

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

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STATE OF FLORIDA, :

Plaintiff, :

vs. : Case No.

THE UNITED STATES OF AMERICA, : 3:21-cv-1066

et al., :

Defendants. :

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Arlington, Virginia

Thursday, July 28, 2022

Videotaped Deposition of RAUL L. ORTIZ, a witness herein, called for examination by counsel for Plaintiff in the above-entitled matter, pursuant to notice, taken at the offices of Henderson Legal Services, 2300 Wilson Boulevard, Seventh Floor, Arlington, Virginia, at 9:32 a.m. on Thursday, July 28, 2022, and the proceedings being taken down by stenotype by and transcribed by KAREN YOUNG.

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16 ALSO PRESENT:

17 Michelle Tonelli, Esq., DHS
18 Stephanie Muffett, Esq., CBP
19 Krishna Sharma, Videographer
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning everyone.

3 This begins Media Number 1 in the videotaped
4 deposition of Mr. Raul Ortiz, taken in the matter of
5 the State of Florida versus the United States of
6 America et al. This case is filed at the U.S.
7 District Court, Northern District of Florida,
8 Pensacola Division, Case Number 3:21-cv-1066. This
9 deposition is being held at 2300 Wilson Boulevard,
10 Arlington, Virginia on July 28, 2022, and the time on
11 the video monitor is 9:32 a.m.

12 At this time attorneys please identify
13 yourselves for the record, and after that, our court
14 reporter from Henderson Legal Services will swear in
15 the witness and we can begin.

16 MR. GUARD: Good morning. John Guard,
17 Chief Deputy Attorney General for the State of
18 Florida.

19 MR. PERCIVAL: James Percival for the State
20 of Florida.

21 MS. CHRISTMAS: Natalie Christmas for the
22 State of Florida.

1 MS. PATEL: Anita Patel for the State of
2 Florida.

3 MR. DARROW: Joseph Darrow on behalf of the
4 United States.

5 MS. RYAN: Erin Ryan on behalf of the
6 United States.

7 MS. TONELLI: Michelle Tonelli on behalf of
8 the United States.

9 MS. MUFFETT: Stephanie Muffett on behalf
10 of the United States.

11 MR. GUARD: Good morning, Chief Ortiz.

12 Whereupon,

13 RAUL ORTIZ,
14 business address at U.S. Department of
15 Homeland Security, 1300 Pennsylvania
16 Avenue, Northwest, Washington, D.C., called
17 for examination by counsel for
18 Plaintiff and having been duly
19 sworn by the Notary Public, was examined
20 and testified as follows:

21 - - -

22 EXAMINATION BY COUNSEL FOR PLAINTIFF

1 BY MR. GUARD:

2 Q. Let me try that again. Good morning, Chief
3 Ortiz. Can you state and spell your name for the
4 record?

5 A. Yeah, Raul Ortiz, R-A-U-L, Ortiz,
6 O-R-T-I-Z.

7 Q. Thank you. Chief Ortiz, some ground rules
8 for this deposition. While if you and I were at a
9 restaurant talking, we would not always give audible
10 responses. We have a court reporter sitting next to
11 my right, your left, who's taking everything down,
12 and she cannot take down shakes of the head and
13 other, you know, things that -- winks, nods, all
14 those kind of things. So if you could please just
15 make sure that you -- you, when asked a question, you
16 give an audible response so she can take that down,
17 is that fair?

18 A. Yes.

19 Q. If you don't understand a question I ask, I
20 would ask you to ask me to rephrase it, and I will
21 try to make it so that you can understand the
22 question. If you answer the question, I'm going to

1 assume that you understood it. Is that fair?

2 **A. That's fair.**

3 Q. All right. And from time to time, Mr.
4 Darrow may object to the questions. Obviously we
5 don't have a judge here, so unless he instructs you
6 not to answer a question, if he objects, you go ahead
7 and answer the question, and we then take care of
8 that later in court. Is that fair?

9 **A. Okay.**

10 Q. And this is not the Bataan death march or
11 anything like that, so if you need a break, if you'll
12 just answer the question pending, I'll give you any
13 breaks or all breaks you want. Is that fair?

14 **A. That's fair.**

15 Q. And the last thing is more my problem
16 probably than your problem. If we were in a
17 restaurant and we were talking, we'd probably
18 interrupt each other and maybe at times talk over
19 each other because that's how human beings behave,
20 but again, we have a court reporter, and if we're
21 both talking at the same time, she can't possibly
22 take that down, so let's both try to avoid that. Is

1 that fair?

2 **A. That's fair.**

3 Q. All right. Are you under the influence of
4 any alcohol, medication or substances that would
5 impair your ability to testify today?

6 **A. No.**

7 Q. And do you understand that today you're
8 being deposed as both a corporate representative of
9 the Department of Homeland Security and in your
10 individual capacity as well?

11 **A. Yes.**

12 Q. And to make sure the record is clear which
13 capacity you're testifying to, the first part of this
14 deposition is going to be you testifying in your
15 individual capacity. We'll then take a break, and
16 then we'll do the corporate deposition.

17 **A. Okay.**

18 Q. All right? Have you ever been deposed
19 before?

20 **A. Yes.**

21 Q. How many times?

22 **A. Less than ten.**

1 Q. Okay. And I'm not asking for the specific
2 circumstances of each deposition, but generally what
3 were those -- what subject matter were those
4 depositions?

5 A. Most of them involved labor employee
6 relations.

7 Q. Okay. How did you prepare for this
8 deposition?

9 A. I met several times with our counsel.

10 Q. Okay. Other than your counsel, did you
11 speak to anyone else?

12 A. No.

13 Q. Okay. Did you review any materials to
14 prepare for this deposition?

15 A. Yes.

16 Q. What materials did you review?

17 A. E-mails and some memoranda and some policy
18 documents.

19 Q. Okay. And did you bring anything with you
20 to this deposition?

21 A. No.

22 Q. Okay. Have you read any of the court

1 filings in this action?

2 **A. No.**

3 Q. Okay. Have you reviewed any of the
4 deposition transcripts from anyone else that's been
5 deposed in this action?

6 **A. No.**

7 Q. Have you spoken to Mr. Barker about his
8 deposition?

9 **A. I've spoken to Mr. Barker about many
10 things, but not specifically his deposition.**

11 Q. Okay. Have you -- and I apologize if I
12 mispronounce his name. Did you speak with Mr.
13 Guadian?

14 **A. No.**

15 Q. Okay. Have you spoken with Mr. Davies?

16 **A. No.**

17 Q. Okay. Did you speak to your boss,
18 Commissioner Magnus, about this deposition?

19 **A. No.**

20 Q. Have you spoken to any of your subordinates
21 about this deposition?

22 **A. Other than the logistics, my adjutant.**

1 Q. Okay.

2 MR. DARROW: Adjutant I think is what he
3 said.

4 A. Yes.

5 Q. Did you have any of your subordinates
6 gather or provide you any information with respect to
7 this deposition?

8 A. Other than printing and binding the
9 information that our counsel provided.

10 Q. Okay. In the course of your preparation
11 for this deposition, did you review the Department of
12 Homeland Security's responses to Florida's requests
13 for production of documents?

14 A. I believe I saw some of those documents in
15 what was printed for me, but I didn't spend an awful
16 lot of time on that.

17 Q. Okay. Is it okay if I use DHS for --

18 A. Yes.

19 Q. -- Department of Homeland Security? All
20 right. Well, we're going to have a bunch of those
21 kind of abbreviations, and I'll ask you before I
22 abbreviate anything. Have you reviewed DHS's

1 responses to Florida's interrogatories in preparation
2 for this deposition?

3 **A. No.**

4 Q. All right. Have you reviewed DHS's
5 responses to Florida's requests for admissions in
6 preparation for this deposition?

7 **A. No.**

8 Q. What is your understanding, Chief Ortiz, as
9 to what this lawsuit is about?

10 **A. I believe it's a challenge of our**
11 **utilization of ATD parole process as a processing**
12 **pathway.**

13 Q. Okay. Do you have a college degree?

14 **A. No.**

15 Q. And you've been employed with the Border
16 Patrol for 31 years, correct?

17 **A. That's correct.**

18 Q. And you've not worked for any other law
19 enforcement agency other than the Border Patrol,
20 right?

21 **A. That's correct.**

22 Q. All right, and you have not worked any

1 other job except for the Border Patrol since May 13th
2 of 1991, right?

3 **A. Well, I was assigned to the Department of**
4 **Homeland Security for a year as their attache, and**
5 **then I returned back to the Border Patrol in 2011.**

6 Q. So you were detailed to DHS. Was that
7 attache --

8 **A. I was actually assigned --**

9 Q. Okay.

10 **A. -- to DHS.**

11 Q. Okay. And that was for an attache in
12 Kabul, Afghanistan?

13 **A. That's correct.**

14 Q. Okay, and you graduated from the Border
15 Patrol Academy, right?

16 **A. That's correct.**

17 Q. When did you graduate from the Border
18 Patrol Academy?

19 **A. In September of 1919.**

20 Q. And I believe you were part of academy
21 class 247; is that right?

22 **A. That's correct.**

1 Q. Just curious, how many Border Patrol agents
2 are still active that were part of your class?

3 A. One.

4 Q. Okay. My wife just retired from the FBI,
5 and she was down to two.

6 A. Yeah.

7 Q. So I appreciate that. So after you
8 graduated from the academy, you became an agent?

9 A. That's correct.

10 Q. And what capacity do you serve the Border
11 Patrol now?

12 A. I am the chief of the United States Border
13 Patrol.

14 Q. And when did you assume that office?

15 A. August 15th of last year.

16 Q. Okay, so roughly 11 months ago?

17 A. That's correct.

18 Q. Okay. Almost a year. What are your duties
19 as chief of the U.S. Border Patrol?

20 A. I oversee approximately 21,000 employees, a
21 budget of just under six billion dollars, and am
22 responsible for the operational oversight of the

1 southwest border, the northern border and our coastal
2 regions, plus our OCONUS mission, which is our
3 overseas deployments.

4 Q. And prior to being chief of the U.S. Border
5 Patrol, what job did you have with the Border Patrol?

6 A. I was the deputy chief of the United States
7 Border Patrol.

8 Q. Is there just a single deputy chief or --

9 A. That's -- there's only one deputy chief in
10 the United States Border Patrol.

11 Q. Okay, and how do the duties of deputy chief
12 compare to the duties of chief?

13 A. Very similar. They're a partnership. The
14 -- certainly the chief is the ultimate authority
15 within the United States Border Patrol, but as a
16 deputy chief, I was considered, you know, his chief
17 operating officer and coordinated all efforts with
18 respect to the border security mission and some of
19 the other coordination we have within the inter-
20 agency.

21 Q. Okay. And when did you become the deputy
22 chief of the U.S. Border Patrol?

1 **A. 2019.**

2 Q. 2019.

3 **A. March of 2019.**

4 Q. And so you served as deputy chief for more
5 or less 17 months?

6 **A. Yes, sir.**

7 Q. Okay. Prior to being deputy chief, what
8 role did you serve in the Border Patrol?

9 **A. I was the chief of the Del Rio sector,**
10 **which is in west Texas.**

11 Q. And that's actually where you're from
12 originally, right?

13 **A. That's correct.**

14 Q. And how long did you serve as the chief of
15 the Del Rio sector?

16 **A. For approximately a year.**

17 Q. Okay. And starting there and kind of
18 working backwards, can you just summarize your
19 experience in the top?

20 **A. Yeah, so my first nine years in the United**
21 **States Border Patrol, I spent in San Diego,**
22 **California. I was both an agent, a senior agent and**

1 a first-line supervisor. In the year 2000, I
2 transferred to Texas as a -- what would be considered
3 a mid-level manager, assistant patrol agent in charge
4 of a Border Patrol station and then ultimately became
5 an agent in charge of two different stations in Del
6 Rio sector.

7 After that, I became a staff officer, which
8 is an assistant chief, and then I was detailed to
9 Afghanistan for a year to run a task force as a
10 director in 2009. I returned and worked for the
11 State Department for a year as a DHS senior advisor,
12 and then I went back to Afghanistan as a DHS attache
13 in 2010 to '11, and then subsequently, I was promoted
14 as the deputy chief of operational programs in
15 Washington, D.C.

16 Q. Okay. What were your duties -- so when
17 approximately were you the deputy chief of operations
18 in Washington, D.C.?

19 A. So I did that job for approximately two
20 years, from 2011 to 2013, and I served as both the
21 deputy of operational programs and operations. I did
22 about a year of each. And then after that, I was

1 promoted to the deputy chief of Rio Grande Valley
2 sector in 2013.

3 Q. Okay. What -- what were your duties as
4 either deputy chief of operations or deputy chief of
5 operational programs?

6 A. So in the Border Patrol, we have 20
7 sectors. We have an academy, and we also have a
8 special operations group. As the deputy chief of
9 operations, just in general, our job is to oversee
10 and coordinate with the other directorates. At the
11 time, there were three different directorates within
12 the Border Patrol. We had a policy shop, we had a
13 mission readiness shop, and we had an operations
14 directorate, and so we had roughly about four or five
15 hundred Border Patrol agents and professional staff
16 members assigned to our headquarters division.

17 And on top of managing those personnel, we
18 also oversaw the operations in the field and
19 coordinated resourcing the sectors both from a
20 budgetary standpoint as well as ensuring that they
21 were executing against the chief's operational
22 priorities and the commissioner's.

1 Q. Okay. At what points in time in your 31
2 years with Border Patrol have you been involved in
3 developing policies?

4 A. Probably most of the policy engagement that
5 I was responsible for happened in the three years
6 that I was assigned to our Afghanistan mission.
7 After that, most of the work as a deputy chief of ops
8 or ops programs centered around coordinating
9 resourcing. We were in the process of restructuring
10 the Border Patrol in 2012. I participated in
11 multiple working groups to ensure that we were able
12 to restructure appropriately. I worked closely with
13 our partner agencies. At that time, there was an
14 awful lot of coordination between us, DOJ and the DHS
15 components to include ICE. And so most of my duties
16 and responsibilities centered around that
17 coordination.

18 Q. The restructuring that you're mentioning --
19 was that part of the restructure that actually
20 created the Department of Homeland Security?

21 A. No, actually, this was an internal Border
22 Patrol restructuring.

1 Q. Prior to being chief of the Border Patrol,
2 at what points in time in your career have you been
3 involved in developing guidance?

4 A. Probably since I became a supervisor, which
5 was in 1997, either implementing guidance or
6 providing information to those who were formulating
7 the guidance.

8 Q. Okay. And how does -- as far as
9 implementing guidance, how does Border Patrol
10 typically I guess for lack of better words get the
11 word out about a new guidance?

12 A. So it happens on several different
13 platforms. First, we issue memoranda to the field to
14 ensure that they understand policies, procedures. We
15 also quite often develop either SOPs, standard
16 operating procedures, or IOPs, internal operating
17 procedures, for our operational components. And then
18 quite often sometimes in exigent circumstances, it
19 could be via an e-mail, and then we also develop
20 operational plans.

21 Operational plans are a very formalized
22 approval process. If a sector or an operational

1 component makes -- has a recommendation on a
2 particular initiative, they may submit a operational
3 plan to headquarters, and it will typically be
4 approved by either the operations directorate chief
5 or may even come to me for approval.

6 Q. Okay, so if a sector -- well, strike that.
7 In developing guidance, does information come from
8 the field to whoever's developing -- involved in
9 developing the guidance?

10 A. Yes, quite often it's very important to
11 involve field representation when developing guidance
12 because every sector's unique. Every sector has
13 different challenges, and unfortunately, amongst the
14 20 sectors, you know, I have sectors that range from
15 36, 37 hundred employees all the way down to, you
16 know, a couple of hundred. And so it can't be a
17 cookie cutter approach. We certainly make sure that
18 we involve the sector reps as we start to develop
19 guidance that may impact them.

20 Q. So the sector that's covering the state of
21 Vermont may have a different amount of employees than
22 the sector that's covering the Rio Grande Valley.

1 **A. That's correct.**

2 Q. And to be clear, the sector that's covering
3 Vermont would have less employees.

4 **A. Yes, most definitely.**

5 Q. All right. Now, the operational plans, the
6 IOP, the SOP and the memorandum, would those go to
7 the chiefs and deputy chiefs of each executive sector
8 for further dissemination to the Border Patrol
9 agents?

10 **A. That's correct.**

11 Q. Okay. And they would go up through -- up
12 and down the chain of command?

13 **A. That's correct.**

14 Q. Okay. If I were just an average line
15 Border Patrol agent and there was a change in policy
16 or change in guidance, would it be common for me to
17 get something in writing?

18 MR. DARROW: Objection as to form. You can
19 answer.

20 **A. Yes.**

21 Q. In your 31 years with Border Patrol, have
22 you ever done anything that you viewed as inhumane to

1 an alien?

2 **A. No.**

3 Q. In your 31 years with Border Patrol, have
4 you ever done anything that you viewed as cruel to an
5 alien?

6 **A. No.**

7 Q. What would you do as chief of the Border
8 Patrol if you found out that an employee of Border
9 Patrol was doing something inhumane?

10 MR. DARROW: Objection as to form. You can
11 answer.

12 **A. So certainly there's a disciplinary**
13 **process. One of the things that I've been awfully**
14 **proud of in the 31 years is that, you know, the men**
15 **and women of the Border Patrol have done a phenomenal**
16 **job under very stressful and dire circumstances, and**
17 **they continue to demonstrate the utmost**
18 **professionalism, but any time I or expectation**
19 **anybody within the Border Patrol witnesses or**
20 **observes somebody mistreating or conducting**
21 **themselves in a manner that would not be to the**
22 **standard of the United States Border Patrol,**

1 **expectation is that that would be reported.**

2 Q. The expectation is that no one in Border
3 Patrol's going to condone inhumane behavior.

4 **A. That's correct.**

5 Q. All right, and the expectation is the
6 Border Patrol agents on the line or even the
7 supervisor, they're going to perform professionally.

8 **A. That's correct.**

9 MR. DARROW: Objection as to form.

10 BY MR. GUARD:

11 Q. I know it's -- I know, again, if we were at
12 a meal, it would be typical for us just to talk and
13 rattle off, but if you could just pause a second so
14 that Mr. Darrow can get his objections in --

15 **A. I will.**

16 Q. -- that'll just help the court reporter,
17 and she won't yell at all of us. Do you believe that
18 detaining an alien illegally present in the United
19 States until he can be processed and either removed
20 or admitted is inhumane?

21 **A. Can you repeat the question?**

22 Q. Sure. Do you believe that detaining an

1 alien illegally present in the United States until
2 that alien can be processed and either removed or
3 admitted is inhumane?

4 **A. No.**

5 Q. Do you believe that detaining an alien
6 illegally present in the United States until he or
7 she can be processed and either removed or admitted
8 is cruel?

9 **A. No.**

10 Q. In your career, would it be fair to say
11 that millions of aliens that have illegally entered
12 the United States have been detained by the Border
13 Patrol?

14 **A. Yes.**

15 Q. The detention of family units by Border
16 Patrol is not something that just happened under
17 President Trump, right?

18 MR. DARROW: Objection as to form.

19 **A. That's correct.**

20 Q. The Border Patrol has detained family units
21 for your entire 31-year career, correct?

22 **A. Well, the Border Patrol does not detain.**

1 We process. The detention operation is the
2 responsibility of ICE, enforcement removal
3 operations. Typically we try and keep people in
4 custody for under 72 hours, and most of that time is
5 spent either processing or coordinating the
6 repatriation or the transfer to one of the other
7 agencies.

8 Q. All right. So what at least Border Patrol
9 tries to do is tries to detain temporarily for a
10 period of time that you try not to exceed 72 hours.
11 Is that fair?

12 A. Yes.

13 Q. Okay, and family units illegally present in
14 the United States were detained under President
15 Obama, right?

16 A. Yes.

17 Q. Family units illegally present in the
18 United States were detained under President Clinton,
19 correct?

20 A. Yes.

21 Q. Would it be fair to say that presidents of
22 both parties have detained family units?

1 **A. Yes.**

2 Q. Now, the detention of juveniles is not
3 something that just happened under President Trump,
4 correct?

5 **A. That's correct.**

6 Q. Juveniles have been detained since you
7 joined the Border Patrol.

8 **A. That's correct.**

9 Q. Okay. And are you familiar with something
10 known as the Flores consent decree?

11 **A. Yes.**

12 Q. And do you know when the Flores consent
13 decree was entered roughly?

14 **A. I know that in 2018 and '19, I traveled to**
15 **Los Angeles to participate in a hearing under the**
16 **Flores decree. I can't remember the exact month.**

17 Q. Okay, all right. Has the Flores decree
18 existed for decades?

19 **A. No, not that I know of.**

20 Q. Okay, so you're not aware that it was
21 roughly entered in 1997?

22 **A. No.**

1 Q. Okay. And the Flores consent decree deals
2 with the detention and treatment of juveniles, does
3 it not?

4 A. Yes.

5 Q. Would you agree that the detention of
6 juveniles raises additional challenges for the Border
7 Patrol that are not present when you're dealing with
8 single adults?

9 MR. DARROW: Objection.

10 A. Yes.

11 Q. What are those additional challenges?

12 A. So one, the Border Patrol facilities were
13 never designed to support long-term detention of
14 juveniles. Juveniles require different care, to
15 include, you know, in some cases infant and tender
16 age children under the age of seven. Our Border
17 Patrol agents first off didn't receive training at
18 their academy to be able to support the wrap-around
19 services that unaccompanied children pose in our, and
20 so just in general, when you -- when you're housing,
21 you know, large numbers of unaccompanied children in
22 congregate settings with adults and family units, the

1 facilities do not have sufficient space to ensure
2 that their safety and security is -- can be
3 prioritized the way it should be in a family
4 residential center or facility that HHS may operate.

5 Q. Okay. I want to kind of carve off
6 unaccompanied children from family units.

7 A. Okay.

8 Q. Both of them have juveniles, correct?

9 A. That's correct.

10 Q. All right. Unaccompanied children, Border
11 Patrol doesn't turn those children over to ICE,
12 correct?

13 A. That's correct.

14 Q. Instead, it turns them over to Department
15 of Health and Human Services, right?

16 A. HHS, yes.

17 Q. All right. I'm going to call it HHS just
18 to -- for ease and comfort. And does Border Patrol
19 segregate for a short time juveniles apart from
20 family units and single adults?

21 MR. DARROW: Objection.

22 A. Yes.

1 Q. Okay, and then it coordinates with HHS to
2 remove them from Border Patrol facilities, right?

3 A. Yes.

4 Q. Family units. Do you segregate or separate
5 family units from single adults?

6 MR. DARROW: Objection.

7 A. We try to.

8 Q. And when you say Border Patrol tries to
9 separate family units from single adults, is that
10 when there is capacity?

11 A. That's correct, it's dependent on space and
12 detention and the facility itself. They are
13 certainly separated within cells, but quite often in
14 the processing area, we have seen on occasion family
15 units and single adults commingled.

