

Let's put things in context here for just a moment.

Nearly half of the cases decided by the Supreme Court in this term were decided unanimously—almost half. That means that all of those “extreme” Republican-nominated Justices and all of the Court's Democrat-nominated Justices were in unanimous agreement almost half the time.

That is not all. At least one of the Court's so-called liberal Justices was in the majority in more than 80 percent of cases. That means that more than 80 percent of the time, at least one liberal Justice agreed with the Court's conservatives. It kind of makes the Supreme Court seem not very extreme. Eighty percent of the decisions had Justices from so-called both sides—conservative and liberal sides.

Yes, there have been a handful of decisions where all of the liberal Justices have disagreed with the majority opinion. But that is hardly unprecedented. There have been plenty of cases in previous years where most or all of the so-called conservative Justices have disagreed with the majority opinion, and I don't remember Democrats having any problems with the legitimacy of those outcomes.

Democrats' utter hysteria in the face of some pretty mainstream Supreme Court decisions could almost be amusing, but it is not, because Democrats' rhetoric and proposed response to a Supreme Court that issues decisions they disagree with has crossed a line.

Now, I completely respect Democrats' right to be upset at and disagree with Supreme Court decisions. I disagreed with quite a few myself. But there is disagreement, and then there is attempting to undermine a branch of our government. And Democrats are engaged in the latter.

Over and over, Democrats' responses go beyond disagreement or outrage at the Court's decisions and cross the line into attacking the Court's legitimacy.

A number of Democrats have gone even further, directly or indirectly calling for expanding the Court or otherwise altering it to create a Court that will rule in line with where Democrats think it should be.

It is difficult to overstate just how dangerous Democrats' rhetoric is. Democrats are not only fostering a sense of distrust about a Court that is completely legitimate in every way—save for the fact the Democrats don't like some of its decisions—that they are proposing so-called solutions that would permanently and completely destroy faith in the Supreme Court as an impartial interpreter of the law.

Do Democrats seriously imagine that their proposal to “restore faith” in the courts would do anything but further divide the American public and encourage one half of the population to regard the Court as an arm of the Democratic Party?

Do Democrats seriously think they could pack the Court with their preferred Justices and not set off a perma-

nent battle in which the party in power adds or subtracts Justices to achieve what it decides is balance?

If Democrats have their way, we will be looking at a future in which the Supreme Court is nothing but an arm of the party in power in the other two branches, with the number of Justices constantly changing to achieve the governing party's preferred outcomes.

There are names for systems of government in which the party in power controls the outcome in the courts. They are names like “dictatorship” and “despotism.” Not getting your way at the Supreme Court is a pretty poor reason to undermine our system of government. But I am starting to wonder just how well Democrats understand our system of government, given their apparent belief that the outcome should always be in their favor. That is not the way it works in our democratic Republic.

In our system of government, you win sometimes and you lose sometimes. When you lose, you fight hard to gain ground and persuade others of the rightness of your position. You do not—you do not—attempt to rig the system so the outcome will always be in your favor. Hopefully—hopefully—you do not set out to undermine faith in the system by suggesting that any outcome that you don't like is not just incorrect but illegitimate.

It is deeply disturbing that so many Democrats and Democratic leaders are participating in this campaign to attack the legitimacy of the Supreme Court. I hope—I truly hope—that cooler heads will prevail before they do permanent damage to our system of government.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

BORDER SECURITY

Mr. CORNYN. Mr. President, I would like to talk for a few minutes about what is happening at the southern border.

Coming from Texas, we have a 1,200-mile common border with Mexico. That is 1,200 out of 2,000 miles of a border with Mexico, most of which has been in the midst of a humanitarian and public safety crisis for—well, for many years. But nowhere at no time has it been worse than it has been during the Biden administration.

You will recall during the COVID crisis, title 42 was issued, which is a public health order which allowed the Border Patrol to expel individuals coming across the border in certain categories—mainly adult males. Family units and children were handled differently under court orders. But title 42 went away this last spring, 2 months ago. For 3 years prior, it had allowed the Border Patrol to quickly expel migrants who had illegally crossed the southern border. With detention facilities and shelters bursting at the seams, title 42 was the only tool the Biden administration was willing to use to prevent even more chaos from unfolding.

In the weeks and months leading up to its end last spring, there was widespread fear that a post-title 42 border would look even worse than it did at the time, which was a historically bad time. Would the newly set records for illegal immigration be replaced? Would we see up to 18,000 migrants a day as the Department of Homeland Security officials once predicted? Would more law enforcement officers be removed from the frontlines in order to process and care for migrants under the flawed policies of the Biden administration?

