe David Lowell, Counsel for Robert Hunter Biden, June 30, 2023

#### QUESTIONS AND RESPONSES FOR THE RECORD

Questions to FBI Director Christopher Wray, submitted by the Honorables Ted Lieu from the State of California, Cori Bush from the State of Missouri, Matt Gaetz from the State of Florida, and Andy Biggs from the State of Arizona, Members of the Committee on the Judiciary, for the record  
No response received at time of print.



# OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

Wednesday, July 12, 2023

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Committee met, pursuant to notice, at 10:05 a.m., in room 2141, Rayburn House Office Building, Hon. Jim Jordan [Chair of the Committee] presiding.

*Members present:* Representatives Jordan, Issa, Buck, Gaetz, Johnson of Louisiana, Biggs, McClintock, Tiffany, Massie, Roy, Bishop, Spartz, Fitzgerald, Bentz, Cline, Gooden, Van Drew, Nehls, Moore, Kiley, Hageman, Moran, Lee, Hunt, Fry, Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Schiff, Cicilline, Swalwell, Lieu, Jayapal, Scanlon, Neguse, McBath, Dean, Escobar, Ross, Bush, and Ivey.

Chair JORDAN. The Committee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's hearing on Oversight of the FBI. The Chair now recognizes the gentleman from Texas, Mr. Gooden, to lead us in the Pledge of Allegiance.

ALL. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

Chair JORDAN. The Chair now recognizes himself for an opening statement. Eight days ago, eight days ago on July 4th, in the Western District of Louisiana, the Court found that the Federal government suppressed Americans' First Amendment free speech rights. In his conclusion on page 154, the Court said this, the judge said this:

Plaintiffs are likely to succeed on the merits in establishing that the Government has used its power to silence the opposition: Opposition to COVID-19 vaccines, opposition to COVID-19 mask and lockdowns, opposition to the lab leak theory of COVID-19, opposition to the validity of the 2020 election, opposition to President Biden's policies, statements that the Hunter Biden laptop was true, and opposition to policies of the Government officials in power. All were suppressed.

It is quite telling that each example or category of suppressed speech was conservative in nature. The court further writes, "the U.S. Government seems to have assumed a role similar to an Orwellian Ministry of Truth." Specific to the FBI, the Court said this:

The FBI's failure to alert social media companies that the Biden laptop story was real and not Russian disinformation is particularly troubling.

The FBI had the laptop in their possession since December 2019, and had warned social media companies repeatedly to look out for "hack and dump operation by the Russians prior to the 2020 election."

Even after Facebook, specifically asked whether the laptop story was Russian disinformation, the FBI refused to comment, resulting in social media companies' suppression of the story and as a result, millions, millions of our fellow citizens did not hear the story prior to the November 3, 2020, election. Additionally, the FBI was included in industry meetings, bilateral meetings, received and forwarded alleged misinformation to social media companies, and actually misled companies in regard to the laptop story.

When the Court said the FBI misled, that is a nice way of saying they lied. They lied, and as a result, important information was kept from we, the people, days before the most important election we have, the election of the President of the United States, election of the Commander in Chief.

In a survey last fall, four out of five Americans said they believed there is a two-tiered system of justice in America today. They said that because there is. They said that because of what they have witnessed. Think about what Americans have seen, National School Board Association, left-wing political group writes the White House and asks them to treat parents at school board meetings as terrorists. The Garland Justice Department does just that. They put together a memo, set up a dedicated line of threat communication and a snitch line on parents. As a result, parents get investigated by our FBI, get a threat tag associated with their name, 25 of them. Because whistleblowers came and told us they were investigated by the Federal Bureau of Investigation.

Americans have seen the FBI's Richmond Field Office put together a memorandum saying pro-life Catholics are extremists. They have seen 20 FBI agents, SWAT team members show up at the home of Mark Houck and arrest him in front of his wife and seven children, even though he had indicated he would be happy to turn himself in. What was he arrested for? Him and his 12-year-old son were praying outside an abortion facility. Some guy starts screaming in his son's face and he did what frankly any dad would do, defended his child.

What is interesting is the National School Board Association apologized for the letter, but the Attorney General refuses to rescind his directive. The FBI did rescind, thank goodness, the Richmond Catholic memorandum, but they refuse to tell Congress who wrote it and who approved it. Mr. Houck, when he got his day in court, he was acquitted by a jury of his peers.

Americans' speech is censored, parents are called terrorists, Catholics are called radicals, and I haven't even talked about the spying that took place of a Presidential Campaign or the raiding of a former President's home. Maybe what is more frightening is what happens if you come forward and tell Congress. You are a whistleblower, come tell the legislature, come tell the Congress what is going on, look out. You will be retaliated against. Ask Garrett O'Boyle. He told Congress about these issues. They took his

clearance. They took his pay. They took his kids' clothes. Ask Gary Shapley, a 14-year veteran at the IRS. Handled some of the biggest international tax fraud cases at the agency. He comes forward and the Justice Department kicks him off the case.

Here is what is truly unbelievable, here is what is amazing. With all that history, with all that, the Justice Department, the FBI, want the taxpayers they censored, the parents they labeled, the pro-life Catholics they call radical, they want them to pay for a new FBI headquarters. They want FISA reauthorization of the 702 program in its current form in the Director's opening statement. I mean you can't make this stuff up.

There are 204,000 reasons why Republicans will oppose FISA reauthorization in its current form. Two hundred and four thousand times, the FBI improperly searched the 702 data base. Unlike the FBI censorship, in the Court's opinion, that was focused on conservatives, the FBI's illegal scrutiny wasn't just limited to conservatives. BLM supporters were illegally scrutinized by the FBI as well. I hope our Democrat friends will join us in opposing reauthorization of Section 702 the way it is currently done. I think they will. I hope they will work with us in the appropriations process to stop the weaponization of the government against the American people and end this double standard that exists now in our justice system.

With that, I yield to the gentleman from New York for an opening statement.

Mr. NADLER. Mr. Chair, not that long ago, an oversight hearing of the FBI in this Committee would have been a relatively bipartisan exercise. My colleagues on both sides of the aisle would have asked legitimate questions about the functioning and mission of the Bureau. Some of the questions may have been tough. Debate may have gotten a little heated when we discussed important topics like privacy and discrimination. Our questioning would have been grounded in advancing and overseeing the FBI's dual missions of enforcing Federal laws and countering national security threats on American soil. In short, despite our disagreements, we would have done our duty as Members of the Judiciary Committee.

Today, unfortunately, House Republicans will fall well short of that mark. For them, this hearing is little more than performance art. It is an elaborate show designed with only two purposes in mind, to protect Donald Trump from the consequences of his actions and to return to the White House in the next election. Don't take my word for it. Chair Jordan announced his plan last August, just days after the FBI searched Mar-a-Lago. He told an audience at CPAC, the Conservative Political Action Conference, that the investigation into Trump's wrongdoing was designed to

... help frame up the 2024 race and I hope and I think President Trump is going to run again and we need to make sure that he wins.

Let me repeat that. "We need to make sure that he wins."

In pursuit of this goal, Chair Jordan and Committee Republicans have claimed for months that the FBI is corrupt, rotten, politicized, and their favorite word, weaponized, against the American people. Chair Jordan has launched an array of baseless investigations into the FBI, most premised on absurd conspiracy theories. Some so absurd that the Chair cannot possibly believe them to be true. This

is where the extreme MAGA leadership of this Congress has brought us today. Today, House Republicans will attack the FBI for having had the audacity to treat Donald Trump like any other citizen. The strategy is simple, really. When in doubt, Chair Jordan investigates the investigators. The FBI dared to hold Trump accountable, so Republicans must discredit the FBI at all costs.

You will hear claims today that the FBI's decision to investigate Donald Trump was somehow unfair. You will hear the Republicans attack the indictment of former President Trump on 37 counts related to his gross mishandling of national security information, including information regarding defense and weapons capabilities of both the United States and foreign countries, the United States nuclear programs, potential vulnerabilities of the United States and its allies to military attack, and plans for possible retaliation in response to a foreign attack.

The facts are made clear in the indictment.

The unauthorized disclosure of these classified documents would put at risk the national security of the United States, foreign relations, the safety of the United States military, and human sources and the continued viability of sensitive intelligence collection methods.

Indeed, the indictment goes on to describe how the former President made such unauthorized disclosures, with him boasting about and showing his classified documents to numerous individuals without proper security clearance. You will hear claims today that this indictment against Trump was unfair, maybe even that it was unlawful. You will hear that the FBI should have just asked Trump a little more nicely, one more time, to hand over the documents. You will hear that the case was a political investigation from the start, orchestrated by a liberal-loving FBI that ensures Trump will be wrongfully vilified at every turn.

These claims, of course, are completely untethered from the evidence. Even if you believe, as Chair Jordan claims, that President Trump has committed no crime, surely we can agree that it is dangerous and profoundly irresponsible to have taken these documents from the White House and left them unsecured in Mar-a-Lago.

Again, don't take just my word for it, Trump's Secretary of Defense Mark Esper said that the former President's handling of this information put U.S. service members' lives and the national security at risk. Trump's hand-picked Attorney General Bill Barr, with whom I agree on very little, hit the nail on the head when he described the former President's legal troubles as,

... entirely of his own making. He had no right to those documents. The Government tried for over a year quietly and with respect to get them back and he jerked them around. When he faced a subpoena, he didn't raise any legal argument. He engaged in the course of deceitful conduct. That was a clear crime if those allegations are true.

The former President could have at any time, for months, simply returned the documents and avoided prosecution. House Republicans do not want to talk about any of that. They seem incapable of assigning any agency or responsibility to Donald Trump for problems that are Trump's and Trump's alone.

You might hear today about a man named Steven D'Antuono, the former Special Agent in Charge of the Washington Field Office during the investigation into the documents. Last month, Committee

Republicans brought him in for an interview and shortly after that, Chair Jordan released a letter purporting to describe Mr. D'Antuono's testimony. In fact, Chair Jordan's summary of Mr. D'Antuono's words are a vast mischaracterization of what he actually said. Here is just one example. Chair Jordan has claimed that Mr. D'Antuono said he had "no idea" why the Mar-a-Lago investigation was run out of the FBI's Washington Field Office instead of the Miami Field Office. What the Chair hides are that just seconds later, Mr. D'Antuono explained that "the venue is here" meaning Washington, DC, for the classified documents, that it was "not out of the ordinary for Washington to be lead office running the investigation" and said that Washington has "most experience and knowledge in working public corruption cases" and are "the experts in classified document investigations." Mr. Jordan did not share the full record with the American public because it does not fit his chosen narrative.

My staff has worked to have a minimally redacted version of Mr. D'Antuono's full testimony release and I urge you to read the words for yourself in their entirety. When you compare his actual words to Mr. Jordan's characterization, you will understand why I feel like this hearing room has become a theater. Frankly, that goes for many things that we will hear from the Republicans today. You can expect to hear that the FBI is retaliating against its conservative employees and has a deep-seated conspiracy to support liberal candidates and ideology. These claims are based on the words of several individuals, people Republicans are somewhat laughably calling whistleblowers. In fact, evidence shows that these individuals were suspended for violating serious FBI policy. One provided an unauthorized interview to Russian State-owned media. Another leaked information about an on-going investigation, placing FBI agents and witnesses at risk. Another said that he wanted to use a senior FBI official as "target practice."

Chair Jordan invited some of these so-called Whistleblowers to testify before the Weaponization Subcommittee in May. As it turns out, two of the witnesses were ultimately paid \$250,000 each for their testimony, money raised in part by former Trump aide Kesh Patel and paid by a check with memo line reads "for holding the line."

Yet, Republicans today will try to claim that it is the FBI, and not these witnesses, who are somehow corrupt. Republicans today will also attack President Biden, starting with the IRS investigation into Hunter Biden. They will ignore the fact that U.S. Attorney David Weiss had the authority to bring charges in any district he saw fit and was able to operate fully free of interference. They do not want to acknowledge that despite years of investigation, President Biden has not been found to have engaged in any wrongdoing. Instead, they will try to convince you that Hunter Biden would have been charged with far more serious crimes had it not been for U.S. Attorney Weiss being blocked by the Biden political machine. Once again, when they do not like the outcome, they investigate the investigators and work to discredit the outcome.

Republicans will make false claims about the FBI's Foreign Influence Task Force, claiming that it is somehow censoring conservatives. In fact, the task force plays a key role in making sure that

Russia, China, Iran, and other foreign entities do not again interfere in our elections.

According to Committee Republicans, the task force's efforts to track and prevent foreign influence operations amount to attacks and conservative speech, a nonsensical claim considering that the Foreign Influence Task Force has nothing to do with censoring American free speech and in fact, helps to ensure that American voices are heard by stopping Russian troll farms.

Make no mistake, in making these claims, Republicans have all but rolled out the red carpet and begged Russia to once again interfere in our elections because they believe that doing so will get Trump reelected in 2024. That is the goal of Republicans today. Republican claims that the FBI has been weaponized, their personal attacks on Director Wray, their repeated calls to "defund the FBI," these are not victimless acts. They are a clarion call to anti-government extremists and that call is being heard.

Last year, Director Wray faced multiple credible death threats. FBI employees faced more threats in the months after the Mar-a-Lago search than they had in the entire prior year. The problem has gotten so bad that the FBI has had to stand up an entire new unit dedicated to combating threats to FBI agents and staff. It is far past time that Republicans realize the consequences of their actions.

Republicans may want to downplay Trump's behavior and blame the FBI for his downfall. No matter what they say, Trump risked the safety and security of the United States to remove those documents from the White House, then lied to the government instead of returning to them. Donald Trump must be held accountable and attempts to shield him from the consequences of his own actions are both transparent and despicable.

Ultimately, no matter how many times Republicans attack Director Wray or the FBI or the investigation at Mar-A-Lago, I trust in the rule of law. Mr. Trump will have his day in court. I believe the system will hold him accountable and I thank the men and women of the FBI who helped bring the classified information to safety and protect the national security of our Nation.

Thank you for being here today, Director Wray. I hope your agents will not be disheartened by what they hear today and will continue this kind of work essential to the safety of our Nation. I thank the Chair and I yield back.

Chair JORDAN. The gentleman yields back. Just for the record, the pronunciation of the former Assistant Director in charge of the Washington Field Office is D'Antuono, something that the Ranking Member might have known if he had actually shown up at the deposition like I did. With that, without objection, all other opening statements will be included in the record.

We will now introduce today's witness.

The Honorable Christopher Wray has been the Director of the FBI since 2017. He previously served as the Assistant Attorney General for the Criminal Division of the Department of Justice, the principal Associate Deputy Attorney General, and Associate Deputy Attorney General, and as Assistant U.S. Attorney for the Northern District of Georgia. Director Wray has also worked in private prac-

tice at King & Spaulding LLP. We welcome our witness and thank him for appearing today. We will begin by swearing you in.

Director, would you please rise, raise your right hand, you have done this before. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record show that the witness answered in the affirmative. Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes. We will give you two extra minutes if you like, Director. Then you know how this works. There will be five minutes of questioning and my guess is every single member is going to have questions for you.

So, again, thank you for being here, Director Wray. You are recognized for your opening statement.

#### **STATEMENT OF THE HON. CHRISTOPHER A. WRAY**

Mr. WRAY. Thank you, good morning, Chair Jordan, Ranking Member Nadler, and Members of the Committee. In the time that I have before we get to your questions, I want to talk about the sheer breadth and impact of the work the FBI's 38,000 employees are doing each and every day because the work the men and women of the FBI do to protect the American people goes way beyond the one or two investigations that seem to capture all the headlines.

Take violent crime. Last year alone, working shoulder to shoulder with our partners in State and local law enforcement, the FBI arrested more than 20,000 violent criminals and child predators. That is an average of almost 60 bad guys taken off the streets per day every day.

For our work going after the cartels exploiting our Southwest border to traffic fentanyl and other dangerous drugs into communities nationwide, the FBI is running well over 300 investigations targeting the leadership of those cartels. Working with our partners, we have already seized hundreds of kilograms of fentanyl this year alone, stopping deadly drugs from reaching their intended destinations in States all over the country and saving countless American lives.

Or the thousands of active investigations we now have into the Chinese government's efforts to steal our most precious secrets, rob our businesses of their ideas and innovation, and repress freedom of speech right here in the United States. That is just scratching the surface. The men and women of the FBI work tirelessly every day to protect the American people from what is really a staggering array of threats. We don't do that work alone. The FBI now leads more than 750 task forces nationwide, made up of more than 6,000 State and local task force officers or TFOs, as we call them, for more than 1,800 different State and local agencies. Each of those TFOs represents an officer, a deputy, or an investigator that a local police chief, sheriff, or State superintendent was willing to send our way, certainly not because they didn't have enough work to do in their own department, but because they saw the tremendous value that our FBI-led task forces bring. We are honored and humbled by their trust in us and grateful for their partnership.

The numbers don't tell the whole story. To truly appreciate the impact the FBI and our partners are having, you have got to look at the cases. Just last month, for instance, the FBI charged 31 members of two drug-trafficking organizations responsible for distributing dangerous drugs like fentanyl, cocaine, and methamphetamine throughout the area around Marion, Ohio. In that one investigation run out of the FBI's two-man office in Mansfield, we worked with partners from multiple local police departments and sheriff's offices to take kilos of fentanyl off Marion streets, enough lethal doses, I should add, to kill the entire population of Columbus, Cleveland, and Cincinnati combined.

It is a great example of how even a small office with a small personal footprint, the FBI is working big cases hand in hand with our State and local partners to have an outside impact in our communities.

The FBI has got thousands of employees working scores of investigations like that all over the country to protect the American people. Those men and women who choose to dedicate their careers, their lives, really, to this kind of work and fulfilling the FBI mission are inspiring.

At a time when so many other law enforcement agencies have had a difficult time with recruiting and retention, the Bureau continues to attract applicants in near record numbers. In fact, after the first couple of years of my tenure, the number of Americans applying to be special agents tripled the pace from when I started, reaching the highest levels in about a decade.

At the same time, inside the FBI, our special agent attrition has remained in the low, single digits and would be the envy of almost any employer. Even with these bigger numbers, the folks we are continuing to add continue to be top notch. The percentage of both veterans, and special agent hires with prior law enforcement experience has remained as steady as ever, between 25–30 percent. Add to that in a job market where applicants have a whole lot of other opportunities, the percentage of those new agent-trainees that also have advanced degrees is up and now approaches about 50 percent of every class at Quantico.

The thing that unites them all is a commitment to public service, a willingness to put others above themselves and that is true from the bottom of the organization to the top.

Since becoming Director, I have worked hard to assemble and cultivate a leadership team that embodies those values and characteristics. It is a team that I purposely chose because they walked the walk out in the field. Just taking our top eight leaders as an example, they all came up through the Bureau as line agents. They have worked in 21 different field offices and have a combined 130 years of field experience. They include a West Point grad, veterans of the Army, Air Force, and Marines, as well as a former police officer and State trooper. Not a single one is a political appointee, not one.

Today's FBI leaders reflect the best of our organization, an organization that is made up of 38,000 men and women who are patriots, professionals, and dedicated public servants, and that is the real FBI. I have now visited every single one of our 56 field offices twice, some of them more than twice. I speak constantly with local



chiefs and sheriffs from all 50 States who work closely with us every day; with judges, coast to coast, who see and hear our work up close; with business leaders who turn to us for help with cyber-attacks, with Chinese economic espionage, with victims and their family's people that we protect from gangs and predators. The FBI they tell me about consistently, almost resoundingly, is the same FBI that I see, an FBI that is respected, appreciated, trusted, and it is there for them when they need us the most. That is the FBI that inspires me and that I am proud to be here today to represent. Thank you.

[The prepared statement of the Hon. Mr. Wray follows:]



# Department of Justice

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STATEMENT OF

CHRISTOPHER A. WRAY  
DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE  
HOUSE JUDICIARY COMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES

AT A HEARING TITLED  
"FEDERAL BUREAU OF INVESTIGATION OVERSIGHT"

PRESENTED  
JULY 12, 2023

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Good afternoon, Chairman Jordan, Ranking Member Nadler, and Members of the Committee. Thank you for inviting me to appear before you today. I do so on behalf of the men and women of the Federal Bureau of Investigation (“FBI”), who tackle some of the most complex national security and criminal threats every day with perseverance, professionalism, and integrity – sometimes at the greatest of costs. I am extremely proud of their service and commitment to the FBI’s mission and to ensuring the safety and security of communities throughout our nation.

Despite the many challenges our FBI workforce faces, I am immensely proud of their dedication to protecting the American people and upholding the Constitution. The list of diverse threats we face underscores the complexity and breadth of the FBI’s mission: to protect the American people and uphold the Constitution of the United States. I am prepared to discuss with you what the FBI is doing to address these threats and what the FBI is doing to ensure that our people adhere to the highest of standards while it conducts its mission.

**Key Threats and Challenges**

Our nation continues to face a multitude of serious and evolving threats ranging from homegrown violent extremists to hostile foreign intelligence services and operatives, from sophisticated cyber-based attacks to Internet facilitated sexual exploitation of children, from violent gangs and criminal organizations to public corruption and corporate fraud. Keeping pace with these threats is a significant challenge for the FBI, and requires us to stay current with constantly evolving technologies. Our adversaries—terrorists, foreign intelligence services, and criminals—take advantage of technology, including the Internet and social media, to facilitate illegal activities, to recruit followers, to encourage terrorist attacks and other illicit actions, and to disperse information on building improvised explosive devices and other means to attack the United States. The breadth of these threats and challenges are as complex as at any time in our

history. And the consequences of not responding to and countering threats and challenges have never been greater.

The support of Congress, including this Committee, is critical in helping the FBI do its part to thwart these threats and face these challenges. That support enables us to establish strong capabilities and capacities to assess threats, to share intelligence, to leverage key technologies, and—often most importantly—to hire some of the best talent to serve as Special Agents, Intelligence Analysts, and professional staff. We are continuously enhancing a workforce that possesses skills and knowledge to deal with the complex threats and challenges we face today—and will face tomorrow. We are building a leadership cadre that views change and transformation as a positive tool for keeping the FBI focused on the key threats facing our nation.

Today's FBI is a national security and law enforcement organization that uses, collects, and shares intelligence in everything we do. Each FBI employee understands that, to defeat the key threats facing our nation, we must constantly strive to be more efficient and more effective. Just as our adversaries continue to evolve, so, too, must the FBI. We live in a time of acute and persistent terrorist and criminal threats to our national security, our economy, and indeed our communities. These diverse threats underscore the complexity and breadth of the FBI's mission: to protect the American people and uphold the Constitution of the United States.

### **National Security**

#### ***Top Terrorism Threats***

Protecting the American people from terrorism—both international and domestic—remains the FBI's number one priority. The threat from terrorism is as persistent and complex as ever. The threats from international terrorism, domestic terrorism, and state-sponsored terrorism all remain at elevated levels, requiring continued investment and vigilance.

The greatest terrorism threat to our Homeland comes from lone actors or small cells who radicalize—typically online—and look to attack soft targets with easily accessible weapons. We see these threats manifested within both Domestic Violent Extremists (“DVEs”) and Homegrown Violent Extremists (“HVEs”), two distinct threats, both of which are located primarily in the United States and typically radicalize and mobilize to violence on their own. Individuals who commit violent criminal acts in furtherance of social or political goals stemming from domestic influences are described as DVEs, whereas HVEs are individuals who are inspired primarily by global jihad but are not receiving individualized direction from Foreign Terrorist Organizations (“FTOs”).

Domestic and Homegrown Violent Extremists are often motivated and inspired by a mix of social or political, ideological, and personal grievances against their targets. Recently, they have focused on accessible targets, including civilians, law enforcement and the military,

symbols or members of the U.S. government, houses of worship, retail locations, and mass public gatherings. Lone actors present a particular challenge to law enforcement and intelligence agencies. These actors are difficult to identify, investigate, and disrupt before they take violent action, especially because of the insular nature of their radicalization and mobilization to violence, as well as their limited discussions with others regarding their plans.

The top domestic terrorism threat we face continues to be from DVEs we categorize as Racially or Ethnically Motivated Violent Extremists (“RMVEs”) and Anti-Government or Anti-Authority Violent Extremists (“AGAAVEs”). In May 2022, a RMVE in the United States conducted an attack in Buffalo, NY, that resulted in the deaths of 10 innocent individuals. The number of FBI domestic terrorism investigations has more than doubled since the spring of 2020. As of the end of fiscal year 2022, the FBI was conducting approximately 2,700 investigations within the domestic terrorism program. The FBI was also conducting approximately 4,000 investigations within its international terrorism program in fiscal year 2022.

The FBI uses all tools available at its disposal to combat domestic terrorism. These efforts represent a critical part of the National Strategy for Countering Domestic Terrorism, which was released in June 2021, and which sets forth a comprehensive, whole-of-government approach to address the many facets of the domestic terrorism threat.

As for international terrorism, the FBI assesses that HVEs are the greatest, most immediate threat to the Homeland. Rather than receiving individualized direction from FTOs, HVEs are people inspired by FTOs—including the self-proclaimed Islamic State of Iraq and ash-Sham (“ISIS”) and al-Qa’ida and their affiliates—to commit violence. A HVE’s lack of a direct connection with an FTO, ability to rapidly mobilize without detection, and use of encrypted communications can pose significant challenges to our ability to proactively identify and disrupt potential violent attacks. For example, on New Year’s Eve last year in New York City, an HVE attacked three New York Police Department Officers using an edged weapon.

The FBI remains concerned about the Taliban takeover of Afghanistan and the intent of FTOs, such as ISIS and al-Qa’ida and their affiliates, to carry out or inspire large-scale attacks in the United States.

Despite its loss of physical territory in Iraq and Syria, ISIS remains relentless in its campaign of violence against the United States and our partners—both here at home and overseas. ISIS and its supporters continue to aggressively promote hate-fueled rhetoric and to attract like-minded violent extremists with a willingness to conduct attacks against the United States and our interests abroad. We are also concerned about ISIS’s successful use of social media and messaging applications, like other foreign terrorist groups, to advocate for lone-offender attacks in the United States and Western countries. They use videos and other English language propaganda that have specifically advocated for attacks against civilians, the military, law enforcement, and intelligence community personnel.

Al-Qa'ida also maintains its desire to conduct and inspire large-scale, spectacular attacks. Because continued pressure has degraded some of the group's senior leadership, we assess that, in the near term, al-Qa'ida is more likely to continue to focus on cultivating its international affiliates and supporting small-scale, readily achievable attacks in regions such as East and West Africa. Over the past year, however, propaganda from al-Qa'ida leaders continued to seek to inspire individuals to conduct their own attacks in the United States and other Western nations.

Iran and its global proxies and partners, including Iraqi Shia militant groups, continue to attack and plot against the United States and our allies throughout the Middle East. Iran's Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") continues to provide support to militant resistance groups and terrorist organizations. Iran also continues to support Lebanese Hizballah and other terrorist groups. Hizballah has sent operatives to build terrorist infrastructures worldwide. The arrests of individuals in the United States allegedly linked to Hizballah's main overseas terrorist arm, and their intelligence collection and procurement efforts, demonstrate Hizballah's interest in long-term contingency planning activities here in the Homeland. Hizballah Secretary-General Hassan Nasrallah also has threatened retaliation for the death of IRGC-QF Commander Qassem Soleimani. This willingness to seek retaliation against the United States was reflected in charges the Department brought in 2022 against a member of the IRGC, working on behalf of the Qods Force, with a plot to murder a former national security advisor.

While the terrorism threat continues to evolve, the FBI's resolve to counter that threat remains constant. As an organization, we continually adapt and rely heavily on the strength of our Federal, state, local, Tribal, territorial, and international partnerships to combat all terrorist threats to the United States and our interests. We use all available lawful investigative techniques and methods to combat these threats. We collect, analyze, and share intelligence concerning the threats posed by violent extremists, in all their forms, who desire to harm Americans and U.S. interests. And we will continue to share information and encourage the sharing of information among our numerous partners through our Joint Terrorism Task Forces across the country, as well as our Legal Attaché offices around the world.

In addition to fighting terrorism, countering the proliferation of weapons of mass destruction materials, technologies, and expertise, preventing their use by any actor, and securing nuclear and radioactive materials of concern are also top national security priority missions for the FBI. The FBI considers preventing, mitigating, investigating, and responding to weapons of mass destruction ("WMD") terrorism a "no-fail" mission because a WMD attack could result in substantial injuries, illness, or loss of lives, with significant social, economic, political and other national security consequences. In collaboration with Federal, state, local, Tribal, territorial, and other partners, The FBI integrates complementary efforts to counter WMD terrorism. An example of this collaboration is the FBI-led Weapons of Mass Destruction Strategic Group. This interagency crisis action team spans more than fifteen departments and agencies to coordinate the federal government's response to WMD threats and incidents.

Alongside the FBI, the Department of Homeland Security maintains the largest footprint on the Strategic Group.

### *Cyber*

Cyber-criminal syndicates and nation-states continue to innovate and use unique techniques to compromise our networks and maximize the reach and impact of their operations. Those techniques include selling malware as a service and targeting vendors as a way to access scores of victims by hacking just one provider.

These criminals and nation-states believe that they can compromise our networks, steal our property, extort us, and hold our critical infrastructure at risk without incurring any risk themselves. In the last few years, we have seen—and have publicly called out—the People’s Republic of China (“PRC”), the Democratic People’s Republic of Korea (“DPRK”), and Russia for using cyber operations to target U.S. COVID-19 vaccines and research. We have seen the far-reaching disruptive impact a serious supply-chain compromise can have through the SolarWinds-related intrusions, conducted by the Russian Foreign Intelligence Service. We have seen the PRC working to obtain controlled dual-use technology and developing an arsenal of advanced cyber capabilities that could be used against other countries in the event of a real-world conflict. As these adversaries become more sophisticated, we are increasingly concerned about our ability to detect and warn about specific cyber operations against U.S. organizations. One of the most worrisome facets is their focus on compromising U.S. critical infrastructure, especially during a crisis.

Making things more difficult, there is often no bright line that separates where nation-state activity ends and cybercriminal activity begins. Some cybercriminals contract or sell services to nation-states; some nation-state actors moonlight as cybercriminals to fund personal activities; and nation-states are increasingly using tools typically used by criminal actors, such as ransomware.

So, as dangerous as nation-states are, we do not have the luxury of focusing on them alone. In the past year, we also have seen cybercriminals target hospitals, medical centers, educational institutions, and other critical infrastructure for theft or ransomware, causing massive disruption to our daily lives. Incidents affecting medical centers, in particular, have led to the interruption of computer networks and systems that put patients’ lives at an increased risk, at a time when America has faced its most dire public health crisis in generations.

We have also seen the rise of an ecosystem of services dedicated to supporting cybercrime in exchange for cryptocurrency. Criminals now have new tools to engage in destructive behavior—for example, deploying ransomware to paralyze entire hospitals, police departments, and businesses—as well as new means to better conceal their tracks. It is not that individual malicious cyber actors have necessarily become much more sophisticated, but that they can now more easily rent sophisticated capabilities.

We must make it harder and more painful for malicious cyber actors and criminals to carry on their malicious activities. Using its role as the lead federal agency for threat response, the FBI works seamlessly with domestic and international partners to defend their networks, attribute malicious activity, sanction bad behavior, and take the fight to our adversaries overseas. We must impose consequences on cyber adversaries and use our collective law enforcement and intelligence capabilities to do so through joint and enabled operations sequenced for maximum impact. And we must continue to work with the Department of State and other key agencies to ensure that our foreign partners are able and willing to cooperate in our efforts to disrupt and bring to justice the perpetrators of cybercrime.

An example of this approach is the coordinated international operation announced in April 2023 against Genesis Market, a criminal online marketplace offering access to data stolen from over 1.5 million compromised computers around the world containing over 80 million account access credentials. Genesis Market was also a prolific initial access broker in the cyber crime world, providing criminals a user-friendly database to search for stolen credentials and more easily infiltrate victims' computers and accounts. As part of this operation, law enforcement seized 11 domain names used to support Genesis Market's infrastructure pursuant to a warrant authorized by the U.S. District Court for the Eastern District of Wisconsin. A total of 22 international agencies and 44 FBI field offices worked with the FBI Milwaukee Field Office investigating the case. And on April 5, the U.S. Department of the Treasury announced sanctions against Genesis Market.

In total, along with our Department colleagues, we took over 1,000 actions against cyber adversaries in 2022, including arrests, criminal charges, convictions, dismantlements, and disruptions. We enabled many more actions through our dedicated partnerships with the private sector, with foreign partners, and with federal, state, and local entities. We also provided thousands of individualized threat warnings and disseminated 70 public threat advisories by way of Joint Cybersecurity Advisories, FBI Liaison Alert System ("FLASH") reports, Private Industry Notifications ("PINs"), and Public Service Announcements ("PSAs")—many of which were jointly authored with other U.S. agencies and international partners.

