

1 DECLINING DEPORTATIONS AND INCREASING CRIMINAL ALIEN
2 RELEASES - THE LAWLESS IMMIGRATION POLICIES
3 OF THE OBAMA ADMINISTRATION

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5 THURSDAY, MAY 19, 2016

6 United States Senate,
7 Subcommittee on Immigration and the National Interest,
8 Committee on the Judiciary,
9 Washington, D.C.

10 The Subcommittee met, pursuant to notice, at 3:05 p.m.,
11 in room SD-226, Dirksen Senate Office Building, Hon. Jeff
12 Sessions, Chairman of the Subcommittee, presiding.

13 Present: Senators Sessions, Grassley, Blumenthal, and
14 Klobuchar.

15 OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR
16 FROM THE STATE OF ALABAMA

17 Chairman Sessions. The Committee will come to order.

18 Senator Blumenthal, who will serve as Ranking, is on
19 his way. We just had a series of votes, and that has gotten
20 us all off kilter a little bit.

21 So thank you all for being here. I want everyone
22 present to be able to watch the hearing without obstruction.
23 If people stand up and block the view of those behind them
24 or speak out of turn, it is not fair or considerate to
25 others, and officers will remove those individuals from the

1 room.

2 Before we begin with opening statements, I want to
3 explain how we will proceed today. We have two panels of
4 witnesses. I will make an opening statement, followed by an
5 opening statement from Senator Blumenthal, who will be
6 serving as Ranking Member. We will then begin with the
7 first panel. After a brief introduction, each witness will
8 have 5 minutes for an opening statement. Following their
9 statements, we will begin the first round of questions in
10 which each Senator will have 5 minutes. After the first
11 round, if any Senator wishes to continue with questions, we
12 will have a second or third round of questions. We will
13 then turn to the second panel and go through the same
14 procedure.

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

17 First, I would like to extend my condolences to the
18 Director of ICE, Sarah Saldana, and her family on the recent
19 tragic loss that they have had. Our thoughts and prayers go
20 out to them at this difficult time.

21 Throughout its tenure, the Obama administration has
22 made numerous public statements, issued multiple memoranda,
23 and represented in testimony before Congress that it has
24 limited resources and, therefore, can remove only a certain
25 number of category of even illegal aliens. Specifically,

1 the administration repeatedly claimed that the U.S.
2 Immigration and Customs Enforcement, ICE, had the resources
3 to deport only approximately 400,000 illegal aliens from the
4 United States each year. So, their reasoning went, they
5 were compelled to focus on criminal illegal aliens and other
6 aliens who pose threats to the Nation's security.

7 Because of this focus, the President argued he had no
8 choice but to grant Executive amnesty to millions of illegal
9 aliens which would allow them to stay in the country and be
10 able to obtain work permits and other Federal benefits.
11 Well, this was the position they essentially took in Federal
12 court in the case that they lost.

13 Yet as we will examine in today's hearing, rather than
14 truly prioritizing the removal of certain types of illegal
15 aliens over others and getting on with that effort, the
16 Obama administration has simply refused to execute the laws
17 passed by Congress and signed into law. It has ordered
18 immigration law enforcement officers to ignore plain law and
19 acquiesce to the presence of millions of illegal aliens in
20 the United States, including criminals and those who have
21 already been ordered deported to leave the country. If the
22 administration was truly prioritizing the removal of certain
23 illegal aliens over others, it would be reasonable to assume
24 that with the same resources, the number of deportations
25 would remain relatively steady each year. With more

1 resources, you would expect more removals.

2 However, the simple fact is that since these policies
3 were implemented, deportations have plummeted, and
4 particularly deportations from the interior of the country
5 as opposed to the border. In fact, the policy says if you
6 can get past the border, you are not going to be deported.
7 And most sharply, the fall is under the guidelines issued by
8 the Secretary of Homeland Security Jeh Johnson in November
9 of 2014.

10 As this dramatic decline has occurred, Congress has
11 increased funding each year for the purpose of immigration
12 enforcement. So this is not prioritization in any effective
13 way, and it is not legitimate prosecutorial discretion.
14 This is a total actual refusal to carry out laws passed by
15 Congress that the Constitution obliges the President to
16 faithfully execute.

17 Meanwhile, the Obama administration has been releasing
18 thousands of criminal illegal aliens onto our streets. In
19 just the last 3 years, ICE released 86,288 criminal aliens.
20 At the same time, the administration touts the decrease in
21 the number of apprehensions at the border as a sign of
22 improving border security, but as we will hear in testimony
23 today, we simply do not apprehend every illegal alien who
24 crosses the border. Not even close. Moreover, we are
25 seeing near record levels of certain categories--

1 unaccompanied alien minors and family units--who face no
2 chance of actually being deported under policies being
3 carried out today. That simply sends a message to anybody
4 anywhere in the world that if they can somehow get into the
5 United States across our southern border, for example, they
6 will be allowed to stay in the country. Other than Mexico,
7 they are allowed to stay in the country. And so that is the
8 reason so many are now coming. It is not the law that is on
9 the books but the policies that are actually being carried
10 out at our border.

11 This is now how the immigration system was intended to
12 work. It is not how the immigration system must work. This
13 is a lawless policy, and it has got to be ended.

14 So today's hearing will focus on a central claim the
15 administration makes to excuse its lawless immigration
16 policies, namely, that limited resources compelled the
17 implementation of its lawless immigration policy.

18 We will also assess the impact of this lawlessness on
19 the integrity and the very moral foundation of a policy. If
20 it is not properly executed and carried out, it has no
21 integrity, and it lacks morality. So this administration
22 for too long has been trying to hide from the American
23 people the true nature and extent of what it is doing. So
24 today we will set the record straight. Efficiency,
25 effectiveness, productivity are essential in this

1 Government. Taxpayers do not spend money on ICE and the
2 Border Patrol to have supervisors somehow keep the officers
3 from doing their duty. Accountability is critical.
4 Congress has a duty to ensure accountability of the agencies
5 it supervises, and that is what we will attempt to do today.

6 Senator Blumenthal, thank you for your good work on
7 this Committee, and I am pleased to recognize you at this
8 time.

9 OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S.

10 SENATOR FROM THE STATE OF CONNECTICUT

11 Senator Blumenthal. Thank you, Senator Sessions.
12 Thank you for your chairing this session of our Subcommittee
13 on Immigration and the National Interest, and thank you to
14 the Chairman who has joined us, Senator Grassley.

15 We should approach the issue of immigration enforcement
16 and reform on a bipartisan basis, as indeed this Committee
17 did in passing an immigration reform measure last session.
18 Unfortunately, it was not brought to the floor of the House,
19 but it passed the United States Senate by an overwhelming
20 bipartisan majority, and that is the approach that we need
21 to keeping our country safe and making sure that immigration
22 laws and enforcement of them is fair and in our self-
23 interest. And I hope that we can approach these issues on a
24 bipartisan basis.

25 I continue to believe that immigration reform is

1 vitally necessary, and I hope that we will continue our work
2 toward it in the next session, if not this one, because it
3 is broken. Our present system has failed and is failing,
4 and we need to provide a path toward earned citizenship for
5 the 11 million people who currently live in the shadows.
6 And we need stronger means of enforcement at our borders,
7 which also was one of the objectives of immigration reform,
8 along with eliminating abuses in related programs like H-1B
9 visas and expanding the number of H-1B visas that can be
10 provided.

11 Those kinds of reforms are vitally necessary. In the
12 meantime, enforcement--that is to say, fair and effective
13 enforcement--must continue to be a priority. I know from my
14 own life in law enforcement how important it is that laws be
15 enforced fairly and effectively. I did it as an objective
16 when I was United States Attorney in Connecticut and for 20
17 years as Attorney General of my State.

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

21 We are going to hear today about numbers. Experts
22 disagree on whether deportations are going up or down and
23 the right way to answer that question. In my view,
24 immigration enforcement is about more than just the numbers
25 of people removed from the country. It is about priorities.

1 If the Department of Homeland Security removes millions
2 of people from this country each year but fails to keep
3 America safe, it has failed to do its job. Let me give a
4 case in point.

5 On June 15, 2015, a man named Jean Jacques killed a 25-
6 year-old young women named Casey Chadwick in Norwich,
7 Connecticut. Jean Jacques was an immigrant from Haiti.
8 After serving more than 15 years in prison for attempted
9 murder, Jacques was detained by immigration officials.
10 Unfortunately and inexplicably and inexcusably, he was never
11 removed from the United States. Instead, he was released
12 from ICE custody, and that release allowed him to murder
13 Casey Chadwick.

14 I have demanded an internal investigation by the
15 Inspector General. In fact, I believe that that
16 investigation must lead to accountability. I have been
17 joined in that effort by Representative Courtney and my
18 colleague Senator Murphy. I hope and demand to see that
19 report. In fact, I think it should be done immediately.

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

24 I have met with the family of Ms. Chadwick. If I
25 needed any source of passion or intensity, which I felt

1 before seeing them, observing their courage and strength
2 certainly would provide it. And so I believe deeply that
3 this administration must do better, and I believe it will be
4 determined to do better as a result of heeding the calls
5 from Members of Congress as well as others and advocates of
6 fairness and effectiveness in enforcement.

7 The Obama administration has committed to focusing its
8 resources on removing dangerous individuals like Jean
9 Jacques, deporting felons not families. I believe that is
10 the right policy. But every time ICE fails to deport a
11 dangerous individual, it undermines the country's confidence
12 in that agency and in fair and effective enforcement of our
13 current immigration laws. They need reform, but right now
14 they have to be enforced with the credibility and trust that
15 good judgment is involved.

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

22 And so these cases are heart-wrenching and
23 heartbreaking. They indicate a need for the administration
24 to do better, and I hope that the hearing today and other
25 steps in the right direction will prompt wiser and better

1 judgment from ICE and that we will see very quickly, in
2 fact, within days or even hours, that report from the
3 Inspector General and that anyone responsible for the
4 failure to deport Jean Jacques will be held accountable.

5 I want to thank the witnesses who are here today. I
6 express my condolences to Director Saldana on the passing of
7 her son on May 13th. And I apologize that I am unable to
8 stay for the balance of this hearing due to another
9 commitment. I want to thank Senator Sessions and my
10 colleague Senator Klobuchar also for being here.

11 Thank you, Mr. Chairman.

12 Chairman Sessions. Thank you, Senator Blumenthal.

13 Will you each stand and raise your right hand and
14 affirm that the testimony--raise your right hand, please.
15 Do you affirm the testimony you are about to give before
16 this Committee will be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 Mr. Homan. I do.

19 Mr. Vitiello. I do.

20 Chairman Sessions. Thank you. I will now briefly
21 introduce each witness before they are provided an
22 opportunity to make an opening statement. For reference,
23 their full biographies are available on the Committee
24 website.

