

## Hearing Transcript

### Senate Judiciary Subcommittee on Immigration and the National Interest Hearing on Immigration Policies

May 19, 2016

#### SESSIONS:

Committee will come to order. Senator Blumenthal, who's -- will serve as ranking, is on his way. We just had a series of votes, and that has gotten us all off kilter a little bit.

So thank you all for being here.

I want everyone present to be able to watch the hearing without obstruction. If people stand up and block the view of those behind them or speak out of turn, it is not fair or considerate to others and officers will remove those individuals from the room.

Before we begin with opening statements, I want to explain how we will proceed today.

We have two panels of witnesses. I will make an opening statement, followed by opening statements from Senator Blumenthal, who will be serving as ranking member.

We will then begin with the first panel. After a brief introduction, each witness will have five minutes for an opening statement.

Following their statements, we will begin the first round of questions in which each senator will have five minutes. After the first round, if any senator wishes to continue with questions we will have a second or third round of questions.

We will then turn to the second panel and go through the same procedure.

With that, I appreciate Senator Blumenthal joining us from the vote, and I will make my opening statement.

First, I'd like to extend my condolences to Director of ICE Sarah Saldana and her family on the recent tragic loss that they've had. Our thoughts and prayers go out to them at this difficult time.

Throughout its tenure, the Obama administration has made numerous public statements, issued multiple memoranda, and represented in testimony before Congress that it has limited resources and, therefore, can remove only a certain number of category of even illegal aliens. Specifically, the administration repeatedly claimed that the U.S. Immigration and Customs Enforcement, ICE, had the resources to deport only approximately 400,000 illegal aliens from the United States each year.

So, their reasoning went, they were compelled to focus criminal -- on criminal illegal aliens and other aliens who pose threats to the nation's security. Because of this focus, the president argued, he had no choice but to grant executive amnesty to millions of illegal aliens, which would allow them to stay in the country and grant -- and be able to obtain work permits and other federal benefits. This is a position they essentially took in federal court on the case that they lost.

Yet, as we will examine in today's hearing, rather than truly prioritizing the removal of certain types of illegal aliens over others and getting on with that effort, the Obama administration has simply refused to execute the laws passed by Congress and signed into law. It has ordered immigration law enforcement officers to ignore plain law and acquiesce to the presence of millions of illegal aliens in the United States, including criminals and those who've already been ordered deported to leave the country.

If the administration was truly prioritizing the removal of certain illegal aliens over others, it would be reasonable to assume that with the same resources the number of deportations would remain relatively steady each year. With more resources you would expect more removals.

However, the simple fact is that since these policies were implemented deportations have plummeted, and particularly deportations from the interior of the country as opposed to the border. In fact, the policy says if you can get past the border you're not going to be deported. And most sharply that fall is under the guidelines issued by the secretary of homeland security, Jeh Johnson in November of 2014.

As this dramatic decline has occurred, Congress has increased funding each year for the purpose of immigration enforcement. So this is not prioritization in any effective way, and it's not legitimate prosecutorial discretion.

This is a total, actual refusal to carry out laws passed by Congress that the Constitution obliges the president to faithfully execute.

Meanwhile, the Obama administration has been releasing thousands of criminal illegal aliens onto our streets. In just the last three years, ICE released 86,288 criminal aliens.

At the same time, the administration counts the decrease in the number of apprehensions at the border as a sign of improving border security. But as we will hear in testimony today, we are simply -- we simply do not apprehend every illegal alien who crosses the border. Not even close.

Moreover, we're seeing near record levels of certain categories -- unaccompanied alien minors and family units -- who face no chance of actually being deported under policies being carried out today. That simply sends a message to anybody in -- anywhere in the world: If they can somehow get into the United States, across our southern border, for example, they will be allowed to stay in the country. Other than Mexico, they are allowed to stay in the country.

And so that is the reason so many are now coming. It's not the law that's on the books, but the policies that are actually being carried out at our border.

And this is not how the immigration system was intended to work; it's not how the immigration system must work. This is a lawless policy and it's got to be ended.

So today's hearing will focus on the -- on a central claim the administration makes to excuse its lawless immigration policies -- namely, that limited resources compelled the implementation of its lawless immigration policies. We will also assess the impact of this lawlessness on the integrity of very financial and -- very -- moral foundation of a policy. If it's not properly executed and carried out, it has no integrity and it lacks morality.

So this administration for too long has been trying to hide from the American people the true nature and extent of what it is doing. So today we will set the record straight.

Efficiency, effectiveness, productivity are essential in this government. The taxpayers don't spend money on ICE and the Border Patrol to have supervisors somehow keep the officers from doing their duty.

Accountability is critical. Congress has a duty to ensure accountability of the agencies it supervises, and that's what we will attempt to do today.

Senator Blumenthal, thank you for your good work on this committee, and I'm pleased to recognize you at this time.

BLUMENTHAL:

Thank you, Senator Sessions. Thank you for your chairing this session of our Subcommittee on Immigration and the national interest.

And thank you, to the chairman who has joined us, Senator Grassley.

We should approach the issue of immigration enforcement and reform on a bipartisan basis, as, indeed, this committee did in passing an immigration reform measure last session. Unfortunately, it was not brought to the floor of the House, but it passed the United States Senate by an overwhelming bipartisan majority.

And that's the approach that we need to keeping our country safe and making sure that immigration laws and enforcement of them is fair and in our self-interest. And I hope that we can approach these issues on a bipartisan basis.

I continue to believe that immigration reform is vitally necessary and I hope that we will continue our work toward it in the next session if not this one, because it is broken. Our present system is failed and failing, and we need to provide a path toward earned citizenship for the 11 million people who currently live in the shadows.

And we need stronger means of enforcement at our borders, which also was one of the objectives of immigration reform, along with eliminating abuses in related programs, like H-1B visas, and

expanding the number of H-1B visas that can be provided. Those kinds of reforms are vitally necessary.

In the meantime, enforcement -- that is to say, fair and effective enforcement -- must continue to be a priority.

I know from my own life in law enforcement how important it is that laws be enforced fairly and effectively. I did it as an objective when I was United States attorney in Connecticut and for 20 years as attorney general of my state.

In my view, while the Obama administration has made real progress on this front, it could and must do better. Law enforcement requires zeal and effort and good judgment.

We're going to hear today about numbers. Experts disagree on whether deportations are going up or down, and the right way to answer that question.

In my view, immigration enforcement is about more than just the numbers of people removed from the country; it's about priorities. If the Department of Homeland Security removes millions of people from this country each year but fails to keep America safe, it has failed to do its job.

Let me give a case in point. On June 15, 2015 a man named Jean Jacques killed a 25-year-old young woman Casey Chadwick in Norwich, Connecticut. Jean Jacques was an immigrant from Haiti.

After serving more than 15 years in prison for attempted murder, Jacques was detained by immigration officials. Unfortunately and inexplicably and inexcusably, he was never removed from the United States. Instead, he was released from ICE custody, and that release allowed him to murder Casey Chadwick.

I've demanded a internal investigation by the inspector general. In fact, I believe that that investigation must lead to accountability. I've been joined in that effort by Representative Courtney and my colleague, Senator Murphy.

I hope and demand to see that report. In fact, I think it should be done immediately.

The information that I have succeeded in obtaining from ICE thus far has only increased my concern, and it makes me more skeptical than ever that ICE did everything in its power to remove Mr. Jacques from this country.

I've met with the family of Ms. Chadwick. If I needed any source of passion or intensity, which I felt before seeing them, observing their courage and strength certainly would provide it.

And so I believe deeply that this administration must do better, and I believe it will be determined to do better as a result of heeding the calls from members of Congress, as well as others, and advocates of fairness and effectiveness in enforcement.

The Obama administration has committed to focusing its resources on removing dangerous individuals like Jean Jacques, deporting felons not families. I believe that's the right policy.

But every time ICE fails to deport a dangerous individual it undermines the country's confidence in that agency and in fair and effective enforcement of our current immigration laws. They need reform, but right now they have to be enforced with the credibility and trust that good judgment is involved.

My case workers frequently tell me about people who have broken no laws, who are working hard, paying taxes, raising their families -- including children born in this country -- threatened with deportation. They pose no risk to anyone. Deporting them instead of Jean Jacques indicates misplaced priorities.

And so these cases are heart-wrenching and heartbreaking. They indicate a need for the administration to do better, and I hope that the hearing today and other steps in the right direction will prompt wiser and better judgment from ICE and that we will see very quickly -- in fact, within days or even hours -- that report from the inspector general, and that anyone responsible for the failure to deport Jean Jacques will be held accountable.

I want to thank the witnesses who are here today. I express my condolences to Director Saldana on the passing of her son on May 13th. And I apologize that I am unable to stay for the balance of this hearing due to another commitment.

I want to thank Senator Sessions and my colleague, also, Senator Klobuchar, for being here.

Thank you, Mr. Chairman.

SESSIONS:

Thank you, Senator Blumenthal.

And I'll -- let's -- so will you each stand and raise your right hand and affirm that the testimony -- and raise your right hand, please?

Do you affirm the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you.

So I'll now briefly introduce each witness before they're provided an opportunity to make an opening statement. For reference, their full biographies are available on the committee website.

First we have Mr. Tom Homan. Mr. Homan serves as the executive associate director -- those are pretty good titles, executive associate director -- of enforcement and removal operations at the

U.S. Immigration and Customs office. He's a 30-year veteran of law enforcement; 27 years of immigration experience; a bachelor's degree in criminal justice.

He began his career as a New York police officer. He then began his career in the immigration world starting as a Border Patrol agent in 1984, a special agent with the former U.S. Immigration and Naturalization Service beginning in 1988, and has since served in a variety of roles while reaching the top of the organization.

Next we have Mr. Ronald Vitiello. Mr. Vitiello is the acting chief of the U.S. Border Patrol. As its chief operating officer, he is responsible for the daily operations of the -- of the Border Patrol and reports to the commissioner of U.S. Customs and Border Protection.

Assisting in planning and directing nationwide enforcement and administrative operations, Mr. Vitiello, and other 30 -- another 30- year law enforcement veteran, entered on duty as a Border Patrol agent in 1985 and has since served in a variety of leadership roles across the agency.

First, Mr. Homan, would you give us your opening statement?

HOMAN:

Chairman Sessions, Ranking Member Schumer, and distinguished members of the committee, thank you for the opportunity to appear before you today to discuss how U.S. Immigration and Customs Enforcement, ICE, works with its sister agency, U.S. Customs and Border Protection, CBP, to enforce our immigration laws.

