



National Border Patrol Council

**Testimony of Brandon Judd
On behalf of the
National Border Patrol Council
In front of The Oversight and Government Affairs Committee,
Subcommittee on National Security
March 23, 2016**

Chairman DeSantis and Ranking Member Lynch thank you for providing me the opportunity to testify on behalf of the National Border Patrol Council (NBPC).

The NBPC represents the interests of 16,500 line Agents at the Border Patrol. My name is Brandon Judd and I am President of the Council. I have been a Border Patrol Agent for nearly 20 years and although I am currently assigned in Montana, I have worked the majority of my career in the El Centro California and Tucson Arizona sectors.

Current Situation on the Border

The Obama Administration and CBP Commissioner Kerlikowske have repeatedly told the American Public that the border is more secure today than it's ever been. As a Border Patrol Agent, I will tell you the exact opposite. Commissioner Kerlikowske and the administration have pointed to a decrease in arrests over the past several years, but they fail to give the American public key indicators such as the number of arrests of persons from countries with known terrorist ties or from countries that compete economically with our interests. In all of Fiscal Year 2015, the United States Border Patrol arrested 5 persons from Afghanistan, 57 from Pakistan and 1,327 from the Peoples Republic of China. Already in the first five months of this fiscal year, the United States Border Patrol has arrested 18 from Afghanistan, 79 from Pakistan and 619 from the Peoples Republic of China. Those numbers should alarm everyone and we are seeing a similar trend from other key countries like Albania, Bangladesh and Brazil. If the single factor for the litmus test is lower numbers, then compared to fiscal year 2015, one must conclude that we are failing.

As someone who has been involved in border protection for over 18 years, I can unequivocally tell you the border is not secure and the situation is getting worse instead of better. Arrests are not the only factor in determining whether the border is secure. We have to look at the totality of the situation such as violence, the number of persons evading arrest and whether organized crime continues to turn a profit. In the context of the times, we must also look at whether persons from countries who would do us harm are able to exploit our weaknesses, through our policies or the lack of manpower on the border.

It is well documented that criminal cartels control the border in the same way inmates control most prison facilities. The cartels are extremely well organized, pathologically violent and have an entire infrastructure on both sides of the border. In Mexico, it is estimated that over 150,000 people have been killed in cartel related violence. They have killed police officers, judges, elected officials, and ordinary civilians who have crossed their path. And this is the opponent Border Patrol Agents face daily. It is an opponent that controls all aspects of border crimes, including narcotics and illegal immigrant smuggling.

One key way to determine whether the cartels are winning is to analyze key data of entries to arrest.

Two weeks ago, I was visiting a station in the Del Rio Border Patrol Sector. During the two weeks in question, the station had a total of 157 known entries, of which 74 were arrested, 54 were known to have evaded arrest and furthered their entry into the United States, 17 were able to evade arrest and make it back into Mexico, and 12 were still outstanding and unaccounted for. Simply put, Border Patrol Agents are being overwhelmed and not being given the resources necessary to complete the mission and the cartels are making a profit. The scariest part of these statistics is that of those who got away, we don't know who they are or from what country they came.

Administration Policies are another area in which cartels are able to exploit our weaknesses. The new prosecutorial discretion guidelines determine whether or not we release someone with a notice to appear, without a notice to appear or hold them in our custody until deportation proceedings commence. This is another key factor. Since January of 2015, it is my understanding that the United States Border Patrol, due to DHS prosecutorial discretion guidelines, released more than 3,800 illegal aliens who were in our custody and were subject to deportation proceedings. These 3,800 persons were from countries all over the globe such as India, China, the United Kingdom, Brazil, etc. They were released simply because they claimed to have been in the United States continuously since January of 2014 and were not issued a notice to appear. This is amnesty through policy. In short, the administration is choosing to bypass congress whose job it is to determine the laws by legislating through policy.

Why this disconnect between the reality of what Border Patrol Agents see every day and what you are being told here in Washington by the Administration? Unfortunately, I believe that it is politics.

One of the main arguments used against immigration reform last Congress was that if you provided legal status to illegal immigrants, you would only be incentivizing the next wave of illegal immigrants. That is what happened after Congress passed the Immigration Reform Control Act (IRCA) of 1986. The year before Congress passed IRCA, the Border Patrol was apprehending approximately 1 million illegal aliens per year. The year IRCA passed this figure jumped to 1.6 million.