25 First, we have Mr. Tom Homan. Mr. Homan serves as the

1 Executive Associate Director--those are pretty good titles,
2 Executive Associate Director--of Enforcement and Removal
3 Operations at U.S. Immigration and Customs Enforcement. He
4 is a 30-year veteran of law enforcement, 27 years of
5 immigration experience, a bachelor's degree in criminal
6 justice. He began his career as a New York police officer.
7 He then began his career in the immigration world, starting
8 as a Border Patrol agent in 1984, a special agent with the
9 former U.S. Immigration and Naturalization Service beginning
10 in 1988, and has since served in a variety of roles while
11 reaching the top of the organization.

12 Next we have Mr. Ronald Vitiello. Mr. Vitiello is the
13 Acting Chief of the U.S. Border Patrol. As its chief
14 operating officer, he is responsible for the daily
15 operations of the Border Patrol and reports to the
16 Commissioner of U.S. Customs and Border Protection.
17 Assisting in planning and directing nationwide enforcement
18 and administrative operations, Mr. Vitiello, another 30-year
19 law enforcement veteran, entered on duty as a Border Patrol
20 agent in 1985 and has since served in a variety of
21 leadership roles across the agency.

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

1 TESTIMONY OF THOMAS HOMAN, EXECUTIVE ASSOCIATE
2 DIRECTOR, ENFORCEMENT AND REMOVAL OPERATIONS, U.S.
3 IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S.
4 DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

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

11 In my 30-plus years in law enforcement, I have served
12 many roles, including a Border Patrol agent, Assistant
13 District Director for Investigations, Deputy Special Agent
14 in Charge, and Assistant Director for Enforcement. I
15 currently serve as Executive Associate Director for ICE
16 Enforcement and Removal Operations, or ERO, where I oversee,
17 direct, and coordinate the operational activities of
18 approximately 6,000 deportation officers throughout the
19 Nation's ERO field offices.

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

1 enforcement priorities.

2 In fiscal year 2015, ICE conducted 235,413 removals:
3 59 percent of all ICE removals were previously convicted of
4 a crime; 98 percent of all ICE removals met one or more of
5 ICE's immigration enforcement priorities. Of the 96,045
6 individuals removed who had no criminal conviction, 94
7 percent of them were apprehended at the border by the Border
8 Patrol. The leading countries of origin for removals were
9 Mexico, Guatemala, Honduras, and El Salvador.

10 More specifically, of the total ICE removals in fiscal
11 year 2015, 86 percent fell into Priority 1, which includes
12 national security and public safety threats; 8 percent fell
13 into Priority 2, which includes individuals convicted of
14 serious or multiple misdemeanors; and 4 percent fell into
15 Priority 3, aliens who received a final order of removal on
16 or after January 1, 2014.

17 A significant factor impacting removals has been the
18 number of State and local law enforcement jurisdictions
19 limiting or declining cooperation with ICE. When State or
20 local law enforcement agencies decline to transfer custody
21 of removable convicted criminals and public safety threats
22 to ICE, my officers must locate and arrest such aliens at-
23 large, which is dangerous and resource intensive. To
24 address this problem, the Department created the Priority
25 Enforcement Program, known as PEP.

1 Our objective with PEP is to implement an interior
2 enforcement strategy that supports community policing by
3 focusing on convicted criminals and individuals who threaten
4 public safety and by working with State and local law
5 enforcement to take custody of dangerous individuals and
6 convicted criminals--including felons, significant/repeat
7 misdemeanants, and criminal gang participants--before they
8 are released into the community.

9 It is critically important that we bring back
10 noncompliant jurisdictions as partners so we can work
11 together to keep our communities safe. When that is not
12 possible, deportation officers are assigned to seek and
13 arrest criminal aliens and other enforcement priorities.
14 Our officers continue to accomplish this mission with
15 accuracy, consistency, and professionalism. One key
16 responsibility of our officers is to locate and arrest of
17 criminal aliens who were released to the streets because
18 detainers or requests for notification were not honored.

19 Changing migrant demographics has also impacted ERO's
20 removal operations. As illegal entries by Mexican nationals
21 continue to decrease, illegal entries by Central Americans--
22 especially unaccompanied alien children and family units--
23 continue to increase. In general, more time, personnel, and
24 funding are required to complete the removal process for
25 nationals from Central America and other noncontiguous

1 countries when compared to Mexican nationals apprehended at
2 the border. This is because removals of non-Mexican
3 nationals requires ICE to use additional detention capacity,
4 expend more time and effort to secure travel documents from
5 the host country, and arrange air transportation to remove
6 these aliens to their country of origin.

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

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

20 With the Committee's support, ICE will continue to
21 implement our enforcement in a smart and a strategic manner
22 to safeguard our communities, maximize the agency's success,
23 and engage with State and local governments and local
24 communities to enhance cooperation and build enduring
25 partnerships.

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

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

6 Thank you.

7 [The prepared statement of Mr. Homan follows:]

- 1 Chairman Sessions. Thank you.
- 2 Mr. Vitiello.

1 TESTIMONY OF RONALD VITIELLO, ACTING CHIEF, U.S.
2 BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION,
3 U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON,
4 D.C.

5 Mr. Vitiello. Thank you, Chairman Sessions, Ranking
6 Member Blumenthal, and distinguished members of the
7 Subcommittee. It is an honor to appear before you today to
8 discuss the role of U.S. Border Patrol in enforcing
9 immigration laws and securing our borders.

10 The Border Patrol, in close cooperation with our
11 partners, protects the United States against terrorist
12 threats and prevents the illegal entry of people and
13 contraband along 6,000 miles of land border between the
14 ports of entry and 2,000 miles of coastal waters.

15 As part of our border security mission, the Border
16 Patrol shares responsibility for enforcing U.S. immigration
17 laws with other CBP components, U.S. Immigration and Customs
18 Enforcement, U.S. Citizenship and Immigration Services, the
19 Departments of State and Justice. The Border Patrol's role
20 is focused on detecting, deterring, and apprehending
21 individuals crossing the border illegally.

22 All individuals apprehended by the Border Patrol are
23 subject to an immigration inspection, which includes
24 interviewing the subject to establish identification,
25 capturing biometric information such as photograph and

1 fingerprints, and checking biographic and biometric records
2 against multiple databases for previous immigration
3 encounters and removals. The Border Patrol also checks
4 multiple crime and terrorist databases for wants/warrants,
5 criminal history, and lookouts. If derogatory information
6 is discovered, the records are reviewed by Border Patrol
7 agents and evaluated to determine if a criminal or
8 administrative proceeding or enforcement action should be
9 pursued. If there is a want or criminal warrant in the
10 NCIC, the corresponding Federal, State, tribal, or local
11 agency is contacted.

12 To apply consequences to subjects from attempting
13 further illegal entries or participating in a smuggling
14 enterprise, the Border Patrol developed the Consequence
15 Delivery System, CDS. The CDS guides agents through a
16 process designed to evaluate each subject and identify the
17 most effective and efficient administrative or criminal
18 consequence applicable to the person in custody, with the
19 goal of reducing further illegal activity.

20 The CDS uses a combination of criminal and
21 administrative consequences, relying on strategic
22 partnerships with governmental agencies, including the U.S.
23 Attorney's Office, U.S. Marshals Service, and the Government
24 of Mexico. Working closely with ICE, the Border Patrol also
25 targets suspected smugglers and disrupts smuggling efforts

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

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

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

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

25 Collectively, these CDS initiatives aid the overarching

1 effort to improve the safety and security of the border.

2 The border regions of the United States cannot be
3 effectively secured by one single DHS component or even a
4 single governmental entity. A whole-of-Government approach
5 has been and will continue to be the most effective way to
6 keep our border secure.

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

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

19 [The prepared statement of Mr. Vitiello follows:]

1 Chairman Sessions. Thank you very much.

2 Mr. Homan, the Obama administration has repeatedly
3 claimed that it has the resources to deport approximately
4 400,000 aliens from the United States each year. In 2012,
5 the record indicate that ICE deported 409,000 people. It
6 did so with a budget of \$2.7 billion for the detention and
7 deportation of aliens from the United States. Of those
8 deported, 180,000 came from the interior of the United
9 States, which would be a primary ICE responsibility. Is
10 that correct?

11 Mr. Homan. Yes, that is correct.

12 Chairman Sessions. And 228,000 were from the border,
13 Mr. Vitiello, basically the Border Patrol's primary
14 responsibility.

15 Mr. Vitiello. Correct.

16 Chairman Sessions. In fiscal year 2015, however, ICE
17 deported a total of 235,000 aliens, which is a considerable
18 drop from 409,000. It did so with a budget of \$3.4 billion.
19 Maybe we can show this chart that would indicate how the
20 budget has moved. In 2012, the budget was \$2.75 billion,
21 and then in 2015, it was \$3.43 billion. And we have seen a
22 substantial increase--that is a 25-percent increase. Can
23 you explain, Mr. Homan, how the numbers have dropped so
24 dramatically when you got a 25-percent increase in your
25 budget?

1 Mr. Homan. Well, certainly, because the framework had
2 changed. Our job is tougher today than it was back in
3 fiscal year 2012 for various reasons. The State of
4 California accounts for about 40 percent of my criminal
5 alien arrests, and when they passed the Trust Act, they took
6 a lot of Level 3's off the table. So that narrowed my scope
7 of target aliens.

8 Chairman Sessions. Well, Mr. Homan, isn't it true that
9 police officers all over America call ICE officers on a
10 regular basis and you do not even attempt to come and pick
11 up those that they are holding that are here illegally to
12 deport them? You have got policies that just--it is not a
13 question of not having sufficient people to deport.

14 Mr. Homan. Well, there are a number of reasons why the
15 numbers are down. In addition to the Trust Act, I still
16 have sanctuary cities that do not cooperate with us. So,
17 yeah, some law enforcement agencies call us, but many do
18 not. We still have a detainer situation across the country
19 where our detainers are not honored, and that is where my
20 men and women have to go knock on a door--

21 Chairman Sessions. Has that increased substantially
22 since 2012?

23 Mr. Homan. In 2012--

24 Chairman Sessions. We had sanctuary cities in 2012,
25 didn't we?

1 Mr. Homan. Yes, we did, but we did not have the
2 detrainer issue that we have had in 2015 and present.

3 Chairman Sessions. So the detrainer issue could make a
4 difference if that could be fixed?

5 Mr. Homan. Pardon me?

6 Chairman Sessions. Would fixing the detrainer issue
7 allow you to deport more people?

8 Mr. Homan. Certainly it would.

9 Chairman Sessions. Well, have you proposed any
10 legislation, has the Department proposed any legislation to
11 fix this detrainer issue?

12 Mr. Homan. I do not know what the Department has
13 proposed, but what I can say is the PEP program is trying to
14 bring some of the noncooperative jurisdictions back. There
15 are--

16 Chairman Sessions. Well, apparently it is not working
17 because your numbers are down substantially.

18 Mr. Homan. Well, there are many large jurisdictions
19 that have not come back to the table yet, and that is a
20 concern.