Along with our partners in the interagency, the FBI has devoted significant energy and resources to these partnerships, especially those involving the private sector. We are working hard to push important threat information to network defenders, but we have also been making it as easy as possible for the private sector to share important information with us. For example, we are emphasizing to the private sector how we keep our presence unobtrusive in the wake of an incident, as well as how we protect identities and other information that the private sector shares with us. We are also committed to providing useful feedback and to improving coordination with our government partners so that we are speaking with one voice. But we need the private sector to do its part, too. We need the private sector to come forward to warn us and our partners—and warn us quickly—when they see malicious cyber activity. We also need the private sector to work with us when we warn them that they are being targeted. Significant cyber incidents—SolarWinds, Cyclops Blink, the Colonial pipeline incident—only



emphasize what we have been saying for a long time: the government cannot protect against cyber threats on its own. We need a whole-of-society approach that matches the scope of the danger. There is no other option for defending a country where nearly all of our critical infrastructure, personal data, intellectual property, and network infrastructure sits in private hands.

In summary, the FBI is engaged in a myriad of efforts to combat cyber threats, from improving threat identification and information-sharing inside and outside of the government to developing and retaining new talent, to examining the way we operate to disrupt and defeat these threats. We take all potential threats to public and private-sector systems seriously and will continue to investigate and hold accountable those who pose a threat in cyberspace.

### *Foreign Intelligence Threats*

#### **Top Threats**

Nations such as China, Russia, and Iran are becoming more aggressive and more capable in their nefarious activity than ever before. These nations seek to undermine our core democratic, economic, and scientific institutions. They employ a growing range of tactics to advance their interests and to harm the United States. Defending American institutions and values against these threats is a national security imperative and a priority for the FBI.

With that, the greatest long-term threat to our nation's ideas, innovation, and economic security is the foreign intelligence and economic espionage threat from the PRC. It's a threat to our economic security—and, by extension—to our national security. The PRC government aspires to reshape the international rules-based system to its benefit, with little regard for the democratic ideals that underpin it. The pursuit of these goals is often with little regard for international norms and laws.

When it comes to economic espionage, the PRC uses every means at its disposal against us—blending cyber, human intelligence, diplomacy, corporate transactions, and other pressure on U.S. companies operating in the PRC, to achieve its strategic goals to steal our companies' innovations. These efforts are consistent with the PRC government's expressed goal to become an international power, modernizing its military and creating innovative-driven economic growth.

To pursue this goal, China uses human intelligence officers, co-optees, and corrupt corporate insiders, as well as sophisticated cyber intrusions, pressure on U.S. companies in China, shell-game corporate transactions, and joint-venture "partnerships" that are anything but a true partnership. There's also nothing traditional about the scale of their theft. It is unprecedented in the history of the FBI. American workers and companies are facing a greater, more complex danger than they have ever dealt with before. Stolen innovation means stolen

jobs, stolen opportunities for American workers, stolen national power, and stolen leadership in the industries.

#### **National Counterintelligence Task Force (“NCITF”)**

As the lead U.S. counterintelligence agency, the FBI is responsible for detecting and lawfully countering the actions of foreign intelligence services and organizations as they seek to adversely affect U.S. national interests. Recognizing the need to coordinate similar efforts across all agencies, the FBI established the NCITF in 2019 to create a whole-of-government approach to counterintelligence. The FBI established this national-level task force in the National Capital Region to coordinate, facilitate, and focus these multi-agency counterintelligence operations, and to programmatically support local Counterintelligence Task Force (“CITF”) operations. Combining the authorities and operational capabilities of the U.S. Intelligence Community, NT-50 departments and agencies, law enforcement agencies around the country, and local CITFs in each FBI field office, the NCITF coordinates and leads whole-of-government efforts to defeat hostile intelligence activities targeting the United States.

The Department of Defense (“DoD”) has been a key partner in the NCITF since its founding. While the FBI has had long-term collaborative relationships with DoD entities such as the Air Force Office of Special Investigations, Naval Criminal Investigative Service, and Army Counterintelligence, the NCITF has allowed us to enhance our collaboration with each other for greater impact. We plan to emphasize this whole-of-government approach as a powerful formula to mitigate the modern counterintelligence threat.

#### **Transnational Repression**

In recent years, we have seen a rise in efforts by authoritarian regimes to interfere with freedom of expression and punish dissidents abroad. These acts of repression cross national borders, often reaching into the United States. Governments such as the PRC, the Russian Federation, and the Government of Iran stalk, intimidate, and harass certain people in the United States. This is called transnational repression. It is illegal, and the FBI is investigating it.

Transnational repression can occur in different forms, including assaults and attempted kidnapping. Governments use transnational repression tactics to silence the voices of their citizens, U.S. residents, or non-citizens connected to the home country. This sort of repressive behavior is antithetical to our values as Americans. People from all over the world are drawn to the United States by the promise of living in a free and open society—one that adheres to the rule of law. To ensure that this promise remains a reality, we must continue to use all of our tools to block authoritarian regimes that seek to extend their tactics of repression beyond their shores.

Our nation is confronting multifaceted foreign threats seeking both to influence our national policies and public opinion and to harm our national dialogue and debate. The FBI and our interagency partners remain focused on foreign malign influence operations—which include subversive, undeclared, coercive, and criminal actions used by foreign governments in their attempts to sway U.S. voters’ preferences and perspectives, shift U.S. policies, increase discord in the United States, and undermine the American people’s confidence in our democratic institutions and processes.

Foreign malign influence is not a new problem, but the interconnectedness of the modern world, combined with the anonymity of the Internet, have changed the nature of the threat and how the FBI and its partners must address it. Foreign malign influence operations have taken many forms and have used many tactics over the years.

The FBI is the lead Federal agency responsible for investigating foreign malign influence threats. Several years ago, we established the Foreign Influence Task Force (“FITF”) to identify and counteract foreign malign influence operations targeting the United States. The FITF is led by our Counterintelligence Division and comprises agents, analysts, and professional staff from the Counterintelligence, Cyber, Counterterrorism, and Criminal Investigative Divisions. It is specifically charged with identifying and combating foreign malign influence operations targeting democratic institutions inside the United States.

The domestic counterintelligence environment is more complex than ever. We face a persistent and pervasive national security threat from foreign adversaries, particularly the Governments of Russia and China, conducting sophisticated intelligence operations using coercion, subversion, malign influence, cyber and economic espionage, traditional spying, and non-traditional human intelligence collection. Together, they pose a continuous threat to U.S. national security and our economy by targeting strategic technologies, industries, sectors, and critical infrastructures. Historically, these asymmetric national security threats involved foreign intelligence service officers seeking U.S. government and U.S. Intelligence Community information. The FBI has observed foreign adversaries employing a wide range of nontraditional collection techniques, including the use of human collectors not affiliated with intelligence services, foreign investment in critical U.S. sectors, and infiltration of U.S. supply chains. The FBI continues to adjust our counterintelligence priorities and posture to address the evolving and multifaceted threat.

#### **Criminal Threats**

The U.S. faces many criminal threats, including financial and health care fraud, transnational and regional organized criminal enterprises, crimes against children and human trafficking, and public corruption. Criminal organizations—domestic and international—and individual criminal activity represent a significant threat to security and safety in communities across the nation.

### *Violent Crime*

Violent crimes and gang activities exact a high toll on individuals and communities. Many of today's gangs are sophisticated and well-organized. They use violence to control neighborhoods and boost their illegal money-making activities, which include robbery, drug and gun trafficking, fraud, extortion, and prostitution rings. These gangs do not limit their illegal activities to single jurisdictions or communities. The FBI is able to work across such lines, which is vital to the fight against violent crime in big cities and small towns across our nation. Every day, FBI Special Agents work in partnership with Federal, state, local, and Tribal officers and deputies on joint task forces and individual investigations.

FBI joint task forces—Violent Crime Safe Streets, Violent Gang Safe Streets, and Safe Trails—focus on identifying and targeting major groups operating as criminal enterprises. Much of the FBI criminal intelligence is derived from our state, local, and Tribal law enforcement partners, who know their communities inside and out. Joint task forces benefit from FBI surveillance assets, and our sources track these gangs to identify emerging trends. Through these multi-subject and multi-jurisdictional investigations, the FBI concentrates its efforts on high-level groups engaged in patterns of racketeering. This investigative model enables us to target senior gang leadership and to develop enterprise-based prosecutions.

By way of example, the FBI has dedicated tremendous resources to combat the threat of violence posed by MS-13. The atypical nature of this gang has required a multi-pronged approach. We work through our task forces here in the United States, while simultaneously gathering intelligence and aiding our international law enforcement partners. We do this through the FBI's Transnational Anti-Gang Task Forces ("TAGs"). Established in El Salvador in 2007 through the FBI's National Gang Task Force, Legal Attaché San Salvador, and the United States Department of State, each TAG is a fully operational unit responsible for the investigation of, primarily, MS-13 operating in the northern triangle of Central America and threatening the United States. This program combines the expertise, resources, and jurisdiction of participating agencies involved in investigating and countering transnational criminal gang activity in the United States and Central America. There are now TAGs in El Salvador, Guatemala, and Honduras. Through these combined efforts, the FBI has achieved substantial success in countering the MS-13 threat across the United States and Central America.

We are committed to working with our Federal, state, local, and Tribal partners in a coordinated effort to reduce violent crime in the United States.

### *Transnational Organized Crime ("TOC")*

More than a decade ago, organized crime was characterized by hierarchical organizations, or families, that exerted influence over criminal activities in neighborhoods, cities, or states. But organized crime has changed dramatically. Today, international criminal enterprises run multi-national, multi-billion-dollar schemes from start to finish. Modern-day criminal enterprises are flat, fluid networks with global reach. While still engaged in many of

the “traditional” organized crime activities of loan-sharking, extortion, and murder, modern criminal enterprises are also involved in trafficking counterfeit prescription drugs containing deadly fentanyl, targeting stock market fraud and manipulation, cyber-facilitated bank fraud and embezzlement, illicit drug trafficking, identity theft, human trafficking, money laundering, alien smuggling, public corruption, weapons trafficking, kidnapping, and other illegal activities. TOC networks exploit legitimate institutions for critical financial and business services that enable the storage or transfer of illicit proceeds. Preventing and combating transnational organized crime demands a concentrated effort by the FBI and Federal, state, local, Tribal, and international partners.

As part of our efforts to combat the TOC threat, the FBI is focused on the cartels trafficking dangerous narcotics, like fentanyl, across our border. The FBI has 323 pending investigations linked to cartel leadership and 78 of those investigations are along the southern border. Additionally, the FBI actively participates in 17 OCDETF Strike Forces across the United States, investigating major drug trafficking, money laundering, and other high priority transnational organized crime networks. On top of that, we are pursuing healthcare fraud investigations against medical professionals and pill mills through our prescription drug initiative, investigating the gangs and criminal groups responsible for distributing dangerous substances like fentanyl through our Safe Streets Task Forces, and disrupting and dismantling DarkNet marketplaces for prescription opioids and drugs like fentanyl through our Joint Criminal Opioid Darknet Enforcement team.

While the FBI continues to share intelligence about criminal groups with our partners and combines resources and expertise to gain a full understanding of each group, the threat of transnational crime remains a significant and growing threat to national and international security with implications for public safety, public health, democratic institutions, and economic stability across the globe. TOC groups increasingly exploit jurisdictional boundaries to conduct their criminal activities overseas. Furthermore, they are expanding their use of the Darknet to engage in illegal activity while exploiting emerging technology to traffic illicit drugs and contraband across international borders and into the United States.

#### ***Crimes Against Children and Human Trafficking***

Every year, thousands of children become victims of crimes, whether it is through kidnappings, violent attacks, sexual abuse, human trafficking, or online predators. The FBI is uniquely positioned to provide a rapid, proactive, and comprehensive response. We help identify, locate, and recover child victims. Our strong relationships with federal, state, local, Tribal, and international law enforcement partners also help to identify, prioritize, investigate, and deter individuals and criminal networks from exploiting children.

But the FBI’s ability to learn about and investigate child sexual exploitation is being threatened by the proliferation of sites online on the Darknet. For example, currently, there are at least 30 child sexual abuse material sites operating openly and notoriously on the Darknet. Some of these exploitative sites are exclusively dedicated to the sexual abuse of infants and

toddlers. The sites often expand rapidly, with one site obtaining 200,000 new members within its first four weeks of operation.

Another growing area of concern involving the sexual exploitation of children is the explosion in incidents of children and teens being coerced into sending explicit images online and extorted for money – a crime known as financial sextortion. In 2022, law enforcement received over 7,000 reports related to the online financial sextortion of minors, resulting in at least 3,000 victims, primarily boys, and more than a dozen suicides. A large percentage of these sextortion schemes originate outside the United States, primarily in West African countries such as Nigeria and Ivory Coast. The FBI continues to collaborate with other law enforcement partners and the National Center for Missing and Exploited Children to mitigate this criminal activity, and provide the public with informational alerts and victim resources regarding these crimes.

The FBI has several programs in place to arrest child predators and to recover missing and endangered children. To this end, the FBI funds or participates in a variety of endeavors, including our Innocence Lost National Initiative, Innocent Images National Initiative, Operation Cross Country, Child Abduction Rapid Deployment Team, Victim Services, over 80 Child Exploitation and Human Trafficking Task Forces, over 50 International Violent Crimes Against Children Task Force officers, as well as numerous community outreach programs to educate parents and children about safety measures they can follow. Through improved communications, the FBI also has the ability to quickly collaborate with partners throughout the world, which plays an integral role in crime prevention.

The Child Abduction Rapid Deployment Team is a rapid response team with experienced investigators strategically located across the country to quickly respond to child abductions. Investigators are able to provide a full array of investigative and technical resources during the most critical time period following the abduction of a child, such as the collection and analysis of DNA, impression, and trace evidence, the processing of digital forensic evidence, and interviewing expertise.

The FBI also focuses efforts to stop human trafficking of both children and adults. The FBI works collaboratively with law enforcement partners to disrupt all forms of human trafficking through Human Trafficking Task Forces nationwide. One way the FBI combats this pernicious crime problem is through investigations such as Operation Cross Country. Over a two-week period in 2022, the FBI, along with other federal, state, local, and Tribal partners, executed approximately 400 operations to recover survivors of human trafficking and disrupt traffickers. These operations identified and located 84 minor victims of child sex trafficking and child sexual exploitation offenses, and located 37 actively missing children. Furthermore, the FBI and its partners located 141 adult victims of human trafficking. In addition to recovering victims, the law enforcement activity conducted during Operation Cross Country led to the identification and arrest of 85 suspects for child sexual exploitation or human trafficking offenses.

Although many victims of human trafficking recovered by the FBI are adult U.S. citizens, the FBI and its partners recognize that foreign nationals, children, and other vulnerable populations are disproportionately harmed by both sex and labor trafficking. We take a victim-centered, trauma-informed approach to investigating these cases and strive to ensure the needs of victims are fully addressed at all stages. To accomplish this, the FBI works in conjunction with other law enforcement agencies and victim specialists on the federal, state, local, and Tribal levels, as well as with a variety of vetted non-governmental organizations. Even after the arrest and conviction of human traffickers, the FBI often continues to work with partner agencies and organizations to assist victims and survivors in moving beyond their exploitation.

#### **Reauthorization of Section 702 of the Foreign Intelligence Surveillance Act**

Before closing, I would be remiss if I didn't underscore an urgent legislative matter directly relevant to our discussion today. As the Committee knows, at the end of December Section 702 and other provisions of the Foreign Intelligence Surveillance Act will expire unless renewed.

Loss of this vital provision, or its reauthorization in a narrowed form, would raise profound risks. For the Bureau in particular, either outcome would mean substantially impairing, or in some cases entirely eliminating, our ability to find and disrupt many of most serious security threats I described earlier in my statement.

I am especially concerned about one frequently-discussed proposal, to require the government to obtain a warrant or court order from a judge before personnel may conduct a "U.S. person query" of information previously obtained through use of Section 702. A warrant requirement would amount to a *de facto* ban, because query applications either would not meet the legal standard to win court approval; or because, when the standard could be met, it would be so only after the expenditure of scarce resources, the submission and review of a lengthy legal filing, and the passage of significant time – which, in the world of rapidly evolving threats, the government often doesn't have. That would be a body blow to the FBI, which relies on this longstanding, lawful capability to rapidly uncover previously hidden threats and connections, and to take swift steps to protect the homeland when needed.

To be sure, nobody more deeply shares Members' concerns regarding past FBI compliance violations related to FISA, including the rules for querying Section 702 collection using U.S. person identifiers, than I do. These violations never should have happened and preventing recurrence is a matter of utmost priority. Fortunately, the Administration's initial response to these episodes was rigorous, and already has yielded significant results – in dramatically reducing the number of "U.S. person queries" by the FBI of the Section 702 database, and in substantially improving its compliance rate. Moreover, as we publicly announced last month, the Bureau is implementing further measures both to keep improving our compliance and to hold our personnel accountable for misuse of Section 702 and other FISA

provisions – including through an escalating scheme for employee discipline, culminating in possible dismissal.

Together with other leaders of the Intelligence Community and the Department of Justice, I remain committed to working with this Committee and others in Congress, on potential reforms to Section 702 that would not diminish its critical intelligence value. There are many options for meaningfully enhancing privacy and oversight, while fully preserving Section 702's efficacy. Doing that will be critical, in order to ensure the FBI's continuing ability to fulfill its mission of identifying and stopping national security threats within the U.S. homeland.

### **Conclusion**

The strength of any organization is its people. The threats we face as a nation have never been greater or more diverse, and the expectations placed on the FBI have never been higher. Our fellow citizens look to the FBI to protect the United States from all of those threats, and the men and women of the FBI continue to meet and exceed those expectations, every day. I want to thank them for their dedicated service.

Chairman Jordan, Ranking Member Nadler, and Members of the Committee, thank you for the opportunity to testify today. I am happy to answer your questions.



Chair JORDAN. Thank you. We will now proceed under the five-minute rule with questions. The Chair recognizes the gentleman from Louisiana, Mr. Johnson.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair. Director Wray, this is no time to mince words. The American people have lost faith in the FBI. All our constituents are demanding that we get this situation under control, and we have to do that. That is our responsibility. This is not a political party issue, sir. This is about whether the very system of justice in our country can be trusted any more. Without that, no republic can survive.

See, the American people that we represent are losing count of the scandals that are mounting. The FBI has been involved; they have seen evidence that is being used as a political tool by the Biden Administration. They have seen counterterrorism resources being used against school parents; the homes of conservative political opponents being raided. They have seen conservative States being targeted over their election integrity laws and conservative Catholics and pro-life citizens characterized as violent extremists.

Just last month, as you know, former Special Counsel John Durham sat right in that seat and testified that the Justice Department and the FBI should never have launched the bogus Trump-Russia investigation. His lengthy report reluctantly concluded that the FBI “failed to uphold its mission of strict fidelity to the law.”

Just last week, NBC had a poll. Only 37 percent of registered voters now view the FBI positively. Thirty-five percent have a negative view. In 2018, by comparison, 52 percent of the country had a positive view of the FBI. There is a serious decline in the people’s faith, and it is on your watch, sir.

Then, July 4th, we had this explosive, explosive 155-page opinion from a Federal Court in my home State of Louisiana that explains in detail that the FBI has been directly involved in what the Court says is, “arguably the most massive attack against free speech in United States history.”

The court ordered the White House DOJ and FBI, among others, to immediately cease colluding with and coercing social media companies to suppress American speech, of course, conservative speech in particular.

Director Wray, I find it stunning. You made no mention of this court opinion either in your opening statement today or in this lengthy 14-page report that you prepared on July 12th which is eight days after the Court ruling.

Have you read the ruling, sir?

Mr. WRAY. I am familiar with the ruling, and I’ve reviewed it with our Office of General Counsel.

Mr. JOHNSON of Louisiana. Are you deeply disturbed by what they have told you about the ruling, if you haven’t read it yourself?

Mr. WRAY. Obviously, we’re going to comply with the Court’s order, the Court’s preliminary injunction. We sent out guidance to the field and headquarters about how to do that. Needless to say, the injunction itself is a subject of ongoing litigation. So, I’ll decline to comment further on that.

Mr. JOHNSON of Louisiana. Well, let me tell you what the Court concluded because it should be the first thing you think about

every morning and the last thing you think about at night. They said, that, quote, the Court found, apparently,

The FBI engaged in a massive effort to suppress disfavored conservative speech and blatantly ignored the First Amendment to right to free speech. The evidence shows the FBI threatened adverse consequences to social media companies if they did not comply with its censorship requests.

The Court found that, quote,

This seemingly unrelenting pressure by the FBI and the other Defendants had the intended result of suppressing millions of protected free speech postings by American citizens.

As a result, the Court states, for example,

Millions of citizens did not hear about the Hunter Biden laptop story prior to the November 3, 2020 election.

Page 4 of the Court ruling lists some of the important subjects that the Biden Administration and the FBI forced the social media platforms to suppress. The evidence shows you, your agency, the people that directly report to you, suppressed conservative-leaning free speech about topics like the laptop; the lab leak theory of COVID-19's origin; the effectiveness of masks and COVID-19 lockdowns and vaccines; speech about election integrity in the 2020 Presidential Election; security of voting by mail; even parity about the President himself; negative posts about the economy.

The FBI made the social media platforms pull that information off the internet if it came from conservative sources. They did this under the guise that it was disinformation.

Can you define what "disinformation" is?

Mr. WRAY. What I can tell you is that our focus is not on disinformation, broadly speaking, but on the—

Mr. JOHNSON of Louisiana. Well, wait a minute. Yes, it is. Wait it a minute. Your—

Mr. WRAY. Can I answer the question?

Mr. JOHNSON of Louisiana. You can in a minute. Your star witness said in the litigation, Elvis Chan, who's in charge of this, said they do it on the basis of "disinformation." We need a definition of what that is.

Mr. WRAY. Our focus is on malign foreign disinformation; that is, foreign hostile actors who engage in covert efforts to abuse—

Mr. JOHNSON of Louisiana. Mr. Wray—

Mr. WRAY. —our social media platforms, which is something that is not seriously in dispute—

Mr. JOHNSON of Louisiana. I have to stop you for time. That's not accurate. You need to read this Court opinion because you're in charge of enforcing it. The Court has found that—and Elvis Chan testified under oath, in charge of this for you—he said 50 percent, he had a 50 percent success rate in having alleged election disinformation taken down or censored. That wasn't just foreign adversaries, sir. That was American citizens. How do you answer for that?

Mr. WRAY. Well, first, I'm not sure that's a correct characterization of his testimony, but what I—

Mr. JOHNSON of Louisiana. It comes right out of the opinion. You should read it.

Mr. WRAY. —of his testimony, but what I would say is the FBI is not in the business of moderating content or causing any social media company to suppress or censor—

Mr. JOHNSON of Louisiana. That is not what the Court has found.

Mr. WRAY. What I would also say is, among the things that you listed off, I find ironic the reference to the lab leak theory. The idea that the FBI would somehow be involved in suppressing references to the lab leak theory is somewhat absurd when you consider the fact that the FBI was the only—the only—agency in the entire intelligence community to reach the assessment that it was more likely than not that was the explanation for the pandemic.

Mr. JOHNSON of Louisiana. Your agents, your agents pulled it off the internet, sir. That's what the evidence and the Court has found.

Chair JORDAN. The time of the gentleman has expired.

The gentleman from New York is recognized.

Mr. NADLER. Director Wray, House Republicans have attacked the execution of the search warrant of Mar-a-Lago last August as a, quote, “unprecedented raid.” Would you consider the execution of the search warrant at Mar-a-Lago a raid?

Mr. WRAY. I would not call it a raid. I would call it the execution of a lawful search warrant.

Mr. NADLER. Can you describe how the search was executed?

Mr. WRAY. Well, we had the case team follow its standard procedure. It has sometimes been described as a SWAT operation. It was not. There was no SWAT involvement. Beyond that, I think I want to be really careful with getting too far into the details now that this case is not only in the hands of a Special Counsel, but, more importantly, in my view, in front of the Court. I learned a long time ago, as a line prosecutor and defense lawyer, to respect the Court process as where I think you should speak.

Mr. NADLER. Were particular steps taken to ensure that the execution of the search warrant did not draw undue attention?

Mr. WRAY. I think there were steps along those lines, yes, sir.

Mr. NADLER. Can you name a couple of them?

Mr. WRAY. Well, among other things, we did not have people coming in so-called “raid jackets,” which is often something you would see—

Mr. NADLER. So, in other words, the FBI agents executing the search wore plainclothes, so as not to attract undue attention, and the FBI waited until Trump had left Mar-a-Lago to execute the search. Is that correct?

Mr. WRAY. Yes.

Mr. NADLER. Chair Jordan has attacked the DOJ and the FBI for not attempting to get the documents back from Trump consensually before turning to a search warrant. I want to walk through all the opportunities Trump had to produce these documents, and I have a series of yes-or-no questions.

The National Archives, also known as NARA, first asked Trump to return all Presidential records to them in May 2021, correct?

Mr. WRAY. Well, I don't remember the date, but I remember there was a request by the National Archives.

Mr. NADLER. OK. Then, throughout 2021, NARA made repeatedly followup requests, but, still, Trump failed to comply, correct?

Mr. WRAY. Yes, I would refer you to the pleadings that have been filed in court that lay out in better detail than I could here—

Mr. NADLER. In fact, it was not until January 2022, after NARA warned Trump that failing to return documents could violate the Presidential Records Act, that Trump finally produced 15 boxes of documents to it, correct?

Mr. WRAY. Again, I would just refer to our court filings, which go into great detail about all this.

Mr. NADLER. Even these 15 boxes did not contain all the documents Trump was required to return, correct?

Mr. WRAY. That's my recollection, but, again, I'll refer to the filings.

Mr. NADLER. So, in May 2022, a grand jury had to actually subpoena Trump for the missing documents, correct?

Mr. WRAY. The same answer.

Mr. NADLER. Trump was, then, present on June 3rd, when his attorneys handed over another folder of documents and a certification that all classified material had been returned, correct?

Mr. WRAY. Again, I just want to stick with what's in the Court filings. That sounds right to me, but I really want to be careful to stay within the four corners of—

Mr. NADLER. The certification was false, right? Even then, Trump had not returned all classified material, correct?

Mr. WRAY. I think that is part of the indictment.

Mr. NADLER. He had additional documents hiding in his bathroom and his storage room, in storage units, et cetera. Yes?

Mr. WRAY. Again, I think that's part of the indictment.

Mr. NADLER. So, finally, DOJ and the FBI were required to obtain a search warrant to obtain the classified documents that had not been retained, correct?

Mr. WRAY. The same answer.

Mr. NADLER. The documents retrieved during that search included 69 marked confidential, 98 secrets, and 30 top secrets, is that correct?

Mr. WRAY. The same answer.

Mr. NADLER. So, to sum up, President Trump had many, many chances to voluntarily comply with the FBI and DOJ's requests. Instead, he made the choice to keep these highly classified defense and national security documents, apparently, because he wanted a souvenir.

I find myself in the strange position of agreeing with former Attorney General Bill Barr's statement that Trump brought this on himself. I would add that it's absurd that House Republicans are attacking the FBI and DOJ for doing their job in ensuring that no person is above the law.

I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Kentucky is recognized for five minutes.

Mr. MASSIE. I thank the Chair.

Director Wray, in light of information provided to us about the FBI's investigation of the January 6th pipe bombs, in an interview with Assistant Director Steven D'Antuono, Chair Jordan and I sent

you a letter a month ago. Some of the information that we found in that interview was that phone data that could have helped to identify the pipe-bomber was corrupted, was unusable. He also wasn't sure who found or how the second bomb was found at the DNC.

Do you know how the second bomb was found at the DNC? When do you plan on answering our letter?

Mr. WRAY. Well, as to the letter, I will work with the Department to make sure we can figure out what information we can provide. As you know, this is a very active, ongoing investigation and there are some restrictions on that, but we will do our best to—

Mr. MASSIE. Yes, we can handle classified information—

Mr. WRAY. Yes.

Mr. MASSIE. —and we fund your Department. So, you need to provide that.

Mr. WRAY. It's not, respectfully, it's not an issue of classification. It's an issue of commenting on ongoing criminal investigations, which is something that, by longstanding Department policy, we are restricted in doing. In fact, the last administration actually strengthened those policies, partly because—

Mr. MASSIE. That's not our policy, though, and we fund you. So, let's move on.

Mr. WRAY. I could State it's partly because—

Mr. MASSIE. Do you know how the second pipe bomb—can you tell us how the second pipe bomb was found at the DNC?

Mr. WRAY. Again, I'm not going to get into that here.

Mr. MASSIE. Nine hundred days ago is when this happened, and you said you had total confidence we'd apprehend the subject. We've found video that looks like somebody, a passer-by, miraculously found this pipe bomb at the DNC, and then, notified the police. Miraculously, I say because it was at specifically the same, the precise time to cause the maximum distraction from the events going on at the Capitol.

Can you show this video that we have, please? I'd like to know if the Director has seen this.

[Video played.]

This is somebody with a mask on wearing a hat. They're walking in front of the DNC, which is out of the view on the righthand side. We'll see them come into view. He goes to one police car. He goes to another police car. He's holding a backpack. He's got a mask on. He's talking to the police. Within a minute, they start scrambling. You'll see the camera turn to the pipe bomb, the location of the pipe bomb.

By the way, that's, I believe, the Metro Police are now getting out of their car, and that's Vice President-Elect detail in the black SUV, I believe, parked about 30 feet from the pipe bomb, eating lunch.

OK. Now, we go over to the location of the pipe bomb. The cameras are scrambling. It appears to me that's not a coincidence; that the person with the backpack who walked by that bench, and then, went up to the police and the detail didn't do that accidentally. They had a purpose in mind. Then, what transpired after that was the result of information that person gave to them.

If that person found the pipe bomb, would they be a suspect?

Mr. WRAY. Well, again, I don't want to speculate about specific individuals. I will tell you that we have done thousands of interviews; reviewed something like 40,000 video files, of which this is one; assessed 500-something tips; reviewed the devices—

Mr. MASSIE. Have you interviewed that person?

Mr. WRAY. We have conducted all logical investigative steps and interviewed all logical individuals at this point.

Mr. MASSIE. Then, you need—it's 900 days—

Mr. WRAY. We're continuing—

Mr. MASSIE. You need to tell us what you found because we're finding stuff you haven't released into the public.

Mr. WRAY. Well—

Mr. MASSIE. In my remaining minute, I want to turn to another issue. George Hill, former FBI Supervisory Intelligence Analyst in the Boston field office, told us that the Bank of America, with no legal process, gave to the FBI gun purchase records with no geographical boundaries for anybody that was a Bank of America customer. Is that true?

Mr. WRAY. Well, what I do know is that a number of business community partners all the time, including financial institutions, share information with us about possible criminal activity. My understanding is that's fully lawful.

Mr. MASSIE. Did you—

Mr. WRAY. In this specific instance—

Mr. MASSIE. Did you ask for that information?

Mr. WRAY. In the specific instance that you're asking about, my understanding is that this information was shared with field offices for information only, but, then, recalled to avoid even the appearance of any kind of overreach. My understanding is that's a fully lawful process.

Mr. MASSIE. Was there a warrant involved?

Mr. WRAY. Again, my understanding is that the institution in question shared information with us, as happens all the time by—

Mr. MASSIE. Did you request the information?

Mr. WRAY. I can't speak to the specifics.

Mr. MASSIE. OK. Well, we've got an email where it says the FBI did give the search queries to Bank of America, and Bank of America responded to the FBI and gave over this information without a search warrant.

Do you believe there's any limitation on your ability to obtain gun purchase data or purchase information for people, for people who aren't suspects from banks without a warrant?

Mr. WRAY. Well, now you're asking a legal question, which I would prefer to defer to the lawyers, since I'm not practicing as one right now, including the Department. What I will tell you is that my understanding is that the process by which we receive information from business community partners across a wide variety of industries, including financial institutions sharing information with us about possible criminal activity, is something that is fully lawful under current Federal law.

Mr. MASSIE. It may be lawful, but it's not constitutional.

I yield back.

Chair JORDAN. The gentleman yields back.

The gentlelady from California is recognized for five minutes.

Ms. LOFGREN. Thank you, Mr. Chair.

Thank you, Director Wray, for being here.

I think it's actually sad that the majority is engaging in conspiracy theories and efforts to try and discredit one of the premier law enforcement agencies in the United States in the effort to try—without really any evidence—make the case that the FBI is somehow opposed to conservative views.

In my view, actually, I'm concerned that the FBI has been reluctant to do its job when it comes to the former President.

I would like to ask unanimous consent to put in the record an article from *The Washington Post*, "FBI Resisted Opening Probe into Trump's Role in January 6th for More Than a Year."

Chair JORDAN. Without objection.

Ms. LOFGREN. Director Wray, would you disagree with the premise of this article that the FBI delayed in looking at Mr. Trump himself? The January 6th Committee—and I was a Member—did find that the ex-President was the center of a wide-ranging conspiracy to overturn the election. Did the FBI start to look right after January 6th at the ex-President?

Mr. WRAY. I'm sorry, I just lost the last part of your question.

Ms. LOFGREN. Did the FBI start looking at the ex-President's role on January 6th starting January 7th or closely to that time?