In my 30-plus years in law enforcement I have served many roles, including a Border Patrol agent, assistant district director for investigation, deputy special agent in charge, and assistant director for enforcement. I currently serve as the executive associate director for ICE enforcement and removal operations, or ERO, where I oversee, direct, and coordinate the operational activities of approximately 6,000 deportation officers throughout the nation's ERO field offices.

Day in and day out ICE personnel focus their efforts and resources on removal of aliens who are national security, public safety, and border security threats. Today I am pleased to outline the role of the dedicated men and women of ERO play in the identification, arrest, detention, and removal of individuals meeting the department's enforcement priorities.

In F.Y. '15 ICE conducted 235,413 removals. Fifty-nine percent of all ICE removals were previously convicted of a crime. Ninety percent of all ICE removals met one or more of ICE's immigration enforcement priorities. Of the 96,045 individuals removed who had no criminal conviction, 94 percent of them were apprehended at the border by the Border Patrol.

The leading countries of origin for removals were Mexico, Guatemala, Honduras, and El Salvador. More specifically, of the total ICE removals in F.Y. '15, 86 percent fell into priority one, which includes national security and public safety threats; 8 percent fell into priority two,

which includes individuals convicted of serious or multiple misdemeanors; and 4 percent fell into priority three, aliens who received a final order of removal on or after January 1, 2014.

A significant factor impacting removals had been the number of state and local law enforcement jurisdictions limiting or declining cooperation with ICE. When state or local law enforcement agencies decline to transfer custody of removable convicted criminal and public safety threats to ICE, my officers must locate and arrest -- arrest such aliens at large, which is dangerous and resource-intensive.

To address this problem, the department created the Priority Enforcement Program, known as PEP. Our objective with PEP is to implement an interior enforcement strategy that supports community policing by focusing on convicted criminals and individuals who threaten public safety and by working with state and local law enforcement to take custody of dangerous individuals and convicted criminals, including felons, significant repeat misdemeanants, and criminal gang participants, before they're released into the community.

It is critically important that we bring back noncompliant jurisdictions as partners so we can work together -- together to keep our communities safe. When that is not possible, deportation officers are assigned to seek and arrest criminal aliens and other enforcement priorities.

Our officers continue to accomplish this mission with accuracy, consistency, and professionalism. One key responsibility of our officers is to locate and arrest criminal aliens who were released to the streets because detainers or requests for notifications were not honored.

Changing migrant demographics has awful impact -- has also impacted ERO's removal operations. As illegal entries by Mexican nationals continue to decrease, illegal entries by Central Americans, especially unaccompanied alien children and family units, continue to increase.

In general, more time, personnel, and funding are required to complete the removal process for nationals from Central America and other noncontiguous countries when compared to Mexican nationals apprehended at the border. This is because removal of non-Mexican nationals requires ICE to use additional detention capacity, expend more time and effort to secure travel documents from the host country, and arrange air transportation to remove these aliens to the country of origin.

The removal process is also impacted by our foreign partners. Although the majority of countries adhere to their international obligations to accept the return of their citizen, ICE suffers from unique challenges with those countries that refuse or delay the repatriation of their nationals. Such countries are considered to be uncooperative or recalcitrant, and they significantly exacerbate the problems presented by the Zadvydas decision.

As of May 2, 2016, ICE records indicated that there are 23 countries listed as uncooperative. ICE is also closely monitoring an additional 62 countries which strain cooperation but not have yet met the ICE threshold of being deemed recalcitrant at this time.

With the committee's support ICE will continue to implement our enforcement in a smart and a strategic manner to safeguard our communities, maximize the agency's success, and engage with state and local governments and local communities to enhance cooperation and build enduring partnerships.

I want to thank the men and women of ERO for performing a dangerous but important job in the utmost professional manner. I am proud of them and I'm proud of what they do.

Thank you again for the opportunity to appear before you today. I look forward to answering your questions.

Thank you.

SESSIONS:

Thank you.

Mr. Vitiello?

VITIELLO:

Thank you, Chairman Sessions, Ranking Member Blumenthal, and distinguished members of the subcommittee. It is an honor to appear before you today to discuss the role of U.S. Border Patrol in enforcing immigration laws and securing our borders.

The Border Patrol, in close cooperation with our partners, protects the United States against terrorist threats and prevents the illegal entry of people and contraband along 6,000 miles of land border, between the ports of entry, and 20 -- and 2,000 miles of coastal waters. As part of our border security mission the Border Patrol shares responsibility for enforcing U.S. immigration laws with other CBP components, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, the Departments of State and Justice.

The Border Patrol's role is focused on detecting, deterring, and apprehending individuals crossing the border illegally. All individuals apprehended by the Border Patrol are subject to an immigration inspection, which includes interviewing the subject to establish identification, capturing biometric information such as photograph and fingerprints, and checking biographic and biometric records against multiple databases for previous immigration encounters and removals.

The Border Patrol also checks multiple crime and terrorist databases for wants, warrants, criminal history, and lookouts. If derogatory information is discovered, the records are reviewed by Border Patrol agents and evaluated to determine if a criminal or administrative proceeding or enforcement action should be pursued. If there is a want or criminal warrant in the NCIC, the corresponding federal, state, tribal, or local agency is contacted.



To apply consequences to subjects attempting further illegal entries or participating in the smuggling enterprise the Border Patrol developed the consequence delivery system, or CDS. The CDS guides agents through a process designed to evaluate each subject and identify the most effective and efficient administrative or criminal consequence applicable to the person in custody with a goal of reducing further illegal activity.

The CDS uses a combination of criminal and administrative consequences, relying on strategic partnerships with governmental agencies including the U.S. Attorney's Office, U.S. Marshals Service, the government of Mexico. Working closely with ICE, the Border Patrol also targets suspected smugglers and disrupts smuggling efforts along the border of the United States.

These partnerships, our targeting efforts, and the availability of criminal and administrative consequences allow the Border Patrol to match the individual with a consequence in the most effective and efficient way to achieve the border security results.

Since CDS was launched in 2011 the Border Patrol has developed multiple effective strategies to deliver targeted consequences to offenders and organizations to break the smuggling cycle or the illegal entry activity. For example, the Criminal Consequence Initiative, formerly (ph) known as Operation Streamline, in a consequence-based prosecution program designed to help CBP border security efforts by conducted focused -- by conducting focused criminal prosecutions of selected aliens within a prioritized enforcement area.

The Alien Transfer and Exit Program, ATEP, a program which moves Mexican nationals apprehended in one Border Patrol sector to another sector before removing them to Mexico. ATEP breaks the smuggling cycle by physically separating aliens from organizations that will repeatedly attempt to bring them into the country.

And the Operation Against Smugglers Initiative on Safety and Security, also called OASISS, is a binational effort designed to coordinate prosecution of alien smugglers in the Mexican judicial system.

Collectively, the CDS initiatives aid the overarching effort to improve the safety and security of the border. The border regions of the United States cannot be effectively secured by one single DHS component or even a single government -- governmental entity. A whole-of-government approach has been and will continue to be the most effective way to keep our borders secure.

Together with ICE, the Border Patrol is an active participant in the DHS Southern Border and Approaches Campaign and has a leading role in Joint Task Force West, an integrated operational approach that increases information-sharing between federal, state, local, and international law enforcement agencies, enhances border-wide interdiction operations, and improves our ability to counter transnational threats.

Chairman Sessions, Ranking Member Blumenthal, and distinguished members of the committee, thank you for the opportunity to testify today. I look forward to your questions.

SESSIONS:

Thank you very much.

Mr. Homan, the Obama administration has repeatedly claimed that it has the resources to deport approximately 400,000 aliens from the United States each year. In 2012 the record indicates that ICE deported 409,000 people. It did so with a budget of \$2.7 billion for the detention and deportation of aliens from the United States.

Of those deported, 180,000 came from the interior of the United States, which would be a primary ICE responsibility. Is that correct?

HOMAN:

Yes, that's correct.

SESSIONS:

And 228,000 were from the border, Mr. Vitiello, basically the Border Patrol primary responsibility.

VITIELLO:

Correct.

SESSIONS:

In fiscal year '15, however, the ICE deported a total of 235,000 aliens, which is a considerable drop from 409,000. It did so with a budget of \$3.4 billion.

Maybe we can show this chart that would indicate how the budget has moved. In 2012 the budget was \$2.75 billion, and in 2015 it was \$3.43 billion. And we've seen a substantial increase -- that's a 25 percent increase.

Can you explain, Mr. Homan, how the numbers have dropped so dramatically when you've got a 25 percent increase in your budget?

HOMAN:

Well, certainly. Because the framework changed. I mean, our job is tougher today than it was back in F.Y. '12 for various reasons.

You know, it can -- it -- the state of California accounts for about 40 percent of my criminal alien arrests, and when they passed the TRUST Act they took a lot of level threes off the table. So that -- that -- that narrowed my scope of target aliens.

SESSIONS:

Well, Mr. Homan, isn't it true that police officers all over America call ICE offices on a regular basis and you don't even attempt to come and pick up those that they are holding that are here illegally to deport them? You've got policies that just -- it's not a question of not having sufficient people to deport.

HOMAN:

Well, there's -- there's a number of reasons why the numbers are down. In addition to the TRUST Act I still have sanctuary cities that don't cooperate with us. So yeah, some law enforcement agencies call us, but many do not.

We still have the detainers situation across the country, where our -- our detainers are not honored, and that's where my men and women have to go knock on a door...

SESSIONS:

Has that increased substantially since 2012?

HOMAN:

Well, in 2012 we...

SESSIONS:

We had sanctuary cities in 2012, didn't we?

HOMAN:

Yes, we did. But we didn't have the detainer issue that we've had in 2015 and present.

SESSIONS:

So the detainer issue are -- can make a difference if it -- that could be fixed?

HOMAN:

Pardon me?

SESSIONS:

Would -- improving, fixing the detainer issue would allow you to deport more people?

HOMAN:

Certainly it would.

SESSIONS:

Well, have you proposed any legislation on -- the department, has it proposed any legislation to fix this detainer issue?

HOMAN:

I don't know what the department's proposed, but what I can say is the PEP program is trying to bring some of the non-cooperative jurisdiction back. There...

SESSIONS:

Apparently it's not working because your numbers are down substantially.

HOMAN:

Well, there are many large jurisdictions who have not come back to the table yet, and that's a concern.

