

Testimony summary for Rodney Scott 09/14/2023

Chairman McClintock, Ranking Member Jayapal, (*Chair Jordan, ranking member Nadler*)
Members of the Subcommittee, good morning and thank you for inviting me to testify before you.

I am currently a Distinguished Senior Fellow for Border Security and Immigration at the Texas Public Policy Foundation (TPPF). However, more people know me from the time I served as Chief of the US Border Patrol (USBP).

While I am proud of both positions, I am here today to talk to you about my firsthand experiences as a U.S. Border Patrol agent for over 29 years. That firsthand experience taught me that border security is national security. That is not a catch phrase or a political talking point, that is just a commonsense fact.

Earlier this week, people across this nation paused to remember the thousands of innocent souls that were murdered, and the lives that were forever changed on September 11, 2001, by a group of foreign nationals, driven by their shared hate for America. While the names of foreign terrorist organizations and their leaders continue to change, the hate and ideologies that drive them to kill and destroy anything they don't agree with, especially America, isn't going away in our lifetime. There are thousands, if not millions, of foreigners around the globe today that are conspiring about how to get inside America's borders and kill and destroy as much as they can.

Please understand, I am not asserting that every threat to America comes from outside our borders. Today, as we will likely observe during this hearing, our nation is increasingly divided and fractured. In this body that divide manifests as arguments, insults and inaction. Outside the walls of Congress, that divide is increasingly resulting in acts of violence by one American against another. I argue that while this is unfortunate, we have existing laws, regulations, processes and entire agencies that are tasked to manage and mitigate these internal issues as they become public safety threats or individual criminal acts.

However, I also argue that it is exponentially more difficult and complicated to manage and mitigate internal conflicts when you allow an unabated influx of external influences, conflicting cultures and countless different languages to overwhelm our communities. Since the founding of this great nation, various Legislatures have acknowledged this reality and established immigration laws and agencies to enforce those laws to ensure that new immigrants are welcomed and assimilated into American culture.

Consistent with the intent of this hearing and my professional expertise, my testimony is focused on the role that border enforcement plays to keep Americans safe from the external threats. I beg each of you to please put your party affiliation aside for a minute to listen and consider my firsthand experiences. My intent is to help you understand why I adamantly believe that border security is national security and what that really means. I hope to help you understand the severity of the threats we are facing and how the current border security and immigration policies have dramatically increased the vulnerabilities at the border. Thus putting every American and immigrant at increased risk. If you have the slightest doubt about any of the

information I provide to you, I highly encourage you to seek out any experienced border patrol agent and ask them if they agree with my assessments and assertions.

My firsthand experiences taught me that border security and immigration policy are two distinctly different, yet interrelated issues. Border security is simply knowing and controlling who and what enters our homeland. Immigration and customs laws set the legal entrance criteria. However, these laws are completely irrelevant if the US government cannot or chooses not to control the initial entry.

To claim any meaningful level of border security the United States government must take every reasonable action to control who and what enters our homeland. Every decision to allow a foreign national or a foreign product to enter our home must be an informed and intentional decision. If either of these criteria are missing, then we cannot honestly assert that our borders are secure. Many would argue that it is malfeasance, or at a minimum nonfeasance, for authorities to knowingly and willfully ignore threats and vulnerabilities. Unfortunately, this is exactly what is occurring.

My firsthand border experience began in 1984 when I moved to a small border town in southern Arizona. This was well before I joined the US Border Patrol in 1992 as a GS-05 Border Patrol agent trainee. I competitively progressed through the Border Patrol ranks and was ultimately promoted to Chief in February 2020. I chose to retire in August 2021. Over my non-partisan career, I was honored to participate in the transition from an uncontrolled chaotic SW border to a border that was increasingly secure. Unfortunately, I also witnessed the rapid and systematic destruction of decades of progressive border security in just the first few weeks of the Biden administration. To be a bit blunt, this systematic destruction of border security and the very predictable consequences scare the hell out of me. And, if you are willing to put emotions aside for just a few minutes to evaluate the entire situation on our borders from a holistic perspective, I assure you that the emotion that will emerge is fear. Hopefully, there is also a sense of urgency to fix this before more people, Americans, or migrants, die.

