

# A “CARAVAN” OF ILLEGAL IMMIGRANTS: A TEST OF U.S. BORDERS

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## HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY

OF THE

COMMITTEE ON OVERSIGHT

AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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# CONTENTS

Hearing held on April 12, 2018 .....	Page 1
WITNESSES	
Mr. Brandon Judd, President, National Border Patrol Council	
Oral Statement .....	5
Written Statement .....	7
Colonel Steven McCraw, Director, Texas Department of Public Safety	
Written Statement .....	14
The Honorable Andrew R. Arthur, Resident Fellow in Law and Policy, Center for Immigration Studies	
Oral Statement .....	27
Written Statement .....	29
Mr. Michael Breen, President & CEO, Truman Center	
Oral Statement .....	49
Written Statement .....	52
APPENDIX	
Statement for the Record of U.S. Customs and Border Protection .....	70
Letter for the Record from Amnesty International, submitted by Ranking Member Lynch. ....	74
Letter from Civil Rights Groups in California to Governor Brown, submitted by Mr. Gomez .....	78



## A “CARAVAN” OF ILLEGAL IMMIGRANTS: A TEST OF U.S. BORDERS

Thursday, April 12, 2018

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIONAL SECURITY,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 2:03 p.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the subcommittee] presiding.

Present: Representatives DeSantis, Duncan, Gosar, Hice, Comer, Lynch, Welch, DeSaulnier, and Gomez.

Mr. DESANTIS. The Subcommittee on National Security will come to order. Without objection, the presiding member or the chair is authorized to declare a recess at any time.

Over the course of the last 2-1/2 weeks, we’ve heard news accounts of a wave of foreign nationals headed for the U.S. southern border. We’re here today to discuss the impending arrival of what was initially called an immigrant caravan, which remains a challenge of U.S. border security.

The San Diego-based group, Pueblo Sin Fronteras, or People Without Borders, has taken credit for organizing the effort. While they claim to provide humanitarian aid to migrants and refugees, what they are doing now is undermining the rule of law.

For 10 years now, this group has escorted foreign nationals on an annual trek from Central America through Mexico, encouraging many to continue to the United States, to take advantage of asylum laws. This year they drew their biggest crowd yet, more than 1,200 people. In some ways there are similarities to what we experienced in 2014, when waves of unaccompanied minors and young mothers with children streamed across the border.

Unlike his predecessor, President Trump called out the Mexican Government’s failure to step up and do their part to accommodate these refugees. For far too long, Mexico has been derelict in its duty. For far too long, Mexico has been content to let these caravans pass on through and become our problem. Not anymore.

Coincidentally, a few days after this group decided to begin its annual march, DHS released its monthly apprehension statistics, which showed an alarming resurgence of illegal border crossers. What we saw in response was the consistency of conviction of President Trump’s administration, of course, who campaigned on building a wall and who backs the brave men and women of ICE and Border Patrol and law enforcement everywhere, who are working hard.

It took courage to mobilize the National Guard without manufacturing a humanitarian crisis, like the previous administration. As Commander in Chief, the President has every right to take meaningful measures to protect our way of life, maintain the integrity of our borders, and safeguard our immigration system.

We all know the National Guard cannot serve in this capacity indefinitely. We need to take a hard look at what our existing laws and capabilities are, and be honest about what can actually be done to not only enhance border security, but to reduce the magnet of illegal immigration going forward.

The caravan had the unintended consequence of helping the Trump administration identify its operational and legal vulnerabilities, and provided us with an opportunity to conduct much-needed oversight of some key immigration loopholes. It reminds us of how porous our borders still are, with people and drugs being smuggled in daily. We also see how, by directing our finite resources to illicit activity in one direction, we may be leaving a gaping hole for cartels and gangs to pass through in another.

Now, there are promising actions that can be taken to get a handle on this. The Trump administration should follow the President's first immigration executive order and properly interpret the Wilberforce Act.

In addition, to combat the abuse of asylum laws, both the Department of Homeland Security and the Department of Justice should send asylum officers directly to the border for a rocket docket, to immediately hold a rapid-fire field hearing and conclude that folks trying to abuse the asylum laws are, in fact, ineligible and then allowing them to be placed in expedited deportation.

What is more, both Article II of the Constitution, and the delegated authority given to the President by the Congress to keep anyone who has not already entered and even override refugee and asylum policies when he determines it's against our interest. That's in the law now. When you have criminals, gangsters, drug crisis, and the political nature of the mass illegal immigration, this clearly fits that description.

And finally, Congress, as part of any effort to tighten immigration statutes, must limit at least the power of the lower courts to block expedited deportation or denial of entry, except when there is a prima facie claim of a plaintiff being a U.S. citizen.

We have a lot of work yet to do, and I'm glad to introduce our distinguished panel of experts who are here to help shed light on this important issue.

Mr. Brandon Judd is here to speak on behalf of the approximately 15,000 Border Patrol agents in his capacity as the President of the National Border Patrol Council. Colonel Steven McCraw currently serves as the Director of the Texas Department of Public Safety, which oversees 13 State criminal justice and public safety divisions. We also have the Honorable Arthur, resident fellow with the Center for Immigration Studies and former immigration judge. And lastly, we welcome Mr. Michael Breen from the Truman Center, a national security expert and Iraq War veteran.

I'd like to add that we did invite the U.S. Border Patrol to join us here today, and they chose not to send a witness to testify on

this important matter. Again, I'd like to thank all the witnesses who decided to join us today and look forward to their testimony.

Finally, I just want to make sure we will be maintaining order in the hearing room. So I thank you and I yield to my ranking member, the gentleman from Massachusetts, for his opening statement.

Mr. LYNCH. Thank you, Mr. Chairman. I'd also like to thank and welcome our witnesses today. Thank you all for helping this committee with its work. As evidenced by the bipartisan omnibus appropriation bill passed last month, there are members on both sides of the aisle who share a commitment to providing our border security and enforcement personnel with the resources necessary to perform their critical missions on behalf of the American people.

This agreement, which I supported, I voted for, provides a total of \$14 billion for Customs and Border Protection, including \$4.4 billion for CBP, Customs and Border Patrol and security operations, and \$3.7 billion for U.S. Border Patrol training, development, assets, and other activities. It also makes funding available for the hiring of 351 new Border Patrol agents and law enforcement officers.

And while the omnibus agreement was a result of hard-fought negotiation and is not a perfect bill, I believe that it does represent a meaningful step towards enhancing our border security. However, it is imperative that the Federal Government utilizes these and other new funding sources provided by the agreement in a wise fashion.

In the interest of national security, policies designed to secure our borders against the threat of terrorism, criminal networks, and other illicit activities cannot be based on misinformation, or derived from arbitrary Presidential tweets. Rather, the strength of our border security framework is dependent on policies developed through bipartisan consideration, and grounded entirely in fact. To this end, they must also be undertaken in a manner that avoids demonization, and affords maximum respect to the fundamental principles of America as a Nation of immigrants, and also adheres to the 1951 Geneva Convention relating to the status of refugees.

In view of all these considerations, it is important to review President Trump's recent decision to order deployment of up to 4,000 National Guard personnel to the U.S.-Mexican border. Clearly, this decision is not unprecedented. Both President George W. Bush and President Obama previously invoked so-called Title 32 authority to temporarily deploy thousands of National Guard units to the southwest border to provide technical, logistical, and administrative support to the U.S. Border Patrol.

It is noteworthy that while the U.S. Border Patrol apprehensions for illegal border crossings exceeded 1 million apprehensions in 2006 and over 460,000 apprehensions in 2010, U.S. Customs and Border Protection reports that in 2017, the agency recorded, quote, "the lowest level of illegal cross-border migration on record, as measured by apprehensions and inadmissible encounters at U.S. ports of entry," close quote. The approximate 310,000 arrests for illegal border crossings recorded for 2017 represents the lowest annual apprehension figure since 1971, 46 years ago.

In articulating his plan to deploy National Guard units, the President has stated, quote, “We are looking from 2,000 to 4,000 and will probably keep them, or a large portion of them, until such time as we get the wall,” close quote.

Given that Congress has not authorized funding for the entirety of the President’s desired border wall and absent further clarification of the President’s tweet, the deployment of our National Guard units to the southwest border appears to be indefinite in duration at this point. It also remains largely undefined, in terms of scope and cost. According to the independent Government Accountability Office, the collective cost of the two previous National Guard border operations under President Bush and President Obama exceeded \$1.35 billion.

It’s important, I think, for Congress to learn which priorities or programs the military will need to reduce in order to reprogram the necessary funding to pay for this border operation. In order for this committee to examine the merits of the President’s action, today, Ranking Member Cummings and I join ranking members from the House Homeland Security, Armed Services, and Judiciary Committees in requesting a series of documents from the Department of Defense and the Department of Homeland Security pertaining to the rationale behind the announcement of deploying National Guard troops to the border, as well as the specific activities, duration, and costs associated with this operation. This includes any memoranda of understanding the administration has negotiated with relevant States in the National Guard Bureau.

Along these lines, it would have been very helpful for us to hear from the Department of Defense and Department of Homeland Security witnesses at today’s hearing as we continue to conduct oversight over our border security policies and seek to identify common-sense steps that we can take to better secure our borders in a balanced and sustainable way.

So thank you, Mr. Chairman. I look forward to discussing these issues with our witnesses, and I yield back the balance of our time.

Mr. DESANTIS. The gentleman yields back.

I’m pleased to introduce our witnesses. We have Mr. Brandon Judd, president of the National Border Patrol Council; Colonel Steven McCraw, director of the Texas Department of Public Safety; the Honorable Art Arthur, resident fellow in law and policy at the Center for Immigration Studies; and Mr. Michael Breen, President and CEO of the Truman Center.

As you can see, there is an empty chair for the uninvited witness, Ms. Carla Provost, acting chief at the U.S. Border Patrol, should she choose to attend the hearing.

Welcome to you all. Pursuant to committee rules, all witnesses will be sworn in before they testify. So if you could all please stand and raise your right hand. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God? Please be seated. All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made part of the record. As a reminder, the clock in front of you shows the remaining time during your opening statement. The light will turn



yellow when you have 30 seconds left and red when your time is up. Please also remember to press the button to turn your microphone on before speaking.

And, with that, we'll recognize Mr. Judd for 5 minutes.

## **WITNESS STATEMENTS**

### **STATEMENT OF BRANDON JUDD**

Mr. JUDD. Chairman DeSantis, Ranking Member Lynch, and distinguished members of the subcommittee, I would like to thank you for the opportunity to testify today. I want to discuss with you the issues of border security and the magnets that draw people across our border illegally. This includes, but is not limited to, the catch-and-release program, manpower, and the use of agents. The catch-and-release policy is a term that was coined by Border Patrol agents many years ago. It refers to persons arrested for crossing the border illegally, and subsequently, released into the United States on their own recognizance and prior to having their deportation proceedings adjudicated by an immigration judge.

Under this program, most individuals are released, with the promise to appear before a judge at a later date that is to be determined. Due to an extensive backlog of cases, the date is usually at least 2 years from the time of release, but it might as well be 10, 15, or 20 years, because the vast majority of these individuals never appear before a judge as ordered. Instead, they disappear into the shadows of society.

On January 25th, 2017, President Donald Trump signed the Border Security and Immigration Improvement Executive Order. Its intent was to implement new policies designed to stem illegal immigration. In support, DHS Secretary John Kelly issued implementation directions by a memoranda to all corresponding department heads, stating the catch-and-release policy shall end immediately.

Notwithstanding the clear guidance, catch-and-release policies have not ended. In November of 2017, field office directors for both San Antonio and El Paso, Texas, ICE ERO field offices sent email messages to Border Patrol leadership stating, in part, "I have directed my staff to not accept files or custody of any FAMUs," family member units, "that are not processed as NTAs, notices to appear, that are not FRC eligible." FRC is field relocation center. "My position may change subsequent to discussions with HQ, but for now, ERO San Antonio and El Paso position is that we will not process cases like male HOH," head of household, "unless we accept custody, as the transfer of cases is not automatic."

By processing illegal border crossers with WA/NTAs, we consciously continue the catch-and-release program and send a clear message to criminal cartels that we are not serious about following through with the President's or Secretary's orders.

Criminal cartels continue to exploit our policies, specifically catch and release. They force large groups of people to cross the border illegally in dangerous locations instead of through ports of entry, a controlled environment, in an effort to create gaps in our coverage. By creating gaps, criminal cartels are able to cross higher-value contraband, such as opioids, criminal aliens, persons from special interest countries, and other narcotics without detection,

apprehension, or seizure. By continuing policies like catch and release, we are putting innocent people, like women and children, into the hands of dangerous criminal enterprises.

The single biggest challenge that we face right now to securing our border is manpower, as we are currently 2,000 agents below our congressionally mandated floor of 21,370 agents. There are currently three challenges that we face: Retention, recruitment, and the use of agents. The National Border Patrol Council also views the reinstatement of FLSA as a top priority and one that will significantly improve our urgent retention crisis. I want to be clear about this. Until we address these issues, we will not be able to secure the border.

Along with catch and release and manpower, the deployment of our limited resources is an important piece of the border security puzzle. The Washington Times recently published an article highlighting gross mismanagement of the Border Patrol workforce in the McAllen Border Patrol Station. A little more than 700 agents are assigned to the station, and when annual leave, sick leave, and days off duty are calculated, there are approximately 400 agents that show up to work on any given day. Of those 400 agents on duty, only around 50 are deployed to the border. That's unacceptable.

This is well below par for a station that controls approximately 60 miles of the border and is the busiest station in the country. The Federal Government's decision to devote only 12 percent of the workforce to perform the duties they were hired to perform is lost on me, but for the sake of border security, this is entirely unjustifiable.

If you are angry about this, you should be. Protecting our borders is paramount to ensuring homeland security, economic prosperity, and national sovereignty. It is my hope that that the members of this committee recognize this and exercise their oversight responsibility to hold Border Patrol management accountable. I want to thank you for this opportunity to testify, and I look forward to answering any of your questions.

[Prepared statement of Mr. Judd follows:]



## National Border Patrol Council

**Testimony of Brandon Judd**  
**On behalf of the National Border Patrol Council**  
**Before the U.S. House of Representatives Committee on Oversight and Government Reform**  
**Subcommittee on National Security**  
**A 'Caravan' of Illegal Immigrants: A Test of U.S. Borders**  
**April 12, 2018**

### Background

Chairman DeSantis, Ranking Member Lynch, and distinguished Members of the Subcommittee: I would like to thank you all for the opportunity to testify today. My name is Brandon Judd and I currently serve as the President of the National Border Patrol Council, where I represent approximately 15,000 Border Patrol Field Agents. I am an active Border Patrol Agent with over 20 years' experience and have served in California, Arizona, Maine, and now Montana.

As you all know, the news cycle has recently been dominated by the Pueblo Sin Fronteras, which translates to "People Without Borders", caravan from Honduras. Although we have never seen this level of press coverage before, Pueblo Sin Fronteras has been organizing these caravans during Holy Week for the past 10 years. Ironically, the exposure Pueblo Sin Fronteras has long sought after, may now be working against them. The Mexican government is refocusing efforts on their southern border, the President has ordered the National Guard to the border, and we are all here this afternoon to discuss what steps need to be taken to better strengthen border security.

### Catch-and-Release

The "catch-and-release policy" is a term coined by Border Patrol Agents many years ago. It refers to persons arrested for crossing the border illegally and subsequently released into the United States on their "own recognizance" prior to having their deportation proceedings adjudicated by an immigration judge. Under this program, most individuals are released with the promise to appear before a judge at a later date that is "to be determined." Due to an extensive backlog of cases, the date is usually at least two years from the time of release, but might as well be 10, 15, or even 20 years, because the vast majority of these individuals never appear before a judge, as ordered. Instead, they disappear into the "shadows" of society. The last number I received from the agency was that 88 percent of persons released on their own recognizance never show up for their court dates.

Sometime in 2010 or 2011, ICE ERO started releasing persons under this program at an unprecedented rate. Although DHS and ICE denied the program was taking place, several outlets, most notably Judicial Watch, caught ICE in the act and filmed busloads of persons being dropped off by ICE ERO at Greyhound bus stations in Phoenix, Arizona. Judicial Watch published their findings and DHS began admitting that the catch-and-release program was, in fact, taking place. However, instead of terminating the program, DHS/ICE/CBP/OBP decided to expand it by cutting the middle man, ICE ERO, out of the equation and forced Border Patrol Agents to release people out of "our front doors" within mere hours of arrest. Under this mandate, transfer of custody to ICE ERO was eliminated.

Under the catch-and-release program, illegal border crossings surged to numbers not seen since the economic crisis of 2008. Individuals in mass numbers crossed the border illegally and simply gave themselves up, not even attempting to escape detection and avoid apprehension. While in custody and during the interview process, detainees freely admitted to Border Patrol Agents that they were coached to give themselves up because they would be released into the United States after only a few hours in custody. In short, people no longer feared violating our immigration laws because they knew no consequence would be affixed, and as a result the numbers went to levels that had not been seen in several years.

On January 25, 2017 President Donald Trump signed the "Border Security and Immigration Improvement" Executive Order. Its intent was to "implement new policies designed to stem illegal immigration and facilitate the detection, apprehension, detention, and removal of aliens who have no lawful basis to enter or remain in the United States." In support thereof, and on February 20, 2017, DHS Secretary John Kelly issued implementation directions via memoranda to all corresponding department heads. The first two paragraphs under Section A of the memoranda state:

The President has determined that the lawful **detention** of aliens arriving in the United States and deemed inadmissible or otherwise described in section 235(b) of the Immigration and Nationality Act (INA) **pending a final determination of whether to order them removed**, including determining eligibility for immigration relief, is the most efficient means by which to enforce the immigration laws at our borders. Detention also prevents such aliens from committing crimes while at large in the United States, ensures that aliens will appear for their removal proceedings, and substantially increases the likelihood that aliens lawfully ordered removed will be removed.

These policies are consistent with INA provisions that mandate detention of such aliens and allow me or my designee to exercise discretionary parole authority pursuant to section 212(d)(5) of the INA only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit. Policies that facilitate the release of removable aliens apprehended at and between the ports of entry, which allow them to abscond and fail to appear at their removal hearings, undermine the border security mission. Such policies, collectively referred to as "**catch-and-release**," **shall end**.

Notwithstanding the clear guidance, catch-and-release policies have not ended. Surrogates and career employees tasked with carrying out the President's orders have failed to do so. In November of 2017, the Field Office Directors for both the San Antonio and El Paso, Texas ICE ERO Field Offices sent email messages to Border Patrol leadership stating in part:

"I have directed my staff to not accept files or custody of any FAMUs that are not processed as NTAs that are not FRC eligible. My position may change subsequent to discussions with HQ, but for now ERO [San Antonio and El Paso] position is that we will not reprocess cases (like male HoH) unless we accept custody, as the transfer of cases is not automatic. Again, I will be discussing this with ICE leadership and my position will conform with their direction."

Processing individuals with NTA (Notice to Appear) instead of ER (Expedited Removal) allows ICE ERO to release the individuals. This decision by ICE management that was carried out by the San Antonio and El Paso Field Office Directors was based strictly upon bed space. It did not conform to the narrow guidelines set forth by then Secretary Kelly on when it would be appropriate to release individuals before seeing a judge.

Although the Border Patrol did not have to acquiesce, it did. By processing illegal border crossers with WA/NTAs we consciously continued the catch-and-release program, and sent a clear message to criminal cartels that we are not serious about following through with the President's or Secretary's orders. And since April of 2017, we have seen a steady increase of border apprehensions nearly every month. In the last two months, February and March 2018, the Border Patrol exceeded the number of apprehensions that took place during the same months within the last two years of President Obama's Administration. Despite the clear

month-by-month trend of increased illegal border crossings, CBP and the Border Patrol have made no effort to enact new policies or enforcement operations to address the trend.

Criminal Cartels continue to exploit our policies, specifically catch-and-release. They force large groups of people to cross the border illegally in dangerous locations instead of through ports of entry, a controlled environment, in an effort to create gaps in our coverage. When we have to devote Agents to take groups of “give ups” into custody, criminal groups capitalize on the limited resources that are taken out of the field. By creating gaps, criminal cartels are able to cross higher value contraband such as opioids, criminal aliens, persons from special interest countries, and other narcotics without detection, apprehension, or seizure. By continuing policies like catch-and-release, we are putting innocent people like woman and children into the hands of dangerous criminal enterprises.

#### **Manpower**

The single biggest challenge that we face right now to securing our border is manpower, as we are currently 2,000 Agents below our congressionally mandated floor of 21,370 Agents. There are currently three challenges that we face:

1. How do we **retain** the employees that we already have in place?
2. How can we more effectively **recruit** and hire additional Agents?
3. How can we more effectively **use** the Agents we already have?