Mr. WRAY. Well, let me start with, I'm not in the business of kind of commenting or engaging on the truth or falsity of newspaper articles. In this particular instance, as I'm sure you can appreciate, there is an ongoing, very important, ongoing Special Counsel investigation that's now in court.

Ms. LOFGREN. OK.

Mr. WRAY. So, not only do I not want to talk about the ongoing investigation—

Ms. LOFGREN. Well, I respect—

Mr. WRAY. —but the internal deliberations related to it are even more sensitive.

Ms. LOFGREN. I respect that you cannot discuss ongoing investigations.

Let me turn to another item. There's been criticism, and the Ranking Member went through the scenario leading up to the warrant for the documents at Mar-a-Lago, but I'd like to ask unanimous consent to put an article from *The Washington Post*, "Show-down Before the Raid: FBI Agents and Prosecutors Argued Over Trump."

Chair JORDAN. Without objection.

Ms. LOFGREN. It's pretty clear from this article that there was a resistance on the part of the FBI to actually look at the President or pursue that case vigorously. Although you can't comment on it, the article does suggest that FBI agents want to just close the case because the ex-President made an assertion that a search had been made.

Now, we had Mr. D'Antuono in as a witness, and he testified four times that the Mar-a-Lago search had adequate probable cause. Do you agree with that statement?

Mr. WRAY. That the search had probable cause?

Ms. LOFGREN. Correct.

Mr. WRAY. Yes.

Ms. LOFGREN. Thank you.

So, you don't have any dispute that there was probable cause for this warrant? I just want to say, before going to my next question, that over and over again the FBI delayed and showed unprecedented caution before investigating the ex-President, even when there was a potential threat to national security. That's my view. That's very far from the assertion that there was unfair targeting. Let me ask—

Mr. WRAY. Can I just, on that point, if I may, while I can't discuss any specific investigation, my expectation for all our investigations, repeatedly communicated to all our people—and this is especially important in sensitive investigations—is that our folks take great pains to be rigorous, professional, objective, following all our policies and procedures, and do the work in the right way. Sometimes that's frustrating to others.

Ms. LOFGREN. My time is almost up. I want to ask you another question.

In the Senate hearing, in response to Senator Wyden's question of whether the FBI is currently purchasing Americans' location data, you indicated that it was limited to data derived from internet advertising. It's since been reported that the FBI has admitted it bought U.S. location data. Is the FBI purchasing location data from commercial sources without a warrant?

Mr. WRAY. This is an area that requires a little more precision and context for me to be able to answer that fully. So, let me have my staff follow back up with you, so that I make sure that I don't leave something important out.

Ms. LOFGREN. I'll just close with the FBI had 3.4 million backdoor searches of the FISA data base without a warrant in 2021. Can you say whether the FBI is continuing to search the FISA data base without a warrant for Americans?

Mr. WRAY. Well, if you're asking about our use of 702 queries—

Ms. LOFGREN. I am.

Mr. WRAY. —there is no warrant requirement under the Fourth Amendment for those queries. It's fairly well settled. The 3.4 million figure that you're talking about, I guess I would say a couple of things. First, that's not 3.4 million people; that's 3.4 million search terms or query terms. Second, those are not queries in violation of rules. Those are just queries under the procedures—

Ms. LOFGREN. My time has expired, but the Committee—

Chair JORDAN. The gentlelady's time has expired.

Ms. LOFGREN. —will look into the warrant requirement later in the process.

Chair JORDAN. We sure will. We sure will.

The gentleman from Florida is recognized.

Mr. GAETZ. The American people need to understand what just happened. My Democratic colleague just asked the Director of the FBI whether or not they are buying information about our fellow Americans, and the answer is, "Well, we'll just have to get back to you on that." It sounds really complicated.

I have other questions.

I'm sitting here with my father. I will make certain between the man sitting next to me and every person he knows and my ability to forever hold



a grudge that you will regret not following my direction. I am sitting here waiting for the call with my father.

It sounds like a shakedown, doesn't it, Director?

Mr. WRAY. I'm not going to get into commenting on that.

Mr. GAETZ. Well, you seem deeply uncurious about it, don't you? Almost suspiciously uncurious. Are you protecting the Bidens?

Mr. WRAY. Absolutely not. The FBI does not and has no interest in protecting anyone politically.

Mr. GAETZ. Well, you won't answer the question.

Hold on. You won't answer the question about whether that's a shakedown, and everybody knows why you won't answer it. Because to the millions of people who will see this, they know it is. Your inability to acknowledge that is deeply revealing about you.

Let's go from the uncurious to the downright nose. How many illegal FISA queries have occurred under your leadership of the FBI?

Mr. WRAY. Well, there are reports that have come out with different numbers about compliance incidents.

Mr. GAETZ. More than a million illegal ones? Because that's what the Inspector General said. The Inspector General said that, "in the 3.4 million of these queries, more than a million in error." Do you have any basis to disagree with that, that assessment by the Inspector General?

Mr. WRAY. I'm not sure, actually, that's a correct characterization of the Inspector General's findings on that, but—

Mr. GAETZ. Oh, well, the internet will remind you of that in moments.

Mr. WRAY. But I—

Mr. GAETZ. Let's now go to what the Court said. The Court said it was over 200,000 that have occurred on your watch. Do you have any basis to disagree with that assessment?

Mr. WRAY. Again, I don't have the numbers, as I sit here right now. What I can tell you—

Mr. GAETZ. It seems like a number you should know—how many times the FBI is breaking the law under your watch, especially if it's like over a million. To not know that number—and I'm worried about your veracity on the subject as well.

Play the video.

[Video played.]

So, there, Senator Lee is asking you whether or not FISA was in any way involved in your January 6th investigation, and you say no. Was that truthful?

Mr. WRAY. I said that I did not believe it was.

Mr. GAETZ. OK. So, now, let's pull up what the Court said, which is something a little different than what you said.

So here—no, that's not the right one. Yes, here we go, right there, it says,

The government has reported additional significant violations of the querying standard, including several relating to the January 6, 2021, breach of the Capitol.

So, I guess the question, Director Wray, is, did you not know, when you were answering these questions, that the FBI was engaging in these illegal searches, or did you perjure yourself to Senator Lee?

Mr. WRAY. I certainly didn't perjure myself. At the time that I testified in front of the Senate Judiciary Committee, I didn't have that piece of information. I will add—

Mr. GAETZ. Well, that was a Court order. You didn't have that piece of information because the Court hadn't yet rendered a judgment. Did you not know, when you gave the untruthful answer before Senator Lee, that this was going on?

Mr. WRAY. It was a truthful answer. I did not believe FISA had been involved in the January 6th investigation.

Mr. GAETZ. It was. So, you didn't—the answer is, the FBI has broken so bad, that people can go and engage in queries that, when you come before the Congress to answer questions, you're like blissfully ignorant—you're blissfully ignorant as to the unlawful queries. You're blissfully ignorant as to the Biden shakedown regime. It just seems like it gets into kind of a creepy place as well.

Go to our next image on what the Court said.

Just to the American people realize, the Court has smacked you down alleging—or ruling, "FBI personnel apparently conducted queries for improper personal reasons." People were looking themselves up. They were looking their ex-lovers up. Who has been held accountable or fired as a consequence of the FBI using the FISA process as their, like, creepy, personal snoop machine?

Mr. WRAY. There have been instances in which individuals have had disciplinary action and they are no longer with the—

Mr. GAETZ. Name them.

Mr. WRAY. I can't get into it here, but we can follow back up with you.

Mr. GAETZ. Don't you see that's kind of the thing, Director Wray, that you preside over the FBI that has the lowest level of trust in the FBI's history? People trusted the FBI more when J. Edgar Hoover was running the place than when you are. The reason is because you don't give straight answers. You give answers that later a court deems aren't true, and then, at the end of the day, you won't criticize an obvious shakedown when it's directly in front of us. It appears as though you're whitewashing the conduct of corrupt people.

Mr. WRAY. Respectfully, Congressman, in your home State of Florida, the number of people applying to come work for us and devote their lives working for us is over, up over 100 percent since I—

Mr. GAETZ. We're deeply proud of them and they deserve better than you.

Chair JORDAN. The time of the gentleman has expired.

The gentleman from Tennessee is recognized for five minutes.

Mr. COHEN. Thank you, Mr. Chair.

Director Wray, thank you for continuing to serve with all these attempts to sully your name and suggest you've committed crimes, when you've done an excellent job as FBI Director. I don't agree with everything you've done, but mostly I do, and I think the FBI is a premier law enforcement agency, and I support law enforcement. To attack the FBI is to attack law enforcement in general.

A few days after Mar-a-Lago, there was some individual who went after the Cincinnati headquarters of the FBI. Can you tell us a little bit about that and how you think that came about?

Mr. WRAY. So, the incident that you're asking about was, obviously, deeply disturbing. We had an individual wearing a tactical vest, armed with an AR-style rifle and a nail gun, who attempted to forcibly enter and attack our Cincinnati field office.

A subsequent review of the subject's devices and online postings identified a pretty striking anti-FBI, anti-Federal law enforcement hostility. He was calling on others to kill Federal law enforcement, claiming that he felt he was a, in his words, "civil war."

It's, unfortunately, part of a broader phenomenon that we have seen, not just against the FBI—and this is important to add—but against law enforcement all across the country, not just against law enforcement professionals themselves, which is appalling enough, but calling for attacks against their families, which is truly despicable.

Mr. COHEN. That man eventually was captured and eliminated, was he not?

Mr. WRAY. Yes.

Mr. COHEN. A few days later, was the Arizona FBI Department the subject of armed violence—or not violence, but armed protestors?

Mr. WRAY. Well, I know that our Phoenix field office has had a number of very concerning security incidents where people attempted to attack or breach the facility. I can't remember the dates of when that happened, but—

Mr. COHEN. All this has happened kind of in the same sphere. It's been information that's been put out on social media and just in general, and by Members of the Congress, questioning the FBI, questioning law enforcement in general. This has had a deleterious effect on the safety of FBI officials, and you said others like Justice.

The was a story the other day, I believe, about people involved in the prosecution of the former President and threats to them, DOJ personnel, as well as FBI. Is that something that's going on presently? Are there efforts to have a unit at the FBI maybe look into how to protect and defend law enforcement personnel who are threatened with violence?

Mr. WRAY. We did stand up a whole dedicated unit to focus on threats to FBI individuals, FBI employees and FBI facilities, because of the uptick that we saw over that time period.

Mr. COHEN. The January 6th, was beyond a weaponization of government; it was a nuclearization of government against the government. I believe I heard that you said that you didn't have any prior notice or reason to believe that there would be such an event on January 6th. Is that correct?

Mr. WRAY. We did not, to my knowledge at least, have prior knowledge of an attempt, a violent overthrow of and breach of the Capitol Building itself. Certainly, we were concerned about and put out a number of products, intelligence products, to partners and others warning of the potential for violence more generally on that date.

Mr. COHEN. So, there have been—I think Tucker Carlson and some of the Members, colleagues on the other side of the aisle, have said that Ray Epps was a secret government agent helping

encourage this crime, so as to make the President look bad. Do you have any knowledge of Ray Epps being a secret government agent?

Mr. WRAY. No. I will say this notion that somehow the violence at the Capitol on January 6th was part of some operation orchestrated by FBI sources and agents is ludicrous and it's a disservice to our brave, hardworking, dedicated men and women.

Mr. COHEN. Director, I agree with you. I think the FBI has some of the most talented law enforcement people in our Nation and in the world. They are concerned about safety. They tend to, as I understand, lean Republican, but they do their job down the line. That's what they're supposed to do.

I'm happy we have the FBI operating in Memphis and other places to work with our police departments and joint units to protect our citizens, and I thank you for your service to the United States.

I yield back my time.

Chair JORDAN. The gentleman yields back.

The gentleman from California is recognized.

Mr. ISSA. Thank you.

Director, I'm going to followup on my colleague from Memphis. How many individuals who were either FBI employees or people that the FBI had made contact with were in the January 6th entry of the Capitol and surrounding area?

Mr. WRAY. So, I really need to be careful here talking about where we have or have not used confidential human sources.

Mr. ISSA. Was there one or more individuals that would fit that description on January 6th that were in or around the Capitol?

Mr. WRAY. I believe there is a filing in one of the January 6th cases that can provide a little more information about this, and I'm happy to see if we can follow back up with you to provide that.

Mr. ISSA. I just want an answer. Was there one or more? I mean you would know if there was at least one individual who worked for the FBI who entered the Capitol on that day.

Mr. WRAY. I can't—again I just can't speak to that here, but I'm happy to get the Court filing that—

Mr. ISSA. Look, it has been two years and you now come before us. The gentleman asked these questions, makes all kinds of insinuations, and you nod your head yes. Then I ask you simply was there one or more and you won't answer that. So, I am going to make the assumption that there was more than one, more than five, more than 10, and that you are ducking the question because you don't want to answer for the fact that you had at least one and somehow missed understanding that some of the individuals were very dangerous and that there were others inciting individuals to enter the Capitol after others broke windows.

So, I am just going to move on because I think it is time to move on past January 6th. I just—seems that the other side won't.

You are near-cabinet-level individual. You enjoy a term in Senate confirmation. You feel comfortable speaking to other Members, either cabinet-level or subcabinet-level when appropriate to resolve problems within the government?

Mr. WRAY. Absolutely.

Mr. ISSA. OK. So, when the FBI censored the U.S. Government you wouldn't have to just take it down by calling Meta or Google, would you?

Mr. WRAY. I'm sorry. I'm not sure I'm following the question.

Mr. ISSA. Are you familiar with the official verified Russian language account of the United States Department of State that was taken down at your agency's request?

Mr. WRAY. That doesn't ring a bell as I sit here right now, no.

Mr. ISSA. OK. Well, now you have something to take back and look at—

Mr. WRAY. OK.

Mr. ISSA. —because in fact in this bundle that SBU constantly was submitting to various agencies was, in fact, a Russian language statement of the government. Literally, you took down the free speech of the Department of State.

Mr. WRAY. So—

Mr. ISSA. Yes, go ahead.

Mr. WRAY. —you mentioned SBU. I'm not sure we're talking about the same thing, but I will endeavor to provide a little more context, as least as to SBU.

Mr. ISSA. Yes.

Mr. WRAY. So, I believe what you may be referring to, but I'm not sure we're not talking about the same thing, is that when Russia invaded Ukraine the security service of Ukraine, SBU, which is a longstanding good partner of the FBI, asked us for help on a whole range of things. One of those things was to contact U.S. companies on their behalf because the Russians—the invasion had cut-off Ukraine's communications.

So, we did pass through information from the SBU to social media.

Mr. ISSA. Are you also familiar with the fact that President Zelensky has had to clean house at the SBU?

Mr. WRAY. I know there have been a number of personnel changes.

Mr. ISSA. OK. Well, we will followup with this in more detail.

The question I have for you is you are the premier law enforcement operation, and you are a former Department of Justice high-ranking executive at all levels, so would you agree that the job of the FBI is criminal investigation?

Mr. WRAY. It is criminal investigation and to protect the country from national security threats, those two things.

Mr. ISSA. OK. So, the idea that you take information, and you have it taken down, use your authority and the leverage you have to have Meta, Google, Facebook; Facebook being Meta, or Twitter—take down people's information on things like where COVID came from, where do you find the national security interest in that? Where do you find the interest in free speech of American citizens being taken down? I repeat, free speech of American citizens. Where do you have that authority?

Mr. WRAY. So, we don't ask social media companies to censor information or suppress information when it comes to national security threats, certainly. So, what we do is alert them when some other intelligence agency gives us information about a foreign intelligence service being behind some account, we will call social media

companies' attention to that. At the end of the day, we're very clear that it's up to the social media companies to decide whether to do something about it or not—

Mr. ISSA. The suggestion of the most powerful law enforcement operation is not a suggestion. It is in fact effectively an order.

Mr. Chair, I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Georgia is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair. We are here today because MAGA Republicans will do anything to protect Donald Trump, their savior, no matter how unfounded or dangerous it may be to do so. Welcome to the legislative arm of the Trump reelection campaign.

A grand jury found probable cause that among other crimes Trump illegally kept highly sensitive national security documents, which put our country and our sources in danger if they got out and which photographs show Trump kept those records in bathrooms, showers, closets, and in the Mar-a-Lago ballroom. MAGA Republicans are afraid that the justice system might hold Trump accountable for his actions so to protect him Republicans are trying to intimidate FBI officials. In case that does not work, Republicans are trying their hardest to discredit the FBI in the eyes of the American public.

When Trump lost in 2020, they tried to make Americans distrust their election systems. Now that the FBI and the Justice Department have sought to hold Trump to the same standard any other American citizen would be held to, MAGA Republicans are telling Americans not to trust the FBI. To protect Trump Republicans are trying to distract us from the real work that the FBI does every day, which is fighting violent criminals, child predators, and fighting domestic terrorists and extremists so as to protect our democracy and our national security. Even worse, MAGA Republicans are stirring up threats that pose a danger to the safety of FBI employees. It is past time that Republicans realize the consequences of their words and put the good of this country over politics.

Now, Director Wray, I want to thank you for your service during a time of unprecedented travail. Director Wray, you were a partner in an international law firm before you took a drastic pay cut to accept the job of FBI Director, isn't that correct?

Mr. WRAY. Yes, that's something my wife reminds me of from time to time.

[Laughter.]

Mr. JOHNSON of Georgia. Let me ask you this, sir: You took this office after Trump fired the former FBI Director Jim Comey, correct?

Mr. WRAY. Yes, sir.

Mr. JOHNSON of Georgia. Did you contact the Trump Administration to offer yourself for this job or did the administration recruit you for the job?

Mr. WRAY. They contacted me and asked me if I would be willing to consider taking on the role.

Mr. JOHNSON of Georgia. So, Trump handpicked you to be the FBI Director?

Mr. WRAY. Yes.

Mr. JOHNSON of Georgia. He expected you to do what he wanted you to do, correct?

Mr. WRAY. Well, that I can't speak to. I can tell you the same thing I told him which is that I'm going to do this job by the book.

Mr. JOHNSON of Georgia. Well, I'll put it like this: He's unhappy with you now, isn't he?

Mr. WRAY. I'll let him speak for himself.

Mr. JOHNSON of Georgia. Well, I think a lot of his acolytes here reflect his intent at this particular time.

Director Wray, are you aware that MAGA Republicans have repeatedly called for the FBI to be defunded?

Mr. WRAY. I have heard some of that language.

Mr. JOHNSON of Georgia. In fact, Republicans on this very Committee have said that your institution should be dismantled, isn't that correct?

Mr. WRAY. Well, I think certain Members have.

Mr. JOHNSON of Georgia. One Member even tweeted, quote, "Defund and dismantle the FBI." Another told *Fox News* that, quote, "Republicans should defund the bureaucracy." A third told the press that he thinks the FBI, quote, "needs to be split up and moved out into pieces." Those are direct quotes and only a small sample of what is out there.

Can you briefly describe for us what the effect would be on our national security and on our domestic tranquility if the FBI were to be defunded or dismantled?

Mr. WRAY. Well, certainly it would be disastrous for 38,000 hard-working career law enforcement professionals and their families, but more importantly in many ways it would hurt our great State and local law enforcement partners who depend on us every day to work with them on a whole slew of challenging threats. It would hurt the American people, neighborhoods, and communities across the country, the people we're protecting from cartels, violent criminals, gang members, predators, foreign and domestic terrorists, and cyber attacks. I could go on and on.

The people it would help would be those same violent gangs and cartels, foreign terrorists, Chinese spies, hackers, and so forth.

Mr. JOHNSON of Georgia. Member—

Chair JORDAN. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Colorado for five minutes.

Mr. BUCK. I thank the Chair.

Director Wray, thank you. Thank you for your work with the FBI and thank you for your history of work in law enforcement. You started out as an AUSA. I am getting this information from Wikipedia, the great font of knowledge in the digital age, so I'm assuming that it is true. You started out as an AUSA. You were nominated by Republican President Bush for the position of Assistant Attorney General in the Criminal Division at the Department of Justice, and you were confirmed by a Republican Senate, if I am correct in that.

Mr. WRAY. Yes, by a unanimous voice vote.

Mr. BUCK. You were then nominated by Republican President Donald Trump to be the FBI Director and again confirmed by the Republican Senate for that position?

Mr. WRAY. Yes, I think there were only five votes against me, and they were all from Democrats.

Mr. BUCK. According to Wikipedia you are still a registered Republican, and I hope you don't change your party affiliation after this hearing is over. I want to thank you. I want to thank you for leading an agency, as you mentioned in your opening statement, that protects Americans from foreign terrorists, an agency that protects Americans from spies from China and Russia, cybercrime, public corruption, organized crime, drug cartels, human traffickers, and white-collar criminals. I want to thank you and the FBI for protecting law-abiding Americans from the evil that exists all around us.

Director Wray, you know this, but it is worth mentioning again anyway. The FBI doesn't protect America because this is a beautiful country. It doesn't protect America just because of the citizens who live in this country. You and the FBI protect America because of the values that we hold, because of our constitutional republic, because this is a special place. The rest of the world knows just how special this place is.

Director Wray, I am concerned about FISA. I am not concerned about FISA in a partisan way, and, frankly, I am not in favor of defunding the FBI, nor am I in favor of splitting up the FBI, nor am I in favor of using the Holman rule for the FBI Director. I am concerned about FISA because I am concerned about what makes this place special and the threats to us. I would love to work with the FBI on how we can protect Americans at the same time protecting the civil liberties of Americans. That area of FISA is what really concerns me.

I know you have gone to great lengths to try to work with FBI agents on how they access information under 702, and I know that at times it has been successful and at times it has not been successful. The spirit of FISA and the spirit of our constitutional republic really demands that the FBI culture shift and it shifts to a place where FBI agents understand that protecting Americans' civil liberties, that protecting the privacy that we all enjoy in this country and even though we screw up, we still enjoy this privacy. In court we have the highest burden of proof the world has ever known, to prove a case beyond a reasonable doubt. That information has to be gathered by the government in a legal way.

So, I fear that we are going to overcorrect on FISA in Congress. That we are going to take away some tools that are necessary because there is a trust factor here that is missing. I would love to know how we can draw that line in a way that assures the civil liberties.

I agree with my colleague from California, and I don't often agree with folks from California, but I agree with my colleague from California that it is essential that we do not get geolocation information from what I consider criminals at big tech and that we protect that information for Americans. You as a law enforcement official should not know where I am necessarily unless you have probable cause to get that information.

I am also concerned about the ability of law enforcement, and particularly the FBI, to access information. When I go on the internet, and I search for a gun vault, or I search for a holster I don't



want the government to know that I own a gun. I think I have that privacy right to make sure the government doesn't know that I own a gun, or any other information that I search for on the internet unless you have got probable cause to make that search.

So, I want to ask you a question with my few seconds, and that is how can you work on the culture in the FBI and help us reach that sweet spot on FISA?

Mr. WRAY. Well, thank you for that. Certainly, we start it with first principles, try to drive home every day to our entire workforce that our mission is to both protect the American people and uphold the Constitution. We have on the issue of FISA clearly had failures in the past. I've been very plain about that. We've implemented a whole series of reforms.

If you look at the reports that have started to come out now from the FISA Court, ODNI, the Justice Department, and from others who have looked at the effect of your reforms, over and over again they are showing significant improvement in compliance. We're talking about the most recent FISA Court opinion finding 98 percent compliance and commending us for moving in the right direction. A DOJ report found 99 percent compliance. Our internal audit found a 14-percent jump up to 96 percent. These are all separate reports looking at the impact of our reforms.

A lot of the public commentary about our failures—and let's be clear, we have had problems. Those problems are unacceptable, and I am determined with my leadership team to fix them. Those problems almost entirely predate those reforms, even though some of them have just come out recently.

So, we're going to keep working at this. That is not a one-and-done from my perspective. I recognize that we need to work with the Congress on this issue, but this is an incredibly important tool. As you know from your own public service—

Chair JORDAN. The time of the—

Mr. WRAY. —as a prosecutor as well, this is an incredibly important tool to protect the American people from very serious foreign threats.

Chair JORDAN. The time of the gentleman is expired.

The gentleman from California is recognized.

Mr. SCHIFF. Thank you, Mr. Director. I want to pick up where Mr. Buck began as well by thanking you for your service. I am glad that we have an opportunity for one Democrat, one Republican in close succession to thank you for your service to the country.

You are being attacked and vilified by some of the Members of this Committee and others outside this Committee because the Justice Department, the FBI has had the audacity to investigate serious allegations of criminal conduct by a former President. I just want a chance to recap how we got to where we are.

During the last administration and for four years the Justice Department took the position, not unprecedented for the department, that a former President could not be—a current President could not be indicted. Now, I think that is a flawed matter as a constitutional principle, but nonetheless that was the view of the Office of Legal Counsel and the Justice Department during the Trump years that the President of the United States could not be indicted.

My Republican colleagues seem to believe that a former President similarly cannot be indicted. That would effectively make a President above the law, beyond the reach of the law. In my view, there would probably be only one thing the Founders would find more politically precarious and dangerous to our Constitution than the indictment of a President or former President, and that is the failure to indict a President or former President when they have engaged in criminal conduct.

The Justice Department, I believe, as Representative Lofgren, my fellow Member of the January 6th Committee, asserted, took a very long time to begin the investigation of Donald Trump and his involvement in January 6th. I believe it began with urgency when it came to the foot soldiers who broke into the Capitol and assaulted police officers that day, but at least what I can tell from the public record the activities of the President himself, some of which were a matter very much of public record such as his tape-recorded conversation with the Secretary of State in Georgia in which he badgered the Secretary to, quote, “find 11,780 votes that don’t exist,” while that was the subject of investigation by the local District Attorney in Fulton County, it did not appear to be the subject of investigation for more than a year by the Justice Department. To me that is inexplicable. This was never the kind of case in which you could roll up the foot soldiers on the higher-ups because there were multiple lines of effort in this plot to overturn the election.

I do think that the appointment of the Special Counsel has accelerated the investigation of the former President’s misconduct and I think that is a positive step for the department and for the country so we can get resolution to this.

Likewise, with Mar-a-Lago, notwithstanding the protests of my colleagues, they were repeated, repeated requests by the Archives to get those documents back from the former President. Then when those were unsuccessful, there was a Grand Jury subpoena that was administered. When that was unsuccessful and only when that was unsuccessful and there was evidence that the former President was still withholding highly classified materials, did the FBI go to the step of a search warrant. That was more than a 1½ years after those initial requests. This was anything but a rush to judgment in the Mar-a-Lago case.

So, I believe the department if anything has exercised enormous caution, I would say too much caution, in the June 6th Commission—Committee’s work and oversight to proceed against a former President when there are serious and credible allegations of criminal conduct.

I want to thank you for your stewardship during this incredibly difficult time. I don’t think there has been a more difficult time for an FBI Director. Notwithstanding concerns I have expressed none of them go to your integrity or your commitment to the country and I want to thank you for that.

Let me ask you about a different topic, although related to January 6th as well. Let me ask you broadly about domestic violent extremism. I offered an amendment in this Committee, voted down by the Republicans, that we should oversee the increasingly dire threat of domestic violent extremism. One of your recent reports

underscored the rise of this prevalent threat and I would ask you if you would address it today.

Mr. WRAY. So, the rise of domestic violent extremism is something that I and we have been identifying for quite some time. It goes back well before January 6th. In fact, a lot of people don't know this, but the Joint Terrorism Task Forces that we hear about so often at the FBI were largely created in response to domestic terrorism, not foreign terrorism.

In my first few years, as Director we were identifying this issue more and more and that's why we elevated in the Summer of 2019 racially motivated violent extremism to a national threat priority level. We saw I think about a 40-percent increase in the number of domestic violent extremism investigations all before anything to do with January 6th. Obviously since then it has continued.

Domestic violent extremism cuts across the spectrum from the racially motivated violent extremism, militia violent extremism, anarchist violent extremism, environmental violent extremism, and, of course, recently, we've had a lot of violent extremism attacks against prolife facilities. We're investigating those.

So, it really covers a wide spectrum. What they all have in common is three things: Violence or threats of violence motivated by some ideology. It varies in violation of Federal criminal law. That's the domestic violent extremism that I'm talking about when I've identified this phenomenon.

Mr. SCHIFF. Mr. Chair, could I request unanimous consent to enter into the record two letters, both from David Weiss, the Trump-appointed U.S. Attorney in Delaware, rebutting allegations concerning partiality in the investigation of the Hunter Biden case?

Chair JORDAN. Without objection.

Mr. SCHIFF. I thank you.

Thank you, director.

Chair JORDAN. Without objection.

Director, what is the difference between a traditional Catholic and a radical traditional Catholic?

Mr. WRAY. I'm not an expert on the Catholic orders.

Chair JORDAN. Well, your FBI wrote a memo talking about radical traditional Catholics. I am just wondering if you can define it for us.

Mr. WRAY. Well, what I can tell you is you're referring to the Richmond Product, which was a single product by a single field office, which as soon as I found out about it, I was aghast and ordered it withdrawn and removed from FBI systems.

Chair JORDAN. You were aghast? Then why won't you let us talk to the people that put it together?

Mr. WRAY. We are working on finishing an internal review into what happen there.

Chair JORDAN. We have to wait; we the Congress and the American people have to wait until you do an internal review—it is not a criminal investigation going on here—an internal review before we can talk to the people who wrote this?

Mr. WRAY. When we finish our internal review, which will be very soon, we will come back before the Committee and provide a briefing on what we found. Then we can—

Chair JORDAN. Any idea how many Catholics in America?

Well, we appreciate the briefing, but we want to talk to the people who wrote it.

Mr. WRAY. Then we can—

Chair JORDAN. Any idea how many Catholics are in America, director?

Mr. WRAY. No, sir.

Chair JORDAN. There are a lot, over 60 million. What percentage of those are radical traditional Catholics according to the Richmond Field Office of the FBI?

Mr. WRAY. Again, that product is not something that I will defend or excuse. It's something that I thought was appalling and removed it.

Chair JORDAN. Let's read from that product. Page 4 of that product—by the way, the copy you gave us—when can we get a copy that doesn't have all these redactions on it, so we can actually see what the American taxpayers were paying for, to see their rights, their First Amendment religious liberty rights attacked? Let me just read from page 4.

Provide new opportunities to mitigate extremist threat through outreach to traditional Catholic parishes and the development of sources with the placement and access to report on places of worship.

That is pretty fancy language for they are trying to put informants in the parish, in the church. That is what this memorandum said, Director, from one of your field offices. You won't let us talk to the people who did it. Any response to that?

Mr. WRAY. I didn't know—I was waiting for the question.

Chair JORDAN. No, you think priests should be informants inside the church, Director?

Mr. WRAY. We do not recruit, open, or operate confidential human sources to infiltrate, target, report on religious organizations.

Chair JORDAN. That's not what this said.

It sounds like you were trying to do it in Richmond, Virginia.

Mr. WRAY. No, sir. No, sir.

Chair JORDAN. You weren't?

Mr. WRAY. That's—

Chair JORDAN. This didn't happen? You can assure us that this didn't happen?

Mr. WRAY. That product did not, as best as we can tell, result in any investigative action as a result of it. None.

Chair JORDAN. You know what the motivation for this was? Why would they even think about doing this? You know what the motivation was?

Mr. WRAY. Well again, I think that's what our internal review will find, and I'd rather wait until I hear what the results of that internal review are.

Chair JORDAN. Well, I don't need an internal review. I can read the document. I assume you can do the same. Because it says right there on the same page,

Richmond assesses extremist interest in radical traditional Catholics is likely to increase over the next 12–24 months in the run-up to the next general election.

Same paragraph,

Events in which extremists and radical traditional Catholics might have common cause include legislation, judicial decisions in such areas as abortion rights, immigration, affirmative action, LGBTs, immigration, affirmative active, and LGBTQ protections.

It is politics. That is the motivation. In the run-up to the next election. They talk about the border, affirmative action, and abortion rights. It is total politics. I think it is interesting that affirmative—we just got a decision from a bunch of Catholics who sit on the U.S. Supreme Court relative to affirmative action. Politics was the total motivation here. That is what is scary. That is what I think is so frightening and why we—how this happens I don't know.

Five people signed off on it. Five people including the Chief Division Counsel at the Richmond Field Office. I would like to talk to this lawyer. A lot of people in this room went to law school. You had a course on the Constitution. Talks about the First Amendment. I find that really scary.

Again, when do you think we are going to have a chance? How soon you going to complete this internal investigation so we can talk to these folks who put this together?

Mr. WRAY. I expect us to be able to brief the Committee on our internal review later this summer.

Chair JORDAN. Will that briefing include the names of the individuals who put this document together attacking Americans' First Amendment liberty?

Mr. WRAY. I'm not sure yet what it will include because it's not done yet, but when it is, we'll provide you with an appropriate briefing.

Chair JORDAN. What are you doing to fix it, so this doesn't happen again?

Mr. WRAY. Well, we've already started putting place a number of fixes, and those will be further informed by the results of the review.