As a frontline Border Patrol agent in San Diego, CA from 1992 through 1998, I routinely spent 10 hours a day, five days a week directly patrolling the US/Mexico border between the Pacific Ocean and base of Otay Mountain. Nearly every day I observed experienced smugglers, low level uneducated foot guides and even average illegal aliens, coordinate distractions to create opportunities for other illegal aliens to get past Border Patrol and into the US. A common distraction would be a couple very fast individuals, normally gang affiliated teenage males, who would make a very visible illegal entry serving as bait to entice agents to chase them. If agents didn't initially take the bait, they would increase the likelihood of a chase by assaulting agents with rocks, sling shots or other debris. Once an agent took the bait, the individuals would routinely run a short distance north then angle east or west to remain within safe retreating distance to the actual border. As agents shifted to chase the bait, the real group of illegal aliens would "banzai" rush into the US through any enforcement gap they identified. Sometimes this second group would be 5-10 illegal aliens and sometimes it would be more than a hundred at a time. If the agents were quick enough to catch the bait it was of little consequence as the US Attorney would not prosecute minors so they would be repatriated to Mexico and the cycle would continue.

This same tactic was used by drug smugglers with significant success. Routinely agents would respond to a large group of illegal aliens crossing the border or even a single vehicle drive through smuggling illegal aliens only to realize that as soon as they responded, several vehicles drove across the border in another area. In one such case, early in my career we were prepared for the distraction. We made it look like we were taking the bait, but other agents covertly held back and interdicted three pick-up trucks shortly after they illegally entered the US through what appeared to them to be an enforcement gap. Each truck was loaded with approximately 1500 lbs. of narcotics. This success came at a cost. To make that enforcement action work we had pulled agents from another area and accepted increased risk there instead. In those days we had less than 5000 agents nationwide and did not have any meaningful border barriers or technology to improve the agent effectiveness, so we have no idea what that operation actually cost in terms of goaways in the area we chose not to patrol that day.

Over my career, the Mexican drug cartels increasingly asserted control over any border crossings between ports. The sophistication of their tactics and techniques continued to improve while the basic concept remained the same: create a distraction too good for law enforcement to ignore, then exploit the gap in border security that is created. After transferring to Arizona in 1998 I observed the local drug cartels leveraging this tactic to new extremes. Within the city limits of Nogales, in addition to sending over the traditional distractions, the local drug smugglers would routinely stage massive rock assaults on agents near the border. In more rural areas they would resort to what we commonly referred to as “give-a-way” loads. The “give-a-way” would be a small load of narcotics or groups of illegal aliens. In an extreme example, a local cartel faction sent a thirteen-vehicle caravan across the border in broad daylight, each vehicle was severely overloaded with illegal aliens. If my memory is correct, one full size Ford van held over 25 illegal aliens. As it turned out the thirteen-vehicle caravan was designed to simply be a distraction to conceal a fourteenth vehicle that was loaded with narcotics and illegally entered a few minutes later. The tactic would have likely worked if it had not been for a couple of alert plain clothes taskforce agents that responded from outside the area to help the overwhelmed Border Patrol and observed the narcotics laden vehicle entering a highway.

To fully comprehend this strategy, one must recognize that in the smuggling business model, most humans are seen by the smugglers as recyclable. When an illegal alien without a known criminal history is arrested by US law enforcement, one of two things routinely happens. The alien is processed, removed from the US, likely to be used again by the cartels/smugglers or the alien is set up for an immigration hearing and then routinely released into the US. They then effectively serve as a human advertisement to entice other would-be illegal aliens to use their smuggling services. Either is a win for the cartel’s business.

There are several important exceptions to the above. This can include any alien with a known significant criminal history, active arrest warrants, an Interpol notice or if the alien is on the National Watchlist. Historically, criminal aliens have been held in custody, prosecuted, jailed for an appropriate time and then formally deported. Even the Biden administration still does this occasionally for extremely significant criminals. Any interdicted narcotics or contraband are seized and eventually destroyed so the cartels limit their losses in this area to the maximum extent possible.

Most aliens, and most Americans for that matter, do not understand what criminal history and other information US law enforcement can access. Even more important for this discussion is the fact that most people do not seem to understand what US law enforcement can NOT access. When law enforcement officers at any level in the US use a person's biographical and biometric information to run records checks, that freshly collected information is being compared to existing records in specific US agency databases. It is extremely rare for any information about criminal acts committed by a foreign national outside the US to be documented within these US criminal history databases. When Secretary Mayorkas or any US official asserts that aliens are properly vetted, they are really telling you that they checked US databases to see if the alien had any known criminal history inside the US or if the alien had been identified and placed in the Terrorist Screening Database or Data Set.