#### **Personnel Shortages and Retention Problems**

Regardless of the amount of funding being appropriated to CBP for tactical infrastructure or emerging technologies being deployed on the border, the fact remains that the most crucial asset that the Border Patrol has are its agents. The men and women of the Border Patrol are some of the finest law enforcement professionals in the world but unfortunately we’re losing agents faster than we can hire them. Just this past November, the Government Accountability Office (GAO) reported that according to CBP, “from fiscal year 2013 to fiscal year 2016, Border Patrol hired an average of 523 agents per year while experiencing a loss of an average of 904 agents per year.” With agent attrition rates far outpacing hiring year in and year out, the Border Patrol has found itself with a critical shortage of agents in the field.

Congress has previously mandated that the Border Patrol maintain a minimum staffing number of 21,370 agent positions. However, due to the steady pace of attrition, the Border Patrol currently has only approximately 19,300 agents. This is roughly 2,000 agents short of where Congress has said the agency’s staffing level needs to be and is simply unacceptable. In large part, agents are leaving the Border Patrol for other federal law enforcement jobs. Based on information provided by CBP leadership itself, GAO’s November 2017 report summarizes the key reasons why agents are leaving the Border Patrol for other agencies and states that, “Border Patrol agents are deployed to less desirable duty locations, and Border Patrol agents generally receive lower compensation.”

This pay disparity issue dates back to December 2014 when former President Obama signed into law the Border Patrol Agent Pay Reform Act (BPAPRA). This legislation overhauled the overtime system that agents had used for over 40 years. While initial drafts of the legislation were revenue neutral, during the legislative process, the Obama Administration pushed Congress to cut roughly \$100 million per year over 10 years from agents’ salaries. As a result, rank-and-file Border Patrol Agents took a significant pay cut of roughly \$5,500 per agent per year. It is of note that the same high-level managers who were tasked with working with Congress on the BPAPRA took no pay cut. While NBPC ultimately supported the final bill because the Obama Administration had already begun limiting agent pay through other administrative means, we believe that this pay cut has

seriously exacerbated attrition rates across the Border Patrol and hope that Congress can help remedy this problem.

I want to be clear about this: If we do not address this issue we will continue to hemorrhage Agents and we will never secure our border. It is that simple. Senator John Cornyn included language in the Grassley Amendment during DACA debate in the Senate that would have restored our Fair Labor Standards Act (FLSA) overtime we lost in 2014. If a border security and immigration reform bill is considered again by this Congress, it is imperative that this FLSA language be included. NBPC views the reinstatement of FLSA as a top priority and one that will significantly improve our urgent retention crisis.

#### **Recruitment**

Executive Order 13767 mandated the hiring of 5,000 new Border Patrol Agents. We currently face three significant challenges to recruitment that must be overcome. First, it takes CBP over 300 days to hire a Border Patrol Agent. The current hiring period is ridiculous in my opinion, but keep in mind that this is considered progress at CBP – two years ago it took 460 days. We have record low unemployment at the moment and we cannot compete for talent in the market when it takes nearly a year to be hired.

The second challenge is that the Office of Professional Responsibility is failing two-thirds of our applicants in the polygraph. That is three times the amount of what most law enforcement agencies face. Please do not misunderstand, no one wants to work with an Agent who may be compromised by the drug cartels. But it is critical that we stop treating our job applicants like criminal suspects.

Finally, the Administration proposed the hiring of an additional 500 Agents in the FY 2018 budget. Regrettably, not a single new Agent of the additional 500 were funded in the Omnibus Appropriations Bill that was recently passed. No funding was included for additional manpower and frankly the men and women in the field are scratching their heads right now.

#### **Accenture Recruiting Contract Waste**

While new recruitment efforts are certainly necessary and crucial going forward, I am deeply concerned that CBP leadership is continuing to ignore our persistent agent retention problems and the detrimental impacts to budgeting, morale and border security that stem from these sustained attrition rates. As the Subcommittee is aware, in November of last year, CBP awarded Accenture Federal Services a contract to recruit and hire additional CBP personnel, including 5,000 Border Patrol Agents. CBP has obligated over \$42 million for the first year of the contract and the total value of the 5-year contract could reach as high as approximately \$297 million.

With news of this contract award, I am deeply concerned that the agency is once again putting the cart before the horse and spending hundreds of millions of dollars without addressing CBP's underlying personnel issues. We must fix our retention problems first. Then we can address recruitment issues once the agency stops hemorrhaging agents. If we don't address why agents are leaving the agency, then we will forever be stuck in a cycle in which the agency, and thereby taxpayers, loses tens of millions of dollars every year and never actually solves the root problem.

Based on only the limited information available regarding this contract, I am afraid that this contract award is at best a gross waste of taxpayer dollars and worse yet, likely mismanagement at the highest levels of CBP. I urge the Subcommittee to continue its oversight of this contract award and related decision-making by CBP to ensure that some light is shed on these matters.

#### **Use of Agents**

Along with catch-and-release, the deployment of our limited resources is an important piece of the border security puzzle. The Washington Times recently published an article highlighting gross mismanagement of the Border Patrol workforce.

The McAllen Border Patrol Station is one of the largest stations in the nation, and out of more than 150 stations, it is also the busiest. A little more than 700 Agents are assigned to the station and when annual leave, sick leave, and days off duty are calculated, there are approximately 400 Agents that show up to work on any given day. Of those 400 Agents on duty, around 50 are assigned to actually patrol the border in a 24-hour period of time. This is well below par for a station that controls approximately 60 miles of the border and is the busiest sector in the nation.

The Federal Government's decision to devote only 12 percent of the workforce to perform the duties they were hired to perform is lost on me, but for the sake of border security, this is entirely unjustifiable. Although the sector is reporting an official apprehension rate of 79 percent, Agents have relayed to me that the sector would be lucky to have an apprehension rate of 50 percent, pointing to the misuse of resources. When a single Agent is assigned to patrol a zone of 14 miles, it becomes nearly impossible to determine the number of people that crossed the border illegally, thereby reducing illegal entry figures to guesswork.

If you are angry about this, you should be. Protecting our borders is paramount to ensuring homeland security, economic prosperity, and national sovereignty. It is my hope that the Members of this Committee recognize this and exercise their oversight responsibility to hold Border Patrol management accountable.

#### **Conclusion**

While significant progress has been made in securing our border over the past year, much work remains to be done. President Trump has worked tirelessly over the past year to improve border security and stop illegal immigration. He's made it crystal clear that he intends to finally secure our Southern border with Mexico and fix our broken immigration system, but sadly career bureaucrats and Obama holdovers at DHS, CBP and ICE have slowed our progress. Whether it's the continued implementation of the catch and release policy or mismanaging manpower resources, CBP management continues to perform poorly. I implore the Members of this Subcommittee to use your oversight powers and jurisdiction to hold CBP management accountable.

Lastly, Congress must take a stand and pass legislation to secure our borders and reform our broken immigration system. I implore both sides of the aisle to quit politicizing border security and illegal border entries, and work with the men and women of the Border Patrol to invest in and ensure we have the infrastructure, personnel resources and technology we need. By so doing, I have no doubt in my mind that Border Patrol Agents will once and for all secure the border.

I want to thank you for the opportunity to testify this afternoon and look forward to answering your questions.

Mr. DESANTIS. Thank you. Colonel, you're up.

Colonel MCCRAW. Chairman, distinguished members, Steve McCraw, director of Texas Department of Public safety.

You have my written testimony, so I will not go into anything that I discussed in there, but four things I would like to mention.

First, I mean, obviously, the Texas-Mexico border is unsecure. Because of that, the consequence of that is it is a public safety and national security threat, not just to Texas but to every community in the United States. And Ranking Member Lynch, you noted some of those things in your comments along that. Everyone is concerned about the impact of criminal organizations on their communities. And we all recognize that we're concerned about fentanyl. We're concerned about methamphetamine. If you got a drug problem, you have a cartel problem. You have got an unsecure border problem. If you have an MS-13 problem in New York, you have a border problem. So clearly, it's the most significant vulnerability that we face right now from a national security and public safety standpoint.

From a Texas standpoint, you know, we recognize that it's a sovereign responsibility of you, the Federal Government, to secure the border, but when it doesn't happen, it impacts our communities.

And Governor Abbott and the State Legislature in Texas is not going to sit around and do nothing. And what they have done is they've allocated billions of dollars to support, provide direct support to U.S. Border Patrol, not compete, complement and provide direct support to deter, detect, and interdict smuggling incidents between the ports of entry. And that includes marine assets, a tactical marine unit we put in place. I have got over 1,000 troopers right now engaged in border security activities. We have 13 aircraft, including nine helicopters and four airplanes, that are dedicated full-time to border security operations. We have got 13 tactical boats that are done. We have got 42 Texas Rangers that we've established to address public corruption, but also to work on occasion—prior, we had to work assault on Federal officers, because they weren't being handled at the Federal level. They are now, thanks to the new U.S. Attorney in the Southern District. But those are the types of things that are important to Texans. And as Texas goes, so goes the Nation.

And we recognize also that not only is it the sovereign responsibility of the Federal Government, it can be done. This is not rocket science. And Mr. Judd mentioned a few of those things that are clearly—clearly would enhance or secure the border, without question. And some of those things is people, technology, infrastructure, and the equipment that they need and resources that they need. And there is no question that they could do it if they had that. But because they don't have it, the Department of Public Safety, the State of Texas and Governor Abbott, they're dedicating resources and time and energy to be able to complement what they're doing in the Border Patrol.

I will say this, though. We do appreciate the Texas military forces and Texas National Guard in Texas. They do a great job. In fact, we've had them involved in border security operations from the beginning, and we'll continue to do. And thankfully, recently they've been able to plus up. They bring with them not just the



UH-72s, but also other resources that we can use, in terms of observation/listening posts. And I can defer to Mr. Judd on how important those things are to be able to deny cartels access to those key areas.

And I'm sure I've outlived my time, so I'll stop right now and move on. Thank you, Chairman.

[Prepared statement of Colonel McCraw follows:]

**Colonel Steven C. McCraw**  
Director of the Texas Department of Public Safety  
*Subcommittee on National Security*  
April 12, 2018

Good afternoon, Chairman DeSantis and the distinguished members of the Subcommittee on National Security. My name is Steven McCraw; I am the Director of the Texas Department of Public Safety. I would like to thank you for the opportunity to testify before you today on the vitally important homeland security issue of an unsecured border with Mexico, and the consequences it has had for the state of Texas and our communities.

In an ever-changing threat environment where crime is increasingly transitory, transnational, organized, and discreet, and terrorism has become more disaggregated, an unsecure border with Mexico represents a grave national security vulnerability. As the members of this committee know well, a porous border with Mexico provides Mexican Cartels a reliable means to smuggle people, some of whom are members of transnational gangs, criminal aliens or foreign nationals from countries that are state-sponsors of terrorism and/or have a large presence of terrorist organizations committed to destroying us and our way of life. The Mexican Cartels continue to prey upon young women and children from Central America and Mexico seeking to enter the U.S. illegally, subjecting them to the vilest of deprivations.

Importantly, the Mexican Cartels have exploited the porous U.S./Mexico border to dominate our nation's lucrative illicit drug market, including marijuana, cocaine, heroin, methamphetamine, and now, fentanyl – and Texas has become the drug and human transshipment center for the nation. The opiate crisis that some of the members of this committee have experienced in your districts illustrates the Mexican Cartel's ability to quickly diversify drug smuggling and trafficking operations to quickly become the largest supplier of our nation's heroin – and now fentanyl. For example, over the last decade, Texas State Troopers routinely seized large loads of cocaine, marijuana, methamphetamine and heroin transported from Mexico, but never large loads of fentanyl – until recently. In less than four months – *in three traffic stops alone* – our State Troopers seized 23.977 kilograms of fentanyl.

According to DEA, “as little as two milligrams [*of fentanyl*] is a lethal dosage in most people.” See the picture below. Using this calculation, the amount of fentanyl seized in the last few months by our Texas Troopers is equivalent to nearly 12 million (*11.988 million*) lethal doses.



When we think about the potential of 12 million people losing their lives, it underscores the serious public health threat this drug presents now that the Mexican Cartels are increasing its availability to communities throughout the nation. To further put this in perspective, 12 million people is approximately equivalent to the \*combined state populations of three members on this committee– Vermont (623,657 – Rep. Peter Welch), Maryland (6.052 million – Rep. John Sarbanes) and Kentucky (4.454 million – Rep. James Comer). (*\*combined population: 11.129 million*)

An unsecured border with Mexico has resulted in other negative consequences. The Mexican Cartels work closely with transnational and U.S.-based gangs to support their criminal operations on both sides of the U.S./Mexico Border, and they provide a readily available retail distribution chain for their drugs. In Texas border communities, the Mexican Cartels recruit children to support their smuggling operations, and they actively recruit and corrupt local, state and federal officials.

In Mexico, they engage in kidnappings, robberies, torture, extortions and murders for profit. The level of violence in Mexico is unconscionable, and reports have shown that murders in Mexico are at a historic high with more than 29,000 homicides reported in 2017. Cartels employ corruption and terrorism tactics and strategies to protect their criminal operations, and they pose a serious threat to the domestic security of Mexico.

In Texas our Governor and members of the Legislature have been clear, “an unsecured border with Mexico is a federal responsibility but a Texas problem.” The State of Texas understands that securing our nation’s border with Mexico is the sovereign responsibility of the federal government. Yet in the absence of adequate federal resources to secure the border, it has been necessary for the state to provide substantial resources to support the brave men and women of the U.S. Border Patrol in protecting the state and nation from the many threats stemming from the failure to secure the U.S./Mexico border.

Governor Abbott has repeatedly called on the federal government to provide the U.S. Border Patrol with sufficient personnel, technology, aircraft, tactical boats and infrastructure beginning in the areas with the highest concentration of human and drug smuggling in the Rio Grande Valley of Texas, which has been the epicenter for the nation.

We applaud the brave men and women of the U.S. Border Patrol for their commendable actions in addressing this formidable task with the limited resources they have been provided. We are grateful for their dedication to keeping our nation safe from an array of public safety and homeland security threats. Texas is concerned that if we see a repeat of 2014 – when waves of foreign nationals including children and family units showed up at the U.S./Mexico border to turn themselves into law enforcement – U.S. Border Patrol agents will again be overwhelmed with detaining, transporting and processing large numbers of individuals through federal immigration procedures. A scenario where droves of individuals seeking asylum once again arrive at the U.S./Mexico border will result in substantial security gaps along the border, and Mexican cartels and other criminal elements will be eager to exploit those national security vulnerabilities.

In 2014, the situation was so dire, the Texas leadership and legislature directed the Texas Department of Public Safety to deploy State Troopers, Special Agents and Texas Rangers to the Rio Grande Valley from other areas of Texas to conduct around-the-clock ground, marine and air operations. We sustained these statewide deployments for over three years until the Governor and legislature provided an additional 500 State Troopers permanently assigned to the border region along with additional tactical marine boats, aircraft and detection technology assets. Unlike natural disasters, the state of Texas was not been reimbursed for providing direct assistance to the federal government, and the local communities in our border regions directly impacted were never reimbursed for their tremendous contributions at the height of the 2014 crisis.

The State of Texas also deployed the Texas National Guard to the border, and Governor Abbott has kept them in place since. The Governor and legislature also funded additional Texas Game Wardens and the Texas Border Prosecutors Unit (BPU), and both have played an essential role in enhancing the level of security at the border. The BPU has also played a key role in addressing the Mexican Cartel smuggling infrastructure in border communities, which includes gang networks.

I can assure you that the state leadership and legislature would much rather use state revenue to address other vital priorities to our taxpayers, such as education, transportation and public health. We are grateful for the recent actions by the Administration to deploy additional National Guard Troops to the Texas/Mexico border, and we are hopeful that the U.S. Border Patrol will ultimately receive the resources needed to secure the border. Securing our international border with Mexico can be and should be done as soon as possible as there are serious public safety and national security consequences on a daily basis – not to just Texas, but the entire nation – in failing to do so. Included below is a list of some of the resources that the State of Texas has provided to assist the U.S. Border Patrol with their vital mission.

Lastly, I would like to again thank Chairman DeSantis and the other distinguished members of this subcommittee for your unwavering commitment to national security and securing our nation's borders in a way that helps ensure the safety of all Americans.

**Texas Border Security**  
January 2018

**Strategic Intent**

The Texas Department of Public Safety (DPS) will work with its local and state partners to provide direct assistance to U.S. Customs and Border Protection to deter, detect and interdict smuggling along the Texas/Mexico border through the deployment of an integrated network of detection and communication technologies and an increase in ground, air and marine interdiction assets.

DPS will work with its local and federal partners and the Border Prosecution Unit to degrade the smuggling infrastructure used by the cartel plaza bosses to smuggle drugs and people into Texas.

The Texas Rangers will work with the Border Prosecution Unit and our federal partners to deter smuggling related corruption along the border by increasing the number of public corruption investigations, arrests and prosecutions.

DPS will work with its local and federal partners to target transnational criminal activity including drug trafficking, labor trafficking, sex trafficking and money laundering in key Texas transshipment and trafficking centers and other impacted areas throughout the state.

**(I) DPS Deterrence and Detection Assets Deployed**

DPS enhances the level of detection coverage directly on the border through the deployment of motion detection cameras, day and night tactical boat patrols, helicopter patrols, and fixed wing aircraft patrols with FLIR and integrated communications technology.

**A. DPS Maritime Assets**

The State of Texas has deployed DPS and TPWD boats on the Rio Grande River to deter and detect smuggling activity.

DPS Boats Assigned to the Border:

Tactical Boats	Deployed	Pending	Totals
Shallow Water	6	--	6
Extreme Shallow Jet	7	--	7
<b>Total</b>	13	--	13

**B. Detection Cameras**

The State of Texas has implemented a camera detection program leveraging low-cost, high-capability motion-detection and low-light camera technology. Through this program, detections are immediately relayed to U.S. Border Patrol and DPS Command Posts, and directly to interdiction assets on the ground and DPS surveillance aircraft. The Texas Rangers and the U.S. Border Patrol work closely together to dramatically expand the ability to detect smuggling events in real time through this program.

***i. DPS Installation Team***

U.S. Border Patrol Technical Agents have installed and provided maintenance service for the vast majority of these cameras to date. Most recently, the DPS Special Operations Group has provided installation support to U.S. Border Patrol. To further increase capacity, DPS has established an installation team using Texas State Guard personnel.

***ii. Detection Cameras Deployed***

4,300 detection cameras are currently deployed throughout the border region.

**C. Aviation Assets**

The State of Texas has deployed DPS and Texas Military Forces aircraft to detect smuggling attempts along the Texas-Mexico border and to assist in interdicting those attempts. The fixed-wing aircraft receive direct alerts from U.S. Border Patrol ground sensors and DPS motion-detection camera activations, and the helicopters receive the DPS motion-detection camera alerts. All DPS aircraft can communicate directly with U.S. Border Patrol Agents and Troopers on the ground.

<b>DPS Aircraft with Advanced Detection and Communications</b>	<b>Deployed</b>	<b>Pending</b>	<b>Totals</b>
<b>Helicopters</b>	9	--	9
<b>Mid-Altitude Fixed Wing</b>	2	--	2
<b>High-Altitude Fixed Wing</b>	2	--	2
<b>Total</b>	13	--	13

**(II) Interdiction**

Once detected, it is important the smugglers either be interdicted or denied entry, which requires a well-coordinated and timely law enforcement response that can only be achieved with a sufficient number of personnel staffed around the clock.

**A. Troopers**

Trooper Positions Currently Permanently Assigned:	945
New Permanent Trooper Positions Hired and Deployed:	356
Pilots and Tactical Flight Officers Permanently Assigned:	25
<b>Total Personnel Strength*:</b>	<b>970</b>

*\*New Permanent Trooper Positions are included in Trooper Positions Currently Permanently Assigned*

**B. Tactical Operations**

DPS Special Operations Group and U.S. Border Patrol Special Operations conduct joint tactical operations in remote and high-threat areas. The Texas Rangers oversee DPS tactical operations, which include Ranger Recon teams, the DPS Special Weapons and Tactics (SWAT) team, and six Regional Special Response Teams (SRT).

**C. Intelligence and Information Sharing**

The Joint Operations Intelligence Centers (JOIC) centralize all of the border incident data across 53 counties and 171 law enforcements agencies to provide a shared view of the threat picture and trending patterns.

Joint Operations Intelligence Centers:	6
Texas Rangers:	2
DPS Border Liaison Officers:	5
State Guard Personnel:	13
HQ Intelligence Analysts Permanently Assigned:	5
Border Region Intelligence Analysts Permanently Assigned:	18
<b>Total Personnel Strength:</b>	<b>43</b>

**D. Communications**

Communications Operators Permanently Assigned:	55
Radio Technicians Permanently Assigned	6
<b>Total Personnel Strength:</b>	<b>61</b>

**(III) Targeting the Smuggling Infrastructure**

The arrests of members and associates of smuggling groups and criminal networks operating in the border region, such as cartel operatives, statewide and regional gangs, transnational criminal gangs, wanted and convicted felons, and criminal aliens, degrades the smuggling infrastructure and increases community safety.