Chair JORDAN. What are those fixes? More training, more things, that is the same thing you told us on FISA. While you may have some improvement, you still got 204,000 times the data base was illegally searched. So, what are the training and procedures you are putting in place?

Mr. WRAY. Well, I'll put the FISA stuff to the side, although if you have time I can engage in that.

Chair JORDAN. Well, I am just using that as an example of where you have told the same thing, you fix something, and you haven't.

Mr. WRAY. I do not believe the number that you just invoked on the FISA side is since the reforms. The fixes, as you called them—

Chair JORDAN. Can we get an unredacted—

Mr. WRAY. —post-date the numbers that you're referring to.

Chair JORDAN. Director, can we get an unredacted copy—while you are still doing this internal investigation can we at least get an un-redacted copy of this memorandum?

Mr. WRAY. I will find out if there's more of the document that can be shared with you. We've tried to be very careful in what we redact and there's always a basis for it. So, let me go back and see if there's more that we can provide. I know my instructions are to be as sparing as possible in the redactions that we provide.

Chair JORDAN. The gentleman from California is recognized.

Mr. SWALWELL. Director, I think it is quite rich that the guy that has accused you of lawlessness and weaponization is 400 days into violation of his own Congressional Subpoena over January 6th. Quite rich to me that you are hearing all these allegations from somebody who won't even respond to a lawful subpoena.

I want to talk more about your workforce because that is where you started. A couple weeks ago at the bureau you had Family Day. Can you tell us what Family Day is?

Mr. WRAY. Family Day is an opportunity for employees from really all over the FBI. It tends to be primarily from the nearby geographies because of the trip that they have to make, employees to bring their families into FBI headquarters so that they can see a little bit about the place their loved ones work and why mom or dad is spending so much time away from home—

Mr. SWALWELL. Do you see any little kids at Family Day?

Mr. WRAY. Many, many, many. It is an opportunity for us to say thank you to the families. We talked a lot in law enforcement about sacrifice. The reality is that law enforcement officers and professionals are sacrificing to do what they love. Our families are sacrificing because of who they love.

Mr. SWALWELL. What would you say in your experience is the No. 1 worry of a little kid about a mom or dad who is a special agent out in the field?

Mr. WRAY. Obviously, they are worried that their mom or dad won't go home at night because they have been killed. That, in fact, has happened unfortunately all too—

Mr. SWALWELL. It happened in Fort Lauderdale a couple years ago. Is that right?

Mr. WRAY. Laura Schwartzenberger and Dan Alfin, two of our agents, killed in a connection with a child exploitation case down there. It was the single darkest day I have had in this job.

Mr. SWALWELL. I want to turn your attention to an organization called Marco Polo. It is run by a former Trump aide named Garrett Ziegler.

Over the past couple weeks, he has doxed the addresses of a former Special Agent connected to the Hunter Biden case. He has put up the dates of births and pictures of two current special agents who work for you. He has said the name, which I will not say, of an Assistant U.S. Attorney who worked on the Hunter Biden case, that she will answer for her crimes. He will focus everything on her. Justice will be done. It is out of my hands. She will answer.

Do these types of threats and doxing concern you about threats to your workforce and what it could mean?

Mr. WRAY. Well, obviously, what we are most concerned about are the actual acts of violence, which themselves have happened and as we just discussed. This kind of phenomenon, doxing, is itself hugely problematic because the more information, personal information about law enforcement professionals that are out in the internet, the more people who may be unstable or inclined to violence that are out there who can choose to act on it. We are seeing that all too often.

The number of officers across law enforcement killed in the line of duty has been up alarmingly over the last few years. I know that because one of the things I committed to doing early in my tenure was every time an officer, anywhere in the country, is shot and killed in the line of duty, I was going to personally call that sheriff or that chief and on behalf of the FBI express our support and condolences and relay that to the family. I have done that now close to 400 times since I have been in this job.

Mr. SWALWELL. Thank you for doing that. You not only do that, but you also send your SACs, your special agents in charge, to their funerals as well. I have seen that.

Chair, I have counted in this hearing, and we are only about an 1½ hours, the use of the word laptop about 20 times. In fact, in the Chair's opening statement, he said that he is upset that he believes the FBI prevented more Americans from learning about a private citizen's laptop. That is bananas to me. You all are bringing up FISA every single question. You are essentially saying to the American people that you are guardians of personal security and privacy. The 2020 election was determined—

Mr. JOHNSON of Louisiana. Would the gentleman yield?

Mr. SWALWELL. —because the FBI, no, because the FBI didn't let more Americans see a private citizen's nonconsensual nudes. Is that what we are saying here; that you lost the election not because of your ideas, but because a private citizen's laptop wasn't out there?

Mr. JOHNSON of Louisiana. Do you want an answer? Will you yield?

Will you yield?

Mr. SWALWELL. That's bananas. Like you should be a party of ideas not a party of nonconsensual nudes to help you win an election.

Mr. JOHNSON of Louisiana. Will you yield for an answer?

Mr. SWALWELL. It seems like that is what the objection is here today. We should be talking about the mass shootings that occurred over the last 10 days. Instead, this hearing has turned into absolute chaos.

I yield back.

Chair JORDAN. The time of the gentleman has expired.

We bring up FISA because it is up for reauthorization, if the gentleman didn't know, at the end of this year. It was in our witness's opening statement. I didn't bring up the laptop—

Mr. SWALWELL. Whose time are you speaking to, Chair?

Chair JORDAN. The judge last—

Mr. SWALWELL. Point of order. Whose time are you—

Mr. NADLER. Chair, point of order. Whose time are you speaking on?

Chair JORDAN. I am speaking on, not a point of order.

I recognize the gentleman from Arizona.

Mr. BIGGS. Thanks, Mr. Chair.

Director, thanks for being here. Who is Matthew Graves? Who is Matthew Graves?

Mr. WRAY. I believe Matthew Graves, at least the person I am thinking of, is I think the U.S. Attorney in the District of Columbia.

Mr. BIGGS. That is the person I am thinking of, too. Are you aware that he has promised more than 1,000 more individuals will be charged or indicted related to January 6th?

Mr. WRAY. I had not heard that he had said that.

Mr. BIGGS. Well, it seems arbitrary. There are reports that it is kind of a quasi-quota system that he has put together for January 6th prosecutions. Do you approve of targets, goals, quotas in prosecuting alleged criminal conduct?

Mr. WRAY. Well, certainly not quotas. That doesn't make any sense. I mean, goals are a little bit more of an ambiguous term.

Mr. BIGGS. Certainly not quotas.

Mr. WRAY. Certainly not quotas.

Mr. BIGGS. Do you know if any of your personnel at the FBI is involved in the investigations promised that will lead to indictments by the January 6th quota established by U.S. Attorney Graves?

Mr. WRAY. That doesn't sound familiar to me.

Mr. BIGGS. OK. In June 2021, you told this Committee that a small group of people at the U.S. Capitol on January 6th had "all sorts of weapons." Do you remember being here for that Committee hearing and testifying that way?

Mr. WRAY. In general, yes.

Mr. BIGGS. It has been reported that more than 40 FBI personnel, agents, or contractors were in the crowd on January 6th. Is that number accurate?

Mr. WRAY. I don't know if that number is accurate.

Mr. BIGGS. Former Capitol Police Chief Steven Sund reportedly has asserted that the protest crowd was filled with Federal agents. Are you aware of his assertion?

Mr. WRAY. I am not.

Mr. BIGGS. Would you agree with him that it was filled with Federal agents on January 6th?

Mr. WRAY. I would really have to see more closely exactly what he said and get the full context to be able to evaluate it.

Mr. BIGGS. How many agents were actually, agents or human resources were present at the Capitol complex and vicinity on January 6th?

Mr. WRAY. Well, again, it is going to get confusing because it depends on when we deployed and responded to the breach that occurred. Obviously, there were—

Mr. BIGGS. How many were—

Mr. WRAY. —Federal agents—

Mr. BIGGS. Sure, yes, you are talking—and you and I both know we are talking different things here. Please don't distract here, because we are focusing on that those who were there in an undercover capacity on January 6th. How many were there?

Mr. WRAY. Again, I am not sure that I can give you that number as I sit here. I am not sure there were undercover agents on scene.

Mr. BIGGS. I find that kind of a remarkable statement, Director. At this point, you don't know whether there were undercover Federal agents, FBI agents, in the crowd or in the Capitol on January 6th?



Mr. WRAY. I say that because I want to be very careful. There have been a number of court filings related to some of these topics. I want to make sure that I stick within what is in—

Mr. BIGGS. I understand that. I just, I thought I heard you say you didn't know whether there were FBI agents or informants or human sources in the Capitol or in the vicinity on January 6th. Did I misunderstand you? I thought that is what you said.

Mr. WRAY. Well, I referred very specifically to undercover agents.

Mr. BIGGS. Yes. So, are you acknowledging then there were undercover agents?

Mr. WRAY. As I sit here right now, I do not believe there were undercover agents on scene—

Mr. BIGGS. Or any assets?

Mr. WRAY. —FBI agents.

Mr. BIGGS. Did you have any assets present that day in the crowd?

Mr. WRAY. When it comes to what you are calling assets or what we would call confidential human sources, that is a place where, again, I want to be careful, much as I said in response to an earlier question. There are court filings that I think speak to this that I am happy to make sure we get to you, assuming they are not under seal. That can better answer the question than I can as I sit here right now.

Mr. BIGGS. In the same, or excuse me, June 2021 Committee hearing you told us that,

The FISA Court approved FBI procedures, minimization procedures, collection and procedures, courting procedures, did not find misconduct.

That is what you said. Specifically, you said the FISC found no misconduct.

Yet, three months later the Inspector General found widespread problems in FBI's FISA applications, raising serious questions about the FBI review process of applications, including hundreds of examples of noncompliance with Woods Procedures, for example. We know that from December 2020–November 2021 the FBI conducted 3.4 million warrantless searches of U.S. data under FISA, 3.4 million, up nearly triple the amount of the previous year. It got worse as you were telling us there was nothing to worry about.

Now, your reforms have produced about, reduced it down to 119,000, over 200,000 total, but 119,000 discrete Americans. That just doesn't seem like you have accomplished much there if you have 119,000 illegal searches and queries under FISA.

I will yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from California is recognized.

Mr. LIEU. Thank you, Mr. Chair.

The House Judiciary Committee is responsible for helping to ensure the rule of law. Unfortunately, this Chair ignored a bipartisan Congressional subpoena served on him. The actions of this Chair have undermined the credibility of all Congressional Committees in seeking information from witnesses and have undermined the rule of law.

Now, Director Wray, thank you for your public service and for the service of the brave FBI agents. I am going to ask you a series

of basic questions to get facts out to the American people about our system of justice.

Trump advisor Roger Stone was convicted in a Federal Court, correct?

Mr. WRAY. That is my recollection.

Mr. LIEU. All right. Trump donor Elliott Broidy was convicted in a Federal Court, correct?

Mr. WRAY. Also, my recollection.

Mr. LIEU. The Attorney General at the time for those two convictions was Bill Barr. Which President nominated Bill Barr for Attorney General?

Mr. WRAY. President Trump.

Mr. LIEU. OK. Trump's former lawyer Michael Cohen was convicted on two separate occasions in a Federal Court, correct?

Mr. WRAY. I believe that is correct.

Mr. LIEU. The Attorney General at the time for Cohen's second conviction was Matthew Whitaker. Which President appointed Matthew Whitaker as Acting Attorney General?

Mr. WRAY. President Trump.

Mr. LIEU. OK. Trump's former Campaign Chair Paul Manafort was convicted in a Federal Court, correct?

Mr. WRAY. Yes.

Mr. LIEU. Trump's former Deputy Campaign Manager Mr. Gates was convicted in a Federal Court, correct?

Mr. WRAY. That is my recollection.

Mr. LIEU. Trump's campaign Foreign Policy Adviser George Papadopoulos was convicted in a Federal Court, correct?

Mr. WRAY. Yes, I think he, yes, he pled guilty, yes.

Mr. LIEU. The Attorney General at the time of those three cases was Jeff Sessions. Which President nominated Jeff Sessions for Attorney General?

Mr. WRAY. President Trump.

Mr. LIEU. OK. You were their FBI Director for all those cases at the time. Which President nominated you?

Mr. WRAY. President Trump.

Mr. LIEU. OK. What these facts show is we don't have a two-tiered system of justice. We have one Department of Justice that goes after criminals regardless of party ideology.

All these folks were convicted under the administrations of three separate Republican Attorneys General. It is not the fault of the FBI that Donald Trump surrounded himself with criminals. Donald Trump brought that on himself. Thank you to the FBI for exposing the cesspool of corruption of these Trump associates.

Now, I would like to talk about efforts by MAGA Republicans to defund the FBI. I think it would be useful for the FBI to explain to the American people what your missions are and how critical they are, so, again, a series of basic questions. The FBI's mission includes counterterrorism, correct?

Mr. WRAY. Yes.

Mr. LIEU. OK. That means the FBI works to stop terrorist attacks on American soil, right?

Mr. WRAY. Yes.

Mr. LIEU. OK. The FBI's mission also includes counterintelligence, correct?

Mr. WRAY. Yes.

Mr. LIEU. That means the FBI works to stop espionage of American companies and organizations. Is that right?

Mr. WRAY. Yes.

Mr. LIEU. OK. The FBI's mission includes stopping cybercrime, right?

Mr. WRAY. Correct.

Mr. LIEU. The FBI's mission includes stopping public corruption, right?

Mr. WRAY. Correct.

Mr. LIEU. The FBI's mission includes stopping weapons of mass destruction from being detonated on American soil, right?

Mr. WRAY. Yes, we work with others on it, but yes.

Mr. LIEU. The FBI's mission includes going after organized crime, right?

Mr. WRAY. Yes.

Mr. LIEU. You go after violent crime, correct?

Mr. WRAY. Yes.

Mr. LIEU. You also go after White collar crime, right?

Mr. WRAY. Yes.

Mr. LIEU. The FBI's mission also includes going after child sex trafficking, correct?

Mr. WRAY. Yes.

Mr. LIEU. OK. Republican Members of their caucus, including Members on this Committee, have asked to defund the FBI. One Member on this Committee from Arizona wrote that the FBI "should be defunded and dismantled." What would happen if the FBI was defunded and dismantled?

Mr. WRAY. We would have hundreds more violent criminals out on the street, dozens more violent gangs terrorizing communities, hundreds more child predators on the loose, hundreds more kids left at those predators' mercy instead of being rescued, scores of threats from the Chinese Communist Party being left unaddressed, hundreds of ransomware attacks left unmitigated, terrorist attacks, both jihadist inspired and domestic violent extremists, not prevented that would succeed against Americans.

Single seizures of fentanyl, it is not uncommon right now for a single FBI office in a single operation to seize enough fentanyl to wipe out an entire State. So many, many, many, many more of those lethal doses would be sweeping the country. We have close to 400 I think it is, somewhere between 300–400 investigations into the leadership of the cartels trafficking that fentanyl. So, you would have a significantly greater threat from the southwest border from the cartels. So, those are just a few things that would happen.

Ultimately, the people most hurt by some ill-conceived effort to defund our agency, the people most hurt are the American people that live in every district represented on this Committee.

Mr. LIEU. Thank you, Director Wray and the FBI agents, for protecting Americans.

Chair JORDAN. The time of the gentleman has expired.

The gentleman from California, Mr. Kiley, is recognized.

Mr. KILEY. Good morning, Director Wray. I would like to take you back to 2021. In many parts of the country, schools remained

closed month after month for no good reason. Once schools did nominally open, many instituted draconian testing and quarantine regimes, such as one student is possibly exposed to COVID, everyone goes home for the week. Children as young as toddlers were subjected to harmful mask mandates that defied international norms.

The way some students were treated truly shocks the conscience. Just consider a few examples from my own State of California. A school district in Davis sent an email to parents announcing that their children will be required to eat outside in the rain to reduce exposure to COVID. A school in Sonoma County made young children chew with their masks on, explaining this was to minimize the time spent unmasked. Some schools in Los Angeles limited students to one bathroom break per day and barred them from drinking water outside of the lunch period. A school in the San Ramon Valley made students eat lunch on the ground.

In October of that year, the American Academy of Pediatrics would declare a National State of Emergency in children's mental health, citing dramatic increases in emergency department visits for all mental health emergencies, including suspected suicide attempts.

In the face of this, Director, the Biden Administration decided to take action. It mobilized the sweeping powers of Federal law enforcement. It wasn't to spare kids from such cruelty. Rather, it was to target the parents who were speaking out against it.

The administration coordinated with the National School Board Association on a letter that began with the alarming claim America's public schools and its education leaders are under an immediate threat. The letter cited a handful of news stories, almost all which involved purely expressive activity by parents at school board meetings, and called such activity a form of domestic terrorism. The letter called for the full counterterrorism and law enforcement powers of the Federal government, including authority granted under the PATRIOT Act, to be mobilized to investigate, intercept, and prevent such activity.

The Biden Administration was ready to take this letter and run with it the moment it was received. After all, administration officials had participated in its drafting. Within five days of receiving it, Attorney General Merrick Garland fired off his infamous memo directing Federal action in response to a "disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff." In response, the FBI opened 25 assessments against parents and even created a new threat tag.

Director Wray, did Attorney General Garland consult with you or the FBI before issuing that memorandum?

Mr. WRAY. I can't get into discussions that did or maybe more importantly did not happen between the FBI and the Department in advance of the—

Mr. KILEY. Why do you say more importantly did not?

Mr. WRAY. Well, because I will say to you the same thing that I said to all 56 of our field offices as soon as I read the memo, which is that the FBI is not in the business of investigating or po-

licing speech at school board meetings or anywhere else for that matter, and we are not going to start now.

Now, violence, threats of violence, that is a different matter. We are going to work with our—

Mr. KILEY. Right. So, that is what the memo was predicated on. What I am asking you, was there any evidence that you provided to Attorney General Garland that supported that premise that there was an increase in harassment and threats of violence?

Mr. WRAY. I am not aware of any such evidence. I know that we have had a number of our folks who have been up here for transcribed interviews. So, unless some of them shared it, I am not aware of any—

Mr. KILEY. Well, actually what they have shared with us points to just the opposite. You had, for example, a letter from Christopher Dunham, Acting Assistant Director, in March of this year where the FBI acknowledged that it has not observed an uptick of threats directed at school officials since it began tracking the data. Does that sound accurate to you?

Mr. WRAY. Yes, sir.

Mr. KILEY. Is it also true that according to the FBI itself none of the school board related investigations have resulted in Federal arrests or charges?

Mr. WRAY. I think that is correct. I think of the 25, and for context that is 25—

Mr. KILEY. I am sorry. I have limited time. So,—

Mr. WRAY. Yes.

Mr. KILEY. —if that is correct, I would like to move on.

This Committee's investigation concluded that the Justice Department's own documents demonstrated there was no compelling nationwide law enforcement justification for the Attorney General's directive. Do you have any reason to dispute that conclusion?

Mr. WRAY. No.

Mr. KILEY. So, we had an investigation of parents. We had a sweeping mobilization of Federal power against the most protected core First Amendment activity, the right of citizens to speak and petition, on the most important of issues, the education of their children. You are telling me that the entire basis for that, there was no evidence to support it.

Mr. WRAY. Well, I want to be clear. We, the FBI, as I said, were not and did not investigate people for exercising their—

Mr. KILEY. Should Attorney General Garland rescind the memo?

Mr. WRAY. I am sorry?

Mr. KILEY. Should Attorney General Garland rescind that memo?

Mr. WRAY. Oh, that is a question for the Attorney General.

Mr. KILEY. Do you believe he should?

Mr. WRAY. Again, that is a question for the Attorney General.

Mr. KILEY. Do you believe that the Attorney General should apologize to parents who were the subject of that memorandum?

Mr. WRAY. I am not going to speak to that.

Mr. KILEY. Will you apologize for the FBI's own role?

Mr. WRAY. I think the FBI conducted itself the way it should here, which is that we have continued to follow our longstanding rules and have not changed anything in response to that memo.

Chair JORDAN. The time of the gentleman has expired.

The Chair recognizes the gentlelady from Washington.

Ms. JAYAPAL. Thank you, Mr. Chair.

Director Wray, thank you so much for being with us. Thank you for your service to the country.

I do want to focus on some areas of concern around American's civil liberties that I have had longstanding concerns about. In testimony to Senate Intelligence in March, you stated that the FBI had previously purchased commercial data base information that includes location data derived from internet advertising, but that to your knowledge the FBI does not currently purchase data.

Just last month the ODNI declassified a report revealing that the FBI and other agencies do purchase significant amounts of commercially available information about Americans from data brokers. The report notes that commercially available information:

... has increasingly important risks and implications for U.S. persons' privacy and civil liberties as commercially available information can reveal sensitive and intimate information about individuals.

It is public information that the FBI uses Babel Street and Venntel, and has a Lexus account. All these companies provide data for purchase. Can you tell me how the FBI uses that data?

Mr. WRAY. Respectfully, this is a topic that gets very involved to explain. So, what I would prefer to do is have our subject matter experts come back up and brief you, and they can answer your questions in detail about it, because there is a lot of confusion that can be unintentionally caused about this topic.

Ms. JAYAPAL. Does the FBI purchase data?

Mr. WRAY. My testimony that you referred to before remains the same. The story about the ODNI report doesn't change that. Again, there is a lot of precision and technical dimensions to this.

Ms. JAYAPAL. Well, I do appreciate that. I am looking at a report that is from the Office of the Director of National Intelligence saying that the FBI purchases data.

Mr. WRAY. I understand that.

Ms. JAYAPAL. Mr. Chair, I ask unanimous consent to enter this into the record.

Chair JORDAN. Without objection.

Ms. JAYAPAL. Do you know if the contracts with data brokers like the ones I described provide location data?

Mr. WRAY. My testimony about purchasing commercial data base information that includes location data derived from internet advertising remains the same, which is that we currently do not do that.

Ms. JAYAPAL. The information that you have that has already been purchased, does it contain location—

Mr. WRAY. Again, I am not trying to be obtuse or difficult here. I just know from experience that the more you drill into this whole issue of commercial data, geolocation data, et cetera, that it gets very involved, in some cases involves pilot projects that are in the past. In some cases, it involves national security information, et cetera.

Ms. JAYAPAL. Director Wray, I do understand that you are—

Mr. WRAY. So, I just want to make sure that we get you the information that you need.

Ms. JAYAPAL. OK. That is great. I will take that. I do want to say that this is just an extremely important issue for the American people to understand how their data is being used. That is location data. That is biometric information. It is medical and mental health information. It is information related to individuals' communications. It is information about people's internet activity. While I understand that this is complicated, that is the reason that you come before us, so that the American people can hear this.

Let me ask you this. Does the FBI have a written policy outlining how it can purchase and use commercially available information?

Mr. WRAY. There are a number of policies that bear on this topic. Again, that could be part of the same briefing that we are happy to provide. I don't dispute at all that this is an important topic. I am simply saying that precisely because it is such an important topic that a minute and 12 seconds counting down is not the best way—

Ms. JAYAPAL. No, I understand that.

Mr. WRAY. That's all.

Ms. JAYAPAL. I am asking whether there is a policy. It sounds like there is a policy. When was that policy last updated?

Mr. WRAY. That I can't, as I sit here right now, I don't have the answer for you on that. Again, there a number of policies that are relevant to this. So that may affect the—

Ms. JAYAPAL. You will commit to providing those to us so that we can explore them—

Mr. WRAY. I will commit to providing you a briefing that will provide hopefully very helpful information to help you understand better this whole topic.

Ms. JAYAPAL. What about a written policy governing how commercially available information can be used in criminal investigations?

Mr. WRAY. I think it is all wrapped up in the same answer I just gave.

Ms. JAYAPAL. The reason that this is so important is because the question is whether the FBI uses that data to generate leads for investigations only or further along in the investigative process.

There is public reporting on DHS contracts with the same data brokers that I mentioned earlier totaling millions of taxpayer dollars. As you know in the 2018 Supreme Court decision in *Carpenter v. The United States*, the Court held that it is a violation of the Fourth Amendment for the government to access historical location data without a warrant.

Does the FBI have a written policy interpreting the Supreme Court's decision in *Carpenter*?

Mr. WRAY. If I recall correctly, there was guidance, I can't remember if it is a policy or what, that came out after the *Carpenter* decision. Again, I think that will be encompassed in the briefing that we are talking—

Ms. JAYAPAL. Well, I am going to followup with you. I want to thank you again for your service. This is a critically important issue for the American people to understand.

We have bipartisan support around FISA reauthorization and the concerns we have around FISA reauthorization. Unless we real-

ly understand what measures the FBI is taking to ensure that people's privacy is protected, I think it is going to be a very difficult reauthorization process. I am sure you know that. Thank you, Director Wray.

I yield back.

Chair JORDAN. The gentlelady yields back. I would just say well said. I appreciate your work with colleagues and bipartisan approach in this area. You have friends over here who want to help you on that.

We now go to the gentleman from—I know, Director Wray. If we can go just a couple more, then we will take a little break, if that works for the Director. A couple more on each side, then we can take a break.

[Off mic comments.]

Chair JORDAN. OK. All right. We will go. I think Mr. Moore is up.

Mr. MOORE. Thank you, Mr. Chair.

Director Wray, thank you for being here today. In 2022, you testified before the Senate Judiciary Committee and stated, "I condemn in the strongest possible terms any prospect of retaliation against whistleblowers." Do you still agree with that statement?

Mr. WRAY. Yes.

Mr. MOORE. Do you feel that your actions as the FBI leadership during your tenure live up to that sentiment?

Mr. WRAY. Yes.

Mr. MOORE. Director Wray, a few months ago we heard from—are you familiar with a Special Agent Garret O'Boyle?

Mr. WRAY. I am familiar with the name.

Mr. MOORE. After Mr. O'Boyle came to Congress and blew the whistle on the misconduct at the Bureau, his clearance was unsurprisingly suspended. Did that surprise you? Do you find that suspicious?

Mr. WRAY. I can't discuss a specific security clearance matter, partly because the security clearance determinations are made by ODN directive, by the security clearance manager, which is not the FBI Director. I don't want to insert myself into the process while appeals are pending, for example.

Mr. MOORE. Well, as a leader, I think it is important. We need to have the opportunity, and you know by law that they have the opportunity to be whistleblowers and talk to Congress and inform us on issues. I think to restore trust in the FBI, it is imperative on you to allow whistleblowers to come forward and for us to have the oversight we need to have to make sure.

We are seeing the polling numbers. The FBI is tanking. It is under your watch, sir. It concerns me for the American people. When I am in the district, the No. 1 concern, and I come from a fairly rural district, is weaponization of the FBI and the DOJ, coming after conservative American citizens who just simply want to have a voice in the process.

So, I would encourage you—Mr. O'Boyle, I understand he has been suspended since September 2023, almost 10 months now. In 2022, he was suspended in 2022. So, almost a year now the man is trying to go without a paycheck. I don't know. Could you make it 10 months without a paycheck, Mr. Wray?



Mr. WRAY. I prefer not to answer that.

Mr. MOORE. Well, you talk about your wife not being really happy, yes, taking a pay cut. Well, can you imagine 10 months later, and you are still going through a process for just a whistleblower coming to the Congress and trying to inform us on issues he sees within the FBI?

I think we could help you in the process if you would allow us. In some ways, we have to look at this whistleblower and other whistleblowers and encourage them to come forward and be truthful with the American people.

Two real quick questions. Why would the FBI offer Christopher Steele a million dollars to verify a dossier about Trump Russian collusion and then the same FBI offer \$3 million to Twitter to squash a story on the Hunter Biden laptop? Do you have any idea why a law enforcement agency would be playing into elections?

Mr. WRAY. Well, you raised a number of different issues there. So, first, as to the Steele dossier, that, of course, is a subject treated at great lengths in the Durham Report, which we, and again, predates my time as director in which we—

Mr. MOORE. I understand that.

It was the same agency paying a million dollars to push one story out or try to collaborate one story and \$3 million to quiet another story for political opponents. I don't quite understand.

Mr. WRAY. Then I would, as to the second part related to Twitter, I would disagree with your characterization respectfully. When there are payments to social media companies, that is by a long-standing Federal law going back, I think, about four decades where we have to pay companies for their costs in responding to a legal process. It is not just social media companies. It is other kinds of businesses as well.

Mr. MOORE. Well, when those stories get out, and you understand certainly the dossier story, and I know that wasn't under your watch, but also the Hunter Biden laptop story, that to me looks political. To the American people, it looks political. I am just an everyday guy. I am not an attorney, Mr. Wray, just an everyday guy. To me, it looks extremely political. That is why you are having trouble keeping the FBI's reputation afloat.

So, with that, Mr. Chair, I am going to yield the balance of my time. I want to enter one thing to the record, Mr. Chair.

Chair JORDAN. Can you do that after and just yield? Then we will enter it into the record after.

Mr. MOORE. Sure, sure.

Chair JORDAN. Director Wray, did the FBI ask financial institutions to turn over their customers—he yielded the time to me. Did the FBI ask financial institutions to turn over their customers' debit and credit card purchase history in the Washington, DC, area for January 5–6, 2021?

Mr. WRAY. I don't know the answer to that as I sit here right now.

Chair JORDAN. Well, we do, because Bank of America gave this email from the FBI to Bank of America.

Mr. WRAY. Well, I am aware that Bank of America provided information to the FBI. What communications occurred between the FBI and Bank of America about it—

Chair JORDAN. Well, let's read it.

To recap our morning call, we are prepared to action the following threshold, customers transacting debit card, credit card, Washington, DC, purchases between January 5–6, 2021.

That is scary enough. Then the next bullet point is even more scary. "ANY HISTORICAL," capital letters, all capitals, "ANY HISTORICAL PURCHASE OF A FIREARM." You guys asked financial, at least Bank of America, we think more. Did you guys ask them?

Mr. WRAY. Again, I don't have the full sequence of the back and forth. You have got one. It looks like you have one email that I haven't seen before here. So, I don't know that I have the full exchange that—

Chair JORDAN. Well, does this email trouble you as much as it does Members of the Judiciary Committee, that the FBI is asking for every single—we had Members of Congress here that week, first time they are getting sworn in as a new Member of Congress, their family in town. You are sweeping. They may happen to be a customer of Bank of America. You are sweeping up every debit and credit card purchase of their family who are in town that week because their husband or their dad or their mom is getting sworn in as a new Member of Congress? Then you are also saying overlaying that information with did you, did this person buy a firearm?

Mr. WRAY. The question is?

Chair JORDAN. I am just nervous about that. Are you nervous about that?

Mr. WRAY. As I think I have testified before, my understanding is that our engagement with Bank of America was fully lawful, but that we recalled the leads that were cut to—

Chair JORDAN. Well, if it is lawful, that was my next point. If it is lawful, why did you say we are not going to use these leads? That is what Mr. Jensen testified to when we deposed him, the Director of the Terrorism Unit at the FBI. That is what he testified to. Why did you not use the leads if it was lawful to get the information?

Mr. WRAY. Well, there are—

Mr. NADLER. The Chair is one minute and 18 seconds over time.

Mr. WRAY. Sir, there are plenty of times where there are things that we lawfully can do, but that we decide is better that we not do.

Chair JORDAN. Yes.

Mr. WRAY. I think that is what happened—

Chair JORDAN. The idea that Mr. Massie said earlier. This is lawful, that you can ask this is scary. This is something else we are going to have to change.

With that, I would yield to the gentlelady from, recognize the gentlelady from, excuse me, well, we got a unanimous consent request from Mr. Moore?

Mr. MOORE. Mr. Chair, yes, the *Wall Street Journal* article I would like to enter into the record says, "Republicans eye sweet home for new FBI headquarters in Alabama."

Chair JORDAN. All right. Without objection.

The Chair now recognizes the gentlelady from Texas for five minutes. Then we will take a break, Director.

Ms. JACKSON LEE. Good afternoon. Thank you very much, Director Wray, for your presence here. Thank you to the men and women of the FBI, in particular, for the work that you have done on gun violence and as well the work that you have done in keeping Americans safe.

Let me very quickly move on some issues that have been made a chief part of the work of our friends on the other side of the aisle. Republican Members of this Committee have spent much time of this Congress claiming that various aspects of the U.S. Government have been weaponized against the American people.

Director Wray, are you or your staff or auxiliaries weaponizing the FBI against the American people?

Mr. WRAY. Absolutely not.

Ms. JACKSON LEE. Thank you very much. Let me thank you as well for your civil rights work and emphasize that, in addition, there have been representations that the FBI exaggerates domestic terrorism reports or data. Certainly, January 6th had its many different storytellers. That was an act of domestic terrorism. I don't know how you could have exaggerated that, as evidenced by the Special Congressional Committee we had.

Let's just think of domestic terrorism as it relates to the good men and women of our law enforcement. Take an example in February 2020 in Texas where a White supremacist was engaged in conspiracy involving swatting, a harassment tactic, and all of the emergency services showed up over and over again. Does domestic terrorism impact negatively and dangerously on America's law enforcement and first responders?

Mr. WRAY. Absolutely. Sometimes law enforcement are themselves the intended victims or targets of domestic violent extremism.