SESSIONS:

Of the 235,000 aliens deported, dropped from, as I noted, from 400,000, only 69,000 came from the interior of the United States -- that would be your jurisdiction -- a 62 percent decline since 2012. So forgive me if I don't accept the fact that sanctuary cities that have been in place for many years and a detainer policy is exclusive reason for that.

HOMAN:

Well, sir...

SESSIONS:

And of -- of the -- and 165,000 of that number were from the border, which is also a -- a decrease.

But tell me again, what can we do, and do you have any ideas to get more productivity for the taxpayers who've given you a big pay raise?

HOMAN:

Well, if I can finish my answer on why the numbers are down, there's -- there's a number of reasons numbers are down. And if -- if we go back, it starts with, you know, the -- the TRUST Act in California had a big impact. Border Patrol apprehensions last year were down 31 percent. They make up 60 percent of my bed, so when they take a 31 percent decrease on the border that has a significant impact on me.

Sanctuary cities, jurisdiction not honoring my detainers, the TRUST Act. In 2012 John Morton, the assistant secretary of ICE, issued a policy on who we issue detainers on. Virtually took level threes off the table. This is a law-abiding society so most -- most crimes are level threes, so to take level threes off the table was significant.

We had the Rodriguez lawsuit. I'm required to release people after six months even though they're mandatorily (ph) detained in 9th Circuit.

Executive actions. Executive actions have narrowed my target population down by certain requirements from the executive actions.

SESSIONS:

Executive action. That's the president's direction not to deport certain people.

HOMAN:

Executive action narrowed my target pool because...

(CROSSTALK)

SESSIONS:

The president ordered you not to enforce certain cases and focus only on criminal cases. Isn't that basically correct?

HOMAN:

We focused our attention on all three enumerated priorities, which include, most importantly: criminal aliens, national security, and recent border entrants.

SESSIONS:

What does "recent border entrants" mean?

HOMAN:

Somebody that entered after January 1, 2014.

SESSIONS:

And do you count those if they come from the border arrest -- those that are arrested on the border?

HOMAN:

If they come to my custody.

SESSIONS:

Well, that's a -- that's a change, of course, making those numbers look higher than they used to look.

Well, I don't -- I believe -- isn't it true that ICE officers get calls every day from police officers and departments all over America that are not sanctuary cities and you're not responding to them because they don't meet the guidelines or the priorities established by the president?

HOMAN:

That is true.

SESSIONS:

So your -- so it's not true, then, that the reason your numbers are down is because you don't have people to deport. You have them to deport, but you have policies that tell you not to deport whole categories of people that are here unlawfully. Isn't that correct?

HOMAN:

That's a factor, yes, sir.

SESSIONS:

All right, sir.

My time -- thank you, Mr. Homan.

BLUMENTHAL:

Thanks, Mr. Chairman.

Mr. Homan, are you aware of the Jean Jacques case?

HOMAN:

Yes, sir.

BLUMENTHAL:

Can you tell me when the inspector general report will be done?

HOMAN:

I do not know. I know it's ongoing. I know they are -- they're questioning employees within ICE, but I have no idea when that report will be finished.

BLUMENTHAL:

Would you agree with me that finishing that report as soon as possible is important?

HOMAN:

Absolutely.

BLUMENTHAL:

Are you aware of the facts surrounding that case that so greatly distress the family and many of us in Connecticut, namely the fact that this individual simply was not deported when he should have been?

HOMAN:

I agree with you it's a terrible tragedy. The reason he was not deported because the agency could not obtain travel documents from the country of Haiti. That's my understanding of the case.

BLUMENTHAL:

Even though everyone knew he was from Haiti, correct?

HOMAN:

We -- we had evidence he was from Haiti, but unfortunately, the government of Haiti would not issue a travel document based on the evidence that we had.

BLUMENTHAL:

So the refusal of Haiti to provide these travel documents prevented ICE from deporting Jean Jacques. Is that your understanding?

HOMAN:

That is my understanding, yes, sir.



BLUMENTHAL:

In your testimony you mentioned that the Department of State and ICE are working together to overcome some of the challenges raised by countries that refuse to accept their citizens back in their countries, like Jean Jacques.

And, by the way, I disagree that he could not have been deported, that sufficient measures were taken to compel Haiti or persuade that nation to take him back. But let's put aside that disagreement.

Can you tell me whether progress is being made by ICE and the State Department to pressure countries to repatriate their citizens? Because there are, after all, I understand, as many as 85 countries -- 23 on the list of resistant or uncooperating (sic) countries, and 62 being reviewed for strained cooperation, still not fully cooperating. And Haiti is on the list of the 62 countries mentioned in your testimony that strain cooperation but still are not being recalcitrant at this time.

What progress has been made?

HOMAN:

In the past year, as far as what I've done as EAD for ERO, either me or my deputy have penned 64 Annex 9 letters to foreign consulates who are in the country, ask them for assistance in retaining travel docs from their consulates. The Director Saldana, she has issued two demarche letters in -- in 2015 to Algeria and Iraq through the State Department.

There are four additional letters being -- action being taken on now to Cuba, Guinea, China, and Liberia. Cuba we're asking them for demarche; Guinea we're asking for visa sanctions; China we're asking for a meeting between the assistant secretary, Department of State, the director, and the -- the ambassador.

BLUMENTHAL:

What is "demarche" mean?

HOMAN:

It's a letter explaining to them their responsibilities under convention, and we're having -- we're not getting the cooperation from their consulates to receive the travel documents in a timely manner, or sometimes not at all.

BLUMENTHAL:

And what's the consequence?

HOMAN:

Well, there's an MOU signed by the director of ICE along with the assistant secretary of consular affairs for the Department of State, and there's -- the first thing is the Annex 9 letter letting them know, "Hey, we need some assistance on a travel document for a person," but the -- the process does issue a demarche letter. A demarche letter pretty -- pretty much lays out the responsibility and our -- our -- our dissatisfaction with the travel document issue.

The second step in the MOU is they hold meetings with the ambassador and the U.S. assistant secretary for consular affairs to discuss the situation. Then we provide notice to the country formerly deemed recalcitrant and -- that we will attempt to ask for visa restrictions from the State Department if the -- if the cooperation does not...

BLUMENTHAL:

Have visa restrictions been taken against any of those 62 countries?

HOMAN:

Visa restrictions have been taken against Guiana, I believe. The other 62 countries, no, sir.

BLUMENTHAL:

Were any of these steps taken in the Jean Jacques case against Haiti?

HOMAN:

I do not know.

BLUMENTHAL:

Would you find out?

HOMAN:

Yes, sir.

BLUMENTHAL:

Have any actions been taken against Haiti since the Jean Jacques case?

HOMAN:

Haiti is actually -- we've made progress in Haiti. We actually returned 433 Haitian nationals in '15, and so far this year we have returned 206 to the country of Haiti. So we're actually making some progress with them.

BLUMENTHAL:

Is Haiti on the list of 62 limited cooperation...

HOMAN:

Yes.

BLUMENTHAL:

... countries?

And so could you give me those numbers again?

HOMAN:

In -- in F.Y. '15 433 Haitians were removed to Haiti, and so far in '16 206.

BLUMENTHAL:

And how about in the years previously?

HOMAN:

I do not have those numbers with me, but I can make them available to you, sir.

BLUMENTHAL:

Would you provide those numbers?

HOMAN:

Yes.

BLUMENTHAL:

The fact of the matter is, wouldn't you agree Jean Jacques should have been one of them?

HOMAN:

I wish he would have been one of them, yes. It was a terrible tragedy. I've been a law enforcement officer for 32 years. I don't want to see someone like him running around the streets of this country.

BLUMENTHAL:

Wouldn't you agree that even stronger action needs to be taken against these countries that are non-cooperative or recalcitrant?

HOMAN:

Yes.

BLUMENTHAL:

And what steps is the Department of State or ICE taking to make sure that stronger action is taken?

HOMAN:

Again, we have an MOU that's existing. I think we're taking steps in that MOU.

When it gets beyond the Annex 9 letter that's higher pay grade than myself, as the director. But I certainly think more needs to be done with countries that don't accept -- accept their nationals,

countries such as Cuba, a whole list of the 23 countries, because many criminal aliens that we can't remove are residing in our neighborhoods, which they -- they should not be.

BLUMENTHAL:

Criminal aliens should not be permitted to stay in this country. Do you agree?

HOMAN:

Yes.

BLUMENTHAL:

It's not about building walls or excluding people on the basis of race or religion. It's about deporting, sending out of this country, people who have demonstrated that they are dangerous and broken our laws, many of them felons, in the case of Jean Jacques a convicted felon, who then do pernicious and insidious damage to our people.

And let me just say, the more I hear from your agency -- nothing personal to you -- the more troubled and disturbed I am about the lack of strong, effective steps that will restore credibility to this system. And that credibility depends on fair and effective enforcement.

So I hope the message will go back to ICE that before long we will reach the conclusion that Congress needs to be involved to assure that dangerous lawbreakers are repatriated to their countries when they are here illegally.

Thank you.

HOMAN:

If I may, one additional point that I think Department of State is -- is a piece of this equation, too. Only they can order visa sanctions. So I think -- I think it needs to be a -- a collaborative effort between both departments.

BLUMENTHAL:

I -- I take that point and I'm glad you added it. My -- my comments are directed to the administration, not solely to ICE. You're absolutely right that the Department of State and perhaps the Department of Justice have roles to play here. So I -- I thank you for making that point.

Thank you.

Thanks, Mr. Chairman.

SESSIONS:

Thank you, Senator Blumenthal.

And Senator Blumenthal has done a good bit of work on this issue, and I know he cares about it. It's certainly something that I think has bipartisan support.

My experience in dealing with over a number of years that it, indeed, is -- you are not able, Mr. Homan, to negotiate with these countries directly? The negotiations go through the State Department when there's a disagreement?

HOMAN:

Well, it starts with a letter from me to the foreign consulates, but once...

SESSIONS:

That's the State Department, right, or their -- their accounts (ph)?

HOMAN:

My letter goes straight to the foreign ambassador, copied to the Department of State. If we get no response then it goes to the next step, and that's where Department of State and our director get involved.

SESSIONS:

And then your director requests, presumably, the Department of State to act.

HOMAN:

Yes, sir.

SESSIONS:

Has your department requested Department of State to take strong action with regard to Haiti as a result of this tragic death?

HOMAN:

I do not know.

SESSIONS:

But that would be the way the system would normally work?