Special Agents Permanently Assigned: 137

**(IV) Targeting Border Corruption**

The Mexican cartels seek to corrupt individuals and institutions on both sides of the border to support their smuggling operations. Successful investigations degrade the cartels' smuggling ability and serves as an important deterrent to those who would betray public trust and the rule of law.

Texas Rangers Permanently Assigned\*: 42

*\*Texas Rangers also assist local law enforcement agencies in the investigation of major crimes such as homicides, kidnappings, robberies and sexual assaults.*

*\*Does not include the number of DPS Special Operations Group Personnel assigned to border tactical missions.*



## DPS Operational Activities

### Criminal Arrests in the Border Region

		2016	2017	Operation total (06/14-12/17)
Texas Highway Patrol	Total Criminal Arrests	15,265	20,689	53,432
DPS Special Agents	Total Criminal Arrests	1,863	1,535	6,575
Texas Rangers	Total Criminal Arrests	523	382	1,715
<b>DPS Total</b>	<b>Total Criminal Arrests</b>	<b>17,651</b>	<b>22,606</b>	<b>61,722</b>

*\*Felony DWI, intoxication manslaughter and other serious traffic offenses, felony Offenses against the Family, as well as Illegal Alien detentions and referrals to U.S. Border Patrol, are not included in the arrest statistics above.*

### Public Corruption Arrests in the Border Region

		2016	2017	Operation total (06/14-12/17)
Texas Rangers		39	33	161

### DPS Aviation Operations in the Border Region

2016	3,950
2017	3,134

### DPS Special Operations Group Tactical Missions in the Border Region

2016	2,562
2017	2,555
<b>Operation Total (06/14-12/17)</b>	<b>7,442</b>

**DPS Apprehension Support to U.S. Border Patrol**

	2016	2017	Operation total (06/14-12/17)
<b>Illegal Alien Detections and Interdiction Assistance</b>			
Cameras	109,247	72,459	271,194
Aviation	3,257	1,084	12,371
Tactical Marine Unit	601	305	1,383
<b>Illegal Alien Detentions and Referrals</b>			
Tactical Marine Unit	1,466	402	3,735
Texas Highway Patrol*	1,578	745	2,323
<b>Total Apprehension Support to U.S. Border Patrol</b>	<b>116,149</b>	<b>74,995</b>	<b>291,006</b>

\*DPS did not capture Texas Highway Patrol Illegal Alien Detections and Referrals prior to December 1, 2015 and is now being captured state-wide. Recent reporting may be lower than the actual amount due to a transition in the method of capturing the data.

**Drugs Seized by DPS in the Border Region\***

	DPS Only (lbs)
2016	48,334.27
2017	59,425.84
<b>Operation Total (06/14-12/17)</b>	<b>258,555.09</b>

\*These totals do not include seizures where DPS provided direct support to another agency.

**Drugs Seized by Type by DPS in the Border Region\* (6/14 – Present)**

	Marijuana	Cocaine	Methamphetamine	Heroin
<b>Weight (lbs)</b>	250,206.75	5,426.20	2,547.54	374.60
<b>Dosage Units</b>	226,983,560	246,128,091	231,108,752	33,983,112

\*These totals do not include seizures where DPS provided direct support to another agency.

**Dosage Units**

Marijuana	500 mg
Cocaine	10 mg
Methamphetamine	5 mg
Heroin	5 mg

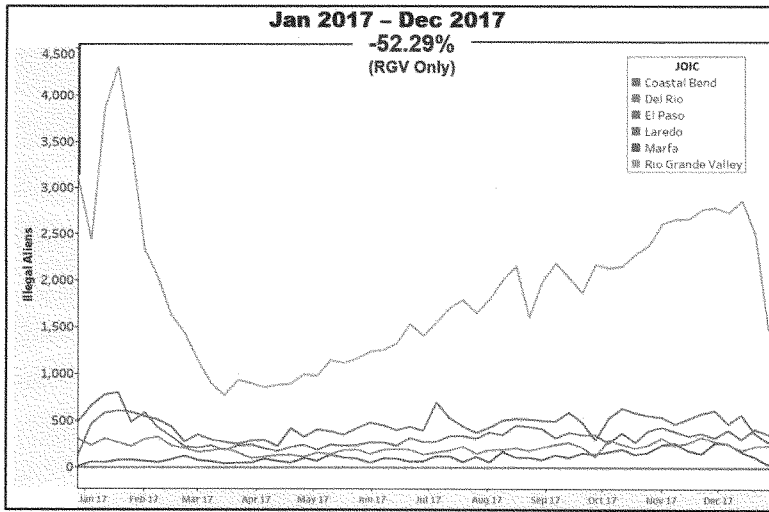
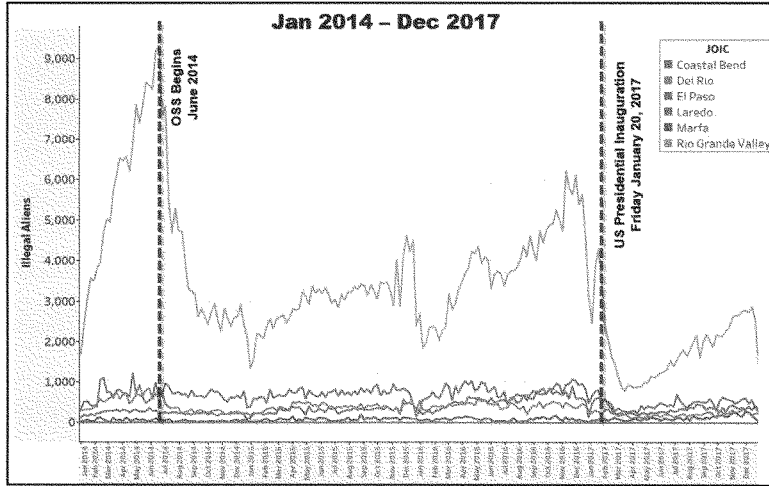
**Currency Seized by DPS in the Border Region\***

	DPS Only
2016	\$13,910,212
2017	\$10,571,211
<b>Operation Total (06/14-12/17)</b>	<b>\$44,706,147</b>

\*These totals do not include seizures where DPS provided direct support to another agency.

### Smuggling Trends

The Texas Legislature provides funding to centralize the collection and sharing of border incident data across all jurisdictions in the border region, which comprises local, state, and federal agencies across 53 counties and more than 171 separate law enforcement agencies in the border region.



**U.S. Border Patrol IA Apprehensions in the Border Region**

FYTD 2018* (10/17-12/17)	50,461
FY 2017**	207,693
FY 2016**	278,470
FY 2015**	221,684

*\*Unofficial U.S. Border Patrol statistics. \*\*CBP reconciled apprehensions. Data includes El Paso Sector, which comprises parts of TX and NM.*

**U.S. Border Patrol Family Unit Apprehensions in the Border Region**

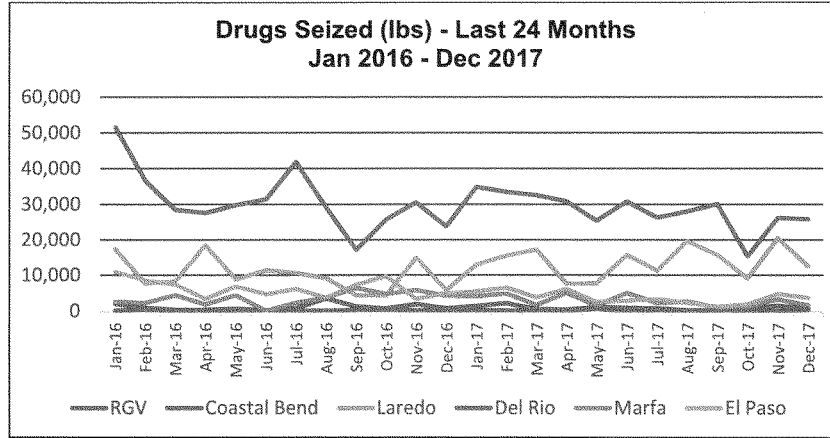
FYTD 2018* (10/17-12/17)	14,257
FY 2017**	62,764
FY 2016**	63,910
FY 2015**	32,949

*\*Unofficial U.S. Border Patrol statistics. \*\*CBP reconciled apprehensions. Data includes El Paso Sector, which comprises parts of TX and NM.*

**U.S. Border Patrol Unaccompanied Alien Children Apprehensions in the Border Region**

FYTD 2018* (10/17-12/17)	7,291
FY 2017**	31,827
FY 2016**	47,192
FY 2015**	31,109

*\*Unofficial U.S. Border Patrol statistics. \*\*CBP reconciled apprehensions. Data includes El Paso Sector, which comprises parts of TX and NM.*



Note: The above border region statistics represent local, state and federal seizures.

**Drugs Seized in the Border Region**

	Drugs (lbs)
<b>2016</b>	627,669.48
<b>2017</b>	593,830.04
<b>Operation Total (06/14-12/17)</b>	2,756,943.02

Note: The above border region statistics represent local, state and federal seizures.

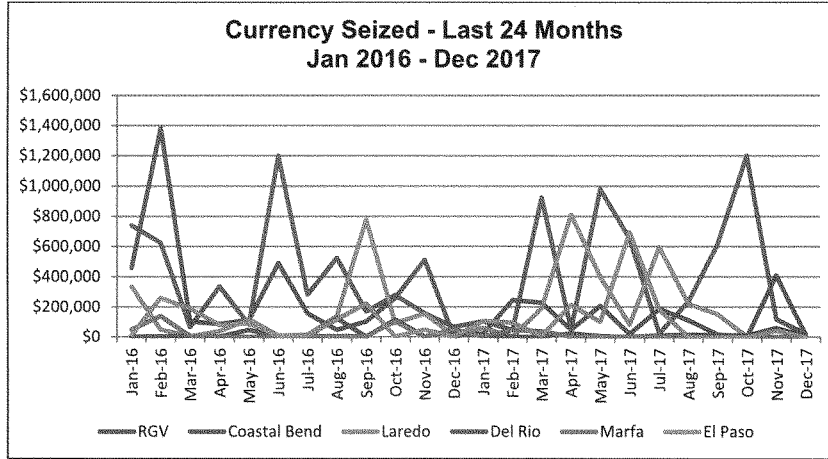
**Drugs Seized by Type in the Border Region (6/14 – Present)**

	Marijuana	Cocaine	Methamphetamine	Heroin
<b>Weight (lbs)</b>	2,691,204.64	33,773.10	28,600.50	3,364.78
<b>Dosage Units</b>	2,441,417,790	1,531,920,797	2,594,591,599	305,247,457

Note: The above border region statistics represent local, state and federal seizures.

**Dosage Units**

<b>Marijuana</b>	500 mg
<b>Cocaine</b>	10 mg
<b>Methamphetamine</b>	5 mg
<b>Heroin</b>	5 mg



Note: The above border region statistics represent local, state and federal seizures.

### Currency Seized in the Border Region

<b>2016</b>	<b>\$11,650,369</b>
<b>2017</b>	<b>\$10,649,892</b>
<b>Operation total (6/14-12/17)</b>	<b>\$59,532,913</b>

Note: The above border region statistics represent local, state and federal seizures.

Mr. DESANTIS. Thank you.  
The chair now recognizes Mr. Arthur for 5 minutes.

**STATEMENT OF HON. ANDREW R. ARTHUR**

Mr. ARTHUR. Thank you. Mr. Chairman, the gentleman from Massachusetts, Mr. Lynch, and members of the subcommittee, thank you for inviting me to speak today about this crucial topic of national interest.

Mr. DESANTIS. Make sure your mic is on. There you go.

Mr. ARTHUR. I should know that, shouldn't I?

A caravan, organized by an immigrants rights group in the middle of March 2018 in Tapachula had grown to more than 1,000 people, mostly Honduran nationals, by the end of the month. This was the 8th year such a caravan had been assembled, but the most notable because of the large number of participants.

This year's caravan, however, illustrates a little noticed issue along the southwest border, and that is a sharp increase in the number of alien apprehensions and inadmissibles, reversing a downward trend that had begun in November 2016. From 66,712 in October 2016, the number of aliens entering illegally or seeking entry without proper documents along the southwest border, had dropped to 15,780 by April 2017. The numbers, however, began to slowly increase between the spring and early winter of 2017, before declining into the mid 30,000s. In March 2018, with Congress having debated amnesty for DACA applicants and others, however, those numbers skyrocketed to 50,308 apprehended and inadmissible aliens. If this continues, that would be 600,000 aliens in a year.

This increase and the phenomenon of the caravan in particular brought into focus some crucial loopholes and flaws in U.S. immigration law. The first is credible fear. In 1996, Congress amended the immigration law to expedite the removal of aliens coming without visas or entering illegally. These amendments, however, included a provision to allow aliens fleeing harm to avoid expedited removal by asserting a credible fear of persecution, allowing them to apply for asylum.

In fiscal year 2009, the asylum office completed 5,523 credible fear cases. By fiscal year 2013, as news spread that aliens applying for credible fear were being released from custody, that number increased to 33,283. At its height in fiscal year 2016, there were 81,864 credible fear cases. These are people arrested at the border, claim credible fear to get into the United States.

The majority of aliens, up to 90 percent who apply, are found to have credible fear. There are many reasons for this, including a lack of clear guidance in adjudicating asylum claims, the low credible fear standard, and lax evidentiary burdens to make such a claim. The fact is most of the aliens in the caravan, should they come to the United States and claim credible fear, would likely be released to await an asylum hearing that may be years in the future, if they appear at all.

This is not the only flaw in our immigration laws, however, that renders our borders insecure. Interpretations of the Trafficking Victims Protection Reauthorization Act of 2008, or TVPRA, have resulted in the release from removal of tens of thousands of minors

from countries other than Mexico or, as we call them, OTMs, including many, if not most, of whom were never trafficked to begin with. This has provided incentives for thousands of other OTM alien minors and their parents to trust those minors' lives to smugglers and undertake the perilous journey to the United States.

Similarly, a 20-year-old settlement agreement in Flores versus Reno has created a presumption that alien minors who are apprehended along the border, even those who came with their parents, should be released into the interior of the United States. This provides even greater incentives for illegal entry, and more money for the smugglers and cartels who facilitate such entry.

Finally, a 2008 expansion of eligibility for special immigrant juvenile visas has provided a third incentive for alien minors to enter the United States illegally, and for their parents to entrust their children to smugglers, debased criminals who deal in human misery.

The fact is, most of the OTM alien minors in the caravan will likely be processed and released into the United States if they decide to come here. The administration has taken steps to stem the recent flow of illegal aliens to the United States, including ending catch and release, as we discussed earlier, sending National Guard troops to the border, and establishing a zero tolerance policy for illegal entry prosecutions.

Each of these efforts, however, will fail to secure the border as long as the loopholes and flaws that I have described exist. I want to thank each of you for your time, and I look forward to your questions.

[Prepared statement of Mr. Arthur follows:]



Testimony of Andrew R. Arthur  
Resident Fellow in Law and Policy  
Center for Immigration Studies

To the Subcommittee on National Security  
United States House of Representatives  
Committee on Oversight and Government Reform

For A Hearing Titled:

“A Caravan of Illegal Immigrants: A Test of U.S. Borders”

April 12, 2018

2:00 p.m.

Room 2154, Rayburn House Office Building  
Washington, DC 20515

Chairman DeSantis, Ranking Member Lynch, and Members of the Subcommittee, I thank you for inviting me here today to discuss this issue, which is not only critical to our national security, but also to our system of justice.

Background on the Caravan

As my colleague, Kausha Luna, reported on March 30, 2018:

*As part of Holy Week, over a thousand Central American illegal aliens set out to complete a "Stations of the Cross", traversing through Mexico, to reach the United States' southern border. Upon arrival, they hope to make asylum claims.*

*The caravan, marching under the slogan "Migrantes en la lucha" ("Migrants in the Fight"), was announced about a month ago by the group Pueblo Sin Fronteras. The organization asked for donations on its Facebook page and encouraged people to send them a message if they were interested in volunteering. The organization's mission statement reads as follows, "Our mission is to provide shelter and safety to migrants and refugees in transit, accompany them in their journey, and together demand respect for our human rights."*

*As early as March 18, participants gathered in Tapachula, on Mexico's southern border (the point of departure). Organizers shared a video on their Facebook*

*page which showed the migrants playing ice-breaker games. According to the post, the organization also conducted some introductory workshops.<sup>1</sup>*

The next day, *BuzzFeed News* reported that there were more than 1,000 Central American migrants in that caravan, 80 percent of whom were Honduran nationals.<sup>2</sup>

Press reports on the original plans for that caravan differ. For example, *Deutsche Welle* reported on April 7, 2018: “The caravan of migrants from Central America [which had reached 1,500] that prompted Trump’s criticism and subsequent border troop deployment was never intended to reach the United States.”<sup>3</sup> That article states:

*The migrants were said to be fleeing violence and poverty and would seek asylum, but they also sought to draw attention to the plight of immigrants. The Mexican government had allowed the caravan to pass through its territory by issuing humanitarian permits valid for 20 days.*

*The caravan began to break up in southern Mexico on April 5 and organizers said the remaining busloads of migrants ended the caravan in Mexico City’s Basilica de Guadalupe late [April 6, 2018]. From there, the migrants will be on their own, though many plan to stay in Mexico, while others will try to seek asylum in the US or attempt to cross the border.<sup>4</sup>*

The *Wall Street Journal*, on the other hand, indicated that the organizers of that march (which the paper states has been an annual ritual since 2010) were overwhelmed by the number of migrants who took part this year.<sup>5</sup> It reports that the organizers “admit their original plan of making their way to the U.S. border has likely changed”:

*“We cannot arrive to the border with 1,000 people. The group is too large, we never had seen this amount of people before,” said Irineo Mujica, one of the leaders of the caravan. He said previous caravans had about 300 people.<sup>6</sup>*

The Mexican government had stopped that caravan in the town of Matias Romero, in the state of Oaxaca, during the first week of April.<sup>7</sup>

The *Journal* reported:

<sup>1</sup> Kausha Luna, *Caravan of Central American Illegal Aliens Heads to the U.S.*, CENTER FOR IMMIGRATION STUDIES, Mar. 30, 2018, available at: <https://cis.org/Luna/Caravan-Central-American-Illegal-Aliens-Heads-US>. And

<sup>2</sup> Adolfo Flores, *A Huge Caravan Of Central Americans Is Headed For The US, And No One In Mexico Dares To Stop Them*, BUZZFEED NEWS, Mar. 31, 2018, available at: [https://www.buzzfeed.com/adolfoflores/a-huge-caravan-of-central-americans-is-headed-for-the-us?utm\\_term=.spoJewXPe#\\_njlADRBrD](https://www.buzzfeed.com/adolfoflores/a-huge-caravan-of-central-americans-is-headed-for-the-us?utm_term=.spoJewXPe#_njlADRBrD).

<sup>3</sup> *US deploys troops to Mexico border, as migrant caravan ends*, DEUTSCHE WELLE, Apr. 7, 2018, available at: <http://www.dw.com/en/us-deploys-troops-to-mexico-border-as-migrant-caravan-ends/a-43290089>.

<sup>4</sup> *Id.*

<sup>5</sup> Juan Montes, *Caravan in Trump’s Crosshairs Stalls Far From Border*, WALL STREET JOURNAL, April 4, 2018, available at: <https://www.wsj.com/articles/caravan-in-trumps-crosshairs-stalls-far-from-border-1522863181>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

*Mexican immigration officials are now offering most of the caravan migrants either a 20-day transit visa through Mexico or a 30-day humanitarian visa for those who want to apply for asylum in Mexico.<sup>8</sup>*

Those migrants who were given 20-day transit visas will likely make their way to the United States. For example, in article dated April 7, 2018, *USA Today* reported that while many of the migrants had decided to stay in Mexico, “some of the migrants are determined to continue on their journey all the way to the U.S. border to apply for asylum in this country.”<sup>9</sup> The paper stated:

*By [April 6, 2018], roughly 630 migrants — about half are women and children — arrived via bus in Puebla, about a two-hour drive south of [Mexico City]. They are staying in four shelters.*

*This weekend, they will be meeting one on one with volunteer Mexican and U.S. lawyers. The lawyers will explain the asylum laws in each country to see if the migrants might qualify, according to Jordi Ruiz Cirera, a freelance photographer who said he has been traveling with the caravan.*

*On [April 9, 2018], the migrants plan to head for Mexico City, where the caravan will end after a series of demonstrations participants plan to hold at key sites to call attention to the plight of migrants fleeing Central America.<sup>10</sup>*

#### March Increase in Border Crossings

The caravan is not the only recent development that calls the security of the border into question.

Throughout the 2016 presidential campaign, then-candidate Donald Trump made it clear that he intended to enforce the immigration laws if elected.<sup>11</sup> Backing up this rhetoric as it pertained to those entering illegally, on January 25, 2017, President Trump issued Executive Order 13,767, captioned “Border Security and Immigration Enforcement Improvements.”<sup>12</sup> While each of the sections of that order enhance immigration enforcement, four in particular were targeted at reducing the number of aliens entering the United States illegally.