21 Chairman Sessions. Of the 235,000 aliens deported, a
22 drop, as I noted, from 400,000, only 69,000 came from the
23 interior of the United States--that would be your
24 jurisdiction--a 62-percent decline since 2012. So forgive
25 me if I do not accept the fact that sanctuary cities that

1 have been in place for many years and the detainer policy is
2 the exclusive reason for that.

3 Mr. Homan. Well, sir--

4 Chairman Sessions. And 165,000 of that number were
5 from the border, which is also a decrease. But tell me
6 again, what can we do and do you have any ideas to get more
7 productivity for the taxpayers who have given you a big pay
8 raise?

9 Mr. Homan. Well, if I can finish my answer on why the
10 numbers are down, there are a number of reasons the numbers
11 are down. And if you go back--it starts with, you know, the
12 Trust Act in California had a big impact. Border Patrol
13 apprehensions last year were down 31 percent. They make up
14 60 percent of my beds. When they take a 31-percent decrease
15 on the border, that has a significant impact on me.

16 Sanctuary cities, jurisdictions not honoring my
17 detainers, the Trust Act--in 2012, John Morton, the
18 Assistant Secretary of ICE, issued a policy on who we issue
19 detainers on. It virtually took Level 3's off the table.
20 This is a law-abiding society, so most crimes are Level 3's,
21 so to take Level 3's off the table is significant.

22 We have got the Rodriguez lawsuit. I am required to
23 release people after 6 months even though they are
24 mandatorily detained in the Ninth Circuit.

25 Executive actions have narrowed my target population

1 down by certain requirements of the Executive actions.

2 Chairman Sessions. Executive action, that is the
3 President's direction not to deport certain people.

4 Mr. Homan. Executive action narrowed my target pool
5 because to put a detainer on somebody--

6 Chairman Sessions. The President ordered you not to
7 enforce certain cases and focus only on criminal cases.
8 Isn't that basically correct?

9 Mr. Homan. We focused our attention on all three
10 enumerated priorities which include most importantly
11 criminal aliens, national security, and recent border
12 entrants.

13 Chairman Sessions. What does "recent border entrants"
14 mean?

15 Mr. Homan. Somebody that entered after 1/1/14.

16 Chairman Sessions. And do you count those if they come
17 from the border arrest, those that are arrested on the
18 border?

19 Mr. Homan. If they come into my custody.

20 Chairman Sessions. Well, that is a change, of course,
21 making those number look higher than they used to look.

22 Well, I believe--isn't it true that ICE officers get
23 calls every day from police officers and departments all
24 over America that are not sanctuary cities, and you are not
25 responding to them because they do not meet the guidelines

1 or the priorities established by the President?

2 Mr. Homan. That is true.

3 Chairman Sessions. So it is not true then that the
4 reason your numbers are down is because you do not have
5 people to deport. You have them to deport, but you have
6 policies that tell you not to deport whole categories of
7 people that are here unlawfully. Isn't that correct?

8 Mr. Homan. That is a factor, yes, sir.

9 Chairman Sessions. All right. My time is up. Thank
10 you, Mr. Homan.

11 Senator Blumenthal. Thanks, mc.

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

13 Mr. Homan. Yes, sir.

14 Senator Blumenthal. Can you tell me when the Inspector
15 General report will be done?

16 Mr. Homan. I do not know. I know it is ongoing. I
17 know they are questioning employees within ICE. But I have
18 no idea when that report will be finished.

19 Senator Blumenthal. Would you agree with me that
20 finishing that report as soon as possible is important?

21 Mr. Homan. Absolutely.

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

1 Mr. Homan. I agree with you it is a terrible tragedy.
2 The reason he was not deported is because the agency could
3 not obtain travel documents from the country of Haiti. That
4 is my understanding of the case.

5 Senator Blumenthal. Even though everyone knew he was
6 from Haiti, correct?

7 Mr. Homan. We had evidence he was from Haiti, but,
8 unfortunately, the Government of Haiti would not issue a
9 travel document based on the evidence that we had.

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

13 Mr. Homan. That is my understanding, yes, sir.

14 Senator Blumenthal. In your testimony, you mentioned
15 that the Department of State and ICE are working together to
16 overcome some of the challenges raised by countries that
17 refuse to accept their citizens back in their countries like
18 Jean Jacques. And, by the way, I disagree that he could not
19 have been deported, that sufficient measures were taken to
20 compel Haiti or persuade that nation to take him back, but
21 let us put aside that disagreement. Can you tell me whether
22 progress is being made by ICE and the State Department to
23 pressure countries to repatriate their citizens? Because
24 there are, after all, I understand, as many as 85 countries,
25 23 on the list of resistant or uncooperating countries, and

1 62 being reviewed for strained cooperation, still not fully
2 cooperating, and Haiti is on the list of the 62 countries
3 mentioned in your testimony that strain cooperation but
4 still are not deemed "recalcitrant" at this time? What
5 progress has been made?

6 Mr. Homan. In the past year, as far as what I have
7 done as EAD for ERO, either me or my deputy have penned 64
8 Annex 9 letters to foreign consuls here in the country
9 asking for assistance in retaining travel documents from
10 their consulates. Director Saldana has issued two demarche
11 letters in 2015 to allegation and Iraq through the State
12 Department. There are four additional letters, action being
13 taken on now to Cuba, Guinea, China, and Liberia. Cuba, we
14 are asking for demarche. Guinea, we are asking for visa
15 sanctions. China, we are asking for a meeting between the
16 Assistant Secretary at the Department of State, the
17 Director, and the Ambassador.

18 Senator Blumenthal. What does "demarche" mean?

19 Mr. Homan. It is a letter explaining to them their
20 responsibilities under the Convention, and we are not
21 getting the cooperation from their consuls to receive the
22 travel documents in a timely manner or sometimes not at all.

23 Senator Blumenthal. And what is the consequence?

24 Mr. Homan. Well, there is an MOU signed by the
25 Director of ICE along with the Assistant Secretary of

1 Consular Affairs of the Department of State, and the first
2 thing is an Annex 9 letter letting them know, "Hey, we need
3 some assistance on a travel document for a person." But the
4 process starts with issuing a demarche letter. A demarche
5 letter pretty much lays out the responsibility and our
6 dissatisfaction with a travel document issue.

7 Then the second step in the MOU is we hold meetings
8 with the Ambassador and the U.S. Assistant Secretary for
9 Consular Affairs to discuss the situation.

10 Then we provide notice to the country formally deemed
11 "recalcitrant" that we will attempt to ask for visa
12 restrictions from the State Department if the cooperation
13 does not come.

14 Senator Blumenthal. Have visa restrictions been taken
15 against any of those 62 countries?

16 Mr. Homan. Visa restrictions have been taken against
17 Guyana, I believe. The other 62 countries, no, sir.

18 Senator Blumenthal. Were any of these steps taken in
19 the Jean Jacques case against Haiti?

20 Mr. Homan. I do not know.

21 Senator Blumenthal. Would you find out?

22 Mr. Homan. Yes, sir.

23 Senator Blumenthal. Have any actions been taken
24 against Haiti since the Jean Jacques case?

25 Mr. Homan. Haiti is actually--we have made progress in

1 Haiti. We actually returned 433 Haitian nationals in 2015,
2 and so far this year we have returned 206 to the country of
3 Haiti. So we are actually making some progress with them.

4 Senator Blumenthal. Is Haiti on the list of 62 limited
5 cooperation countries?

6 Mr. Homan. Yes.

7 Senator Blumenthal. And so could you give me those
8 numbers again?

9 Mr. Homan. In fiscal year 2015, 433 Haitians were
10 removed to Haiti, and so far in 2016, 206.

11 Senator Blumenthal. And how about in the years
12 previously?

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

15 Senator Blumenthal. Would you provide those numbers?

16 Mr. Homan. Yes.

17 [The information follows:]

18 / SUBCOMMITTEE INSERT

1 Senator Blumenthal. The fact of the matter is, would
2 you not agree Jean Jacques should have been one of them?

3 Mr. Homan. I wish he would have been one of them, yes.
4 It was a terrible tragedy. I have been a law enforcement
5 officer for 32 years. I do not want to see someone like him
6 running around the streets of this country.

7 Senator Blumenthal. Would you not agree that even
8 stronger action needs to be taken against these countries
9 that are noncooperative or recalcitrant?

10 Mr. Homan. Yes.

11 Senator Blumenthal. And what steps is the Department
12 of State or ICE taking to make sure that stronger action is
13 taken?

14 Mr. Homan. Again, we have an MOU that is existing. I
15 think we are taking steps within that MOU. When it gets
16 beyond the Annex 9 letter, that is a higher pay grade than
17 myself as a Director. But I certainly think more needs to
18 be done with countries that do not accept their nationals,
19 countries such as Cuba, a whole list of 23 countries,
20 because many criminal aliens that we cannot remove are
21 residing in our neighborhoods, which they should not be.

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

24 Mr. Homan. Yes.

25 Senator Blumenthal. It is not about building walls or

1 excluding people on the basis of race or religion. It is
2 about deporting, sending out of this country people who have
3 demonstrated that they are dangerous and broken our laws,
4 many of them felons--in the case of Jean Jacques a convicted
5 felon--who then do pernicious and insidious damage to our
6 people. And let me just say the more I hear from your
7 agency, nothing personal to you, the more troubled and
8 disturbed I am about the lack of strong, effective steps
9 that will restore credibility to this system. And that
10 credibility depends on fair and effective enforcement.

11 So I hope the message will go back to ICE that, before
12 long, we will reach the conclusion that Congress needs to be
13 involved to assure that dangerous law breakers are
14 repatriated to their countries when they are here illegally.

15 Thank you.

16 Mr. Homan. If I may, one additional point. I think
17 the Department of State is a piece of this equation, too.
18 Only they can order visa sanctions, so I think it needs to
19 be a collaborative effort between both departments.

20 Senator Blumenthal. I take that point, and I am glad
21 you added it. My comments are directed to the
22 administration, not solely to ICE. You are absolutely right
23 that the Department of State and perhaps the Department of
24 Justice have roles to play here. So I thank you for making
25 that point. Thank you.

1 Thanks, Mr. Chairman.

2 Chairman Sessions. Thank you, Senator Blumenthal.

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

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

11 Mr. Homan. Well, it starts with a letter from me to
12 the foreign consulates, but once--

13 Chairman Sessions. That is the State Department,
14 right? Or their--

15 Mr. Homan. My letter goes straight to the foreign
16 ambassador, copied to the Department of State. If we get no
17 response, then it goes to the next step, and that is where
18 the Department of State and our Director get involved.

19 Chairman Sessions. And then your Director requests
20 presumably the Department of State to act.

21 Mr. Homan. Yes, sir.

22 Chairman Sessions. Has your Department requested the
23 Department of State to take strong action regard to Haiti as
24 a result of this tragic death?