HOMAN:

Yes. We would go to the Department of State and -- and set up meetings with the Haiti government and explain to them the situation, ask them to turn it around. If they don't then -- then -- if -- if things don't improve, the next step would be to recommend visa sanctions.

SESSIONS:

And visa sanctions would be simply say we're going to reduce or stop any visas to anybody in Haiti until you agree to take back people who've been convicted or charged with serious criminal offense in the United States.

HOMAN:

Yes.

SESSIONS:

Or for any reason that we decide to deport them. I mean, the -- the agreement worldwide, as I understand it, is that if a citizen of your country comes to the United States or goes to Haiti and they get in trouble in that country and the country decides to deport them, it is the responsibility of the home country to take them back. Is that not correct?

HOMAN:

Yes, it is.

SESSIONS:

That's fundamental. And if a country refuses to do that then -- then the nation can say, "We're not taking any more from you until you convince us that you're going to comply with that internationally accepted rule."

HOMAN:

Yes, sir.

SESSIONS:

Well, that's what hadn't been done. Hadn't been done for decades.

Does it cost you money? I mean, do you have to hold dangerous people in prison for weeks, months, or longer because they -- these countries are refusing to do their plain duty?

HOMAN:

Criminal aliens we can't repatriate because we don't have the cooperation of the government are - they're a threat to community safety and, frankly, they're a threat to my law enforcement officers. So yes, I take it very seriously.

SESSIONS:

And you either have to house them in our prisons at our expense or release them on bail into the community, where they remain a danger?

HOMAN:

Yes, sir.

SESSIONS:

That's your only choice you have.

HOMAN:



Yes, sir.

SESSIONS:

And -- and it's not -- well, at some -- and frankly, the secretary of state should pick up the telephone to all these 62 countries and tell them that's what the truth is, and if you want to continue to have people come to the United States then we're going to insist that you immediately comply. It shouldn't be taking long periods of time, in my opinion. It's a very frustrating process.

Now, a detainer is lodged normally when somebody who's in the country illegally and they commit a crime or some offense and are being held in a state or local prison, and you desire to deport them, and you place a detainer on them, which would keep them from being released until you have an opportunity to deport them. Is that essentially the way the detainer system works?

HOMAN:

Well, the detainer rules have changed with the executive action. Now to put a detainer on an individual they have to meet one of the priorities, and if they're there for a crime they have to be convicted of a crime.

SESSIONS:

It has to be convicted now.

HOMAN:

Yes, sir.

SESSIONS:

Well, that's not some constitutional requirement, is it?

HOMAN:

Not that I...

SESSIONS:

Didn't used to be that way, did it?

HOMAN:

Didn't used to be that way, sir.

SESSIONS:

When did it change?

HOMAN:

In November of 2014. It took effect in January of 2015.

SESSIONS:

So that's what happened. So now somebody who's charged (ph) for a very serious crime, we've got to go through the process of trying them, convicting them, and then deporting them. Where (ph) they're subject to being deported whether they commit a crime in the country or not if they're here illegally, are they not?

HOMAN:

Again, I got...

SESSIONS:

Under the law -- under the law, not the policies of President Obama -- under the law, anyone that enters the country unlawfully is subject to being deported at any time.

HOMAN:

Yes.

SESSIONS:

And what reason is there to demand that they actually be convicted of a crime before they're deported?

HOMAN:

Well, the framework I provided (ph) -- or try and provide: prioritize those that have been convicted. The reasoning behind that I wouldn't know. I mean, they want to prioritize the work we do.

And actually, you know...

SESSIONS:

Well, it certainly reduces the number of people you deport. You've got to wait at least -- it may take months, may cost the taxpayers of the United States six, nine months, two years of custody before the trial gets completed when they could have been deported promptly and saved all that.

HOMAN:

One positive result this action from the prioritization is that the number of convicted criminals we actually removed last year, the percentage of convicted criminals, that 59 percent, was an agency record. Those -- those arrested in the interior, 91 percent had a criminal conviction. So if you're talking about prioritization, if you have a criminal alien and noncriminal, I -- I -- I agree the criminal should go first.

SESSIONS:

Well...

HOMAN:

I mean, we talk about prioritization.

SESSIONS:

Well, I -- I would certainly agree with that. But you -- it does not give me comfort, Mr. Homan, that 90-something percent of the people that you arrested were convicted. What that means is you're not arresting anybody but people convicted, and I think that's way too late, way too long, and it's imposing too much cost on the American people. And some of these people that are awaiting trial, aren't they often released on bail pending trial?

HOMAN:

Yes.

SESSIONS:

And so if they're released on bail pending trial, they could disappear into Los Angeles.

HOMAN:

Yes.

SESSIONS:

New Orleans.

And before -- and they're not convicted.

HOMAN:

Correct.

SESSIONS:

So you don't -- they're -- they're not a priority subject to being deported if they're arrested in Los Angeles. All they've got is a charge for armed robbery in Dallas.

HOMAN:

The point I'm trying to make is my -- my law enforcement officers are given a job to do, to -- to create a -- to -- to -- to do a mission, right, to execute a mission. And the -- the mission they've been executing, which they've been given, they've been doing almost a perfect job at. When you look at the numbers of the convicted criminals arrested percentage of that, as of today 99.4 percent of people that are in my detention beds fall within one of the enumerated priorities. What I'm saying is the men and women of -- of ERO are executing the mission they were given perfectly.

SESSIONS:

They...

HOMAN:

Pretty close to perfect. They may not like the mission, but they're executing it perfectly, and I -- I just -- I just think it's important to realize that they -- they -- they don't get to pick and choose what comes down the road, but when they're given a mission to do they're doing a very good job.

SESSIONS:

When you say they don't get to pick and choose, what -- what you're saying is they don't get to set the policies. The policies are set by the president of the United States, and the policies are eviscerating the ability of this system to ever work.

And I know and have not forgotten that the ICE Officers Association sued Mr. Morton and the essence of their complaint was he was requiring them and ordering them not to fulfill their oath to enforce the laws of the United States. It stayed in court for a long time before the judge dismissed it, I think, on standing and technicality.

But -- so your officers are trying to do their job. I agree. They are being frustrated by policies that don't work.

And these charts show the decline in -- in some of these areas. It's pretty stunning to me why you're getting more money. And it's direct result of presidential policy, not the ICE officers. I agree with that.

So, Mr. -- I won't call you chairman, but I will yield to Senator Blumenthal. I've gone over my time.

BLUMENTHAL:

I just want to make a -- a quick comment simply to emphasize that -- to you, Mr. Vitiello -- you are here to, in effect, represent the men and women who are in the trenches on the front lines, and I am eager to say simply thank you for the work that you do because, as Mr. Homan has said, you're out there every day. You collectively are there under very difficult circumstances enforcing policies that may be imperfect in many ways.

And we can disagree, senators at this podium, about the merits of those policies, but you're responsible for protecting America and I just want to say thank you, but also to say that your courage and your excellence in the work that you do and your fellow officers I think should embolden us to do better. And I don't mean only the administration; I mean Congress. Because we may need to make sure that enforcement is fairer and more effective against those people who are in this country already and who pose a danger to our citizens.

And my colleague has suggested the secretary of state should pick up the phone. It may not be quite that simple, but I think he means it in a symbolic sense, not literally, that whether it's visa restrictions or some other steps, the United States of America needs to make sure that we are protected from people like Jean Jacques. We can agree that it was a tragedy, but we should also agree that stronger action should be taken because it will happen again if the nation feels -- fails to take that kind of stronger action.

And having talked to that family, one of my missions in this job will be to do everything possible to make sure that their grief and sorrow is in some way a inspiration for us to take stronger action.

So I thank you for being here today and I hope that that inspector general report is forthcoming as soon as possible.

VITIELLO:

Well, thank you, Senator. We're blessed to have men and women in the Border Patrol that are dedicated professionals who protect America each day in somewhat arduous conditions.

The job they do is tough. They do it well. The -- it's a job that has consequences, and I thank you for lifting them up.

SESSIONS:

Thank you, Senator Blumenthal.

And as a prosecutor yourself you've worked, I know, with Border Patrol agents and ICE officers, as I did when I had the honor to be federal prosecutor. And we do appreciate -- and the duties and it's risky. You're dealing with dangerous criminals.

Maybe 100 of them go fine, but in a career you're going to deal with hundreds and hundreds and you never know which one is just a killer and -- and is extremely dangerous. And we do respect and appreciate their work.

And I think it's our job in Washington, I think it's the president and the top secretaries of the agencies to back them up, to make sure that their efforts are worthwhile, and are -- are conducted in a way that leads to success in achieving the goal that Americans overwhelmingly want, which is an honest, lawful system of immigration that serves the national interest.

That's what people want. They have a right to demand it. And we're not giving it to them, and it's because of politics, not the officers, in my opinion.

With regard to...

BLUMENTHAL:

Mr. Chairman, I'm -- I apologize. I'm going to have to excuse myself. We were a little bit late in started because of the vote and I have another commitment.

SESSIONS:

I understand. Thank you...

BLUMENTHAL:

Thank you.

SESSIONS:

... very much for your participation.

Just to confirm the numbers, Mr. Homan, I see here in 2012 ICE issued 282,000 detainers, and in 2015 they issued 96,000 detainers, a 66 percent decrease since 2012 -- detainers being the holds placed on incarcerated individuals who are illegally in the country and who've committed some sort of criminal offense so that you could obtain their body once they have been completing -- completed their process in state or local court. Is that right?

HOMAN:

In the past detainers were to hold someone for 48 hours if they fell -- if they fell in our priorities. After executive actions we require, now, a conviction to drop detainer on them unless they fall within the small -- if -- if they committed a felony or an aggravated felony that resulted in serious injury or death then we would categorize them as a federal public interest -- a federal interest case because of the severity of the crime. But most circumstances it requires a conviction to drop a detainer.

Some jurisdictions will not accept detainers. They will accept notifications of 247-N, and that's simply -- we ask them to notify us before that alien leaves their custody, which can happen 24/7 so -- so that's -- it requires immediate response.

SESSIONS:

And I didn't let you explain a while ago, but there's no doubt that sanctuary cities do complicate your life and make it more difficult. Is that not true?

HOMAN:

Absolutely. But the -- the jurisdictions that won't work with us at all is a significant issue for me because, as you have said, we do release criminal aliens. Every law enforcement agency does. We're no different. But when we release criminal aliens they're in immigration proceedings and they're in some sort of reporting, ankle bracelets, some other reporting.