16 Q. Okay. Now, again, I'm going to carve off
17 unaccompanied children. I'm not talking about HHS.
18 I'm not trying to wander into that because I think
19 the answer's going to vary. I just want to talk
20 about family units. So that's the premise of this
21 question and probably a series of questions. Is
22 Border Patrol's capacity dependent upon how fast you

1 can move out families to ICE?

2 **A. Yes.**

3 Q. So if ICE is either unwilling or unable to
4 take family units, Border Patrol's facilities become
5 more and more crowded?

6 MR. DARROW: Objection.

7 **A. Yes.**

8 Q. So if ICE were to cut its detention
9 capacity in half, that would have an impact on Border
10 Patrol.

11 MR. DARROW: Objection.

12 **A. Yes.**

13 Q. And if ICE were to cease detaining family
14 units, that could have an impact on Border Patrol.

15 MR. DARROW: Objection.

16 **A. Yes.**

17 Q. I'm going to -- I'm going to show you what
18 I'm going to mark for identification as Exhibit 1. I
19 actually got a copy for him. I'm giving you --

20 MR. DARROW: Okay.

21 MR. GUARD: -- your copy too.

22 (Ortiz Exhibit No. 1

1 was marked for
2 identification.)

3 BY MR. GUARD:

4 Q. Have you seen Exhibit 1 before?

5 A. Yes.

6 Q. What is Exhibit 1?

7 A. It is a table of organization for the
8 Department of Homeland Security.

9 Q. Okay. Is it a fair and accurate
10 representation of the organization of the Department
11 of Homeland Security?

12 A. It appears to be.

13 Q. All right. The United States Border Patrol
14 is not listed on this chart, is it?

15 A. It is a subcomponent of the U.S. Customs
16 and Border Protection, so no, by itself, it's not
17 listed on this.

18 Q. Okay. And if I refer to the United States
19 Customs and Border Protection as CBP, you'll know
20 what I'm talking about?

21 A. Yes.

22 Q. Okay. And what does CBP do?

1 **A.** **Customs and Border Protection is a**
2 **component within the Department of Homeland Security**
3 **that is responsible for border security. They're**
4 **responsible for facilitating legal trade and travel**
5 **at our ports of entry, seaports and airports, and**
6 **then we also have -- are responsible for facilitating**
7 **trade. We have six operational components within**
8 **CBP, the Office of Trade, United States Border**
9 **Patrol, Office of Field Operations, Executive**
10 **Services, and Operational Services I believe, yeah.**

11 **Q.** All right. I'm going to show you what I'm
12 going to mark as Exhibit 2 to your deposition.

13 MR. DARROW: Thank you.

14 (Ortiz Exhibit No. 2
15 was marked for
16 identification.)

17 THE WITNESS: Thank you.

18 BY MR. GUARD:

19 **Q.** Have you ever seen Exhibit 2 before?

20 **A.** **That's correct.**

21 **Q.** And what is Exhibit 2?

22 **A.** **Exhibit 2 is the table of organization for**

1 **Customs and Border Protection.**

2 Q. And that was what you were just -- the six
3 departments that you were just describing?

4 **A. That's correct.**

5 Q. And on this -- on Exhibit 2, there's
6 actually a place for Border Patrol?

7 **A. That's correct.**

8 Q. What does the Border Patrol do?

9 **A. Border Patrol's responsible for securing**
10 **the border in between the ports of entry.**

11 Q. Okay. And would you agree that Border
12 Patrol's responsibilities are to act in concert with
13 the other components of CBP?

14 **A. Yes.**

15 Q. And to act with the other components of DHS
16 to secure the United States.

17 **A. Yes.**

18 Q. All right. Would you agree that a large
19 part of what Border Patrol does is encounter and
20 determine who is entering the United States?

21 MR. DARROW: Objection.

22 **A. Yes.**

1 Q. Okay. And you report to the deputy
2 commissioner; is that correct?

3 A. **That's correct.**

4 Q. And Troy Miller is the current deputy
5 commissioner, right?

6 A. **Yes.**

7 Q. And do you understand the difference
8 between career and political appointees?

9 A. **I do.**

10 Q. Is Mr. Miller a career or a political
11 appointee?

12 A. **Career.**

13 Q. Okay, and who is the commissioner of Border
14 Patrol -- or excuse me, of CBP?

15 A. **Chris Magnus.**

16 Q. Okay, and is Mr. Magnus a career or
17 political appointee?

18 A. **Political appointee.**

19 Q. All right. Below -- on Exhibit 2, below
20 Chief of Border Patrol, do you see Office of Field
21 Operations?

22 A. **I do.**

1 Q. What are -- what is the Office of Field
2 Operations?

3 A. So Office of Field Operations are the
4 customs and agricultural inspectors that work at our
5 ports of entry, our airports and our seaports to
6 facilitate legal trade and travel, and certainly
7 those folks that are traveling and presenting
8 themselves for inspection.

9 Q. Okay, and how does Office of Field
10 Operations and the responsibilities they have differ
11 from the Border Patrol?

12 A. So at ports of entry, it is a certainly
13 designated entry point. They work closely with our
14 Canadian, our Mexican partners to the south of us,
15 and then even to some degree in foreign countries.
16 We have preclearance facilities throughout the world.
17 Our Office of Field Operations officers roughly have
18 about 25,000 employees, and they are responsible for
19 both goods, cargo that are traveling through our
20 ports of entry, but they're also responsible for the
21 inspection of individuals that are presenting
22 themselves for inspection.

1 Q. Okay. If you'll flip back to Exhibit 1 and
2 look at Exhibit 1, does it -- Exhibit 1 contain a
3 component named United States Immigration and Customs
4 Enforcement? It's on the bottom row to the right?

5 A. Yes.

6 Q. Okay, and is it all right if I refer to
7 them as ICE?

8 A. Yes.

9 Q. Okay, and ICE is a separate entity from
10 CBP, right?

11 A. That's correct.

12 Q. All right, and it's definitely a separate
13 entity from Border Patrol.

14 A. Yes.

15 Q. All right. Would it be fair to say that
16 ICE and Border Patrol have an ongoing relationship?

17 A. Yes.

18 Q. Okay. And would it be fair to say that
19 Border Patrol has multiple memorandums of
20 understanding with ICE?

21 A. Yes.

22 Q. All right. Among those memorandums of

1 understanding is there one that -- where ICE agrees
2 to provide transportation from the border?

3 **A. Yes.**

4 Q. All right. Does ICE also agree to
5 transport aliens back to their country of origin as
6 part of the memorandum?

7 **A. Yes.**

8 Q. Okay. And another I guess relationship
9 that ICE and Border Patrol has is that ICE agrees to
10 accept transfer aliens that need to be detained; is
11 that correct?

12 **A. That's correct.**

13 Q. All right. And for -- strike that. Would
14 it be fair to say that Border Patrol often detains
15 aliens that it encountered at the southern border
16 until they can be processed and turned over to ICE?

17 **A. Yes.**

18 Q. Would you agree, Chief Ortiz, that the
19 southern border is currently in crisis?

20 MR. DARROW: Objection.

21 **A. Yes.**

22 Q. Would you agree, Chief Ortiz, that historic

1 numbers of aliens are illegally entering the United
2 States through the southern border?

3 MR. DARROW: Objection.

4 A. Yes.

5 Q. Would you agree, Chief Ortiz, that
6 unprecedented numbers of aliens are illegally
7 entering the United States right now?

8 MR. DARROW: Objection.

9 A. Yes.

10 Q. Would you agree, Chief Ortiz, that more
11 aliens are going through the southern border than we
12 have seen in the last 20 years?

13 A. Yes.

14 Q. Would you agree -- would you agree, Chief
15 Ortiz, the Border Patrol has never had as many
16 encounters with aliens in a physical year as it has
17 had in the last two years?

18 MR. DARROW: Objection.

19 A. Yes.

20 Q. Chief Ortiz, do you expect the historic
21 number of aliens illegally entering the United States
22 to increase in the near term?

1 MR. DARROW: Objection.

2 A. Actually, we'd seen a decrease over the
3 last two months, and I expect that in July, we will
4 see a continuing decrease from the previous two
5 months.

6 Q. Is some of that the seasonality of the
7 border?

8 A. I haven't seen much of a seasonal trend
9 over the last three or four years.

10 Q. Okay. Are you familiar with something
11 known as Title 42?

12 A. I am.

13 Q. Do you expect that the number of aliens
14 trying to illegally enter the United States will
15 increase if the Title 42 order is rescinded?

16 MR. DARROW: Objection.

17 A. I always prepare for scenarios that may
18 impact the flow of the migrant population, and so we
19 have prepared for both higher and lower numbers.

20 Q. I'm going to show you what I'm going to
21 mark for identification as Exhibit 3 to your
22 deposition.

1 (Ortiz Exhibit No. 3
2 was marked for
3 identification.)

4 MR. DARROW: Thank you.

5 BY MR. GUARD:

6 Q. Have you seen Exhibit 3 before, Chief
7 Ortiz?

8 A. I have.

9 Q. What is Exhibit 3?

10 A. It's a memorandum that I signed on May
11 19th, 2022, and it discusses the non-citizen releases
12 from our custody.

13 Q. Okay. And so that's roughly two months
14 ago?

15 A. That's correct.

16 Q. All right. In your experience 31 years
17 with the Border Patrol, have you ever seen a document
18 -- or have you ever seen a memorandum like Exhibit 3
19 before?

20 A. No.

21 Q. Why did you send out Exhibit 3?

22 MR. DARROW: Objection.

1 **A.** To ensure that our Border Patrol sectors
2 were coordinating with our non-governmental
3 organizations and were also focused on perhaps the
4 impact to the communities and ensuring that we were
5 coordinating with our ICE partners.

6 Q. Would you agree with me, Chief Ortiz, that
7 Exhibit 3 deals with the possible rescission of Title
8 42?

9 MR. DARROW: Objection.

10 **A.** **Yes.**

11 Q. Would you agree with me, Chief Ortiz, that
12 Exhibit 3 provides directions to sectors in the
13 southwest border if the capacity becomes an issue?

14 **A.** **Yes.**

15 Q. And what does this memorandum direct the
16 sector chiefs to do if detention capacity becomes an
17 issue on the southwest border because of the repeal
18 of Title 42?

19 MR. DARROW: Objection.

20 **A.** **It directs the sectors to ensure that prior**
21 **to any releases, that we have worked closely with our**
22 **non-governmental organizations or our partners within**

1 our respective communities. It also reminds the
2 sectors to factor in the safety and security of the
3 migrant populations that we are processing. One of
4 the things that we did not want to see happen is
5 migrants released in the middle of the night where
6 transportation nodes were closed if they weren't able
7 to be turned over to a nongovernmental organization
8 because NGOs and their facilities were also facing
9 some constraints and challenges with respect to
10 space.

11 Q. Wasn't this guidance issued for situations
12 where ICE was either unable or unwilling to accept
13 transfers of aliens?

14 MR. DARROW: Objection.

15 A. Yes.

16 Q. And if ICE were either unwilling or unable
17 to accept transfer of aliens, this memo authorizes
18 the sectors to release aliens into the interior of
19 the United States.

20 MR. DARROW: Objection.

21 A. Well, it authorizes them to release them
22 into the communities that they were apprehended in.

1 Q. Okay. And does Exhibit 3 authorize the
2 release of aliens that would otherwise be
3 inadmissible into the United States?

4 MR. DARROW: Objection.

5 A. Yes.

6 Q. Have you ever heard the term "broken
7 arrow"?

8 A. Yes.

9 Q. What is a broken arrow?

10 A. Typically in the context of operations, it
11 is unsustainable operational circumstances.

12 Q. Okay. Is Exhibit 3 meant to deal with
13 situations where Border Patrol had what amounts to a
14 broken arrow?

15 MR. DARROW: Objection.

16 A. No.

17 Q. Okay. Can you explain to me why not?

18 A. Well, we still had processes in place, and
19 we still expected a majority of the encounters that
20 we were experiencing on the southwest border would be
21 facilitated from us to NGOs, but we also recognize
22 that in a couple locations, that we were going to

1 **experience some challenges.**

2 Q. Okay. Sorry. Did I cut you off?

3 **A. No, go ahead.**

4 Q. I'm now going to show you what I've marked
5 for identification as Exhibit 4 to your deposition.

6 (Ortiz Exhibit No. 4
7 was marked for
8 identification.)

9 MR. DARROW: Thank you.

10 BY MR. GUARD:

11 Q. Exhibit 4 is CBP enforcement statistics for
12 the physical year of 2018, correct?

13 **A. Yes.**

14 Q. And these are statistics that are publicly
15 available from CBP's web site, right?

16 **A. It appears so.**

17 Q. And these statistics include all ports of
18 entries; is that correct?

19 **A. Yes.**

20 Q. All right. And it includes Border Patrol
21 statistics as well, right?

22 **A. Yes.**

1 Q. All right. Is there currently or was there
2 in 2018 a crisis at the northern border?

3 MR. DARROW: Objection.

4 A. No.

5 Q. Okay. Now, looking at Exhibit 4 on its
6 first page, this document contains data not just from
7 physical year of 2018, right?

8 A. Yes.

9 Q. It also includes data from physical years
10 2016 and 2017, correct?

11 A. That's correct.

12 Q. The high number of apprehensions for Border
13 Patrol for those years was in 2016, right?

14 A. That's correct.

15 Q. And that was 415,816?

16 A. Yes.

17 Q. Right? And if you look down at the -- for
18 the total for enforcement actions for all of the CBP
19 components, the high was again in 2016, right?

20 A. Yes.

21 Q. And that was 690,637, correct?

22 A. Yes.

1 Q. All right. I'm going to show you what I've
2 marked for identification as Exhibit 5 to your
3 deposition.

4 (Ortiz Exhibit No. 5
5 was marked for
6 identification.)

7 MR. DARROW: Thank you.

8 BY MR. GUARD:

9 Q. Exhibit 5 is the CBP enforcement statistics
10 for fiscal year 2022, right?

11 A. Yes.

12 Q. And again, these are statistics that are
13 publicly available on CBP's web site, right?

14 A. Yes.

15 Q. And physical year 2022 is not yet
16 concluded, correct?

17 A. That's correct.

18 Q. All right. Now, Exhibit 5 contains data
19 not just for fiscal year 2022, correct?

20 A. That's correct.

21 Q. It contains the data for physical years
22 2017 through physical year 2021?

1 MR. DARROW: Just for clarification, it
2 sounds like you're saying physical. Fiscal, right?

3 MR. GUARD: Yes.

4 MR. DARROW: Okay, sorry.

5 BY MR. GUARD:

6 Q. Sorry. F-I-S-C-A-L, to be clear. Prior to
7 the Biden administration being inaugurated, the
8 highest number of Border Patrol encounters occurred
9 in 2019, right?

10 A. Yes.

11 Q. And the highest number of enforcement
12 actions by CBP occurred in fiscal year 2019, correct?

13 A. '21, it was higher.

14 Q. Oh, sorry. All right. Prior to the Biden
15 administration.

16 A. Yes.

17 Q. Okay, and in '19, the number of Border
18 Patrol encounters was 859,501, right?

19 A. Yes.

20 Q. And the number of total enforcement actions
21 was 1,148,024, correct?

22 A. Yes.

1 Q. All right. And Joseph R. Biden, Junior was
2 inaugurated on January 20th of 2021, right?

3 A. Yes.

4 Q. Okay. And if you look at the physical year
5 '21 numbers, and Donald Trump would have been
6 president for the first three months of that physical
7 year?

8 A. Yes.

9 Q. Okay. And then Biden would have been
10 president after that point in time?

11 A. Yes.

12 Q. All right. And in that year, fiscal year
13 '21, the number of Border Patrol encounters doubled
14 from 2019.

15 MR. DARROW: Objection.

16 BY MR. GUARD:

17 Q. Correct?

18 A. Yes.

19 Q. And the number of Border Patrol encounters
20 in fiscal year '21 is four times any other year other
21 than fiscal year '19.

22 MR. DARROW: Objection.

1 **A. Yes.**

2 Q. Okay. Looking at fiscal year '22, year to
3 date, we have still roughly three months of
4 encounters to occur, and the number of encounters by
5 Border Patrol in fiscal year '22 is almost at the
6 total year number for fiscal year '21, right?

7 **A. We've already exceeded that number, yes.**

8 Q. Okay. So you obviously in your role see
9 data as it happens and not necessarily as it gets
10 reported on a public web site. You're already in
11 excess sitting here right now with roughly three
12 months to go, the total number of encounters that
13 you've had in fiscal year '22 is in excess of
14 physical year '21.

15 MR. DARROW: Objection.

16 **A. Yes.**

17 Q. Now, the numbers that we're experiencing in
18 2021 and 2022 are mainly encounters at the southern
19 border, correct?

20 **A. And we have seen some increases in the
21 coastal region in Miami and in Puerto Rico.**

22 Q. Would you agree the primary driver of the

1 numbers in '21 and '22 is the southern border?

2 MR. DARROW: Objection.

3 A. Yes.

4 Q. Okay. From your 31 years of experience,
5 has the Border Patrol in a year ever had the number
6 of encounters that it's going to have in 2022?

7 MR. DARROW: Objection.

8 A. No.

9 Q. Is the crisis that is currently ongoing at
10 the southern border making the border less safe for
11 Americans and aliens alike?

12 MR. DARROW: Objection.

13 A. Yes.

14 Q. Before I move on, turning back for a minute
15 to I think it was Exhibit 3, has to your knowledge
16 Exhibit 3 ever been implemented?

17 A. No.

18 Q. Okay. Chief Ortiz, are you aware that more
19 aliens have died trying to illegally enter the United
20 States in the last two years than ever before?

21 MR. DARROW: Objection.

22 A. Yes.

1 Q. Now, Chief Ortiz, does CBP components
2 survey aliens that they encounter on why they were
3 entering the United States?

4 A. Yes.

5 Q. I'm going to show you what I marked for
6 identification as Exhibit I think 6.

7 (Ortiz Exhibit No. 6
8 was marked for
9 identification.)

10 MR. DARROW: Thank you.

11 BY MR. GUARD:

12 Q. Exhibit 6 is an overview of the southwest
13 border by CBP, correct?

14 A. Yes.

15 Q. Have you ever seen Exhibit 6 before?

16 A. I'm not sure what the date is on this, but
17 yes, it does look familiar.

18 Q. All right. Well, let's try to figure out
19 the date from -- from the document. If you look at
20 the first paragraph of Exhibit 6, that first bullet
21 point mentions spring of 2021, correct?

22 A. Yes.

1 Q. And that's -- it is talking about
2 unaccompanied children that arrived at the border
3 through spring of 2021; is that correct?

4 A. That's correct.

5 Q. So it would appear to be at some point in
6 time after the spring of 2021? Is that fair to say?

7 A. That's fair to say.

8 Q. All right. And if you look at page 2 at
9 the second bullet point, it talks about two
10 hurricanes, Ada and Iota, that made landfall in
11 November of 2020, so again, sometime after the late
12 2020 is what that paragraph seems to indicate?

13 A. Yes.

14 Q. And so sometime late 2020 would be when
15 this document -- hold on. Strike that. Going back
16 to that first bullet point, the first three months of
17 fiscal year 2021 -- never mind. Strike that. On the
18 second page of Exhibit 6, at the first bullet
19 point --

20 A. On the second page you said?

21 Q. Yes, sir.

22 A. Uh-huh.

1 Q. The overview lists seven factors that CBP
2 designates as, quote, the primary push-pull factors
3 cited by migrants?

4 MR. DARROW: Objection.

5 BY MR. GUARD:

6 Q. Did I read that correct?

7 A. Yes.

8 Q. All right. And what are push-pull factors?

9 A. **Those are factors that are considered**
10 **either drivers or opportunities that migrants may**
11 **perceive as a reason to enter illegally into the U.S.**

12 Q. Okay. Looking at the first I guess
13 sub-bullet point under -- under the primary push-pull
14 factors that are cited by migrants, it says economic
15 opportunities. Did I read that correct?

16 A. Yes.

17 Q. All right. Economic opportunities are --
18 would you agree are a consistent driver of aliens
19 entering the United States?

20 MR. DARROW: Objection.

21 A. Yes.

22 Q. In your 31 years, economic opportunities

1 has been a driver every year?

2 MR. DARROW: Objection.

3 A. Yes.

4 Q. Okay, all right. Looking at the next
5 bullet points, next bullet point, regional and
6 political instability, you see that?

7 A. Yes.

8 Q. And that's regional and political
9 instability in Central and Southern America?

10 A. Well, Haiti. It's 158 different countries
11 that we encounter migrants from.

12 Q. Okay. Would it be fair to say that over
13 your 31 years, there's been regional -- regional and
14 political instability somewhere in those 158
15 countries that you've encountered?

16 A. Yes.

17 MR. DARROW: Objection.

18 BY MR. GUARD:

19 Q. And so that's a consistent driver --

20 MR. DARROW: Objection.

21 BY MR. GUARD:

22 Q. -- of illegal immigration into the United

1 States?

2 **A. Yes.**

3 Q. Okay. Fear of violence is the next bullet
4 point. Did I read that correct?

5 **A. Yes.**

6 Q. All right. Fear of violence -- has that
7 been a factor that has been present for at least part
8 of your 31 years as a Border Patrol agent driving
9 illegal immigrants into the United States?

10 **A. Yes.**

11 Q. Okay. If you drop down a couple more,
12 perception -- perceptions of favorable U.S.
13 immigration policies, you see that?

14 **A. Yes.**

15 Q. Do you know if prior to the Biden
16 administration being inaugurated, whether aliens had
17 a favorable view or favorable perception of U.S.
18 immigration policies?

19 MR. DARROW: Objection.

20 **A. Repeat the question please?**

21 Q. Sure. Let me -- I inartfully worded it
22 because I actually worded two questions together.

1 Prior to January 20th, 2021 when President Biden was
2 inaugurated, from your experience as a Border Patrol
3 agent, did aliens have a favorable view or
4 unfavorable view of Trump's immigration policies?

5 MR. DARROW: Objection.

6 **A. They had an unfavorable view.**

7 Q. Okay. Would an unfavorable view of Trump's
8 immigration policies kept aliens from coming the
9 border?

10 MR. DARROW: Objection.

11 **A. Some.**

12 Q. Okay. When President Biden was elected,
13 did the number of aliens trying to illegally enter
14 the United States increase or decrease?

15 MR. DARROW: Objection.

16 **A. Increase.**

17 Q. Okay. Did caravans restart to the border
18 after President Biden was elected?

19 MR. DARROW: Objection.

20 **A. Caravans are a recent phenomenon that we've**
21 **seen over the last couple of years.**

22 Q. Okay. Since President Biden was elected,

1 does this document indicate that aliens illegally
2 entering the United States perceive that they will be
3 able to enter and remain in the United States?

4 MR. DARROW: Objection.

5 **A. Yes.**

6 Q. You can set that document aside. I think
7 we're on 7.

8 (Ortiz Exhibit No. 7
9 was marked for
10 identification.)