25 Mr. Homan. I do not know.

1 Chairman Sessions. But that would be the way the
2 system would normally work?

3 Mr. Homan. Yes. We would go to the Department of
4 State and set up meetings with the Haiti Government, explain
5 to them the situation, ask them to turn it around. If they
6 do not, then if things do not improve, the next step would
7 be to recommend visa sanctions.

8 Chairman Sessions. And visa sanctions would be to
9 simply say we are going to reduce or stop any visas to
10 anybody in Haiti until you agree to take back people who
11 have been convicted or charged with a serious criminal
12 offense in the United States?

13 Mr. Homan. Yes.

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

21 Mr. Homan. Yes, it is.

22 Chairman Sessions. And that is fundamental. And if a
23 country refuses to do that, then the nation can say, "We are
24 not taking any more from you until you convince us that you
25 are going to comply with that internationally accepted

1 rule."

2 Mr. Homan. Yes, sir.

3 Chairman Sessions. Well, that is what has not been
4 done. It has not been done for decades. Does it cost you
5 money? Do you have to hold dangerous people in prison for
6 weeks, months, or longer because these countries are
7 refusing to do their plain duty?

8 Mr. Homan. Criminal aliens that we cannot repatriate
9 because we do not have the cooperation of the governments,
10 they are threat to community safety and, frankly, they are a
11 threat to my law enforcement officers. So, yes, I take it
12 very seriously.

13 Chairman Sessions. And you either have to house them
14 in our prisons at our expense or release them on bail into
15 the community where they remain a danger.

16 Mr. Homan. Yes, sir.

17 Chairman Sessions. That is your only choice you have.

18 Mr. Homan. Yes, sir.

19 Chairman Sessions. Well, frankly, the Secretary of
20 State should pick up the telephone to all these 62 countries
21 and tell them that is what the truth is, and if you want to
22 continue to have people come to the United States, then we
23 are going to insist that you immediately comply. It should
24 not be taking long periods of time, in my opinion. It is a
25 very frustrating process.

1 Now, a detainer is lodged normally when somebody is in
2 the country illegally and they commit a crime or some
3 offense and are being held in a State and local prison. And
4 you desire to deport them, and you place a detainer on them
5 which would keep them from being released until you have an
6 opportunity to deport them. Is that essentially the way the
7 detainer system works?

8 Mr. Homan. Well, the detainer rules have changed with
9 Executive action. Now to put a detainer on an individual,
10 they have to meet one of the priorities. If they are there
11 for a crime, they have to be convicted of a crime.

12 Chairman Sessions. It has to be convicted now?

13 Mr. Homan. Yes, sir.

14 Chairman Sessions. Well, that is not some
15 constitutional requirement, is it?

16 Mr. Homan. Not that I--

17 Chairman Sessions. It did not used to be that way, did
18 it?

19 Mr. Homan. It did not used to be that way, Senator.

20 Chairman Sessions. When did it change?

21 Mr. Homan. In November of 2014. It took effect in
22 January of 2015.

23 Chairman Sessions. So that is what happened. So now
24 somebody is caught for a very serious crime. We have got to
25 go through the process of trying them, convicting them, and

1 then deporting them, where they are subject to being
2 deported whether they commit a crime in the country or not
3 if they are here illegally, are they not?

4 Mr. Homan. Again, I have got to--

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

8 Mr. Homan. Yes.

9 Chairman Sessions. And what reason is there to demand
10 that they actually be convicted of the crime before they are
11 deported?

12 Mr. Homan. Well, the framework I am provided, they try
13 to prioritize those that have been convicted. The reasoning
14 behind that I would not know. I mean, they want to
15 prioritize the work we do. And, actually, you know--

16 Chairman Sessions. Well, it certainly reduces the
17 number of people you deport. You have got to wait at least--
18 -it may take months. It may cost the taxpayers of the
19 United States 6, 9 months, 2 years of custody before the
20 trial gets completed, when they could have been deported
21 promptly and saved all that.

22 Mr. Homan. One positive result of this action from the
23 prioritization is that the number of convicted criminals we
24 actually removed last year, the percentage of convicted
25 criminals, that 59 percent, was an agency record. Those

1 arrested in the interior, 91 percent has a criminal
2 conviction. So if you talk about prioritization, if you
3 have a criminal alien and noncriminal, I agree the criminal
4 should go first. I mean, we talk about prioritization.

5 Chairman Sessions. Well, I am going to certainly agree
6 with that. But it does not give me comfort, Mr. Homan, that
7 90-something percent of the people that you arrested were
8 convicted. What that means is you are not arresting anybody
9 but people convicted, and I think that is way too late, way
10 too long, and it is imposing too much cost on the American
11 people. And some of these people that are awaiting trial,
12 aren't they often released on bail pending trial?

13 Mr. Homan. Yes.

14 Chairman Sessions. And so if they are released on bail
15 pending trial, they could disappear into Los Angeles.

16 Mr. Homan. Yes.

17 Chairman Sessions. Or New Orleans. And they are not
18 convicted.

19 Mr. Homan. Correct.

20 Chairman Sessions. So they are not a priority subject
21 to being deported if they are arrested in Los Angeles. All
22 they have got is a charge for armed robbery in Dallas.

23 Mr. Homan. The point I am trying to make is my law
24 enforcement officers are given a job to do, to do a mission,
25 right? To execute a mission. And the mission they have

1 been executing which they have been given, they have been
2 doing almost a perfect job. When we look at the numbers of
3 the convicted criminals arrested, the percentage of that, as
4 of today 99.4 percent of people that are in my detention
5 beds fall within one of the enumerated priorities. What I
6 am saying is the men and women of ERO are executing the
7 mission they were given perfectly--pretty close to perfect.
8 They may not like the mission, but they are executing it
9 perfectly. I just think it is important to realize that.
10 They do not get to pick and choose what comes down the road,
11 but when they are given a mission to do, they are doing a
12 very good job.

13 Chairman Sessions. When you say they do not get to
14 pick and choose, what you are saying is they do not get to
15 set the policies. The policies are set by the President of
16 the United States, and the policies are eviscerating the
17 ability of this system to ever work. And I know and have
18 not forgotten that the ICE Officers Association sued Mr.
19 Morton, and in essence, their complaint was he was requiring
20 them and ordering them not to fulfill their oath to enforce
21 the laws of the United States. It stayed in court for a
22 long time before the judge dismissed I think on standing and
23 a technicality. So your officers are trying to do their
24 job. I agree. They are being frustrated by policies that
25 do not work. And these charts show the decline in some of

1 these areas that are pretty stunning to me, while you are
2 getting more money. And it is a direct result of
3 Presidential policy, not the ICE officers. I agree with
4 that.

5 So Mister--I almost called you "Chairman." But I will
6 yield to Senator Blumenthal. I have gone over my time.

7 Senator Blumenthal. I just want to make a quick
8 comment, simply to emphasize to you, Mr. Vitiello, that you
9 are here to, in effect, represent the men and women who are
10 in the trenches on the front lines, and I am eager to say
11 simply thank you for the work that you do because, as Mr.
12 Homan has said, you are out there every day. You
13 collectively are there under very difficult circumstances
14 enforcing policies that may be imperfect in many ways, and
15 we can disagree, Senators at this podium, about the merits
16 of those policies, but you are responsible for protecting
17 America. And I just want to say thank you, but also to say
18 that your courage and your excellence in the work that you
19 do and your fellow officers I think should embolden us to do
20 better. And I do not mean only the administration. I mean
21 Congress, because we may need to make sure that enforcement
22 is fairer and more effective against those people who are in
23 this country already and who pose a danger to our citizens.

24 My colleague has suggested that the Secretary of State
25 should pick up the phone. It may not be quite that simple,

1 but I think he means it in a symbolic sense, not literally,
2 that whether it is these restrictions or some other steps,
3 the United States of America needs to make sure that we are
4 protected from people like Jean Jacques. We can agree that
5 it was a tragedy, but we should also agree that stronger
6 action should be taken because it will happen again if the
7 Nation fails to take that kind of stronger action.

8 Having talked to that family, one of my missions in
9 this job will be to do everything possible to make sure that
10 their grief and sorrow is in some way an inspiration for us
11 to take stronger action. So I thank you for being here
12 today, and I hope that that Inspector General report is
13 forthcoming as soon as possible.

14 Mr. Vitiello. Well, thank you, Senator. We are
15 blessed to have men and women in the Border Patrol that are
16 dedicated professionals who protect America each day in
17 somewhat arduous conditions. The job they do is tough.
18 They do it well. It is a job that has consequences, and I
19 thank you for lifting them up.

20 Chairman Sessions. Thank you, Senator Blumenthal. As
21 a prosecutor yourself, you have worked, I know, with Border
22 Patrol agents and ICE officers, as I did when I had the
23 honor to be a Federal prosecutor. And we do appreciate--and
24 the duties--and it is risky. You are dealing with dangerous
25 criminals. Maybe a hundred of them go fine, but in a

1 career, you are going to deal with hundreds and hundreds,
2 and you never know which one is just a killer and is
3 extremely dangerous. We do respect and appreciate their
4 work, and I think it is our job in Washington, I think it is
5 the President's and the top Secretaries' of the agencies to
6 back them up, to make sure that their efforts are
7 worthwhile, and are conducted in a way that leads to success
8 in achieving the goal that Americans overwhelmingly want,
9 which is an honest, lawful system of immigration that serves
10 the national interest. That is what people want. They have
11 a right to demand it, and we are not giving it to them, and
12 it is because of politics, not the officers, in my opinion.

13 With regard to--

14 Senator Blumenthal. Mr. Chairman, I apologize. I am
15 going to have to excuse myself. We were a little bit late
16 in starting because of the vote, and I have another
17 commitment.

18 Chairman Sessions. I understand.

19 Senator Blumenthal. Thank you.

20 Chairman Sessions. Thank you very much for your
21 participation.

22 Just to confirm the numbers, Mr. Homan, I see here in
23 2012 ICE issued 282,000 detainers, and in 2015, they issued
24 only 96,000 detainers, a 66-percent decrease since 2012,
25 detainers being the holds placed on incarcerated individuals

1 who are illegally in the country and who have committed some
2 sort of criminal offense so that you could obtain their body
3 once they have completed their process in State or local
4 court. Is that right?

5 Mr. Homan. In the past, detainers would hold somebody
6 48 hours if they fell within our priorities. After
7 Executive actions, we require now a conviction to drop
8 detainer, unless they fall within a small--if they committed
9 a felony or an aggravated felony that resulted in serious
10 injury or death, then we would categorize them as a Federal
11 interest case because of the severity of the crime. But in
12 most circumstances, it requires a conviction to drop a
13 detainer.

14 Some jurisdictions will not accept detainers. They'll
15 accept notifications of 247N. That is simply we ask them to
16 notify us before that alien leaves their custody, which can
17 happen 24/7. So it requires an immediate response.