For these jurisdictions that are not working with us at all, we got level one and two criminals walking out of those jails every day. They're not in immigration proceedings. I don't know who they are. They're on no sort of reporting. That's a bigger issue for me.

SESSIONS:

So essentially, the way the system should work is if someone catches a criminal and they are being held by the sheriff's department in a certain country or state, they notify you that they have reason to believe this is an unlawful entrant into the country and you, if you choose, would place a detainer on that person. And when they notify you when he's due to be released and you pick them up promptly at that time or before they're due to be released for deportation. Is that correct essentially?

HOMAN:

Well, it -- it'd be a different form. It's 247-N. But the notification form is (ph), yes, they wouldn't hold him one minute past what they'd normally hold him; they just give us a heads up that this person is being released.

SESSIONS:

Yeah. So they don't serve any longer, but they do notify you in advance of the release so that they can be detained.

Well, that's the way it's supposed to work. That's basic. That's basic.

And when that's not working then we are really not deporting criminal aliens, as we've been promised. And that's why the numbers are down. That's one of the reasons I'm sure numbers are down.

Mr. Vitiello, the Border Patrol apprehended 337,117 aliens in fiscal year 2015. I'm told homeland security has no idea of how many of those are still in the country today.



Why is that? How many of those -- how many people apprehended were immediately deported, and how many are released on some sort of custody or transported to some destination they desired after they were arrested unlawfully entering the country?

VITIELLO:

So on the southern border part of the population, the people that are apprehended by the Border Patrol, some of that population would then be reviewed, as I said in my opening statement, for criminal history and previous immigration history. Depending on that outcome and those classifications, some will qualify or be allowed to voluntarily -- will -- will be allowed a voluntary return to Mexico.

So a number of those people that are apprehended at the southern border will then be returned immediately. Others that have a different...

SESSIONS:

And if they are from Mexico and don't want to voluntarily return, what happens to them?

VITIELLO:

Well, then they would be -- they would be -- it's their choice to have an administrative hearing for removal in that case...

SESSIONS:

They have a choice if they're apprehended at the border to have an administrative hearing?

VITIELLO:

So each of them would be presented with that option, correct. There's a couple of things that we're required to -- to avail them of. One would be notification to their consulate, their right to a hearing if they choose, or the -- the opportunity to withdraw and -- and be returned voluntarily.

And so a number of people from Mexico fall into that category. The rest would then be referred to my colleagues in ICE.

SESSIONS:

And so then ICE is getting those. In the past those weren't counted as ICE removals, I -- I don't believe; now they are. But -- but so how long does it take to have one of these hearings typically -- administrative hearing, you call it.

VITIELLO:

It depends on what district that they're in. It -- essentially the role at CBP is to make those referrals and then, you know, putting them on the docket and -- and setting that up is a -- a function of both ICE and the Executive Office of Immigration Court.

SESSIONS:

All right. Do you have any impression how many people from Mexico successfully are released on bail at some point and -- and do not show up for court?

VITIELLO:

Yeah. I -- I -- I don't have that. That -- that's not part of the data that we track at CBP, and...

SESSIONS:

Mr. Homan, do you know from the ICE perspective? You should have those numbers, I suppose.

HOMAN:

It varies on the population. Anywhere from 40 to 55 percent fail to appear.

SESSIONS:

So -- so in effect this is pretty much a mockery of the system. Anybody that's willing to enter the country across the border illegally and take that risk, that now has no basis to claim a right to stay in the country, is ordered to appear at court. Why would they go to court?

If they intended to go to Denver or to St. Louis or to Los Angeles, why wouldn't they just go from the -- the Arizona or the Texas border to that location? There's no real reason to ask it. So we know about half of them are not.

And what I would say to you, that erodes the deterrence impact of the enforcement strategy.

Mr. Vitiello, isn't it -- wouldn't it be true that if every one of those people were given a -- held in custody, given a hearing within a few days, and -- and deported if they were not -- had no justification to stay, and that was consistently and effectively done, we'd have fewer and fewer people attempting to enter the United States illegally?

VITIELLO:

That is my experience. I think what -- what -- when I talked about in the opening statement about the consequence delivery system, our data -- you know, and you talked about deterrence -- our data shows us that if there's a consequences applied post arrest then that reduces activity overall.

SESSIONS:

Well, there's just no doubt about it. I'm sure.

Now, on Streamline -- I want to wrap this up, but on Operational Streamline, when that was introduced, I believe in the Arizona sector initially...

VITIELLO:

The first place we did that -- we piloted it in Del Rio and then expanded from there.

SESSIONS:

All right. And we had very good deterrent impact. They were held in custody; they were convicted of some misdemeanor, I suppose?

VITIELLO:

So -- so a misdemeanor...

SESSIONS:

And then they were deported, and they have a record, and it had a much greater deterrent effect than just simply returning them across the border. That proved to be the case, did it not?

VITIELLO:

So again, it -- it's -- it's a -- it's a method of tracking -- classifying an individual and putting them in the appropriate system for consequence. And Streamline, in its -- in its beginning, had a dramatic effect in Del Rio.

As it expanded what we found out was that was not only using criminal prosecution in federal court but using the other available administrative proceedings so that using not just Streamline but other avenues of post-arrest consequence showed us that...

SESSIONS:

Well...

VITIELLO:

... it brought the traffic down almost everywhere we tried it.

SESSIONS:

OK. And what percentage of the border has something like Operation Streamline operating today?

VITIELLO:

So it's still in effect in Tucson, Del Rio, Laredo, and the Rio Grande Valley.

SESSIONS:

And about what percentage of the illegal entrants are processed through Streamline? Do you know?

VITIELLO:

I don't have that in front of me.

SESSIONS:

Rough estimate? Half? Less than half?

VITIELLO:

It's a -- it's a handful in each of those locations. So in a place like Tucson, where -- where they may be arresting a couple of hundred people a day, about 70 of -- they -- they have room for or they -- they -- they avail themselves of the use of Streamline in about 70 cases a day.

SESSIONS:

So less than -- almost a third of the number. About a third of the number.

Well, that's in -- my view is if that were stepped up to 100 percent and rigorously and effectively processed, and you would need some extra resources for short term but then we might hope, would we not, Mr. Vitiello, that we would be begin to see a decline in the number coming...

VITIELLO:

So...

SESSIONS:

... and have fewer entrants per agent, per judge, per prosecutor, and you'll reverse your cycle, then, of further reducing the flow into the country.

VITIELLO:

So -- so consequences matter. I think that -- that Streamline has been an important part. You have to use it with other methods, but it -- but I will agree with you that consequences have impact. That's my experience, as well.

SESSIONS:

And at the border barriers can be helpful, can they not?

VITIELLO:

"Barriers" as in physical barriers?

SESSIONS:

Yes. Walls. Fences.

VITIELLO:

They -- they have been. They have been.

SESSIONS:

They magnify the ability of a single officer to be able to cover more territory?

VITIELLO:

Right. So all of the things that we use on the border -- physical barriers, fencing as one; technology is a -- is a -- is a great benefit to us, plus the agencies still have to have that response, as well.

SESSIONS:

Well, gentlemen, we'll leave the record open for further questions. I thank you for your service and those of your officers who serve under you.

It's pretty clear, based on resolutions at the associations of both ICE officers, Border Patrol officers, and CIS officers that they are very frustrated. Department of Homeland Security -- I'm not blaming you, but according to objective government studies have I believe the lowest morale in the entire federal government.

And I don't believe it's because of you. I believe it's because executive policies, presidential orders that frustrate their ability to do their job. And they go out and place their lives at risk every day and they turn around and see those people released, and it makes a -- their work feel underappreciated, and indeed, it is.

HOMAN:

Sir, I'd like...

SESSIONS:

Yes, sir?

HOMAN:

If I may, I want to set -- set the record straight on a couple things.

A comment you made earlier that ICE claims credit for removals of aliens arrested by Border Patrol that turned over to us -- we've always claimed those removals. If -- if Border Patrol turns an alien over to us and we transport them, detain them, put them through the process, when they're eventually removed we get that -- we get that stat for the removal. We always have. Border Patrol doesn't get that stat, so it's not double-counting.

The second issue is if Border Patrol processes a recent border entrant by expedited removal, they're mandatorily detained by us. So recent border entrants are priority and we try to detain everyone we can if -- and -- and that's what we do. They certainly have a right to due process.

The third thing I wanted to...

SESSIONS:

Now in that group you didn't used to count that, correct -- as a ICE removal if it was a expedited Border Patrol stop?

HOMAN:

If -- if they voluntarily return we don't take the credit. But if it's an expedited removal administrative process where they don't have the, you know, the right to see a judge and we detain them and remove them, we'll get the removal.

(CROSSTALK)

SESSIONS:

I'll try to get it -- I'd like to get into that because I -- that was my understanding, that then justified a high removal number is some change somewhere in this system on what was being counted and what was not being counted.

HOMAN:

Anybody ICE takes custody of and we expend resources on them by detaining them and go into the process, we'll claim that removal.

The third issue I wanted to clarify is when we talked about the policy of the administration, the PEP policy, the Priority Enforcement Program, is something I do support because we had several hundred jurisdictions that weren't working with us at all. What PEP did is bring a lot of those jurisdictions back to the table.

Now, it might not -- might not be at the same level of cooperation we had before, but any cooperation is better than nothing. So I kind of welcomed that because I was getting my hands on some dangerous criminals that we weren't getting before.

So PEP, you know, is the best deal we got going right now, considering detainer is litigated throughout the country in lawsuits. PEP actually brought quite a few people back to the table. Not everybody, and I'm frustrated with some large jurisdictions that just don't want to cooperate with us at all, but PEP actually was a good thing to bring people back to the table because we had nothing else available to us.

SESSIONS:

Well, thank you very much. And we may follow up with written questions.

We thank both of you for your appearance here, and I hope and believe firmly that better enforcement policies with more support from the top, your officers can do great -- much better job, that we can get on a virtuous cycle of reducing the attempts of people to entry the country because a -- the world will know that our border is not open, you're not going to be successful, and if you are apprehended you will be -- not be taken into the country and released on bail and then allowed to stay. If you don't end that cycle then we're -- nothing will work.

So thank you all again very much.

SESSIONS:

Our next panel?

So, as with the first panel, I'll introduce each witness -- witness but note the biographies are on the committee's website.

Would you each stand and raise your right hand?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Please have your seats, and thank you.



First we have Mr. Brandon Judd, president of the National Border Patrol Council. He is a Border Patrol agent and serves as president of the National Border Patrol Council, representing more than 16,500 Border Patrol line officers who do their work every day. And they're the ones that are feeling the pressure from some of these policies.