The Administration in their desire to pass comprehensive immigration reform, told Congress and the American people that this time it would be different. It was different because the border was secure and even if there was a wave, we could stop it. The

Administration boasted that Border Patrol catches more than 75 percent of the border crossers.

The problem was that these assertions had no basis in reality. If you ask any Border Patrol Agent what we catch, they will tell you it is no more than 40 percent of the traffic on the southern border. On the northern border, that figure is probably less than 10 percent because we only have 300 Border Patrol Agents on duty at any one time. This is for a northern border that is 4,000 miles long.

The “border is secure” was the Administration’s sales pitch and the problem now is that they cannot walk it back. The Administration cannot ask for more Border Patrol Agents or resources because they have painted themselves into a corner. For the field Agents that I represent, this is completely unacceptable. You cannot begin to fix a problem until you admit that a problem exists.

Steps that can be taken

There are a number of factors that are driving most of the traffic we are seeing. Many point to the endemic violence in Central America. Without a doubt, violence and instability in Central America is a factor and about 50 percent of the traffic now consists of Central Americans. It is not however the primary factor driving this migration.

When Border Patrol Agents arrest illegal immigrants, we interview them. Most illegal immigrants believe that they will either not be caught, or even if they are caught, they will not be deported back to their home country. Most believe, especially family units, that they will simply be issued a Notice to Appear (NTA) and will be released.

The second driver is the idea that they need to get here before some ambiguous deadline. Some of them do not even know when the deadline is, only that they need to beat it if they want to stay permanently in the United States. We call this the myth of the “permisso” and it is most likely being advanced by the drug cartels that control all the illegal alien and drug smuggling along the border.

For the cartels, human smuggling is big business worth hundreds of millions of dollars each year. Most aliens are paying close to \$10,000 per person. Higher value aliens, such of those from the Middle East or Asia, pay almost double this figure. These unaccompanied minors and family groups also serve another more lucrative purpose. They are human screens that tie up Border Patrol Agents while the cartels smuggle narcotics and higher value aliens behind them who, if caught, will be deported back to their home country.

If there is one thing that could be done to correct this problem, it would be to end the catch and release policy we currently have. The individuals that we apprehend are not foolish. Before investing nearly a lifetime in savings, they weigh the costs and benefits of attempting to cross the border. If they knew that if they were caught they would be detained, adjudicated, and repatriated to their home country, the calculation changes dramatically. I guarantee that if this was the case, the numbers would fall dramatically.

The second action deals with resources. As I stated earlier, at best we are apprehending 40 percent of the illegal immigrants crossing. This low capture rate leaves the perception that crossing the border illegally is a viable option. I am happy to discuss this in greater detail during the question and answer period, but we need more manpower to do our job.

Another disturbing trend is the rise of criminal aliens. Twenty years ago, the individuals we were arresting were hard working people that simply wanted to earn money for their family. Across the southwest border, we are finding today that about 20 percent of the individuals apprehended have been previously criminally deported. I was in San Diego last month and the Agents there told me that some nights the percentage of criminal aliens is well over 50 percent. Again, the numbers of apprehensions are lower, but the mix of hardened criminals is completely different from what we have previously seen.

Today our largest trouble area is in Texas. Criminal cartels are once again proving adept at understanding and working around our policies. Late in the year of 2013 and throughout all of 2014, an unprecedented number of unaccompanied minors entered our country illegally through the Rio Grande Valley Sector of operations. Instead of presenting themselves legally at Ports of Entry and asking for asylum, the unaccompanied minors were forced by the cartels to enter illegally at dangerous points along the border. In most cases, these minors were not trying to escape or evade apprehension; they were simply crossing the border illegally and giving themselves up.

The cartels understood that the unaccompanied minors would force the Border Patrol to deploy Agents to these crossing areas in order to take the minors into custody. I want to stress this point because it has been completely overlooked by the press. The unaccompanied minors could have walked right up to the Port of Entry and asked for asylum. Why did the cartels drive them to the middle of the desert and then have them cross over the Rio Grande, only to surrender to the first Border Patrol Agent they came across? The reason is that it completely tied up our manpower and allowed the cartels to smuggle whatever they wanted across our border.