11 BY MR. GUARD:

12 Q. I'm going to show you what I marked for
13 identification as Deposition Exhibit 7.

14 MR. DARROW: Thank you.

15 BY MR. GUARD:

16 Q. Have you seen Deposition Exhibit 7 before?

17 **A. Not this specific document.**

18 Q. Okay. Does Exhibit 7 have comments that
19 Secretary Mayorkas, Commissioner -- Acting
20 Commissioner Miller and you made?

21 **A. Yes.**

22 MR. DARROW: Objection.

1 BY MR. GUARD:

2 Q. What is the date of Exhibit 7?

3 A. **September 20th.**

4 Q. Okay.

5 A. **'21, sorry.**

6 Q. What were the circumstances that caused you
7 to -- you, Secretary Mayorkas and Acting Commissioner
8 Miller to make comments on that day?

9 A. **We had a mass migration event in Del Rio,
10 Texas of between 16 and 19 thousand migrants from
11 principally Haiti, but we also encountered
12 individuals from Venezuela, Cuba, Nicaragua and a few
13 other countries.**

14 Q. And there was news coverage going on of
15 migrants living under a bridge I think?

16 MR. DARROW: Objection.

17 BY MR. GUARD:

18 Q. Is that correct?

19 A. **Yes.**

20 Q. All right. And there was a lot of press
21 coverage. Would that be fair?

22 MR. DARROW: Objection.

1 **A. Yes.**

2 Q. Okay. And you had to respond to that
3 situation, right?

4 MR. DARROW: Objection.

5 **A. Yes.**

6 Q. Okay. And what -- the comments that were
7 being made by the three of you were kind of detailing
8 that -- the Border Patrol's response to the situation
9 of the 16 to 19 thousand migrants that had entered
10 the United States illegally, right?

11 MR. DARROW: Objection.

12 **A. Yes.**

13 Q. Okay. I want to kind of focus on your
14 comments, and if you look at the third page of
15 Exhibit 7, and I'm not sure if it's -- since there's
16 no indents, I can't tell if it's a continuation of
17 the previous paragraph or it's a new paragraph, but
18 the paragraph that says, "I talked yesterday"? Do
19 you see where I am at the top of the page?

20 **A. Yes, okay.**

21 Q. You said, "I talked yesterday about how so
22 much of this migration is driven through social media

1 and word of mouth, and smugglers are significant
2 drivers of the misinformation that people that" --
3 "that gets to people to undertake these dangerous
4 journeys." What are you describing with that
5 sentence?

6 A. So prior to this event, we had scheduled
7 some repatriation flights back to Haiti. Those
8 flights were cancelled, and when those flights were
9 cancelled, those migrants were unable to be
10 repatriated, and so what happens quite often is the
11 migrant population will use the social media
12 platforms to inform folks that were already making
13 the trek from South America and from some of the
14 other countries, most -- or quite a few of the
15 Haitian migrants that we encountered underneath the
16 bridge had already been domiciled in other countries
17 in South America. So they had begun to make the
18 trek, and when they found out that the flights had
19 been turned off in Del Rio, we found that criminal
20 organizations, smuggling organizations were
21 chartering buses and driving them to Ciudad Acuna,
22 which is just south of Del Rio.

1 Q. Okay, and the migrants were being told that
2 if you go to the Del Rio sector, you will not be
3 repatriated, correct?

4 MR. DARROW: Objection.

5 A. They were told a couple of things. They
6 were told that it's safe in Acuna and in Del Rio.
7 They were told that they would be processed
8 relatively quickly, and then I'm sure they were told
9 that there was a chance that they may be released.

10 Q. Okay. Were -- from those flights that were
11 cancelled, were any of those Haitians actually
12 released into the interior of the United States?

13 A. Yes.

14 Q. Do you know approximately how many Haitians
15 were released into the interior of the United States?

16 A. No.

17 Q. Are we talking tens, hundreds or thousands

18 --

19 MR. DARROW: Objection.

20 BY MR. GUARD:

21 Q. -- being released?

22 A. I would assume it was in the hundreds

1 initially.

2 Q. Okay. Now, after the crowd of aliens under
3 the bridge had gathered, how were they dispersed?

4 A. So we focused on the vulnerable populations
5 first. When I arrived, we had a rough estimate of
6 about 16,000 migrants underneath the bridge, and so
7 just in doing my initial assessment, I was able to
8 ascertain that many of them were family units and
9 quite a few of them were pregnant females, and so we
10 worked with our partners to try and focus on those
11 individuals first.

12 Q. Okay. As to the family units and to the
13 pregnant females, when they would go through
14 processing, would -- would they have likely been
15 released into the interior of the United States or
16 would they have been removed?

17 MR. DARROW: Objection.

18 A. So most of those family units and -- were
19 taken to our Office of Field Operations. We had to
20 shut down the port of entry in Del Rio, and we began
21 processing them in a different facility, and then we
22 also bused some of those populations to some of the

1 other surrounding sectors, and we actually flew some
2 of them to other sectors. What their disposition
3 once they reached the processing centers is unknown
4 to me.

5 Q. Okay. This was September of 2021?

6 A. That's correct.

7 Q. All right. Do you know if by September of
8 2021, ICE was -- or had any detention beds for family
9 units?

10 MR. DARROW: Objection.

11 A. No.

12 Q. No, you don't know that they had -- whether
13 they had detention for family units, or no, they did
14 not have any detention for family units?

15 A. It is my understanding that they did not
16 have any detention beds for family units.

17 Q. So as to the family units in that group of
18 16 to 19 thousand people, they could not have been
19 detained, right?

20 MR. DARROW: Objection.

21 A. That's correct.

22 Q. All right. So the option would have been

1 to admit them or to repatriate them, right?

2 MR. DARROW: Objection.

3 **A. Yes.**

4 Q. Now, if you look at the next paragraph in
5 your statement -- first let me ask you this because I
6 forgot to ask it, and you can take a minute if you'd
7 like to take a minute, but are the paragraphs here
8 that -- where it says transcript of U.S. Border
9 Patrol Chief Ortiz, are they accurate?

10 **A. Yes.**

11 Q. Okay. If you look at the last paragraph,
12 the first sentence says, "The smugglers leverage
13 misinformation to mislead people. Some of that
14 information is focused on TPS." First, what is TPS?

15 **A. Temporary protective status.**

16 Q. All right. And what are smugglers doing
17 with information on TPS?

18 **A. They are telling -- or they were telling**
19 **the migrant population that regardless of when you**
20 **entered or were processed, that you would be allowed**
21 **to stay in the United States.**

22 Q. Would you agree, Chief Ortiz, that the

1 aliens who cite favorable immigration policy as a
2 reason to come to the United States are perceiving
3 what actually is happening in the United States?

4 MR. DARROW: Objection.

5 **A. Yes.**

6 Q. Prior to President Biden being elected, did
7 you review Candidate Biden's immigration proposals?

8 MR. DARROW: Objection.

9 THE WITNESS: No.

10 MR. GUARD: If this is a good time to take
11 a break, we can take a break because I did not write
12 down my tab number on --

13 THE WITNESS: Yeah.

14 MR. GUARD: -- this exhibit, and we've been
15 going for a while.

16 THE WITNESS: That'll work.

17 MR. GUARD: Okay.

18 THE VIDEOGRAPHER: We are now off the
19 record at 10:48.

20 (Recessed at 10:48 a.m.)

21 (Reconvened at 10:57 a.m.)

22 THE VIDEOGRAPHER: We're now back on the

1 record at 10:57.

2 BY MR. GUARD:

3 Q. All right, Chief Ortiz, I think before we
4 left and went on break, I was asking you if you'd
5 reviewed Candidate Biden's immigration proposals. Do
6 you remember that?

7 A. Yes.

8 Q. All right, and you had not.

9 A. I had not.

10 Q. Okay. I'm going to show you what I marked
11 for identification as Exhibit 8 to your deposition.

12 (Ortiz Exhibit No. 8
13 was marked for
14 identification.)

15 BY MR. GUARD:

16 Q. If you look at the second sentence on the
17 first page of Exhibit 8, it reads, "When children are
18 locked away in overcrowded detention centers and the
19 government seeks them there indefinitely."

20 MR. DARROW: Take your time to read it if
21 you need it.

22 BY MR. GUARD:

1 Q. Did I read that sentence correctly?

2 A. Yes.

3 Q. During the Trump administration, is that
4 sentence -- was that sentence true, to your
5 knowledge?

6 MR. DARROW: Objection.

7 A. We had a unaccompanied child crisis in
8 2014. I was the deputy chief in Rio Grande Valley,
9 and we saw a significant spike in unaccompanied
10 children during that time.

11 Q. And so 2014, that would have been the Obama
12 administration?

13 A. That's correct.

14 Q. Okay. Was that still true under the Trump
15 administration?

16 MR. DARROW: Objection.

17 A. We had seen steady increases since 2014 of
18 unaccompanied children that we hadn't experienced
19 prior to that.

20 Q. Okay. But were unaccompanied children
21 walked away in overcrowded detention facilities and
22 kept there indefinitely at that time?

1 **A. No.**

2 MR. DARROW: Objection.

3 BY MR. GUARD:

4 Q. All right. If you'll turn to page 5 of
5 Exhibit 8, the second bullet point says, "End
6 prolonged detention and reinvest in a case management
7 program." You see that?

8 **A. Yes.**

9 Q. In the two years that the Biden
10 administration has been in office, or roughly two
11 years, have they ended prolonged detention?

12 MR. DARROW: Objection, and take your time
13 to read it if you need it.

14 **A. We have continued to do a better job of**
15 **minimizing the time in custody of the migrant**
16 **population within the Border Patrol, and I would**
17 **imagine that's probably holds true for our ICE/ERO**
18 **partners.**

19 Q. Are you aware of whether or not ICE has cut
20 its detention capacity?

21 MR. DARROW: Objection.

22 **A. I could not speak to that.**

1 Q. So you as the chief of Border Patrol do not
2 know whether ICE has reduced the number of detention
3 beds that it has.

4 MR. DARROW: Objection.

5 A. I do know that ICE has had some capacity
6 issues with respect to detention beds and space, but
7 the number of reduced beds, I'm not familiar with the
8 exact number.

9 Q. And you are familiar, I believe, with the
10 fact that ICE has stopped detaining family units,
11 correct?

12 MR. DARROW: Objection.

13 A. I am familiar that they are no longer
14 manning residential facilities.

15 Q. Okay. If you'll look down in the
16 paragraph, one, two, three, four, five sentences in,
17 the sentence reads, "Biden will codify protections to
18 safeguard children to make sure their treatment is
19 consistent with their best interest and invest in
20 community-based" -- "community-based case management
21 programs, including those supported by faith-based
22 organizations, such as Lutheran Immigration and

1 Refugee Services, to move migrants into safe
2 environments as quickly as possible." Did I read
3 that correctly?

4 **A. Yes.**

5 Q. Now, that sentence uses the word "codify."
6 Do you see that?

7 **A. I do.**

8 Q. What does the word "codify" mean to you?

9 **A. It means that they're going to establish a**
10 **process and develop a policy that focuses on**
11 **protecting unaccompanied children and migrants.**

12 Q. Does it also mean for family units?

13 MR. DARROW: Objection.

14 **A. It doesn't indicate that it's for family**
15 **units.**

16 Q. Okay, but family units have children,
17 right?

18 **A. Typically.**

19 Q. Okay. And the word "codify" -- does that
20 indicate that they need to go to Congress to pass
21 something?

22 MR. DARROW: Objection.

1 **A. That I'm not going to assume.**

2 Q. Okay.

3 **A. We've seen executive orders issued for the**
4 **last few years that we hadn't seen previously, and I**
5 **say the last, I'm talking about the last five or six**
6 **years.**

7 Q. Sure. Now, Border Patrol itself under your
8 direction -- strike that. For a moment, Chief Ortiz,
9 I want you to ignore the existence of the Title 42 CD
10 order and assume Title 8 was the only -- Title 8
11 flows are the only flows for aliens encountered at
12 the southern border, okay? When a Border Patrol
13 agent finds an individual on or near the southwest
14 border that he or she believes to be an alien, does
15 the agent seek a warrant to detain the alien?

16 MR. DARROW: Objection.

17 **A. Typically when we encounter migrants along**
18 **the southwest border, we process them via Title 8,**
19 **which is our authority to issue a notice to appear**
20 **and a warrant of arrest, and then if they are from**
21 **Mexico, we can voluntarily return that migrant**
22 **population with a repatriation agreement we have with**

1 **the government of Mexico.**

2 Q. Okay, but as far as the actual seizing of
3 the alien, is it a warrantless or a warrant seizure
4 of -- of -- of the --

5 **A. Warrant.**

6 Q. So okay. All right, so the border agent
7 seizes the alien and conducts an inspection, right?

8 **A. That's correct.**

9 Q. Okay. With that inspection, the Border
10 Patrol agent is trying to determine whether the alien
11 is admissible or inadmissible, right?

12 MR. DARROW: Objection.

13 **A. That's correct.**

14 Q. Okay. And you know, the Border Patrol
15 agent is trying to discern the appropriate pathway to
16 process an alien, correct?

17 **A. That's correct.**

18 Q. Okay. And you're familiar with the
19 immigration and naturalization act of 1965?

20 **A. I am.**

21 Q. Okay. And Congress and I'm going to call
22 it the INA established pathways, correct?

1 **A. That's correct.**

2 MR. DARROW: Objection.

3 BY MR. GUARD:

4 Q. And Congress set out the process for
5 inspections to happen.

6 MR. DARROW: Objection.

7 BY MR. GUARD:

8 Q. Correct?

9 **A. Yes.**

10 Q. And I believe it's section 235 of the
11 Immigration and Nationality Act, or also known as 8
12 USC section 1225; is that correct?

13 **A. Yes.**

14 Q. All right, let's -- let's look at that. I
15 keep on losing my pen. You'll have eight or ten pens
16 in this -- we're on 9?

17 (Ortiz Exhibit No. 9
18 was marked for
19 identification.)

20 BY MR. GUARD:

21 Q. I show you what I marked for identification
22 as Exhibit Number 9. Now, Exhibit Number 9 is the --

1 is section 235 of the Immigration and Nationality
2 Act, is it not?

3 **A. Yes.**

4 Q. Okay, and if you look at section (a)(1) of
5 that statute, it provides -- or that section, it
6 provides aliens who are present in the United States
7 and not admitted shall be detained, correct?

8 MR. DARROW: Objection.

9 **A. Where does it say not --**

10 Q. If you look at --

11 **A. You said (a)(1)?**

12 Q. Yes.

13 **A. I don't see anything that talks about**
14 **detention.**

15 Q. Sorry. Excuse me. (b)(1). Strike that.
16 All right, let's move on. Section 1225(a)(1) is the
17 authority that Border Patrol agents use every day to
18 conduct inspections, right?

19 MR. DARROW: Objection.

20 **A. Yes.**

21 Q. Now, looking at 1225(a)(3), that's the
22 section of the statute that provides for an

1 inspection.

2 MR. DARROW: Objection.

3 **A. Yes.**

4 Q. Okay. And looking down to the next
5 section, it has a section entitled -- or -- so that's
6 1225(a)(4), it says, "Withdrawal of an application
7 for admission." Do you see that?

8 **A. I do.**

9 Q. And withdrawal of an application, that is a
10 -- one of the processing pathways, is it not?

11 MR. DARROW: Objection.

12 **A. Not that the Border Patrol uses.**

13 Q. Okay. So an alien, if they just want to be
14 removed, they cannot withdraw their application and
15 just be repatriated?

16 MR. DARROW: Objection.

17 **A. We do have a voluntary return.**

18 Q. Okay.

19 **A. Yeah.**

20 Q. All right. Looking down at (b)(1), so
21 that's on the second page of Exhibit Number 9,
22 (b)(1)(A) sub 1 -- I guess it's actually on the first

1 page. I apologize. So (b)(1), big A little I is --
2 it describes the inspection that is being conducted
3 generally, correct?

4 MR. DARROW: Objection.

5 **A. That's correct.**

6 Q. Okay. And it makes reference to two
7 statutes, 1182(a) subsection A, 6 big C, and
8 1182(a)(7). Do you see that?

9 **A. I do.**

10 Q. Okay. And so the Border Patrol, when it's
11 doing this inspection in general, is inquiring of an
12 alien about his citizenship, correct?

13 MR. DARROW: Objection.

14 **A. Yes.**

15 Q. Okay. And if that alien misrepresents his
16 citizenship, he can be removed?

17 MR. DARROW: Objection.

18 **A. Yes.**

19 Q. And if he does not have a visa and a
20 passport, he can be removed.

21 **A. Yes.**

22 Q. Okay. And so the initial screening, you're

1 gathering biographical information and citizenship
2 documents. Is that fair to say?

3 MR. DARROW: Objection.

4 **A. If they possess travel documents or some**
5 **sort of immigration documents, yes, we will --**

6 Q. Okay. And all or almost all of the aliens
7 that Border Patrol encounters at the southern border
8 don't have a visa to enter the United States. Is
9 that fair?

10 MR. DARROW: Objection.

11 **A. Yes.**

12 Q. Okay, and the vast majority of aliens
13 encountered at the southern border don't have a
14 passport, right?

15 MR. DARROW: Objection.

16 **A. Typically they discard them before they**
17 **enter the U.S. Quite often our officers will find**
18 **them discarded in or around the border area.**

19 Q. Okay, and sometimes they'll have I think
20 they call it pocket trash? Are you familiar with
21 that term?

22 **A. I am.**

1 Q. What is pocket trash?

2 A. It could be anything from a map to phone
3 numbers to smugglers or, you know, information on who
4 to contact when they make it to the U.S.

5 Q. Do sometimes pocket trash include
6 information indicating that whatever they've told the
7 Border Patrol agent is not true?

8 MR. DARROW: Objection.

9 A. Yes.

10 Q. Okay. Under 1225, if an alien doesn't have
11 a visa and a valid passport, what is supposed to
12 happen to that alien?

13 MR. DARROW: Objection.

14 A. We take them into custody.

15 Q. Okay. Are they supposed to be detained?

16 MR. DARROW: Objection.

17 A. Yes.

18 Q. Okay. And -- and they're to be removed
19 unless they request asylum?

20 MR. DARROW: Objection.

21 A. Yes.

22 Q. Okay.

1 **A. If we have a repatriation agreement with**
2 **the country that they are traveling from or that they**
3 **are citizens of.**

4 Q. Okay. And the removal, assuming that
5 there's a repatriation agreement, is supposed to be
6 immediate, correct?

7 MR. DARROW: Objection.

8 **A. Well, that's very dependent on logistics.**

9 Q. Okay.

10 **A. Flights occur, you know, at different**
11 **times, and so a lot of coordination and logistics**
12 **have to happen.**

13 Q. Okay. And that would be coordination and
14 logistics with ICE.

15 **A. With ICE and the host country.**

16 Q. Okay, all right. And the exception -- and
17 again, the exception to removal is if the alien
18 claims asylum?

19 MR. DARROW: Objection.

20 BY MR. GUARD:

21 Q. Correct?

22 **A. Well, there's a couple of exceptions. One**

1 is asylum. The second may be if they're a part of a
2 smuggling investigation or event, they may be held as
3 a material witness.

4 Q. Any other exceptions?

5 A. Typically those are the ones that we
6 encounter the most.

7 Q. Okay. And how frequently do you hold or
8 process people as material witnesses?

9 MR. DARROW: Objection.

10 A. It's very dependent on the sector. When
11 you think about, you know, Laredo and Tucson sector
12 where we see the criminal organizations, smuggling
13 organizations operating at a higher level, I think
14 you'll find that we'll have more material witnesses
15 kept within ICE's custody in those locations.

16 Q. Okay. Would the number of exceptions for
17 material witnesses be greater than the number of
18 people claiming asylum?

19 MR. DARROW: Objection.

20 A. No.

21 Q. Would the number of people climb claiming
22 asylum dwarf the number of material witnesses?

1 MR. DARROW: Objection.

2 A. Once again, it's going to be dependent on
3 location.

4 Q. Okay, all right. Is it typical for aliens
5 encountered at the border to claim asylum?

6 MR. DARROW: Objection.

7 A. Initially when they are taken into custody
8 by the Border Patrol, quite often the asylum claim
9 does not happen until after the processing begins --

10 Q. Okay.

11 A. -- or they are turned over to ICE.

12 Q. Okay. And while I'm sure it varies,
13 sometimes they're processed on the scene. Is that
14 fair to say?

15 MR. DARROW: Objection.

16 A. We have instituted some mobile processing
17 --

18 Q. Okay.

19 A. -- in certain locations due to COVID, but
20 more often than not, most of them are processed at a
21 facility or a centralized processing center.

22 Q. Okay, all right. So it's not -- they don't

1 make an asylum claim when the initial encounter
2 happens. They make the claim when they get
3 transferred back to a Border Patrol processing
4 center. Is that fair?

5 MR. DARROW: Objection.

6 **A. Typically that's when that happens, yes.**

7 Q. Okay. And it's not unusual for aliens to
8 make an asylum claim?

9 MR. DARROW: Objection.

10 **A. It's not unusual.**

11 Q. Okay. If an alien claims asylum, the agent
12 or some other immigration officer has to perform a
13 further interview, correct?

14 MR. DARROW: Objection.

15 **A. Yes.**

16 Q. All right, at that interview, is it
17 determined if the alien has a credible fear of
18 persecution?

19 MR. DARROW: Objection.

20 BY MR. GUARD:

21 Q. Correct?

22 **A. Persecution or torture.**

1 Q. Would you agree with me, Chief Ortiz, that
2 the vast majority of asylum claims, there is not a
3 credible fear of persecution or torture?

4 MR. DARROW: Objection.

5 A. I do not have the disposition of all the
6 credible fear claims, and it would be unfair for me
7 to --

8 Q. Okay. And -- but that interview is
9 supposed to take place before the alien is processed
10 further, correct?

11 MR. DARROW: Objection.

12 A. Yes.

13 Q. Okay. Are Border Patrol agents currently
14 performing credible fear interviews before they
15 either parole or release aliens on their own
16 recognizance?

17 MR. DARROW: Objection.

18 A. No.

19 Q. Is Border Patrol transferring aliens who
20 have made asylum claims to ICE custody without
21 performing credible fear interviews?

22 A. Yes.

1 Q. Looking -- looking back at -- at Exhibit
2 Number 9 at I think it's (b)(1) large B sub -- you
3 got to love these statutes. Three little I -- or no,
4 excuse me, two little I, it says "Referral of Certain
5 Aliens." You see that?

6 **A. I do.**

7 Q. All right. What does that section indicate
8 that is supposed to happen if the asylum officer
9 determines that an alien has a credible fear of
10 persecution?

11 MR. DARROW: Objection.

12 **A. The alien shall be detained for further
13 consideration of the application for asylum.**

14 Q. If you look at the next subsection, so
15 that's 1225(b)(2) big B sub 3 little I big I, what is
16 supposed to happen if the asylum officer finds that
17 an alien does not have a credible fear of
18 persecution?