18 Chairman Sessions. And I did not let you explain a
19 while ago, but there is no doubt that sanctuary cities do
20 complicate your life and make it more difficult. Is that
21 not true?

22 Mr. Homan. Absolutely. But the jurisdictions that
23 will not work with us at all is a significant issue for me,
24 because as you have said, we do release criminal aliens.
25 Every law enforcement agency does. We are no different.

1 But when we release criminal aliens, they are in immigration
2 proceedings, and they are in some sort of reporting, ankle
3 bracelet or similar reporting. For these jurisdictions that
4 are not working with us at all, we have got Level 1 and 2
5 criminals walking around those jails every day. They are
6 not in immigration proceedings. I do not know who they are.
7 They are on no sort of reporting. That is a bigger issue
8 for me.

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

18 Mr. Homan. Well, it would be a different form. That
19 is 247N. But the notification form, yes, they would not
20 hold them one minute past they would normally hold them.
21 They just give us a heads up that this person is being
22 released.

23 Chairman Sessions. So they do not serve any longer,
24 but they do notify you in advance of the release so that
25 they can be detained. Well, that is the way it is supposed

1 to work. That is basic. That is basic. And when that is
2 not working, then we are really not deporting criminal
3 aliens as we have been promised, and that is why the numbers
4 are down. That is one of the reasons, I am sure, that
5 numbers are down.

6 Mr. Vitiello, the Border Patrol apprehended 337,117
7 aliens in fiscal year 2015. I am told that Homeland
8 Security has no idea of how many of those are still in the
9 country today. Why is that? How many of those--how many
10 people apprehended were immediately deported? And how many
11 are released on some sort of custody or transported to some
12 destination they desired after they were arrested unlawfully
13 entering the country?

14 Mr. Vitiello. So on the southern border, part of the
15 population, the people that are apprehended by the Border
16 Patrol, some of that people would then be reviewed, as I
17 said in my opening statement, for criminal history and
18 previous immigration history. And depending on that outcome
19 and those classifications, some will qualify or be allowed
20 to voluntarily--will be allowed to voluntarily return to
21 Mexico. So a number of those people that are apprehended at
22 the southern border will then be returned immediately.
23 Others that have a different--

24 Chairman Sessions. What if they are from Mexico and do
25 not want to voluntarily return? What happens to them?

1 Mr. Vitiello. Well, then they would be--it is their
2 choice to have an administrative hearing for removal. In
3 that case--

4 Chairman Sessions. They have a choice if they are
5 apprehended at the border to have an administrative hearing?

6 Mr. Vitiello. So each of them would be presented with
7 that option, correct. There are a couple of things that we
8 are required to avail them of. One would be a notification
9 to their consulate, their right to a hearing if they choose,
10 or the opportunity to withdraw and be returned voluntarily.

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

14 Chairman Sessions. And so then ICE is getting those.
15 In the past, those were not counted as ICE removals, I
16 believe. Now they are. So how long does it take to have
17 one of these hearings typically? An "administrative
18 hearing," you call it.

19 Mr. Vitiello. It depends on what district they are in.
20 Essentially the role at CBP is to make those referrals and
21 then, you know, putting them on the docket and setting that
22 up is a function of both ICE and the Executive Office of
23 Immigration Court.

24 Chairman Sessions. All right. Do you have any
25 impression how many people from Mexico successfully are

1 released on bail at some point and do not show up for court?

2 Mr. Vitiello. I do not have that. That is not part of
3 the data that we track at CBP.

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

6 Mr. Homan. It varies on the population. Anywhere from
7 40 to 55 percent fail to appear.

8 Chairman Sessions. So, in effect, this is pretty much
9 a mockery of the system. Anybody that is willing to enter
10 the country across the border illegally and take that risk,
11 that now has no basis to claim a right to stay in the
12 country, is ordered to appear at court, why would they go to
13 court? If they intended to go to Denver or to St. Louis or
14 to Los Angeles, why wouldn't they just go from the Arizona
15 or the Texas border to that location? There is no real
16 reason to ask it. So we know about half of them are not.
17 What I would say to you, that erodes the deterrence impact
18 of the enforcement strategy.

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

25 Mr. Vitiello. That is my experience. I think when I

1 talked in the opening statement about the consequence
2 delivery system, our data--you know, and you talked about
3 deterrence. Our data shows us that if there is a
4 consequence applied post-arrest, then that reduces activity
5 overall.

6 Chairman Sessions. Well, there is just no doubt about
7 it. Now, on Streamline--and I am going to wrap this up. On
8 Operation Streamline, when that was introduced--I believe in
9 the Arizona Sector initially?

10 Mr. Vitiello. The first place we did that, we piloted
11 it in Del Rio and then expanded from there.

12 Chairman Sessions. All right. And we had very good
13 deterrent impact. They were held in custody. They were
14 convicted of some misdemeanor, I suppose?

15 Mr. Vitiello. Misdemeanor.

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

20 Mr. Vitiello. So, again, it is a method of tracking--
21 classifying the individual and putting them in the
22 appropriate system for consequence, and Streamline in its
23 beginning had a dramatic effect in Del Rio. As it expanded,
24 what we found out was that it was not only using criminal
25 prosecution in Federal court, but using the other available

1 administrative proceedings so that using not just Streamline
2 but other avenues of post-arrest consequence showed us that-
3 -brought the traffic down almost everywhere we tried it.

4 Chairman Sessions. Okay. And what percentage of the
5 border has something like Operation Streamline operating
6 today?

7 Mr. Vitiello. It is still in effect in Tucson, Del
8 Rio, Laredo, and the Rio Grande Valley.

9 Chairman Sessions. And about what percentage of the
10 illegal entrants are processed through Streamline, do you
11 know?

12 Mr. Vitiello. I do not have that in front of me.

13 Chairman Sessions. A rough estimate? Half? Less than
14 half?

15 Mr. Vitiello. It is a handful in each of those
16 locations, so in a place like Tucson where they may be
17 arresting a couple hundred people a day, about 70 of--they
18 have room for or they avail themselves of the use of
19 Streamline in about 70 cases a day.

20 Chairman Sessions. So almost a third of the number,
21 about a third of the number. Well, my view is that if that
22 were stepped up to 100 percent and rigorously and
23 effectively processed, and you would need some extra
24 resources for a short term, but then we might hope, would we
25 not, Mr. Vitiello, that we would begin to see a decline in

1 the number coming? When there are fewer entrants per agent,
2 per judge, per prosecution, you are in a virtuous cycle then
3 of further reducing the flow into the country.

4 Mr. Vitiello. So consequences matter. I think that
5 Streamline has been an important part. You have to use it
6 with other methods, but I will agree with you that
7 consequences have impact. That is my experience as well.

8 Chairman Sessions. And at the border, barriers can be
9 helpful, can they not?

10 Mr. Vitiello. Barriers as in physical barriers?

11 Chairman Sessions. Yes, walls.

12 Mr. Vitiello. They have been.

13 Chairman Sessions. Fences.

14 Mr. Vitiello. They have been.

15 Chairman Sessions. They magnify the ability of a
16 single officer to be able to cover more territory?

17 Mr. Vitiello. Right. So all of the things that we use
18 on the border: physical barriers, fencing, as one,
19 technology is a great benefit to us, plus the agents. You
20 still have to have that response as well.

21 Chairman Sessions. Well, gentlemen, we will leave the
22 record open for further questions. I thank you for your
23 service and that of your officers who serve under you. It
24 is pretty clear, based on resolutions that the associations
25 of both ICE officers, Border Patrol officers, and CIS

1 officers, that they are very frustrated. The Department of
2 Homeland Security--I am not blaming you, but according to
3 objective Government studies--has, I believe, the lowest
4 morale in the entire Federal Government. And I do not
5 believe it is because of you. I believe it is because of
6 Executive policies, Presidential orders that frustrate their
7 ability to do their job. They go out and place their lives
8 at risk every day, and they turn around and see those people
9 released, and it makes their work feel underappreciated, and
10 indeed it is.

11 Mr. Homan. Sir, if I may?

12 Chairman Sessions. Yes, sir.

13 Mr. Homan. I want to set the record straight on a
14 couple things. A comment you made earlier that ICE claims
15 credit for removals of aliens arrested by Border Patrol that
16 were turned over to us, we have always claimed those
17 removals. If the Border Patrol turns an alien over to us
18 and we transport them, detain them, put them through the
19 process, when they are eventually removed, we get that stat
20 for removal. We always have. Border Patrol does not get
21 that stat, so it is not double counting.

22 The second issue is that if Border Patrol processes a
23 recent border entrant by expedited removal, they are
24 mandatorily detained by us. So recent border entrants are a
25 priority, and we try to detain every one we can, and that is

1 what we do. They certainly have the right to due process.

2 The third thing I want to--

3 Chairman Sessions. But on that group, you did not used
4 to count that--correct?--as an ICE removal if it was an
5 expedited Border Patrol stop?

6 Mr. Homan. If they voluntarily return, we do not take
7 the credit. But if it is an expedited removal,
8 administrative process, where they do not have the right to
9 see a judge, we detain them and remove them, we get the
10 removal.

11 Chairman Sessions. I will try to get into--I would
12 like to get into that because that was my understanding that
13 justified a higher removal number, is some change somewhere
14 in the system on what was being counted and what was not
15 being counted.

16 Mr. Homan. Anybody ICE takes custody of and we expend
17 resources on them by detaining them and going through the
18 process, we will claim that removal.

19 The third issue I wanted to clarify is when we talk
20 about the policies of the administration, the PEP policy,
21 the Priority Enforcement Program, is something I do support
22 because we had several hundred jurisdictions that were not
23 working with us at all. What PEP did is bring a lot of
24 those jurisdictions back to the table.

25 Now, it might not be at the same level of cooperation

1 we had before, but any cooperation is better than nothing.
2 So I kind of welcomed that because I was getting my hands on
3 some dangerous criminals that we were not getting before.
4 So PEP, you know, is the best deal we have got going right
5 now considering detainer is litigated throughout the country
6 in lawsuits. PEP actually brought quite a few people back
7 to the table--not everybody, and I am frustrated with some
8 large jurisdictions that just do not want to cooperate with
9 us at all. But PEP actually was a good thing to bring
10 people back to the table because we had nothing else
11 available to us.

12 Chairman Sessions. Well, thank you very much, and we
13 may follow up with written questions. We thank both of you
14 for your appearance here, and I hope and believe firmly that
15 with better enforcement policies with more support from the
16 top, your offices can do a much better job, that we can get
17 on a virtuous cycle of reducing the attempts of people to
18 enter the country, because the world will know that our
19 border is not open, you are not going to be successful; and
20 if you are apprehended, you will not be taken into the
21 country and released on bail and allowed to stay. If you do
22 not end that cycle, then nothing will work.

