



# National Border Patrol Council

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**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.