19 MR. DARROW: Objection.

20 **A. Removal without further review if no
21 credible fear of persecution.**

22 Q. Is the alien supposed to be detained until

1 removal?

2 MR. DARROW: Objection.

3 A. Yes.

4 Q. Okay. Now, that's not necessarily the end
5 of the process, correct?

6 A. That's correct.

7 MR. DARROW: Objection.

8 BY MR. GUARD:

9 Q. An alien who's made an asylum claim can ask
10 for review; is that right?

11 MR. DARROW: Objection.

12 A. Yes.

13 Q. If the alien asks for review of a finding
14 of no credible fear, if you look at 1225(b)(2), sub
15 B, I think it's three little I, sub 4, there's a
16 section that says "Mandatory Detention." Excuse me.
17 (b)(1). Sorry. (b)(1) sub B three little I sub 4.
18 It's on 2, second column, second heading in, it says
19 "Mandatory Detention." Do you see that?

20 A. I do.

21 Q. All right. So if an alien who got a
22 finding of no credible fear on their asylum claim

1 wants a hearing, what is supposed to happen to that
2 alien pending the hearing?

3 MR. DARROW: Objection.

4 **A. Should be detained.**

5 Q. And it actually uses the word "mandatory,"
6 correct?

7 MR. DARROW: Objection.

8 BY MR. GUARD:

9 Q. Now, Chief Ortiz, when you tell your Border
10 Patrol agents that they shall do something, do you
11 expect them to follow your command?

12 MR. DARROW: Objection.

13 **A. Yes.**

14 Q. Okay. When you tell your Border Patrol
15 agents that they shall do something, do you expect
16 that they will try and figure out ways around your
17 command?

18 MR. DARROW: Objection.

19 **A. No.**

20 Q. Okay. For example, did the Border Patrol
21 agent require its agents to obtain the COVID-19
22 vaccine?

1 MR. DARROW: Objection.

2 A. Yes.

3 Q. Were any Border Patrol agents fired for
4 refusing to get vaccinated?

5 MR. DARROW: Objection.

6 A. No.

7 Q. What happened to the Border Patrol agents
8 that refused to get vaccinated?

9 MR. DARROW: Objection.

10 A. **Ninety-eight percent of the employees that**
11 **failed to be vaccinated submitted a request for**
12 **exception.**

13 Q. Okay. They filed for an exemption based on
14 some ground.

15 A. Yes.

16 MR. DARROW: Objection.

17 BY MR. GUARD:

18 Q. What about that two percent?

19 MR. DARROW: Objection.

20 A. **The two percent of the population continued**
21 **-- either retired or opted to resign.**

22 Q. Chief Ortiz, and if you need to take a

1 moment, please take a moment. Is there anywhere in
2 section 1225, Exhibit 9 that's in front of you, where
3 the statutory language indicates that the alien shall
4 be released?

5 MR. DARROW: Objection.

6 A. I'd have to read the entire document.

7 Q. Do you know from your experience utilizing
8 this section in your job, do you know that from just
9 your use?

10 MR. DARROW: Objection.

11 A. We -- when you talk about releases, you
12 know, in the Border Patrol context, I consider
13 paroles, I consider, you know, other means of
14 releasing somebody out of our custody as an option
15 for humanitarian reasons. We've had situations where
16 we may encounter somebody who is, you know, eight,
17 eight and a half months pregnant, or there may be a
18 medical or humanitarian reason for us to release
19 somebody into the community or to a sponsor or to --
20 so there are other --

21 Q. Sure.

22 A. -- conditions that exist.

1 Q. And we're going to look at I think the
2 statute that allows for that in a little bit, but
3 those situations that you just described are
4 individual one-off kind of situations, correct?

5 MR. DARROW: Objection.

6 **A. That's correct.**

7 Q. Okay. Is there anything within section
8 1225 that allows for the processing of family units
9 to be different --

10 MR. DARROW: Objection.

11 BY MR. GUARD:

12 Q. -- than single adults?

13 **A. I don't believe so.**

14 Q. Okay. Chief Ortiz, if trafficking
15 organizations know that family units will be
16 released, aren't they likely to disseminate that
17 information to migrants?

18 MR. DARROW: Objection.

19 **A. Yes.**

20 Q. Okay. Does differentiating detention
21 policy based on whether an alien is part of a family
22 or not encourage some forms of irregular immigration

1 to the United States?

2 MR. DARROW: Objection.

3 A. I would imagine so.

4 Q. Okay. Does differentiating detention
5 policy based on the nationality of an alien encourage
6 irregular immigration?

7 MR. DARROW: Objection.

8 A. Yeah, so you think about, you know, what
9 we're experiencing right now with Cuban, Venezuelans
10 and Nicaraguans and to some degree Peruvians now, the
11 fact that we do not have the ability to repatriate
12 those populations has certainly increased the
13 migration flows from those countries, and so to
14 answer your question, yes.

15 Q. Sure. And do you know if ICE is detaining
16 individuals from those four countries that you just
17 listed?

18 A. So we have instituted a initiative in the
19 last week where we are trying to detain as many of
20 that population within ICE custody in certain areas.
21 We -- when you look at the nine southwest border
22 sectors over the last 12 months, three of them have

1 been problematic for us as an organization, Yuma, Del
2 Rio, Rio Grande Valley. We have been able to do a
3 very good job of managing the security in San Diego,
4 El Centro, El Paso, Big Bend, Laredo. We don't see
5 the same migration flow patterns in those sectors,
6 and a lot of that is driven by the criminal
7 organizations.

8 And so when you think about instituting a
9 -- and having the ability to detain certain
10 populations, you really want to focus that in areas
11 where you see the highest flows, and that continues
12 to be those three sectors, Yuma, Del Rio and Rio
13 Grande Valley.

14 Q. And so you want -- is the purpose of kind
15 of targeted detention of specific populations to
16 either dissuade immigration coming to the southern
17 border, or is it to cause the flows to go to those
18 other sectors and spread out?

19 MR. DARROW: Objection.

20 BY MR. GUARD:

21 Q. Or both?

22 A. It's actually even more than that. It's an

1 opportunity, one, to institute a consequence against
2 the migrant populations, and then certainly as a
3 deterrent.

4 Q. Okay. Going back for a moment to Exhibit
5 Number 9, if you look at I think it's (b)(2)(C), big
6 C, so that's on page 3, first column, bottom of it,
7 it says, "Treatment of aliens arriving from
8 contiguous territory." It's on the bottom of the
9 third page, first column.

10 A. Okay.

11 Q. Are you familiar with a policy called
12 remain in Mexico?

13 MR. DARROW: Objection.

14 A. Yes.

15 Q. Okay. And that policy explicitly required
16 migrants to remain in Mexico until their asylum
17 hearing; is that correct?

18 MR. DARROW: Objection.

19 A. Yes.

20 Q. Okay, and the Biden administration ended
21 that policy, correct?

22 A. Initially, yes.

1 Q. Okay. Has that policy restarted?

2 MR. DARROW: Objection.

3 A. Well, the migrant protection protocols have
4 been operational for, you know, a majority of the
5 calendar year at some degree in certain locations.

6 Q. Is it -- the migrant protection protocols
7 or MPP, are they operating at the same extent as they
8 did under the Trump administration?

9 MR. DARROW: Objection.

10 A. No.

11 Q. Okay. If you -- if someone didn't want
12 children detained because they were traveling to the
13 border with their family, would remain in Mexico
14 accomplish allowing them not to be retained in a
15 custodial setting?

16 MR. DARROW: Objection.

17 A. It would allow them to be detained in a
18 migrant camp in Mexico.

19 Q. Okay. We're on 10 I think.

20 A. Yeah.

21 (Ortiz Exhibit No. 10
22 was marked for

1 **identification.)**

2 BY MR. GUARD:

3 Q. I'm going to show you what I marked for
4 identification as Exhibit 10 to your deposition. Are
5 you familiar with section 212 of the INA?

6 **A. I am.**

7 Q. Okay, and Exhibit Number 10 in front of you
8 is 8 United States code 1182, which is section 212 of
9 the INA, correct?

10 **A. That's correct.**

11 Q. All right. And this section does actually
12 a couple things. First, this section makes certain
13 groups of aliens inadmissible into the United States,
14 right?

15 MR. DARROW: Objection.

16 **A. Yes.**

17 Q. It makes certain criminals inadmissible,
18 correct?

19 MR. DARROW: Objection.

20 **A. Yes.**

21 Q. It makes terrorists unsurprisingly
22 inadmissible, right?

1 MR. DARROW: Objection.

2 A. Yes.

3 Q. All right. And it also makes, another
4 example that seems not surprising, people who commit
5 genocide, right?

6 MR. DARROW: Objection.

7 A. Yes.

8 Q. All right. If you'll turn about 13 pages
9 into Exhibit 10, there's a section that's 1182
10 section -- subsection F?

11 A. What page is it?

12 Q. It's 13. It says "Suspension of Entry or
13 Imposition of Restrictions by President," is what the
14 heading is.

15 MR. DARROW: For the record, it looks like
16 it's on page 145 of the --

17 BY MR. GUARD:

18 Q. Oh, I'm sorry. I apologize.

19 A. Okay.

20 Q. I didn't realize there were page numbers on
21 top. All right, section 1192(f) allows the president
22 to bar admission of any class of aliens, right?

1 MR. DARROW: Objection, and read it if you
2 need to.

3 A. Yes.

4 Q. Okay. Section 1192(f) allows for the
5 exclusion of an entire group of aliens, right?

6 MR. DARROW: Objection.

7 A. Yes.

8 Q. All right. And Congress utilized the word
9 "class" when it wanted to give the authority for the
10 administration to take an action against a group,
11 right?

12 MR. DARROW: Objection.

13 A. I would imagine that's what that means,
14 yes.

15 Q. Okay. Now if you turn -- go back one page,
16 so now that I know there are page numbers on it, 144,
17 it's the 12th page of Exhibit 10, and there's a --
18 it's -- technically it's 1182(d) sub 5 large A,
19 you're familiar with this subsection?

20 MR. DARROW: Objection.

21 A. Yes.

22 Q. All right, and you've actually utilized

1 this subsection in memos, correct?

2 **A. That's correct.**

3 MR. DARROW: Objection.

4 BY MR. GUARD:

5 Q. Looking at section 1182, I believe it's D
6 sub 5 sub A, the authority that's granted by Congress
7 in this section is for relief on a case-by-case
8 basis, correct?

9 MR. DARROW: Objection.

10 **A. Yes.**

11 Q. And Congress chose in that subsection not
12 to utilize the word "class," right?

13 MR. DARROW: Objection.

14 **A. Yeah, I don't see class in here.**

15 Q. Okay. 1182(b) sub 5 sub A requires an
16 individualized determination can be utilized, right?

17 MR. DARROW: Objection.

18 **A. It says by case-by-case basis, yes.**

19 Q. Okay. Now, you mentioned earlier on that
20 you were now detaining aliens from certain countries
21 in certain sectors. You recall that?

22 **A. Yes.**

1 Q. Is the new initiative that you just
2 mentioned related to the July 18th memo that just
3 came out?

4 MR. DARROW: Objection.

5 A. No.

6 Q. Okay. I want to show you what I'm going to
7 mark as Exhibit 11 --

8 (Ortiz Exhibit No. 11
9 was marked for
10 identification.)

11 BY MR. GUARD:

12 Q. -- to your deposition. I think we're on
13 11.

14 MR. DARROW: Thank you.

15 BY MR. GUARD:

16 Q. Have you seen Exhibit 11 before?

17 A. I have.

18 Q. What is Exhibit 11?

19 A. It's a document that displays the
20 processing pathways that Border Patrol has at their
21 disposal.

22 Q. Okay. Is -- okay. There are -- on the

1 left-hand side, there are three diamond shapes that
2 have been blacked out. What are the difference
3 between those three diamond shapes?

4 MR. DARROW: Objection.

5 **A. From my recollection, it is single adults,**
6 **family units and unaccompanied children.**

7 Q. Okay. Is unaccompanied children, would
8 that be the top group?

9 MR. DARROW: Objection. It's blacked out
10 because it's privileged. Don't answer that.

11 MR. GUARD: Okay, well, the document
12 doesn't say it's privileged, so there are claims of
13 privilege. So that's why I was asking. We got these
14 documents in FOIA. There are a whole bunch of
15 exceptions for FOIA.

16 MR. DARROW: This was --

17 MR. GUARD: Oh.

18 MR. DARROW: -- from this case.

19 BY MR. GUARD:

20 Q. Okay, I apologize. Okay, so -- all right,
21 so regardless of which diamond shaped is chosen,
22 which pathway, going across the page, the diamonds

1 are encountering aliens, correct?

2 MR. DARROW: Objection.

3 **A. Yes.**

4 Q. All right. And then there are lines going
5 across the page. It says biographical, biometrics
6 and records check. Do you see that? And that is an
7 inspection?

8 **A. That's part of the processing, yes.**

9 Q. Okay. And then there's a box at the bottom
10 saying 14-year-old and up for biometrics. You have
11 for children that are under 14, you do not gather
12 biometrics; is that correct?

13 **A. That's correct.**

14 Q. Okay, all right. And then the next kind of
15 bar going down the page, it says, "Review history,
16 criminal and immigration." I would assume that is
17 after you gather that biographical data, you do
18 database checks and then you get returns of those
19 database checks that the officer reviews?

20 **A. Yes.**

21 Q. Okay. And for single adults and family
22 units, the next diamond is Title 42, correct?

1 MR. DARROW: Objection.

2 BY MR. GUARD:

3 Q. Are unaccompanied minors subject to Title
4 42 removal?

5 A. No.

6 MR. DARROW: Objection.

7 BY MR. GUARD:

8 Q. Okay. And so there's a CDC order that is
9 currently in effect. Is that fair to say?

10 A. Yes.

11 Q. And the vast majority of folks that
12 illegally enter the United States are being expelled
13 pursuant to that order?

14 MR. DARROW: Objection.

15 A. No.

16 Q. Okay. What percentage approximately is
17 being expelled --

18 MR. DARROW: Objection.

19 BY MR. GUARD:

20 Q. -- pursuant to Title 42?

21 A. The last report I reviewed, it hovered
22 between 35 and 40 percent of the population was being

1 processed via Title 42 and expelled under those
2 authorities, and the remaining were processed via
3 Title 8.

4 Q. Okay. Was there a point in time when that
5 percentage was higher than 35 or 40 percent?

6 MR. DARROW: Objection.

7 A. Yes.

8 Q. In the recent term, was the percentage
9 higher than 35 to 40 percent?

10 MR. DARROW: Objection.

11 A. At the beginning of the year, it was about
12 a 50/50 split.

13 Q. Okay. At the diamond, there's a decision
14 for the -- or a decision that the Border Patrol agent
15 has to make, and this is whether it -- they're Title
16 42 amenable. Do you see that?

17 A. I do.

18 Q. Okay, and if the answer is yes, they're --
19 the alien is expelled; is that correct?

20 MR. DARROW: Objection.

21 A. That's correct.

22 Q. And if it's no, you go down the Title 8

1 processing lanes, right?

2 **A. Yes.**

3 Q. Okay. Now, there's a box at the bottom
4 that it says that certain countries present unique
5 challenges to U.S. Border Patrol by not accepting
6 repatriations. Are those countries -- well, strike
7 that. We've talked about several countries that
8 don't accept repatriations. Are they among the
9 countries that aren't also receiving repatriations to
10 Title 42?

11 **A. Yes.**

12 Q. Okay, all right. Now looking at the Title
13 8 path, are -- there are one, two, three, four, five,
14 six, seven different processing pathways in this
15 diagram from Title 42 to Title 8 and going out; is
16 that correct?

17 **A. Well, there's nine if you include the top
18 two, the voluntary return and the WA/NTA.**

19 Q. Okay. Those are actually repeated in the
20 bottom seven, correct?

21 **A. Yeah.**

22 Q. Okay, all right. All right, we've already

1 talked I believe about the MPP pathway, correct?

2 **A. Yes.**

3 Q. All right. We haven't yet talked about the
4 expedited removal pathway, have we?

5 **A. No.**

6 MR. DARROW: Objection.

7 BY MR. GUARD:

8 Q. Okay. What is expedited removal?

9 **A. It's a Title 8 processing pathway for**
10 **migrants that do not have a credible fear or asylum**
11 **claim.**

12 Q. Okay, and what happens to aliens who are
13 subject to expedited removal?

14 **A. They are processed and then turned over to**
15 **ICE for detention and then repatriated back.**

16 Q. Okay. Do you know if there are any pending
17 rules or pending proposed rules regarding expedited
18 removal?

19 MR. DARROW: Objection. That's subject to
20 the deliberative process privilege. Don't answer
21 that.

22 MR. GUARD: I believe it's actually been

1 published in the Federal Register, so I was not
2 seeking deliberative privilege material. If you'll
3 let me get the proposed rule out, I'm happy to do
4 that.

5 MR. DARROW: No, I just clarified that
6 you're asking for public matter.

7 BY MR. GUARD:

8 Q. Yes. Are you aware that there's public
9 information about a change to expedited removal?

10 **A. Yes.**

11 Q. And what is your understanding of the
12 proposed rule on expedited removal? What is the
13 change?

14 **A. I'd have to -- I'd have to go back and
15 review it.**

16 Q. Well, does it expand -- do you know sitting
17 here right now as the chief of the Border Patrol
18 whether it expands or contracts expedited removal?

19 MR. DARROW: Objection.

20 **A. I believe it contracts it.**

21 Q. Okay. So you're having a historic surge of
22 aliens crossing the southern border, and the Biden

1 administration is trying to tie Border Patrol's hands
2 and restrict a processing pathway; is that correct?

3 MR. DARROW: Objection.

4 **A. I can't assume what the policy officials**
5 **are proposing. I can tell you that as Border Patrol**
6 **agents, you know, we try and leverage as many of the**
7 **pathways that we have at our disposal, and ER is one**
8 **of them.**

9 Q. Okay. And the contraction of the
10 availability of ER, as you called it, means that the
11 aliens that were going through expedited removal have
12 to go through a different pathway, right?

13 MR. DARROW: Objection.

14 **A. Potentially, yes.**

15 Q. Okay. And so we talked about MPP earlier,
16 and that -- MPP is not being utilized to the extent
17 it was previously under the Trump administration,
18 correct?

19 MR. DARROW: Objection.

20 **A. Yes.**

21 Q. So MPP has been contracted, right?

22 MR. DARROW: Objection.

1 **A. Yes.**

2 Q. Expedited removal has been contracted.

3 MR. DARROW: Objection.

4 **A. We're still leveraging ERs, not -- not to**
5 **the same degree that -- that we have in the past.**

6 Q. Okay, and so two pathways that were
7 previously available are being limited or contracted,
8 right?

9 MR. DARROW: Objection.

10 **A. Yes.**

11 Q. There are -- on the seven -- or the --
12 looking at the bottom, the seven different
13 categories, we talked about expedited removal and
14 MPP. There are two that have the -- well, yeah, have
15 -- one has NTA and the other has notice to appear.
16 Do you see that?

17 **A. Yes.**

18 Q. All right. The warrant of arrest in NTA,
19 that's warrant of arrest slash notice to appear,
20 correct?

21 **A. That's correct.**

22 Q. All right. And the one that's I guess two

1 spots down below on Exhibit 11 is notice to appear
2 slash own recognizance. Do you see that?

3 **A. I do.**

4 Q. Okay. What is the difference between those
5 two processing pathways?

6 **A. Warrant of arrest, NTA, the individual will**
7 **be kept in custody. Notice to appear O.R., the**
8 **individual potentially would be released.**

9 Q. Okay. Would the warrant of arrest slash
10 NTA pathway include aliens that you encountered that
11 were going to be indicted criminally for some
12 violation of law?

13 **A. Yes.**

14 MR. DARROW: Objection.

15 BY MR. GUARD:

16 Q. Okay. In addition to Title 8, Border
17 Patrol agents also from time to time deal with Title
18 18 and Title 21?

19 **A. Yes.**

20 MR. DARROW: Objection.

21 BY MR. GUARD:

22 Q. Okay. Title 18 is federal crimes, and

1 Title 21 is controlled substance offenses; is that
2 correct?

3 MR. DARROW: Objection.

4 A. Yes.

5 Q. Okay. The first one, reinstatement of
6 prior order removal, bag and baggage, what is that?

7 A. That is somebody who's already been ordered
8 removed from the country, their immigration hearing
9 was either heard and they were ordered removed, and
10 so when the agent or the officer, immigration officer
11 encounters them in the field, the processing has
12 already been completed and a disposition has already
13 been rendered, and so they are taken into custody,
14 turned over to ICE and removed.

15 Q. Okay. What does bag and baggage refer to?

16 A. It just refers to the processing of those
17 individuals.

18 Q. Okay, all right. Looking down to the third
19 of the seven that are listed on the bottom of Exhibit
20 11, it says voluntary return slash withdrawal of
21 application of admission. What does that pathway
22 include?

1 **A.** Those are typically centered around the
2 **Mexican nationals, that population group, and allows**
3 **us to process them and allows them to be removed at**
4 **the nearest port of entry.**

5 Q. Okay, okay. Looking at the notice to
6 appear slash own recognizance released, I believe you
7 described that those folks are released. Is that
8 fair?

9 MR. DARROW: Objection.

10 **A.** **Yes.**

11 Q. Okay. Are aliens that are in that process
12 flow aliens that may be inadmissible?

13 MR. DARROW: Objection.

14 **A.** **They may be, yes.**

15 Q. Okay. And if we were to compare that
16 process way with the parole plus ATD process
17 through-put or whatever -- pathway, would the
18 difference between the two pathways largely be
19 whether a notice to appear is actually issued?

20 MR. DARROW: Objection.

21 **A.** **Yes.**

22 Q. Okay. Is there a consequence to an alien

1 if they fail to appear when they have a notice to
2 appear?

3 **A. At some point, yes.**

4 Q. Okay. Can they have an order of removal
5 entered against them in absentia? You can't nod your
6 head. I need you to say yes or no.

7 **A. Just pausing for --**

8 Q. Oh, okay.

9 **A. Yes.**

10 Q. Okay. Sorry. It's the first time you
11 actually nodded your head, and I just wanted to make
12 sure we weren't going to fall into a bad habit with
13 the court reporter, or she hates all three of us.
14 Now, we're going to talk about parole plus ATD more a
15 little bit later, but the bubble below the parole
16 plus ATD pathway reads, "Used as a last resort in
17 select sectors when certain triggers are met, single
18 adults is only approved by USB chief and CBP
19 commissioner," right?

20 **A. Yes.**

21 Q. All right. Originally was parole plus ATD
22 meant only for family units?

1 MR. DARROW: Objection.

2 A. Yes.

3 Q. Okay. Do you know when parole plus ATD was
4 first utilized with single adults?

5 A. I'd have to go back and check.

6 Q. Okay. Was it in the last fiscal year?

7 A. Yes.

8 Q. Okay. Was it since January?

9 A. Yes.

10 Q. Okay. For single adults where parole plus
11 ATD is being utilized, are there any common
12 characteristics like national origin that are defined
13 when it is used and when it is not used?