Ms. JACKSON LEE. Though you have good, committed individuals, does the—critique is legitimate. That is our job. Does the constant condemnation impact the morale of FBI personnel or those trying to join the FBI?

Mr. WRAY. Well, look, our people are human beings, and nobody likes to see the organization they have dedicated their careers, really their lives, to unfairly criticized. I will tell you, as I said in my opening statement, that the good news is our people are also tough and resilient. Our attrition is in the low single digits and would be the envy of almost any employer. Our recruiting, unlike what is happening in law enforcement more generally—

Ms. JACKSON LEE. Great news.

Mr. WRAY. —is actually up very significantly.

Ms. JACKSON LEE. Thank you. I look forward to it being diverse.

Let me start with our whistleblower journey here. Are you familiar with FBI special agents Kyle Seraphin?

Mr. WRAY. I am familiar with the name.

Ms. JACKSON LEE. Is that yes?

Mr. WRAY. I am familiar with the name.

Ms. JACKSON LEE. Yep. The Committee heard testimony that Mr. Seraphin was suspended after he mishandled his service weapon and then said he wanted to use two female FBI executives as shooting targets. That was testimony of Jennifer Moore, HR, under, human resources under oath from the FBI.

Mr. Seraphin describes himself as a Congressional whistleblower. Committee Republicans will not tell us whether he has been in contact with them. Are you familiar with former FBI agents Garret O'Boyle and Marcus Allen?

Mr. WRAY. Again, I am familiar with the names.

Ms. JACKSON LEE. Thank you. O'Boyle was suspended for accessing information about an ongoing case and then leaking to the press. Allen was suspended for interfering in an investigation of a January 6th suspect. Both Allen and O'Boyle testified before the Weaponization Committee in May. Were you aware of that?

Mr. WRAY. Yes, ma'am.

Ms. JACKSON LEE. I think they are clearly there for all friends and family to see. I assume they wanted to be seen.

Do you know who Kash Patel is, if you know?

Mr. WRAY. Yes, I know who he is.

Ms. JACKSON LEE. He is an aide to President Trump, isn't he, or was an aide or is an aide to President Trump?

Mr. WRAY. Well, he was an individual who served in a number of different roles, both up here on the Hill and in the Executive Branch.

Ms. JACKSON LEE. Thank you. Here is another picture. It is the checks that Seraphin sent to both O'Boyle and Allen. Each check was for \$255,194. Let me say that again. These men were paid \$255,194 after they testified as so-called whistleblowers. It should be noted that it says here, as it says, for holding the line.

Director, at the time that Seraphin and Patel gave Garret O'Boyle and Marcus Allen these checks, do you happen to know if they were still employees of the FBI?

Mr. WRAY. I can't speak to that. I don't know the answer.

Ms. JACKSON LEE. If they were, 5 CFR 2635, and I would appreciate it if we can get an answer in writing after you go back, whether they were or not, prohibits FBI employees from accepting cash gifts, doesn't it?

Mr. WRAY. Well, there are a whole number of rules that would apply to this. Again, I don't want to weigh in on a specific personnel matter.

Ms. JACKSON LEE. If they were, that rule applies about cash gifts.

Mr. WRAY. I am not aware of a situation in which they could—

Ms. JACKSON LEE. No, but just—

Mr. WRAY. —appropriately accept cash gift.

Ms. JACKSON LEE. Just generally—

Mr. WRAY. Oh.

Ms. JACKSON LEE. —if that applies to FBI agents about not taking cash gifts. Is that correct?

Mr. WRAY. There are definitely rules that apply to special agents accepting cash gifts.

Ms. JACKSON LEE. Thank you. Let me just finish this. Can you explain why an FBI agent should not receive cash?

Let me move to one that I think is extremely important. Mr. Chair, just a moment. Here is what I think is the most interesting piece of this whole puzzle. O'Boyle and Allen are represented by an outfit called Empower Oversight.

Chair JORDAN. Time has expired.

Ms. JACKSON LEE. Empower Oversight is run by former Republicans staffers. Do you know who else Empower Oversight might represent in any way?

Mr. WRAY. I do not.

Mr. JOHNSON of Louisiana. Mr. Chair, I have a unanimous consent request.

Ms. JACKSON LEE. Let me just—

Mr. JOHNSON of Louisiana. The gentlelady's time has expired.

[Off mic comments.]

Ms. JACKSON LEE. Thank you so very much. Thank you. The so-called IRS whistleblower who Jim Jordan had relied on. Does anyone need any further proof that these allegations are ginned up, corrupt political stunts advanced by those who don't want to see us follow the law.

Finally, Mr. Chair, here is another person who wants to join you on the 702. The FBI has begun major reforms. I think we should recognize that. You have been very kind. I yield back my time.

Chair JORDAN. The gentlelady yields back.

I would just point out my guess is they got the money because, they wanted the money because they had to try to, they were trying to feed their family.

Mr. JOHNSON of Louisiana. They actually haven't received the money.

I have a unanimous consent request, Mr. Chair, of a tweet Matthew Foldi put out here during this hearing. Right off the bat Jerry Nadler lies about whistleblower getting \$250,000. He says here Marcus Allen has not received \$250,000. He has not received or cashed the check that Kyle Seraphin posted online. Enter that into the record.

Chair JORDAN. Into the record.

The Committee will take a five-minute recess, five minutes and then we will come back.

[Recess]

Chair JORDAN. The Committee will come back to order. The Chair now recognizes the gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chair.

Director Wray, thank you for being here. Since we last spoke in Appropriations on April 27, and Special Counsel John Durham delivered his report detailing intelligence activities investigations arising out of the 2016 Presidential Campaign.

When Mr. Durham presented here at the Committee, I asked him these questions. He was able to answer me in yes-or-no answers. I would ask you to do the same.

Did the FBI have an adequate basis on which to launch Crossfire Hurricane?

Mr. WRAY. My understanding is that Mr. Durham found that it did not have a proper basis to elevate it to a full investigation, but that he thought it was an assessment or a preliminary inquiry was appropriate.

Mr. CLINE. Did the FBI fail to examine all available exculpatory evidence?

Mr. WRAY. Well, you say to examine it? Certainly, I think there are failures, significant failures with respect to exculpatory information.

Mr. CLINE. Did the FBI interview all key witnesses in Crossfire Hurricane?

Mr. WRAY. I think Mr. Durham I think found that they did not.

Mr. CLINE. Did the FBI abuse its authority under the Foreign Intelligence Surveillance Act?

Mr. WRAY. Well, certainly, there were violations that were totally unacceptable and in my view cannot be allowed to happen again.

Mr. CLINE. As noted in the report, Crossfire Hurricane investigators had hoped the returns on the Carter Page FISA application would “self-corroborate.” Do FBI or DOJ guidelines permit investigators to submit uncorroborated allegations in a FISA application in the hopes that the returns will self-corroborate?

Mr. WRAY. I have never heard of that concept.

Mr. CLINE. OK. Is Crossfire Hurricane the only time the FBI has violated the procedures for the FISA process?

Mr. WRAY. Well, there are a lot of different procedures, but certainly not the only compliance incidence that we have had with respect to FISA.

Mr. CLINE. Director, as I expressed to you upstairs, the American people are outraged. Just this week I had at a townhall, constituents expressing outrage about the actions of those within your agency who have damaged the FBI’s reputation and undermined the work, the good work, of the vast majority of hardworking men and women within your agency.

Going down the list, you have the Biden family investigations, you have the anti-Catholic memo. By the way, you mentioned five individuals who contributed to the anti-Catholic memo in the Richmond Field Office. Are they still employed by the FBI?

Mr. WRAY. I don’t think I mentioned any specific individuals. I did say that this was a product by a single field office that we took action on immediately. We have an inspection that is underway right now that is looking at how this happened and how we make sure it doesn’t happen again.

Mr. CLINE. So, it is possible that individuals will be fired as a result of your review.

Mr. WRAY. Well, I don’t want to predetermine or forecast where the review will go. We are going to look at everything from exactly how it happened and what went wrong, and then—

Mr. CLINE. It is possible—

Mr. WRAY. If there are appropriate steps to be taken, we will take whatever the appropriate steps are.

Mr. CLINE. OK. You have the violence against pro-life clinics, you have the investigation of parents speaking at school board meetings, you have the collusion with Big Tech. The FISA abuses of Section 702 is where I want to focus right now.

As you know, Section 702 authorizes warrantless surveillance that is supposed to be targeted toward foreigners abroad, but the surveillance sweeps in a large amount of Americans’ communications, and the FBI routinely runs searches of Section 702 data looking for phone calls, emails, and text messages of Americans in so-called back-door searches.

Depending on the year, FBI has conducted anywhere from 3.4 million in 2021 to 200,000 in 2022. Given this fact, do you honestly

think it is fair to continue describing Section 702 as authority targeted only at foreigners abroad?

Mr. WRAY. I do.

Mr. CLINE. It looks like a framework that enables the FBI to spy on countless Americans. Would you agree with that assessment?

Mr. WRAY. Well, I can't speak to what it looks like to certain people. I can tell you that it is an authority focused on foreigners overseas in the context of national security investigations.

I would add to that the FBI's piece of that, the FBI only accesses—so everything we are talking about FBI-related only goes to about three percent of the entire 702 collection. Then within that three percent, this is important now—

Mr. CLINE. OK, I have 30 seconds.

Mr. WRAY. It is important that people understand this. The FBI ends up only accessing content in like 1½ percent of that. So, a little context is appropriate.

Mr. CLINE. I understand. Well, if you are conducting hundreds of thousands or even just hundreds of warrantless searches of Section 702 data for Americans' communications, it is clearly a domestic surveillance tool.

I would argue that I believe it does pose a real problem within the FBI's conduct toward Americans. I speak for many when I say it poses a real problem for the reauthorization of FISA authority for your organization.

With that, I yield back.

Chair JORDAN. The gentleman yields back. The gentlelady from Pennsylvania is recognized.

Ms. SCANLON. Thank you, Mr. Chair.

Thank you, Director Wray, for being here. I am troubled by many of the statements and questions we have heard today that embrace conspiracy theories and disinformation. With these comments, it appears that some of my colleagues are trying to sow division and score political points rather than conduct legitimate oversight of the actual actions and policies of the FBI.

I, like many Americans, would rather Congress focus on doing the people's business and ensuring that the FBI is able to do its job and do it well within the bounds of our constitution and laws.

Now, one of the most serious issues facing American communities now is drug abuse, particularly opioids and fentanyl. In your opening remarks, you mentioned the arrest of 31 U.S. citizens in Northeast Ohio just a couple weeks ago, most hailing from Marion, for drug trafficking.

Can you just take a minute, because I have some other questions, to describe what the FBI is doing to end the scourge of fentanyl and what additional tools you might need from Congress.

Mr. WRAY. So, the FBI is attacking the scourge of fentanyl coming from the Southwest border, in particular, in a variety of ways.

- (1) We are using our organized crime task forces to target the supply, the cartels in particular.
- (2) We are using our Safe Streets task forces to go after the gangs that are principally responsible, violent gangs, for distributing a lot of this all over our streets.
- (3) We are targeting provider abuse, prescription, pill mills, and things like that through our healthcare fraud authorities.

- (4) We have something called J-CODE, which focuses on the trafficking of fentanyl on the dark web, which is a real problem.

We have had a number of very significant take-downs there.

We are also doing things like engaging in outreach, raising awareness. We put out a video called Chasing the Dragon with DEA that has been showed in a lot of schools around the country. We are trying to work with the health community.

So, there's a lot of things that we are doing, but this is an epidemic. I don't believe that it is an overstatement. It is something that requires all hands on deck.

Ms. SCANLON. OK. If there are things you think Congress can help you with, please submit that to us afterwards.

Another major threat to our Nation is domestic terrorism, and that is something you have spoken about repeatedly. Like many Americans, I find it unpatriotic and dangerous when Members of Congress embrace dangerous conspiracy theories that undermine our Federal law enforcement and ultimately our democracy.

I find it disingenuous for Members of Congress to harangue the head of the FBI about people losing faith in the FBI when those same Members have been trumpeting lies and conspiracy theories about the agency for months. Words matter, they have consequences. When leaders lie or embrace disinformation, that is dangerous.

In recent years we have seen increasing threats and violence levied against public servants at all levels, including journalists, elected officials, election workers, doctors, nurses, school officials, teachers, librarians, and more.

What these public servants have in common is they became targets for threats and violence when they had the guts to stand up to lies and conspiracy theories promulgated by the former President and his allies.

We have seen MAGA extremists, *Fox News* pundits, Russian internet trolls, and elected officials parrot conspiracy theories and use heated language to convince the American public, without facts, that dedicated public servants are dangerous enemies who should be feared.

Most Americans understand that this is not legitimate political discourse and that this kind of overheated and fact-free rhetoric can in fact encourage political violence. It is not normal, and it should not be part of American public life.

So, Director Wray, you have repeatedly testified about the serious threat that domestic violence extremists present to Americans. These are people who commit violent and criminal acts in furtherance of social or political goals, whether racial and ethnic motivation or anti-government motivation.

Can you talk about the role that mistrust in government and disinformation and conspiracy theories play in the radicalization and recruitment of extremists?

Mr. WRAY. Well, certainly there is a whole host of misconceptions that are out there about any number of institutions, whether it is law enforcement, whether it is the Supreme Court, whether it is any number of institutions. That in the environment that we are



in where there are people who increasingly channel their rage into violence, that causes a problem.

There is a right way under the First Amendment to express what you are angry about and who you are angry with, and we take that very seriously and view as part of our mission not just to protect the American people, but to uphold the Constitution.

When those views are then turned into violence and threats of violence, then we got a problem. Then I think the FBI has to act.

Ms. SCANLON. Thank you. I see my time has expired, but I would seek unanimous consent to introduce into the record a press release from the U.S. Attorney's Office of the Northern District of Ohio entitled, "31 Individuals Involved in a Drug Trafficking Organization in Marion County and Lorain County Indicted."

Chair JORDAN. No objection.

Ms. SCANLON. Thank you.

Chair JORDAN. The Chair recognizes the gentleman from California.

Mr. MCCLINTOCK. Thank you.

Mr. Director, when we abandoned Afghanistan, we released about 5,000 terrorists from the Parwan Detention Facility. One of those terrorists showed up at Abbey Gate 10 days later and killed 13 U.S. Marines. Where are the other 5,000?

Mr. WRAY. I don't know that I can tell you where all 5,000 of them are.

Mr. MCCLINTOCK. Well, let me put it more simply. Have you encountered any here in the United States?

Mr. WRAY. We have quite a few ongoing investigations into foreign terrorist-related subjects, whether they are Al Qaeda-related or Isis-related, that we are conducting as you and I are having this conversation. Certainly,—

Mr. MCCLINTOCK. So, have you encountered any from Parwan here in the United States?

Mr. WRAY. Specifically, I am not sure I can say that. Let me followup and make sure if there is anything more I can provide you on that.

Mr. MCCLINTOCK. Well, meanwhile, we have had about one and a half million know got-aways cross the border as this crisis has unfolded. Any estimate of how many among, of those 5,000 among one and a half million known got-aways may be terrorists?

Mr. WRAY. I know that we have seen an uptick, which is obviously concerning to me, and I can tell from your question concerning to you, in KSTs, as we call them, known or suspected terrorists coming across the Southwest border. Our folks are working very hard to try to do our part to try to keep tabs on those individuals.

Mr. MCCLINTOCK. Speaking of upticks, have we seen an uptick in criminal cartel or cartel-related gang activity in the United States over the last several years?

Mr. WRAY. Yes. The cartels, working in kind of an unholy alliance with dangerous, violent gangs here in the U.S. are responsible not just for the abominable distribution of fentanyl all over the country, but also an awful lot of the violence that comes along with it.

Mr. McCLINTOCK. That is coming principally across our Southern border?

Mr. WRAY. That is a huge driver of it, certainly.

Mr. McCLINTOCK. A huge driver. It is reported we have lost contact with the guardians of more than 85,000 unaccompanied minors who have been brought here by the cartels through the Southern border. How many of these children are still unaccounted for?

Mr. WRAY. That I am not sure we have the answer to that. That may be a question for DHS.

Mr. McCLINTOCK. What is the Woods Procedure?

Mr. WRAY. The Woods Procedure is a procedure for—it has nothing to do with 702. It has to do with traditional FISA, Title 1 FISA, as we call it, and involves having files that have all the underlying documents to support each of the factual assertions in—

Mr. McCLINTOCK. Is that important to the integrity of FISA applications?

Mr. WRAY. Yes, sir.

Mr. McCLINTOCK. In February 2020, you assured the Committee that you took these FISA abuses seriously, that you were working to address them. A 1½ year later the Office of the Inspector General reported that you weren't. They reported systemic noncompliance and essentially that some FBI field personnel took the Woods Procedure as a joke.

If we can't trust your past reforms, how seriously should we take your promises of future reform?

Mr. WRAY. I appreciate the opportunity to address this one. So, that OIG finding actually applies to, first, a compliance problems that occurred before all the fixes that I was testifying to you about. Even though the report came out later, it was covering a time period that predated all the fixes and reforms we put in place.

Mr. McCLINTOCK. Well, your General Counsel assured Mr. Durham that the abuses would not have happened because of the new procedures for supervisorial review, yet some of the worst abuses in Crossfire Hurricane were committed by supervisory agents. So, why should we have any great confidence that it is not going to happen again?

Mr. WRAY. There are a couple different sets of reforms here. So, the first is on the reforms that we put in place in response to the Inspector General's Crossfire Hurricane report.

Mr. McCLINTOCK. We can't trust your supervisors is the problem. The problem seems to be that this power exists at all and human beings, being what they are, will tend to abuse them. Could you describe the term parallel construction as it relates to evidence produced in FISA searches?

Mr. WRAY. Parallel construction? I am not sure I have used that—

Mr. McCLINTOCK. Doesn't that refer to the FBI using forbidden information from a 702 search to alert local law enforcement to search for and then produce the same material without revealing that it came from an improper search?

Mr. WRAY. I am just not sure about the use of the term.

Mr. McCLINTOCK. Well, has the FBI ever employed that particular tactic in prosecuting American citizens?

Mr. WRAY. Not to my knowledge. Again, I can look into that and get back to you.

Mr. MCCLINTOCK. What percentage of FISA warrant applications are rejected by the FISA Court?

Mr. WRAY. I don't know that we have that number. There is usually a back-and-forth with the Court. It is not unusual for the Court to—

Mr. MCCLINTOCK. It is a fraction of percentage, isn't it?

Mr. WRAY. A fraction of a percentage?

Mr. MCCLINTOCK. Yes.

Mr. WRAY. Yes, I don't know if that is right, but it is definitely a small number. I think that is partly because our folks learn over time what the Court expects.

Mr. MCCLINTOCK. Which makes that sound an awful lot like a rubber stamp. I see my time has expired. I yield back.

Chair JORDAN. The gentleman yields back. The gentlelady from Georgia recognized.

Ms. MCBATH. Thank you, Chair.

Good afternoon, Director Wray. Thank you for coming before the Judiciary Committee this afternoon. I have read your testimony.

I want to redirect this questioning for a moment, and I want to focus on the important work that the FBI is tasked with when it continues to do its work with gun violence prevention and keeping our communities safe.

As of today, there have been over 300 mass shootings. That is more the number of days that we have in this year. Statistics will continue to show us over and over again that during the summer, these numbers continue to rise.

Extreme risk protection orders play an important role in law enforcement's response to preventing mass shootings from happening.

What are also known as red-flag laws or orders, they empower law enforcement, along with family members and household members, to petition a court to actually have an individual that appears to be in crisis have those firearms just temporarily taken away or removed from them with a court order, to be returned during expiration of that order.

I have a few questions for you, so if you can answer as directly as you can, I appreciate it. Family members and members of law enforcement can often identify individuals who would pose a risk to themselves or to others within the community when they actually possess a gun.

As the head of the United States' Federal law enforcement agency, do you believe that these red-flag laws and these programs enhance public safety?

Mr. WRAY. I don't want to speak on behalf of any specific legislative proposal, but I will say that I know from experience that a number of States have had good experiences with those laws.

Ms. MCBATH. Thank you. In the past several years, several States have actually enacted those extremist protection orders. In total, we actually have 21 States and the District of Columbia have enacted their own forms of red-flag laws.

If a person who is subject to such an order tries to buy a gun from a federally licensed firearm dealer, would the FBI approve or deny the sale?

Mr. WRAY. Well, I believe if the order is required by State law making it a State prohibitor, and therefore is loaded into the NICS system, then when the background check is run, when the FFL, the Federal Firearms Licensee contacts NICS to proceed with the sale, what would pick up the so-called—the order that you are talking about.

If that is a prohibitor, then that would block the transaction is my understanding.

Ms. MCBATH. So, in the absence of an application or applicable State law, is there a way for the FBI agent to seek an order under Federal law?

Mr. WRAY. I am not aware of any Federal law to that effect.

Ms. MCBATH. Exactly. If an FBI agent has information that someone has been violent many times in the past, but is not able to seek a criminal conviction, is there a way for the FBI to deny the sale of a gun to that person?

Mr. WRAY. We only deny sales for people who are prohibited by law from possessing firearms.

Ms. MCBATH. My bill, the Federal Extreme Risk Protection Order Act, which was passed by the House last Congress, would provide Americans in all States access to these truly lifesaving measures. I have reintroduced this bill again this term.

Last summer Congress also passed the bipartisan Safer Communities Act. Among other critical gun violence provisions in that, the legislation begins to address the problem of gun trafficking.

What steps has the FBI taken to implement or utilize this new law that actually helps to stop gun trafficking?

Mr. WRAY. Well, we are, of course, working closely with the Justice Department to implement all the provisions of the laws that relate to NICS, in particular. The place that has had the biggest impact on us is, certainly, on the additional checks that now would be run for the 18–20 year olds.

We started implementing that last October. It was fully implemented starting in January. It is a big change for us and for the State agencies that are on the receiving end of the request for information. As well as for the FFLs, both the big stores and the mom-and-pops. It is a big change in the system.

I think we have done about 100,000 or so checks of this 18–20, in other words U21 group that we are talking about since the implementation of the act. Those are not all denials, to be clear. Most, in fact, the vast, vast, vast majority of them were sales that appropriately proceeded.

There were some that were of course denials based on the statute.

Ms. MCBATH. Thank you so much, I'm out of time.

Chair JORDAN. The time of the gentlelady has expired. The gentleman from Texas is recognized.

Mr. ROY. Thank the Chair. Thank you, Director Wray, for appearing.

Brian Auten was one of the FBI intelligence analysts who interviewed Igor Danchenko, the principle source of the Steele dossier in January 2017, correct?

Mr. WRAY. I believe that is in the Durham Report.

Mr. ROY. Danchenko explained that the dossier allegations were BS, yet the FBI did not reveal that to the FISA Court. Instead, the FBI continued to use those allegations in two more sworn FISA applications about President Trump and Putin, correct?

Mr. WRAY. Well, again, I want to let Mr. Durham's Report speak for itself.

Mr. ROY. OK, but as Director of the FBI, those are the facts of the FBI under your watch. The FBI—

Mr. WRAY. Well, no, sir, I'm sorry. Just, it's important. Not under my watch. Those were the facts before I—

Mr. ROY. I'm getting to the part under your watch.

Mr. WRAY. OK.

Mr. ROY. The FBI conducted an internal investigation of Auten and sought to suspend him, but Auten appealed, correct?

Mr. WRAY. I can't discuss a specific pending personnel matter.

Mr. ROY. OK, well according to recent reports, those are the facts. Nevertheless, in 2020 after Senators Grassley and Johnson highlighted evidence of potential financial crimes and corruption against the Biden family, the FBI assigned Auten to compile an assessment, which was used to characterize the Biden revelations as Russian disinformation.

The evidence Grassley and Johnson had collected were mostly financial records and could easily have been corroborated as authentic. By then, the FBI had the Hunter laptop in its possession for over a year. So, it knew the lucrative payments to the Bidens from corrupt and anti-American regimes were authentic.

How on earth did the FBI empower an agent under investigation for potentially corrupt performance and abuse of FISA in one politically fraught investigation, a Democrat operative driven case against President Trump, to a play a key role and to undermine a second politically fraught investigation, a case against the Bidens?

How is that possible? How can you allow that to occur in the Federal Bureau of Investigation, as my colleagues on the other side of the aisle, say the elite law enforcement agency of the United States? How does that occur?

Mr. WRAY. I can't at the moment discuss a pending personnel matter. I can tell you that every employee who in any way touched the Crossfire Hurricane matter has been referred to our Office of Professional Responsibility, our disciplinary arm.

Mr. ROY. Are you concerned about this activity by the FBI and what was communicated to the FISA Court? Does that concern you as the Director of the FBI?

Mr. WRAY. I consider the conduct that was described in the Durham Report as totally unacceptable and unrepresentative of what I see from the FBI every day and must never be allowed to happen again.

Mr. ROY. Have there been consequences as a result? Is Mr. Auten—has he had consequences?

Mr. WRAY. Well, again, I can't speak to pending personnel matters, as you would perhaps remember from your own time in law enforcement. Because we were working closely with Mr. Durham and I assigned agents to help him, at his request we slowed down

the administrative process to allow his investigation to complete itself.

Now, that it is complete, our personnel processes are very much ongoing.

Mr. ROY. Well, I think it is more than troubling that under your watch, we see that this continued to occur. You have Auten continue to be empowered after there was an investigation and after there was an effort by the FBI to look into why he would go to the FISA Court and give wrong information.

The issue here has been wrapped up in a cloud of politics, but the fact is the American people deserve to know how the FISA Court is being abused and how it is being abused against a former President and against them in light of the reports that we saw Mr. Johnson of Louisiana put forward that was in a court filing, in a court report.

Want to move on to another topic. On September 23, 2022, 20 heavily armed agents stormed the home of Mark Houck. You are familiar with this?

Mr. WRAY. I am familiar with the Houck case, a little bit, yes.

Mr. ROY. This was after Mr. Houck's lawyer reached out and said he would appear voluntarily because the incident in question occurred almost a year earlier in October 2021. So, a year earlier.

The question here I have, local authorities investigated the incident, but concluded there was no case. After the jury met for roughly an hour, Houck was acquitted. How on earth did Mark Houck end up having the FBI send several armed agents along with local authorities to arrest him at gunpoint? Do you approve it, did you approve of that?

Mr. WRAY. Well, let me start where you ended. Decisions about the manner of an arrest are not something that the FBI Director approves. I defer to and rely on the judgment of the experienced career agents on the ground, who have both the most intimate understanding of the facts and have the training experience to decide how best to effectuate an arrest.

Mr. ROY. Do you know who did order it?

Mr. WRAY. My understanding is that this arrest was conducted in our Philadelphia Division by career agents with a combined 40 years of FBI experience.

Mr. ROY. Do you approve of the raid now in retrospect? Do you think it was appropriate? Do you think it was appropriate for a father to have armed FBI agents along with local agents go to his home, arrest him at gunpoint for alleged violation of the FACE Act a year after the alleged incident after the father had said through his lawyer that he would appear voluntarily?

Do you believe that FBI agents should go to the home of a father in Philadelphia suburbs?

Mr. WRAY. I'm not going to second-guess the judgment of the career agents on the ground who made the determination.

Mr. ROY. Your job is to second-guess—

Mr. WRAY. I think your description—

Mr. ROY. Look at what they are doing. Your job is to review what they do. Your job is to protect the American people from the tyrannical FBI storming the home of an American family.

Mr. WRAY. I could not disagree more with your description of the FBI as tyrannical, and I think—

Mr. ROY. You don't believe it's tyrannical that FBI were a part of storming a father's home in suburban Philadelphia?

Chair JORDAN. The time of the gentleman—the time of the gentleman—

Mr. WRAY. Mr. Chair?

Chair JORDAN. The time of the gentleman has expired. The witness may respond, and then we will move to our next witness.

Mr. WRAY. So, respectfully, they did not storm his house. They came to his door. They knocked on his door and identified themselves. They asked him to exit. He did, without incident.

Mr. ROY. [Off mic.] Armed at gunpoint.

Mr. WRAY. Whenever our agents—well, not at gunpoint. Whenever our agents conduct an arrest, they are armed. Our agents are armed virtually all the time, as you may remember from your own experience as a prosecutor.

Chair JORDAN. The gentleman yields back. The Ranking Member has a unanimous consent request.

Mr. NADLER. I ask unanimous consent that this document be placed in the record.

Chair JORDAN. That's pretty—that's not too specific.

Mr. NADLER. I ask unanimous consent to enter the full January 15, 2021, email thread between the Bank of America and the FBI that is about threats to Inauguration Day, instead of the edited version that was shown on the—

Chair JORDAN. I'm happy to have that into the record. Without objection. We champion that. We are going to bring that up again here if we get a chance.

The gentlelady from Pennsylvania is recognized.

Ms. DEAN. Thank you, Mr. Chair.

Director Wray, good to see you. I thank you for being here today. I just want to remind those who are watching at home or here in the room that we are here as an oversight function. We are not here as a political tool to hammer you or your 38,000 public servants, law enforcement men and women, and to try to use you politically.

It surely doesn't feel that way all the time during this. So, I thank you for your service. I thank the men and women for their service. I have a first cousin, technically I guess a first cousin-in-law who for a very long time in the Philadelphia suburbs served as an FBI agent with integrity and honor. So, I think of him, I think of Jack today, as I am doing this.

I read your testimony. Often, over and over, you State the mission of FBI, to protect the American people and uphold the Constitution of the United States. Twofold, protect the American people, uphold the Constitution. Do it by the rule of law. That is what we should be asking about, are we doing that to the best of our ability.

I want to use and examine the case of the Mar-a-Lago documents, because it has been used by the former President as a pitying moment, as though he has somehow been victimized. None of that is normal. These are serious times, and your people have seri-

ous missions about the safety of the American people and doing it lawfully.

Director Wray, a ballroom, a bathroom, a bedroom, are those appropriate places to store classified, confidential information?

Mr. WRAY. Well, again, I don't want to be commenting on the pending case, but I will say that there are specific rules about where to store classified information, and that those need to be stored in a SCIF, a secure compartmentalized information facility. In my experience, ballrooms, bathrooms, and bedrooms are not SCIFs.

Ms. DEAN. Mine too. Yet, that is where the former President chose to put vital information about our national security. He exacerbated the risk, as alleged in the damning 37-count indictment, by evading law enforcement and allegedly even showing some of these classified documents to others who were not either in a SCIF or up to having these informations sent to him.

It was January 2021, having lost the election, 2021, when at noon Mr. Trump has to leave the White House. Of course, it is shown in the affidavit and in the indictment that he left with quite a few boxes.

In May 2021, the National Archives emailed requesting the missing documents from Mr. Trump. His lawyer said that he would provide them, and then never did.

On January 18, 2022, so we are talking a full year later, Mr. Trump finally turned over 15 boxes. Fourteen of them contained documents with classified markings, 30 documents Top Secret.

In June 2022, this is now a 1½ years later, DOJ and FBI recover an additional 38 classified documents from Mar-a-Lago, your FBI, our FBI. A lawyer for Mr. Trump signed a statement at that point. To the best of her knowledge, she said, "all classified materials had been returned."

Surveillance footage of course showed that wasn't the case.

In August 2022, a Federal judge approved a warrant to search Mar-a-Lago. This was not a raid, as some on the other side would like to have a pity party for Mr. Trump. This was not a raid.

They then retrieved another 102 documents with classified markings. Three hundred and some documents taken by the President, improperly stored, and then tried to evade and obstruct justice, as is alleged.

Do you think that the FBI went over the top or was out of line in your participation in retrieving these documents?

Mr. WRAY. Well, again, I don't want to discuss the specifics of a pending case. From everything I have seen, our folks in this case have proceeded honorably and in strict compliance with our policies, our rules, and our best practices.

Ms. DEAN. It seems from what overview we can do, I am taking a look here at the affidavit to get the search warrant to go on in, it was one of your special agents assigned from the Washington Field Office, obviously, we don't know who. Pointed out and made the case for probable cause to go in and to collect these documents.

So, let's take a look at the flip side. What is the harm, what is the danger to either human assets, your employees, national security for Mr. Trump holding onto, moving around, showing Top Se-



cret documents, where is the harm? Eighteen months of this going on.

Mr. WRAY. Well, again, respectfully, I am not going to comment or weigh in on a case that is now pending in front of Federal judges. Speaking more generally, the rules governing the handling of classified information are there for a reason, and people need to be very mindful of those rules.

Unfortunately, the FBI has a steady part of its docket a number of investigations involving mishandling. The reason those rules are there is because classified information, if it gets into the wrong hands, can put human sources in jeopardy.

It can put other kinds of intelligence collection at jeopardy. It can jeopardize our partnerships with foreign liaison services, which are the lifeblood of the intelligence community in many ways.

So, it is serious business, and it needs to be taken seriously. Again, I am not speaking about a particular case, I am just speaking generally.

Ms. DEAN. I very much appreciate it, Mr. Chair. I appreciate it, but I do want to just point out to the world, none of this is normal. It was not normal what took place here.

I yield back.