<sup>8</sup> *Id.*

<sup>9</sup> Daniel González, *Migrant caravan in Mexico smaller, but not disbanded, as travelers meet with lawyers*, USA TODAY, Apr. 7, 2018, available at: <https://www.usatoday.com/story/news/nation-now/2018/04/07/immigrant-caravan-mexico/494888002/>.

<sup>10</sup> *Id.*

<sup>11</sup> See Miriam Valverde, *Compare the candidates: Clinton vs. Trump on immigration*, POLITIFACT, dated July 15, 2016 (“Presidential candidates Donald Trump and Hillary Clinton have taken opposite roads on their quest for immigration reform. Trump calls for mass deportations, migrant bans and a wall to keep away people from coming into the country, while Clinton wants a pathway to citizenship, immigrant integration and protection from deportation.”), available at: <http://www.politifact.com/truth-o-meter/article/2016/jul/15/compare-candidates-clinton-vs-trump-immigration/>.

<sup>12</sup> E.O. 13,767, “Border Security and Immigration Enforcement Improvements”, THE WHITE HOUSE, Jan. 25, 2017, available at: <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

First, section 2 of that order makes it clear that it is the policy of the Executive branch to:

- (a) secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism;*
- (b) detain individuals apprehended on suspicion of violating Federal or State law, including Federal immigration law, pending further proceedings regarding those violations;*
- (c) expedite determinations of apprehended individuals' claims of eligibility to remain in the United States;*
- (d) remove promptly those individuals whose legal claims to remain in the United States have been lawfully rejected, after any appropriate civil or criminal sanctions have been imposed; [and]*
- (e) cooperate fully with States and local law enforcement in enacting Federal-State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs that are consistent with Federal law and do not undermine Federal immigration priorities.<sup>13</sup>*

Section 5 of that order, captioned “Detention Facilities,” stated:

- (a) The Secretary shall take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.*
- (b) The Secretary shall take all appropriate action and allocate all legally available resources to immediately assign asylum officers to immigration detention facilities for the purpose of accepting asylum referrals and conducting credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1225(b)(1)) and applicable regulations and reasonable fear determinations pursuant to applicable regulations.*
- (c) The Attorney General shall take all appropriate action and allocate all legally available resources to immediately assign immigration judges to immigration detention facilities operated or controlled by the Secretary, or operated or controlled pursuant to contract by the Secretary, for the purpose of conducting proceedings authorized under title 8, chapter 12, subchapter II, United States Code.<sup>14</sup>*

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<sup>13</sup> *Id.* at section 2.

<sup>14</sup> *Id.* at section 5.

Section 6 of that order, captioned “Detention for Illegal Entry,” specified that the Secretary of Homeland Security:

*[S]hall immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law. The Secretary shall issue new policy guidance to all Department of Homeland Security personnel regarding the appropriate and consistent use of lawful detention authority under the INA, including the termination of the practice commonly known as "catch and release," whereby aliens are routinely released in the United States shortly after their apprehension for violations of immigration law.<sup>15</sup>*

Section 13 of that order, captioned “Priority Enforcement,” provided:

*The Attorney General shall take all appropriate steps to establish prosecution guidelines and allocate appropriate resources to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border.<sup>16</sup>*

The theory behind these provisions appears to be that, if a foreign national considering illegal entry into the United States knows that he or she will be arrested and detained (and possibly prosecuted) pending a determination of removability and relief, that foreign national will be less likely to try to enter illegally. If this is true, the order ostensibly had its intended effect, at least for a while.

The number of aliens apprehended along the Southwest border dropped precipitously after the election and the issuance of this order, in the short term. Specifically, according to U.S. Customs and Border Protection (CBP), the number of apprehensions along the border and of inadmissible persons at ports of entry declined from 66,712 in October 2016 to 63,364 in November 2016, 58,426 in December 2016, 42,473 in January 2017, 23,563 in February 2017, 16,600 in March 2017, and to 15,780 in April 2017.<sup>17</sup> They began to increase in May 2017 (19,940), reaching a post-inauguration high of 40,511 (in December 2017) before declining again in January 2018 (35,822), with a slight uptick in February 2018 (36,695).<sup>18</sup>

<sup>15</sup> *Id.* at section 6.

<sup>16</sup> *Id.* at section 13.

<sup>17</sup> *Southwest Border Migration FY2017*, U.S. CUSTOMS AND BORDER PROTECTION, Dec. 15, 2017, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>.

<sup>18</sup> *Southwest Border Migration FY2018*, U.S. CUSTOMS AND BORDER PROTECTION, Apr. 4, 2018, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

Unfortunately, after Congress began to discuss amnesty for DACA beneficiaries (and others)<sup>19</sup>, the number of apprehensions and inadmissible aliens skyrocketed, reaching 50,308 in March 2018.<sup>20</sup>

Of these numbers, CBP states Southwest border apprehensions in FY 2017 dropped 76 percent from a high of 47,211 aliens in November 2016 to 11,126 aliens in April 2017, before ticking up in May (to 14,535 aliens), and increasing to 22,537 in September 2017.<sup>21</sup> Those apprehensions increased again to 29,077 (in November 2017), before dropping slightly in December 2017 (28,978), January 2018 (25,978), and trending upward again in February 2018 (26,666), and as noted in March 2018 (37,393).<sup>22</sup>

Significantly, according to CBP, total apprehensions along the Southwest border declined by 25 percent between FY 2016 and FY 2017.<sup>23</sup> The latest influx of aliens across the Southwest border threatens to reverse this trend.

#### Presidential Response

The president has responded to this March 2018 influx and to the caravan by taking a number of actions.

First, he ordered that National Guard troops be sent to the border.<sup>24</sup> On Friday, April 6, 2018, Defense Secretary James Mattis ordered up to 4,000 National Guardsmen be deployed to the Southwest border through September 30, 2018, “under the ‘command and control of their respective governors.’”<sup>25</sup>

Second, on April 6, 2018, the president ordered an end to “catch and release” policies that restricted the number of aliens who could be detained.<sup>26</sup> *The Hill* reports:

*President Trump signed a memorandum on Friday ordering agencies to “expeditiously end” the practice known as “catch and release” that allows immigrants caught in the U.S. without proper documents to be released from detention while their cases play out in court.*

<sup>19</sup> See Dylan Scott and Tara Golshan, *The Senate’s failed votes on DACA and immigration: what we know*, VOX, Feb. 18, 2018, available at: <https://www.vox.com/policy-and-politics/2018/2/12/17003552/senate-immigration-bill-floor-debate>.

<sup>20</sup> *Southwest Border Migration FY2018*, U.S. CUSTOMS AND BORDER PROTECTION, Apr. 4, 2018, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

<sup>21</sup> *Southwest Border Migration FY2017*, U.S. CUSTOMS AND BORDER PROTECTION, Dec. 15, 2017, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>.

<sup>22</sup> *Southwest Border Migration FY2018*, U.S. CUSTOMS AND BORDER PROTECTION, Apr. 4, 2018, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

<sup>23</sup> See *id.*

<sup>24</sup> Dave Montgomery and Manny Fernandez, *Texas Begins Sending National Guard Troops to Mexican Border*, N.Y. TIMES, Apr. 6, 2018, available at: <https://www.nytimes.com/2018/04/06/us/national-guard-border-texas.html>.

<sup>25</sup> *Id.*

<sup>26</sup> Jesse Byrnes, *Trump signs memo ordering end to ‘catch and release’ practices*, THE HILL, Apr. 6, 2018, available at:

*The memo signed by Trump orders the Department of Homeland Security, in coordination with other agencies, to submit a report to the president within 45 days "detailing all measures that their respective departments have pursued or are pursuing to expeditiously end 'catch and release' practices."*

*The report instructs departments to share information on any contracts to construct or operate detention facilities along the border as well as steps taken to assign asylum officers at detention facilities, among other measures.*

*As part of the order, Trump is requesting "a detailed list of all existing facilities, including military facilities, that could be used, modified, or repurposed to detain aliens for violations of immigration law at or near the borders of the United States."*

*Trump has also directed Attorney General Jeff Sessions and Homeland Security Secretary Kirstjen Nielsen to identify any other resources or steps "that may be needed to expeditiously end 'catch and release' practices."<sup>27</sup>*

Also on April 6, 2018, Attorney General Sessions also issued a memorandum<sup>28</sup> directing:

*[E]ach United States Attorney's Office along the Southwest border – to the extent practicable, and in consultation with [the Department of Homeland Security (DHS)] –to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a).*

The referenced provision of the law renders an initial illegal entry into the United States a criminal misdemeanor subject to a sentence of up to six months (and a fine), and illegal reentry a felony that carries with it a fine and a sentence of up to two years<sup>29</sup>.

#### Shortcomings in U.S. Immigration Law

Each of these actions will have a deterrent effect on aliens who are considering entering the United States illegally. Unfortunately, until various loopholes and flaws in our immigration laws are addressed, even these actions will not be sufficient to secure the border.

Prosecuting aliens under section 1325(a), particularly if those convicted receive significant sentences, will make it less likely that foreign nationals will attempt illegal entry into the United States. Logic dictates that the higher the penalty (including jail time) imposed for a criminal violation, the less likely that the criminal will attempt the offense. This is especially true in immigration, where convictions make it less likely that an alien will receive discretionary relief, and where the vast majority of aliens are coming to the United States to work. If they are

<sup>27</sup> *Id.*

<sup>28</sup> The Attorney General, *Memorandum: Zero Tolerance for Offenses under 8 U.S.C. § 1325(a)*, U.S. DEPT OF JUSTICE, April 6, 2018, available at: [https://www.justice.gov/opa/press-release/file/1049751/download?utm\\_medium=email&utm\\_source=govdelivery](https://www.justice.gov/opa/press-release/file/1049751/download?utm_medium=email&utm_source=govdelivery).

<sup>29</sup> 8 U.S.C. § 1325(a), available at: <https://www.law.cornell.edu/uscode/text/8/1325>.

detained and convicted (and subsequently deported), they will have spent money on smuggling fees that they will not be able to recoup.

Similarly, an increase in detention will make it less likely that aliens will enter the United States illegally, and make it more likely that aliens without meritorious claims for relief who entered illegally will take orders of removal or voluntary departure and go home. Again, logic and experience suggest that aliens enter the United States illegally to remain at large in the United States. The longer that the alien is able to remain at large and work, therefore, the better. If the alien is detained and cannot work, however, there is no longer an incentive to remain; instead, accepting an order of removal or a grant of the privilege of voluntary departure is more advantageous to the alien than continued detention.

Finally, the presence of National Guard troops in support roles will free up Border Patrol Agents to make apprehensions of aliens who entered illegally.

This is not the first time that the National Guard has been deployed to the border. As PBS notes:

*From 2006 to 2008, the Guard fixed vehicles, maintained roads, repaired fences and performed ground surveillance. Its second mission in 2010 and 2011 involved more aerial surveillance and intelligence work. People involved in both operations say the Guard was the Border Patrol's "eyes and ears."<sup>30</sup>*

According to news reports, during this deployment, Air National Guard helicopters will likely provide surveillance and back up, and check areas where sensors have been triggered "to determine the number of immigrants having crossed the line."<sup>31</sup> In addition, "Guardsmen will also repair vehicles, monitoring and maintaining video surveillance to help provide real-time intel to border agents."<sup>32</sup>

As noted, even these efforts will be frustrated, however (at least to some degree) by flaws and loopholes in current U.S. immigration law.

First, border security is undermined by our current "credible-fear" system. When they arrive at the United States border without proper documents, aliens seeking entry take one, or both, of two separate actions: entering the United States illegally across the border, or presenting themselves at a port of entry.

If they present themselves at a port of entry without proper documents, they will be deemed inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA).<sup>33</sup> If they enter the United States illegally, and are apprehended by the

<sup>30</sup> Elliot Spagat, *National Guard's last border deployments offer clues to the future*, PBS NEWS HOUR, Apr. 6, 2018, available at: <https://www.pbs.org/newshour/politics/national-guards-last-border-deployments-offer-clues-to-the-future>.

<sup>31</sup> William Lajeunesse, *National Guard will only play supporting role to agents at the border*, FOX NEWS, April 6, 2018, available at: <http://www.foxnews.com/us/2018/04/05/national-guard-will-only-play-supporting-role-to-agents-at-border.html>.

<sup>32</sup> *Id.*

<sup>33</sup> Section 212(a)(7)(A)(i)(I) of the INA, available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-2006.html> ("In general.—Except as otherwise specifically provided in this Act, any



Border Patrol, they will likely be detained and in charged with removability under section 212(a)(6)(A)(i) of the INA.<sup>34</sup>

Under section 235(b)(1)(A) of the INA<sup>35</sup>, when apprehended shortly after entry at the border or a port of entry, each of these classes of aliens are subject to expedited removal. Specifically, that provision states that “the [immigration] officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.”<sup>36</sup>

It appears that the aliens in the caravan who reach the United States will be requesting asylum under the “credible fear” process. Attorney General Sessions explained that process in a speech he delivered on October 12, 2017 before the Executive Office for Immigration Review (EOIR):

*The Department of Homeland Security is tasked in the first instance with evaluating whether an apprehended alien's claim of fear is credible. If DHS finds that it may be, the applicant is placed in removal proceedings and allowed to present an asylum claim to an immigration judge.*

*If, however, DHS finds that the alien does not have a credible fear, the alien can still get an immigration judge to review that determination. In effect, those who would otherwise be subject to expedited removal get two chances to establish that their fear is credible.*<sup>37</sup>

Under section 235(b)(1)(B)(v) of the INA<sup>38</sup>, “the term ‘credible fear of persecution’ means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.” “[S]ignificant possibility . . . that the alien could establish eligibility for asylum” is lower than the standard required for asylum itself, which requires proof of either “past persecution” or “well-founded fear of persecution.”<sup>39</sup>

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immigrant at the time of application for admission- (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a) . . . is inadmissible.”).

<sup>34</sup> Section 212(a)(6)(A)(i) of the INA, available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-2006.html> (“In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.”).

<sup>35</sup> Sections 235(b)(1)(A) and (iii)(II) of the INA, available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-5389.html>.

<sup>36</sup> *Id.*

<sup>37</sup> Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review, U.S. DEP’T OF JUSTICE, OFF. OF PUBLIC AFFAIRS, Oct. 12, 2017, available at: <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

<sup>38</sup> Section 235(b)(1)(B)(v) of the INA, available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-5389.html>.

<sup>39</sup> See section 208(b)(1) of the INA (“The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland

In the aforementioned October 2017 speech, Attorney General Sessions identified a number of key problems with the “credible-fear” system:

*[I]n 2009, the previous Administration began to allow most aliens who passed an initial credible fear review to be released from custody into the United States pending a full hearing. These changes — and case law that has expanded the concept of asylum well beyond Congressional intent—created even more incentives for illegal aliens to come here and claim a fear of return.*

*The consequences are just what you'd expect. Claims of fear to return have skyrocketed, and the percentage of claims that are genuinely meritorious are down.*

*The system is being abused to the detriment of the rule of law, sound public policy, public safety, and of just claims. This, of course, undermines the system and frustrates officers who work to make dangerous arrests in remote areas. **Saying a few simple words is now transforming a straightforward arrest and immediate return into a probable release and a hearing — if the alien shows for the hearing.***

*Here are the shocking statistics: in 2009, DHS conducted more than 5,000 credible fear reviews. By 2016, that number had increased to 94,000. The number of these aliens placed in removal proceedings went from fewer than 4,000 in 2009 to more than 73,000 by 2016 — nearly a 19-fold increase — overwhelming the system and leaving those with just claims buried.*

*The increase has been especially pronounced and abused at the border. From 2009 to 2016, the credible fear claims at the border went from approximately 3,000 cases to more than 69,000.*

*All told the Executive Office for Immigration Review has over 600,000 cases pending — tripled from 2009.*

*And the adjudication process is broken as well. DHS found a credible fear in 88 percent of claims adjudicated. That means an alien entering the United States illegally has an 88 percent chance to avoid expedited removal simply by claiming a fear of return.*

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Security or the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).”), available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-1687.html>; section 101(a)(42)(A) of the INA (“The term “refugee” means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . .”), available at: [https://www.dhs.gov/xlibrary/assets/training/xus/crc1/asylumseekers/crc1\\_asylum/pdfs/Immigration%20and%20Nationality%20Act%20101\(a\)\(42\).pdf](https://www.dhs.gov/xlibrary/assets/training/xus/crc1/asylumseekers/crc1_asylum/pdfs/Immigration%20and%20Nationality%20Act%20101(a)(42).pdf).

*But even more telling, half of those that pass that screening — the very people who say they came here seeking asylum — never even file an asylum application once they are in the United States. This suggests they knew their asylum claims lacked merit and that their claim of fear was simply a ruse to enter the country illegally.<sup>40</sup>*

(Emphasis added). In cases in which a credible fear determination was made in the first three months of FY 2018, credible fear was established in 90 percent of cases (October 2017 and November 2017), and 89 percent of cases (December 2017).<sup>41</sup> This number does not include “closings,” that is, cases in which a request for credible fear was withdrawn or some other action was taken on the alien’s case. Even when those numbers are added in, however, credible fear was found in more than 75 percent of cases (October 2017), 77 percent of cases (November 2017), and 78 percent of cases (December 2017).<sup>42</sup>

It is doubtful that DOJ will attempt to prosecute aliens who have entered illegally but who have been found to have a “credible fear” of persecution. Therefore, the Attorney General’s “zero-tolerance” policy will likely have no effect on the flow of such aliens to the United States illegally. Further, the deployment of National Guard troops to the border to supplement the efforts of the Border Patrol will likely have little effect on aliens claiming credible fear, as those aliens often will turn themselves in to the first Border Patrol Agent they encounter.<sup>43</sup>

It should be noted that some credible fear claims are simply fraudulent, advanced by aliens in order to gain access to the United States, and that some are legitimate. That said, many aliens claim credible fear because they are in flight from areas where there are high levels of criminal danger, some of which may have affected those aliens themselves. The lack of clear guidance on adjudicating such claims has, unfortunately, swelled the numbers of aliens found to have credible fear.

In particular, many asylum claims in recent years from Central America have related to criminal violence, and in particular gang violence, in those countries, a fact magnified by the number of unaccompanied alien children (UACs) who have entered the United States in recent years.

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<sup>40</sup> *Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review*, U.S. DEP’T OF JUSTICE, OFF. OF PUBLIC AFFAIRS, Oct. 12, 2017, available at: <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

<sup>41</sup> See *Credible Fear Workload Report Summary: FY 2018 Total Caseload*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, undated, available at: [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED\\_CredibleFearandReasonableFearStatisticsandNationalityReport.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_CredibleFearandReasonableFearStatisticsandNationalityReport.pdf).

<sup>42</sup> *Id.* But the

<sup>43</sup> See Amanda Sakuma, *Illegal Immigration Is Changing. Border Security Is Still Catching Up*, NBC NEWS, Oct. 17, 2016, available at: <https://www.nbcnews.com/storyline/immigration-border-crisis/illegal-immigration-changing-border-security-still-catching-n667916> (“U.S. officials have known for years that a significant number of Central American migrants are actually turning themselves in at Border Patrol stations and begging for protection. And because they’re asylum-seekers, agents can’t simply turn them away or immediately deport them. The United States has a legal obligation to accept the thousands of migrants until their asylum claims are processed.”).

In a September 5, 2014 report<sup>44</sup>, the Congressional Research Service (CRS) found:

*When considered by the [Board of Immigration Appeals (BIA)] or appellate courts in light of how the INA's definition of refugee is construed, claims to asylum based on gang-related violence frequently (although not inevitably) fail. In some cases, this is because the harm experienced or feared by the alien is seen not as persecution, but as generalized lawlessness or criminal activity. In other cases, persecution has been found to be lacking because governmental ineffectiveness in controlling the gangs is distinguished from inability or unwillingness to control them. In yet other cases, any persecution that is found is seen as lacking the requisite connection to a protected ground, and instead arising from activities "typical" to gangs, such as extortion and recruitment of new members. The particular social group articulated by the alien (e.g., former gang members, recruits) may also be seen as lacking a "common, immutable characteristic," social visibility (now, social distinction), or particularity.*

Four of the five factors for asylum relief are fairly straightforward: race, religion, nationality, and political opinion.<sup>45</sup> The BIA and the courts, however, have struggled with the parameters of "membership in a particular social group." In *Matter of the M-E-V-G*<sup>46</sup>, for example, the BIA held: "The phrase 'membership in a particular social group,' which is not defined in the Act, the [United Nations Convention Relating to the Status of Refugees], or the [United Nations Protocol Relating to the Status of Refugees], is ambiguous and difficult to define." In *Fatin v. INS*<sup>47</sup>, then-Judge (now Justice) Alito, writing for the Court of Appeals for the Third Circuit, noted: "Read in its broadest literal sense, the phrase is almost completely open-ended. Virtually any set including more than one person could be described as a 'particular social group.'"