14 A. Yes.

15 Q. All right. What are those common
16 characteristics?

17 A. Quite often it's going to be from
18 populations where we do not have a return mechanism,
19 and then also it would be, you know, for those
20 populations with no criminal history, they are deemed
21 not a security risk, and more often than not, they
22 would be considered vulnerable population.

1 Q. When you said -- so we're talking about
2 single adults, right?

3 A. **Could be a female.**

4 Q. Okay. That's -- you said vulnerable
5 population, so I wanted to -- what do you mean by
6 that?

7 A. **Yes.**

8 Q. Females?

9 A. **Females that may be pregnant in their third
10 trimester.**

11 Q. Okay. Any other common characteristics
12 other than vulnerable adults, people from countries
13 not subject to repatriation, are there any other kind
14 of common characteristics or groups that are parole
15 plus ATDs being utilized as far as single adults?

16 A. **Not that I can think of.**

17 Q. Okay, all right. And the countries that
18 we're talking about regarding not being able to
19 repatriate, are the most common ones Cuba, Nicaragua
20 and Venezuela?

21 MR. DARROW: Objection.

22 A. **Yes.**

1 Q. Okay. Did you approve of the expansion of
2 parole plus ATD to single adults?

3 **A. Yes.**

4 Q. Have you approved its utilization in
5 specific sectors?

6 **A. Yes.**

7 Q. What sectors have you approved its
8 utilization in?

9 **A. Yuma, Del Rio, and Rio Grande Valley.**

10 Q. Okay. Now, we kind of moved past it pretty
11 quickly because of the bubble there, but as far as
12 family units, have you approved parole plus ATD being
13 utilized in any sectors?

14 **A. Yes.**

15 Q. What sectors have you approved parole plus
16 ATD to be utilized in?

17 **A. Those sectors that meet certain criteria,
18 to include detention capacity and our inability to
19 decompress to other locations. So we have seen
20 spikes in other sectors on occasion, and so when we
21 do not have the ability to transfer the migrant
22 population to ICE, we do not have a mechanism to**

1 return them, and they have been in our custody longer
2 than a certain period of time, I have authorized the
3 use of ATD plus parole in certain circumstances.

4 Q. Okay. Would it be in the three sectors
5 that you mentioned earlier?

6 A. Yes.

7 Q. And then a couple sectors on occasion
8 outside those three sectors.

9 A. That's correct.

10 Q. Okay. Now, moving back to single adults,
11 how was the expansion of parole plus ATD communicated
12 to the associates of the southwest border?

13 MR. DARROW: Objection.

14 A. A couple of ways. One, we issued a
15 memoranda, and then we also issued e-mail guidance to
16 the sectors.

17 Q. Counsel, we've not received a copy of any
18 memoranda expanding it to single adults, and I think
19 we've requested that in discovery, so I would ask for
20 it again, and I'll reserve having to recall this
21 witness once we get that memo. Do you have any idea
22 of approximately how many single adults have been

1 released utilizing parole plus ATD?

2 **A. No.**

3 MR. GUARD: Okay, all right. It is noon.
4 Do you want to take a break for lunch because I'm
5 about to start a whole new subject that's going to
6 take about an hour.

7 MR. DARROW: Take a break for lunch?

8 THE WITNESS: Sure.

9 (Recessed at 11:59 a.m.)

10 (Reconvened at 1:08 p.m.)

11 THE VIDEOGRAPHER: We're now back on the
12 record at 13:08.

13 BY MR. GUARD:

14 Q. All right, when we broke, we were talking
15 about immigration processing pathways that Border
16 Patrol utilizes. I want to change the subject and
17 talk about detention and detention capacity. Now, in
18 the last several physical years, Border Patrol under
19 your direction has taken proactive steps to deal with
20 the border crisis as far as its detention capacity,
21 correct?

22 **A. Yes.**

1 Q. All right. You've actually increased
2 Border Patrol's detention capacity, right?

3 A. Yes.

4 Q. You put up I think one or two soft-sided
5 facilities; is that correct?

6 A. We put up multiple soft-sided facilities,
7 and we also completed our centralized processing
8 center in Rio Grande Valley, which is our Ursula
9 facility. We stood that up under the previous
10 administration after the -- in 2014, and continued to
11 operate that for the next four years, but it needed
12 some engineer's modifications to bring it up to code,
13 and so we in essence had to shut it down, but over
14 the last -- I believe we opened it back up in
15 December.

16 Q. Okay. And increasing detention capacity
17 for any organization, but for a federal government
18 agency, takes time, right?

19 A. Yeah, most definitely. You need both, in
20 this case, the contracting ability to be able to do
21 it, you have to have the funding to be able to do it,
22 and then you have to have the manpower to support

1 those facilities.

2 Q. And standing up additional facilities is
3 something that takes time, right? Takes multiple
4 years, correct?

5 A. Typically -- I mean, we have stood up some
6 soft-sided facilities in relatively quick periods of
7 time depending on the conditions, but more often than
8 not, it takes months if not a year to plan.

9 Q. Okay, and today, you can now handle a
10 higher volume of aliens as far as processing than you
11 could before January of 2021, right?

12 MR. DARROW: Objection.

13 A. So depending on what you are sort of -- so
14 we were already dealing with this COVID environment
15 in January 2021, and so our ability to safely care
16 for, detain, process the migrant population as well
17 as care -- ensure safety and security of our
18 personnel was already being challenged. When you
19 think about, you know, having the ability to --
20 normally without it being in a pandemic or in a COVID
21 environment, a whole 17,000 people at max capacity,
22 that's not optimal. When you talk about detention,

1 space as law enforcement officials, you don't want to
2 fill every seat, every bed, every corner of those
3 processing centers. I mean, that's -- when you get
4 to those -- or you exceed or reach those maximum
5 capacity levels, you are really stretching the
6 logistics and the capacity of the sectors and the
7 stations.

8 Q. I appreciate that, Chief Ortiz, but I guess
9 from -- just from a mathematical perspective, the
10 number of available beds has increased as far as
11 Border Patrol from January 2021 till the present.

12 A. Well, we have really no beds. We were
13 never -- processing --

14 Q. Yes.

15 A. -- centers.

16 Q. Okay, I was --

17 A. Occupancy level of our facilities has
18 increased, yes.

19 Q. Okay, that's all I was trying to get at.

20 A. Okay.

21 Q. And I appreciate that during COVID, you
22 were at 75 percent occupancy level; is that right?

1 **A. No, in some levels it was very dependent on**
2 **the community, the facility itself, some of the -- as**
3 **I mentioned, the engineering controls that existed in**
4 **some of those facilities, and in some facilities, we**
5 **had to process outside because we did not have enough**
6 **space to process the amount of migrants we were**
7 **encountering.**

8 **Q. Okay. I'm going to show you what I've**
9 **marked for identification as Exhibit 12 to your**
10 **deposition.**

11 (Ortiz Exhibit No. 12
12 was marked for
13 identification.)

14 BY MR. GUARD:

15 **Q. Have you seen Exhibit 12 before, Chief**
16 **Ortiz?**

17 **A. I have.**

18 **Q. Okay. And Exhibit 12 is Homeland**
19 **Security's FY 2021 budget and brief, correct?**

20 **A. Yeah, it appears to be the '21 budget.**

21 **Q. Okay, and what this is is a -- kind of a**
22 **summary that Homeland Security publishes of its**

1 budget for a physical year?

2 **A. For fiscal year '21, yes.**

3 Q. Okay, and on -- if you want to look, on
4 page 22 and 23 of Exhibit 12, it has CBP, some pages
5 about CBP, and it has in -- on pages 22 and 23
6 information about Border Patrol too, correct?

7 **A. That's correct.**

8 Q. All right. All right, if you'll flip to
9 page 32, if you look on page -- so we're not hiding
10 anything, if you look back at page 28, 28 through
11 page 33 deals with ICE, correct?

12 **A. Yeah, it appears to.**

13 Q. Okay, and so this is a summary that is
14 prepared for DHS about ICE's budget highlights,
15 correct?

16 **A. That's what it appears to demonstrate,**
17 **yeah.**

18 Q. Okay, and physical year 2021, that budget
19 would have been put together by the Trump
20 administration; is that correct?

21 **A. That's correct.**

22 Q. Okay. It would have been the last budget

1 that the Trump administration personnel would have
2 put together, right?

3 **A. That's correct.**

4 Q. All right. If you'll look over on page 32,
5 towards the bottom of the page, it has increase to
6 60,000 ADP. Do you see that?

7 **A. Yes.**

8 Q. And so the budget in FY 2021 for ICE was
9 proposing an increase to 60,000 ADP. Do you know
10 what ADP is?

11 **A. You know, I've never seen that acronym
12 before.**

13 Q. Okay. If -- if you look at the second
14 sentence underneath the increase to 60,000 ADP, it --
15 well, look at the first sentence. It says of the
16 60,000, 55,000 are adults and 5,000 for family. Do
17 you see that?

18 **A. Yes.**

19 Q. Okay, and then it talks of the requested
20 adult beds, does ADP have to do -- deal with
21 something with detention beds?

22 MR. DARROW: Objection.

1 **A.** **Yeah, I'm going to assume it stands for**
2 **authorized detention. I'm not sure what the P stands**
3 **for, but --**

4 Q. Okay. Let me see if I can find -- if you
5 look on page 29, if you look at service to the public
6 --

7 **A.** **Average daily population. I wasn't even**
8 **close.**

9 Q. So it's their average detention capacity is
10 what ADP stands for?

11 MR. DARROW: Objection.

12 **A.** **Or daily population, yeah, that's what it**
13 **stands for.**

14 Q. Okay. And it's talking about how many
15 people are housed by ICE, right?

16 MR. DARROW: Objection.

17 **A.** **On average, yes.**

18 Q. Okay. And that's ERO? ERO would be the
19 component housing for ICE?

20 **A.** **Enforcement removal operations, yes.**

21 Q. Okay. I probably -- I forgot that is not
22 one we've yet touched on.

1 **A. Yeah.**

2 Q. So ERO stands for enforcement removal
3 operations; is that right?

4 **A. That's correct.**

5 Q. Okay, and that's an ICE component, right?

6 **A. It's one of two ICE component.**

7 Q. And it's the ICE component that you deal
8 with when you're going to transfer aliens, right?

9 **A. That's correct.**

10 Q. Okay. When Exhibit 12 was being created,
11 would you have had any reason or had any reason for
12 anyone on your staff to kind of peruse what the other
13 components of DHS are doing or not doing?

14 MR. DARROW: Objection. Are you asking
15 when the budget proposal was being created? Because
16 that's deliberative process protected.

17 BY MR. GUARD:

18 Q. No, I'm asking Exhibit 12 was -- it was
19 created, so after it's released, would he have had
20 anyone on his staff review it.

21 **A. Yes, I would.**

22 Q. Okay. Would they report changes or -- or

1 additions or subtractions to the budget of entities
2 that Border Patrol deals with?

3 **A. Yes.**

4 Q. Okay, and you were not Border Patrol chief
5 in -- when the physical year 2021 budget process was
6 going on, were you?

7 **A. No, I was the deputy chief.**

8 Q. Okay. As deputy chief, would you have had
9 someone reporting to you on what was being published
10 as far as ICE's budget and the changes thereto as is
11 relevant to Border Patrol?

12 **A. Yes.**

13 Q. I'm going to mark for identification as
14 Exhibit 13 to your deposition the following document.

15 (Ortiz Exhibit No. 13
16 was marked for
17 identification.)

18 MR. GUARD: I couldn't get a stapler to
19 staple it.

20 MR. DARROW: Too big.

21 BY MR. GUARD:

22 Q. So that was my way of dealing with that

1 problem. Exhibit 13 is a Congressional justification
2 created by the Department of Homeland Security, U.S.
3 Immigration and Customs Enforcement budget overview,
4 correct?

5 **A. That's what it appears to be, yes.**

6 Q. And -- and there are similar documents for
7 each component of the Department of Homeland
8 Security, right?

9 **A. Yes.**

10 Q. And you're involved probably in the
11 creation of the CBP version of this document?

12 **A. I am.**

13 Q. Okay. Now, looking at this document,
14 Exhibit 13, you first will turn to the page on the
15 bottom, it's labeled ICE 3, it's in the strategic
16 context portion of the document?

17 MR. DARROW: You're talking this ICE-3?

18 MR. GUARD: It's under the strategic
19 context component overview. I'm not responsible for
20 --

21 MR. DARROW: There might be a couple ICE 3s
22 in here.

1 BY MR. GUARD:

2 Q. I don't know why -- that would make no
3 sense, but -- hold on. Let me look at it.

4 A. **There is.**

5 Q. Hold on. Strike that. Let's go back.
6 Let's go to instead ICE-O&S-18, or 17 is where it
7 starts. Program change number 1 is listed as an
8 adult bed increase to 55,000 ADP. That's the same as
9 that budget overview line item that we were looking
10 at a few minutes ago in Exhibit 12, correct?

11 A. **Yeah, it appears to be the same.**

12 Q. And if you look on page 18, it has a
13 justification for why the increase is necessary,
14 correct?

15 A. **Yes.**

16 Q. All right. And -- and the reason at least
17 the Department of Homeland Security, or what the
18 Department of Homeland Security was telling Congress,
19 who appropriates money for it, is that the increase
20 provides ICE greater flexibility and capacity to
21 detain a larger number of recent border crossers,
22 alien populations ineligible for a quick turn,

1 apprehensions and removals and criminal aliens. Did
2 I read that justification correctly?

3 **A. Yes.**

4 Q. And then it -- it provides some ADP numbers
5 for previous years, correct?

6 **A. Yeah, it appears like it goes back all the
7 way to 2017, and there's been a 33 percent increase,
8 22 percent increase over those years consecutively.**

9 Q. And so for the 2019 number that is included
10 in this document, the number of an average daily
11 population at an ICE facility was 48,850, so almost
12 50,000 individuals.

13 **A. That's correct.**

14 Q. All right. You'll turn to ICE dash O&S27,
15 it details a program change, it's program change
16 number 9 towards the bottom of the page, family bed
17 increase to 5,000 ADP. Do you see that?

18 **A. Yes.**

19 Q. And so again, this is the other part of --
20 so the line item in the budget in brief that DHS
21 published was 60,000, the adult bed was 55,000, and
22 5,000 was family beds, correct?

1 **A. That's correct.**

2 Q. All right. And so this is just a
3 justification for two -- to Congress by DHS of what
4 they need, right?

5 MR. DARROW: Objection.

6 **A. It appears that that's what that is, yes.**

7 Q. All right. And if you turn, or you look at
8 the bottom of the page, the justification that ICE --
9 or that HHS is making to Congress, its appropriators,
10 is that in recent years, family unit arrivals have
11 outpaced ICE -- ICE's capacity for processing and
12 detaining families. That's the justification for the
13 increase?

14 MR. DARROW: Objection.

15 BY MR. GUARD:

16 Q. Or what the document says the justification
17 for the increase is?

18 **A. That, and the fact that they've seen a 341**
19 **percent increase from 2018 to 2019 was part of the**
20 **justification, yes.**

21 Q. Okay. All right, if you'll put that
22 document aside, and you're going to have to put it --

1 I'm going to show you what I'm going to mark for
2 identification as Exhibit 14 to your deposition.

3 (Ortiz Exhibit No. 14
4 was marked for
5 identification.)

6 THE WITNESS: Thank you.

7 MR. DARROW: Thank you.

8 BY MR. GUARD:

9 Q. Exhibit 14 is the FY 2022 budget in brief
10 for the Department of Homeland Security, correct?

11 A. Yes.

12 Q. And again, this is a document that you
13 would have -- as either deputy chief or chief would
14 have been involved in at some point in time.

15 A. Yes.

16 Q. And it's a document that you would have had
17 someone on your staff review after it was published.

18 A. Yes.

19 Q. And that staff member would have been
20 looking to see changes for other DHS components that
21 could affect Border Patrol's operations, right?

22 A. Both the Border Patrol and CBP, and then

1 **also our partner agencies.**

2 Q. Okay. And again, this document contains a
3 section for CBP on page 23.

4 **A. Yes.**

5 Q. Okay. And if you'll then flip to page 29,
6 there's a section for ICE, correct?

7 **A. Yeah.**

8 Q. All right, and if you'll look to page 35,
9 the only proposed major decrease to ICE's budget was
10 to decrease the number -- decrease to 30,000 adult
11 ADP.

12 MR. DARROW: Objection.

13 BY MR. GUARD:

14 Q. Did I read that correctly?

15 **A. Yes.**

16 Q. No other decrease that is disclosed in this
17 document for ICE?

18 MR. DARROW: Objection.

19 **A. I haven't reviewed the entire document, so**

20 **--**

21 Q. Well, on page 35, is there any other
22 decrease?

1 **A. That's the only one I see.**

2 Q. Okay. And if you look on -- do you see, if
3 you start on page 32 going through page 34, there are
4 a number of programs that are being increased, right?

5 **A. Well, I believe the management efficiency's**
6 **being reduced.**

7 Q. By five million dollars.

8 **A. Yeah.**

9 Q. Okay. Other than the management
10 efficiencies and the adult ADP, there are no other
11 decreases disclosed in this DHS document, right?

12 MR. DARROW: Objection. He can't speak to
13 the whole document unless you give him a chance to
14 read the whole thing.

15 BY MR. GUARD:

16 Q. Counsel, you're allowed to object to form.
17 You're not allowed to coach witnesses. I would
18 appreciate if you would just please keep your
19 objections to object to form. In the ICE section of
20 this document, so I'm talking pages 32 halfway down
21 through 35, little over three pages, there are only
22 two decreases proposed by DHS to ICE's budget, right?

1 **A. Well, it actually starts on page 29. Let**
2 **me -- those seem to be the only two decreases.**

3 Q. Okay, and if you look at the -- under -- on
4 page 35 under the major decreases section, it
5 indicates that their ADP level is going to 32,500,
6 paren, 30,000 adult and 2,500 family, correct?

7 **A. That's correct.**

8 Q. And in the previous budget, 55,000 adults
9 and 5,000 family beds were being requested.

10 MR. DARROW: Objection.

11 BY MR. GUARD:

12 Q. Right?

13 **A. Well, they were being requested, but that**
14 **was not what was authorized --**

15 Q. Okay, again, but --

16 **A. -- by Congress.**

17 Q. What was being requested was up to 55 and
18 five, correct?

19 **A. What was being requested in the '21 budget**
20 **was 60,000. What was being requested in this budget**
21 **was 30 -- 30,000 -- or 3 -- 32,000 -- or 33,000, but**
22 **what was actually enacted was much lower than both**

1 **those numbers.**

2 Q. And was that because DHS was operating on a
3 continuing resolution?

4 **A. I believe that's because that's what**
5 **Congress authorized, or appropriated.**

6 Q. Okay, all right. And so this is a decrease
7 -- so this is 2021 is when this -- when this document
8 is being prepared. We're at a historic unprecedented
9 flood of aliens across the border, and Department of
10 Homeland Security is decreasing the number of
11 detention beds?

12 MR. DARROW: Objection.

13 BY MR. GUARD:

14 Q. Is that right?

15 **A. 1,500, yes.**

16 Q. You'll -- I'm going to mark for
17 identification as Exhibit 14, 15 --

18 **A. Yeah.**

19 MR. DARROW: Fifteen, yeah.

20 (Ortiz Exhibit No. 15
21 was marked for
22 identification.)

1 MR. DARROW: Thank you.

2 BY MR. GUARD:

3 Q. No problem. Exhibit Number 15 is the FY
4 2023 budget in brief by the Department of Homeland
5 Security, correct?

6 A. Yes.

7 Q. Okay, and this again, you were chief of the
8 Border Patrol when this document was being created,
9 right?

10 A. That's correct.

11 Q. All right. And would you have had some
12 involvement in at least either providing information
13 or in the preparation of this document?

14 A. On the CBP portion, yes.

15 Q. Okay. And there is a, like in the previous
16 one, starting on page 26, there is a section for
17 Customs and Border Patrol, right?

18 A. Yes.

19 Q. All right. And if you look on page 33,
20 there -- like in the previous budget in brief, the
21 two that we looked at, there is an ICE portion,
22 right?

1 **A. Yes.**

2 Q. And if you turn to page 40, there's again a
3 section for FY 2023 major decreases, right?

4 **A. Yes.**

5 Q. And DHS was proposed to -- a budget that
6 decreased ADP to 25,000, right?

7 **A. Yes.**

8 Q. And so that's 5,000 adult ADP from the
9 previous budget.

10 **A. Yes.**

11 Q. Okay. And in addition to the 5,000 less
12 adult ADP from the previous budget, so going from
13 30,000 to 25,000, this major decrease also eliminated
14 the funding for family detention beds, correct?

15 MR. DARROW: Objection.

16 **A. That's what it states, yes.**

17 Q. Okay. So again, in the middle of a
18 historic unprecedented flow of illegal immigrants
19 across the southern border, the Department of
20 Homeland Security's budget decreases the detention
21 capacity of ICE?

22 MR. DARROW: Objection.

1 **A. It looks like it decreases the detention**
2 **capacity but increases the ATD program by \$527**
3 **million.**

4 Q. And so you brought up ATD, and so instead
5 of detaining aliens, this administration has decided
6 to release aliens, including inadmissible aliens into
7 the interior of the country, correct?

8 MR. DARROW: Objection.

9 **A. It decided to put them in another program**
10 **of detention, which is alternative to detention with**
11 **either electronic monitoring devices or another**
12 **technical means.**

13 Q. Or having them call in or report
14 occasionally to an ICE facility, correct?

15 **A. That's correct.**

16 Q. All right. I would assume, since you're
17 not an ICE person, you have no idea how many people
18 they're actually electronically monitoring right now,
19 do you?

20 MR. DARROW: Objection.

21 **A. I do not.**

22 Q. Okay. You do not know how many people

1 they're just having go by and occasionally check in
2 with an ICE office, right?

3 **A. No.**

4 MR. DARROW: Objection.

5 **A. I don't have access to that --**

6 Q. Okay.

7 **A. -- information.**

8 Q. Again, I assumed you wouldn't because
9 you're Border Patrol. You're not ICE. Now, have you
10 ever heard the phrase "catch and release"?

11 **A. Yes.**

12 Q. And the phrase "catch and release" is that
13 you -- at least in the context that you work in, is
14 that you catch an illegal alien and then you release
15 them, right?

16 MR. DARROW: Objection.

17 **A. Typically that's how it's been used.**

18 Q. And so the budgets that we've looked at
19 have increased funding for releasing aliens,
20 including inadmissible aliens, right?