23 So thank you all again very much.

1 Chairman Sessions. We will bring up the next panel.

2 So as with the first panel, I will introduce each witness,

3 but note that the biographies are on the Committee's

4 website. Would you each stand and raise your right hand?

5 Do you swear to tell the truth, the whole truth, and nothing

6 but the truth, so help you God?

7 Mr. Judd. I do.

8 Mr. Nowrasteh. I do.

9 Mr. Krikorian. I do.

10 Chairman Sessions. Please take your seats, and thank
11 you.

12 First, we have Mr. Brandon Judd, president of the
13 National Border Patrol Council. He is a Border Patrol agent
14 and serves as president of the National Border Patrol
15 Council, representing more than 16,500 Border Patrol line
16 officers who do their work every day. And they are the ones
17 that are feeling the pressure from some of these policies.
18 He brings with him nearly 20 years of experience as a Border
19 Patrol agent, fluency in Spanish, and a thorough
20 understanding of the policies affecting border security.
21 Mr. Judd started his career as a field agent in 1997. He
22 served in a variety of capacities while with the Border
23 Patrol, including instructor at the Patrol Academy.

24 Mr. Judd, we would be glad to hear your opening
25 statement at this time.

1 TESTIMONY OF BRANDON JUDD, PRESIDENT, NATIONAL
2 BORDER PATROL COUNCIL, AMERICAN FEDERATION OF
3 GOVERNMENT EMPLOYEES, MALTA, MONTANA

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

7 The current administration has repeatedly told the
8 American public the border is more secure than it has ever
9 been. They will point to apprehension numbers and say that
10 because we are apprehending fewer illegal aliens than in the
11 past, our border is more secure than ever. The Bush
12 administration, however, told the American public that
13 because we were apprehending more illegal aliens than ever
14 before, the border was secure. So which administration is
15 right? The answer is neither.

16 Border security is a complex equation that takes into
17 account all variables, including entries, apprehensions,
18 turnbacks, and "got aways." It also takes into
19 consideration the likelihood of getting away.

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

23 Along the border, we have thousands of sensors that
24 will alert Border Patrol agents to a border breach. If a
25 group of illegal aliens or narcotics smugglers trip a

1 sensor, we instantly know exactly where the breach has
2 occurred and can rush agents immediately to the area. In
3 cases where we have a sensor alert, our chance of
4 apprehending the illegal aliens or drug smugglers is about
5 50 percent. In those cases where illegal aliens or drug
6 smugglers cross where we do not have sensors, it could be as
7 low as 10 percent.

8 In the last 8 years, three things have changed that
9 make my job much harder. The first is the continued rise of
10 Mexican drug cartels. The second is the administration's
11 use of the catch and release policy to an extent never
12 before seen. And the third is the lack of management
13 accountability.

14 Although there have been smuggling organizations along
15 the U.S. and Mexico border for decades, the rise of Mexican
16 drug cartels started in earnest in the 1990s. As their
17 power and influence grew, so did the violence and
18 corruption. In 2006, the situation in Mexico got so bad
19 that then-Mexican President Felipe Calderon ordered the
20 Mexican armed forces to directly confront the drug cartels.
21 That decision sparked the Mexican drug war.

22 Over the past 10 years, more than 150,000 people H-1B
23 killed by cartel violence. This number includes teachers,
24 police officers, judges, elected officials, and ordinary
25 citizens. Within the last few years, the situation with the

1 cartels has gotten so bad the U.S. State Department issued
2 multiple travel warnings to U.S. citizens about visiting
3 Mexico. And over the past 8 years, Mexican cartels have
4 maintained a stranglehold on illegal activity along our
5 southwest border. Drug cartels control the illegal activity
6 along our border in the same way gangs control illegal
7 activity within our prisons. Nothing moves along the border
8 in the U.S. or Mexico without the cartels' permission.

9 For the cartels, illegal alien and narcotics smuggling
10 are two lines of huge business that brings in billions in
11 annual revenue. For example, last year, the Border Patrol
12 apprehended 174,000 illegal immigrants in the Rio Grande
13 Valley. Each of these individuals paid the Gulf cartel
14 approximately \$5,000 to be smuggled into the United States.
15 That is \$870 million in revenue for the cartel for those
16 that were apprehended. When you factor in those that "got
17 away," the total revenue from alien smuggling alone for the
18 Gulf cartel in this sector is nearly over \$1.7 billion.
19 That is in one sector alone.

20 There are a number of factors, including what we just
21 talked about on the cartels, that are driving illegal
22 immigration. But the single biggest factor right now is our
23 catch and release program.

24 When Border Patrol agents arrest illegal immigrants, we
25 interview them, and we have found that most illegal

1 immigrants believe that they will either not be caught, or
2 even if they are caught, they will simply be issued a Notice
3 to Appear and will be released.

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

12 The illegal aliens that we apprehend are practical
13 people. Before making what is a very dangerous journey and
14 risking a lifetime of savings, they weigh the costs and
15 benefits. Right now, with catch and release, the costs are
16 lower than the benefits. As long as we continue with this
17 policy, they will continue to come.

18 The third issue is lack of accountability. The
19 challenge now is that the administration has painted itself
20 into a corner. If the border is secure, how do you ask
21 Congress for more manpower? If the border is secure, how do
22 you ask for more money? If it is secure, how do you ask for
23 additional air support, technology, and fencing?

24 The answer, unfortunately, is that you do not. You do
25 not talk about the Mexican drug cartels. You do not talk

1 about the fact that every day on average a Border Patrol
2 agent is seriously assaulted. You do not talk about how 20
3 percent of the individuals we are apprehending now are
4 convicted felons and have previously been deported. You do
5 not talk about any of this. You talk about how
6 apprehensions are down and how well things are going. And
7 you punish anyone who has the temerity not to echo the
8 administration's talking points.

9 We can solve this problem, and we can have a secure
10 border. We can put a serious dent in narcotics trafficking
11 and make sure our communities are safer. However, the first
12 step to having a secure border is to have the courage to
13 admit the problem exists and acknowledge that some of our
14 policy choices are making the problem worse--not better.

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

17 [The prepared statement of Mr. Judd follows:]

1 Chairman Sessions. Thank you very much.

2 Next we have Mr. Alex Nowrasteh, an immigration policy
3 analyst at the Cato Institute. His publications have
4 appeared in the Wall Street Journal, USA Today, the
5 Washington Post, the Los Angeles Times, and elsewhere. His
6 academic publications have appeared in the Journal of
7 Economic Behavior and Organization, the Fletcher Security
8 Review, and Public Choice. He is a native of Southern
9 California, received a B.A. in economics from George Mason
10 University and a master's of science in economic history
11 from the London School of Economics.

12 Mr. Nowrasteh, we would be glad to hear your statement.

1 TESTIMONY OF ALEX NOWRASTEH, IMMIGRATION POLICY
2 ANALYST, CATO INSTITUTE, WASHINGTON, D.C.

3 Mr. Nowrasteh. Chairman Sessions, Ranking Member
4 Schumer, and distinguished members of the Committee, I thank
5 you for the invitation to appear today for this important
6 hearing.

7 Before I begin my testimony, I would just like to make
8 clear that my comments are solely my own and do not
9 represent any official position of the Cato Institute.

10 This spoken testimony will present a brief overview of
11 immigration enforcement and other factors that influence the
12 intensity of that enforcement inside the United States, such
13 as economic conditions in the United States and in sending
14 countries. My written testimony explores more potential
15 explanations and goes into much greater detail than I will
16 speaking today.

17 To analyze the Obama administration's record on
18 immigration enforcement, we also have to compare it to other
19 administrations. ICE's interior immigration enforcement
20 peaked with 237,941 interior removals in 2009 and has since
21 subsequently dropped. From 2009 through 2015, ICE removals
22 from the interior of the United States totaled together over
23 1.17 million, far higher than the 555,164 interior removals
24 during the Bush administration.

25 Now, we do not have data for interior immigration

1 removals during the first 2 years of the Bush
2 administration, but counting all of the removals for 2001
3 and 2002 as interior removals, which would surely greatly
4 exaggerate the number, only raises that number to 909,000,
5 far smaller than the Obama administration totals.

6 ICE removals as a percentage of the total estimated
7 population of illegal immigrants is another way to measure
8 the intensity of interior enforcement. Annualized removals
9 as a percentage of all illegal immigrants averaged 1.48
10 percent during the entirety of the Obama administration.
11 For the 5 available years of the Bush administration, the
12 average was 0.83 percent removed annually. President
13 Obama's ICE has removed more illegal immigrants and a
14 greater percentage of the entire population than during the
15 Bush administration.

16 The major difference between the two administrations is
17 the trajectory of the interior removals. The number
18 increased every year during the Bush administration while
19 they had been falling during President Obama's
20 administration, especially since 2010, and are currently at
21 2005 to 2006 numbers. Additionally, the Obama
22 administration has enforced worksite immigration laws more
23 intensely than other Presidents. Compared to the George W.
24 Bush administration, the Obama administration has issued 5.1
25 times as many final orders, 15.5 times as many

1 administrative fines, 8.3 times as many administrative
2 arrests, and initiated 7.6 times as many cases.

3 The Bush administration did ramp up interior
4 enforcement on worksites when the economy started to slow at
5 the beginning of the housing price decline, but enforcement
6 increased even more rapidly during the Great Recession and
7 then relaxed afterwards as the economy improved--with the
8 exception of administrative fines and final orders that have
9 remained fairly high through 2014.

10 Now, what are some of the explanations for these
11 shifting numbers? There are several changes in policy and
12 other actions that could potentially explain these
13 fluctuations in interior immigration enforcement. For
14 instance, every Homeland Security appropriations bill since
15 2008 has required the DHS Secretary to prioritize the
16 identification and removal of aliens convicted of a crime by
17 the severity of that crime. The refocusing of ICE's
18 immigration enforcement to removing convicted criminals
19 betrays a quality-over-quantity approach to deportations
20 that can explain a good portion of this decrease in overall
21 enforcement. Broad changes in enforcement numbers can be
22 explained by other factors as well. Poor economic
23 conditions in the United States have likely historically
24 caused administrations and agencies to intensify immigration
25 enforcement while improving economic conditions have

1 generally followed a relaxation in such enforcement.

2 Interior immigration enforcement ramps up when economic
3 growth is poor and unemployment is high--as happened in the
4 early 1950s, 1987, 1994, and 2001. The Great Recession of
5 late 2007 to 2009 was preceded by a weakening economy and
6 included a financial and housing crisis.

7 Not coincidentally, these are the years when ICE's
8 interior immigration enforcement efforts and worksite
9 enforcement effects expanding most quickly--adding more
10 evidence to those theories.

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

19 Interior economic conditions also affect enforcement
20 along the border. When industries that employ many illegal
21 immigrants expand rapidly, then even border control
22 generally relaxes to allow more in--at least from the early
23 1970s until the late 1990s. In each one of these
24 situations, immigration enforcement decreases after the end
25 of high unemployment and the resumption of economic growth.