Chair JORDAN. The gentlelady yields back. Bedroom, bathroom, ballroom. How about a box in a garage.

Mr. IVEY. Mr. Chair—

Chair JORDAN. A beach house in Delaware and the Biden Center. I don't think those are SCIF—

Mr. IVEY. Mr. Chair, point of order.

Chair JORDAN. The gentleman from Texas is recognized.

Mr. GOODEN. Thank you, Mr. Chair.

I want to talk about China, but before I do, I want to just comment, in the last exchange with Mr. Roy, I heard you say certain practices were outrageous to you, and I appreciated that.

I think maybe we would have liked to have heard more of that this hearing, about things, acknowledging failures. I realize there are a lot of positives to talk about, but we do as a Committee want to work with you.

When Chair Jordan asked why so much is redacted in a document, could we perhaps sit down with you, even if it is privately, and you tell us why that needs to be the case? If we ask for the names of these employees that were behind the Catholic issue in Virginia, can we get a commitment that we will eventually get those names? I didn't hear that in that exchange with Mr. Jordan.

Mr. WRAY. Well, you certainly have my commitment that we will work collaboratively with the Committee. We obviously have rules that govern what we can share, and we have to be mindful of those too.

In my experience, that is what the longstanding accommodation process between the Executive Branch, especially law enforcement agencies, and Congress is there for. We absolutely will pursue that in good faith.

I know we have been providing an enormous amount of information. If there are places that we can do better on that, we want to try to do better on that. Again, consistent with our rules.

I'm very mindful of the fact that the whole reason I am in this job is because my predecessor was fired. In a fairly scathing Inspector General Report, one of the things he was criticized for was sharing more information both with the public and frankly with Congress than was consistent with Federal Rules.

Mr. GOODEN. Thank you, thank you for that pledge.

Now, to China. Most Americans don't realize, I don't think, that U.S. companies doing business in China are required to have joint venture agreements. That has been around since 2017 or 2018 I believe. It requires the Chinese Communist Party to have political cells within these enterprises, American enterprises in China.

In the last few weeks, it has come to my attention that they have taken that up a notch and actually gone further, the Chinese have, and said that not only must they be present and have access, but they now control these American businesses. So, they are in essence nationalizing American enterprises in China.

The CEOs I have talked to are afraid to say something. They say they have gone to the FBI; the FBI I think is aware of this. I am about to turn it over to you. My question is: Is this happening and what can be done about it, what do we need to do about it?

Mr. WRAY. Well, I think you have put your finger on a very important issue, and frankly, one that does not get the attention that it really deserves, so I appreciate you bringing it up.

I will say that in my view, there is no country, none, that presents a broader, more comprehensive threat to our ideas, our innovation, our economic security than the Chinese Government and the Chinese Communist Party. In many ways, it represents I think the defining threat of our era.

When it comes specifically to the business community, while there is no law against joint ventures, the problem that we have is that the Chinese Government all too often has exploited those joint ventures to then use them as ways to get improper access to companies' secrets and information.

Mr. GOODEN. Do you find that they have stepped it up, though, to where they are in essence nationalizing U.S. companies quietly?

Mr. WRAY. In a variety of ways, I hadn't really thought of using that term, but I think you are on to a very important point.

I will give you an example that I think a lot of people in America still don't know about and would be shocked to hear, which is that really any company of any size in China is required, required by Chinese law, to have what they quaintly call a Committee. It is essentially a cell inside the company, whose sole function is to ensure that company's compliance with Chinese Communist Party orthodoxy.

If we tried to install something like that in American companies or if the British tried to do it in British companies, or any number of other places, people would go out of their minds, and rightly so.

Mr. GOODEN. Agreed. Well, thank you. I would like to work with you more on that. I would yield the balance of my time to the Chair. Thank you.

Chair JORDAN. That is exactly what you did. The judge said it last week. Every week you were meeting with Big Tech companies saying hey, look at this, this violates your policy. Take this speech

of Americans down. You were doing the same darn thing you just described the Chinese about.

Can we put up the email that Mr. Nadler entered into unanimous consent request. We put this up from the FBI to Bank of America. Because I want to know something. This is the full email. Go to the bullet point where it says, “Any historical purchase going back 6 months generally for weapons, weapons-related vendor purchase.”

Do you see that, Director? You see that bullet point, the one that says “ANY” in all caps, that bullet point. This is the email. How did you know? How would you know if it is a firearm purchase? How is the FBI going to know this? Would you put your mic on, please.

Mr. WRAY. I am sorry. I am not going to start engaging on specific correspondence. I don’t have the whole string here. As I have said before, my understanding is that our engagement with Bank of American was lawful, but that we also took steps, as we discussed in our earlier exchange—

Chair JORDAN. If it is lawful, why did you take steps not to use the material? You can’t have it both ways.

Mr. WRAY. I disagree with that, actually.

Chair JORDAN. Really?

Mr. WRAY. There are plenty of things that we lawfully can do that we decide are better not to do. That is my understanding is what happened here.

Chair JORDAN. Wow, wow.

The Chair recognizes the gentlelady from Texas for five minutes.

Ms. ESCOBAR. Thank you, Mr. Chair.

Director Wray, thank you for your testimony and thank you for your public service.

Last week in my district and my hometown of El Paso, Texas, a domestic violent extremist was sentenced to 90 consecutive life terms for a horrific attack he carried out on my community on August 3, 2019. On that day, he confessed that he drove over 10 hours from his community in East Texas to mine to slaughter Mexicans and immigrants.

Before he walked into that Walmart, he published his screed online. He used some of the same ugly, xenophobic rhetoric that I hear my colleagues on the other side of the aisle use. Then he walked into that Walmart with an automatic-style weapon and began shooting indiscriminately.

He killed 23 people, injured dozens more. My community remains profoundly impacted by that attack. The victims and the survivors and the loved ones still live with profound pain and trauma.

What is the FBI doing, Director Wray, in response to racially motivated domestic terrorism?

Mr. WRAY. Well, first, let me say I feel your pain. I actually visited the Walmart crime scene shortly after the attack and spent time with our folks on the ground who were processing the crime scene in blistering heat in the parking lot there. Obviously, got briefed by the investigative team and met with our local partners.

Obviously, it was a horrific, tragic event. The individual stories about some of the individual victims stick with me to this day.

As to the broader phenomenon of racially motivated violent extremism, we have done a number of things. We elevated it to a national threat priority back in the Summer 2019, I believe it was, which means that it is squarely in scope of all our joint terrorism task forces and treated as a priority at the top level. That is our highest level of priority.

We also have engaged; we created a domestic terrorism hate crimes fusion cell. You might wonder what is the point of that? Well, what we found was that sometimes the same acts of violence could either be called a hate crime, or it could be called an act of domestic violent extremism.

In the way the FBI is structured, the first is treated by our Criminal Investigative Division. The second is focused on by our Counterterrorism Division.

By bringing the two subject matter experts together, we could make sure that we are not letting anything slip through the cracks. More importantly, we can be proactive in thinking ahead.

That same fusion cell, for example, was then very important in us identifying and preventing a potentially devastating attack against a synagogue outside of Colorado. It was really one of the first times in recent memory that a hate crimes prosecution was able to be preventative.

All too often, unfortunately, those cases are brought after there is a horrific attack. So, we were very proud of disrupting that plot.

Ms. ESCOBAR. Thank you so much, Director Wray. I am also very curious about what steps you have taken to improve coordination between the FBI and the Department of Homeland Security in terms of reporting the domestic terrorism data.

Mr. WRAY. Well, there were a number of places—this gets a little bit technical. The reports that Congress called for, I have had a number of engagements with Senator Peters on the Senate side about this, where data about how many domestic terrorism attacks there had been and what cases there were.

I think there were different ways in which in the two agencies what they were counting and so forth. So, to kind of get better at providing that information as required by Congress, we have worked more and more closely with DHS on ensuring a common set of metrics and so forth to make sure that the reports are getting in on time and that they are complete.

We still have some work to do to make them better, but I think we have made significant progress.

Ms. ESCOBAR. I appreciate it. That data is critically important, as you know. I am just about out of time. Thanks again for your service.

Mr. Chair, I yield back.

Chair JORDAN. Excuse me, the gentlelady yields back. The gentlelady from Florida is recognized.

Ms. LEE. Good afternoon, Director Wray. Director, how many sworn special agents are there currently in the United States?

Mr. WRAY. You mean outside the FBI?

Ms. LEE. Oh, no, in the FBI.

Mr. WRAY. Just in the FBI? I think we have about 14,000 or so FBI special agents.

Ms. LEE. They are spread across field offices and resident agencies in the U.S. and in some cases around the world, is that right?

Mr. WRAY. Yes.

Ms. LEE. All right. Now as a former Federal prosecutor and judge I have had the opportunity to work with a number of men and women of the FBI from my home State and one thing that I know and that we have heard in your testimony today is that you have very broad responsibilities. Is it correct to say that the FBI, among other things, investigates counterterrorism, counterintelligence, cybercrime, public corruption, civil rights offenses, transnational organized crime, violent crime, and domestic terrorism?

Mr. WRAY. Then other things as well, but yes.

Ms. LEE. Yes. In addition to that would you agree with the statement that the bureau provides important support to local law enforcement agencies around the country on those subjects and others?

Mr. WRAY. I would say indispensable support and something I hear about—I'm talking with chiefs and sheriffs probably every week in this job since I've started and if there's one refrain I hear from the consistently is keep it coming; we need it; can you give us even more help? That's what I hear from them.

Ms. LEE. I would like to focus on the subject of domestic terrorism today. When we talk about domestic terrorism the bureau's work includes investigating and bringing to justice those who do profound harm to the homeland given the opportunity. The bureau has been involved in cases involving hate crimes, violent extremists, and even some of our country's most notorious criminals like Timothy McVeigh and Ted Kascinski. Is that right?

Mr. WRAY. Yes.

Ms. LEE. OK. Of course, there are many such individuals who have plans to do harm to our homeland that America never hears about because you successfully intercept and prevent before those incidents occurs?

Mr. WRAY. Yes. In fact, one of the things that I think people would be surprised to know because terrorism is not as much in the news as it was during the era when I was serving in the Bush administration in the 9/11 era—but we have, just since I've been Director, disrupted attacks against a July 4th parade in Ohio, any number of attacks against churches and other houses of worship, an attack, an attempted attack, a plot to attack a hospital during COVID, the pier in San Francisco in sort of a peak tourism moment, a crowded beach during a Memorial Holiday. These are not all domestic terrorism. Some of them are—and that's important for people to know. Some of these are jihadist-inspired terrorist attacks, too. That has not gone away even though a lot of the public discussion has been about domestic terrorism.

Ms. LEE. So, here is what I am hoping you can help us reconcile today: So, we know that there are a limited number of agents, a limited number of resources, and a vast responsibility to prevent a broad array of very serious offenses. What I would like to do with that in mind is turn your attention to the decision within the bureau to use investigative resources to investigate and surveil parents who attended school board meetings for the purpose of sharing their concerns about the nature of their children's education and

the efficacy of the policies that were being implemented by school boards around the country.

Is it correct that in 2021 the FBI created a threat tag specifically designed to identify parents attending school board meetings?

Mr. WRAY. Yes, I think it's important for people to understand what a threat tag is and is not. It is not what we base investigations on. It's not an investigative tool. It's an administrative function in our system and it doesn't change anything, anything about how we investigate, tools we use, any of our longstanding standards for predication.

Ms. LEE. In those circumstances—

Mr. WRAY. You mentioned the whole resource allocation question—

Ms. LEE. —it is correct is it not however that agents surveil, that agents did in fact surveil and investigate certain parents who were attending school board meetings?

Mr. WRAY. No, ma'am, that's actually not correct. We opened 25 assessments into reports that were tagged, but none of those involved incidents at school board meetings. To my knowledge the FBI has not opened investigations on any parent for exercising speech at school board meetings.

Ms. LEE. Would you be concerned that to do so would be an infringement or perhaps a chilling on the First Amendment rights of parents to participate freely and opening in those meetings? Do you believe that would be an appropriate function of the bureau?

Mr. WRAY. I believe that our mission is to protect the American people and uphold the Constitution. The uphold the Constitution part is very important to me and to our people. I will say to you the same thing I said to all 56 of our field offices as soon as I read that memo, which is the FBI is not and has never been in the business of policing or investigating speech by parents at school board meetings and we're not about to start now. We're going to keep doing what we've been doing. That includes when there's violence, threats of violence, we're going to work with our State and local partners as we always have on that and following our normal procedures and our normal investigative steps and our normal standards for predication.

Ms. LEE. Thank you, Director Wray.

Mr. Chair, I yield back.

Chair JORDAN. The gentlelady yields back.

The gentleman from Colorado is recognized.

Mr. NEGUSE. Thank you, Mr. Chair.

Director Wray, thank you for being here, thank you for your testimony, and thank you for your service to our country under some pretty difficult circumstances. We are certainly grateful. I am certainly grateful. The people of the State that I represent, Colorado, are grateful to the 38,000 members of the FBI team, as you have articulated, that are working every day to keep the American people safe and to keep the people of my State and my community safe. So, we are grateful for you being here.

This Committee obviously has a legitimate role in terms of conducting oversight. Generally, that oversight has extended to the policy areas, the areas of law enforcement that, of course, you are responsible for. Unfortunately, much of the conversation today—

and it is disappointing I think for those Americans who have been watching—has not been focused on those legitimate areas of inquiry, but instead conspiracy theories and the like. Obviously, you have been given an opportunity to respond to some of the attacks that have been made against the law enforcement agency that you direct and the dangerous calls, or at least in my view the dangerous calls that have been made by my colleagues on the other side of the aisle in terms of defunding Federal law enforcement, which is deeply dangerous. You have articulated the many reasons why.

I would like to focus in on two areas that are important to my constituency in Colorado and that I believe are relevant to the work that you do, and that is the fentanyl epidemic and gun violence prevention.

With respect to the latter, you may recall you testified in front of the Committee previously, I had an opportunity to ask you about an incident that occurred back in 2020 in my State in Colorado. In 2021, the GAO issued a report in response to this particular incident. Just by way of background a gun dealer in Colorado transferred a firearm to an 18-year-old resident of Florida without first verifying the purchaser's age, eligibility, and her State of residence. The guy buyer then threatened to commit a school shooting akin to the mass tragedy that occurred at Columbine High, causing the lock-down and closure of multiple schools in my district back in Colorado.

The report recommended, the GAO report, that the FBI strengthen its system for the sale of firearms to out-of-state purchasers. Specifically, it recommended that the FBI update the NICS system to verify the age requirements of an out-of-state firearm purchaser in both the purchaser's State of residence and the State of sale to ensure basic age eligibility. We have introduced legislation that I believe the Department of Justice is aware of to make that requirement statutory.

Wonder if you could expound a bit on whether the—I am sure you are aware of the report—whether the FBI has implemented the recommendation that the GAO has made? If not, the FBI's plans to do so.

Mr. WRAY. Well, I think the specific legislation that would require that is something, as you said, that I think the department is studying, and so I can't weigh in on a specific legislative proposal. When it comes to the specific issue of 18–20-year-olds, in particular, and gun purchases, that is of course the subject of the bipartisan Safer Communities Act that was passed.

There are a number of significant checks that now occur. We started implementing that last October; fully implemented it starting in January. That provides for enhanced checks for that—that critical population, the 18–20-year-old range. Juvenile criminal records, mental health records for that population, and contact in some ways—most importantly contact with local law enforcement in that person's community.

I've actually be out to NICS, met with and sat with the operators who process those checks. So, I've seen kind of firsthand how it works and the important work it represents. I think if you were to talk—I'm talking to chiefs and sheriffs all over this country every

week and you will hear most of them—if you talk to them for very long, you will hear about their concern and our concern about juveniles and violence—almost guarantee you with the first 10 minutes of any conversation. It's a real problem in this country.

Mr. NEGUSE. Well, I thank you for your answer and I think it underscores the importance of the NICS program and would look forward to perhaps following up with your team on this particular administrative issue of trying to just make sure that the data base is working efficiently.

Limited time left, but I just want to give you an opportunity—I know we have talked a bit about the fentanyl epidemic devastating communities across the country. Certainly, in Colorado it is one of the reasons why we created a Fentanyl Prevention Caucus here in the Congress. It is bipartisan. Representative Issa is one of our Co-Chairs.

Wonder if you just might be able to, for those Americans who are watching, kind of provide us with your sense of some of the trends, the most dangerous and disturbing trends that you think the American people and policymakers should be aware of?

Mr. WRAY. Well, there are a whole bunch of trends, but in the limited time—but because of the importance of this topic, I'll hit a couple.

- (1) We were just discussing this recently internally, we are finding over the course of the last year that, maybe even a little less than a year, almost every gang takedown we have now, and we're doing them all over the country all the time—almost every single one now seems to involve as well a seizure of fentanyl. We've been doing gang takedowns since Congresswoman Lee was a prosecutor as well. So, that's not new. What is new is that over and over and over again it seems consistently we're finding fentanyl in these—again these violent crime takedowns.
- (2) A phenomenon, which is deeply disturbing, and I know the DEA Administrator is very concerned about as well, is that we're seeing more and more adulteration or lacing of fentanyl into all sorts of different kinds of prescription drugs that lots of Americans take all the time.

If you think about the phenomenon of the youth of this country, which is itself a problem, of getting prescription drugs from their friends or their friends' parents or whatever it happens to be, they may not know that there's potentially a lethal dose of fentanyl in some prescription drug that they're taking. So, it just underscores the importance of only getting your prescriptions from an appropriate medical provider.

Chair JORDAN. The gentleman's time is expired.

The gentleman from Wisconsin is recognized.

Mr. TIFFANY. Is the Southern border secure?

Mr. WRAY. I think the Southern border represents a massive security threat.

Mr. TIFFANY. So, what we have heard from you today is that fentanyl has become a really big problem and that you are having to put more resources to it. Is that correct?

Mr. WRAY. Toward fentanyl, yes. Yes, we are.



Mr. TIFFANY. The related gangs. You just regaled us with some of the story.

Mr. WRAY. Right.

Mr. TIFFANY. So, this all happened over the last couple years as the border has become unsecure. Is the Southern border secure?

Mr. WRAY. Well again, we're not—I want to defer to the Homeland Security which has responsible for the physical security of the building. I will just tell you from the FBI's perspective that we are seeing all sorts of very serious, very serious criminal threats that come from across the border.

Mr. TIFFANY. Getting worse, correct? You are putting more assets toward it.

Mr. WRAY. We certainly do. We have, as I said—

Mr. TIFFANY. So, it is becoming more of a priority for you?

Mr. WRAY. It is becoming more and more of a priority for us, yes.

Mr. TIFFANY. So, in the Durham Report, and we heard from Mr. Durham just a couple, weeks ago, he said the FBI failed to uphold the important mission of strict fidelity to the law. That predates you. Do you agree with that statement that Mr. Durham made?

Mr. WRAY. Yes, I do.

Mr. TIFFANY. Was Russia collusion a hoax? So, in light of the Durham Report in that was Russia collusion a hoax?

Mr. WRAY. Well, what I would say is this: First, as to the Durham Report itself, as to the issue of Russia malign influence. As to the Durham Report itself—

Mr. TIFFANY. Be quick.

Mr. WRAY. —I will try—the conduct it describes is conduct that I consider unacceptable and unrepresentative of who I see the FBI is every day and must not ever be allowed to happen again.

Mr. TIFFANY. On the other side?

Mr. WRAY. Second, on the other one it is not seriously disputed that the Russians, among other foreign adversaries, have attempted to interfere in our elections. There have been any number of findings to that. In fact, President Trump himself rightly declared a national emergency about foreign interference in our elections in 2018.

Mr. TIFFANY. So, as a result of the actions of James Comey, the disgraced James Comey and the FBI, they have interfered with the elections in both 2016 and 2020. Will that interference happen again in 2024 by the FBI?

Mr. WRAY. The FBI is not going to be interfering in elections.

Mr. TIFFANY. They did in 2016.

Mr. WRAY. Well, I don't know that's what Mr. Durham found. What I would tell you again is that it was conduct that I consider unacceptable and unrepresentative.

Mr. TIFFANY. You can be in denial if you want to.

Mr. WRAY. I'm not in denial, sir.

Mr. TIFFANY. Mr. Director, you can be in denial on this. That is exactly what happened.

Last year, the FBI gave a defensive briefing to my home State Senator Johnson. You can see the slide up there now. Then that defensive briefing was leaked to *The Washington Post*. Who ordered that briefing?

Mr. WRAY. So, defensive briefings, when it comes to election matters, including in the last administration, under a procedure set up by the last administration, are an interagency process coordinated by the Office of Director of National Intelligence. The way that works is the interagency concludes that a defensive briefing is appropriate and the FBI is given information from whatever intelligence community agency supplies it and then we provide it. Defensive briefings, it's important to understand—

Mr. TIFFANY. Senator Johnson. That is his quote. He is up there with you and Hunter Biden. "I knew it was a setup." He asked you this question back in November of last year and he said "I knew it was a setup."

That goes back to the point about interfering in elections. Senator Johnson was one of the most vulnerable Republican incumbents, if not the most vulnerable Republican incumbent, that was a target of the Democrats in the 2022 election. Then you see this briefing happen and he knew what was happening, that there was someone or some people within the FBI and the intelligence arena that were going after him.

Did Joe Biden take payment from Barisma or any other foreign companies as Vice President, President, or Private Citizen Biden?

Mr. WRAY. As you may know there is an ongoing investigation being led by the U.S. Attorney in Delaware, Mr. Weiss, appointed by President Trump in the last administration, that our Baltimore Field Office is working with. I would refer you to him as to what if anything can be shared.

Mr. TIFFANY. So, the President is under investigation?

Mr. WRAY. I'm not going to confirm or speak to who is or isn't under investigation for what. I'm simply going to tell you—

Mr. TIFFANY. So, he is not under investigation?

Mr. WRAY. I didn't say that either. By longstanding department policy and practice I'm not going to be confirming or denying who is or isn't under investigation or for what.

Mr. TIFFANY. Thank you. I will close with this: Russia collusion started it, Mr. Chair, and the targeting and the suppression and the censorship has continued until this point. We need to thoroughly review what the FBI is doing. At a minimum I will be allowing FISA to sunset if we are not going to see significant reforms in the agency. I yield back.

Chair JORDAN. The gentleman yields back.

The gentlelady from North Carolina is recognized.

Ms. ROSS. Thank you, Mr. Chair.

Thank you, Director Wray, for your service and your patience. In 2018, 10 leaders of Temple Beth Or, a synagogue in my district, received threats mailed to their homes. These threats led to the cancellation of programming and continued a disturbing trend of rising antisemitism in North Carolina.

In the years since my State has confronted new threats from domestic terrorists at minority institutions. This past April a man was arrested on the campus of North Carolina A&T State University, the largest HBCU in the country with multiple firearms and hundreds of rounds of ammunition as well as a makeshift explosive, brass knuckles, crossbow, knives, and other weapons. Thankfully this man was arrested before he could cause any harm, but

the threat he posed to the campus mirrors threats we have seen to HBCUs around the country.

In North Carolina and across the United States we have also seen increased threats against reproductive care providers in the wake of the *Dobbs* decision last summer. North Carolina recently enacted a 12-week abortion ban that has severely restricted access to reproductive healthcare in my State and people often have to go through threatening crowds to be able to access the care that they need. While some in North Carolina have highlighted vandalism of crisis pregnancy centers since the overturn of *Roe*, they have failed to acknowledge or respond to the increase in violence at abortion providers.

Does the FBI currently provide antiterrorism training to civilians, to HBCUs, places of worship, religious centers, individuals providing abortion services, and LGBTQ groups? Does that training include a domestic terrorism component, so that they can help you and law enforcement?

Mr. WRAY. Well, we do a whole bunch of things to engage with the community, institutions that are targeted with violence that include a number of the kinds of institutions you mentioned. I know, in particular, we work very, very closely with the Jewish community, which has the unfortunate distinction of despite the percentage that they represent of the American population of being [audio malfunction] around the country and nationally.

We also spent a lot of time engaging with campus law enforcement including at HBCUs. We spent a lot of time on that especially last year with the bomb threats that were coming in. I was just recently with all the campus law enforcement leaders from around the country just the last couple weeks. We certainly try to provide awareness to different kinds of institutions about how to deal with potential mass casualty events and things like that. We also provide information about things to be on the lookout for in people's communities.

I should say though, when you mention on the abortion side reproductive facilities, of course, I would be remiss if I didn't also point out that there has been a pretty significant uptick in violence going the other way since the *Dobb* decision.

Ms. ROSS. Yes.

Mr. WRAY. In fact, most of the investigations that we've opened since the *Dobb* decision, probably about 70 percent of them have been violence against prolife facilities. We recently had a significant charge in the Madison, Wisconsin area of a guy who was trying to firebomb a prolife facility there.

So, we're out there with communities across the spectrum.

Ms. ROSS. OK. How would an investigation differ if it is domestic terrorism as opposed to just an ordinary criminal case?

Mr. WRAY. Well, our investigation focuses on the violence first and foremost.

Ms. ROSS. Yes.

Mr. WRAY. I think there is no domestic terrorism statute. There's no offense of domestic terrorism—

Ms. ROSS. Yes.

Mr. WRAY. —but we define domestic terrorism for purposes of opening an investigation as having three things: Violence or threat

of violence in furtherance of an ideology; in other words, that's what's driving the violence in that particular instance, and in violation of Federal criminal law. If we have those three things, enough evidence to indicate that might be what's going on, then we would treat that as a domestic terrorism investigation.

Ms. ROSS. Thank you, Mr. Chair. I yield back.

Chair JORDAN. The gentlelady yields back.

We have got votes, director. We are going to do one more on our side, then we will take a break and come back for the remaining Members.

The gentlelady from Wyoming is recognized.

Ms. HAGEMAN. Yes, Director Wray, we have established that the FBI and other Federal agencies met weekly with executives from major social media companies including Facebook, Twitter, YouTube, Google, Microsoft, LinkedIn, Yahoo, and Verizon. Were you involved in any of those meetings, yes or no?

Mr. WRAY. I wasn't involved in the kind of meetings that you're talking about, or I didn't participate I guess in meetings like that.

Ms. HAGEMAN. OK. Are these meetings still occurring? If so, how frequently?

Mr. WRAY. Well, right now as you may know there is a preliminary injunction that's been entered—

Ms. HAGEMAN. Prior to the preliminary injunction were these weekly meetings taking place?

Mr. WRAY. I don't know if weekly meetings occurred again before the injunction, but certainly we've been very open about this, engaged with social media companies.

Ms. HAGEMAN. Does the FBI intend to continue to have such meetings leading up to the 2024 election to police election-related speech?

Mr. WRAY. Well, we're not going to be policing election-related speech.

Ms. HAGEMAN. That what you previously did?

Mr. WRAY. That's not—I do not agree with that description.

Ms. HAGEMAN. OK. Well, here is what I would say: This committee has learned that the FBI acted to quote, “discredit leaked information about Hunter Biden before and after it was published,” that, quote, “Twitter’s contact with the FBI was constant and pervasive as if it were a subsidiary,” and that, quote,

... a surprisingly high number of requests by the FBI for Twitter to take action on election misinformation even involving joke tweets from low follower accounts.

Are you aware that this has been reported?

Mr. WRAY. I am aware of some of what the Committee has found in its report.

Ms. HAGEMAN. OK.

Mr. WRAY. I will add that I'm not sure I agree with the findings in the Committee's Report.

Ms. HAGEMAN. That is what we found. Director Wray, you and I both know that the Federal government is forbidden from doing indirectly what it cannot do directly. In other words, neither you nor the FBI have any legal authority to circumvent the First Amendment by using a surrogate to do your dirty work, yet that is exactly what you have been doing. The bureau under your watch

has been using proxies to violate the First Amendment. Were you the person who gave the orders to use these social media companies to violate the First—violate Americans' First Amendment rights?

Mr. WRAY. Again, I don't agree with your description of our engagement with social media companies.

Ms. HAGEMAN. So, who made the decision to use social media companies as a proxy to suppress the First Amendment rights of American citizens?

Mr. WRAY. Because I don't believe that's what we did I'm not sure there's anyone that would have made such a decision.

Ms. HAGEMAN. Do you really expect the American public that you were not involved in the decisions related to using social media companies to suppress the First Amendment rights of American citizens?

Mr. WRAY. I can't help what people believe or not. I can only speak to what the facts are.

Ms. HAGEMAN. Was anyone ever fired or otherwise reprimanded for pursuing mass censorship? In other words, has anybody been held accountable for taking the actions that were described in the decision by the District Court out of Louisiana?

Mr. WRAY. Well, the District Court's decision just came out on July 4th as I recall—

Ms. HAGEMAN. Has anybody been reprimanded or held accountable for what has—

Mr. WRAY. At the moment we have issued guidance to everyone in the organization who could be affected as to how to follow that.

Ms. HAGEMAN. Has anyone been reprimanded?

Mr. WRAY. I'm not going to speak to personnel matters because we have not made any such determination at this stage.

Ms. HAGEMAN. Mr. Wray, I have some letters from Lindsay Graham and Rand Paul that were sent to you on April 20th and June 20th requesting a meeting to discuss the Weapons of Mass Destruction Directorate's work investigating the origins of SARS-COVID-19. Your office has never responded to these letters. Do you intend to respond to Senators Lindsay Graham and Rand Paul to find out more information about the origin of COVID-19?

Mr. WRAY. Well, we try hard to respond to all correspondence we get from the Hill. We get a lot. I'll have to check—

Ms. HAGEMAN. So, I assume you will be responding to this?

Mr. WRAY. —but, my intention is that we would have an appropriate response. Sometimes our responses—by longstanding procedure our responses have to go through the department before they go out, so it could be that it's held up there. I don't know that's—

Ms. HAGEMAN. So,—

Mr. WRAY. —I don't know if that's the case in these particular ones, but—

Ms. HAGEMAN. —Senators Graham and Paul should be receiving a response from your office pretty soon?

Mr. WRAY. Some kind of response. As you may know we were the only agency in the intelligence community, until more recently when the Department of Energy did as well, to reach the assessment that in our folks' view we thought—

Ms. HAGEMAN. I understand, Mr. Wray.

Mr. WRAY. —it was more likely to be a lab leak.

Ms. HAGEMAN. OK. Mr. Wray, from the Twitter files, *Missouri v. Biden* disclosures, the Durham Investigation and Report, and exposure and collapse of the Russian collusion hoax, the American people fully understand that there is a two-tiered justice system that has been weaponized to persecute people based on their political beliefs and that you have personally been—that you have personally worked to weaponize the FBI against conservatives.

I asked Mr. Durham about this to which he answered,

I don't think that things can go too much further with the view that law enforcement, particularly the FBI or Department of Justice, runs a two-tiered system of justice. The Nation can't stand under those circumstances.

Director Wray, what are you prepared to do to reform Federal law enforcement in a manner which earns back the trust of the American people?

Mr. WRAY. Well, first, I would disagree with your characterization of the FBI and certainly your description of my own approach. The idea that I'm biased against conservatives seems somewhat insane to me given my own personal background.

As to how we are approaching our work of protecting the American people and upholding the Constitution, it starts with me having emphasized to all our folks over and over and over again in everything we do that we need to do the right thing in the right way, and that means following the facts wherever they lead no matter who likes it.

It starts—then goes on from there to all kinds of enhanced procedures, safeguards, approvals, double checks, triple checks, record keeping requirement, accountability policies, and funding of new functions like an Office of Internal Audit that didn't exist before, the installation of an entirely new leadership team from my predecessor.

Where I can take action, where we can take action to hold people accountable by removing people from the chain of command—

Chair JORDAN. The gentlelady's time is expired. Director, we are going to take a 30-minute break for votes. We will be back—I am going to try to start right at 2:15.

Ms. HAGEMAN. Unanimous consent to introduce statements into the record.

Chair JORDAN. Without objection it will so be entered.

We will start with Ms. Bush and then Mr. Bishop on our side when return. We will stand in recess for approximately 30 minutes.

[Recess.]

Chair JORDAN. The Committee will come to order.

The gentlelady from Missouri is recognized.

Ms. BUSH. Thank you, Mr. Chair, and thank you for being here, Director Wray.

Before I get into the primary topic of my remarks, I want to ask you about a separate issue. On June 16th my esteemed colleague, Ranking Member Raskin of the Oversight Committee, sent you a letter asking the FBI to publicly reiterate certain nonclassified information that it provided in an oral briefing about Form FD-1023 subpoenaed by Oversight Chair Comer.

It has now been almost a month since Mr. Raskin sent his letter. When can he expect a response?

Mr. WRAY. I'll have to check with my staff because we have gotten so many letters from so many Members and that's—each one of them is important to me. As I sit here right now I don't know when the timing is but we'll get back to you on that.

Ms. BUSH. OK.

Mr. WRAY. More importantly, we'll get back to you on that one.

Ms. BUSH. OK. OK. All right. Thank you, and we will followup. OK. Especially because I did ask directly of your staff. So, we'll followup.