In the gang violence context, this is complicated by the fact that generally, as the BIA recognized in *Matter of Sanchez and Escobar*<sup>48</sup>, "the tragic and widespread savage violence [in a general population] as the result of civil strife and anarchy is not persecution," and that, as the BIA recognized in *Matter of T-M-B*<sup>49</sup>, victims of crime (in that case, extortion) not related to one of

<sup>44</sup> Kate M. Manuel, *Asylum and Gang Violence: Legal Overview*, CONGRESSIONAL RESEARCH SERVICE, Sep. 5, 2014, available at: <https://fas.org/srg/crs/homesecc/R43716.pdf>.

<sup>45</sup> See section 101(a)(42)(A) of the INA ("The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . ."), available at: [https://www.dhs.gov/xlibrary/assets/training/xus/crcl/asylumseekers/crcl\\_asylum/pdfs/Immigration%20and%20Nationality%20Act%20101\(a\)\(42\).pdf](https://www.dhs.gov/xlibrary/assets/training/xus/crcl/asylumseekers/crcl_asylum/pdfs/Immigration%20and%20Nationality%20Act%20101(a)(42).pdf).

<sup>46</sup> *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014), available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3795.pdf>.

<sup>47</sup> *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993), available at:

[https://scholar.google.com/scholar\\_case?case=11990936080202514559&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=11990936080202514559&hl=en&as_sdt=6&as_vis=1&oi=scholar).

<sup>48</sup> *Matter of Sanchez and Escobar*, 19 I&N Dec. 276 (BIA 1985), *aff'd*, *Sanchez-Trujillo v. INS*, 801 F.2d 1571 (9th Cir. 1986), available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2996.pdf>.

<sup>49</sup> *Matter of T-M-B*, 21 I&N Dec. 775 (BIA 1997), available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3307.pdf>.

the five factors for asylum relief have not been subject to “persecution” for purposes of that relief as a result of such criminality.

The BIA summarized these issues as they relate to gang violence in *Matter of M-E-V-G*<sup>50</sup>:

*The prevalence of gang violence in many countries is a large societal problem. The gangs may target one segment of the population for recruitment, another for extortion, and yet others for kidnapping, trafficking in drugs and people, and other crimes. Although certain segments of a population may be more susceptible to one type of criminal activity than another, the residents all generally suffer from the gang's criminal efforts to sustain its enterprise in the area. A national community may struggle with significant societal problems resulting from gangs, but not all societal problems are bases for asylum.*

Notwithstanding this, certain courts have held that aliens have been able to establish eligibility for asylum based on gang violence. For example, in *Hernandez-Avalos v. Lynch*<sup>51</sup>, the Court of Appeals for the Fourth Circuit found that a Salvadoran national who had received death threats from Mara 18 members unless she allowed her son to join the gang had established eligibility for asylum. It held: “Mara 18 threatened Hernandez in order to recruit her son into their ranks, but they also threatened Hernandez, rather than another person, because of her family connection to her son,” concluding that those “threats were ... made ‘on account of’ her membership in her nuclear family,” a particular social group.

Fortunately, it appears that the Attorney General is poised to address these issues, and provide clarity to the immigration courts, the BIA, and asylum officers. On March 7, 2018, he directed the BIA to refer *Matter of A-B*<sup>52</sup> to him for his review, in accordance with 8 C.F.R. § 1003.1(h)(1)(i).<sup>53</sup> In that case, the Attorney General is inviting briefing on: “Whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal.”<sup>54</sup>

By providing immigration judges, the BIA, and asylum officers with better guidance on these issues, the Attorney General will be able to limit the number of claims (and in particular “credible fear” claims) that are considered in the immigration courts, and enable immigration judges and asylum officers to decide those cases more quickly.

<sup>50</sup> *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014), available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3795.pdf>.

<sup>51</sup> *Hernandez-Avalos v. Lynch*, 784 F. 3d 944 (4<sup>th</sup> Cir. 2015), available at: <http://www.ca4.uscourts.gov/Opinions/Published/141331.P.pdf>.

<sup>52</sup> *Matter of A-B*, 27 I&N Dec. 227 (A.G. 2018), available at: <https://www.justice.gov/eoir/page/file/1041481/download>.

<sup>53</sup> 8 C.F.R. § 1003.1(h)(1)(i), available at: <https://www.law.cornell.edu/cfr/text/8/1003.1>.

<sup>54</sup> *Matter of A-B*, 27 I&N Dec. 227 (A.G. 2018), available at: <https://www.justice.gov/eoir/page/file/1041481/download>.

There is also pending legislation to address other flaws in the “credible fear” process. Specifically, the Securing America’s Future Act of 2018 (SAFA)<sup>55</sup> contains two provisions that would amend section 235 of the INA to put asylum officers in a better position to make credible-fear determinations.

Section 4402 of division B, title IV of that bill<sup>56</sup> would amend the definition of “credible fear of persecution” in section 235(b)(1)(B)(v) of the INA to apply the same credibility standards that are used in asylum adjudications, and to make it clear that credible fear should only be found where “it is more probable than not that the statements made by, and on behalf of, the alien in support of the alien’s claim are true.” All too often, it appears that asylum officers believe they are required to accept the credible fear applicant’s statements at face value absent significant inconsistencies. This provision would address that issue.

Second, section 4403 of division B, title IV<sup>57</sup> of that bill would direct uniformity in questioning by asylum officers in credible fear cases, and require recording of credible fear interviews, which would be made available to the immigration court considering the alien’s asylum claim. The second provision is particularly important, as aliens who have passed credible fear and are applying for asylum will often claim that they were misquoted during their credible fear interviews when confronted with inconsistencies between the record of those interviews and their testimony in court.

Another factor that will frustrate the president’s border-enforcement efforts is the current iteration of The William Wilberforce Trafficking Victims Reauthorization Protection Act of 2008 (TVPRA).<sup>58</sup>

By way of background, section 462 of the Homeland Security Act of 2002<sup>59</sup> vested jurisdiction over the care and placement of UACs in removal proceedings with the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS).

Section 235 of the TVPRA distinguishes between UACs from “contiguous” countries (Canada and Mexico) and aliens from “non-contiguous” countries. Under section 235(a)(2) of that act, a UAC from a contiguous country can be returned if that UAC has not been and will not be a “victim of a severe form of trafficking in persons,” does not have a credible fear, and “is able to make an independent decision to withdraw” his or her application for admission.

As CRS has found, however:

<sup>55</sup> Securing America’s Future Act of 2018, H.R.4760, 115th Congress (2018), *available at*: <https://www.congress.gov/bills/115/congress/house-bills/4760/text>.

<sup>56</sup> *Id.* at div. B, tit. IV, § 4402.

<sup>57</sup> *Id.* at div. B, tit. IV, § 4403.

<sup>58</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457 (2008), *available at*: <https://www.congress.gov/bills/110/congress/house-bills/7311?q=%7B%22search%22%3A%5B%22William+Wilberforce+Trafficking+Victims+Protection+Reauthorization+Act+of+2008%22%5D%7D&r=1>.

<sup>59</sup> Homeland Security Act of 2002, Pub. L. 107-296 (2002), § 462, *available at*: [https://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf).

*The TVPRA mandated that unaccompanied alien children from countries other than Mexico or Canada—along with UAC from those countries who are apprehended away from the border—are to be transferred to the care and custody of HHS and placed in formal removal proceedings.<sup>60</sup>*

Specifically, section 235(b)(3) of the TVPRA directs “any department or agency of the Federal Government that has an unaccompanied alien child in custody” to “transfer the custody of such child to [HHS] not later than 72 hours after determining that such child is an unaccompanied alien child.”<sup>61</sup>

As my colleague Joseph J. Kolb described the TVPRA in a November 3, 2016 Backgrounder from the *Center for Immigration Studies*:

*The William Wilberforce Trafficking Victims Reauthorization Protection Act of 2008 was a well-intentioned attempt to protect immigrant children from exploitation, but it actually applies to very few of the more than 200,000 unaccompanied minors that have crossed the southwest border from the Northern Triangle countries of Central America since 2013. Most of these kids are not victims of trafficking, but came to the United States voluntarily with the assistance of a human smuggler, and with the intent of being reunited with a parent or family member.*

*According to the Associated Press, with information obtained through a Freedom of Information Act request from the U.S. Department of Health and Human Services, between February 2014 and September 2015, 56,000 (80 percent) of the children were placed with sponsors illegally in the United States and an additional 700 were placed with sponsors in deportation proceedings. Only 4,900 were placed with sponsors legally in the country.*

*The TVPRA calls for the HHS secretary to have the children promptly placed in the least restrictive setting that is in their best physical and emotional interest. This is the loophole HHS uses to place children with designated sponsors illegally in the United States. The law only refers to checking the sponsors’ immigration status, not acting upon it. The perception by ORR is that regardless of immigration status, placing the children with a parent is the preferred solution. The AP report found that more than 50 percent of the children were placed with parents.*

\* \* \* \*

<sup>60</sup> William A. Kandel, *Unaccompanied Alien Children: An Overview*, CONGRESSIONAL RESEARCH SERVICE, at 4, Jan. 18, 2017, available at: <https://fas.org/spp/crs/homesecc/R43599.pdf>.

<sup>61</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, § 235(b)(3), Pub. L. 110-457 (2008), available at: <https://www.congress.gov/bills/110th-congress/house-bill/731/1?q=%7B%22search%22%3A%5B%22William+Wilberforce+Trafficking+Victims+Protection+Reauthorization+Act+of+2008%22%5D%7D&r=1>.

*One congressional staffer, who declined to be identified, told the author that the current policy exploits a humanitarian law to manufacture additional reasons for illegal immigrants to remain in the country instead of being returned home. And it creates a huge demand for more minors to flood across the U.S. border to take advantage of it. In some cases, these unaccompanied minors should not qualify for the protections of this law because not only were they not trafficked, they were placed with their parents or legal guardians, which by definition means they are no longer unaccompanied.*

*The Obama administration and welfare advocates have professed that UACs are attempting to escape gang violence in Central America, and many have been. But there is also an awareness of the current policies that will enable them to stay for an indefinite period. The author's understanding, after seeing Border Patrol intel reports, news media accounts, and results of interviews by some of my colleagues, is that there was not so much awareness of DACA as just the fact that they would be released with a court date far in the future. According to one intel report, something like 90 percent of the UACs and family arrivals interviewed said they were coming because they heard they would be released with a "permiso" which is the slang for Notice to Appear in immigration court, which is de facto permission to stay pending the conclusion of deportation proceedings. This has resulted in a massive advertising campaign throughout Central America attempting to stem the migration north by saying that their hopes for admission to the United States based on this interpretation of the law is risky.*

*Pedro Sanchez, Consul at the El Salvadoran Consulate in New York City, acknowledges that many children from his country hedge their bets on this interpretation.*

*"People continue to send their children with this misunderstanding," Sanchez told the author.<sup>62</sup>*

It is doubtful that UACs would be prosecuted for illegal entry (or even illegal reentry), regardless of the Attorney General's policies. Moreover, it would appear that "catch and release" will continue to apply to this population of aliens, regardless of the president's pronouncements. Again, this law provides an incentive for older UACs to attempt to enter the United States illegally, and for the parents of younger UACs to have their children smuggled illegally to the United States.

This is particularly problematic because of the nature of smuggling, and in particular the debased nature of smugglers. U.S. Immigration and Customs Enforcement (ICE) put it best when they stated:

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<sup>62</sup> Joseph J. Kolb, *Implementation of a Law to Protect Trafficking Victims Has Become a Public Safety Issue*, CENTER FOR IMMIGRATION STUDIES, Nov. 3, 2016, available at: <https://cis.org/Report/Implementation-Law-Protect-Trafficking-Victims-Has-Become-Public-Safety-Issue>.



*While smugglers most often transport adult males, the number of women, children and family units seeking transport has increased dramatically in recent years. They often find themselves at risk for assault and abuse such as rape, beatings, kidnapping and robbery. Smugglers regularly overcrowd living and sleeping accommodations, and withhold food and water. In addition, individuals who are smuggled may be forced into human trafficking situations upon their arrival in the U.S. or their families may be extorted. Even knowing these dangers, the majority of people who travel with a smuggling organization do so voluntarily.<sup>63</sup>*

Again, SAFA attempts to plug the loopholes in section 235 of the TVPRA. Division B, title V, section 5501<sup>64</sup> of that bill eliminates the conflicting rules between nationals from contiguous and non-contiguous countries, and subjects all minors to expeditious return if they have not been trafficked and do not have a credible fear of persecution. In addition, it ensures that minors who are victims of severe forms of trafficking are afforded a hearing before an immigration judge within 14 days, while extending the ability of DHS to hold a UAC for up to 30 days to ensure a speedy judicial process.

Moreover, that section of SAFA requires HHS to provide DHS with biographical information for the sponsors or family members to whom the UACs are released, a requirement that does not exist in current law. In the absence of such information, there is a distinct possibility that UACs could become lost in the removal system, or worse, possibly be handed over to abusers and other criminals.

Further, section 5501 provides authority for the Secretary of State to negotiate agreements with foreign countries regarding UACs, including protections for minors who are returned to their country of nationality.

Finally, section 5503 of division B, title V of SAFA<sup>65</sup> would eliminate section 208(b)(3)(C) of the INA<sup>66</sup>, which gives UACs the opportunity to have their asylum applications heard by both asylum officers at U.S. Citizenship and Immigration Services (USCIS) and immigration judges, even if they would be subject to expedited removal under section 235(b) of the INA. Again, this provision of current law provides UACs greater incentives to enter the United States illegally and make an asylum claim, regardless of its validity.

Yet another factor complicating the president's border agenda is the so-called *Flores*<sup>67</sup> settlement, which regulates the treatment and conditions of detention of UACs in immigration custody. As CRS has described that agreement:

<sup>63</sup> *Human smuggling equals grave danger, big money*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, updated January 16, 2018, available at: <https://www.ice.gov/features/human-smuggling-danger>.

<sup>64</sup> Securing America's Future Act of 2018, H.R.4760, 115th Congress, div. B, tit. V, § 5501 (2018), available at: <https://www.congress.gov/bills/115th-congress/house-bill/4760/text>.

<sup>65</sup> *Id.* at § 5503. When the

<sup>66</sup> Section 208(b)(3)(C) of the INA, available at: <https://www.uscis.gov/i/ink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-1687.html>.

<sup>67</sup> *Flores v. Reno*, Stipulated Settlement Agreement, available at: [https://cliniclegal.org/sites/default/files/attachments/flores\\_v\\_reno\\_settlement\\_agreement\\_1.pdf](https://cliniclegal.org/sites/default/files/attachments/flores_v_reno_settlement_agreement_1.pdf). The

*During the 1980s, allegations of UAC mistreatment by the former Immigration and Naturalization Service (INS) caused a series of lawsuits against the government that eventually resulted in the Flores Settlement Agreement (Flores Agreement) in 1997. The Flores Agreement established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC as minors while detained without a parent or legal guardian present.<sup>68</sup>*

Human Rights First has explained:

*The Flores Settlement Agreement (Flores) imposed several obligations on the immigration authorities, which fall into three broad categories:*

*The government is required to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody.*

*If a suitable placement is not immediately available, the government is obligated to place children in the “least restrictive” setting appropriate to their age and any special needs.*

*The government must implement standards relating to the care and treatment of children in immigration detention.<sup>69</sup>*

The Ninth Circuit has made it clear that the *Flores* settlement agreement creates a presumption in favor of the release of alien minors.<sup>70</sup>

It should be noted that the *Flores* agreement does not only apply to UACs; rather, a July 2016 circuit court opinion<sup>71</sup> held that the 1997 *Flores* settlement applies to both accompanied and unaccompanied alien children.

The *Flores* settlement agreement is problematic in many ways. It encourages UACs to enter the United States illegally, and encourages the parents of UACs to hire smugglers to bring their children to the United States. Further, it encourages people to bring their own children (or children whom they claim to be their own) with them when they make the perilous journey to the United States, thinking that it will make it more likely that they (the parents or purported parents) are more likely to be released if they are travelling with those children.

<sup>68</sup> William A. Kandel, *Unaccompanied Alien Children: An Overview*, CONGRESSIONAL RESEARCH SERVICE, at 3, Jan. 18, 2017, available at: <https://fas.org/sgp/crs/homesecc/R43599.pdf>.

<sup>69</sup> *The Flores Settlement: A Brief History and Next Steps*, Human Rights First, Feb. 19, 2016, available at: <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>. And

<sup>70</sup> *Flores v. Lynch*, 828 F. 3d 898 (9<sup>th</sup> Cir. 2016), available at: <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/07/06/15-56434.pdf>.

<sup>71</sup> *Id.*

Ironically, in cases where the alien parents are detained, and their alien child is released, the child would, in fact be, a UAC; it is questionable that this is a result that Congress or the courts intended.

Again, it is doubtful that the president's efforts to end "catch and release" or the Attorney General's "zero-tolerance" policy will be directed toward these UACs, and therefore will have little or no effect on the illegal entry of such aliens to the United States. Moreover, it is doubtful that the presence of National Guard troops supporting Border Patrol activities will stem the flow of these UACs; with the prospect of release into the United States, they would have no reason not to turn themselves in to the Border Patrol, or at least not be inhibited by additional Border Patrol agents enforcing the laws along the border.

Moreover, and as a significant practical matter, almost every UAC in the caravan (other than a Mexican or Canadian national) would be able to use the TVPRA and the *Flores* settlement agreement to come to the United States with the expectation of being released into the interior of this country, to await a hearing that might be years in the future.

Again, SAFA provides for a fix to *Flores* as it pertains to accompanied children. Specifically, division B, title V, section 5506 of that bill<sup>72</sup> clarifies that there is no presumption that an accompanied child should not be detained, and vests jurisdiction over detention determinations for accompanied children with the Secretary of Homeland Security. It also mandates that accompanied children be released only to the alien's parent or legal guardian.

One final provision that undermines the president's border agenda relates to so-called special immigrant juveniles (SIJs), for whom a visa is available under section 101(a)(27)(J) of the INA.<sup>73</sup> USCIS's website explains:

If you are in the United States and need the protection of a juvenile court because you have been abused, abandoned, or neglected by a parent, you may be eligible for [SIJ] classification. If SIJ classification is granted, you may qualify for lawful permanent residency (also known as getting a Green Card).<sup>74</sup>

Again, SIJ classification (which in appropriate instances can be a necessary form of protection) provides an incentive for foreign national children and young adults to enter the United States illegally. As CRS reported in August 2014:

*There has been a tenfold increase in the number of children requesting SIJ status between FY2005 and FY2013. In terms of approvals, the numbers have gone from 73 in FY2005 to 3,432 in FY2013. While the data do not differentiate among those unauthorized children who arrived unaccompanied by their parents and those*

<sup>72</sup> Securing America's Future Act of 2018, H.R.4760, 115th Congress, div. B, tit. V, § 5506 (2018), available at: <https://www.congress.gov/bills/115/congress-house-bill/4760/text>

<sup>73</sup> Section 101(a)(27)(J) of the INA, available at: [http://www.courts.ca.gov/documents/BTB\\_23\\_3K\\_3.pdf](http://www.courts.ca.gov/documents/BTB_23_3K_3.pdf).

<sup>74</sup> *Special Immigrant Juveniles*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, updated Apr. 4, 2018, available at: <https://www.uscis.gov/green-card/sij>.

*who were removed from their parents because of abuse, abandonment, or neglect, many observers point to the similarity in the spiking trends of both categories.*<sup>75</sup>

Why the increase? It is possible that amendments in the TVPRA are to blame. According to CRS:

*In 2008, Congress amended the SIJ provisions in the INA to broaden their applicability. The [TVPRA], among other things, amended the SIJ eligibility provisions to (1) remove the requirement that a juvenile court deem a juvenile eligible for long-term foster care and (2) replace it with a requirement that the juvenile court find reunification **with one or both parents not viable**.*<sup>76</sup>

(Emphasis added). This means that an alien can nonetheless still be granted SIJ classification, even though another parent is present in the United States and is able and willing to care for them.

SAFA provides a fix to this loophole as well. Section 5502 of division B, title V of SAFA<sup>77</sup> would make it clear that an alien is only eligible for SIJ classification if the alien is unable to reunite with either of his or her parents “due to abuse, neglect, abandonment, or a similar basis found under State law.”<sup>78</sup>

#### Summary

After months in which a fewer number of aliens than usual attempted illegal entry into the United States following the election and inauguration of President Trump, in March 2018, more than 50,000 aliens were apprehended along the border or were deemed inadmissible of the ports of entry. This upward trend is illustrated by the 1,000 to 1,500 foreign nationals in the Pueblo Sin Fronteras caravan, some if not all of whom had the intention of making their way to the United States.