He brings with him nearly 20 years of experience as a Border Patrol agent (sic), fluency in Spanish, and a thorough understanding of the policies affecting border security. Mr. Judd started his career as a field agent in 1997. He served in a variety of capacities while with the Border Patrol, including instructor at the Patrol Academy.

Mr. Judd, we'd be glad to hear your opening statement at this time.

JUDD:

Senator Sessions, I appreciate the opportunity to testify before you on behalf of all of the men and women of the United States Border Patrol.

The current administration has repeatedly told the American public the border is more secure than it's ever been. They will point to apprehension numbers and say that because we are apprehending fewer illegal aliens than in the past our border is more secure than ever.

The Bush administration, however, told the American public that because we were apprehending more illegal aliens than ever before the border was secure. So which administration is right?

The answer is neither.

Border security is a complex equation that takes into account all variables, including entries, apprehensions, turn-backs, and got-aways. It also takes into consideration the likelihood of getting away.

Speaking as an agent and on behalf of line agents, I will tell you the border is not secure. When I talk about the border being not -- when I talk about the border not being secure, let me be very specific.

Along the border we have thousands of sensors that will alert Border Patrol agents to a border breach. If a group of illegal aliens or narcotic smugglers trip a sensor, we instantly know exactly where the breach has occurred and can rush agents immediately to the area.

In cases where we have a sensor alert, our chance of apprehending the illegal aliens or drug smugglers is about 50 percent. In those cases where illegal aliens or drug smugglers cross where -- where we do not have sensors it could be as low as 10 percent.

In the last eight years three things have changed that make my job much harder. The first is the continued rise of Mexican drug cartels; the second is the administration's use of the catch-and-

release policy to an extent never before seen; and the third is the lack of management accountability.

Although there have been smuggling organizations along the U.S. and Mexico border for decades, the rise of Mexican drug cartels started in earnest in the 1990s. As their power and influence grew, so did the violence and corruption.

In 2006 the situation in Mexico got so bad that then Mexican President Felipe Calderon ordered the Mexican armed forces to directly confront the drug cartels. That decision sparked the Mexican drug war.

Over the past 10 years more than 150,000 people have been killed by cartel violence. This number includes teachers, police officers, judges, elected officials, and ordinary citizens.

Within the last few years the situation with the cartels has gotten so bad the U.S. State Department issued multiple travel warnings to U.S. citizens about visiting Mexico. And over the past eight years Mexican cartels have maintained a stranglehold on illegal activity along our southwest border.

Drug cartels control the illegal activity along our border in the same way gangs control illegal activity within our prisons. Nothing moves along the border in the U.S. or Mexico without the cartels' permission.

For the cartels, illegal alien and narcotic smuggling are two lines of huge business that brings in billions in annual revenue. For example, last year the Border Patrol apprehended 174,000 illegal immigrants in the Rio Grande Valley. Each of these individuals paid the Gulf Cartel approximately \$5,000 to be smuggled into the United States.

That is \$870 million in revenue for the cartel for those that were apprehended. When you factor in those got-aways, the total revenue from alien smuggling alone for the Gulf Cartel in this sector is nearly over \$1.7 billion. That's in one sector alone.

There are a number of factors, including what we just talked about on -- on the cartels, that are driving illegal immigration, but the single biggest factor right now is our catch-and-release program. When Border Patrol agents arrest illegal immigrants we interview, and we've found that most illegal immigrants believe that they will either not be caught or, even if they are caught they will simply be issued a notice to appear and will be released.

Candidly, they're not wrong. If you are an unaccompanied minor we will not only release you but we will escort you to your final destination. If you are a family unit we will release you. If you claim credible fear we will release you. If you are a single male and we do not physically see you cross the border and you claim that you have been in this country since 2014 we will release you.

The illegal aliens that we apprehend -- that we apprehended are -- are -- the illegal aliens that we apprehend are practical people. Before making what is a very dangerous journey and risking a

lifetime of savings, they weigh the costs and benefits. Right now, with catch- and-release the costs are lower than the benefits. As long as we continue with this policy, they will continue to come.

And the third issue is the lack of accountability.

The challenge now is that the administration has painted itself into a corner. If the border is secure, how do you ask Congress for more manpower? If the border is secure, how do you ask for more money? If it's secure, how do you ask for additional air support, technology, and fencing?

The answer, unfortunately, is that you don't. You do not talk about the Mexican drug cartels. You do not talk about the fact that every day on average a Border Patrol agent is seriously assaulted. You do not talk about how 20 percent of the individuals we are apprehending now are convicted felons and have personally been deported.

You do not talk about any of this. You talk about how apprehensions are down and how well things are going. And you punish anyone who has the temerity not to echo the administration's talking points.

We can solve this problem and we can have a secure border. We can put a serious dent in narcotics trafficking and make sure our communities are safe.

However, the first step to having a secure border is to have the courage to admit the problem exists and acknowledge that some of our policy choices are making the problems worse, not better.

I appreciate the time and I look forward to answering any of your questions.

SESSIONS:

Thank you (OFF-MIKE)

Next we have Mr. Alex Nowrasteh, immigration policy analyst at the Cato Institute. His publications have appeared in the Wall Street Journal and USA Today, the Washington Post, Los Angeles Times, and elsewhere. His academic publications have appeared in the Journal of Economic Behavior and Organization, the Fletcher Security Review, and Public Choice.

He's a native of Southern California, received a B.A. in Economics from George Mason University and Master of Science and Economic History from the London School of Economics.

Mr. Nowrasteh, we'd be glad to hear your statement.

NOWRASTEH:

Chairman Sessions, Ranking Member Schumer, and distinguished members of the committee, I thank you for the invitation to appear today for this important hearing.

Before I begin my testimony I would just like to make clear that my comments are solely my own and do not represent any official position of the Cato Institute. This spoken testimony will present a brief overview of immigration enforcement and other factors that influence the intensity of that enforcement inside the United States, such as economic conditions in the United States and in sending countries. My written testimony explores more potential explanations and goes into much greater detail than I will speaking today.

To analyze the Obama administration's record on immigration enforcement we also have to compare it to other administrations. ICE's interior immigration enforcement peaked with 237,941 interior removals in 2009 and has subsequently dropped. From 2009 to 2015 ICE removals from the interior of the United States totaled together over 1.17 million, far higher than the 555,164 interior removals during the Bush administration.

Now, we do not have data for interior immigration removals during the first two years of the Bush administration, but counting all of the removals for 2001 and 2002 as interior removals, which would surely greatly exaggerate the number, only raises that number to 909,000 -- far smaller than the Obama administration totals.

ICE removals as a percentage of the total estimated population of illegal immigrants is another way to measure the intensity of interior enforcement. Annual ICE removals as a percentage of all illegal immigrants averaged 1.48 percent during the entirety of the Obama administration. For the five available years of the Bush administration the average was 0.83 percent removed annually.

President Obama's ICE has removed more illegal immigrants and a greater percentage of the entire population than during the Bush administration.

The major difference between the two administrations is the trajectory of the interior removals. The number increased every year during the Bush administration while they have been falling during President Obama's administration, especially since 2010, and are currently at 2005 to 2006 numbers.

Additionally, the Obama administration has enforced worksite immigration laws more intensely than other presidents. Compared to the George W. Bush administration, the Obama administration has issued 5.1 times as many final orders, 15.5 times as many administrative fines, 8.3 times as many administrative arrests, and initiated 7.6 times as many cases.

The Bush administration did ramp up interior enforcement on worksites when the economy started to slow at the beginning of the housing price decline, but immigrant (ph) enforcement increased even more rapidly during the Great Recession and then relaxed afterwards as the economy improved. With the exception of administrative fines and final orders, those remain fairly high through 2014.

Now, what are some of the explanations for these shifting numbers? There are several changes in policy and other actions that could potentially explain these fluctuations in interior immigration enforcement.

For instance, every homeland security appropriations bill since 2008 has required the DHS secretary to prioritize the identification and removal of aliens convicted of a crime by the severity of that crime. The refocusing of ICE's immigration enforcement to removing convicted criminals betray the quality over quantity approach to deportations that can explain a good portion of this decrease in overall enforcement.

Broad changes in enforcement numbers can be explained by other factors, as well. Poor economic conditions in the United States have likely -- have historically caused administrations and agencies to intensify immigration enforcement, while improving economic conditions have generally followed relaxation in such enforcement.

Interior immigration enforcement ramps up when economic growth is poor and unemployment is high, as happened in the early 1950s, 1987, 1994, and 2001. The Great Recession of late 2007 to 2009 was preceded by a weakening economy and included a financial and housing crisis. Not coincidentally, these are the years when ICE's interior immigration enforcement efforts and worksite enforcement effects expanded most quickly, adding more evidence to those theories.

Looking at an even longer time period of 1900 to 1982, immigration laws were more strictly enforced during times of economic contraction and less stringently so during times of expansion. Adding more weight to these findings, the number of immigration I-9 audits and the amount of discretionary fines levied against firms for violating immigration laws increases with unemployment, according to a study that focused on the 1990 to 2000 period.

Interior immigration conditions also affect enforcement along the border. When industries that employ many illegal immigrants expand rapidly and even border control are -- generally relaxes to allow more in, at least from the early 1970s to 1990 -- to the late 1990s. In each one of these situations immigration enforcement decreases after the end of the high employment and the resumption of economic growth.

Economic and political and economic and other effects around the world also explain much of the decrease in the flow of Mexicans and the increase of Central Americans across the southwest border since the year 2000. Mexican relative wages have improved tremendously in recent years as Mexican per capita GDP adjusted purchasing power parity is much higher than it was in 1990. However, for many Central American countries such as Honduras, El Salvador, and Guatemala, they are far poorer than Mexico and their low per-capita GDP ratios compared to the United States basically show that we can expect more illegal immigration in the future from those countries and less so from Mexico.

The paradox of enforcement is that if effective immigration restrictions raise U.S. wages in certain occupations then the benefits for an illegal immigrant to come here and work are higher than they were before, potentially wiping out or at least offsetting those gains in enforcement.

On the other side, the best piece of literature by Edward Alden, Bryan Roberts, and John Whitley at the Council on Foreign Relations estimates that one-third of the decline in illegal immigrants crossing the border since the mid-2000s can be attributed to enforcement practices; the other two-thirds to economic issues and other factors.