21 MR. DARROW: Objection.

22 **A. It's using an alternate means of detention,**

1 **yes.**

2 Q. And that alternate means involves release,
3 right?

4 **A. Ultimately --**

5 MR. DARROW: Objection.

6 **A. -- they are released into the community,**
7 **yes.**

8 Q. Okay. Do you have any idea how many people
9 on alternative detention have absconded from ICE's
10 custody?

11 MR. DARROW: Objection.

12 **A. I do not.**

13 Q. In formulating policies for the Border
14 Patrol, did you consider the rate of -- that aliens
15 in the past had absconded in determining whether to
16 have a proposal pathway?

17 MR. DARROW: Objection. The formulation of
18 policies is deliberative process protected.

19 BY MR. GUARD:

20 Q. Okay. In the memo which we're about to get
21 to, there is no mention in that memo of the number of
22 aliens that absconded from parole, correct?

1 **A. That's correct.**

2 Q. Okay. For an organization that is to
3 provide security for the border, do you believe that
4 the number of aliens that abscond from control of ICE
5 would be a consideration that should be made?

6 MR. DARROW: Objection.

7 **A. The number of aliens that the Border Patrol**
8 **releases under the ATD parole pathway is typically**
9 **family units or single adults that are considered a**
10 **low threat population. So there could be many**
11 **factors associated with their failure to report to an**
12 **ICE facility, anywhere from the address or their**
13 **final destination ended up being somewhere different**
14 **to, you know, their inability to actually get to an**
15 **ICE location close to where their final destination**
16 **was.**

17 Q. Okay. I'm going to show you what I marked
18 for identification to your deposition as Exhibit 16.

19 (Ortiz Exhibit No. 16
20 was marked for
21 identification.)

22 MR. DARROW: Thank you.

1 BY MR. GUARD:

2 Q. Have you seen Exhibit 16 before?

3 A. No.

4 Q. Okay. Exhibit 16 was information that the
5 Department of Homeland Security provided us in
6 connection with this case. Now, looking at the top
7 query, there's a program called notice to report.
8 What was notice to report?

9 A. Notice to report was a processing pathway
10 that the previous chief of the Border Patrol, Rodney
11 Scott, developed and instituted because our
12 facilities were overcrowded and we needed to ensure
13 that we had a mechanism to process a low-threat
14 population and ease the overcrowded conditions in
15 some of our facilities.

16 Q. Okay. And the aliens that were released to
17 the notice -- on the notice to report policy were
18 given a document that it was not a notice to appear,
19 correct?

20 A. That's correct.

21 Q. And they were basically told to go to the
22 nearest ICE location to the address they provided to

1 Border Patrol, right?

2 MR. DARROW: Objection.

3 **A. That's correct.**

4 Q. Okay. And does Border Patrol -- when it is
5 doing its biographical gathering during the
6 inspection, does it request addresses where the alien
7 is going to?

8 **A. It depends on what type of process we're
9 doing, but normally when we issue a notice to appear,
10 yes.**

11 Q. Okay. And it's not unusual for them to
12 request -- request an address if they're thinking
13 about going through one of those processing avenues,
14 right?

15 **A. That's correct.**

16 Q. And it has the ability -- does the Border
17 Patrol have the ability to query and find out how
18 many aliens are going to a particular area or
19 particular state?

20 **A. I don't know if our systems allow us to
21 query those data points.**

22 Q. Okay. Have you ever seen any reports that

1 report where people are going that are coming through
2 the border and being released?

3 **A. Not any of the CBP or Border Patrol reports**
4 **that I've seen, no.**

5 Q. Okay, all right. That's why I'm asking
6 you. I get a chance to find out what you all track
7 and what you don't track.

8 **A. Yeah.**

9 Q. All right, the first data point indicates
10 that between, you know, 1/2021 to 11/1/21,
11 non-citizens released with a notice to report during
12 those dates and who failed to check in but provided a
13 Florida address, and it's more than -- it's 1,127
14 people, correct?

15 **A. That's what the report says, yes.**

16 Q. Okay, and then looking down at the second
17 query, that's parole plus ATD, which we were just
18 talking about, right?

19 **A. Yes.**

20 Q. And same -- it's a little broader query,
21 non-citizens released with parole plus ATD between
22 11/1/2021 to 7/4/2022 and who failed to check in but

1 provided a Florida address, and that is as of July
2 4th of 2022 47,984 non-citizens, correct?

3 **A. That's what the report says, yes.**

4 Q. Okay, all right. Now, would that -- and
5 you may not be able to answer that. I -- I get
6 you're not the guy who's running queries on a
7 database, and if you are, we're in a world of
8 trouble, not because you can't, but just because you
9 have better things to do. Would that 47,984 number
10 -- when you're doing parole plus ATD, my
11 understanding is that you're only giving the -- a
12 document to one member of the family unit. You're
13 not giving a document to all four -- you're doing an
14 alien file for the lead, for lack of a better term,
15 alien, right?

16 MR. DARROW: Objection.

17 **A. So the A number's issued to the head of**
18 **household when we process a family unit for parole**
19 **plus ATD, but I would imagine that the children are**
20 **also going to be included as family members in this**
21 **data set.**

22 Q. Okay, all right. That's what I was trying

1 to get at.

2 **A. Yeah.**

3 Q. But you didn't run the query, and you don't
4 know for sure, but you think based on your 31 years'
5 experience inside Border Patrol that to be true.

6 **A. That's correct.**

7 Q. Okay. 50,000 people, or nearly 50,000
8 people is a lot of people to not know where they are.
9 Would you agree with that?

10 MR. DARROW: Objection.

11 **A. 50,000 people is a large number.**
12 **Comparatively speaking, when you're apprehending, you**
13 **know, 1.7 million people in eight months of a fiscal**
14 **year, it is certainly a number that is concerning,**
15 **but I'd be curious as to in this number, does it --**
16 **is it also taking in consideration the folks that are**
17 **already on a electronic monitoring device. So**
18 **there's a lot of unknowns with respect to that 47,000**
19 **number that I -- I would, as a leader in the Border**
20 **Patrol organization, I'd ask additional questions**
21 **about.**

22 Q. Okay. Obviously I'm not the database guy

1 either, so I'm not going to be able to --

2 **A. Yeah.**

3 Q. -- to answer that question.

4 **A. I got you.**

5 Q. And -- and that 47,000 number, that's just
6 for Florida addresses, right?

7 **A. That's what it indicates, yeah, but for
8 Florida addresses, yeah.**

9 Q. Okay. Do you know if -- if just by
10 anecdotal evidence, whether Florida's a common
11 destination for aliens entering at the southwest
12 border?

13 MR. DARROW: Objection.

14 **A. Well, we've seen increases in migration
15 from Cuba and some of the other countries within the
16 Caribbean, and obviously their final destination
17 tends to be Florida, so Florida is a destination that
18 we see quite often --**

19 Q. Okay.

20 **A. -- from some of the demographics.**

21 Q. Have you ever seen any statistics or data
22 that shows that Florida's in the top six for

1 destination for -- for aliens entering this country?

2 **A. I haven't seen --**

3 Q. Okay.

4 **A. -- a report that demonstrates that. I can**
5 **tell you that, you know, for some reason, Haitian**
6 **migrants like to go to Maine, and that's one of those**
7 **things that -- Portland, Maine would never been a**
8 **final destination that I would have assumed Haitian**
9 **migrants would want to travel to.**

10 Q. I think you'd need to have some agents ask
11 some questions about why they're going to Portland,
12 Maine.

13 **A. Actually, Portland welcomed them.**

14 Q. Okay. That's -- you couldn't get any
15 further from Haiti than Portland, Maine.

16 **A. I would agree.**

17 Q. Having been there, it's a wonderful place.
18 I'm not saying anything negative about it. Just
19 would not be what I pictured for -- for Haitian
20 immigrants. And they're wonderful people too, and we
21 have lots of them in Florida. I'm going to show you
22 what I'm going to mark as 17.

1 (Ortiz Exhibit No. 17
2 was marked for
3 identification.)

4 MR. DARROW: Thank you.

5 BY MR. GUARD:

6 Q. Have you seen Exhibit Number 17 before?

7 A. Yes.

8 Q. You're actually copied on Exhibit 17,
9 correct?

10 A. That's correct.

11 Q. Before I get into Exhibit 17, do you recall
12 when you learned that ICE was no longer going to
13 accept transfer for detention family units?

14 A. I don't have the specific date, no.

15 Q. Okay. Now, looking at Exhibit -- Exhibit
16 17, it looks like someone who it is not disclosed who
17 was e-mailing Rodney Scott, who was your chief at the
18 time, correct?

19 A. Yes.

20 Q. And forwarding him or I guess -- I can't
21 tell for sure if they're going back and forth because
22 the froms and tos are blocked out with PII, but

1 they're either going back and forth or the chief is
2 getting an e-mail forwarded to him. Is that -- is
3 that fair?

4 **A. Yes.**

5 Q. Okay, and I think you're copied on both --
6 both of the top two e-mails, right?

7 **A. Yes.**

8 Q. Okay. And the subject line, first, this
9 e-mail is on February 16th of 2021, right?

10 **A. Yes.**

11 Q. That's 26 days after Joe Biden has been
12 inaugurated, right?

13 **A. Yes.**

14 Q. Okay, all right. The subject matter of
15 this e-mail is ERO changes, correct?

16 **A. Yes.**

17 Q. And ERO again is the ICE component that
18 handles detention and/or transfers from Border
19 Patrol.

20 **A. That's correct.**

21 Q. All right. If you look down at the third
22 e-mail, or what I think is the third e-mail in the

1 chain, there is a paragraph that has been I guess --
2 I guess it was sent because of Chief Scott being in
3 this chain, I guess it was sent to at least at some
4 point to Chief Scott, right?

5 **A. Yes.**

6 Q. Okay, and if you look at the second page of
7 Exhibit 17, again, it is blacked out as per PII
8 reasons. It says Chief, Law Enforcement Operations
9 Directorate, United States Border Patrol
10 headquarters. Do you recall who served in that role
11 in February 2021?

12 MR. DARROW: Objection. You're trying
13 again to identify what's blocked out by the PII.

14 MR. GUARD: Yes. I'm asking who sent this
15 e-mail.

16 MR. DARROW: That's privileged information,
17 hence, the redaction.

18 MR. GUARD: So you're claiming what
19 privilege, Counsel?

20 MR. DARROW: Law enforcement sensitive
21 privilege.

22 MR. GUARD: For a senior-level official

1 reporting a conversation.

2 MR. DARROW: One second. Thank you. I had
3 some clarification. Yeah, the reason we consider it
4 law enforcement sensitive is that these officers are
5 regularly doxed when this information is released and
6 people get their PII.

7 BY MR. GUARD:

8 Q. Can you please mark this, and I'll take
9 this up with the court, and we may have to come back.
10 So whoever was chief of law enforcement operations
11 directorate sent an e-mail to -- well, before I get
12 there, is -- if I -- if I were to Google chief of law
13 enforcement operations directorate, U.S. Border
14 Patrol, could I probably figure out who the chief of
15 law enforcement operations Border Patrol was at the
16 time?

17 MR. DARROW: Objection.

18 A. You may be challenged because that has been
19 a acting capacity for probably 90 percent of the time
20 that I've been either the deputy chief or the chief.
21 It has -- we've struggled with filling the position
22 on a couple of occasions, and then at one point, the

1 person who occupied the position permanently that
2 Chief Scott transferred in there was detailed out.

3 Q. Okay. Do Border Patrol agents, including
4 folks in the upper management of the Border Patrol,
5 use social media like LinkedIn?

6 A. Yes.

7 Q. Okay. All right, we'll deal with that in
8 front of the court later. Oh, Counsel, you're
9 instructing the witness not to answer. I want to
10 make that sure that it's clear that you're
11 instructing him to.

12 MR. DARROW: Yes.

13 MR. GUARD: Okay.

14 MR. DARROW: Not to answer, that's correct.

15 MR. GUARD: Okay, I just -- you just --
16 never say that.

17 MR. DARROW: Right, right, no.

18 BY MR. GUARD:

19 Q. So I just wanted -- I didn't want that to
20 be the technical defense, that I forgot to get you to
21 say that. All right, looking at the actual e-mail on
22 the first page, and sorry that you had to listen to

1 all that lawyer talk. It just happens from time to
2 time. All right, this person who was the chief of
3 that group at Border Patrol had a conversation with
4 someone at ERO, right, and they advised that the
5 three FRCs -- what are FRCs?

6 **A. Family residential centers.**

7 Q. Okay, and then it lists out the three
8 family residential centers, were transitioning to
9 reception centers, correct?

10 **A. That's what it indicates, yes.**

11 Q. And basically those three facilities were
12 now going forward only going to be used to house
13 families for 72 hours.

14 **A. That's correct.**

15 Q. Okay, all right. Do you know -- do you
16 recall receiving this e-mail?

17 **A. Yes.**

18 Q. Okay. Do you recall thinking that this
19 e-mail was going to become an issue?

20 **A. Well, during this time, it was the height**
21 **of COVID.**

22 Q. Okay.

1 **A. So this wasn't the only issue that we were**
2 **dealing with at the time, but it was certainly going**
3 **to be impactful, yes.**

4 Q. Okay, it was going to constrict or
5 constrain the available processing pathways for
6 family units, right?

7 MR. DARROW: Objection.

8 **A. Well, it's going to mean that we are going**
9 **to have to transfer the family units to those**
10 **facilities as quickly as possible out of our custody**
11 **so they could be tested and then ultimately released.**

12 Q. Okay. But there's not going to be -- this
13 e-mail's disclosing that ICE is no longer going to
14 retain family units, right?

15 MR. DARROW: Objection.

16 **A. That's what it appears to be indicating,**
17 **yes.**

18 Q. All right, so as a policy member, ICE was
19 letting Border Patrol know we're not going to detain
20 any more family units, right?

21 MR. DARROW: Objection.

22 **A. Well, they were advising that they were**

1 **changing the operational posture of the three FRCs in**
2 **central Texas.**

3 Q. Okay, but that change, that operational
4 change, as you referred to it, meant that family
5 units would no longer be able to be detained.

6 **A. For longer than 72 hours. Looks like they**
7 **were going to release them within 72 hours.**

8 Q. Okay. So if someone is from a -- a country
9 that -- where you cannot repatriate them to or even
10 if someone has some other indication that would make
11 them detainable, if they're with a family unit, there
12 no longer is going to be bed space for that
13 individual, right?

14 MR. DARROW: Objection.

15 **A. Yeah, it appears that there was no longer**
16 **going to be an opportunity to detain them.**

17 Q. So at that point, all family units were
18 going to be released after the 72 hours at the,
19 quote, reception center, right?

20 MR. DARROW: Objection.

21 **A. Yes.**

22 Q. Okay. Now, do you know if this e-mail was

1 the first notice that you got about this operational
2 change?

3 **A. I can't recall.**

4 Q. Okay, but as like a kind of -- like by
5 February 16th, 26 days into the Biden administration,
6 you knew this was going to be what was going to
7 happen going forward, right?

8 MR. DARROW: Objection.

9 **A. Yeah, based upon the e-mail, yes.**

10 Q. We're on 18? No, that's not going to work.
11 I'll come back to that. I'm going to need a sticker.
12 I finally found one where I didn't put a sticker on
13 it.

14 (Ortiz Exhibit No. 18
15 was marked for
16 identification.)

17 BY MR. GUARD:

18 Q. Mark for identification USA 002081 as
19 Exhibit 18 for your deposition.

20 MR. DARROW: Thank you.

21 BY MR. GUARD:

22 Q. All right, now, this is an e-mail involving

1 a Tony Barker, who's an employee -- or is the -- I
2 guess he's the deputy chief of operations for Border
3 Patrol, right, at the time?

4 **A. At this time, he was, yes.**

5 Q. Okay. Is he still with Border Patrol?

6 **A. Yeah, he's -- he's the acting operations**
7 **chief.**

8 Q. Okay, all right. Would Mr. Barker reported
9 to the mystery man on the previous page, the previous
10 e-mail, Exhibit 17?

11 MR. DARROW: Objection. Again, that calls
12 for disclosure of --

13 MR. GUARD: I'm not asking his identity.
14 I'm asking the organizational structure, who reports
15 to who just by title.

16 MR. DARROW: With that clarification, you
17 can answer.

18 THE WITNESS: So the deputy chief reports
19 to the chief of operations, the deputy chief of the
20 Border Patrol and the chief of the United States
21 Border Patrol.

22 BY MR. GUARD:

1 Q. Okay, so would that be a different person
2 than the person who was serving in chief, law
3 enforcement operations directorate, or is that the --

4 **A. That's the same.**

5 Q. Same, okay. So Mr. Barker, whose name is
6 being disclosed, but whoever was the chief at the
7 time, was not. All right, and I can't tell you who
8 this e-mail was sent to and who it was from. My
9 initial question to you is do you know if you ever
10 received this e-mail?

11 **A. I couldn't tell you.**

12 Q. Okay. That's fair enough. What does this
13 e-mail seem to report?

14 **A. It seems to report how many family units we**
15 **were apprehending, how many we were turning over to**
16 **ICE/ERO, and then how many of those family units are**
17 **NTA/OR'd.**

18 Q. Okay, let's start with the -- I think it's
19 the -- probably the -- so the first e-mail in the
20 string is someone sending e-mails -- an e-mail to Mr.
21 Barker reporting the numbers at the different
22 southern border sectors of family units, right?

1 **A. Yeah, both the seven day and 21 day**
2 **average, yeah.**

3 Q. Okay, and then the next e-mail in the chain
4 is Mr. Barker sending to it looks like it's probably
5 more than one person since there are multiple lines
6 blocked off, and it says this is the flow that ICE
7 will have to accept if we do a hundred percent
8 referral. What does hundred percent referral refer
9 to?

10 **A. That's a reference to the amount of family**
11 **units that we would want to dispo over to ICE/ERO.**
12 **Dispo, disposition, I'm sorry, or transfer.**

13 Q. Then there's an e-mail from someone back to
14 Mr. Barker asking a question, "Is that number we are
15 currently releasing on NTA, right?" And that's
16 releasing with notice to appear, correct?

17 **A. That's correct.**

18 Q. All right, and then Mr. Barker responds,
19 and all this is happening on May 21st of 2021, NTA
20 and PD, right? What is PD?

21 **A. Prosecutorial discretion.**

22 Q. Okay. We haven't talked about

1 prosecutorial discretion today. What -- as a
2 processing pathway. Is -- is PD or prosecutorial
3 discretion still being utilized by Border Patrol?

4 **A. No.**

5 Q. Okay. When did it cease being utilized
6 approximately?

7 **A. I couldn't tell you.**

8 Q. Okay. And what was prosecutorial
9 discretion?

10 **A. That was the Border Patrol's or CBP, not**
11 **just the Border Patrol, CBP's authorization to not**
12 **issue a notice to appear for an alien in their**
13 **custody based upon certain conditions.**

14 Q. Do you recall what those conditions were?

15 **A. They obviously couldn't be a criminal**
16 **alien, you know, a threat to national security,**
17 **flight risk. There was several factors.**

18 Q. Okay. Do you know approximately when the
19 prosecutorial discretion category began?

20 **A. I couldn't tell you.**

21 Q. Was it after the Biden administration
22 started?

1 **A. We've leveraged PD in the past, so I would**
2 **imagine that it wasn't just under this**
3 **administration, but once again, I'm unsure.**

4 Q. Okay, all right. And I don't want you to
5 speculate, but if you can approximate, I'd appreciate
6 it. All right, was prosecutorial discretion in 2021
7 being utilized with any specific group of alien?

8 **A. I'm not going to speculate on that.**

9 Q. Okay, so you don't recall?

10 **A. That's correct.**

11 Q. Okay. Was it -- if I were to look at a
12 report of releases by Border Patrol, would it be
13 under a -- do you know what category prosecutorial
14 discretion would be included in?

15 **A. Typically I think they were categorized**
16 **under O.R., but I'd have to confirm that.**

17 Q. Okay, all right.

18 **A. Our reports have changed quite a bit over**
19 **the last couple of years. They continue to evolve,**
20 **and some of the data sets that we look at have**
21 **changed.**

22 Q. Okay. I just have never seen PD on a

1 report, so --

2 **A. Yeah, no.**

3 Q. I was just asking for my edification so I
4 can go back and see how frequently -- was PD the same
5 as the NTR program that we were talking about a
6 little bit earlier?

7 **A. No.**

8 Q. Okay. How did PD differ from NTR?

9 **A. So NTRs were only for family units.**

10 Q. Okay. And PD, could it be single adults?

11 **A. Could have been.**

12 Q. Okay. Any other -- the result of either
13 process at least as you explained it is that the
14 alien is not getting an NTA, right?

15 MR. DARROW: Objection.

16 **A. That's correct.**

17 Q. All right, so as far as that is concerned,
18 that they were similar, right?

19 MR. DARROW: Objection.

20 **A. Well, the forms used were different.**

21 Q. Okay, but they didn't get a notice to
22 appear and a date and time to show up at an ICE

1 facility, right?

2 **A. I think with the notice to report, they had**
3 **X amount of days to present themselves at an ICE**
4 **facility, and most of that was on the I-385, and I**
5 **believe they had 60 days.**

6 Q. Okay. And I've tried to really avoid using
7 the -- all the different forms you utilize because
8 I'd just likely mess it up worse than I mess up --

9 **A. I got you.**

10 Q. -- mess up the statutes, but for -- for --
11 for PD, or for people that were released on
12 prosecutorial discretion, was an I-385 issued?

13 **A. That I do not know. I do know for the ITR,**
14 **the I-385 was issued.**

15 Q. Okay. Do you not -- do you recall if a
16 different form was utilized?

17 **A. It's been a while since I processed, so I**
18 **couldn't tell you.**

19 Q. Okay, all right. But if something was
20 going to be rolled out to the rank and file during
21 May of 2021, you were the deputy chief, right?

22 **A. That's correct.**

1 Q. And for -- did you typically at that time
2 look at what was being rolled out to the rank and
3 file?

4 A. I tried to review most of the forms that
5 were included, yes.

6 Q. Okay.

7 A. If it was already an existing program, I
8 wouldn't go back and review that, but if it was a new
9 program, I would have, yes.

10 Q. Okay, all right. Fair enough. Looking
11 back at Exhibit 18, it's the second page of the
12 exhibit, we're moving -- it's all again within a
13 couple hours on May 21st of 2021, Barker is
14 responding to someone -- or a group of people cc-ing
15 a bunch of people, and with last sector data, right?
16 All right. What is LRT?

17 A. Laredo, Texas.

18 Q. Okay, I thought so, but I did not want to
19 assume. And so is this just separate data for Laredo
20 being reported here?

21 A. No, it's going to include RGV, and it may
22 also include Del Rio.

1 Q. Okay, so at the time, you were transferring
2 along the border it looks like family units from --
3 from sectors that were busier.

4 A. **That's correct.**

5 Q. And that's what this is kind of reporting,
6 right?

7 A. **That's correct.**

8 Q. Okay. Looking back to the first page of
9 the e-mail, this is minutes after that last exchange,
10 and there's an e-mail from someone again that we
11 don't know who to Mr. Barker, and it says the fact
12 that RGV is only able to refer a hundred families a
13 day is absurd. We should start with that. What is
14 that statement referring to?