Now St. Louis and I are here today in continuing solidarity with the protesters, the advocates, and movements that are actually targeted by surveillance and other law enforcement abuses in this country.

Director Wray, I know that you are aware of the FBI's long and sordid history of targeting Black protesters and activists. At a hearing before this Committee in December 2017 you characterized the abuses related to Cointelpro as, quote,

... one of the darker moments in the FBI's history. It's something we're not proud of, but it is also something we have learned from.

Director Wray, isn't it true that an FBI agent improperly ran a batch query of unminimized FISA information using the identifiers of 133 individuals arrested in connection with the protests after the murder of George Floyd in 2020? Just a yes or no is fine.

Mr. WRAY. Well, I am aware of the incidence you're talking about. Whether that correctly describes it or not I'm not 100 percent sure. I know it's in the most recent FISC opinion.

What I will tell you is that this incident is noncompliance I considered unacceptable and most importantly, it predates all these fixes and corrective measures and reforms that we have put in place, which I think would have prevented it from happening now.

Ms. BUSH. Thank you. Now on to ZeroFox.

Isn't it true a firm hired on a \$14 million contract by the FBI, which we have heard already today, to monitor social media threats previously labeled Black Lives Matter activists as threat actors requiring constant surveillance? Yes or no.

Mr. WRAY. I'm not sure that's a correct description of the way we do work with ZeroFox. I don't know that's a correct description of how we do it.

Ms. BUSH. So, did the FBI hire the firm?

Mr. WRAY. My understanding of ZeroFox is it has a tool which allows us to, in certain instances, engage in social media searches to prevent threats. The specifics of—

Ms. BUSH. So, the FBI—so they were hired?

Mr. WRAY. Well, I don't know, again, the terms of our arrangement, whether it's a retention or what. I've heard the term ZeroFox before and my general experience is it's usually used in connection with preventing violence out of a particular critical incident of some sort.

Ms. BUSH. So, to the tune of \$14 million, though, there is reporting that threat actors was actually what they labeled Black Lives Matter activists, two of whom I know very well, and I served more than 400 days on the ground during the Ferguson uprising myself, more than 400 days, many of those days with those two people that were named and who are not violent.

Isn't it true that the FBI has been actively involved in the law enforcement response to people protesting the Atlanta Public Safety Training Center, a response that has included State charges of domestic terrorism against protesters? Yes or no.

Mr. WRAY. Well, our Atlanta division is working in support of our State and local partners when it comes to violence and threats of violence that occurred amid the unrest that you're referring to.

Ms. BUSH. So, the FBI is involved. These are not isolated incidents and, as I said, they're part of a long history of abuses by the FBI against Black and Brown communities and progressive movements.

These are the real oversight issues. They matter to my district where there is real and justified skepticism of whether the civil rights of Black and Brown people are adequately protected.

I know this from personal experience in the Ferguson uprising and from other protest movements that I have been a part of. That's why I asked you about the targeting of protesters the last time that you were before us because they also included me.

What my district is not concerned about is the Republican conspiracy theories and selective targeting of law enforcement agencies who tried to hold their twice-impeached twice-indicted cult leader Donald Trump accountable. The Insurrection Caucus wants to use this hearing to score immediate political points. They want to evade oversight. They don't want to conduct it.

We're talking about real issues, real reform that can actually save lives. So, once again, I urge my Republican colleagues who claim to care about government overreach and weaponization to do the exact same.

I yield back.

Chair JORDAN. The gentlelady yields back.

I would just remind the lady that what we'd actually likely to do is work with you to protect Americans' privacy whether they've been targeted on the right or on the left.

Mr. IVEY. Mr. Chair? Mr. Chair, point of order. Point of order. Point of order.

Chair JORDAN. The gentleman may State his point of order.

Mr. IVEY. It's not your time.

Chair JORDAN. I appreciate the point of order, and I was just getting ready to yield to the gentleman from North Carolina who—

Mr. IVEY. Thank you, Mr. Chair. I greatly appreciate that.

Chair JORDAN. I appreciate the reminder.

Mr. BISHOP. I want to followup, Director Wray, about the Foreign Influence Task Force. There have been exchanges with Mr. Johnson of Louisiana and Ms. Hageman over that, and I understand the difference. I want to respect the differences in characterization.

Earlier this weekend in denying a stay of its order the Federal Court essentially said this isn't complicated. Follow the law as articulated by the U.S. Supreme Court in the area of the First Amendment and that was it as far as it was concerned.

The Foreign Influence Task Force is not a predecessor's decision. You set that up, right?

Mr. WRAY. Yes.



Mr. BISHOP. You've known about the continuous interaction with social media companies. You've known about—I'm sure you know about testimony of Elvis—agent Elvis Chan, correct?

Mr. WRAY. I don't know everything he's testified to, but I'm aware that he was—

Mr. BISHOP. Did you read his testimony?

Mr. WRAY. I've read parts of it, yes.

Mr. BISHOP. That there were thousands of posts that were flagged by the social media companies. These meetings with social media continued across time on a periodic basis and this court has found—and I understand where the point of disagreement is, I guess, at this stage is and I believe it's fairly common sense—that if you've got constant, expectant suggestions from the FBI to social media companies with respect to social media posts at some point in times it becomes a government decision or it becomes coercive in nature. That's what the Courts preliminarily found. That apparently is the line you decided to walk in setting this up.

Today it's striking that you come in and you sort of casually acknowledge and among other things that we did pass through, I think you said, information from the Ukrainian SBU to social media as if it's normal for the FBI to serve effectively as the agent of a foreign power to help pull information out of circulation to which Americans otherwise would have access because the foreign intel service doesn't like it.

Now, those are my characterizations. I have tried to be a little bit more neutral in my language and you can differ with them. Here's what I'm wondering.

Why would you walk that fine a line with respect to Americans' fundamental constitutional rights at scale especially with knowledge of past abuses by the FBI like Cointelpro?

You said earlier that the FBI wasn't even concerned about disinformation, per se, but the foreign origins of the information. Assuming so, how does that comport with *Lamont v. Postmaster General*?

Mr. WRAY. Well, I'm not going to try to engage on Supreme Court jurisprudence, but what I can tell you is that the—

Mr. BISHOP. Well, that's the point, though, Director Wray, and let me just ask you, do you know about that case? Do you know that case?

Mr. WRAY. I've heard of the case.

Mr. BISHOP. All right. Right in the heart of the cold war at the behest of an American plaintiff—a communist, by the way—the Supreme Court said that Americans have a First Amendment right of access to information even if it is propaganda originating abroad and, in that case, the United States Postal Service could not interdict it.

Do you know that, in essence?

Mr. WRAY. Again, I'm not familiar with the holding of the case. I'd have to review it to be sure that—

Mr. BISHOP. That's seems to me the trouble. I keep wondering as I read all these revelations how that could be. Then let me go to this. That the FBI engaged with the social media companies, continuously warning them of hack and leak operations in 2020—not

2018, by the way, but before the 2020 election—lots of warnings about hack and leak. You're aware of that?

Mr. WRAY. I'm aware that we gave them lots of information about intelligence that we were receiving from some of our intelligence—

Mr. BISHOP. At the time you were giving them those warnings the FBI had the Hunter Biden laptop for more than nine months and—but, of course, Cointelpro itself was the mother of all hack and leak operations.

Leftist activists at the time broke into the FBI's office in Media, Pennsylvania, stole the files, gave them to the media and the newspapers published them. You're bound to be aware of *New York Times Company v. The United States*—The Pentagon Papers case?

Mr. WRAY. Yes.

Mr. BISHOP. That says that even if information had been stolen or inappropriately taken that you can't get a prior restraint in almost any circumstance to prevent their being distributed.

So, how is it that your Foreign Influence Task Force is out warning of hack and leak operations to innocent—not involved in the hack—that would be criminal—but news or social media organizations where information may be circulating?

Mr. WRAY. Well, first, we're not engaging in any prior restraint. Second—the second—

Mr. BISHOP. Wow.

Mr. WRAY. Let me—if I could finish, please.

Second, there is no serious dispute that foreign adversaries have and continue to attempt to interfere in our elections and that they use social media to do it.

President Trump himself in 2018 declared a National Emergency to that very effect and the Senate Intelligence Committee in a bipartisan—overwhelmingly bipartisan way, by the way, not only found the same thing but called for more information sharing between us and the social media companies.

Mr. BISHOP. I hate to say this, Director—I hear you, but it doesn't justify trampling the established First Amendment rights of Americans as the Supreme Court has declared them whether or not, frankly, I agree with them, or you agree with them. I just don't—that's what I don't get.

You come here and the comments are sort of blasé answers. Accountability is always down the road. It never arrives and I'm not trying—I guess I'm joining the gang up.

What I'm concerned about and I think Americans are concerned about is they just never see it. I don't know of an answer other than to take an appropriation from you that's very significant or to do something to take your intel powers away and put them in another agency.

I honestly want to know.

Mr. IVEY. Mr. Chair?

Mr. BISHOP. I think Americans want to know.

I yield.

Chair JORDAN. They sure do.

The gentleman from Maryland who keeps us on time is recognized.

Mr. IVEY. Until it's my turn. Then I'm going to run overtime.

Mr. BISHOP. Wait until he gets his five minutes. Yes.

Chair JORDAN. The gentleman's time is about ready to start.

Mr. IVEY. Thank you, Mr. Chair.

Director, I appreciate you coming in today. I saw a characterization of this hearing as a GOP-FBI grudge match. I must say that the only grudge that's been seen here is from the Republican side.

I think you've done an outstanding job with your testimony today. Even though you've been admitting that there are shortcomings by your office, that mistakes have been made, I appreciate the fact that you are willing to do that because it's not easy for agency heads to do that and also, more importantly, to point out the changes that you've made to try and address those concerns.

I want to say this, too. There are a couple points that have been made here about—you were just talking about the Foreign Influence Task Force and I know there's a lot of talk about this as being some kind of prior restraint or First Amendment violation.

I want to say that I'm on the side that thinks this is a very important tool for the FBI and the U.S. Government to have, especially with respect to potential intervention or interference especially by Russian State actors with respect to American elections.

There are some people who think, and I'm kind of starting to agree, that one of the reasons some of my colleagues are pushing so hard against this and other aspects of information protection within the United States is because they want to have Russian interference in the 2024 election.

Chair JORDAN. Oh, please.

Mr. IVEY. I certainly don't. So, I certainly thank you for continuing your efforts on that front.

There was an issue that was raised about whistleblowers earlier in the hearing and I wanted to bring this up. I know you can't speak to this, Mr. Director, but these are the two checks that were written to some of these witnesses—two of the witnesses that testified here—and they are for over \$250,000.

Now, they came after they gave their testimony I think by a few days. From my perspective, this is something that the American public should know when they evaluate the testimony of these individuals. Hopefully, I don't know if the majority knew about this, but didn't disclose it at the time or what was going on with it.

In my book, this really brings the credibility of these witnesses' testimony into question, and I think we should keep this in mind when we evaluate the allegations that they've made.

I also want to say this, too. My Republican colleagues have come a long way from the law-and-order days of the Republican Party back when I was a kid. Now, we're a defund the FBI, I think one of them selling T-shirts to try and raise money using that slogan.

Another colleague is talking about abolish the ATF. Another one wants to say defund the Department of Justice. As you mentioned in your testimony earlier, the FBI is doing a lot of great work protecting the country from terrorism, foreign intelligence threats, international cartels. There are weapons of mass destruction that you mentioned in your testimony. I appreciate that.

Also, there has been a great deal of talk about the domestic terror threats. For me the planned attempt to kidnap the Governor

of Michigan and apparently kill her was showing to the extreme and I appreciate the fact that you were able to intervene on that.

I want to say this quickly, too. I'm running short on time. The misinformation and weaponization claims that have been made by my Republican colleagues I want to offer these two articles.

One is called—it's by Aaron Blake of the *Washington Post*, "All the ways Trump, not his foes, sought to weaponize the government," and then another one—this is Philip Bump. This is on the *Missouri v. Biden* case, which was quoted extensively at the beginning of the hearing, "A deeply ironic reinforcement of right-wing information."

The point of this article is that the *Missouri v. Biden* decision, which—and I know you can't comment on it because it's pending litigation, but I also think it's being challenged by the Department of Justice and rightly so because it's riddled with factual inaccuracies and legal inaccuracies as well.

One other article for the record—this is by Leah Litman and Laurence Tribe, "Restricting the government for speaking to tech will spread disinformation and harm democracy." I'd like all those admitted.

Then, last, with respect to the Hunter Biden issue there's a letter from Abbe Lowell, who represents Mr. Biden—this is to Representative Jason Smith, but I think also to Chair Jordan as well—that raises the push back on the allegations that points out that the investigation began during the Republican Trump Administration, was supervised by two Republican Attorney Generals, was carried over by a holdover Republican U.S. Attorney.

The last point I want to make—I promise I won't run over my time much—I happen to represent the district where we contain two of the sites where the FBI headquarters could be moved to.

The Chair made a reference to maybe not wanting to fund the move, but I must say I think I had an office near your building that got nets around it to keep parts of the building from falling down and hurting pedestrians. If the move is important and also would give you a chance to consolidate hopefully, you'll bring it to Prince Georges County, and we'll save \$1 billion for the taxpayers.

With that, I yield back.

Chair JORDAN. The gentleman yields back.

The gentlelady from Indiana is recognized.

Ms. SPARTZ. Thank you, Mr. Chair.

Director Wray, the FBI's mission is to protect the American people and uphold the U.S. Constitution, correct?

Mr. WRAY. Yes.

Ms. SPARTZ. OK. So, we had a couple of years ago—it was in hearing and I actually looking in all the concerns and I've seen was really warrantless surveillance and abuses of Section 702 of FISA.

I compared the agency to KGB, and spending two years on this Committee reading a lot of reports, now doing a lot of hearings I'm really shocked that your agency is involved not just unlawful surveillance of American citizens, intimidation of American citizens, censorship of American citizens, potential coverups of convenient political figures, potential setups of inconvenient political figures, and a lot of my colleagues has a lot of questions.

I think when we look at that and, unfortunately, we haven't been doing our job authorizing spending which was not authorized by our Committee already for over a decade, we're going to have this serious conversation and including reauthorization of Section 702.

I want to talk about some other issues that you mentioned about that my colleagues were talking about and you mentioned that you focus on malign foreign actors.

So, in Durham Report, which describes 2020, he states, and this is a quote,

Steele's sources could have been compromised by the Russians. FBI never gave appropriate consideration to the possibility that the Steele Report was Russian disinformation.

No vetting happened. You have some falsified FISA court application. You have some very shady confidential human sources that you can pay for them. Nothing was vetted. Some of your head of counterintelligence division was accused of taking money from a Russian oligarch just recently this year.

So, you said all those bad. Now, we go to 2022. Your agency is involved with SBU, security service of Ukraine to actually provide information to big tech to censor, just use, of American people. No vetting, it seems, is happening. This is information.

Actually, a lot of this information was pro-Russian against Ukraine and pro-Putin. Your agency just passed it along. It seems like nothing happened. It's interesting for me that when I raised some issue actually the beginning of July and what's happening in Ukraine, I don't have any confidential human sources, just using common sense and intelligence that something is wrong happening in Ukraine. It seems like there was a lot of infiltration. I was attacked—oh, my gosh, how can you question.

Well, strangely enough, after me raising this question in the middle of July President Zelenskyy fired his SBU top guy, opens over 600 investigations as potential infiltration by Russians and then fire a lot of other people for corruption. An anticorruption prosecutor was suddenly installed.

What is really interesting for me, is how could you have these processes, and are you doing actually any investigation to look? Because it seems to me, as I understand you still have our agencies working with SBU with coming from KGB time and FSB time has a lot of potential to have this infiltration. Are you doing any investigations on those issues?

Mr. WRAY. Doing investigations on—

Ms. SPARTZ. Yes, to look at that, why we're doing unvetted information we're taking from SBU which actually was infiltrated and given to censor Americans to our big tech companies. Are you looking into that as an agency?

Mr. WRAY. I'm not sure there's an investigation that is directly on point to what you're saying. Certainly, the SBU is an agency that we have worked with for a long time.

Ms. SPARTZ. So, we're not doing an investigation. So, did we change the processes now since we know your guys work with SBU, SBU was infiltrated by Russia and big tech was censoring American citizens. This unvetted information that actually was provided by Russians did you change any processes or it's still hap-

pening? You have some of the same processes that happened? Is this still happening now?

Mr. WRAY. Well, the engagement that we had with SBU was during—

Ms. SPARTZ. I'm talking right now.

Mr. WRAY. Yes.

Ms. SPARTZ. Because recently some of your agents had actually a joint meeting and they were bragging how their top corporation was SBU. Did you change processes?

Mr. WRAY. I'm not sure what processes you're talking about.

Ms. SPARTZ. To vet information.

Mr. WRAY. Yes.

Ms. SPARTZ. What's happening?

Mr. WRAY. Again, during the period at the beginning of the invasion—

Ms. SPARTZ. No. No. I'm talking right now. Do you change—do you vet information that you get from agencies like SBU? I mean, I don't know. If we're trying to—are we being stupid? I understand—are we being infiltrated by Russians or corrupt?

I don't understand why we're not vet information was such a real challenge in the agency. So, are you changing anything of that? I would like to have a briefing or something on this because if you're not looking at it, I have a huge problem with that.

Mr. WRAY. I'm happy to try to see if we can arrange to get you a better briefing on the subject.

Ms. SPARTZ. Because this is a serious national security issue. I yield back.

Chair JORDAN. The gentlelady yields back.

The gentleman from South Carolina.

Ms. JACKSON LEE. Thank you, Mr. Chair.

Oh, I'm sorry. The gentlelady from Texas is recognized.

Ms. JACKSON LEE. Thank you so very much, Mr. Chair, the Lone Ranger on this side.

Chair JORDAN. Thanks for sticking with us.

Ms. JACKSON LEE. We appreciate you for a moment and all my members.

Let me just quickly indicate that I have a document that is a tweet that is—I'm wanting to submit it into the record. Two of the Republican witnesses were gifted \$255,000 checks—\$255,000 in checks immediately after they testified before this Committee. It seems to be quid pro quo.

The fact of—the tweet that I'm submitting from Mr. Kyle Seraphin says the fact that Mr. Allen has not yet cashed the check is not that he did not receive the check. So, I submit in the record the tweet from Mr. Seraphin who indicated that two gentlemen, Garrett and Marcus, receiving a check of—

Chair JORDAN. Continuing your attack on whistleblowers, without objection those are—those are—

Ms. JACKSON LEE. Just for clarification, Mr. Chair.

Then finally, the Federal Bureau of Investigation and Department of Homeland Security's strategic intelligence assessment and data on domestic terrorism dated October 2022, Appendix A—the document itself, Appendix A, Appendix B, and the categories of domestic violence extremism.

Chair JORDAN. Without objection.

Ms. JACKSON LEE. Your kindness is appreciated. Thank you very much.

Chair JORDAN. Thank you. The gentleman from South Carolina is recognized.

Mr. FRY. Thank you, Mr. Chair.

A few weeks ago, Special Counsel Durham confirmed the FBI had bias against President Trump and took unprecedented steps to go after him during the 2016 Presidential Election.

The Durham Report showed:

- (1) The FBI did not have an adequate basis to launch the investigation;
- (2) it didn't verify or examine all the evidence; and,
- (3) the FBI was politically charged against then candidate Trump.

This, of course, was before your time. Here we go again. In August 2022, the FBI raided the personal residence of President Trump. This unprecedented raid was a shocking escalation in what we talk about with the weaponization of the Federal government against political opponents.

Our country is almost 250 years old. We have had 46 Presidents. This is unprecedented and when we say it's unprecedented, we mean it. This has never been seen before in our country's history. Just like we saw in the Durham Report, the FBI did not follow traditional protocols and this investigation was chock full of abnormality.

So, I kind of want to go into those a little bit. Director Wray, as you know, the Committee recently conducted a transcribed interview with Steven D'Antuono, the former Assistant Director in charge of the FBI's Washington Field Office. He has over 20 years of FBI experience and he expressed some strong concerns with your department's handling of the case, the DOJ's handling of the case.

The first abnormality deals with the FBI office, that they conducted the raid themselves.

Director Wray, generally speaking, which FBI office oversees Palm Beach, Florida?

Mr. WRAY. The Miami office has an office in Palm Beach. To the question you're asking it is not unusual for a field office that is investigating the case to send the case team down to be involved in conducting the search.

Mr. FRY. President Trump's residence is in Palm Beach, Florida. Is that correct?

Mr. WRAY. Yes.

Mr. FRY. Director Wray, did the Miami field office conduct the investigation and search at Mar-a-Lago?

Mr. WRAY. The Washington Field Office conducted the search, although I think there was some assistance by people from Miami.

Mr. FRY. It was primarily run out of Washington and not the Miami field office?

Mr. WRAY. Which was the case team that had opened the investigation based on a referral—

Mr. FRY. Did the FBI headquarters—

Mr. WRAY. —based on a referral from the National Archives, which is in DC.

Mr. FRY. Did the FBI headquarters in Washington instruct the Washington Field Office to start that investigation and that raid at Mar-a-Lago?

Mr. WRAY. Well, the investigation was opened in the field by the Washington Field Office.

Mr. FRY. Right. So, it was not Miami. It was Washington.

Mr. WRAY. Which the Washington Field Office opened the investigation based on a referral from the National Archives, which is also in DC, so that made sense.

Mr. FRY. Who made the decision to have the Washington Field Office execute that search warrant rather than the Miami field office?

Mr. WRAY. I can't speak to the specific individual. As you know, this is an ongoing case and internal deliberations are ongoing on the case.

Mr. FRY. We're not asking about—I'm not asking about the facts of the case. I'm asking you about who made the call to go to Washington and use the Washington Field Office as opposed to Miami. Would that had been you?

Mr. WRAY. Well, no. The Washington Field Office opened the investigation because they're the office where the National Archives is, which is what referred the investigation and kicked off the whole investigation.

Mr. FRY. Director, on May 15, 2023, the FBI, your special counsel—or excuse me, not your special counsel, your general counsel—sent a letter to Special Counsel Durham in response to his report. In that letter the FBI wrote, quote,

FBI executive management has instructed investigations to be run out of the field and not from headquarters.

So, despite the location of the search occurring in the territory of the FBI's field office the Washington Field Office instructed the raid. This is inconsistent with the FBI's statement from two months ago.

I want to move on to a second abnormality.

Mr. WRAY. Sir, I'm sorry. It's actually not—it's not—

Mr. FRY. I've got 1 minute left. I've got 1 minute left, Director. Now, is it normal for a U.S. Attorney to be assigned to an investigation—a high-profile investigation?

Mr. WRAY. Well, that's a decision that's made over at the Justice Department as to how they allocate responsibilities.

Mr. FRY. That's normal protocol. Is that correct?

Mr. WRAY. There are investigations, prosecutions in cases that are handled by main Justice. There are trial attorneys there. Again, I only speak to the FBI's decisionmaking, not to the Justice Department.

Mr. FRY. A U.S. Attorney was not initially assigned to this investigation, were they?

Mr. WRAY. I think that's correct. Again, I would refer you to the Justice Department for any questions about what—U.S. Attorneys versus main Justice.

Mr. FRY. The third abnormality that I find really troubling—probably the most troubling, quite frankly, is the FBI did not first seek consent to search the residence, did they?



Mr. WRAY. Well, there is a fairly detailed filing in court that goes through in fairly excruciating detail the process that was followed that led up to the execution of the search and it goes through in great detail the efforts that were made to secure documents and because this case is now pending and moving forward in Federal Court I want to respect that and not engage in more discussion beyond. I will refer you to the filing—

Mr. FRY. You can hear the frustration, Director Wray.

Mr. WRAY. —which lays out in great detail, the answer to your question.

Mr. FRY. Here's the frustration that I see, Director.

The Durham Report laid out very clearly that in cases just in general that you cross every T and dot every I, that this was not done here. You didn't run it out of the field office. You didn't have a U.S. Attorney assigned to the case.

Senior officials did not listen to people on the ground as the testimony of Mr. D'Antuono talked about. You didn't ask for a consent from their attorney. You didn't ask for a consent search despite the President having cooperated and handed over documents for a long period of time, and you refused to wait for President Trump's own attorney to get to Mar-a-Lago to do this with you.

So, what has changed since Durham? You've acknowledged this in 2023 that things should be run out of the field, that you've made internal process changes, but nothing has really changed since 2016 and that's my big concern.

With that, I yield back.

Mr. WRAY. I could not disagree more, but we'll just have to disagree on that one.

Chair JORDAN. Well, here's what he said. This is questions from the Democrat lawyer in the depositions to Mr.—in the deposition of Mr. D'Antuono—“Can you explain to the attendees here why the case was not assigned to, for example, the Miami field office?” and Mr. D'Antuono's answer was, “I have absolutely no idea.”

Then they said the investigators handled it differently and he said—his answer was,

It was handled differently than I would have expected to be than any other case is handled.

So, I think that was the Member's point and that's the concern that we have in spite of the letter we got from your general counsel.

The Chair now recognizes the gentleman from Texas for five minutes and then we'll go to Wisconsin.

Mr. HUNT. A recent poll found that 37 percent of Americans have a positive view of the FBI and that's from an NBC poll. I wouldn't exactly call that right media propaganda and I think I know why.

Here's what the American people know and believe about the FBI today, sir. If you are a Trump, you will be prosecuted. If you are a Biden you'll be protected, and the American people that I represent are sick and tired of this double standard.

It seems like every single hearing that we have in this room we talk about the two-tiered justice system of Biden's DOJ and the FBI and, as we were talking earlier, here we are again.

President Trump endured an unprecedented raid at his home in Mar-a-Lago. President Biden's home, however, was respectfully browsed.

President Trump is facing up to 400 years in Federal prison for allegedly being in possession of classified documents he obtained as the Commander in Chief of these United States of America and meanwhile President Biden is facing no charges for the classified documents he had held at his time as a Senator and a Vice President, not the President of these United States of America, and last I checked he had no legal authority to declassify those documents.

Assuming President Trump was in possession of some classified documents would those documents be more secure surrounded by Secret Service at Mar-a-Lago or in a box in a garage behind your Corvette? You don't have to answer that question.

A question for you, sir. What can you tell us about the status of the FBI's investigation of President Biden's classified documents found next to his Corvette in Delaware and those found at the Penn Biden Center? Do we have an update on that, sir?

Mr. WRAY. What I can tell you is that there is an ongoing Special Counsel investigation led by Mr. Robert Hur and we have FBI agents affiliated with it, working on it, working very actively and aggressively with him on that case.

I, obviously, disagree with your description of the two standards. In my view, at least under my watch we have one standard—

Mr. HUNT. OK.

Mr. WRAY. —and that is we're going to pursue the facts wherever they lead no matter who likes it, and I add that last part because especially in sensitive investigations almost by definition somebody's not going to like it.

Mr. HUNT. So, I understand that and that's actually why I led with the sentiment of the American people. I understand that sentiment.

Mr. WRAY. So, let me—

Mr. HUNT. I do want to finish this. So, I want everybody to talk about this dichotomy that we have seen. I get your point, sir, but that's just not what we see as the public as We the People.

We see one case being fast tracked and one case being slow walked. We see one person's home being raided; the other person's home being kindly searched. You have one government agency—the Secret Service—protecting the former President and his home and another government agency—the FBI—raiding the same home.

Now, to me, sir, that's tragically ironic and we expect more from a functional Constitutional republic and these things shouldn't be happening.

Now, it's my opinion that Joe Biden is the most unpopular President we have seen in a century and that's why he knows the only way to stop President Trump from beating him in November is by putting him in jail.

You talked about this, Mr. Fry. In the 247 years of this existence of this great Nation only one President has ever been indicted by the DOJ and his home raided by the FBI.

Now, some have said that President Trump's indictment means that no one is above the law. OK. All right. I would love to see that.

What about Hillary Clinton and what about Joe Biden and what about Hunter Biden, who was America's favorite son?

Let me tell you something. I got a four-year-old daughter and a two-year-old daughter at my house. Hunter Biden, to me, is like glitter. He is on everything, and you cannot get rid of him, and yet nothing is going to be done about this and we're sick of it.

James Comey decided not to prosecute Hillary Clinton despite overwhelming evidence that she committed crimes, and as I recall it was the position of the FBI to not prosecute because they didn't want to interfere with a Presidential Election.

What do you call this? The Iowa caucuses are in six months. Six months. I think the American public would expect to see this from Cuba, Venezuela, Russia, and China, but not here.

The people expect us to have blind justice. They expect equal justice under the law. It is not the job of the DOJ or the FBI to prosecute Joe Biden's top political opponent who was leading in every single primary poll and the Iowa caucuses are in six months.

Let the people decide. It's our job to uphold the Constitution. As a West Point grad, a military veteran, this is the Constitution I'm giving my life to protect, and I expect us all to uphold it likewise.

Thank you so much for being here.

Mr. WRAY. Mr. Chair, may I briefly respond?

Chair JORDAN. Sure.

Mr. WRAY. So, first, as to the investigations related to Ms. Clinton, as you noted that happened under my predecessor, and I'm not going to either speak for or defend that decision.

Mr. HUNT. I recognize that. I recognize that.

Mr. WRAY. Second, as to your descriptions of the investigations related to Hunter Biden, as you know there is an ongoing investigation being led by the Delaware U.S. Attorney appointed by President Trump and we are actively working on that investigation with him.

Mr. HUNT. Well, we look forward to seeing the result of this quickly and swiftly.

Mr. WRAY. Third and finally, to your point about the American people and their views, I worry less about *NBC* polls or polls by any other news outlet. I will tell you that the number of people in Texas applying to work for us since I've been in this job has gone up 93 percent and, in fact—

Mr. HUNT. I'm not going to quote Mr. Gaetz. I heard the responses earlier.

Mr. WRAY. In fact, we have—

Mr. HUNT. That's great.

Mr. WRAY. —more applicants from the State of Texas annually in the last several years than any other State in the country.

Mr. HUNT. That makes sense because Texas is the greatest State in the country.

Mr. WRAY. Then I think that speaks very well of the view of Texans about the FBI.

Chair JORDAN. Director, are any agents who served on the Cross-fire Hurricane investigation or the Mueller investigation—are any of those agents on Mr. Hur or Mr. Smith's special counsel team?

Mr. WRAY. I don't believe so, but I can't from the top of my head go through the list of—there's a lot of agents involved in the two

investigations and so let me check into that and see if there's any way we can get back to you on that because I don't want to get out over my skis.

Chair JORDAN. Thank you. The gentleman from Wisconsin is recognized for five minutes.

Mr. FITZGERALD. Director Wray, thanks for being here today.

On June 21st, the Committee heard testimony from Special Counsel John Durham. Have you reviewed his findings, and did you dispute any of those?

Mr. WRAY. I have reviewed them. It is a big multi 100-page binder sitting to my right on my desk and I refer to it frequently.

I can't say that I'm aware of anything specific that I would dispute in it. I would certainly—as you may know, not only did we fully cooperate with him in the investigation, as he noted in his report, but I actually assigned a bunch of agents and FBI personnel to work on it with him to help him and I'm very proud of the fact that the reforms that we have put in place in response to the inspector general's investigation, also in the Crossfire Hurricane as well as some other changes that we made working closely with Attorney General Barr.

If those reforms had been in place back at the time that all this stuff that Special Counsel Durham found, I don't think any of this would have happened.

Mr. FITZGERALD. So, the confirmation bias which was brought up time and time again when Durham was here before the Committee you feel those have been addressed? I think Jason Jones says that he put together a letter and that includes a lot of that information. Do you feel it's adequate or—

Mr. WRAY. Well, I'm ambitious by nature for us as an organization so we're constantly looking for more things we can do. I'll give you an example on this issue of bias because I think it's so important.

One of the things that I did as FBI Director, and I did this a couple of years ago and this, frankly, was in reaction in many ways more to both the Hillary Clinton investigation as well as the Crossfire Hurricane investigation—was that I put in place training for the entire workforce that focused specifically not just on the importance of avoiding bias, but the importance of avoiding even the appearance of bias.

One of the things that I did to make sure that I was sending that message was that rather than like what normally happens in a bureaucracy where all the training gets saddled on all the folks on the front lines right out of the gate, I started with the top 200–300 or so people in the organization, brought them all to Quantico for an entire day's stand down.

We heard from the Federal judiciary, the Inspector General, the Hatch Act Office of Special Counsel, and the whole point of it was the importance of not just objectivity but making sure that we are faithful to the appearance of objectivity as well.

Then we had a smaller version of this that went out to the whole workforce. The idea was to send the message that everybody at the top has to take the medicine first.

Mr. FITZGERALD. So, there's two other things that were in there. Serious lack of analytical rigor was one of the other things that

Durham brought up numerous times, and then I'll just—there was a noticeable departure from how it approached—how the FBI approached matters involving possible attempted foreign election interference plans amid, as you just brought up, at the Clinton Campaign.

So, the question would be: Has the FBI protocols surrounding investigations—I want to know specifically in the Presidential Campaigns what's the policy now? We're on the verge of another nationwide election and I'm wondering is there anything specific in writing that you could inform the Committee of this afternoon?