In conclusion, the -- Obama administration has been a fairly stringent enforcement of immigration laws, according to these metrics. The age of mass illegal immigration from Mexico is likely over for myriad reasons, including but also due to other factors besides enforcement. Illegal immigration, however, from Central American nations will likely continue in the future.

Thank you for inviting me here today to testify, and I look forward to answering your questions.

SESSIONS:

Thank you.

Finally, we have Mr. Mark Krikorian, the executive director of the Center for Immigration Studies. He is a nationally recognized expert on immigration issues and has served as executive director of the Center for Immigration Studies since 1995.

He's testified before Congress and has published articles in numerous outlets including the Washington Post, New York Times, Los Angeles Times, and Commentary. He's a contributor at National Review online, has appeared on "60 Minutes," "Nightline," "NewsHour with Jim Lehrer," CNN, NPR, and other other television and radio programs.

He holds a master's degree from the Fletcher School of Law and Diplomacy and a bachelor's degree from Georgetown University. Mr. Krikorian has spent two years at Yerevan State University in then Soviet Armenia.

Thank you, Mr. Krikorian. We value your testimony.

KRIKORIAN:

(OFF-MIKE) for this administration has collapsed. ICE statistics show that deportations from the interior have fallen precipitously, something like 70 percent over the course of this administration. Even the removal of criminals has declined by more than half from 2010 despite the administration's claim of prioritizing those.

This collapse in deportations is certainly not due to the fact we're running out of illegal aliens, which we're not, nor is it due to a lack of resources, as you yourself have pointed out. In fact, the administration's budget request calls for a decrease in resources for enforcing immigration law, but they have not -- you have not given them that decrease. They have plenty of money and they're not out of money.

Rather, the collapse of enforcement is a policy choice by this administration. And it's not the result of a casual or piecemeal decisions to detain fewer people here or deport fewer people there. Rather, the enforcement collapse is the result of a fundamental transformation of immigration law undertaken by this administration without the consent of Congress.

The deportation memos, the priority memos from November and the various other memos that have been issued over the years, are just tactical measures. They're ways of implementing this broader change in immigration law, which has not been acknowledged. It's a broader strategy to unilaterally change violations of immigration law into secondary offenses when that is not what the statute supports.

That is to say, the administration's strategic vision is that when an -- that an alien faces consequences for breaking immigration law only if he violates some other real law, as it were, that involves, say, violence or drug dealing. And even then, the primary violation has to be quite severe to result in deportation for the -- what they consider the secondary offense.

Just, I mean, you as a prosecutor understand this, but just for the record, a secondary offense is comparable -- is similar to seatbelt laws in many states, where they are secondary offenses. And what that means is that you cannot be pulled over by a patrolman if you're not wearing your seatbelt. But if he pulls you over for a primary offense -- running a red light, speeding, what have you -- he can then give you an additional ticket because the seatbelt law is a -- violating the seatbelt law is a secondary offense.

The November -- the administration's November 2014 priority memos pretend that the administration has not moved to a secondary offense strategy. In other words, it includes other violations of immigration law in its third -- the third of the three priorities. But people are not deported in that priority.

In other words, it's really just for show. In fact, they have switched to this new approach to immigration law.

And you don't have to take my word for it. John Sandweg, the former acting director of ICE, said to the L.A. Times, quote, "If you are a run-of-the-mill immigrant here illegally your odds of getting deported are close to zero," unquote. That is a succinct articulation of this fundamental change that this administration has unilaterally undertaken.

Now, Congress, with its Article I powers, could, in fact, make violations of the INA secondary offenses, but it has not done so. And the president has done so on his own.

Just as an example for -- for people to understand what real discretion means -- because discretion is the pretext that they're using -- law enforcement discretion would be, for instance, a patrolman pulling you over for speeding, you're respectful, the car is not stolen, your toddler in the backseat is crying because she needs her diaper changed, and he says, "OK, ma'am, I'm not going to give you a ticket; I'm just going to give you a warning this time." That is law enforcement discretion because it doesn't undermine the basic mission of the agency.

The administration now is using discretion as a pretext for changing the law. This is comparable to the IRS, for instance, issuing a memo on the Internet that says ordinary people who are not money-launderers or drug-dealers but who simply fail to pay their taxes will not be sanctioned in any meaningful way. Congress would be aghast at that idea, and yet that is exactly what this administration has done.

Congressman Pelosi, just as an example, articulated this secondary offense perspective very well in 2013 when she said, quote, "Our view of the law is that if somebody is here without sufficient documentation that is not reason for deportation," unquote. That is -- what that means is immigration violations are a secondary offense.

And this is a very different approach from an earlier Democratic congresswoman, Barbara Jordan, a civil rights pioneer, champion of the rule of law, most especially during the Watergate hearings. As chairman of the bipartisan U.S. Commission on Immigration Reform she testified before this Congress 20 years ago in a kind of preemptive rebuke of this Obama-Pelosi approach to immigration law when she said, quote, "Deportation is crucial. Credibility in immigration policy can be summed up in one sentence: Those who should get in get in; those who should be kept out are kept out; and those who should not be here will be required to leave."

Thank you for your time.

SESSIONS:

Well, thank you very much.

Thank all of you for your testimony.

And, Mr. Krikorian, this idea that you've just described using the collapse of enforcement as a result of policy choices by this administration amounts to a change in law or virtually an evisceration of whole sections of law, does it not?

KRIKORIAN:

I mean...

SESSIONS:

It's pretty -- have you -- it's one of the most astounding things I've seen in my career in law enforcement and now in the Senate.

KRIKORIAN:



I mean, the -- the charitable way to put it -- and this is -- and it still involves, I would submit, lawless activity, but the charitable way to put it is not that the administration is not enforcing immigration law, it's that they have effectively changed the immigration law and are enforcing it, but under their new version of the law. As Mr. Homan said, his people are actually doing very well the very narrow responsibilities they've been given, and I think that's -- that's very true.

SESSIONS:

Well, it leaves out whole chunks of normal law.

KRIKORIAN:

Right. Right. But -- and that's my point is that what they are doing is saying that all of those other areas of the law -- the immigration law -- are only applicable if some other thing happens.

SESSIONS:

I think that's very insightful the way you've explained that, and for a -- a lawyer that's true. I take off my -- I used to be a lawyer.

I would say that the administration is on strike. They're basically not happy that the Congress didn't pass their bill, and so they've set about to ignore parts -- parts of the law that disagreed with the policy they asked Congress to adopt. And Congress didn't adopt it so they're going to not enforce that part of the law.

It's really breathtaking to me and unacceptable.

KRIKORIAN:

I mean, I think there's something to that, but it actually predates the Schumer-Rubio legislation because the Morton memos themselves in 2012 were the first step toward this transformation of immigration law. So I think you're right, Senator, but the process began even before the legislation that the Senate passed.

SESSIONS:

Mr. Judd, in your testimony you made several compelling points, but something you said stood out. You indicated that agents in the field believe that we are approximately 50 percent effective in apprehending aliens who cross our border illegally in areas where we have sensors -- sensors that show motion, and even less effective where we don't have those sensors. So what -- what

you're saying is that in the best case scenario for every one apprehension made we can assume roughly one alien evaded detection and made it into the United States?

JUDD:

Yeah. And I -- I actually believe that that would be high.

And it's not that the agents aren't doing their jobs. These agents are extremely good agents. They -- they work extremely hard.

The problem is is if we're not put in a situation where we can best be effective, we're not going to be effective. If we're not patrolling specific high-traffic areas, well, those high-traffic areas are going to be exploited. We've got example after example after example of when we vacate an area criminal cartels will actually cut the fence that we build, drive their vehicles through that -- through that area, and they'll get away.

And -- and that's the problem that -- that's the situation that we currently face. If we're put in situations to succeed, we succeed. If we're not put in those situations to succeed, we still try to but it becomes very difficult.

SESSIONS:

Is it -- in your opinion -- you've -- you've been involved in this for a number of years. You lead this association of 16,000-plus agents. Do the Border Patrol officers believe that the top officials of this country, including the president, want them to succeed in stopping illegal immigration at the border and are prepared to back them up and help them achieve that goal?

JUDD:

No. In fact, we're tired of being vilified. We get vilified from -- from all sides because we're trying to simply enforce the law.

We've been hired by the American public to enforce the laws that are on the books, and unfortunately, those laws -- the goal line continues to move each and every year and -- and it becomes harder and harder to enforce those laws.

But no, we do not feel that we're being given the support that's necessary.

SESSIONS:

So an official statistic from Customs and Border Protection tout the fact that it apprehended 337,000 aliens at the southern border last year. It's possible that that many more made it into the country unlawfully.

JUDD:

I would say that it's -- it's -- it's more than likely. I -- I would say that that's just a fact.

SESSIONS:

Tell us about this catch-and-release policy. This is the most damaging -- one of the most -- I can't imagine much more damaging than this, where agents are being ordered to simply release an illegal alien that's been apprehended without even receiving a charging document telling them to go to court.

What does that mean? And I want -- I think we all need to appreciate the significance of that. Can you give us an example or an idea of what that means?

JUDD:

Absolutely. There -- there's two -- there's actually two phases of the catch-and-release program. There's the catch-and-release program in which we give an NTA or a notice to appear, in which they are required to show up before an immigration judge...

SESSIONS:

Well, let's slow down. So this is someone that -- in -- in Tucson at the border someone's apprehended. I had the impression that they would be detained and deported perhaps the next day or even that same day. What do you mean -- explain what you mean now about this example.

JUDD:

Well, that's -- that's as far from the truth as -- as what is reality. What happens is if you are arrested in the United States and you ask for any sort of asylum, make any -- any claim for asylum, what we do is we will process you and -- and we will walk you right out our front door, give you a pat on the back, and say, "Welcome to the United States," and -- and they're good to go.

If they're a -- if they're...

SESSIONS:

And the -- the paperwork or the process simply is that, "Well, we'll give you a hearing on that some distant time in the future and in the meantime you're free to go."

JUDD:

Correct. Correct.

And if you're -- but at least -- at a minimum we're -- we're at least processing these individuals with an NTA and therefore it can be tracked whether or not they showed up for court. I mean, we just heard Mr. Homan -- and this is the first time I've actually heard an agency official testify to this -- we just heard Mr. Homan say that between 40 and I believe he said 55 -- might have said 50, but between 40 and 50 percent of those individuals that are given NTAs, they never even show up for their hearings.