15 MR. DARROW: Objection.

16 A. **I'm assuming it's somebody's opinion that**
17 **the fact that only a hundred families can be referred**
18 **to ICE/ERO is unacceptable.**

19 Q. Okay. If ICE were only willing to accept a
20 hundred family units from the Rio Grande Valley,
21 would that cause a capacity issue at -- for the Rio
22 Grande?

1 MR. DARROW: Objection.

2 **A. Yes.**

3 Q. For -- okay, all right. You can put that
4 exhibit aside. I'll mark this as Exhibit 19 --

5 (Ortiz Exhibit No. 19
6 was marked for
7 identification.)

8 BY MR. GUARD:

9 Q. -- to your deposition.

10 MR. DARROW: Thank you.

11 BY MR. GUARD:

12 Q. Have you seen Exhibit 19 before?

13 **A. It doesn't look familiar, but chances are I**
14 **may have seen it.**

15 Q. Okay, all right. And the only reason I'm
16 asking you again is that the to and the cc are
17 blocked out, so I don't know if you have or haven't,
18 but it's an e-mail from Mr. Barker, who now is chief,
19 right, of the law enforcement operations directorate,
20 so he's now promoted by this point in time, right?

21 **A. He's acting chief, yes.**

22 Q. Okay. And that's the same role in Exhibit

1 17 that was blocked out. And you know, this e-mail's
2 -- right? Let me --

3 MR. DARROW: Objection.

4 BY MR. GUARD:

5 Q. So on Exhibit 17, the chief of the law
6 enforcement operations directorate name was blocked
7 out, but here Mr. Barker's mail is being disclosed,
8 right?

9 MR. DARROW: Objection.

10 **A. Yes.**

11 Q. Okay, all right. And this is an e-mail
12 from May 15th, 2022, right?

13 **A. Yes.**

14 Q. Okay, and my question for you is there's a
15 quote, "We must ensure that we are detaining and
16 removing the demographics that are amenable or else
17 the flows will only compound more." Do you see that
18 quote?

19 **A. I do.**

20 Q. Do you know what Mr. Barker's referring to
21 with that quote?

22 MR. DARROW: Objection.

1 **A.** So it appears that this was part of a
2 tabletop exercise that was executed on that Saturday,
3 and part of the exercise -- the tabletop exercise
4 requires injects to determine what CBP, ICE and the
5 department are going to do if there were to be a mass
6 migration, if Title 42 were to come down and we were
7 to begin to see some increases in flow. So it sounds
8 like Tony is describing to the FEMA exercise
9 operators that that should be a priority, removing
10 those demographics, but this is all I believe
11 centered around a tabletop exercise. This wasn't the
12 operational environment on that particular day.

13 **Q.** Okay. Why is it important to detain and
14 remove demographics that are amenable to the Border
15 Patrol?

16 **A.** One, you want to make sure you have
17 consequences.

18 **Q.** Okay. And if you don't have consequences,
19 what is likely going to happen?

20 MR. DARROW: Objection.

21 **A.** In my experiences -- in my experience, we
22 have seen increases when there are no consequences.

1 Q. Okay. So if migrant populations believe
2 that they're going -- there are not going to be
3 consequences, more of them will come to the border?
4 Is that what you're saying?

5 MR. DARROW: Objection.

6 **A. There is an assumption if migrant**
7 **populations are told that there's a potential that**
8 **they may be released, that yes, you can see**
9 **increases.**

10 Q. Okay. And if you see -- and so if you do
11 not -- you said number one, consequences. Are there
12 any other things that -- other than just that one,
13 consequences? Is there a two or a three?

14 **A. Two or three what?**

15 Q. Well, you said number one, consequences. I
16 didn't know if there were -- if that was the complete
17 list or there were other things that --

18 **A. Affect the flow?**

19 Q. Yeah.

20 **A. Of course, there's many things. There's,**
21 **you know, what our partners to the south do, our**
22 **ability to communicate the dangers, our ability to**

1 impact the criminal organizations, smuggling
2 organizations that are trafficking the migrant
3 populations, our ability to deploy technology and
4 manpower in areas where we're starting to see greater
5 flows. All of those factor into the flow and how
6 it's managed.

7 Q. Okay, and if you're not detaining and
8 removing demographics that are amenable and the flow
9 will compound, so it will increase at an exponential
10 rate? Is that what's being suggested here?

11 MR. DARROW: Objection.

12 A. Well, I do think it will increase, yeah.

13 Q. Now, during the Trump administration, were
14 you able -- we've talked a little today about
15 releasing aliens on their own recognizance. During
16 the Trump administration, were you able to release
17 aliens on their own recognizance?

18 A. It would have to be on very exigent
19 circumstances.

20 Q. Some humanitarian reason?

21 A. Medical or humanitarian reason, yes.

22 Q. Okay. As far as using parole under the

1 Trump administration, was that as well limited?

2 **A. Yes.**

3 Q. Okay. Was it limited to aliens who agents
4 found were going to be admissible?

5 MR. DARROW: Objection.

6 **A. Parole was used on a limited basis based
7 upon humanitarian reasons also.**

8 Q. Okay. When the Biden administration took
9 over from the Trump administration, how were the
10 changes to parole and releasing aliens on own
11 recognizance communicated to Border Patrol and to the
12 line agents?

13 MR. DARROW: Objection.

14 THE WITNESS: Can I confer?

15 MR. GUARD: We'll take a break. We've been
16 going for a while anyway.

17 MR. PERCIVAL: With an open question?

18 MR. GUARD: I'll let him do it.

19 THE VIDEOGRAPHER: We're now off the record
20 at 14:27.

21 (Recessed at 2:27 p.m.)

22 (Reconvened at 2:46 p.m.)

1 THE VIDEOGRAPHER: We're now back on record
2 at 14:46.

3 MR. GUARD: If the court reporter can
4 please read the last question back.

5 THE REPORTER: Question: "When the Biden
6 administration took over from the Trump
7 administration, how were the changes to parole and
8 releasing aliens on own recognizance communicated to
9 Border Patrol and to the line agents?"

10 MR. DARROW: And I remind the witness not
11 to reveal anything privileged in his answer.

12 THE WITNESS: So during this time frame,
13 one of the things that we were encountering is Rio
14 Grande Valley, which is in South Texas, was really
15 the only area that was problematic for us at the
16 time, and so most of the coordination centered
17 between the headquarters operations directorate and
18 the sector personnel, and then some decompression
19 into Laredo, but at the time, it wasn't an issue for
20 all nine southwest border sectors.

21 BY MR. GUARD:

22 Q. Okay, I thought the question was how was

1 the changes to own recognizance and parole by the
2 Biden administration communicated. I understand it
3 may have only been the Rio Grande Valley. Were there
4 memorandum or e-mails or was it by telephone or radio
5 or however? I mean, I'm not trying to be cute or
6 smart, but I mean, I'm asking you how was it
7 communicated.

8 **A. So most of the coordination occurred either**
9 **telephonically or through e-mail coordination between**
10 **Border Patrol headquarters and the sector.**

11 Q. Okay. While the problem or the issue at
12 the time may have been the Rio Grande Valley, would
13 changes to Border Patrol's policies with respect to
14 parole or own recognizance that occurred after the
15 Biden administration taken -- had taken over
16 eventually trickled out to the other sectors of the
17 southern border?

18 MR. DARROW: Objection.

19 **A. Yes.**

20 Q. Okay. And how would those changes have
21 been communicated to those other sectors when they --
22 later?

1 **A.** So at the time, we had a couple ways of
2 communicating with the field components. Every
3 Tuesday we have a chiefs' call where we coordinate
4 directly with the sector chiefs and the deputy
5 chiefs. And then the operations directorate would
6 also communicate with the sectors if there were
7 specific issues centered around coordination,
8 operational coordination that had to happen.

9 **Q.** Okay, all right. I want to go back if we
10 can just briefly, I'm going to mark this as Exhibit
11 20 to your deposition.

12 (Ortiz Exhibit No. 20
13 was marked for
14 identification.)

15 BY MR. GUARD:

16 **Q.** You mentioned earlier at some point in time
17 going and testifying regarding Flores, right?

18 **A.** **Yes.**

19 **Q.** Okay. Now, this document in particular is
20 dated March 5th, 2021, so that's after the time
21 period that you think you went to testify, right?

22 **A.** **Definitely.**

1 Q. Okay. If you'll look at -- all right, so
2 the date of the document's March 5th, 2021, correct?

3 A. Yes.

4 Q. All right, and if you look at the signature
5 page, and it has Deane Dougherty, who's an ICE
6 employee?

7 MR. DARROW: Is that on page 8?

8 BY MR. GUARD:

9 Q. Page 8. Sorry. I should have said that.
10 Actually, it's page 9 if you look at the top.

11 MR. DARROW: Oh.

12 BY MR. GUARD:

13 Q. Page 8 if you're looking at the bottom
14 numbers. Page 9 if you're looking at the top.

15 A. Okay.

16 Q. Okay. If you'll look at page 2, the first
17 line on top of the page, it indicates that, "ICE
18 would like to note that it's revising its current
19 family detention posture at the FRCs to allow a
20 broader repurposing of the physical facilities to
21 better meet operational needs." Did I read that
22 correctly?

1 **A. Yes.**

2 Q. All right, and so on March 16th, we looked
3 at the e-mail, I believe it's Exhibit 17, that had
4 ICE telling you all that they were no longer going to
5 be detaining families, and this is a document being
6 filed in court indicating that it's revising its
7 posture, correct?

8 **A. Yes.**

9 MR. DARROW: Objection.

10 BY MR. GUARD:

11 Q. All right. Turn to page 4. If you look at
12 the second sentence on top of page 4, it says a chart
13 updated on March 4th, 2020 shows only 13 families
14 remained in custody. I think that actually is a
15 typographical error, because if you actually look at
16 the chart, it says March 4th, 2021, right, and the
17 document itself is filed on March 5th of 2021, right?

18 **A. Yes.**

19 Q. Okay, and it says that there were only 13
20 families remained in custody as of that date, March
21 4th, 2021, right?

22 **A. That's correct.**

1 Q. So in a little over -- little less than two
2 months of being in office, the Biden administration
3 has only -- has 13 families in ICE custody, right?

4 MR. DARROW: Objection.

5 BY MR. GUARD:

6 Q. Excuse me, 13 juveniles in custody, 13
7 families. Sorry. Strike that.

8 **A. To be honest with you, I don't really**
9 **understand this whole report.**

10 Q. Okay, but ICE is representing to a court
11 that there are 13 families in custody as of March
12 4th, 2021, right?

13 **A. That's what the report states, yes.**

14 Q. Okay, all right. Well, you can put that
15 aside. Now, when immigration law changes, like the
16 family detention rule, newspaper articles and -- and
17 press cover it, correct?

18 MR. DARROW: Objection.

19 **A. Yes.**

20 Q. And smugglers and others see those
21 newspaper articles, and that can affect perception,
22 right?

1 MR. DARROW: Objection.

2 A. I can assume they read it also, yes.

3 Q. Okay, all right. Well, folks that are here
4 legally or illegally can read those news sources,
5 right, if nothing else.

6 MR. DARROW: Objection.

7 A. Yes.

8 Q. Okay, and I believe in one of your speeches
9 in Del Rio, you talked about word of mouth, right?

10 A. I did.

11 Q. Okay. So changes like to the family
12 detention policy get communicated to folks outside
13 the United States.

14 MR. DARROW: Objection.

15 THE WITNESS: Yes.

16 MR. GUARD: Okay. I'm going to mark this
17 as 21?

18 MR. DARROW: Yeah.

19 (Ortiz Exhibit No. 21
20 was marked for
21 identification.)

22 MR. DARROW: Thank you.

1 MR. GUARD: And I'll go ahead and mark the
2 second document as 22, because it may be just easier
3 to do.

4 (Ortiz Exhibit No. 22
5 was marked for
6 identification.)

7 MR. DARROW: Thank you again.

8 MR. GUARD: No problem.

9 THE WITNESS: I think you gave me two
10 copies.

11 BY MR. GUARD:

12 Q. Okay, don't want to do that. All right,
13 Exhibit 21 are custody and transfer statistics for
14 CBP for physical year 2020?

15 **A. Yes.**

16 Q. And 22 are custody and transfer statistics
17 for CBP for fiscal year 2021, right?

18 **A. That's correct.**

19 Q. All right. If you look at the -- I think
20 it's one, two, three, the fourth page in the exhibit
21 --

22 MR. DARROW: Exhibit 21?

1 BY MR. GUARD:

2 Q. Twenty-one. I think it's the fourth page
3 in both, but let's look at 21 first. Okay, there are
4 two reports from Border Patrol, correct?

5 A. Yes.

6 Q. And these are monthly reports, right?

7 A. Yes.

8 Q. Okay. Of -- and this is for monthly
9 southwest border apprehensions by processing
10 disposition, correct?

11 A. That's correct.

12 Q. All right, and so you have the different
13 pathways and how many aliens were processed through
14 each pathway, right?

15 A. That's correct.

16 Q. Okay. And so you have -- we've talked
17 about expedited removal, right? You have to say yes.

18 A. Yes.

19 Q. It's okay. It's been a long day. I
20 appreciate it, you know, but I've got to try to
21 protect the record, and again, at some point the
22 court reporter will start yelling at both of us. The

1 next line is PACR, HARP, and ACA. Now, we've not
2 talked about any of those acronyms yet today. What
3 are those acronyms?

4 **A. So PACR stands for prompt asylum claim**
5 **review. HARP is humanitarian -- humanitarian asylum**
6 **review process, and ACA is the asylum cooperative**
7 **agreements that we have with third countries.**

8 Q. Okay, all right. And it looks like --

9 **A. I think I got it right.**

10 Q. It sounds pretty good to me. And there's a
11 footnote, and they have those three plus MPP, which
12 we've talked about all in the kind of same -- it's
13 the subjects enrolled in multiple rooms only counted
14 once based on the following order. So it's at least
15 trying to make it so the math doesn't -- the math
16 adds up I guess. And so you have -- those three
17 programs only have January 2020, February 2020 and
18 March 2020, right?

19 **A. That's correct.**

20 Q. Do those programs end in March 2020?

21 **A. It appears that they ended in March --**

22 Q. Okay.

1 **A. -- of 2020.**

2 Q. All right. We talked about notice to
3 appear and order of recognizance, released. We've
4 talked about reinstatement of prior removal, talked
5 about voluntary -- well, we've talked about all these
6 other than the other category, which seems to be any
7 alien that was processed, but it's -- whatever the
8 code is hadn't been entered into the system, so it
9 was just what was ever kind of left because of the
10 end of a month or end of a -- of a time period,
11 right?

12 MR. DARROW: Objection.

13 **A. That's correct.**

14 Q. Okay, all right. The bottom -- so that was
15 processing dispositions. The bottom table is for
16 Border Patrol southwest border apprehensions by
17 transfer destination. And so that's telling where
18 they were sent or what entity dealt with them, right?

19 **A. Yes.**

20 Q. Okay. You have humanitarian release. What
21 type of aliens would be within the humanitarian
22 release category, to your knowledge?

1 **A. Folks that were dispositioned via O.R. due**
2 **to medical or some other exigent circumstances.**

3 Q. Okay. You've got federal, and that has a
4 -- you can look at -- if you want to look at the
5 footnote, that's anyone who was transferred to ICE or
6 HHS or marshals or whatever.

7 **A. That's correct, those are prosecutions,**
8 **misdemeanor, felony prosecutions, will also include**
9 **the folks that are turned over ORR, the unaccompanied**
10 **children, and then the migrant population that would**
11 **be turned over to ICE for repatriation.**

12 Q. Okay, and then there are two other
13 repatriation pathways that are marked federal. You
14 had northern triangle, which is Guatemala, Honduras
15 and El Salvador.

16 **A. That's correct.**

17 Q. And Mexican repatriation, right?

18 **A. That's correct.**

19 Q. And then you had folks that you turned over
20 to a port of entry that were not under the MPP
21 program, so that would be OFO would be who they would
22 have been turned over to, correct?

1 **A. Actually, I believe the non-MPP population**
2 **would be Mexican nationals that were VR'd.**

3 Q. Okay, all right. And then VR means
4 voluntary return --

5 **A. Voluntary return, yes, sir.**

6 Q. -- to Mexico. And then the next category,
7 port of entry, MPP, that would be -- they would have
8 been -- I believe you described them, immigration
9 camp, Mexican immigration camp, or immigration camp
10 located in Mexico, and they would go back to the port
11 of entry for their asylum hearing?

12 MR. DARROW: Objection.

13 **A. So when the migrants are processed via the**
14 **migrant protection protocols, they are returned to**
15 **Mexico, and most of them remain in those border**
16 **communities housed in not government-run facilities,**
17 **but non-governmental organization-run facilities.**

18 Q. Okay.

19 **A. So they're called migrant camps.**

20 Q. All right, and there's a category for state
21 and local law enforcement agencies, right?

22 **A. Those are folks that are turned over to our**

1 **state and local partners because they had warrants or**
2 **some other prosecutorial charge.**

3 Q. Okay. It's fair to say that looks back at
4 the processing disposition, notice to appear, order
5 of recognizance in FY 2020 ranged from a low of one
6 to 91, right?

7 **A. Yes.**

8 Q. Okay. All less than a hundred.

9 **A. That's correct.**

10 Q. Okay. Turning over to Exhibit 22, look
11 again at the -- well, I think now it starts on the
12 third page and goes to the fourth page, you have the
13 same two charts that we just looked at, right?

14 **A. Yes.**

15 Q. Okay. It looks like PACR, PARP and ACA
16 have started up again at least at some point in time
17 in 2021?

18 **A. Yeah, it appears that in May, we had a**
19 **couple that were processed under the PACR program.**

20 Q. Okay. Do you know in 2022 whether that is
21 continuing?

22 **A. I believe we have a small number.**

1 Q. Okay, all right. If you look at notice to
2 appear, order of recognizance, there's now a third
3 category which says I-385 dash released. What is
4 included within I-385 dash released?

5 **A. That is the notice to report.**

6 Q. And if you look at the last month, last
7 full month of the Trump administration, December of
8 2020, there were 17 aliens released on a notice to
9 appear order of recognizance, right?

10 **A. That's correct.**

11 Q. All right, and by July of 2021, that
12 number's over 60,000, correct?

13 MR. DARROW: Objection.

14 **A. That's correct.**

15 Q. If you look, in July 2021 at -- and compare
16 the notice to appear order of recognizance I-385
17 released with the warrant slash notice to appear dash
18 detained, the number of aliens being detained under
19 the Biden administration is half of that which is
20 being released, right?

21 MR. DARROW: Objection.

22 **A. Yeah, it appears that it would be less than**

1 30,000, so less than half.

2 Q. Okay. Put 21 and 22 aside. I'm going to
3 mark this as Exhibit -- I did it again -- 23 to your
4 deposition.

5 (Ortiz Exhibit No. 23
6 was marked for
7 identification.)

8 BY MR. GUARD:

9 Q. Have you seen Exhibit 23 before?

10 A. I don't believe so.

11 Q. Okay. This purports to be a memorandum
12 dated December 16th, 2014, correct?

13 A. That's correct.

14 Q. And it is for Directors, Field Operation
15 Director Preclearance Operations, Office of Field
16 Operations. Is this an OFO program and not a Border
17 Patrol program?

18 A. Yeah, this seems to be focused on Office of
19 Field Operations.

20 Q. Okay, all right. Was this -- was this --
21 this parole program or a parole program like this
22 ever created for Border Patrol?

1 **A.** **I wasn't at headquarters in December of**
2 **2014. I was in the field, so typically we didn't**
3 **create policy in the field, so --**

4 **Q.** But you would have implemented a policy if
5 it had been created.

6 **A.** **Yes.**

7 **Q.** Okay, and you don't recall implementing
8 this policy.

9 **A.** **No.**

10 **Q.** Okay. So looking at the -- kind of the
11 last paragraph of this -- well, first, looking at --
12 under the second paragraph, it says, "Effective
13 immediately, any parole under a section 212(d)(5) of
14 the Immigration and Nationality Act for nonimmigrant
15 aliens, alien," parens, closed paren, "that meet the
16 following criteria." Now, section 212(d)(5), that's
17 the statute we looked at earlier, 8 USC 1182 to 85,
18 correct?

19 **A.** **Yes.**

20 **Q.** And then looking down at the last paragraph
21 of this one-page memo, it reads, "Lack of detention
22 space, requests from other law enforcement agencies,"

1 paren, "unless accompanied by a valid unexpired I-512
2 issued by HSI," closed paren, "or other purposes not
3 considered essential for law enforcement are not
4 appropriate reasons to parole an inadmissible alien."

5 Does it say that?

6 **A. Yes.**

7 Q. All right. So this policy has nothing to
8 do with capacity, right?

9 MR. DARROW: Objection.

10 **A. This is pertaining to folks that are**
11 **presenting themselves for admission at a port of**
12 **entry.**

13 Q. Okay.

14 **A. And typically Office of Field Operations**
15 **never encounter the numbers that the Border Patrol**
16 **encounters.**

17 Q. Fair enough. I'm going to mark this as
18 Exhibit 25.

19 **A. Twenty-four.**

20 Q. Twenty-four --

21 (Ortiz Exhibit No. 24

22 was marked for

1 identification.)

2 BY MR. GUARD:

3 Q. -- to your deposition.

4 MR. DARROW: Thank you.

5 BY MR. GUARD:

6 Q. Have you seen Exhibit 24 before?

7 **A. I don't believe so.**

8 Q. All right. Like the previous exhibit,
9 Exhibit 23, this appears to be an Office of Field
10 Operations policy?

11 **A. Yes.**

12 Q. All right. And again, it's another parole
13 policy, right?

14 **A. That appears to be what it is, yes.**

15 Q. Okay, all right. You can put that aside.

16 (Ortiz Exhibit No. 25

17 was marked for

18 identification.)

19 MR. GUARD: Twenty-five.

20 MR. DARROW: Thank you.

21 BY MR. GUARD:

22 Q. Have you seen Exhibit 25 before?

1 **A. Not that I recall, no.**

2 Q. Okay. Anything on this document indicate
3 which CBP component Exhibit 25 applies to?

4 **A. I think it still applies to airports or OFO
5 because it talks about admissibility and passenger
6 programs --**

7 Q. Okay.

8 **A. -- as the office -- as part of the offices,
9 so I would imagine it's still an OFO guidance
10 document.**

11 Q. Okay, all right. Well, you can put that
12 aside because you're not part of OFO. Mark this for
13 identification as Exhibit 26 --

14 (Ortiz Exhibit No. 26
15 was marked for
16 identification.)