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

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

19 On the other side, the best piece of literature by
20 Edward Alden, Bryan Roberts, and John Whitley at the Council
21 on Foreign Relations estimates that one-third of the decline
22 in illegal immigrants crossing the border since the mid-
23 2000s can be attributed to enforcement practices, the other
24 two-thirds to economic issues and other factors.

25 In conclusion, the Obama administration has been a

1 fairly stringent enforcer of immigration laws, according to
2 these metrics. The age of massive illegal immigration from
3 Mexico is likely over for myriad reasons, including but also
4 due to other factors besides enforcement. Illegal
5 immigration, however from Central America nations will
6 likely continue in the future.

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

9 [The prepared statement of Mr. Nowrasteh follows:]

1 Chairman Sessions. Thank you.

2 Finally, we have Mr. Mark Krikorian, the executive
3 director of the Center for Immigration Studies. He is a
4 nationally recognized expert on immigration issues and has
5 served as executive director of the Center for Immigration
6 Studies since 1995. He has testified before Congress and
7 has published articles in numerous outlets, including the
8 Washington Post, the New York Times, the Los Angeles Times,
9 and Commentary. He is a contributor at National Review
10 Online, has appeared on "60 Minutes," "Nightline," "NewsHour
11 with Jim Lehrer," CNN, NPR, among other television and radio
12 programs. He holds a master's degree from the Fletcher
13 School of Law and Diplomacy and a bachelor's degree from
14 Georgetown University. Mr. Krikorian spent 2 years at
15 Yerevan State University in then-Soviet Armenia.

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

1 STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR,
2 CENTER FOR IMMIGRATION STUDIES, WASHINGTON, D.C.

3 Mr. Krikorian. Thank you, Mr. Chairman. As you have
4 already mentioned, immigration enforcement under this
5 administration has collapsed. ICE statistics show that
6 deportations from the interior have fallen precipitously,
7 something like 70 percent over the course of this
8 administration. Even the removal of criminals has declined
9 by more than half from 2010, despite the administration's
10 claim of prioritizing those.

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

18 Rather, the collapse of enforcement is a policy choice
19 by this administration, and it is not the result of a casual
20 or piecemeal decision to detain fewer people here or deport
21 fewer people there. Rather, the enforcement collapse is the
22 result of a fundamental transformation of immigration law
23 undertaken by this administration without the consent of
24 Congress.

25 The deportation memos, the priority memos from

1 November, and the various other memos that have been issued
2 over the years are just tactical measures. They are ways of
3 implementing this broader change in immigration law, which
4 has not been acknowledged. It is a broader strategy to
5 unilaterally change violations of immigration law into
6 secondary offenses when that is not what the statute
7 supports.

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

14 You as a prosecutor understand this, but just for the
15 record, a secondary offense is comparable, is similar to
16 seat belt laws in many States where they are secondary
17 offenses. And what that means is that you cannot be pulled
18 over by a patrolman if you are not wearing your seat belt.
19 But if he pulls you over for a primary offense--running a
20 red light, speeding, what have you--he can then give you an
21 additional ticket because violating the seat belt law is a
22 secondary offense.

23 The administration's November 2014 deportation priority
24 memos pretend that the administration has not moved to a
25 secondary offense strategy. In other words, it includes

1 other violations of immigration law in the third of the
2 three priorities. But people are not deported in that
3 priority. In other words, it is really just for show. In
4 fact, they have switched to this new approach to immigration
5 law, and you do not have to take my word for it. John
6 Sandweg, the former Acting Director of ICE, said to the L.A.
7 Times: "If you are a run-of-the-mill immigrant here
8 illegally, your odds of getting deported are close to zero."
9 That is a succinct articulation of this fundamental change
10 that this administration has unilaterally undertaken.

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

14 Just as an example, for people to understand what real
15 discretion means, because discretion is the pretext that
16 they are using, law enforcement discretion would be, for
17 instance, a patrolman pulling you over for speeding, you are
18 respectful, the car is not stolen, your toddler in the back
19 seat is crying because she needs her diaper changed, and he
20 says, "Okay, ma'am. I am not going to give you a ticket. I
21 am just going to give you a warning this time." That is law
22 enforcement discretion because it does not undermine the
23 basic mission of the agency. The administration now is
24 using discretion as a pretext for changing the law.

25 Is this comparable to the IRS, for instance, issuing a

1 memo on the Internet that says ordinary people who are not
2 money launderers or drug dealers but who simply fail to pay
3 their taxes will not be sanctioned in any meaningful way?
4 Congress would be aghast at that idea. And yet that is
5 exactly what this administration has done.

6 Congressman Pelosi, just as an example, articulated
7 this secondary offense perspective very well in 2013 when
8 she said, "Our view of the law is that, if somebody is here
9 without sufficient documentation, that is not reason for
10 deportation." What that means is immigration violations are
11 a secondary offense, and this is a very different approach
12 from an earlier Democratic Congresswoman, Barbara Jordan, a
13 civil rights pioneer, champion of the rule of law, most
14 especially during the Watergate hearings. As Chairman of
15 the bipartisan U.S. Commission on Immigration Reform, she
16 testified before the Congress 20 years ago in a kind of
17 preemptive rebuke of this Obama-Pelosi approach to
18 immigration law, when she said, "Deportation is crucial.
19 Credibility in immigration can be summed up in one sentence:
20 Those who should get in, get in; those who should be kept
21 out, are kept out; and those who should not be here will be
22 required to leave."

23 Thank you for your time.

24 [The prepared statement of Mr. Krikorian follows:]

1 Chairman Sessions. Well, thank you very much. I thank
2 all of you for your testimony.

3 Mr. Krikorian, this idea that you have just described
4 using the collapse of enforcement as a result of policy
5 choices by this administration amounts to a change in law or
6 virtually an evisceration of whole sections of law, does it
7 not? This is one of the most astounding things I have seen
8 in my career in law enforcement and now in the Senate.

9 Mr. Krikorian. The charitable way to put it--and it
10 still involves, I would submit, lawless activity. But the
11 charitable way to put it is not that the administration is
12 not enforcing immigration law. It is that they have
13 effectively changed the immigration law and are enforcing
14 it, but under their new version of the law.

15 As Mr. Homan said, his people are actually doing very
16 well, the very narrow responsibilities they have been given,
17 and I think that is very true.

18 Chairman Sessions. It leaves out whole chunks of
19 normal law.

20 Mr. Krikorian. Right, and that is my point, that what
21 they are doing is saying that all of those other areas of
22 the law, the immigration law, are only applicable if some
23 other thing happens.

24 Chairman Sessions. I think that is very insightful,
25 the way you have explained that. And for a lawyer, that is

1 true. I used to be a lawyer. I would say that the
2 administration is on strike. They are basically not happy
3 that the Congress did not pass their bill, and so they set
4 about to ignore parts of the law that disagreed with the
5 policy they asked Congress to adopt. The Congress did not
6 adopt it, so they are going to not enforce that part of the
7 law. It is really breathtaking to me and unacceptable.

8 Mr. Krikorian. I think there is something to that, but
9 it actually predates the Schumer-Rubio legislation because
10 the Morton memos themselves in 2012 were the first step
11 toward this transformation of immigration law. So I think
12 you are right, Senator, but the process began even before
13 the legislation that the Senate passed.

14 Chairman Sessions. Mr. Judd, in your testimony you
15 made several compelling points, but something you said stood
16 out. You indicated that agents in the field believe that we
17 are approximately 50 percent effective in apprehending
18 aliens who cross our border illegally in areas where we have
19 sensors, sensors that show motion, and even less effective
20 where we do not have those sensors.

21 So what you are saying is that in the best-case
22 scenario, for every one apprehension made we can assume
23 roughly one alien evaded detection and made it into the
24 United States?

25 Mr. Judd. Yeah, and I actually believe that that would

1 be high. And it is not that the agents are not doing their
2 jobs. These agents are extremely good agents. They work
3 extremely hard. The problem is if we are not put in a
4 situation where we can best be effective, we are not going
5 to be effective. If we are not patrolling specific high-
6 traffic areas, well, those high-traffic areas are going to
7 be exploited. We have got example after example after
8 example of when we vacate an area, criminal cartels will
9 actually cut the fence that we build, drive their vehicles
10 through that area, and they will get away. And that is the
11 situation that we currently face. If we are put in
12 situations to succeed, we succeed. If we are not put in
13 those situations to succeed, we still try to, but it becomes
14 very difficult.

15 Chairman Sessions. In your opinion--you have been
16 involved in this for a number of years. You lead this
17 association of 16,000-plus agents. Do the Border Patrol
18 officers believe that the top officials of this country,
19 including the President, want them to succeed in stopping
20 illegal immigration at the border and are prepared to back
21 them up and help them achieve that goal?

22 Mr. Judd. No. In fact, we are tired of being
23 vilified. We get vilified from all sides because we are
24 trying to simply enforce the law. We have been hired by the
25 American public to enforce the laws that are on the books,

1 and, unfortunately, those laws--the goal line continues to
2 move each and every year, and it becomes harder and harder
3 to enforce those laws. But, no, we do not feel that we are
4 being given the support that is necessary.

5 Chairman Sessions. So official statistics from Customs
6 and Border Protection tout the fact that it apprehended
7 337,000 aliens at the southern border last year. It is
8 possible that that many more made it into the country
9 unlawfully.

10 Mr. Judd. I would say that it is more than likely. I
11 would say that that is just a fact.

12 Chairman Sessions. Tell us about this catch and
13 release policy. This is the most damaging, one of the most-
14 -I cannot imagine much more damaging than this, where agents
15 are being ordered to simply release an illegal alien that
16 has been apprehended without even receiving a charging
17 document telling them to go to court. What does that mean?
18 I think we all need to appreciate the significance of that.
19 Can you give us an example or an idea what that means?

20 Mr. Judd. Absolutely. There are actually two faces to
21 the catch and release program. There is a catch and release
22 program in which we give an NTA, or a Notice to Appear, and
23 which they are required to show up before an immigration
24 judge--

25 Chairman Sessions. Well, let us slow down. So this is

1 someone in Tucson at the border, someone is apprehended. I
2 have the impression that they would be detained and deported
3 perhaps the next day or even that same day. What do you
4 mean--explain what you mean now about this example.

5 Mr. Judd. Well, that is as far from the truth as what
6 is reality. What happens is if you are arrested in the
7 United States and you ask for any sort of asylum, make any
8 claim for asylum, what we do is we will process you and we
9 will walk you right out our front door, give you a pat on
10 the back, and say, "Welcome to the United States." And they
11 are good to go.

12 If they are a juvenile--

13 Chairman Sessions. And the paperwork or the process
14 simply is that, well, we will give you a hearing on that
15 some distant time in the future, and in the meantime you are
16 free to go.