Mr. WRAY. Well, we have put in place a whole slew of reforms that help to try to mitigate against the kind of concerns you're raising. Whether there's a specific one that I would think is kind of—I don't think there's any one that's a single silver bullet.

I know that Attorney General Barr and I put in place certain reforms that dealt with particularly sensitive investigations and approvals that would have to be required before anything like that could happen. I know that was very important to him and we worked together on that.

We have a whole slew of additional approvals, sign offs, triple check safeguards, et cetera, that go into a lot of these kinds of issues. When you raise the issue of analytical rigor, obviously, that's—I talk about rigor.

I bet my folks would tell you they hear the word rigor coming out of my mouth probably every single day and that is something that we're always aspiring to get better at.

Mr. FITZGERALD. So, if you had somebody within the FBI that you found out was involved in trying to manipulate or rig an election, especially at the national level, how would that be handled by the FBI? How would you handle it as the Director?

Mr. WRAY. Well, it obviously would depend on the specific facts as to exactly what it is the person was doing. Accepting your premise, that's the kind of thing that would have the person referred to our disciplinary process.

Mr. FITZGERALD. To be fired or terminated?

Mr. WRAY. The process would play itself out. We have a whole offense code that goes into what different rules we have and different punishments and there's a whole complicated system that goes into the disciplinary process. Our disciplinary process is, for the most part, I think, one of the better ones in Federal law enforcement. There is a process that we have to follow.

Mr. FITZGERALD. Has anybody that was involved in that type of action in the past been disciplined for that at the FBI?

Mr. WRAY. Well, let me answer that this way. Obviously, former employees—the important point here is that all the senior managers in any way involved in the Crossfire Hurricane investigation are all gone from the FBI for a variety of reasons in a variety of ways.

To the extent that there's anybody left you're talking about a small handful of currently line level employees, all of whom have been referred to this disciplinary process. That process, as you may have heard me say in response to an earlier exchange, as is typical working with Special Counsel Durham we had put that kind of on

a hold until he could finish his case because the criminal case had to come first, and that process is now fully underway.

Again, you're talking about a few relatively line level people where we erred on the side of inclusion so anybody who touched it we sent them to the process, and we'll see where that plays itself out.

The key point is that all the main players, if you will—the senior people—are all gone. I put in place an entirely new leadership team.

Mr. FITZGERALD. Very good. I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Oregon is recognized.

Mr. BENTZ. Thank you, Mr. Chair, and thank you, Director, for your patience.

So, you're very, very good at your job as illustrated by the last four hours and I just want to say that you're way better at defending than you are at explaining what you're going to do about the problems that led to your dismal public profile.

I wish it was better, but I have the most recent poll here from—I think it's from Harris. Yes, it is—the Harvard CAPS Harris poll. Seventy percent of respondents said that they were either very or somewhat concerned about interference by the FBI and other intelligence agencies in elections. Seventy-one percent agreed that changes post-2016 had not done enough to prevent further interference and that wide ranging reform is still required.

Now, I also—pretty interesting article, the Inquirer I see damning the Durham Report and I'll just read from you this quote from Mr. Durham.

The promulgation of additional rules and regulations to be learned in yet more training sessions would likely prove to be a fruitless exercise.

So, you must have done something more than promulgating additional rules and regulations because, to me, that doesn't do much at all when we're going to an issue that probably is cultural.

To that end, I just want to share with you some of the things I hear from my sheriffs across my 20 counties. So, I have 20 county sheriffs. In fact, one of my brothers used to be one for 15 years.

So, I called him—my brother—and I said, hey, what was your experience with the FBI? He said, they're very qualified but when they appear you know you have to be aware that part of their job is to enforce Section 1983, and he pointed that out just because there's a constant tension between FBI and local law enforcement. Would you agree?

By the way, when you go out and you talk to sheriffs nobody's going to say to the Director of the FBI, we don't like you. Why would they do such a crazy thing? They want your help.

By the way, I asked for your help down in southern Oregon against all the drug cartels and to your credit and your office out of Portland's credit you did your best to help. You don't have very many people there, but you did your best to help.

For you to come in here and say, I've never heard from a sheriff that we're doing a bad job, well, no, you haven't. Now tell me, am I wrong? Am I saying that sheriffs would just walk right up to you and say you're doing a bad job? How many have said that to you?

Mr. BENTZ. You have done your job today to defend your agency, and good for you. It is not what we are here today. I want to go to Durham's, page 228 of his report, and this is going to the heart of what your problem, part of your problem may be. He is making his observations; he is very careful to protect you. He says, in making observations, we are mindful of the benefit of hindsight. Then he says this:

Some employees, FBI employees who were interviewed by our investigators' advice, they had significant reservations about aspects of Crossfire Hurricane and tried to convey their misgivings. Others had doubts about the investigation did not voice their concerns.

In some cases, nothing has been said because of a sense there had to be more compelling information in positions closest to the—and still other and current former employees who maintained they did their best to take reasonable investigative steps and acted within your procedure and guideline.

What I am getting at here is I don't think people within your organization are comfortable calling out negative things. I don't think they are, and I wouldn't be either. I would be worried because I look at what happens to whistleblowers and others. I would go, oh, man, this is not a safe place to be, I am going to keep my mouth shut. I think that is not a good thing for your agency.

You know where it starts? It starts with actually admitting that you have got a problem, and I don't think you are very good at that either. I am going to your testimony, page 13. You might want to look at it. I am sure you wrote it, so you probably don't have to. On page 13, the last paragraph, you write: "To be sure, nobody more deeply shares members' concerns regarding past FBI"—and here is the words—"compliance violations." Compliance. Is that all they did? Aren't there a whole bunch of better terms? I went to ChatGPT to find out, and I found these words that might have been better. I am really asking you is that all they did? Didn't they break a law? Didn't they do something more than failure to comply? I am asking you. If the culture is the issue, doesn't the leader have to at least call out bad acts a little more aggressively is my question.

Mr. WRAY. First, depending on what the violation is, that may or may not be the right description. Some of the things that have happened in the past are things that I have deplored in the strongest possible terms. Some of the things that have happened in the past I think are described as compliance violations. So, there is no one description that fits everything that has gone wrong at the FBI over the last five or 10 years.

My language, in general, tends to be fairly measured. I think that is a fair statement about me. Some people refer to me as low key, but no one should ever mistake my demeanor for what my spine is made out of. I have made very clear to our people over and over and over again that I expect them to do their work in the right way with rigor and objectivity.

As to FBI employees' willingness to speak freely and to complain, much like our exchange about sheriffs, I will tell you your description of our employees doesn't fit with my experience. When I get out to all 56 field offices, one of the things that I do, especially on this last round, my second round, was to meet with employees

without their executive management present, just me and them, including people who are retirement eligible. We have a term, an affectionate slang term for people who are retirement eligible. It is called KMA. You can guess what KMA stands for, and it reflects their ability, because their retirement eligible, to be able to speak freely. They complain to me about all kinds of things, and we have a very lively conversation.

So, I am quite confident that my employees feel comfortable talking to me about problems and things that we need to fix. My demeanor is part of what you are—

Mr. BENTZ. Forgive me for interrupting, but my time is over. I want to thank you for your candor, and I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from New Jersey, Mr. Van Drew, is recognized.

Mr. VAN DREW. Thank you, Mr. Chair. Director Wray, thank you for being here. Believe it or not, I am basically just a simple country dentist, but I do know my dentistry. One thing I know about are abscesses. If you have an abscess, you can have a mild or moderate one and you treat it with antibiotics and warm salt rinses and, in a week to 10 days, it will be better.

If you have a severe one, I am going to take a scalpel to that abscess. You have got to cut it open, and you have got to let the pus, blood, and the gas drain out. If you don't, that abscess will travel. It will travel to the patient's brain possibly or their heart, and it definitely can kill them. That is the type of infection that I feel is within the FBI today. It has gotten so deep that we need to get in there with a metaphorical scalpel before it kills our Nation. We need real structural change, and this Committee is that metaphorical scalpel.

A clear sign of the rot is a memo where your agents, and I know you say you feel bad about this, too, but nevertheless, and I don't think you like to talk about it, but your agents in a field office attempted to spy on Catholic churches and their congregations and frame them as extremists. This is unbelievable. How do we get there? Who exactly are the Catholics you are going to go after here or they were going to go after? The charitable men of the Knights of Columbus that help their communities, that help charities, that help people in every way they can, or maybe we meant the folks that are fighting for the sanctity of life, or are you talking about those who hold true to their beliefs rooted in the traditional values and teachings of the Catholic faith?

As a Roman Catholic myself, and I believe you are, as well, I was deeply, deeply disturbed by this memo. It is shameful it was only rescinded after, basically, it got leaked to the public. That should scare each and every American from parents at school board meetings to grandmas clutching their rosary beads. The misguided priorities of our intelligence community put every American at risk, and it is wrong. It is un-American, and it undermines two of our most important tenets: Freedom of speech and freedom of religion. It is what our Nation is built on.

Director Wray, you work for the American people. They pay your salary. They pay all our salaries. They don't work for us; you work for them. You are supposed to protect them from the bad guys, and now many feel they need protection from the FBI.



I have a few questions here. Despite multiple requests, why hasn't the FBI produced an unredacted copy of this memo that really outlines this? It isn't public security, it isn't national security, and it isn't public safety. This is an internal thing that you did that was wrong, and we, as a Committee, this Committee, have a right to look at it. When are we going to get it? Why haven't we gotten it already? Unredacted.

Mr. WRAY. We redact information for a variety of reasons that cover various rules that apply to us—

Mr. VAN DREW. Sir, I want to know why this one—I don't know about the rules. I told you, man, I am not a lawyer, all right. You know what I want to know? I want to know why we don't know what happened here, that people in their churches had to worry, and it isn't something that is going to affect national security. So, whatever damn rule it is that you have, we should change that rule because when something like this happens and it isn't a matter of national security, then we should know. So, I would like to know when we are going to get it. I would like a date certain.

Mr. WRAY. What I can tell you is that we are almost done with our internal review and, as I said to the Chair, we are going to be providing a briefing to the Committee on what the internal review—

Mr. VAN DREW. When?

Mr. WRAY. It should be later this summer.

Mr. VAN DREW. Why do we need your internal review? Good you are doing an internal review. You should do a lot internally. Why don't we get the information when we ask for it, when we subpoena for it? We clearly are not creating any risk to our Nation or national security. You could give us that tomorrow. Why don't we get that part tomorrow, and then you can give us your briefing on the internal review?

Mr. WRAY. As I said, we are going to give you a briefing on the internal review, and then we can discuss additional information that may—

Mr. VAN DREW. Because you are going to try to shape it differently and make it out that it was kind of OK.

Mr. WRAY. No. On that, no. I will tell you that I am not going to defend or excuse that memo—

Mr. VAN DREW. I understand you said that. Simply yes or no. These are really easy questions. Has the FBI created or maintained any list of Roman Catholic churches, yes or no?

Mr. WRAY. Any list of Roman Catholic churches?

Mr. VAN DREW. Correct.

Mr. WRAY. Well, we're certainly not targeting any Roman Catholic churches.

Mr. VAN DREW. Well, they were, they were. The field office was since we found out.

Mr. WRAY. No—

Mr. VAN DREW. As a yes or no, do you have a list? If you don't have a list, it is easy to say no.

Mr. WRAY. We have 30,000 employees. We engage with churches of all kinds—

Mr. VAN DREW. So, you may have a list of churches that you are looking at for—

Mr. WRAY. No, no, no, no, no, no, not for possible investigation.

Mr. VAN DREW. How about Russian Orthodox churches?

Mr. WRAY. Same answer.

Mr. VAN DREW. Greek Orthodox churches? Tell me yes or no. Evangelical churches? Tell me yes or no.

Mr. WRAY. We do not maintain—

Mr. VAN DREW. Yes or no.

Mr. WRAY. Excuse me?

Mr. VAN DREW. Please answer yes or no.

Mr. WRAY. It is not a yes or no question.

Mr. VAN DREW. It is a yes or no. If you have got a list of churches that you are targeting and looking at, the answer is yes. If you don't, the answer is no.

Mr. WRAY. If your question is do we have a list of churches that we are targeting, then the answer is, no, we do not have—

Mr. VAN DREW. How about Jewish synagogues, yes or no? Same question.

Mr. WRAY. We do not maintain any kind of list of religious institutions that we are targeting because we are not targeting religious institutions.

Mr. VAN DREW. Let me tell you, it is a sorry State of affairs that these questions are questions I have to ask, and it is a damn shame to see what has become of our once universally respected FBI. We need structural change. Mr. Chair, I yield back.

Chair JORDAN. The gentleman yields back. Director, the five individuals who signed off on that memo, have any of them lost their security clearance during this internal investigation?

Mr. WRAY. I don't believe anybody has lost their security clearance, but, again, we have an internal review pending, and I will let that finish and come to its conclusion.

Chair JORDAN. How did you become aware of the Catholic memo that the gentleman just referenced?

Mr. WRAY. How did I become aware of it?

Mr. JOHNSON of Georgia. Point of order, Mr. Chair.

Chair JORDAN. The gentleman may say his point of order.

Mr. JOHNSON of Georgia. Whose time is the Chair consuming with his—

Chair JORDAN. I thought that the Committee—it is not a point of order. The Chair now recognizes the gentleman from Texas for five minutes.

Mr. NEHLS. Thank you, sir. I will say this, Mr. Wray, I am one of those sheriffs that will be very blunt with you today. I have had an opportunity to look at your testimony, lots of stuff, and hear about numerous task forces, crimes being committed against children, including even infants and toddlers; MS-13 gang members coming across the open Southern border; the poisoning and killing of the American people with fentanyl; the sex trafficking; and the human trafficking. It is quite clear, it is clear that you guys are dealing with some of the sickest bastards in our society.

I have an article here from *CNN* in January 2022 calling the January 6th investigation the biggest investigation in FBI history, and what shocks me about this, quite honestly, is that you don't mention January 6th, again, the biggest investigation, not one time

in your 14-page testimony. You don't mention it one time, and that makes me ask myself the question what the hell are you hiding?

Sir, you mentioned 38,000 agents and support personnel in your agency. How many FBI agents and support personnel have you assigned to the January 6th investigation?

Mr. WRAY. I don't know that I know the number. I know we have a lot of people working on it and—

Mr. NEHLS. OK. Lots. Fair enough. Lots. Knowing that you are dealing with some of the sickest people in our society with investigations related to child sex trafficking, have you reassigned any of these agents or personnel to investigate January 6th, yes or no?

Mr. WRAY. I don't believe we have reassigned people away from child exploitation—

Mr. NEHLS. OK. Now, let me just say this, Director—

Mr. WRAY. —to January 6th, to my knowledge.

Mr. NEHLS. —I find that answer disturbing because last month Steve Friend, he testified before the Weaponization Committee. Mr. Friend, was a domestic terrorism investigator for you, and he was told by one of his superiors that January 6th was, I quote, “a higher priority than pursuing child pornography cases.” For those of you watching in America, understand today's FBI is more concerned about searching for and arresting Gram and Grandpa for entering the Capitol Building that day than pursuing the sick individuals in our society who prey on our children. Mr. Wray, your priorities are flawed.

Let's rehash what we know so far, all right. It is the largest investigation in FBI history, and you don't mention it in your testimony. Agents have been reassigned from child exploitation cases and so on.

So, now let's get into the money, Mr. Wray. How much taxpayer money has been spent on January 6th?

Mr. WRAY. I don't know that I have the figure off the top of my head but—

Mr. NEHLS. OK, fine. Mr. Wray, I have got an article here, December 22, 2022, two years after the events of January 6th, and it says the Justice Department has requested another \$34 million from Congress. First, you shouldn't get another dime. The FBI shouldn't get another dime for this political witch hunt against the greatest President in my lifetime, Donald J. Trump.

I want to turn my attention now to this fellow, this character, Mr. Ray Epps. We have all heard of them. We have heard of Mr. Ray Epps. He was number 16 on your FBI most wanted list. He was encouraging people the night prior and the day of to go into the Capitol, and Mr. Ray Epps can be seen at the first breach of Capitol grounds at approximately 12:50 p.m. Play the clip, please.

[Video played.]

Mr. NEHLS. There he is, breaching the line, going in at the first breach into the Capitol grounds and restricted area. Mr. Wray, you have arrested hundreds of people related to January 6th, and there have been people arrested for breaching Capitol grounds. Couy Griffin is an example and Raechel Genco is an example. Then we go to Mr. Brandon Strikta. Brandon was arrested for disorderly and destructive conduct, which included yelling, I quote, “go, go,

go,” as rioters tried to enter the Capitol. These three never went into the Capitol. They never assaulted anyone.

So, let’s be honest with each other. There is very little difference between the actions of Ray Epps and Brandon Strikta that day, but, yet, Strikta was arrested and Epps wasn’t. Epps also testified to the January 6th Committee he was back at his hotel when video evidence showed that he wasn’t. He lied. He was on the Capitol grounds, just as Brandon Strikta was. Epps even texted his nephew at 2:12 p.m. and said, I quote, “I was in the front with a few others, it was on the video; I also orchestrated it.”

Now, look into the camera, sir, when you answer my next question. Are you going to arrest Mr. Epps, yes or no?

Mr. WRAY. I am not going to engage here in a discussion about individual people who are or are not going to be prosecuted.

Mr. NEHLS. OK. Here we go. Can I get a commitment? You just watched the video. I am an old law dog. I understand a little bit about probable cause. He did very little, there was very little difference what he did and Mr. Strikta. You can see him. He is encouraging. I almost think he is inciting a riot. He is encouraging people the night prior to go into the Capitol, the day of, go into the Capitol, and he was at the first breach and he breached the restricted area. Everybody, a lot of people, getting arrested for not going into the Capitol, but they are in the restricted area; but, yet, Ray Epps, who many people feel fed, fed, fed, right, and there is a lot of cloud over this.

So, my point is this, you arrested a lot of folks for unlawful activity. You just saw the video. I will tell you, if you don’t arrest Mr. Epps, there is a reason behind it. I believe you know what it is, and it appears to me you are protecting this guy.

I strongly recommend you get your house back in order. With that, I yield back.

Mr. WRAY. Mr. Chair, if I might briefly.

Chair JORDAN. The gentleman may respond, and then we have got a couple of point of orders. Go ahead, Mr. Wray.

Mr. WRAY. It has never been appropriate for an FBI Director in Congressional testimony to be weighing in on who is or isn’t going to be arrested and who is or isn’t going to get charged, which is a prosecutor’s decision. If you are suggesting that the violence at the Capitol on January 6th was part of some operation orchestrated by FBI sources or FBI agents, the answer is, no, it was not. To suggest otherwise is a disservice to our hardworking, dedicated law enforcement professionals.

Mr. NEHLS. Can I respond to that now that—the point is he was number 16 on your list. He was 16 on your list, and you never arrested him. Hundreds of Americans were arrested. Shame on you.

Chair JORDAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Florida for unanimous consent.

Mr. GAETZ. Mr. Chair, I seek unanimous consent for all Members have five legislative days to submit any additional materials, as well as any questions for the record for the Director, and I would hope that those questions for the record we would submit would receive more timely responses than some of our letters have. I would further seek unanimous consent that the WhatsApp message from

Hunter Biden I used earlier in the hearing be submitted for the record.

Chair JORDAN. Without objection.

[The information referred to follows:]

Chair JORDAN. The gentleman from Georgia is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair. I have a unanimous consent request that an article from the *Daily Mail* dated today with the headline "January 6th Protestor Ray Epps reveals he is forced to live in an RV in hiding after death threats over FBI informant conspiracy. Epps confirmed he has never worked for them, as he slams right-wing theorists using him as a scapegoat" I would like to offer this into the record.

Chair JORDAN. Without objection.

[The information referred to follows:]

Chair JORDAN. The Chair recognizes the gentleman from Texas.

Mr. MORAN. Thank you, Mr. Chair. Director Wray, thank you for your time today. You said earlier in response to Representative Issa's questions that the job of the FBI is to: (1) Undertake criminal investigations and (2) protect the U.S. from national security threats. Would you agree with me that, in doing those activities, the FBI has to do a lot of that in what are effectively confidential conditions; is that correct?

Mr. WRAY. Yes.

Mr. MORAN. When you are undertaking those activities and those confidential conditions, you are going to require tools that have been appropriated by Congress in the past, tools that say to you we are going to trust you to use those tools correctly and, in return, the FBI then is expected to not abuse the trust of those tools that are provided to the FBI to undertake its activities. Is that a correct statement, as well?

Mr. WRAY. Yes, I would agree with that.

Mr. MORAN. So, trust is a very important thing, both the giving of trust when you give those tools and then making sure that you do not abuse that trust once those tools have been given to you.

Were you aware that, according to a recent poll by Harvard CAPS/Harris, 70 percent of respondents in the United States said that they were either very or somewhat concerned about interference by the FBI and other intelligence agencies in the elections. Were you aware of that?

Mr. WRAY. I am not aware of the particular survey, poll, study, or whatever it is.

Mr. MORAN. In that same poll, 71 percent of Americans, which is certainly a bipartisan group, agreed that internal FBI changes post-2016 had not done enough to prevent further interference in elections and that, quote, "wide-ranging reform was still required." Again, you are not aware of those numbers?

Mr. WRAY. No.

Mr. MORAN. Does any of that shock you?

Mr. WRAY. I don't spend a lot of time as the FBI Director worrying about pools. What I do look at is whether people want to work with us, whether people want to work for us. On both of those metrics, we are actually going up quite significantly. In fact, in your home State of Texas, we have got a 93-percent increase in the

number of Texans applying to work for the FBI since I have been in this job.

Mr. MORAN. Well—

Mr. WRAY. In fact, it is the highest, Texas has more people applying to work for the FBI than any other State in the Union.

Mr. MORAN. Even if you do not watch polls, certainly you appreciate the fact that you want the trust of the American people. Would you agree with that?

Mr. WRAY. Absolutely.

Mr. MORAN. All right. Does it bother you that so many Americans do not trust the FBI presently?

Mr. WRAY. Well, again, I don't spend a lot of time worrying about polls. I do care about what I hear from the American people otherwise.

Mr. MORAN. I am asking about the trust.

Mr. WRAY. It bothers me any time any American has lost trust in the FBI. Of course, that concerns me.

Mr. MORAN. Earlier, you were talking to Representative Hageman, and you said where we can take action where possible to remove them from the chain of command, and then you got, you ended your time, you got cutoff because we had to get to the votes. You were going to say something further on that. Do you have any plans to remove anybody from the chain of command or go through a process to determine who should be removed from the chain of command?

Mr. WRAY. Well, I have already removed any number of people at different stages of my tenure from the chain of command. I have also referred people to our disciplinary arm, which has resulted, in some cases, in termination.

Mr. MORAN. Do you have any plans to do any more of that?

Mr. WRAY. If somebody has violated a rule, absolutely.

Mr. MORAN. When we talk about a good faith basis for trust of Americans, both Republicans and Democrats, does it bother you that these legal queries have continued, even with efforts of the FBI to try to reduce them, that we now have somewhere between a couple hundred thousand and at least a million of illegal FISA queries?

Mr. WRAY. Well, there are two things going on there. First, I think your numbers of what are actually illegal are off. Second, more importantly to me, all the changes that we have put in place to address compliance failures that I consider unacceptable have pointed to the effectiveness of the reforms that we have put in place. So, I am talking about—

Mr. MORAN. What number of illegal FISA queries would you put on the table as those that you know of?

Mr. WRAY. Well, here is what I can tell you: The most recent FISA Court opinion found, I think it is a, like, 98-percent compliance rate. The most recent DOJ audit found a 99- or 98-percent compliance rate.

Mr. MORAN. Is that acceptable to you? Is that one percent or two percent—

Mr. WRAY. No, we strive for 100 percent. All of those things, all of those things, but it is the FISC, the FISA Court, whether it is ODNI, the Office of the Director of National Intelligence, whether

it is DOJ, whether it is our own Office of Internal Audit, which I created by the way, all four of those things have shown that the reforms that we have been putting in place have already had dramatic positive impact. Am I satisfied with that? No.

Mr. MORAN. Has anybody been fired or removed as a result of their inappropriate use of FISA?

Mr. WRAY. Well, the last time somebody has had truly abusive behavior with respect to FISA goes back a way, but those people have been gone from the organization.

Mr. MORAN. Are you making a distinction between truly abusive and just abusive? What is the distinction there?

Mr. WRAY. Well, the distinction I would draw is between intentional or reckless conduct versus somebody who makes a good faith mistake. To me, a good faith mistake is still a compliance violation and still somebody needs to be counseled, trained, coached, and taught to do it right, but that is different from somebody who intentionally or recklessly breaks the rules.

Mr. MORAN. Director Wray, I am going to go back where I started, and that is with trust. We trust you. When we give the FBI tools, we trust that those tools would not be abused. In the last six years, certainly we have seen a number of abuses of the tools given, and I think, as a result of that, you are going to see a curtailment of some of the tools that are provided to the FBI. That is not a choice that we are in a position that we want to make but we have to make as a result of the abuses of the trust of the American people. Thank you for your time today.

Chair JORDAN. The gentleman yields back. Director, I have just a couple of extra questions, but, in fairness to the minority, I will recognize Mr. Johnson. So, he will go for a few questions, I will have a few, and then we appreciate you being here for this length of time, and then we will be able to adjourn the hearing.

The gentleman from Georgia is recognized.

Mr. JOHNSON of Georgia. Thank you. Director Wray, you have acquitted yourself admirably today under severe and constant fire. So, your day is about to come to a close with your head still held high and your soul, I am sure, further empowered to continue doing the right thing on behalf of the American people through your service as Director of the FBI, and I thank you for that.

You were asked multiple times about the *Missouri v. Biden* injunction. This is a preliminary injunction issued on a holiday, July 4th, Independence Day. It makes various allegations that, thus far, have been totally unproven but relied on as true here by Members of this Committee. What is your response to the allegations that the FBI has been engaged in censoring social media platforms or anyone else?

Mr. WRAY. Well, while I respect the Court's decision, I think there are a number of factual findings that we don't agree with and, certainly, the FBI is not engaged, in my view, in censorship or content suppression.

Mr. JOHNSON of Georgia. My Republican colleagues also seem to think that the FBI is being weaponized against the American people. What is your response to that allegation? That will be my final question for today to you.

Mr. WRAY. The FBI that I see every day and, again, when I see the FBI, nobody gets to see it the way I do it. I have been all to 56 of our field offices at least twice. I have spoken with partners; law enforcement partners in all 50 States multiple times; with Federal judges all over the country; with business leaders; community leaders; prosecutors; victims, more importantly, and their families. The FBI that I see every day is working their tails off to protect the American people from a really staggering array of threats. They are an inspiring, incredibly dedicated group of people.

The FBI that I see is best captured by the Chicago agent who had his arm shot up by an AR-15 chasing a fugitive and retrained himself left-handed and then re-qualified for SWAT left-handed, by the Atlanta agent who unexpectedly came across a fugitive, a gang fugitive, chased the guy into a car, got caught in the car drove. The guy drove off with the Atlanta agent stuck in the door and the guy headed out onto the freeway. The poor agent broke his pelvis and Lord knows how many other things, and, yet he still managed to apprehend the subject. The FBI that I see is captured by the Portland agent who, out for a run, comes across a mentally ill woman down on the train tracks and climbs down in the train tracks to try to wrestle her out of the way of the oncoming train while she is trying to bite him and everything else, and gets her to safety; or the bomb tech who comes across a booby trap, blows up on him, and the next business day he is back at work. That is the FBI that I see. I can give you countless examples. That is the real FBI.

Mr. JOHNSON of Georgia. Well, I thank you again for your service, and I appreciate the fact that you have allowed somewhat loquaciousness to emerge during this hearing with that final response. Thank you.

Chair JORDAN. I think the gentleman yields back. Director, we appreciate those, the whole country does. In fact, I said this in an interview this morning, a TV interview this morning, two of those agents who served for years in the FBI and did great work now work for the Committee on the Republican staff. We appreciate the work they did then, the work they are doing now. They share the same concerns raised by Members of the Committee. That is why they came to work for us.

So, I just got a couple of other questions. Any of the FBI personnel who did improper queries of the 702 data base, have any of those individuals lost their clearance?

Mr. WRAY. Well, it depends on how far back you want to go in time. We have had individuals, if you go back to, say, like 2018 was the last I remember we had somebody who engaged in intentional conduct, and the person, for example, is gone. I think there were security clearances revoked for people back in that time period, but I don't know that we have had somebody who has engaged in intentional or reckless conduct more recently than that.

We have, as you may know, Mr. Chair, and this actually didn't come up today, but it is important for people to know, we recently put in place a whole new set of accountability policies specifically focused on 702. They go through cascading consequences, and so that is an important—



Chair JORDAN. It has been reported that donors of a Congressional Member of Congress were illegally searched. Has that individual lost their clearance?

Mr. WRAY. I am not sure I am familiar with the specific example.

Chair JORDAN. Well, it has been widely reported that the donor base for a Member of Congress has been searched, and I just wonder if the person responsible for that has had any consequences, like a loss of a security clearance.

Mr. WRAY. I don't know the answer—

Chair JORDAN. OK. Is the FBI assisting the Secret Service in the investigation as to how cocaine wound up at the White House?

Mr. WRAY. Yes. I want to be a little bit careful about what I can say here because the Secret Service is leading the investigation. As is standard in an investigation where white powder is found, the FBI's lab personnel did an evaluation to determine whether or not there was a biological—

Chair JORDAN. Is that the only assistance?

Mr. WRAY. That is the only assistance we have done so far. We have offered the full range of our assistance to the Secret Service if they want to use us for that purpose, but, beyond that, I will refer you to the Secret Service.

Chair JORDAN. That offer has been denied; is that what you're saying?

Mr. WRAY. No, I didn't say that. We have offered it to the Secret Service, but, beyond that, I would refer to them.

Chair JORDAN. In October 2020, when Facebook asked the FBI is the Biden laptop story Russian disinformation, the FBI's answer was no comment. Who gave that answer?

Mr. JOHNSON of Georgia. Before you answer, sir, if I might just interject the fact that we agreed that I would have two questions and you would have two questions.

Chair JORDAN. I think I said a couple of questions.

Mr. JOHNSON of Georgia. Yes, and you have asked a couple—

Chair JORDAN. In fact, I don't think, I know I said a couple of questions. I gave you five minutes. Do you want another question?

Mr. JOHNSON of Georgia. No, I want us to conclude this hearing and—

Chair JORDAN. We will be done in two minutes and 10 seconds.

Mr. JOHNSON of Georgia. Thank you.

Chair JORDAN. We appreciate that, and we obviously appreciate the Director being here. In October 2020, when Facebook asked the FBI is the Biden laptop story Russian disinformation, the FBI's response was no comment. Do you know who gave that response?

Mr. WRAY. I do not.

Chair JORDAN. The court knew and the Court said it was Laura Dehmlow. Do you know who Laura Dehmlow is?

Mr. WRAY. I do know who Laura Dehmlow is.

Chair JORDAN. What does she do?

Mr. WRAY. Laura Dehmlow is an agent in our counterintelligence division, and she currently works with the Foreign Influence Task Force.

Chair JORDAN. Doesn't she head the Foreign Influence Task Force?

Mr. WRAY. I think she leads it, yes.

Chair JORDAN. She leads the Foreign Influence Task Force. Did you tell her to give that comment?

Mr. WRAY. Did I what now?

Chair JORDAN. Did you instruct anyone, when Facebook asked, did you instruct them to give the no comment?

Mr. WRAY. I don't remember giving any instruction along those lines, although I should say I am not sure whether Laura Dehmow was in that role at the timeframe that you described, but I—

Chair JORDAN. Again, the Court in Louisiana said she was and said when Facebook asked her specifically, she said no comment. This is the Foreign Influence Task Force leader, the Foreign Influence Task Force that you created as Director of the FBI, correct?

Mr. WRAY. I am sorry—

Chair JORDAN. All that is correct. You created the Foreign Influence Task—

Mr. WRAY. I did create the Foreign Influence Task Force.

Chair JORDAN. Yes, you put that together and she heads it up. OK. When did you become, how did you become aware of the Catholic memo, the one in Richmond that we have talked about a couple of times today?

Mr. WRAY. As I recall, in one of my regular morning meetings, I learned that there was this product and that was the same day that I ordered that it be removed.

Chair JORDAN. Was that before or after it was already in the press?

Mr. WRAY. That I can't tell you. My guess is it was probably around the same time, but I don't know.

Chair JORDAN. Did you learn about it—did the people who brought it up to you, did they learn about it from the press, or was it some internal communication?

Mr. WRAY. I can't speak to how they learned about it. I just know that I was told about it by them, and we had a conversation about it immediately, taking steps that we then did—

Chair JORDAN. We appreciate that. OK. Director, we appreciate your time today. I know it has been a long day. We already had the unanimous consent for Mr. Gaetz, so the Committee is adjourned.

[Whereupon, at 3:47 p.m., the Committee was adjourned.]

All materials submitted for the record by Members of the Committee on the Judiciary can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=116192>.