The migration levels over the last 2 months haven't been as bad as some had expected, but they certainly have not been good either. Last week, the New York Times reported that since May 12, the average number of illegal crossings has been around 3,360. Well, that is an improvement from where we were a few months ago, but it is hardly reason to pop a champagne cork and celebrate. For one, the drop is likely seasonal, temporary. Officials and immigration experts believe many migrants are in a wait-and-see mode. They are paying close attention to the legal challenges and other migrants' journeys in order to determine their best courses of action.

That is also true of the criminal cartels that control the flow of migrants across the U.S.-Mexico border. This is a business proposition for them. They are continuing to get rich in moving people and drugs across the border, and they are taking a wait-and-see attitude to see: OK, what is public opinion going to look like? Are we going to create a backlash and even a more dramatic response by the U.S. Government or can we just sort of go slowly, and they won't notice as we gradually ramp up the numbers of migrants and drugs coming across the border?

It is also likely that many migrants are holding out for a highly sought after appointment with Customs and Border Protection through the CBP One app, as it is called. It is an app for your phone. As that wait grows longer and frustration grows higher, the decision of many to wait and to use that app in order to schedule a time to meet with Customs and Border Protection officials means that their decision to wait is likely to change. Some areas, indeed, along the border are already seeing an increase, including the Tucson sector. During the week that ended June 2, agents apprehended roughly 4,300 migrants, while 4 weeks later they apprehended 7,000—an increase of nearly 65 percent. So we can see the way this trend is headed.

We don't know what the coming weeks and months will bring, but we do know that more than 3,300 migrants are being apprehended at the border every day, which is still a very high and unacceptable number.

Back in 2019, Secretary of Homeland Security Jeh Johnson, who served under the Obama administration, reflected on his time in leading the Department of Homeland Security. He

said that every morning he would review the border apprehension numbers from the day before. He considered under 1,000 apprehensions a day to be a relatively good number and anything above 1,000 to be a relatively bad number. When the numbers were bad, he said it would put him in a bad mood for the whole day.

As former Secretary Johnson noted at the time, 1,000 migrants a day overwhelm the system. Well, fast-forward to today, and that is still true. We don't have the personnel. We don't have the facilities or the resources to manage the sort of historic levels of illegal immigration that we are seeing in a fair or humane way.

Today, we are encountering more than three times as many migrants as the CBP did on a bad day during the Obama administration, and the Biden administration is trying to celebrate, saying: Look at what we did. We brought it down to three times the unacceptable level of the Obama administration's. Unfortunately, many in the mainstream media are eating up this spin or narrative of success, and unfortunately this number represents only a portion of the migrants entering the United States each day.

Of course, there are what we have come to call the "got-aways"—migrants who are detected by cameras, sensors, and other forms of surveillance but who are not arrested or processed by the Border Patrol. You can only guess what they are up to, but clearly they do not want to encounter Federal law enforcement agents at the border.

My suspicion is, and I think it is a reasonable suspicion, that they are up to illegal activities. They are probably people who have criminal records who know they won't be allowed to come across. It probably includes a significant number of drugs that contributed to the deaths of 108,000 Americans last year alone.

These individuals, these "got-aways," could be drug traffickers, human smugglers, or they could be terrorists. There have been a number of individuals on the Terrorist Watchlist who have been detained at the southern border, and, of course, many are known gang members—MS-13—one of the most violent gangs on the planet. The truth is, we really don't know because they were able to slip into our country and disappear into the great American heartland.

Since the start of the Biden administration began, Customs and Border Protection has logged 1.5 million known "got-aways." Those are the people who have been detected by sensors or cameras or others but have been unable to be apprehended by the Border Patrol—1.5 million. Again, these are people more likely than not to be engaged in some sort of illegal or dangerous activities. That is in addition to the 5.4 million illegal border crossings since the start of the Biden administration. So you have to add the acknowl-

edged number, which is 5.4, with the unacknowledged "got-aways," and that is obviously almost 7 million migrants.

The post-title 42 drop in border crossings doesn't just ignore those who snuck into the United States but also those the Biden administration simply waved through the turnstile. Now, this is another way of hiding the ball or cooking the books to make it look like the situation at the border has vastly improved when it has not.

Earlier this year, the Biden administration rolled out a new plan that allowed migrants from four nations—Cuba, Haiti, Nicaragua, and Venezuela—to remain in the United States for up to 2 years and receive a work authorization.

Before this hat trick that the Biden administration performed, those individuals were treated like every other migrant and were subject to being removed under title 42 or were subject to other immigration enforcement measures, but now, because of the wave of the wand, the magic wand, 360,000 individuals from Cuba, Haiti, Nicaragua, and Venezuela have been subtracted from that top-line number because what was illegal is now, due to the sleight of hand by the Biden administration, presumably legal. All they have to do is to submit their information online before crossing the border and wait for the administration to give them the green light.