To ensure there is no confusion here, running records checks on any alien that has not been arrested by US law enforcement in the past or is not currently known by US intelligence is like looking for something on an empty hard drive. There is simply no data to compare it with. The alien could be a saint, or he/she could be serial killer. There are a few ways to find out more about who the alien really is. One way is to request information from officials in the alien's home nation. At best, that is extremely time-consuming and requires US State Dept. support. In many cases this is not even an option due to a lack of diplomatic relations or a lack of capabilities in the other nation. Another way to solicit more information is for a skilled interviewer to conduct an in-depth face-to-face interview in the alien's native language.

Many illegal aliens assume that the US knows more about them than we do. Any alien with something to hide will routinely pay more to ensure that they can evade law enforcement. That means they pay extra to be in the second wave which increases the probability of successfully getting past US Border Patrol. Today, instead of fast teenagers taunting agents, the cartels simply use large groups of illegal aliens that have been coached to seek out Border Patrol and claim asylum. In my experience, the second wave of illegal entries is more likely to contain the most significant threats to the safety and security of America regardless of what the records checks do, or do not reveal.

Now let's address the aftermath of the terrorist attacks that took place on September 11, 2001. The 9/11 terrorist attacks had a profound impact on my understanding of border security. From 1992 to September 11, 2001, terrorism was not part of the US Border Patrol's daily considerations, planning or even dialogue. That changed as the Nation realized that foreign terrorists had exploited vulnerabilities in our border security and hit us hard on our own soil.

Congress responded in part by creating the Department of Homeland Security. I responded by accepting an opportunity to help build the CBP Office of Anti-Terrorism. I quickly found myself immersed in classified intelligence briefings and interagency planning to mitigate immediate terrorist threats and improve our capabilities to detect and prevent future threats. I was honored to be part of several interagency and interdisciplinary teams that analyzed government wide capabilities, modified processes, integrated information and drafted operational and investment plans to improve Americas border security. The terrorists that perpetrated 9/11 entered the country through ports of entry. As such, improving inspections at ports was initially our top priority. But we acknowledged that as we mitigated vulnerabilities at ports, terrorists, and other

threats would predicably shift to entering illegally in between the ports. We also had reason to believe that terrorist organizations would increasingly seek to use operatives that were unknown to US law enforcement or intelligence agencies. We could not rely solely on records checks. Building a solid foundation of CBP Officers and Border Patrol Agents with specialized interview skills was critical. Investments were made in assignments to the FBI Joint Terrorism Taskforces across the country, specialized intelligence training, security clearance upgrades and specialized interview and observation techniques training. This enhanced agents' and officers' ability to illicit a response and detect deception. CBP also invested in upgraded data systems to store and analyze these vast amounts of information.

The Border Patrol strategy evolved with an increased focus on situational awareness through intelligence and physical surveillance. To sustain and improve our border security gains without significant increases in personnel, we needed to buy more time. However, deterring illegal immigration through a certainty of arrest and application of consequences remained a fundamental pillar.

When I was selected as Chief, the capabilities of the Border Patrol to detect and interdict illegal entries were better than ever and rapidly improving. As a result, illegal entries were dropping. Fewer illegal entries combined with the construction of the new border wall system was making every agent more efficient. In simple terms, that bought us more time. One agent was increasingly able to maintain security over more border area than ever before. This allowed agents to not only expand patrol areas but to spend more time interviewing anyone that was arrested. The security benefits began to cascade quickly. Agents had a better opportunity to verify every alien's identity, as well as their intent. Agents identified fraudulent families, gang members, various criminals, and even potential terrorist ties that routine records checks had not revealed. Intelligence on transnational criminal network's operations, tactics and techniques was increased. USBP enhanced data systems to better track and analyze operational and criminal activity. Increasingly that information was used to further enhance operational effectiveness and to support the investigations of various agencies targeting human traffickers, narcotics smugglers, and terrorism.

In contrast, starting on January 21, 2021, I watched the border security gains that were made over three decades vanish and the safety of border communities spiral backwards. With each border security and immigration related executive action that the Biden Administration took, the volume of illegal immigration rapidly increased, overwhelmed Border Patrol and effectively transferred control of our southwest border to the Mexican drug cartels.