The Trump Administration has taken steps to address the surge of aliens coming in recent weeks illegally across our Southwest border. Specifically, the president is phasing out “catch and release,” National Guard troops will be mobilized to the border, and the Attorney General has announced a “zero-tolerance” policy for illegal entry prosecutions. While each of these steps will serve to stem the tide of aliens entering the United States illegally, there are still shortcomings and flaws in U.S. immigration law which draw aliens, and in particular alien minors, to enter the United States illegally. These shortcomings and flaws still need to be addressed, which could require Congressional action.

I thank you again for your invitation to attend today’s hearing, and I look forward to your questions.

<sup>75</sup> Ruth Ellen Wasem, *Special Immigrant Juveniles: In Brief*, Congressional Research Service, Summary, Aug. 29, 2014, available at: <https://fas.org/sgp/crs/homesecc/R43703.pdf>.

<sup>76</sup> *Id.* at 3.

<sup>77</sup> *Id.* at § 5502.

<sup>78</sup> Section 101(a)(27)(I) of the INA, available at: [http://www.courts.ca.gov/documents/BTB\\_23\\_3K\\_3.pdf](http://www.courts.ca.gov/documents/BTB_23_3K_3.pdf).

Mr. DESANTIS. Thank you.  
Mr. Breen, 5 minutes.

#### STATEMENT OF MICHAEL BREEN

Mr. BREEN. Thank you. Chairman DeSantis, Ranking Member Lynch, distinguished members of the subcommittee, thank you for the opportunity to testify today.

The situation at our southern border represents a foreign policy problem, a drug policy problem, an immigration policy problem, a series of legal problems, a humanitarian problem, a law enforcement problem, and much else besides. It is not at this time, definitively not a military problem.

I want to preface my testimony by saying how much I respect the service and the sacrifice of Border Patrol agents, Texas Department of Safety troopers, and other law enforcement agents who safeguard our borders and our communities. My own uniformed service was in the military, not in law enforcement, but I'm a proud member of a three-generation law enforcement family. And with respect to the Border Patrol, my dad was serving as a New Hampshire State trooper who was involved in the apprehension of Carl Drega in 1997, alongside a Border Patrol agent who was shot and wounded during that incident.

So we show our military men and women a great deal of appreciation in this country, but not frequently enough with law enforcement and their families. So thank you for everything that you both do and all that you represent.

Ensuring that our law enforcement agencies have the resources they need must be a national priority, and there is no question that a secure border is essential. Fortunately, we've been on the right track toward both of those goals over the past several decades. We've tripled the Border Patrol's budget since 2001, even as apprehensions have dropped dramatically, from over 1.2 million in 2001, to just over 300,000 in 2017, a large portion of whom were asylum seekers who appeared at ports of the entry or actively sought out Border Patrol agents rather than attempting to avoid them.

There is much more important work to be done, of course, and it's critical that we do it, but these numbers point to a success story for the Nation and they reflect important political and economic changes in the hemisphere. What these numbers do not point to, and what we do not, in fact, face, is a true crisis or emergency on the border. We face challenges, of course, but those challenges are best addressed by strengthening the institutions we already have, to support safe and orderly migration and through foreign policy and economic statecraft in Latin America, not by using the military.

Nonetheless, President Trump frequently speaks of the need for a great wall across nearly 5,000 miles of the southern border. He initially claimed this wall would be paid for by the Government of Mexico, which, of course, declined to do so. He then sought the funding from Congress, which has also, in large part, declined up to this point.

So now President Trump has declared his intention to deploy up to 4,000 National Guardsmen to the border. In the President's own

words, “Keep them there, or a large portion of them there, until such time as we build the wall,” close quote.

There may be some marginal benefit to the deployment, but there are a great many causes for serious concern, although more so, because it does not appear to be the result of a deliberative planning or decision-making process. The decision is likely to negatively impact readiness for the National Guard, potentially for the Active Duty force as well, do nothing to improve the capabilities or strength of the Border Patrol itself in the long run, and do precious little to improve security.

Time does not permit me to lay out all the reasons this is so, which are detailed much more fully in my written testimony, but essentially, it comes down to readiness and cost, two issues which are, of course, extremely interrelated. It’s still unclear where the funds for this will come from, but costs are likely to be in the hundreds of millions, at a minimum. And if that funding is repurposed from within the Department of Defense, Congress should ask hard questions about the impact on other defense priorities, especially readiness.

There is also a direct readiness cost to the National Guard since, by definition, Guardsmen who are standing tower duty, clearing brush, maintaining fences, doing other things on the border are not training with their brigade combat teams for their primary mission, which is combat. That impacts our national security as a whole, because, as an operational reserve, the Guard is an integral part of our military team.

If we faced an actual emergency on the border, those costs and risks would perhaps be worth incurring, but consider the so-called threat that prompted this very hearing. A caravan of Central America migrants that presented no serious national security threat to the United States in the first place, and that is now largely dissipated, with only a fraction of the original 1,200 travellers planning to continue their journey northward through Mexico, where, by all indications, they intend to present themselves at a port of entry and seek asylum.

So, in short, the situation at our southern border is, in many ways, better than it’s been in decades; but meanwhile, the National Guard is an increasingly integral part of our military, and our military faces a more challenging environment around the world than it has in decades: Ongoing wars in Afghanistan, Syria, and Iraq; counterterrorism work in East Africa, West Africa, Yemen; ongoing commitments to NATO and our mission in Kosovo, which the Guard entirely owns; critical deterrence missions in the Persian Gulf and the Korean Peninsula, where that border is more dangerous than it’s been at any point since the last Korean War.

Our military is facing all of these challenges just as the services are finally digging out of a serious readiness gap, as Secretary Mattis is testifying to down the hall, left by 15 years of war. So this is not the time to pull troops and dollars away from their primary mission to fight and win the Nation’s wars, especially in the absence of a genuine threat.

There is much we can do and should do to improve the situation on our southern border. I hope we do those things. But deploying

the National Guard in this manner right now is not one of those things.

Thank you and I look forward to your questions.

[Prepared statement of Mr. Breen follows:]

Written Testimony of Michael Breen, President and CEO of Truman Center

United States House of Representatives

Committee on Oversight and Government Reform

Subcommittee on National Security

A 'Caravan' of Illegal Immigrants: A Test of U.S. Borders

12 April 2018

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Chairman Desantis, Ranking Member Lynch, and distinguished members of the Subcommittee: Thank you for the opportunity to testify today on the planned deployment of our National Guard to the southern border of the United States by President Trump.

I want to preface my testimony by saying how much I respect the service and sacrifice of the Border Patrol agents, Texas Department of Safety troopers, and other law enforcement officers who safeguard our border areas and protect our communities. While my own uniformed service was in the military rather than law enforcement, I'm proud to be a member of a three-generation law enforcement family. We show our military men and women a great deal of appreciation in this country, and that is well deserved, but we don't recognize law enforcement officers and their families nearly enough. So thank you for all that you do.

The situation at our southern border represents a foreign policy problem, a drug policy problem, an immigration policy problem, a series of legal problems, a humanitarian problem, a law enforcement problem, and much else besides. At this time, however, it is definitely not a military problem.

The security and integrity of our border with Mexico is a serious matter, deserving of a serious approach from policymakers. In significant part, this is because a positive relationship with Mexico is both a benefit to and a necessity for the United States. There are an estimated 5 million American jobs tied to our economic relationship with Mexico, which accounts for approximately \$600 billion in trade—all part of what is arguably the most complex and intertwined relationship that America has with any foreign nation. There is much about the relationship that is productive, including a strong trade surplus in services, as well as a strong and growing Mexican middle class with a demonstrated affinity for American culture that represents an important market for U.S. businesses.

In this context, it is clear that orderly migration, trade, and other activity at the border relies on a positive working relationship with Mexico. Every time we needlessly strain that relationship, whether through poorly-crafted policy or careless rhetoric, we make it harder to work with a partner we need in order to execute successful national security policy, and much else besides.



That said, the issue at hand in this hearing today is protecting our border with Mexico. This important duty falls primarily to the U.S. Border Patrol. I will leave it to others to describe daily life in this line of work, but it is fair to say that the organization is not currently staffed or resourced at an adequate level to meet the challenges it faces today. As of May 2017, the Government Accountability Office (GAO) found that Customs and Border Patrol was operating with approximately 1,900 fewer agents than its congressionally-mandated floor, and that attrition was outpacing hiring at “an average of 904 agents compared to 523 agents” in recent years.<sup>i</sup>

Presumably in part to make up for these deficiencies, President Trump frequently speaks of the need for a great wall across nearly five thousand miles of the southern border. He initially claimed that this wall would be paid for by the government of Mexico, which declined to do so; he then sought the funding from Congress, which has also in large part declined up to this point. Now, President Trump has declared his intention to deploy up to 4,000 National Guardsmen to the southern border.<sup>ii</sup> In the president’s own words, he plans to “keep them...or a large portion of them [there], until such time as we build the wall.”<sup>iii</sup>

There may be some marginal benefit to this deployment, but there are a great many causes for serious concern. This decision is likely to impose a significant cost, negatively impact readiness for the National Guard and the Active Duty force alike, and do nothing to improve the capabilities or strength of the Border Patrol and precious little to improve security.

The National Guard’s current budget for FY18 allocates approximately \$19 million for training and operations on the border. Even if this operation lasts only six months—not enough time to complete the (anywhere from \$12 to \$70 billion dollar) wall by a long shot—it is certain to cost many times that.<sup>iv</sup> In 2013, the Department of Defense’s Cost Assessment and Program Evaluation prepared a report entitled, “Unit Cost and Readiness for the Active and Reserve Components of the Armed Forces,” which estimated the annualized full-time cost of an E7 Guardsman at \$100K (additional costs were \$175K for an O5, and \$58K for an E4).<sup>v</sup> Using those numbers, the annualized cost of placing 4,000 troops on the border comes to approximately \$400 million, or \$200 million if the mission lasts only six months. That puts the Guard about \$180 million over the budget allocation, even in a very conservative scenario.

This is concerning not only from the perspective of the American taxpayer, but also because it is so far unclear where that additional money—beyond the \$19 million already allocated—is going to come from. Repurposing it from within DoD, just as the services are finally digging out of a serious readiness problem, would be deeply unwise and detrimental to both the Active Duty force and the National Guard.

In the FY18 budget recently agreed to by Congress, funds were specifically allocated to address a serious readiness gap across the services. This gap has long been discussed in the context of the budgeting process; in 2017, Secretary of Defense Mattis—who has previously fiercely criticized Congress for limits on defense spending—characterized recently approved spending

as getting the military “back on its feet” and “in the right direction.”<sup>vi</sup> Meanwhile, rising tensions with adversaries from Russia to North Korea underscore the deadly serious need for our forces to be prepared to fulfill their primary function: fighting and winning the nation’s wars, against any and all adversaries. Given these realities, it should be no surprise to anyone on this committee that Chief of Staff of the Army General Mark Milley is fond of saying that “Readiness for ground combat is—and will remain—the U.S. Army’s #1 priority...and there is no other #1.”<sup>vii</sup>

It would be ironic and unfortunate in the extreme if, only weeks after allocating those funds, Congress were asked to approve repurposing millions of those carefully designated dollars for a short-term deployment to the border that will do nothing at all to improve readiness, and is in fact likely to do the opposite for the units involved. Since 9/11, the National Guard has clearly proven itself as an essential element in our national defense, and a high-capacity partner for the Active Duty Force. Simply put, the National Guard can no longer be fairly described as a “strategic reserve” to be used only in case of major war. It is now an “operational reserve,” capable of seamlessly integrating with Active Duty elements as part of ongoing operations around the world. The National Guard has ably owned the Kosovo mission for 15 years now, proven itself in combat by playing essential roles in Iraq and Afghanistan, and responded admirably to natural disasters and other needs here at home.

Americans and their elected policymakers should be proud of their National Guard for all of this and more. Yet we also must recognize that this level of performance requires a genuine focus on training and preparing units for the range of challenges they will face, ensuring that adequate forces are available to meet challenges as they emerge, and taking care of Guardsmen and their families.

Like the Active Duty Army, today’s Army National Guard is primarily organized into units of approximately 5,000 soldiers, known as Brigade Combat Teams (BCTs). Forming a complete BCT typically requires drawing Guardsmen from across an entire state, or several states in many cases. Training a full BCT together is a top current priority for the National Guard, and an essential component of the Army National Guard 4.0 readiness initiative. In the words of Army Lt. General Timothy Kadavy, the director of the Army National Guard, “We are implementing this because our country needs us to do so. This is due to the current size of the total Army and the multiple threats that our country faces from potential adversaries.”<sup>viii</sup>

Deploying the National Guard to the border directly undermines these clearly stated training and readiness priorities by making it difficult or impossible for full BCTs to train together. Deploying a few hundred Guardsmen from a number of different states may ease the burden on any one state, but only serves to break up a larger number of BCTs for longer periods of time. For those on the border, the already questionable training value of the deployment is further eroded by the fact that they will be operating in very small units, which is not how they would operate in most combat scenarios. Even if the National Guard were to somehow deploy an entire BCT to the border as an intact unit, they would either be spread out over thousands of

miles (and therefore by definition not training together), or concentrated in a small area providing very limited benefit to border security (and very likely causing increased tensions with Mexico, since a massed US Army BCT is a truly formidable presence on any border).

This is to say nothing of the very questionable training value of the missions the Guard will likely be asked to conduct on the border. While details of the deployment are still emerging, a Department of Defense spokesman said on Tuesday that Guardsmen would not be “arresting migrants or carrying out armed patrols along the border;” instead, they will focus on surveillance and infrastructure improvement.<sup>14</sup> In plain English, this means staring at the desert through binoculars, staring at the desert on a video screen, and repairing roads and fences. This isn’t meant to be glib, but is a critical point because it underscores the opportunity cost of this deployment in terms of the skills that the National Guard needs to continue developing in its volunteers.

The U.S. military faces crises around the world: ongoing wars in Afghanistan and Iraq; indefinite deployments in Syria; counterterrorism work in Africa and Yemen; ongoing commitments to NATO and our mission in Kosovo; and critical deterrence in the Persian Gulf and Korean Peninsula, accompanying each of which is the significant risk of a war. Due to the nature and number of these threats, the National Guard is, as I mentioned before, continuing to transition from a strategic reserve to ability as an operational reserve—in other words, focused on better preparing its guardsmen to rapidly deploy in combat scenarios. The training in surveillance and infrastructure improvement that troops deployed to the southern U.S. border will receive will be of some marginal value, but performing these duties will undeniably put training for more complex operations on hold. Put another way, sitting in surveillance towers and moving barricades will do nothing to increase the lethality of the National Guard or otherwise prepare them to fight effectively abroad or respond to disasters at home—and it will preclude them from receiving the training they need to do so.

Guardsmen’s time is finite in other ways, as well. Just as Guardsmen deployed to the border cannot be deployed elsewhere, a Guardsman deployed to the border is not going to work at his or her civilian job. They are not with their families, or taking an active role in their communities. The National Guard has very good employer support programs, and many employers take considerable pride in supporting their employees as citizen-soldiers. Nonetheless, the decade and a half since 9/11 have taught us clearly that there is a cost to asking a volunteer, part-time force to spend too many long months and years far from home.

In sum, this is likely to be a losing proposition for the Active Duty force, which stands to see much-needed funding repurposed, a losing proposition for the Guard in a number of ways, and a losing proposition for the Border Patrol, which will receive only temporary support at best. The National Guard is by definition a temporary force, and at the end of this mission, we will have lost capacity across the board rather than building it.

There is also a broader question to be called here: Is this the proper use of the U.S. military at all? The Department of Defense will respond, within its legal authorities, to whatever mission it is asked to perform by the president. The highly-trained men and women of the U.S. military will lean into that mission, and no doubt do everything in their power and more to accomplish it. But in a democratic society, we have rightly placed limits on what we ask them to do on our own soil. And while this deployment may not violate the letter of the law, it is arguably contrary to its spirit.

In the case of an actual emergency on the border, all these costs would perhaps be worth incurring. In its 2017 Border Security Report, however, Customs and Border Patrol “recorded the lowest level of illegal cross-border migration on record,” and noted that apprehensions were down by 23.7 percent from the previous year.<sup>x</sup> Crossing and apprehension numbers certainly fluctuate back and forth, and there has purportedly been a more recent increase in certain areas—including larger numbers of children, accompanied by family members or not, seeking entry to the United States. That hardly seems to constitute a risk to our national security, though.

Moreover, consider the so-called “threat” that prompted this very hearing: a caravan of Central American migrants. It is true that migrants travel through Mexico—usually in ‘caravans,’ or simply groups, to stay safe—in the course of fleeing discrimination or extreme violence in home countries like Guatemala, Honduras, and El Salvador. The particular caravan that led to this deployment was deliberately organized by Pueblo Sin Fronteras, a nonprofit organization that has, in the past, facilitated such mass movements to raise awareness of the suffering of these migrants.<sup>xi</sup> While historically large in number (peaking at approximately 1,200), this demonstration and the people participating in it present no national security threat to the United States; indeed, the caravan has now largely dissipated, with only a fraction of the original travelers planning to continue their journey northward.<sup>xii</sup>

For those that do reach our border, they intend to plead for asylum as they are entitled to do under international humanitarian law—not simply enter the country illegally. These are people seeking a safer and better life for themselves and their families. Simply put, nobody wants to leave their home and take their children on a perilous journey across the desert. This is an act of necessity and desperation, not aggression; those who make this journey are not a national security threat in any meaningful sense, and in my opinion, it defies common sense and American values to say that they are. The broader question of how to reduce this flow of migrants would be far better answered by a robust and thoughtful conversation about U.S. foreign policy in the Western Hemisphere, including smart development policy to alleviate human suffering and strengthen the weak governance from which that suffering stems.

Ultimately, a column of soldiers marching on the United States border is a military issue that would merit a mobilization response—including the National Guard. But this was not a column of soldiers. Considering our challenges to readiness and the number of legitimate threats we face abroad, America’s Guardsmen have more pressing work to do, competencies to develop,

and places to be at this hour; moreover, it is unclear how their presence on the southern border will be of a long term benefit to our Border Patrol agents, who would be far better served by more permanent resources specific to their work. In sum, while the costs (material and opportunity) of this development will continue to emerge over the weeks and months to come, it is hard to see how this deployment is justified as a proper response to a legitimate national security threat.

Thank you for your consideration of my testimony, and I look forward to your questions.

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<sup>i</sup> <https://www.gao.gov/products/GAO-18-50>

<sup>ii</sup> <http://www.nationalguard.mil/News/Article/1487429/national-guard-troops-deploy-to-southern-us-border/>

<sup>iii</sup> <https://www.reuters.com/article/us-usa-trump-border/trump-wants-national-guard-on-mexican-border-until-wall-built-idUSKCN1HC2SH>

<sup>iv</sup> <https://www.brookings.edu/essay/the-wall-the-real-costs-of-a-barrier-between-the-united-states-and-mexico/>

<sup>v</sup> <https://www.ngaus.org/sites/default/files/CAPE%20FINAL%20ACRCMixReport.pdf>

<sup>vi</sup> <http://thehill.com/policy/defense/337533-mattis-slams-congress-for-inhibiting-military-readiness>

<sup>vii</sup> [https://www.army.mil/e2/rv5\\_downloads/leaders/csa/Initial\\_Message\\_39th\\_CSA.pdf](https://www.army.mil/e2/rv5_downloads/leaders/csa/Initial_Message_39th_CSA.pdf)

<sup>viii</sup> [https://www.army.mil/article/201131/readiness\\_enhanced\\_with\\_army\\_national\\_guard\\_40\\_initiative](https://www.army.mil/article/201131/readiness_enhanced_with_army_national_guard_40_initiative)

<sup>ix</sup> [https://www.washingtonpost.com/world/national-security/troops-sent-by-trump-to-border-will-fly-drones-gather-intel--and-clear-brush-too/2018/04/09/8f608250-3c08-11e8-a7d1-e4efec6389f0\\_story.html](https://www.washingtonpost.com/world/national-security/troops-sent-by-trump-to-border-will-fly-drones-gather-intel--and-clear-brush-too/2018/04/09/8f608250-3c08-11e8-a7d1-e4efec6389f0_story.html)

<sup>x</sup> <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/cbp-border-security-report-fy2017.pdf>

<sup>xi</sup> <https://www.vox.com/policy-and-politics/2018/4/6/17206042/caravan-mexico-trump-rape>

<sup>xii</sup> <https://twitter.com/SecNielsen/status/981317335708520448>

Mr. DESANTIS. Thank you. The chair now recognizes himself for 5 minutes.

Colonel McCraw, when they had the border surge in 2014, was that something that was good or bad for the drug cartels?

Colonel MCCRAW. It's always good for the cartels if they can overwhelm Border Patrol's resources, and that's what happened in 2014. It overwhelmed the resources. And the threat is more significant than, I think, that some have let on to. When you're talking about Mexican cartels that are powerful and ruthless and dominate the entire lucrative drug and human smuggling market, engage in trafficking of people and drug trafficking as well, when you've got transnational gangs, when you've got criminal aliens.