So instead of making the situation better, the Biden administration has taken 360,000 individuals from Cuba, Haiti, Nicaragua, and Venezuela and welcomed them with open arms. This isn't a small program that is limited to the most vulnerable individuals; it is open to 30,000 individuals a month.

Of course, the Biden administration took this major step without consulting with Congress. It acted unilaterally to offer work status to up to 360,000 people a year.

We have talked about this before, but it is worth remembering that the Border Patrol says illegal immigration is a combination of push factors and pull factors. The push factors are things like poverty and violence, the desire for a better life, and we certainly all understand that. But the pull factors for illegal immigration are incentives that are provided to the migrants to come to the United States, whether they be social welfare benefits or, in this case, work permits.

Instead of making things better by reducing the number of migrants by enforcing the law, the Biden administration is offering additional incentives for people to migrate from these four countries into the United States because, lo and behold, they will get a work permit.

Of course, there is no situation as to what happens to these individuals 2 years on; this is a 2-year provision. And rest assured, if the Biden administration were still to be in charge, there would never ever be any effort to try to return individuals who overstay after

their 2 years are up. These are individuals who likely will remain in the United States for the rest of their lives under this new wave of the wand by the Biden administration.

This new policy lets the administration roll out the welcome mat. That is one of those pull factors encouraging people to make the dangerous journey in the hands, in the custody, of some of the most dangerous people on the planet—these criminal cartels. This policy lets the administration roll out the welcome mat for tens of thousands of migrants while making it seem like the numbers have gone down. They say, "Look, the top line is down," but they don't tell you that they have taken people out of that category and welcomed 360,000 migrants a year from these four countries. That is cooking the books where I come from.

When you look at the total number of migrants encountered at the border during any given month, these migrants are not included in the total. For example, in May, Customs and Border Protection reported more than 204,000 border crossings, but they didn't include the 30,000 migrants who were admitted under the administration's new wave of the wand or the potentially tens of thousands of "got-aways" who were up to no good because they had simply evaded the Border Patrol and law enforcement.

Still, the Biden administration has tried to claim victory when it comes to the border when its policies have been a demonstrable, abject failure. Three times more migrants are currently being encountered at the border than Jeh Johnson, the Secretary of Homeland Security under the Obama administration, said would be a real problem—more than three times more—and the trend line shows that number going up and up and up.

I just think the Biden administration is not being honest with the American people. I am sure Director Mayorkas is patting himself on the back with some of the stories that are being printed, saying: Well, the problem has been resolved. Title 42 went away, but the number didn't skyrocket even higher.

I am sure he is more than happy with only about 3,600 coming across the border, together with the "got-aways," under the magic trick by which people who previously would have been considered to have illegally entered the country are then deemed legal by the Biden administration.

In May, the Department of Homeland Security said the drop in numbers is proof "the administration's plan is working as intended." And I can tell you exactly what that plan is. It appears our Democratic colleagues are using the same playbook that President Obama used to create deferred action for childhood arrivals. Those are the Dreamers, the young people who came to the United States as children who were then unilaterally given deferred action for childhood arrivals, or DACA, as we frequently call it.

Step 1, the President acts outside of his legal authorities to extend status to a massive population of undocumented immigrants. He is applauded by the left for taking the action even though it is based on the shakiest of legal grounds, which, by the way, has been held illegal by a Federal district judge in the Southern District of Texas.

To take from that same Obama DACA—or Dreamers'—playbook, the Biden administration's step 2 watches more and more people take advantage of the program as lawsuits are brought against the government.

The debate will wind its way through the courts as tens or even hundreds of thousands of people put down roots in the United States, which is where we are now. And step 3 will come later down the road.

Mr. President, I used to, at one point, just think this was mere incompetence, but now I think it is actually part of a plan because we have seen this play out before, and we know where this ends.

So step 3 will come later down the road. At that point, the individuals who came to the United States through this program will likely have been here for many years. They will have jobs, homes, probably even American-citizen children. Our Democratic colleagues will then point to them and say it is unfair for them to live in a second-class status so we need to provide an amnesty so that they can enjoy the benefits of full American citizenship. They will say it will be cruel to force these individuals to return to their home countries after years of living and working in the United States, and they will frame anyone who refuses to go along as just plain heartless.

So we have seen this movie before, and I can guarantee you that migrants who enter the United States under this new, made-up program of the Biden administration will experience the same level of uncertainty and fear as the DACA recipients currently are. Their legal status is the result of Executive overreach. And as legal challenges are considered, these individuals will be left to wonder whether they will be able to remain here in the United States.