And -- and these hearings -- what these hearings are for is -- is these are the chance for these individuals that are here illegally to make the case on why they should be allowed to stay. That's what these hearings are for. And if they're not able to make that case then they are removed and sent back to their country.

But unfortunately, these NTAs are completely and totally ignored, and why shouldn't they be? If we're not going to go find them, why would you show up to your hearing?

SESSIONS:

And nobody goes to look if they don't show up.

JUDD:

And the second part of the...

SESSIONS:

I mean, that -- fundamentally there is no policy that if somebody is ordered to appear in one of these hearings and they don't show nobody calls up ICE and says, "Go look for -- for this individual."

JUDD:

No, they don't. No, they don't.

SESSIONS:

So in a sense -- well, go ahead.

JUDD:

So the -- the second part of the -- the second part of the catch-and release program that we have is releasing individuals without NTAs. This is -- this is actually the most disconcerting part.

We can actually arrest somebody that has a criminal arrest record here in the United States and if it does not meet these priority guidelines we have to walk them out our door if they've -- if they've been here since -- if they claim to have been here since January of 2014 we have to walk them out our door and we don't even issue them an NTA. In effect we're saying, "Go ahead and stay in the country as long as you want. You don't even have to go before a judge. You don't even have to show cause for why you should be allowed to stay in the United States."

We just walk them out our door and say goodbye. And we do this -- we do this in sectors where we're not even very busy.

For instance, in the Havre Sector several months ago we arrested an individual who -- who was arrested in the state of Louisiana for a violent crime against a woman. Domestic violence. A violent crime against a woman. This was a felony arrest that this individual was on the books for.

We, the Border Patrol in the Havre Sector, arrested this individual, determined that he was in the country illegally. We found out that he had this arrest record on the books in the state of Louisiana and we still walked him out the door and said, "Goodbye. Have a nice day."

SESSIONS:

Well, tell me a little further about this question of how -- the -- the changes that have occurred at the border with regard to apprehensions. Wasn't it the case that most individuals apprehended in the past were processed and returned rather than put in a removal situation and going through the removal policy?

JUDD:

There's actually been ebbs and flows. There are times that we have, in fact, released individuals.

For instance, in the -- in the early 2000s, mid-2000s we -- we had an influx of Brazilians that were entering the country illegally. And what they would do is they would actually cross the

border and they would test us to find out if we were going to release them with an NTA. And the moment we did that they would flood that particular area until we stopped that and held them for deportation proceedings. But the moment we stopped releasing them with NTAs and held them for deportation proceedings, that traffic immediately dried up and that deterrent effect got back to the country of Brazil and they no longer tried to cross the border illegally.

So today what we're doing, in essence, is we're releasing nearly -- if you're not from the country of Mexico we're releasing basically everybody, as long as you're not from the country of Mexico. And even if you're from the country of Mexico and you claim that you have -- that you have a credible fear or that you -- you're asking for asylum for one reason or another if you're from the country of Mexico we're still releasing those individuals.

So if I were to guess I would say that -- that at least 80 percent of the individuals that the United States Border Patrol arrest at the border qualify for this catch-and-release program and in essence we are just letting them come into the United States.

SESSIONS:

Eighty percent.

JUDD:

I would guess that's -- that's about where it's at.

SESSIONS:

Mr. Nowrasteh, in 2013 you were quoted in a Fox News article as saying, quote, "Border Patrol should operate as a funnel to channel would-be unlawful immigrants into the legal market rather than an agency that separates willing workers from willing employers," close quote. Is that accurate and do you stand by that statement?

NOWRASTEH:

Yes.

SESSIONS:

I know you've previously testimony we've -- we've had an exchange, at least in a -- in a format you and I were together you -- you cited the Mariel boatlift as proof that wages of domestic workers are not reduced by a large flow of workers from abroad. In his testimony before the subcommittee -- this subcommittee Dr. Borjas, who is from Harvard and probably the

authoritative person in the world on these issues, examined that allegation or that point and established that for the people who came in on the Mariel boatlift, people in the same work skill sets that they had did see a reduction in their wages. Do you agree or disagree with Dr. Borjas' statement?

NOWRASTEH:

He did find that. The effect was delayed for several years so it's hard to draw exact causality between that. But he did make an important contribution to that literature.

I want to say in our exchange where we had this about the Mariel boatlift we also talked about many other papers and much other evidence by Professor Perry (ph) and others that discusses the wage impact of immigration in the United States.

SESSIONS:

Well, I would note the Congressional Budget Office found that if the Gang of Eight bill had passed we'd have had a decline in wages for American working people for 10 years, on that 10-year window.

Mr. Krikorian, Department of Homeland Security's Visa Overstay Report that came out earlier this year, which was rather shocking to me, indicated that 482,000 aliens who overstayed their visas in 2015 -- that's almost a half a million overstayed their visas -- were suspected to remain in the country at the end of the fiscal year. We've often heard that visa overstays account for approximately 40 percent of the illegal population in the United States today. That was a number we had several years ago.

Given the numbers in the report from last year, do you think that percentage could be rising?

KRIKORIAN:

Yeah. It's almost certainly rising. In fact, there's research from the Center for Migration Studies, which is not related to the Center for Immigration Studies -- in fact, they're a high immigration booster outfit -- but by a former INS statistics director who's a -- who's a top person on this; he's got real integrity. He looked at this data and his conclusion is that more than 50 percent of the new illegal immigrants -- in other words, there's still a lot of illegal immigrants who were border-jumpers -- of the new illegal immigrants coming in today -- I mean, his data was only through 2012 but it showed a clear pattern of the majority of new illegal immigrants are visa overstays.

And there's still a lot of people sneaking across the border, infiltrating the border. It's not that the problem isn't there; it's just that from roughly 60-40 border-jumpers-to-overstays, it now maybe has reversed to something like 60-40 overstays-versus-border-jumpers, and nobody is looking for those overstays, period. No one.

SESSIONS:

Well, Mr. Judd, this would suggest that if you can get a visa and you come to the United States lawfully for a week, a month, or for an education, or anything you can get that visa for, you never have to fear being deported unless you commit a serious crime.

JUDD:

Correct.

SESSIONS:

I mean, it's just an -- an evisceration of law, is it not? I mean, how can you deal with the problem of -- of visa overstays if your policy is not to deport anybody unless they overstay their visa and then, on top of that, commit a second -- and as secretary -- former Secretary of State Clinton said in a debate a few weeks ago, nobody should be deported unless they commit a violent crime.

JUDD:

And -- and what's amazing about that is if we -- 9/11 should scare every single United States citizen, period. If you look at those individuals that took down the towers, they came in under exactly what you're talking about. They came in under lawful visas and they overstayed those visas and they later -- they later committed the -- the most heinous crime against the citizens of this country.

The problem that we face today is nobody believes that our immigration laws are going to be forced. Everybody worldwide knows that our immigration laws are not going to be enforced.

SESSIONS:

Is that an incentive to come illegally?

JUDD:

Of course it's incentive. Why -- why not? Why not?

I -- I mean, again, let's talk about the Brazilians. When the Brazilians used to cross the border when they knew that they were going to be released, they would literally walk across the border with suitcase in hand, they would drop the suitcases the moment they crossed the border, and they would wave at the cameras so Border Patrol agents could come pick them up because we



would just facilitate their entry further into the United States. We would give them -- we would give them a bus ticket, and -- and what was funny is they were all going to either Atlanta or Boston, every single one of them.

SESSIONS:

Well, on that point, how was that reversed? It wasn't impossible. You reversed it. What happened?

JUDD:

We -- we held them for their -- for their actually show- cause proceedings. We actually held them...

SESSIONS:

Oh, so you didn't release them on bail; you gave them a hearing but you held them in custody until they had the hearing and then deported them if they didn't have a justification.

JUDD:

We did, and that stopped -- that stopped them from...

(CROSSTALK)

JUDD:

... yes, and they -- they didn't come anymore.

SESSIONS:

Well, this is -- Mr. Judd, every single day your agency reports on the seizures of -- of enormous drug loads, literally tons of heroin, cocaine, meth, marijuana with street values in millions at or near the border. A lot of it's also caught inside the border -- inside the country.

Last week the White House reported a 67 percent increase in Mexican heroin production from 2014 to 2015, and nearly all of Mexico's heroin is targeted from the -- in -- to the United States. Isn't that correct?

JUDD:

That is correct, and -- and that's something that we should -- that should also scare the American public. There is a way that you can actually -- these individuals that are crossing the border illegally, they're doing it to tie our hands up. They know that if we're chasing these individuals then the -- then the cartels can run the higher-profit contraband, such as heroin, right behind us, right behind the holes that they create.

All of these individuals that are crossing the border illegally -- and again, that is a -- that is a violation of the law to cross the border illegally -- all of these individuals, they could present themselves at the port of entry and ask for asylum but they don't. They cross the border illegally because they -- because the cartels know that now we're going to be tied up chasing those illegal aliens and all they do is they run their higher-profit contraband behind us.

SESSIONS:

Thank you.

Mr. Judd, would you say the administration's policies of catch- and-release that you have described has encouraged a surge of illegal immigration, have made it more difficult for the Border Patrol to interdict the flood of drugs in addition to people crossing the border?

JUDD:

I wouldn't say that. I know it has. I know it has.

SESSIONS:

And would you say that the uptick we've seen in illicit drugs -- would you say we're seeing an increase in illicit drugs crossing the border?

JUDD:

I just got a picture from -- from a very good friend of mine, a canine handler who works out of Arizona, and -- and I -- I saw several pictures of China White heroin that they -- that -- that was filled in a -- in a vehicle that they had to take the vehicle apart to -- to get to it. We know that it's coming, and -- and the policies are encouraging it to -- to continue to come.

SESSIONS:

Well, thank you all. I appreciate this testimony.

My judgment, having been a federal prosecutor for almost 15 years, I've worked with crime, I -- there is a deterrent impact in law enforcement, and I think it would be very dramatic with regard to illegal immigration.

And if we had a leader in this country that said, "Do not come to this country unlawfully; you will be apprehended, and if you are apprehended you will be deported and we're not going to play games anymore; and you're going to be sorry you wasted your money and your time and risked your life; if you want to come to America apply lawfully," we would see a dramatic reduction in the attempts, the risk that people are taking to come to America, and we would restore some credibility to our system.

I feel very strongly about it. I think this hearing has helped confirm that fact.

Thank you all for your testimony. It's been very valuable.

We will adjourn the hearing and there will be an opportunity for people to submit questions for the record, and we would appreciate it if you would respond if requested.

Thank you. We are adjourned.