When you have these smuggling communities recruit our children, all these things, you know, result in a serious public safety threat. Like I said before, not just Texas. What happens on the Texas-Mexico border happens throughout the Nation. So clearly, it was a problem, and we saw that. And less Border Patrol agents were there and they were involved in detention activities and trying, in an overwhelmed situation trying to deal with unaccompanied children and family units, and could not put enough people in line.

And Texas, at that point in time, the leadership and State Legislature decided to spend enough resources to conduct and send troopers around, 24 and 7, from around the State, maintain surge operations for 3-1/2 years, until we can permanently assign troopers down to that area.

So, from a Texas standpoint, they've been paying the bill thus far. And anything you can do to support Border Patrol, we're all for. If it's National Guard right now, fine. But the long-term solution is clearly invest in Border Patrol.

When you get right down to it, the patrol function in the Federal Government has never been valued, period. The investigative function, yes, but not the patrol function. They don't have the incentive bonuses. They don't have the salary. They don't have the things that recruiting, they can readily recruit and compete with some of the other services at the Federal level.

Patrol in a post 9/11 environment is extremely important. It's a deterrent capability. And unless you invest in it, you're not going to have the type of capability that you need. And clearly, again, I've said it a number of occasions and not just here, is that Border Patrol can do it. They don't need Texas to help them if they're given the proper resources to do it.

And if it's National Guard right now, we're all for it. Anything you can, because we look at it every day matters. Every day a community is impacted in Texas. Every day something goes on that's criminal that's transnational crime that we have to deal with in Texas. So anything we can do and the Federal Government can do, we're all for.

Mr. DESANTIS. Mr. Judd, in terms of the cartels and bringing—because I think we're seeing in our country a huge problem with fentanyl and some of these opioids. These are street drugs. You know, they're being brought in. A lot of it is across the border. A lot of it originates in China.

Where is the majority of that coming in, in terms of are these controlled access points that they're just sneaking past the guards, or are they parts of the border that are unsecured?

Mr. JUDD. No, most everything that's coming across is coming between the ports of entry, because it's easy. If you go through a controlled environment, you've got all kinds of people, you've got the K-9 handlers, you've got to get past all of that.

What it's very easy for the smugglers to do is it's easy for them to send people across the border illegally, which they force them to do. They force us to take our resources out of the field to deal with that, create the gaps, and then they cross their products right behind in the gaps that they created.

You got to remember, of those 50,000 apprehensions that we had in March, only 13,000 was at the ports of entry. 38,000 was between the ports of entry.

Mr. DESANTIS. Mr. Arthur, in terms of asylum, how does it work? I mean, if somebody is living in a poor country where there's crime, can they just kind of come here and say asylum, or do they have to qualify for certain types of—maybe they were persecuted on the basis of race or religion or something like that? Can you just give us how is it supposed to work and then how is it actually working?

Mr. ARTHUR. To be granted asylum in the United States, you have to show either past persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

Four of those are easily defined. The fifth one, membership in a particular social group, unfortunately, is rather vague, vague in the law and vague in its interpretation. But, fortunately, Attorney General Sessions has certified a case to himself in which he will clarify what exactly the parameters are for granting asylum on the basis of being a victim of a criminal activity, such as by gangs in a foreign country.

Mr. DESANTIS. So, I mean, you know, I think most of us believe that, you know, there is a role for people who are being persecuted. The United States does want to be a refuge for folks in that situation.

But if you're coming in because, you know, better job opportunities are here, using some amorphous thing, I mean, isn't that kind of a runaround just the normal legal immigration process, where they should just be applying to come here, if they're not actually in any of those buckets that you're talking about?

Mr. ARTHUR. Unfortunately. And unfortunately, it's actually worse than that, because the fact is the bad claims take away from the good claims. They take away from the time that the judges have to grant asylum to individuals who are actually in fear of harm in their home countries.

Once granted asylum by an immigration judge, those individuals could then petition to bring their families out of that dangerous situation. But when the system gets clogged up with fraudulent claims or non-meritorious claims, the system breaks down. And that's what we're seeing right now in our immigration courts.

Mr. DESANTIS. I'm out of time, so I'm going to recognize the ranking member for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

Firstly, I'd like to have entered into the record a letter from Amnesty International regarding this hearing.

Mr. DESANTIS. Without objection.

Mr. LYNCH. Thank you. As I noted earlier, the omnibus appropriation bill that we just did allocated \$14 billion for Customs and Border Protection. That included a lot for security operations, and I believe hiring, I think, 351 additional Border Patrol agents.

However, that bill did not anticipate moving 4,000 National Guard to the border. That's a separate budget that's got to come off DOD's account. And last week, Secretary of Defense Mattis directed the Pentagon comptroller to, quote, "identify available funding to pay for the 4,000 National Guard troops to be moved to the border." We still don't have an estimate of how much the operation will cost, but we do know it will divert resources from other military priorities.

And Chairman Mac Thornberry, also a Texas native, had this to say: He said, If you take away money, you can't do some of the things that—you take away things from the—money from the defense budget, you can't do some of those things that you were trying to do, like add pilots or repair ships or those other sort of things.

So, Mr. Breen, first of all, thank you for your service to our country. We appreciate it. What do you think about, you know, pulling money from, I think, core defense and combat training activities and diverting, you know, 2,000 to 4,000 of our National Guard men and women to the border, what do you think about the efficacy of that move?

Mr. BREEN. Congressman, that's a dangerous game to start playing. And I think history indicates that, all the way back to Task Force Smith in the first Korean War. Readiness degrades in a military force very quickly, and the cost of that can be very high when you get yourself into a fight.

I agree with a great deal of what Colonel McCraw had to say, in the sense that we do need to invest in these capabilities, but I think there's a—patrol and other things, but I think there's a great danger when policymakers reach for the military as a Band-Aid to solve problems in other areas of government.

And the military can only do so many things. It's been overstretched. The Secretary of Defense, who knows a few things about being in a fight, again, is down the hall saying the number one priority is lethality. The chairman of the Joint Chiefs of Staff says readiness is his number one priority. He has no number two priority. And he's identified critical readiness needs, in terms of the force's ability to go toe to toe with foes like Russia and other modernizing militaries. We have become I think a little too accustomed to think of ourselves as an overwhelming superior force, but we have been tied down doing counterinsurgency and counterterrorism, which are serious tasks. Meanwhile, the world's other high-end militaries have been modernizing and have been looking at everything we do and training and manning and equipping specifically to fight us. So we've got to really catch up to that.

And, again, going back into history, Task Force Smith was about 5 years after the end of World War II. It doesn't take long. You take the most capable land force the world had ever seen, the one



that beat the Nazis and the Japanese in World War II, 5 years later, puts an infantry force into the field against the second-rate North Korean Army, and is routed, because the investments weren't continuously made in that combat capability. So I think it's dangerous.

The other thing I would say is it impacts the entire Guard. It sounds like, you know, it's only 4,000 guardsmen, but the Guard needs to deploy and fight as a brigade combat team. A brigade combat team is 5,000 soldiers. When you start removing elements of that team for other tasks, it degrades the entire team's ability to train. And the National Guard has a modernization and training plan called National Guard 4.0 that explicitly calls for those brigade combat teams to be kept together and trained together so they can deploy to fight together. So this directly undermines those priorities.

Mr. LYNCH. Thank you. And by the way, thank you all for your service to our country. Thank you all.

We've had a chance, members of this committee, to go down, we went down to Tegucigalpa down in Honduras, went down to Guatemala City down in El Salvador, to look at the human trafficking operations going on there that are actually inducing people to come up to the border. We also have had an active role in what's going on in the tri-border area where we have got Hezbollah on the ground, and so there are major concerns there.

My question is really about the efficiency and efficacy of our funding. Is it better to try to divert money to the National Guard or—look, I voted for this \$14 billion for Border Patrol, you know, enhanced border security. Is that a better way to address the challenge that we have, or should we sort of try to make it up as we go along using our National Guard folks to do a job that they necessarily aren't really—they didn't sign up for, I guess?

Mr. JUDD. Well, the investment in the Border Patrol has to be there, but right now you have an attrition rate that exceeds the hiring rate. And so we're not retaining our Border Patrol agents, so we do have to have a stopgap. But as far as our National Guard, they're being put in situations that is like combat situations. They're in LP and OP situations. They're sitting in observation posts, which they would be required to do in the military in the event that a war was to take place. As a uniformed officer, I've worked right next to my uniformed National Guard counterparts, and I can tell you that they feel that the operations that they're doing is—

Mr. LYNCH. I know my time is running short. All I'm saying is that Secretary Mattis had other stuff for those folks to be doing rather, than being sitting on the border, and I'm just worried about those other priorities that are being ignored. But thank you, I appreciate it.

I yield back.

Mr. DESANTIS. The gentleman's time has expired.

The chair now recognizes the gentleman from Tennessee for 5 minutes.

Mr. DUNCAN. Thank you, Mr. Chairman.

When I was growing up, my grandparents in Scott County, Tennessee, one of the poorest counties in the U.S., they had 10 kids

and an outhouse and not much more. My dad hitchhiked into Knoxville with \$5 in his pocket to go to the university. And all 10 of those children end up doing real well, but they all grew up in what would be considered bitter poverty today, and started with nothing.

So I have spoken many times at the naturalization ceremonies in Knoxville to express my respect and admiration for people who come to this country with nothing except a desire to work and who have made good livings for themselves. But the American people are the kindest, most generous people in the world, and we have allowed far more immigration than any other country over the last 50 years or so, than any other country. No other country has come close.

But when I google the question of percentage of world population that lives on \$10 a day or less, the first thing that pops up is from [globalissues.org](http://globalissues.org), says at least 80 percent of humanity live on less than \$10 a day. Almost half the world, over 3 billion people live on less than \$2.50 a day. And they have similar articles like that.

We all have tremendous sympathy for all these people who are living in such bitter poverty around the world, but when you talk about 3 billion people living with almost nothing, you can understand that we have no telling how many people who would come here tomorrow if they possibly could.

So it seems to me that we have to have some sort of legal orderly system of immigration that has to be enforced, because if we didn't, our whole infrastructure, our hospitals, our jails, our sewers, our schools, our roads, our whole economy, we couldn't handle such a rapid influx as we might have over the next 3 or 4 years if we just simply opened our borders, or didn't enforce our immigration laws.

And so when I—and I've heard for—I'm now in my 30th year in the Congress. Every year since I've been here, I've heard this figure, 11 million immigrants. I believe it has to be at least 2 or 3 times that many that are here, living here illegally, because I'm not near a border, but every place in the country is overrun, it seems to me, with illegal immigrants.

I just wonder, it's not being mean or cruel or harsh to say that we have to have some of these immigration laws and they have to be enforced. We have to do it, it seems to me, unless we want to almost destroy this country economically.

Mr. Judd, what do you think would happen if we simply—if we did away with the Border Patrol and basically just had no borders, open borders?

Mr. JUDD. Well, just from my experience of people that cross the border illegally now, I think that we would have mass influxes of people coming across the border, but that's just from my experience.

I would like to say that I wish that my colleagues from management were here to testify as well, because they could specifically tell you, you know, why we're allocating resources where we're allocating them. And if we were allocating them properly, maybe we wouldn't even need the National Guard. But we'll never know that because we didn't do it.

Mr. DUNCAN. Well, it seems to me that we've got to have stronger enforcement of our immigration laws for many, many reasons.

And I think almost all of us, probably everybody at this table, believes in legal immigration and continuing to allow many, many people to immigrate here legally. But we just have a problem that we are forced to do something about.

Colonel McCraw, do you want to say anything, or Mr. Arthur?

Colonel McCRAW. I'll gladly pitch in just a couple comments. First, we have a very good relationship with U.S. Border Patrol. I think that's important that we state that. And the leadership has worked very well with us along the border. It is a seamless operation. We know what unified command is about. We understand in terms of why it is important of integrating in terms of air, marine, and land operations, special operations groups. All of those things are happening. And some things that we can do is use some of our special agents to target the smuggling infrastructure in some of those areas.

So I want to give, you know, a clear indication to you and members that we do work very well with our Federal partners and we're very proud to work with them, the U.S. Border Patrol, the brave men and women, all that risk their lives daily to protect Texas and the rest of this Nation. So I just want to get that on the record.

In terms of our concern is this: Simply put, is that if the border is not secured, then you're opening it up to increased drugs, criminal aliens, transnational gangs, some of the things you're already seeing, because the border is not secure. And there is no question that it has an impact on public safety in Texas. Anybody will tell you that. The Texas sheriffs will tell you that. The border sheriffs will tell you that. This is a nonpartisan issue. This is a national security and public safety threat. This is nothing about politics, just simply is.

And in terms of where the funding comes from, way above my pay grade. How it happens, how Border Patrol gets the resources they need to secure between the ports of entry, that's certainly above my pay grade. I'm sure you can figure it out if you wanted to. And believe me, I can assure you, from my discussions with members and I've got an appropriations hearing next week in Texas, is they want to find out in terms of where we are staffing at a Federal level so we can back off from the State standpoint. But right now, the Governor has made it very clear we're not going to back off an inch. We're not going to give one inch to the cartels and the transnational gangs to support them.

Mr. DUNCAN. Well, I certainly agree with you, but my time is up. Thank you very much.

Mr. DESANTIS. The gentleman's time has expired. The chair now recognizes the gentleman from California for 5 minutes.

Mr. GOMEZ. Thank you, Mr. Chairman, and thank you for the witnesses who showed up, for showing up. I really appreciate that.

I believe it is quite evident that the recent deployment of National Guard troops to the southern border is hardly the result of carefully considered fact-based decisions.

On April 1st, President Trump manufactured a crisis on Twitter and justified the deployment of national troops after watching Fox News describe a caravan of Central American migrants who en-

tered the U.S. through the so-called catch and release. And, as with a lot of his tweets, there is plenty of misinformation to unpack.

First, he appears to be claiming it is getting more dangerous due to a caravan of largely Honduran asylum-seekers fleeing violence, mostly who are women and children, or even babies.

Mr. Breen, is this also your understanding?

Mr. BREEN. Yes. My understanding is that the caravan is essentially asylum-seekers fleeing an extremely violent northern triangle of Central America, yes.

Mr. GOMEZ. Do you believe this caravan of asylum-seekers poses a national security or military threat?

Mr. BREEN. I have absolutely no reason to believe that, no.

Mr. GOMEZ. And I know I'm asking to restate some of your points, but it's for a purpose.

President Trump also seemed to imply that the caravans were coming, in part, because of DACA, the Deferred Action for Childhood Arrivals Program.

Among other conditions, only individuals who have lived here in the U.S. since 2007 would be eligible. Mr. Breen, with that in mind, would it be possible for any new arrival from a caravan to be eligible for DACA?

Mr. BREEN. By definition, no, it would not.

Mr. GOMEZ. President Trump's decision to send National Guard troops to the border until a 2,000-mile wall is built is also baffling from a policy perspective.

Mr. Breen, is constructing a 2000-mile concrete border wall the most efficient or effective way to improve border security?

Mr. BREEN. I do not believe so, no. The wall would—I mean, basically every expert who looked at this, you can construct a physical fortification at great cost that will take a great period of time. You're going to have to use eminent domain a lot to do that, run through a lot of private property. Major challenges there.

And then in the absence of the kind of patrol and interdiction resources Colonel McCraw is talking about, all you're going to have is an expensive wall people get over, to say nothing of the fact that as border apprehensions have been decreasing the Coast Guard's interdictions in counter-drug at sea have been increasing this entire time.

So I think there are a lot of other places you can put the \$20 billion or whatever it's going to cost from, you know, added capacity for immigration courts to better resources for Border Patrol to resourcing the Coast Guard adequately, and on and on we go. But no, I don't think the wall is an effective solution.

Mr. GOMEZ. Also, Mattis signed a memo that stated that the National Guard will not perform law enforcement activities or interact with migrants.

Mr. Breen, is that right? And what would the National Guard's role consist of and how effective would they be?

Mr. BREEN. I think that is correct. That is definitely the right thing to do. It's worth noting that this is a Title 32 situation, not a Title 10 situation. So Secretary Mattis is not in a position, as strange as it may sound, to directly issue guidance to the Guard. That falls to the Governors. But I definitely think that is the wisest course of action.

What ends up happening, of course, is that, in theory, the National Guard will do things like man towers and do other tasks so that Border Patrol agents are free to go out. But, as Mr. Judd has already stated, Border Patrol has already got, in some situations, 75 percent of its man strength not patrolling already. So it's a little hard to see in a management situation like that how you're not just going to have a lot of guys, frankly, just standing around.

Mr. GOMEZ. I don't have much time, so one of the things I want to kind of point out and ask, because it was justified that the deployment of National Guard troops based on catch and release and DACA. Does sending National Guard troops to the border change any policy that you know of, catch and release or DACA?

Mr. BREEN. No, not at all.

Mr. GOMEZ. So my point is is that it seems that this policy was decided at a whim to send National Guard down to the border. I'm not saying that it won't be necessary, but I'd like to have something that's actually fact-based, something that is thought out, that's done with coordination and understands that there is a real crisis going on on the border.

And if your justification is the drug cartels, state it. Don't make up another fact that just kind of gives red meat to your base, right? That's what this President did is using something that's not correlated with what he's calling a crisis, because there's no crisis because of these asylum-seekers, right? And it doesn't change policy at all. All you're doing is sending more troops to the border that are going to probably not produce the result of keeping away people who will be catch and release or DACA recipients. So I just appreciate the time.

In closing, I'd like to enter a letter from civil rights groups in California asking Governor Brown to reject the xenophobia driving the deployment of the National Guard to our border.

Mr. DESANTIS. Without objection.

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

Mr. DESANTIS. The gentleman yields back. The chair now recognizes the gentleman from Georgia for 5 minutes

Mr. HICE. Thank you very much, Mr. Chairman. Mr. McCraw, I understand that your department is responsible in Texas for maintaining the statewide sex offender registry. Is that correct?

Colonel MCGRAW. That is correct.

Mr. HICE. Okay. This is a little off topic, I understand, but it is of great concern to me the threat that's been posed by convicted sex offenders who have entered this country illegally, and under the previous administration, many of those individuals were released from ICE custody without even local law enforcement being notified, and without ensuring that they were placed on the National Sex Offender Registry.

Now, I realize a lot has been done within ICE over the last couple of years and the law enforcement notification system. Progress is being made. I understand that. I deeply appreciate that, but I'm, likewise, very much concerned that we have still got a long ways to go with this.

So it is my understanding, for example, that when ICE enforcement and removal operations is scheduled to release an illegal alien who is required supposedly to register on the sex offender list,

that ICE sends notification through the Department of Justice SORNA, the exchange portal. Is that correct?

Colonel MCGRAW. Yes, sir.

Mr. HICE. Okay. So when you receive this information, what kind of information is provided? What do you get from ICE? For example, are you getting criminal histories, country of origin, fingerprints, aliases? What do you get?

Colonel MCGRAW. We're getting all the information that we need to be able to follow State law and follow up on also the Federal requirements, so we can get them registered at that point in time. In fact, with ICE ERO we have actually done some operations with them to capture sex offenders that were criminal aliens here in Texas that have been registered and have—

Mr. HICE. Okay. So, but are you getting like fingerprints, and do you get—

Colonel MCGRAW. Yes, sir. And I have no reason to know otherwise. If there's anything contrary to that I'll get back to you, but as I understand it right now we're getting all that we need from ICE ERO on the situation like that.

Mr. HICE. All right. I'm glad to hear that that, but if you would get back with me on what you do receive.

Colonel MCGRAW. Yes, sir.

Mr. HICE. I would like that. All right. So at this point in the process, is it then your department or ICE that has the responsibility to ensure that local law enforcement knows about these individuals?

Colonel MCGRAW. Well, we certainly do. We go through the process. Once they get registered in the Texas registry because they live in Texas at that point, we notify local agencies at that point in time, and they have the responsibility to register.

Mr. HICE. So ICE hands the baton to you, and at that point, it is your responsibility?

Colonel MCGRAW. Yes, sir.

Mr. HICE. Okay. And Texas is doing a good job with notifying law enforcement locally and so forth. It is my understanding a lot of States are dropping the ball on that. Are you aware of that?

Colonel MCGRAW. Well, I'm not aware of what they're doing in other States, I just know the Governor and the legislature won't stand for anything less than getting it done directly.

Mr. HICE. Okay. It is my understanding that local law enforcement is unable and certainly citizens likewise, but local law enforcement is unable to access the DOJ SORNA exchange portal. Is that—

Colonel MCGRAW. I'm not aware of that. I know they can access the Texas Sex Offender Registry. I have they have access. I can't tell you about SORNA from a Federal standpoint.

Mr. HICE. Okay. So that's where it becomes your responsibility to make sure they get it?

Colonel MCGRAW. Yes, sir.

Mr. HICE. Because they're not able to, as I understand it, I just want to make sure. So how can we better fix this whole process, improve the notification, the information-sharing process, and this type of thing when it comes to sex offenders?