For a party that talks so much about compassionate immigration, this is not compassionate. It is cruel and manipulative and dishonest. The Biden administration is cooking the books in order to make the American people think the border crisis isn't so bad after all. It is deceiving migrants by offering legal status that the Biden administration has no authority to offer, and it is unfair to the individuals who follow the law and who are naturalized as American citizens each year.

I have said it before; I will say it again. We should celebrate the fact that we are a nation of legal immigrants. It is what has made our country so strong and resilient and prosperous. But what is happening at the border is not legal immigration; it is

simply hiding the ball, pretending that things aren't so bad, and hoping that the press will move on to look at something else.

And it is unfair to those migrants, to those immigrants, to those would-be American citizens to say: I am sorry; we can't process your legal immigration application because we are too busy taking care of this flood of humanity coming across the border through these made-up programs like the Biden administration is foisting on the American people. And, of course, finally, it is setting the table for another battle over how to handle a massive population of immigrants with legally dubious immigration status.

So, Mr. President, it may appear superficially that the Biden administration is making progress on the border crisis, but it is just an illusion. It is deception. It is manipulation. It is dishonest. And it won't last forever. So the simple answer, as the Presiding Officer knows, is that at some point things are going to get so bad that we are actually going to have to do the hard work. After all, immigration law is Congress's prerogative and bailiwick.

But as long as the Biden administration can take a crisis at the border with title 42 in place—once it expires—and substitute essentially a green light for anybody and everybody who wants to come to the United States outside of a legal immigration process, they are going to say: What problem? We don't have a problem at the border.

Meanwhile, States like mine continue to experience a flood of humanity coming across, overwhelming not only the capacity of Border Patrol to deal with it but diverting those resources away from their primary job, which is to enforce the law, including our drug laws.

Again, I don't know what it is going to take. Almost 7 million migrants during the Biden administration's tenure—that doesn't seem to bother them. What about the 108,000 Americans who died last year due to drug overdoses—71,000 of those from synthetic opioids like fentanyl.

I have been in very emotional settings with parents who have lost their children because they thought they were taking a Percocet or a Xanax or some other more relatively innocuous pharmaceutical drug, when, in fact, it was laced with fentanyl, and they didn't wake up the next morning. These parents are distraught at losing their child who had so much potential and such a wonderful future, only to be killed because the administration is unwilling to do what it should do to be able to stop more of those drugs, including synthetic opioids, from making their way across the border. But apparently that is not enough: 7 million border encounters, 108,000 dead Americans.

We know where the drugs are coming from, and we know how to do a better job of stopping it, but the Biden administration looks the other way. And now we will talk more about this. The facts

are coming into view with the 300,000 unaccompanied children whom the Biden administration has welcomed into the United States. And once they are placed with sponsors—people who are maybe not even their family members—they simply say: We are done. We have no responsibility.

The New York Times and other established news organizations have reported these children are subject to labor exploitation, recruitment into gangs, being neglected or abused. And the Biden administration said: It is not our responsibility. Once these children are placed with sponsors—300,000 of them—we have nothing left to do.

Well, as I said, we will talk more about that later, but we do know that in 85,000 of those cases, when Health and Human Services, the Office of Refugee Resettlement that is responsible for getting the sponsors—in 85,000 of those 300,000 cases, when the U.S. Government official calls the sponsor to check in on that child, there is no answer—no answer at all.

I think this constitutes abandonment of these children who are welcomed into the United States as unaccompanied children, placed with sponsors, then simply abandoned by the U.S. Government—unacceptable. If you were to do that with an American citizen child, you would be in prison. You would be charged and convicted of child endangerment or worse. But that is what the Biden administration is doing almost on a daily basis, and it needs to be held to account.

The PRESIDING OFFICER (Mr. PADILLA). The Senator from Delaware.

Mr. CARPER. Mr. President, I ask unanimous consent that I be permitted to speak for 5 minutes and that Senator STABENOW be permitted to speak for 5 minutes prior to the scheduled votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF XOCHITL TORRES SMALL

Mr. CARPER. Mr. President, it is good to see you, and it is good to see my colleague JOHN CORNYN here in the Senate today, all the pages, and folks who came back to go to work. There is a lot of work to do.

One of the first items of business before us is a critical nomination, a nomination for the Department of Agriculture—and not just any job at the Department of Agriculture but the No. 2 job, the Deputy Secretary of Agriculture.

The person who has been nominated is a woman who serves currently as the Under Secretary at the Department of Agriculture, and she has been nominated to be the Deputy Secretary for the Department. She has a hard name to pronounce, and it is a name I have never seen before. It sounds something like this: So-cheel, like S-O, cheel, like C-H-E-E-L. You look at it down on paper, and you say: How would you pronounce that name? That is the way to pronounce it.

But the rest of her name is Torres Small. She is somebody I have known