The creation of holes in Border Patrol operations was only one benefit to the cartels by the unaccompanied minor surge. The other was the exploration of our "catch and release" policy. As this surge became too much to handle, the Border Patrol and the Enforcement and Removal Office began releasing nearly everyone we arrested.

I believe this release allowed the cartels to increase their smuggling profits. With catch and release, the cartels could credibly say to potential customers that they would be able to remain in the United States without fear of deportation, as long as they asked for asylum upon being apprehended. Although the problem began with unaccompanied minors, as word quickly spread of everyone being released, we started to see more crossings of complete family units, leading to a bigger problem than what we had in 2014. And once again, we are playing catchup to a problem that in part we created through policy.

All individuals that were released during this period of time were given an official document that ordered them to appear before an immigration judge at some future date. These orders are called Notices to Appear (NTA). The only problem however, is that these official orders are usually ignored, so much so that Border Patrol Agents have dubbed

them Notices to Disappear. The latest data that I have seen shows that approximately 40 percent of the individuals being issued NTAs do not show up.

The willful failure to show up for court appearances by persons that were arrested and released by the Border Patrol has become an extreme embarrassment for the Department of Homeland Security. It has been so embarrassing that DHS and the U.S. Attorney's office has come up with a new policy.

Simply put, the policy makes mandatory the release, without an NTA, of any person arrested by the Border Patrol for being in the country illegally, as long as they do not have a previous felony arrest conviction and as long as they claim to have been continuously in the United States since January of 2014. The operative word in this policy is "claim." The policy does not require the person to prove they have been here, which is the same burden placed on them during deportation proceedings. Instead, it simply requires them to claim to have been here since January of 2014.

Not only do we release these individuals that by law are subject to removal proceedings, we do it without any means of tracking their whereabouts. Agents believe this exploitable policy was set in place because DHS was embarrassed at the sheer number of those who choose not to follow the law by showing up for their court appearances. In essence, we pull these persons out of the shadows and into the light just to release them right back to those same shadows from whence they came.

Let me give you an example from my sector in Montana. Several months ago we arrested an illegal alien with a felony domestic violence arrest from another state. He was released because his trial had not occurred and therefore had not been convicted. Mind you he had not been acquitted either, but we had to let him go all the same.

Under the law he should have been set up for removal proceedings, but under the policy he was let go. And he was let go even though he first proved that he cared so little about our laws that he entered the United States illegally, and once here, he proved further disdain by getting arrested for a serious violent act against another. What did we teach him and everyone else he undoubtedly told about his experience? We taught him our laws mean very little, but policies mean everything.

Immigration laws today appear to be mere suggestions. There are little or no consequences for breaking the laws and that fact is well known in other countries. If government agencies like DHS or CBP are allowed to bypass Congress by legislating through policy, we might as well abolish our immigration laws altogether.

I believe it is all our hope that people choose to govern themselves by honoring and sustaining the laws without compulsion. However if they do not, there must be a consequences and an enforcement mechanism that oversees compliance. In the absence of consequences and enforceable laws, innocent people are hurt, criminals are rewarded, chaos abounds, and cartels reap huge financial benefits.

I look forward to answering any of your questions.

Brandon Judd

Brandon Judd is a Border Patrol Agent and serves as President of the National Border Patrol Council, representing more than 16,500 Border Patrol line Agents. He brings with him nearly 20 years of experience as a Border Patrol Agent, fluency in Spanish, and a thorough understanding of the policies affecting border security. Judd started his career as a field agent in 1997. In 2002, he was selected as a Special Operation Mountain Team Leader in Naco, Arizona, where he supervised the interdiction of aliens. He also served as a Field Training Officer and a Canine Officer stationed at one of the busiest border crossings in Naco, Arizona. From 2001 to 2002, Judd was an instructor at the Border Patrol Academy. During his 15-year tenure, he oversaw the implementation of numerous department policies, including changes affecting the mission-driven Mobile Response Team. He was first elected President of the Border Patrol Local in El Centro, California in 2001, and was later elected President of the largest Border Patrol Local in Tucson, Arizona in 2010, where he served a two-year term. Judd is currently a Border Patrol Agent assigned in Montana.