Colonel MCGRAW. Well, again, you're looking at different States, you know, different things, and some of those things are laws, and some things have taken a more proactive approach to that concern. In Texas, the legislature and Governor have been very proactive and concerned about sex trafficking, whether it is international sex trafficking, or we are seeing domestic sex trafficking by gangs, and they have been very proactive in that area.

Mr. HICE. Okay. Well, listen, I want to thank you for your work with this, and I wanted to—like I said, I know this is a little off topic, but it still is very much related to the overall topic because we're dealing with this stuff on a regular basis, and I appreciate your expertise and what you do. I just want to make it known I'm willing to work and look forward to working with you, your department any of you who are interested in helping find ways to close the gaps and ensure the safety of the American public in this regard, and I appreciate your work in that regard. I'll yield back.

Colonel MCGRAW. Sex trafficking is a problem, and it clearly is. We'll get back to you if we have anything.

Mr. DESANTIS. The gentleman yields back. I want to thank the witnesses, again, for appearing before us today. The hearing record will remain open for 2 weeks for any member to submit a written opening statement or questions for the record. If there's no further business, without objection, the Subcommittee on National Security stands adjourned.

[Whereupon, at 3:02 p.m., the subcommittee was adjourned.]





## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

WRITTEN STATEMENT FOR THE RECORD OF  
U.S. Customs and Border Protection  
For A Hearing Entitled "A 'Caravan' of Illegal Immigrants: A Test of U.S. Borders"  
U.S. House of Representatives  
Committee on Oversight and Government Reform, Subcommittee on National Security  
April 12, 2018, Washington, DC

**Introduction**

Chairman DeSantis, Ranking Member Lynch, and distinguished Members of the Subcommittee, U.S. Customs and Border Protection (CBP) appreciates the opportunity to submit this statement for the record detailing CBP's efforts to achieve our strategic and operational border security objectives and to enhance our deterrence, detection, and interdiction of illegal cross-border activity.

CBP is responsible for securing approximately 7,000 miles of land border, 95,000 miles of shoreline, 328 ports of entry (POE), and the associated air and maritime space from the illegal entry of people and contraband into the United States. The border environment in which CBP works is dynamic and requires continual adaptation to respond to emerging threats and changing conditions.

**Legislative Priorities**

When President Trump took office last year, he issued a series of Executive Orders to enhance border security, promote public safety, minimize the threat of terrorist attacks by foreign nationals, and protect American workers from unfair foreign competition. In January 2017, the President signed the Executive Order entitled *Border Security and Immigration Enforcement Improvements* (EO 13767), which directs executive departments and agencies to deploy all lawful means to secure the Nation's southern border, prevent further illegal immigration to the United States, and repatriate aliens with final orders of removal swiftly, consistently, and humanely. EO 13767 sets a new standard of operational control of the southern border and establishes the foundation for securing the southern border by directing the provision of necessary tools, resources, and policy goals for the Department of Homeland Security's (DHS) dedicated men and women to fulfill their critical mission.

But CBP is part of a system which neither begins nor ends at our borders, and innovative technologies and enhanced interdiction capabilities alone cannot prevent illegal crossings. The Administration seeks support from Congress to amend current law to facilitate the expeditious return of Unaccompanied Alien Children (UACs) and family units who are ineligible for relief. The Administration supports correcting the systemic deficiencies that created the asylum backlog, and supports providing additional resources to reduce the immigration court backlog and ensure the swift return of illegal border crossers. CBP looks forward to working with Congress on the legislation needed to enhance the security of our Nation, ensure effective immigration and enforcement, and protect American workers and taxpayers. These legislative needs have a direct impact on CBP's ability to perform its mission.

CBP remains committed to working with Congress to address these issues in support of the priorities of this Administration and CBP's mission set.

In the interim, and to enhance CBP's capability in southwest border sectors, the Department of Defense (DOD), in conjunction with border state governors, has begun deploying the National Guard to assist in stopping the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country. Initial forces are already on the ground assisting CBP by executing missions such as logistical and administrative support, operating detection systems, providing mobile communications, and augmenting border-related intelligence analysis efforts. National Guard members will provide added surveillance, engineering, administrative and mechanical support to our agents on the frontline to allow CBP's agents to focus on their primary responsibility of securing our border. National Guard personnel will not conduct law enforcement activities, will not be assigned responsibilities that require direct contact with migrants, and will not be assigned missions that require them to be armed. CBP is working with DHS Headquarters and DOD to ensure a seamless coordination of efforts.

### **Personnel**

Frontline personnel are a critical resource for improving border security. Mission readiness - the ability to properly train and equip personnel- is critical to CBP's ability to secure the border and protect the American people. CBP remains committed to growing our workforce of dedicated personnel to protect our Nation and the American people.

CBP has faced challenges in the past to meet its hiring goals. However, CBP has taken decisive action, while recognizing that much work remains to be done to ensure CBP has enough officers and agents to meet the Agency's needs well into the future. In the last two years, more than 40 individual improvements to CBP's hiring process have resulted in significant recruitment and hiring gains- despite record low unemployment around the United States and intense competition for highly-qualified, mission-inspired people. With support from Congress, CBP is making investments in our capability and capacity to hire across all frontline positions. CBP is focusing on efforts to attract qualified candidates and expedite their progress through the CBP hiring process.

In the last two years, CBP has undertaken a comprehensive effort to look across all of our recruitment and hiring process areas. CBP implemented process changes that have resulted in significant recruitment and hiring gains. CBP embraced the use of social media, and is working to more effectively identify the best return on investment in digital media. CBP has also introduced a mobile app for applicants in our hiring pipeline to keep them engaged during the process. CBP is going to introduce an "applicant care" component whereby a dedicated employee is assigned to an applicant to help them navigate the process. CBP is also leveraging private sector expertise and experience in recruiting and human resources to provide additional capacity

CBP's streamlined frontline hiring process has led to significant reductions in the average time-to-hire. In the last 12 months, close to 70 percent of new U.S. Border Patrol (USBP) agents and 60 percent of new CBP officers on-boarded in 313 days or fewer, with 17 percent of USBP agents and 19 percent of CBP officers on-boarding within 192 days. This is a significant improvement from the 469-day overall baseline established in January 2016. This streamlined process is reducing the number of otherwise qualified candidates who drop out due to process fatigue or

accepting more timely job offers elsewhere, helping CBP grow its workforce. CBP's background investigation time is approximately 90 days for a Tier 5 level investigation, which is required for all of CBP's law enforcement officer applicants and 90 percent of CBP applicants overall. This is considerably less than the government average for the same level investigation. CBP is also recognized as having a best practice quality assurance program, which other agencies regularly visit CBP to learn about.

As a result of these improvements, CBP's FY 2017 hiring totals surpassed FY 2016 totals by 21 percent for CBP officers, four percent for USBP agents, and 91 percent for Air and Marine Operations (AMO) air interdiction agents. In FY 2017 CBP reached the highest number of USBP agent hires since FY 2013 and the highest number of air interdiction agents and marine interdiction agent hires since FY 2014. The total number of frontline applicants increased by 73 percent between FY 2015 and FY 2017, including a 41 percent increase from FY 2016 to FY 2017.

CBP is also actively working to minimize attrition and fill positions in "hard-to-fill" locations that are often remote and offer very limited amenities compared with metropolitan locations. A stable relocation program will help meet USBP operational requirements and alleviate the workforce's concerns about lack of mobility, which is significantly contributing to increased attrition. CBP is working to develop programs that address attrition through relocation and retention incentives that meet employee aspirations, and at the same time enable CBP to staff these locations. Recruitment incentives are also helpful in attracting new personnel to join CBP, especially for positions in geographic locations that are difficult to fill. CBP is thankful for the continued dedication of Congress to working collaboratively with us to develop solutions to this complicated challenge.

The assignment of USBP agents is determined by leveraging USBP's annual, full spectrum requirements analysis process, which creates a consistent and repeatable, field-driven approach to conducting mission analysis and planning aimed at identifying capabilities gaps across the complex environments the USBP agents work in every day. Capability gaps are captured directly from the field using this process, and are explored through qualitative and quantitative analysis and other evidence to provide information to decision makers about the border security mission space across the northern, southern, and costal borders of the United States. This methodology leads to informed investments that achieve the greatest possible operational impact. As the threats along the borders change, USBP will update this analysis as needed to maximize the impact of future investments.

This process is used by USBP to identify needs related to 12 master capabilities: communications, doctrine and policy, domain awareness, human capital management, impedance and denial, information management, intelligence and counter intelligence, planning and analysis, security and partnerships, access and mobility, command and control, and mission readiness. While the process identifies needs across all 12 master capabilities, four capabilities – impedance and denial, domain awareness, access and mobility, and mission readiness – are consistently prioritized by field commanders as the most important. All of these capabilities and needs are taken into consideration when assigning USBP agents to duty stations.

**Infrastructure and Technology**

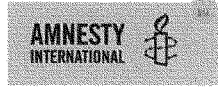
President Trump has directed CBP toward a new standard of border security between the POEs, and defined operational control as the ability to prevent or interdict all illegal border crossings. To make progress toward this standard, CBP will need substantial investments in impedance and denial capabilities, surveillance technology, access and mobility, and mission readiness and personnel. For impedance and denial, a modern border wall system will significantly enhance CBP's efforts to attain operational control of the border between the POEs. Border barrier systems are comprehensive solutions. A wall system that integrates sensors, cameras, lighting, and access and patrol roads, has the support of our USBP agents working our borders and is the direct result of an in-depth analysis of existing capability gaps. Between the POEs, tactical infrastructure, including physical barriers, has long been a critical component of CBP's multi-layered and risk-based approach to securing our southwest border. It is undeniable that border barriers have enhanced- and will continue to enhance- CBP's operational capabilities by creating persistent impedance and facilitating the deterrence and prevention of illegal entries of people and contraband.

The land along the border between the United States and Mexico is extremely diverse, consisting of desert landscape, mountainous terrain, and urban areas. Thanks to the support of Congress across numerous Presidential Administrations today there are several types of barriers, to include steel bollard and levee wall, along nearly one-third, or 654 miles, of the southwest border. Congress provided \$1.4 billion for new and replacement fencing in the FY 2018 Consolidated Appropriations Act- the largest investment in border wall in more than a decade. CBP encourages Congress to continue to support the construction of border wall system.

The deployment of proven, effective technology strengthens border security operations between the POEs in the land, air, and maritime environments. Technology complements the operational capabilities provided by tactical infrastructure and enhances CBP's operational capabilities by increasing the ability of the men and women of CBP to detect and identify individuals illegally crossing the border, detect dangerous goods and materials concealed in cargo and vehicles, and detect and interdict illegal activity in the air and maritime domains. For CBP, the use of technology in the border environment is an invaluable force multiplier that increases situational awareness by enhancing the ability of CBP's agents and officers to detect and respond to illegal activity quickly, with less risk to the safety of CBP's front-line personnel. CBP remains committed to adopting innovative technology to keep America and CBP's workforce safe.

**Conclusion**

The border environment is dynamic and requires constant adaptation to respond to emerging threats and changing conditions. CBP continues to work in close coordination with our partners and the White House to respond to these threats and ensure the safety and prosperity of the American people. With the support of Congress and the White House, CBP will continue to secure our Nation's borders through the risk-based deployment of infrastructure, personnel, and technology.



April 12, 2018

Representative Ron DeSantis, *Chair*  
Representative Stephen Lynch, *Ranking Member*  
House Committee on Oversight and Government Reform  
Subcommittee on National Security  
2154 Rayburn House Office Building  
Washington, DC 20515

**Re: April 12 hearing on “A ‘Caravan’ of Illegal Immigrants: A Test of U.S. Borders”**

Dear Chairman DeSantis, Ranking Member Lynch, and Members of the Subcommittee Committee:

On behalf of Amnesty International (“AI”)<sup>1</sup> and our more than seven million members and supporters worldwide, we hereby submit this statement for the record. AI is an international human rights organization with major offices around the world, including the U.S. and Mexico. AI’s top global priority is refugee protection, and has conducted research on the root causes behind the refugee exodus from the northern triangle region of Central America, as well as research on the experience of asylum seekers requesting humanitarian protection at the U.S. border.

The topic of this hearing, along with a slew of recent Trump administration measures, are aimed at addressing a purported U.S. border security crisis. The facts and data, however, do not bear this out and instead point to a very different conclusion. U.S. border apprehensions are at near historic lows, and a large segment of people arriving at the southern border are children and families seeking refugee and humanitarian protection in the U.S.

AI’s statement will not focus on the specific “caravan” in question that is the named subject of this hearing, but will address more broadly the plight of Central Americans, disproportionately children and families, who are seeking humanitarian protection in the U.S. Among those participating in the 2018 “caravan” are reportedly children and families fleeing persecution and violence in

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<sup>1</sup> Amnesty International was awarded the Nobel Peace Prize in 1977.

the northern triangle region. In years past, some participants of these caravans have come to the U.S. seeking refugee and humanitarian protection.

According to the United Nations Refugee Agency, many of the children fleeing the northern triangle region (Honduras, El Salvador, Guatemala) have strong protection claims. Those arriving to the U.S. are requesting relief through the long-established legal procedures to review asylum claims, in line with U.S. obligations under international refugee law and human rights law. Many asylum seekers are affirmatively presenting themselves to border agents in order to request asylum, and are not seeking to evade authorities. All arriving asylum seekers are subject to an elaborate legal regime and institutional process established by the Department of Homeland Security (“DHS”) and the Justice Department to assess individual asylum claims. DHS asylum officers are well-versed in interviewing individuals who have suffered trauma, and have specific knowledge of country conditions and training on evaluating witness credibility. A secondary level of review involves an immigration judge who examines witness testimony, documentary evidence, and State Department country conditions in evaluating the individual asylum claim.

The asylum process is extensive and rigorous, and is designed to ensure that those with strong refugee claims are not deported to conditions of persecution or torture, in accordance with U.S. legal obligations under the Refugee Convention and Convention Against Torture. However, due to a longstanding shortage of immigration judges, the asylum process takes years to conclude.

In recent years AI has conducted on-the-ground research in Central America, Mexico, and the U.S. to assess the push factors driving asylum seekers from their homes, as well as the dangers they face on their perilous routes in search of safety. The grave abuses faced by asylum seekers along those routes continue to persist, as do DHS turn-backs of asylum seekers along the U.S.-Mexico border.

In January 2018 AI met with the DHS Customs Border Protection (“CBP”) Field Operations Director (“FOD”) for the San Diego Sector, who oversees the San Ysidro port of entry (“POE”), the busiest POE on the southern border. The FOD indicated there had only been “a very small surge [of asylum seekers], during a very short period of time” in 2017, which actually surpassed the capacity of DHS officials to process asylum claims. However, the main challenge indicated by the FOD was a lack of bed space and asylum officers, which he blamed for the turning away of asylum seekers at the San Ysidro POE on multiple occasions in 2017. Irrespective of the actual reason, such turn-backs are violations of U.S. and international law, and are the subject of a 2017 class action lawsuit brought against CBP.

The administration's recently announced policy of indefinite detention of asylum seekers, without bond or humanitarian parole, will only exacerbate the capacity problems stated by CBP. DHS has stated that the objective of indefinitely detaining asylum seekers is to deter them from entering the U.S. in search of refuge. Moreover, the President's recent announcement to deploy the National Guard to the southern border is part of the administration's plan to deter, detain, and punish people seeking refugee and humanitarian protection, in violation of U.S. obligations under international law and standards.

The situation along the southern border is hardly a crisis requiring the President's deployment of the National Guard or an additional 750 more border patrol agents as requested by CBP. What is desperately needed is more funding to hire immigration judge teams so that the immigration courts can chip away at the multi-year backlog of asylum cases.

In sum, there is indeed a crisis, but it's not a border security crisis embodied by a caravan of children and families traveling through Mexico. The crisis lies with the U.S. immigration courts, which have been underresourced for years and are thus unable to adjudicate asylum claims in a timely manner. That funding crisis, fortunately, can be readily addressed by Congress which controls the power of the purse.

#### **I. Amnesty International's recommendations**

##### **To the Trump administration**

- Discontinue plans outlined in the Border Security Executive Order to return arriving asylum seekers to Mexico to await their asylum proceedings, in violation of international law.
- End detention of all children, whether unaccompanied or in family units. Locking up children is never in their best interest.
- Implement policies to limit the detention of asylum seekers to a last resort, only when it is determined to be necessary and proportionate to a legitimate purpose, based on an assessment of the individual's particular circumstances.
- Halt plans to deploy the National Guard to the southern border. The world's mightiest military is not needed to respond to children and families fleeing trauma and violence in search of humanitarian protection.

##### **To Congress**

- Dramatically increase funding for immigration judge teams and DHS asylum officers, to reduce the multi-year backlogs.



- Decline to fund the President's border wall, expansion of border patrol, and continuation of CBP operations absent rigorous external oversight of CBP and border patrol.
- Decline to fund DHS's unprecedented expansion of immigration detention, which sweeps in children and asylum seekers.

For more information, please contact Joanne Lin at 202/509-8151 or [jlin@aiusa.org](mailto:jlin@aiusa.org).

Sincerely,

Joanne Lin  
National Director  
Advocacy and Government Affairs  
Amnesty International USA

Brian Griffey  
Regional Researcher/Advisor  
Amnesty International

April 12, 2018

Governor Edmund G. Brown, Jr.  
State Capitol  
Sacramento, CA 95814

Dear Governor Brown,

We the undersigned civil rights, advocacy, and community organizations write to ask you to join us in rejecting the xenophobia and fear that are driving calls to deploy National Guard troops to the border.

In response to news of a migrant caravan, in which women, children, and men travel together to safely reach Mexico or the United States, far-right media began raising fears and sensationalizing the story. In fact, border crossings remain at historic lows. The caravan is a reflection of individuals who want only to live in safety, and U.S. law recognizes the right of such individuals to request protection.

The border is already heavily militarized. Border Patrol is one of the largest law enforcement agencies in the country and as recently as March 23rd, when Congress denied the Administration's request to appropriate additional funds to hire more border patrol agents, the Department of Homeland Security was unable to adequately justify the need for more agents. In fact, throughout the current fiscal year, the average border patrol agent assigned to the southwest border apprehends just one person every 17 days. If we don't need more Border Patrol agents, we definitely don't need the National Guard.

Yet anti-immigrant and white nationalist provocateurs have latched onto this false narrative. Jeff Schwilk, a longtime anti-immigrant extremist and former Minutemen leader called the caravan a "coordinated, organized effort by foreign criminals and open border operatives to try to infiltrate our sovereign nation." The white nationalist group Identity Evropa, whose members participated in the deadly Charlottesville protests, have started a campaign calling for the Trump administration to "stop the invasion."

Unfortunately, far-right agitation has led President Trump to order the National Guard to the border. This decision is not based on policy considerations. Instead, it's a response to political concerns from the President's base. We respectfully urge you to decline to send California troops to the border.

While migrants seeking safety do not pose a security risk, far-right elements may. In 2014, women and children fleeing violence in Central America were subjected to intimidating protests from anti-immigrant activists in California and Arizona. In Murrieta, CA, buses carrying these women and children were confronted and forced to turn around and relocate to a different city. The 2018 caravan, however, has received attention from hardcore elements of the far-right that are much more prone to violence than those who protested four years ago. Public statements

from governors and attorneys general denouncing vigilante violence could help dissuade these elements and avoid tragedy.

Fueling anti-immigrant and white nationalist activity with action based on this story only increases the risk of violent confrontation. We respectfully ask you to decline to send California troops to the border. We also ask that you make a public statement condemning any vigilante violence at or near the border and upholding shared values of inclusion.

Sincerely,

America's Voice Education Fund  
 America's Voice Ohio  
 Advancing Justice-Asian Law Caucus  
 Alliance San Diego  
 Arkansas United Community Coalition  
 Asian Americans Advancing Justice-LA  
 Bend the Arc Jewish Action  
 CASA  
 Christian Community Development Association  
 Coalition for Humane Immigrant Rights (CHIRLA)  
 CREDO  
 Defending Rights & Dissent  
 Disciples Refugee & Immigration Ministries  
 El CENTRO de Igualdad y Derechos  
 Faith in Public Life  
 Florida Immigrant Coalition  
 Franciscan Action Network  
 Illinois Coalition for Immigrant and Refugee Rights  
 Indivisible  
 Legal Voice  
 Laredo Immigrant Alliance  
 Las Imaginistas  
 Latin America Working Group  
 Migrant Rights Collective  
 Milwaukee Muslim Women's Coalition  
 MomsRising  
 MPower Change  
 Muslim Justice League  
 Neta RGV  
 Northern Jaguar Project  
 OneAmerica  
 People for the American Way  
 Services, Immigrant Rights, and Education Network (SIREN)  
 Sierra Club  
 South Asian Americans Leading Together (SAALT)  
 Southern Border Communities Coalition

Southern Poverty Law Center  
Southwest Environmental Center  
Surge Reproductive Justice  
Texas Organizing Project  
Unitarian Universalist Association  
United We Dream  
Voces de la Frontera  
Voto Latino  
Western States Center