The publicly available numbers are readily available at www.CBP.gov/newsroom/stats/nationwide-encounters so I won't waste time reciting all of them here. However, the published numbers only tell part of the story. While the Biden administration and mainstream media try to tell America that what they are seeing on TV is simply families from Mexico and Latin America seeking a better life, they ignore the fact that since the Biden administration took office, there have been well over one million illegal aliens encountered by CBP from outside the Western Hemisphere. The vast majority of those being single adults. While CBP routinely encounters illegal aliens from over 150 nations each year, they only publish the actual number of aliens encountered from 21 select nations. CBP lumps all other

nationalities into the general category of “other”. Per the CBP website, under the Biden administration over 400,000 illegal aliens have been encountered from counties lumped into the “Other”. For perspective, in Fiscal year 2021 that number was only 28,252.

Of great concern, is the increasing number of encounters in between the ports of entry with illegal aliens on the Terrorist Screening Data Set (TSDS), commonly known as the National Watchlist. From fiscal year 2017 through fiscal year 2020 only 14 illegal aliens on this watchlist were encountered by US Border Patrol. From fiscal year 2021 through July 31, 2023, 263 illegal aliens on this watchlist were encountered by US Border Patrol. 149 of these encounters were in fiscal year 2023 alone.

What all those numbers fail to adequately show is what America has lost and what the cartels, terrorists and even nations hostile toward American have gained. Policy makers must understand that this is not simply an immigration issue. This is a serious national security threat. Today the cartels have mastered the tactic of using the endless flow of illegal aliens to overwhelm law enforcement to create controllable gaps in border security. In many areas they simply coordinate a massive illegal entry. At other times they force aliens to cross the border in extremely remote dangerous areas. In the Rio Grande River and other maritime environments, it is not uncommon for the cartels to throw an alien into the dangerous waters. These tactics are all designed to elicit the desired law enforcement response and to create a controllable gap in border security. These gaps are then exploited to smuggle anything they want into the US. To think that well-resourced terrorist networks and hostile nations are not exploiting this vulnerability is naive.

This well-known and effective tactic is getting easier for the cartels to pull off and harder for law enforcement to mitigate every day. Each policy decision that results in an illegal alien being released into the US is free advertisement for the cartel. This ensures that they will have an endless wave of humans eager to pay them and be used as distractions as long as they have a chance of getting into America.

If the sheer numbers were not bad enough, the current administration has directed border patrol to prioritize immigration processing over enforcement. This means that many agents never leave the station and those that are deployed at the beginning of the shift are directed to prioritize transporting surrendering aliens to processing centers. Agents are spread so thin that they often lack the capability to make an interdiction even after an illegal entry is detected. These events are reported as known gotaways. Unfortunately, CBP refuses to post this number on their web site. Court documents and local sector reports indicate that there have been nearly 1.7 million known gotaways under the Biden Administration. This does not include the unknown gotaways along the hundreds of miles of border that lack persistent surveillance and go unpatrolled for days and even weeks. In my professional assessment, U.S. Border Patrol has lost the ability to know who and what is entering our homeland. The Mexican drug cartels now get to pick and choose who, and what gets to enter America.

But I am not done. It gets worse. Due to the massive numbers of illegal aliens overwhelming CBP, in-depth face to face interviews are all but nonexistent. CBP is experiencing stations overcrowded with illegal aliens from several countries that are known to sponsor and support terrorism. Even so, they cannot get any language translation support to conduct even the most

basic processing, let alone a meaningful interview. This continued even after it was discovered that a smuggler associated with ISIS had helped at least fifteen illegal aliens from Uzbekistan enter the US. Public reporting also indicates that these fifteen were released into the US and remain at large. Please remember that the border is simply a transit point to every town, city, and State throughout the United States.

As the incident with the Uzbekistanis demonstrates, we cannot rely on biographic or even biometric records checks alone to decide what foreign nationals are allowed to roam freely around the US. These tools are great resources that were developed and intended to assist our law enforcement officers. However, there is simply too much information that these systems will never contain.

The key to effective border security has always been the trained officers and agents interacting face-to-face to conduct meaningful evaluations. The massive illegal immigration that was invited and encouraged by the polices of the Biden administration has effectively removed the officers and agents from this role. We are relying solely on severely limited data systems for our national security. But it does not need to be this way.

I look forward to answering your questions.

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