17 Mr. Judd. Correct. Correct. And if you are--but at
18 least--at a minimum we are at least processing these
19 individuals with an NTA and, therefore, it can be tracked
20 whether or not they showed up for court. We just heard Mr.
21 Homan--and this is the first time I have actually heard an
22 agency official testify to this. We just heard Mr. Homan
23 say that between 40 and, I believe he said, 55--he might
24 have said 50, but between 40 and 50 percent of those
25 individuals that are given NTAs, they never even show up for

1 their hearings. And these hearings, what these hearings are
2 for is these are the chance for these individuals that are
3 here illegally to make the case on why they should be
4 allowed to stay. That is what these hearings are for. And
5 if they are not able to make that case, then they are
6 removed and sent back to their country.

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

10 Chairman Sessions. And nobody goes to look if they do
11 not show up.

12 Mr. Judd. And the second part of--

13 Chairman Sessions. I mean, fundamentally, there is no
14 policy that if somebody is ordered to appear in one of these
15 hearings and they do not show, nobody calls up ICE and says
16 go look for this individual.

17 Mr. Judd. No, they do not. No, they do not.

18 Chairman Sessions. So in a sense--well, go ahead.

19 Mr. Judd. So the second part of the catch and release
20 program that we have is releasing individuals without NTAs.
21 This is actually the most disconcerting part. We can
22 actually arrest somebody that has a criminal arrest record
23 here in the United States, and if it does not meet these
24 priority guidelines, we have to walk them out our door if
25 they have been here since--if they claim to have been here

1 since January of 2014, we have to walk them out our door,
2 and we do not even issue them an NTA. In effect, we are
3 saying, "Go ahead and stay in the country as long as you
4 want. You do not even have to go before a judge. You do
5 not even have to show cause for why you should be allowed to
6 stay in the United States." We just walk them out our door
7 and say goodbye. And we do this in sectors where we are not
8 even very busy. For instance, in the Havre Sector, several
9 months ago we arrested an individual who was arrested in the
10 State of Louisiana for a violent crime against a woman,
11 domestic violence, a violent crime against a woman. This
12 was a felony arrest that this individual was on the books
13 for. We, the Border Patrol in the Havre Sector, arrested
14 this individual, determined that he was in the country
15 illegally. We found out that he had this arrest record on
16 the books in the State of Louisiana, and we still walked him
17 out the door and said, "Goodbye. Have a nice day."

18 Chairman Sessions. Well, tell me a little further
19 about this question of the changes that have occurred at the
20 border with regard to apprehensions. Was it not the case
21 that most individuals apprehended in the past were processed
22 and returned rather than put in a removal situation and
23 going through the removal policy?

24 Mr. Judd. There have actually been ebbs and flows.
25 There are times that we have, in fact, released individuals.

1 For instance, in the early 2000s, mid-2000s, we had an
2 influx of Brazilians that were entering the country
3 illegally, and what they would do is they would actually
4 cross the border, and they would test us to find out if we
5 were going to release them within an NTA. And the moment we
6 did that, they would flood that particular area until we
7 stopped that and held them for deportation proceedings. But
8 the moment we stopped releasing them with NTAs and held them
9 for deportation proceedings, that traffic immediately dried
10 up, and that deterrent effect got back to the country of
11 Brazil, and they no longer tried to cross the border
12 illegally.

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

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

1 Chairman Sessions. 80 percent?

2 Mr. Judd. I would guess that that is about where it is
3 at.

4 Chairman Sessions. Mr. Nowrasteh, in 2013 you were
5 quoted in a Fox News article as saying, "The Border Patrol
6 should operate as a funnel to channel would-be unlawful
7 immigrants into the legal market rather than an agency that
8 separates willing workers from willing employers." Is that
9 accurate? And do you stand by that statement?

10 Mr. Nowrasteh. Yes.

11 Chairman Sessions. I know you have in previous
12 testimony--we had an exchange at least in a format you and I
13 were together. You cited the Mariel boatlift as proof that
14 wages of domestic workers are not reduced by a large flow of
15 workers from abroad. In his testimony before this
16 Subcommittee, Dr. Borjas, who is from Harvard, probably the
17 authoritative person in the world on these issues, examined
18 that allegation or that point and established that for the
19 people who came in on the Mariel boatlift, people in the
20 same work skill sets that they had did see a reduction in
21 their wages. Do you agree or disagree with Dr. Borjas'
22 statement?

23 Mr. Nowrasteh. He did find that. The effect was
24 delayed for several years. So it is hard to draw exact
25 causality between that. But he did make an important

1 contribution to that literature.

2 I want to say in our exchange where we had this about
3 the Mariel boatlift, we also talked about many other papers
4 and much other evidence by Professor Perry and others that
5 discuss the wage impact of immigration in the United States.

6 Chairman Sessions. Well, I would note that the
7 Congressional Budget Office found that if the Gang of Eight
8 bill had passed, we would have had a decline in wages for
9 American working people for 10 years, in that 10-year
10 window.

11 Mr. Krikorian, the Department of Homeland Security's
12 visa overstay report that came out earlier this year, which
13 was rather shocking to me, indicated that 482,000 aliens who
14 overstayed their visas in 2015--that is almost half a
15 million who overstayed their visas--were suspected to remain
16 in the country at the end of the fiscal year. We have often
17 heard that visa overstays account for approximately 40
18 percent of the illegal population in the United States
19 today. That was a number we had several years ago.

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

22 Mr. Krikorian. Yeah, it is almost certainly rising.
23 In fact, there is research from the Center for Migration
24 Studies, which is not related to the Center for Immigration
25 Studies--in fact, they are a high immigration booster

1 outfit. But by a former INS statistics director who is a
2 top person on this--he has got real integrity--he looked at
3 this data, and his conclusion is that more than 50 percent
4 of the new illegal immigrants--in other words, there are
5 still a lot of illegal immigrants who are border jumpers.
6 Of the new illegal immigrants coming in today--I mean, his
7 data was only through 2012, but it showed a clear pattern of
8 the majority of new illegal immigrants are visa overstays.
9 And there are still a lot of people sneaking across the
10 border, infiltrating the border. It is not that the problem
11 is not there. It is just that from roughly 60/40 border
12 jumpers to overstays, it now maybe has reversed to something
13 like 60/40 overstays versus border jumpers. And nobody is
14 looking for those overstays, period. No one.

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

20 Mr. Judd. Correct.

21 Chairman Sessions. This is an evisceration of law, is
22 it not? I mean, how can you deal with the problem of visa
23 overstays if your policy is not to deport anybody unless
24 they overstay their visa, and then on top of that commit a
25 second--and former Secretary of State Clinton said in a

1 debate a few weeks ago that nobody should be deported unless
2 they commit a violent crime.

3 Mr. Judd. And what is amazing about that is if we--
4 9/11 should scare every single United States citizen,
5 period. If you look at those individuals that took down the
6 towers, they came in under exactly what you are talking
7 about. They came in under lawful visas, and they overstayed
8 those visas, and they later committed the most heinous crime
9 against the citizens of this country.

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

14 Chairman Sessions. Is that an incentive to come
15 illegally?

16 Mr. Judd. Of course it is incentive. Why not? Why
17 not? I mean, again, let us talk about the Brazilians. When
18 the Brazilians used to cross the border when they knew that
19 they were going to be released, they would literally walk
20 across the border with suitcase in hand. They would drop
21 the suitcases the moment they crossed the border, and they
22 would wave at the cameras so Border Patrol agents could come
23 pick them up because we would just facilitate their entry
24 further into the United States. We would give them a bus
25 ticket, and what was funny is they were all going to either

1 Atlanta or Boston, every single one of them.

2 Chairman Sessions. Well, on that point how was that
3 reversed? It was impossible. You reversed it. What
4 happened?

5 Mr. Judd. We held them for their actual show-cause
6 proceedings. We actually held them--

7 Chairman Sessions. Oh, so you did not release them on
8 bail. You gave them a hearing, but you held them in custody
9 until they had the hearing and then deported them if they
10 did not have a justification.

11 Mr. Judd. We did, and that stopped them from--

12 Chairman Sessions. And they quit--

13 Mr. Judd. Yes, and they did not come anymore.

14 Chairman Sessions. Mr. Judd, every single day your
15 agency reports on seizures of enormous drug loads, literally
16 tons of heroin, cocaine, meth, marijuana, with street values
17 in millions, at or near the border. A lot of it is also
18 caught inside the border, inside the country. Last week,
19 the White House reported a 67-percent increase in Mexican
20 heroin production from 2014 to 2015, and nearly all of
21 Mexico's heroin is targeted to the United States. Is that
22 not correct?

23 Mr. Judd. That is correct, and that is something that
24 should also scare the American public. There is a way that
25 you can actually--these individuals that are crossing the

1 border illegally, they are doing it to tie our hands up.
2 They know that if we are chasing these individuals, then the
3 cartels can run the higher-profit contraband such as heroin
4 right behind us, right behind the holes that they create.
5 All of these individuals that are crossing the border
6 illegally--and, again, that is a violation of the law to
7 cross the border illegally. All these individuals, they
8 could present themselves at the port of entry and ask for
9 asylum. But they do not. They cross the border illegally
10 because the cartels know that now we are going to be tied up
11 chasing those illegal aliens, and all they do is they run
12 their higher-profit contraband behind us.

13 Chairman Sessions. Thank you.

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

19 Mr. Judd. I would not say that. I know it has. I
20 know it has.

21 Chairman Sessions. And would you say that the uptick
22 we have seen in illicit drugs--would you say we are seeing
23 an increase in illicit drugs crossing the border?

24 Mr. Judd. I just got a picture from a very good friend
25 of mine, a K9 handler who works out of Arizona, and I saw

1 several pictures of China White heroin that was filled in a
2 vehicle, that they had to take the vehicle apart to get to
3 it. We know that it is coming, and the policies are
4 encouraging it to continue to come.

5 Chairman Sessions. Well, thank you all. I appreciate
6 this testimony. In my judgment, having been a Federal
7 prosecutor for almost 15 years, having worked with crime,
8 there is a deterrent impact in law enforcement. And I think
9 it would be very dramatic with regard to illegal immigration
10 if we had a leader in this country that said do not come to
11 this country unlawfully, you will be apprehended, and if you
12 are apprehended, you will be deported, and we are not going
13 to play games anymore, and you are going to be sorry you
14 wasted your money and your time and risked your life, if you
15 want to come to America, apply lawfully. We would see a
16 dramatic reduction in the attempts, the risks that people
17 are taking to come to America, and we restore some
18 credibility to our system. I feel very strongly about it.
19 I think this hearing has helped confirm that fact.

20 Thank you all for your testimony. It has been very
21 valuable. We will adjourn the hearing, and there will be an
22 opportunity for people to submit questions for the record,
23 and we would appreciate it if you would respond if
24 requested.

25 Thank you. We are adjourned.

1 [Whereupon, at 5:01 p.m., the Subcommittee was
2 adjourned.]

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