17 BY MR. GUARD:

18 Q. -- to your deposition.

19 MR. DARROW: Thank you.

20 BY MR. GUARD:

21 Q. Have you seen Exhibit 26 before?

22 **A. Yes.**

1 Q. Okay. If you'll flip to the page that's
2 labeled AR -- AR 003 --

3 A. I don't have an -- oh, there it is, my
4 signature.

5 Q. That was going to be the question, is that
6 your signature?

7 A. Yes.

8 Q. All right, and did you sign this document
9 under penalties of perjury? Look back to the next
10 page.

11 A. Yes.

12 Q. Okay. That was not a trick question. I
13 was not trying to trick you. All right, I know it's
14 been a long day. All right, since you signed this
15 document on April 19th, 2022, has any additional
16 information or documents that are nonprivileged come
17 to your attention that should be part of the
18 administrative record?

19 MR. DARROW: Objection.

20 A. Yes.

21 Q. What additional documents should be added
22 to the administrative record?

1 **A. The commissioner's memo on parole plus --**
2 **ATD plus.**

3 Q. So are you talking about the July -- I
4 think it's July 18th?

5 **A. 18th memo, and then my July 20th memo, yes.**

6 Q. So you issued a July 20th memo?

7 **A. Yes.**

8 Q. Counsel, I don't think we've ever seen the
9 July 20th memo, but we can take that up later, but
10 just raising that to your attention. All right, you
11 understand that the memo, which is at AR 004, the
12 next page, has now been rescinded, right?

13 **A. Yes.**

14 Q. Okay, and in its place, there's a new memo,
15 right?

16 **A. That's correct.**

17 Q. Okay. We're going to get to the new memo.
18 That's -- that's the next -- that's the next exhibit
19 and the last exhibit of this deposition, so -- and
20 that's a promise, of this deposition. There --
21 corporate representative, there may be one exhibit.
22 All right, so but other than those two documents,

1 you're aware of no other documents that should be in
2 the administrative record that are nonprivileged,
3 correct?

4 **A. That's correct.**

5 Q. Okay, all right. Now, looking at AR 4
6 through AR 6, this is a memo which you sent out,
7 correct?

8 **A. That's correct.**

9 Q. All right. And you sent it out to chief
10 parole agents and deputy chief parole agents, right?

11 **A. That's correct.**

12 Q. And that's the agents that are in charge of
13 the sectors of Border Patrol, right?

14 **A. That's correct.**

15 Q. Okay. Looking at this memo, it indicates
16 that it is superseding a previous guidance, correct?

17 **A. That's correct.**

18 Q. And the previous guidance that it was
19 superseding was your predecessor's notice to report,
20 right?

21 **A. That's correct.**

22 Q. Now, the memo indicates that that -- and I

1 think we weren't able to come to a date earlier that
2 notice to report was promulgated. It indicates that
3 that policy was promulgated in March of 2021, right?

4 **A. That's correct.**

5 Q. Okay. I don't think I asked you this
6 before, and if I did, I apologize. How was the NTR
7 guidance sent out to the field in March of 2021?

8 MR. DARROW: Objection.

9 **A. It was sent out and distributed through
10 multiple platforms. Initially we had a telephonic
11 call with all the associate chiefs. We also asked
12 that the operations directorate send out a e-mail to
13 the sector points of contact, which would have been
14 an assistant chief at those sectors, to include the
15 sector chiefs, and to my recollection, I believe
16 Chief Scott also issued a memoranda.**

17 Q. Okay. Well, I haven't seen that
18 memorandum, so if it exists, obviously we'll take
19 that up with your counsel.

20 **A. I couldn't find it either.**

21 Q. Okay, all right. Well, I deal with public
22 records too. I know sometimes how things don't get

1 filed how they should get filed, so we'll work with
2 that through your counsel. And so he would have
3 signed a similar memorandum to this, to your
4 recollection?

5 **A. Typically that's how information would be**
6 **distributed to the field, which is why I thought**
7 **there was a notice to report memoranda, but when I**
8 **looked through my files, I could not find one either.**

9 Q. Okay. And the justification for this
10 policy is the health of aliens, correct?

11 MR. DARROW: Objection.

12 **A. Yes.**

13 Q. And the health of Border Patrol employees,
14 right?

15 MR. DARROW: Objection.

16 **A. Well, it's not just that. I mean, it's the**
17 **health of the communities. At the time, almost every**
18 **single one of the border communities that we have a**
19 **sector or experiencing significant increases in COVID**
20 **exposures, to include COVID deaths, we had a**
21 **significant spike across the entire southwest border**
22 **and COVID exposures, and even to this day, this**

1 morning I think I had 388 agents still in quarantine
2 status. We've had 11,692 agents I believe that
3 tested positive for COVID out of 19,355. We had 19
4 agents die due to COVID, to include two contractors
5 that I attended probably 75 percent of their
6 funerals.

7 Our communities, the health officials, our
8 law enforcement partners were also under the same
9 issues and faced with some of the same concerns that
10 we had as a law enforcement organization. Typically
11 we use local county detention facilities to house
12 some of our prosecutions, and they were experiencing
13 complete shut-downs of their facilities because of
14 COVID exposures. So it wasn't just the migrants, it
15 wasn't just our agents, but it was our families, the
16 communities, and all of this was placing a
17 significant strain on the entire border environment.

18 Q. And I agree and appreciate that, but in the
19 first sentence of the second paragraph, would you
20 agree with me that it only mentions the health and
21 safety of migrants and the health of the work force?

22 MR. DARROW: Objection.

1 BY MR. GUARD:

2 Q. First sentence of the second paragraph.

3 **A. That first sentence, that's exactly what**
4 **that says, yes.**

5 Q. Okay, and at least -- and I'm not
6 minimizing this, because I agree with you, and I've
7 attended too many law enforcement funerals in the
8 last year as well, so I'm not minimizing that at all,
9 but at least I hadn't seen mention of, at least in
10 this document, of the community as a reason for the
11 policy.

12 MR. DARROW: Objection.

13 **A. Well, I can tell you as the person who**
14 **signed this document, that the communities certainly**
15 **were a factor in my decision-making process.**

16 Q. Okay, all right.

17 **A. My mother lives in a border community in**
18 **Del Rio. She's 85 years old, very vulnerable and**
19 **certainly susceptible to COVID, and so I can**
20 **guarantee you I factored her health into the issuance**
21 **of this memoranda.**

22 Q. Again, I'm not quibbling with that at all.

1 **A. I get it.**

2 Q. I just -- it wasn't mentioned, and that was
3 going to be one of my questions, is why was that not
4 factored, and you're telling me that it was. Other
5 than the health and safety of communities, were there
6 any other reasons that are not disclosed in this
7 e-mail that form the basis of you issuing this memo?

8 MR. DARROW: Objection.

9 **A. Yes.**

10 Q. Okay. Where are they?

11 **A. Overcrowded conditions in these facilities.**

12 Q. That actually is mentioned.

13 **A. To include ensuring that we are compliant**
14 **with the Jane Doe litigation in Arizona, and also**
15 **ensuring that we had significant wrap-around services**
16 **to support the different demographics that we were**
17 **responsible for.**

18 Q. Okay.

19 **A. At the time, we were expanding our**
20 **detention facilities, and I can tell you that**
21 **typically during this time is at the beginning of the**
22 **budget year, and this is -- this year was no**

1 different. We were under a continuing resolution, so
2 we're operating at 75 percent of our budget, and so
3 ensuring that we had the requisite supplies and
4 equipment to support everything that comes with
5 having 15,000 people in custody was part of the
6 decision-making process.

7 Q. Okay. I think part of that is actually
8 reflected in this memo. Again, I'm not --

9 A. Yeah, got you.

10 Q. Not trying to play a got you game or
11 anything like that. If you look at -- I think it's
12 the -- it's the fourth sentence, excuse me, starting
13 with the use of this processing pathway --

14 A. Uh-huh.

15 Q. -- enabled -- well, it's talking
16 technically about NTRs, but this is replacing NTRs,
17 right?

18 MR. DARROW: Objection.

19 BY MR. GUARD:

20 Q. You may answer.

21 A. Yes.

22 Q. Okay. To relieve overcrowding in

1 congregate settings.

2 **A. That's correct.**

3 Q. Okay, thus better protecting both the work
4 force and non-citizens in our custody.

5 **A. That's correct.**

6 Q. Okay. So looking at the second paragraph,
7 it talks about the process for -- of issuing notices
8 to appear, the last -- I think it's the last two
9 sentences. See that?

10 **A. Yes.**

11 Q. All right. Notices to appear are
12 time-consuming.

13 **A. That's correct.**

14 MR. DARROW: Objection.

15 BY MR. GUARD:

16 Q. Were -- under either NTR or parole plus
17 ATD, are Border Patrol agents establishing A files,
18 apple files?

19 **A. Yes.**

20 Q. Okay. Were they establishing A files under
21 NTR?

22 **A. No. Actually, they were for head of**

1 household.

2 Q. Okay.

3 A. But they weren't for the remaining family
4 unit members.

5 Q. Okay. For parole plus ATD, are they only
6 doing A files for the head of household or are they
7 doing A files for all the members of the family?

8 A. I believe they are issuing A files for all
9 the members within the family unit.

10 Q. Okay. Now, just -- I want to talk about
11 parole plus ATD. I'm sorry, for the first time ever
12 in my life I went quiet and maybe mumbled a little
13 bit because I was looking down. Parole plus ATD, are
14 Border Patrol agents completing the asylum interview
15 process?

16 A. No.

17 Q. Where does the asylum review -- asylum
18 interview process occur?

19 A. Usually that occurs with an asylum officer
20 within CIS.

21 Q. Okay.

22 A. Citizen and immigration services.

1 Q. Okay, and that's after the person has been
2 released on parole plus ATD?

3 A. Yes.

4 MR. DARROW: Objection.

5 A. Unless they are held in a detention
6 facility.

7 Q. And at least initially in this memo, parole
8 plus ATD was being limited to family units, right?

9 MR. DARROW: Objection.

10 A. Yes.

11 Q. The last sentence on the first page, AR 004
12 reads, "Parole plus ATD is a rigorous enforcement
13 process that is effective and includes accountability
14 measures to require non-citizens to report to ICE for
15 issuance of an NTA and continue through the formal
16 immigration process." Did I read that sentence
17 correctly?

18 A. Yes.

19 Q. Okay. What did you mean by rigorous?

20 MR. DARROW: Objection.

21 A. Rigorous requires more information than we
22 were issuing with the notice to report, to include

1 next of kin, final destination. When you process
2 somebody for -- under the normal Title 8 process, you
3 obtain more biographical information, to include
4 where they're coming from, where they're going to,
5 their mode of travel. There's a slew of biographical
6 information that you obtain under this process that
7 normally would not be gathered during the NTR
8 process.

9 Q. Okay. So under the NTR process, which
10 lasted roughly from March 2021 through November of
11 2021, that roughly eight months, Border Patrol was
12 not gathering destination of where aliens were going?

13 MR. DARROW: Objection.

14 A. We would put that on the I-385, but in a
15 normal I-213, which is the initial biographical --

16 Q. Uh-huh.

17 A. -- document that we process migrants or
18 aliens under, we actually detail very specifically
19 their route of travel from their home to their final
20 destination, to include any stops and their method of
21 travel, whether they made any smuggling arrangements,
22 whether they paid any smuggling fees. Under the NTR

1 process, you may not have gathered all that
2 information just depending on how many people you had
3 in custody, what your time in custody times were, and
4 the manpower constraints that you were under.

5 Q. Sure, and different Border Patrol agents
6 may -- some are more thorough than others. Is that
7 fair?

8 A. Most definitely.

9 Q. Okay, all right. You wrote here that
10 enforcement process that is effective. What did you
11 mean by effective?

12 MR. DARROW: Objection.

13 A. I meant that it is a method that allows us
14 to monitor the migrant population from when we
15 process them and turn them over to ICE/ERO.

16 Q. Okay, so whether -- whether this program's
17 effective or not is going to depend on ICE and ERO,
18 right?

19 A. Yes.

20 Q. Okay. And you would have only known
21 whatever ICE had shared with you, correct?

22 A. That's correct.

1 MR. DARROW: Objection.

2 BY MR. GUARD:

3 Q. Okay. And I'm not asking him what they
4 shared. I'm just asking that would be the limited
5 extent of his knowledge. The next phrase says
6 includes accountability measures. What did you mean
7 by that?

8 MR. DARROW: Objection.

9 **A. That means the technical and the ankle**
10 **bracelets, the electronic monitoring devices or**
11 **measures that allowed ICE to track and monitor and**
12 **account for the folks that we transferred to their**
13 **custody.**

14 Q. Okay. And then again, that would have been
15 information that you would have gathered or gleaned
16 from ICE, right?

17 MR. DARROW: Objection.

18 **A. Yes.**

19 Q. Okay. So whether or not the program's
20 effective and accountable is again going to depend on
21 ICE and how they implement it, right?

22 MR. DARROW: Objection.

1 **A. Yes.**

2 Q. Okay. If they do a good job, then it will
3 be effective and accountable. If they do a bad job,
4 it won't, right?

5 MR. DARROW: Objection.

6 **A. Well, I would imagine it's dependent on**
7 **their capacity also, whether they have enough**
8 **monitoring devices or cell phones, mobile devices.**

9 Q. Okay. So there could be budgetary
10 constraints, right?

11 **A. Yes.**

12 Q. Did you have to -- before you enrolled
13 someone in -- to parole ATD, at least at the time of
14 -- because I know -- frankly, I think it changes now,
15 but at the time of November 2nd, 2021, did you have
16 to check with ICE before you processed someone
17 through that pathway?

18 MR. DARROW: Objection.

19 **A. Yes.**

20 Q. Okay, all right. Would that have been
21 communicated to the sector chiefs and the deputy
22 chiefs in a separate communication, that they needed

1 to talk with ICE before they used this pathway?

2 MR. DARROW: Objection.

3 A. Most of the sectors at this time were
4 already starting to have ICE/ERO personnel assigned
5 to their processing centers. I know in Rio Grande
6 Valley, at one point we probably had 60 or 70 ICE/ERO
7 personnel working almost 24/7 side by side with our
8 Border Patrol agents.

9 Q. Okay.

10 A. So they were involved with the process at
11 the very beginning.

12 Q. Okay, and that was part of the -- there was
13 a surge of -- of other personnel from DHS to respond
14 to the increase in -- in encounters, correct?

15 MR. DARROW: Objection.

16 A. There was a surge of DOD resources, DHS
17 resources. We increased state and local funding for
18 Operation Stone Garden, and there was a whole
19 government approach.

20 Q. Okay, all right. Looking at -- now, this
21 memo, if certain averages and thresholds were met,
22 was going to be triggered as to all family units,

1 right?

2 MR. DARROW: Objection.

3 A. Yes.

4 Q. Okay. So if the Rio Grande Valley or Del
5 Rio hit the thresholds that are laid out in the
6 second page of this document on AR 5, all family
7 units would be paroled plus ATD, correct?

8 MR. DARROW: Objection.

9 A. All family units minus Central Americans
10 and Mexican family units.

11 Q. Okay. So there are -- for those, there
12 were -- was at the time an alternative pathway that
13 expelled, correct?

14 A. That's correct.

15 Q. All right, all right. Looking down at the
16 third paragraph, there's a reference to the 2019 May
17 daily average. Why was the 2019 May daily average
18 utilized for those two statistics?

19 MR. DARROW: Objection.

20 A. Because those two -- that month saw the two
21 highest encounter apprehension numbers for 2019.

22 Q. So 2019 was a surge year, right?

1 **A. Yes.**

2 Q. Okay, and so you -- you -- that was the
3 highest month in that surge year; is that correct?

4 **A. That's correct.**

5 Q. All right, and so you're using now 2021 and
6 2022, as we talked about doubled that, right?

7 **A. That's correct.**

8 MR. DARROW: Objection.

9 BY MR. GUARD:

10 Q. All right, but you were utilizing the
11 previous high as -- as kind of the point where this
12 was going to be triggered. Is that fair?

13 MR. DARROW: Objection.

14 **A. Yes.**

15 Q. Okay, all right. And then outside those
16 two sectors, either Commissioner Magnus or you were
17 going to have to say yes, you can use this policy,
18 correct?

19 MR. DARROW: Objection.

20 **A. That's correct.**

21 Q. All right. And I think you've indicated
22 that this policy was utilized in a couple other

1 sectors on the southwest border, right?

2 **A. That's correct.**

3 Q. Yuma I think you mentioned, and what were
4 the -- and I apologize.

5 **A. I believe it was Yuma and El Paso, and it
6 would have been Acting Commissioner Troy Miller at
7 the time, not -- Commissioner Magnus didn't take over
8 till January of this year.**

9 Q. Okay. Now, the second to last paragraph
10 talks about the fluidity of the COVID-19 pandemic.
11 Do you see that?

12 **A. Yes.**

13 Q. All right. So this policy was only
14 intended to be temporary?

15 MR. DARROW: Objection.

16 **A. Yes.**

17 Q. All right. Looking at -- there are a
18 series of e-mails in the administrative record that
19 follow. It looks like data was being sent to I
20 assume you, even though the -- you know, the from and
21 tos are blacked out on every one of them, there's
22 looks like reports of the situation at different

1 border crossings, or border sectors? Excuse me,
2 correct?

3 MR. DARROW: Objection.

4 **A. Yes.**

5 Q. All right. And it looks like there's
6 several different days that are reported. Looks like
7 you got October 20th, 2021, September 22nd, 2021,
8 August 12th, 2021, August 11th of 2021, August 2nd of
9 2021, and then the last one is actually e-mail
10 guidance. Why were those specific dates versus other
11 dates chosen or utilized by you?

12 MR. DARROW: Objection.

13 BY MR. GUARD:

14 Q. I mean, I would assume you get a cit rep
15 every day? Is that fair?

16 MR. DARROW: Objection.

17 **A. Now I have a dashboard.**

18 Q. Okay.

19 **A. So --**

20 Q. I could pull out -- I got printouts of your
21 -- I probably have your dashboard.

22 **A. Yeah.**

1 Q. But at the time, I assume you were getting
2 e-mails like this almost practically every day?

3 MR. DARROW: Objection.

4 **A. Yes.**

5 Q. Were these dates dates that were
6 particularly heavy or, you know, why -- why include
7 these and not others into the -- to what you
8 considered?

9 MR. DARROW: Objection.

10 **A. I'm going to have to assume because these**
11 **were probably dates where we experienced higher**
12 **levels of encounters than we had on previous**
13 **occasions. When you look at Del Rio, 3,600**
14 **encounters in three days, that's an average of 1,200**
15 **a day, that's significant.**

16 Q. Okay. If you look down at Rio Grande on
17 that same -- you're looking at the e-mail from
18 October 20th, 2021?

19 **A. That's correct.**

20 Q. Okay. And you look down at Rio Grande and
21 you have on, again, over three days, I think it's
22 4,489 encounters, but you don't recall specifically

1 why you considered this e-mail. You just looking at
2 it now, that seems to be -- makes sense to you,
3 correct?

4 **A. Yes.**

5 MR. DARROW: Objection.

6 BY MR. GUARD:

7 Q. Okay. And if you look at the September
8 22nd of 2021 e-mail, if you look at the second page,
9 Del Rio, it says on pace for 15,052 this week?

10 **A. Yes.**

11 Q. Okay. But you don't know why you included
12 this dashboard versus any other dashboard that -- or
13 not dashboard. Any other stats you report in the
14 administrative record.

15 MR. DARROW: Objection.

16 **A. This one would have been right after the**
17 **event in Del Rio where the Haitian migration flow**
18 **staged underneath the port of entry.**

19 Q. Okay, all right. Looking back at AR 0012,
20 the e-mail from September 22nd, 2021, under the Rio
21 Grande Valley component, there's 475 paroles, paren,
22 475 FMUA, closed paren. Would those have been

1 paroles under NTR?

2 MR. DARROW: Objection.

3 **A. Probably so.**

4 Q. Okay, all right. All right, we can turn to
5 AR 0016. This looks like it's some kind of a
6 roll-out of e-mail of some kind. Is that fair?

7 **A. Yes.**

8 Q. All right, and it's providing guidance on
9 how to stamp the I-385, among other things?

10 MR. DARROW: Objection.

11 **A. Yes.**

12 Q. And it's limit -- it says until 15 days
13 from entry, right?

14 **A. That's correct.**

15 Q. All right. And then if you look at AR 18,
16 this is -- there's another e-mail from August 5th of
17 2021, but there's a -- you know, this is the e-mail
18 that was probably provided to either the assistant
19 chiefs or the chiefs of the sectors that are
20 affected, right?

21 MR. DARROW: Objection.

22 **A. Looks like this one just went to Del Rio.**

1 Q. Okay, and it says, "Sir," comma, and then
2 there's a lengthy thing. All right, and you know,
3 the -- what does B-L-U-F or BLUF stand for?

4 **A. Bottom line up front.**

5 Q. Okay, so executive summary kind of thing?

6 **A. Exactly.**

7 Q. Okay, here's the take-away you need to take
8 from this, and it indicates this is just for family
9 units, right, as of that time.

10 **A. Yes.**

11 Q. Okay. Looking down at the list of bullet
12 points, it has as one of the factors to be considered
13 whether ICE slash ERO will accept custody of the
14 non-citizens, right? So we're on AR 3018.

15 **A. Uh-huh.**

16 Q. Almost three quarters of the way down,
17 bullet points. You with me?

18 **A. Yeah.**

19 Q. All right. It says whether ICE slash ERO
20 will accept custody of non-citizens. You see that?

21 **A. Yes.**

22 Q. At that point in time, ICE/ERO wasn't

1 accepting custody of any citizens, was it?

2 MR. DARROW: Objection.

3 **A. I don't believe so.**

4 Q. Okay. So that was always going to be a no.
5 I mean, you were always going to read that bullet
6 point, right?

7 MR. DARROW: Objection.

8 **A. Yeah, I think there were maybe some**
9 **conditions where there was a mandatory hold on**
10 **certain populations if they were bag and baggage,**
11 **flight risk. So there were some exceptions.**

12 Q. Okay.

13 **A. Well, it says it in the next bullet.**

14 Q. Okay. Well, in the next bullet is -- it
15 makes it -- whether the non-citizen poses a threat to
16 national security, border security or a heightened
17 public safety risk. Now, this e-mail for whatever
18 reason doesn't -- the previous one has citizens with
19 a paren S closed paren. This one doesn't. Is this
20 e-mail saying that you could actually split apart a
21 family unit and peel off a criminal or if someone
22 was, you know, the son of a terrorist, you know, you

1 would have the mother and son could go through and
2 the father who's a terrorist would be split off? Is
3 that what it's kind of suggesting?

4 MR. DARROW: Objection.

5 **A. We have had situations in encounters of**
6 **family units where it could be potentially a mother**
7 **and a father, and the father would have a criminal**
8 **record and would be a mandatory detention, and so in**
9 **that case you're not separating the child from the**
10 **father, but you are taking one of the adults into**
11 **custody.**

12 Q. Okay, all right. That makes sense. All
13 right. And then the rest of the guidance on AR 0019
14 is just you have the documentation --

15 **A. The process, yes.**

16 Q. All right, and if you look at AR 21, it is
17 slightly different. This is on August 11th, so the
18 process I guess has changed in some way, and what I'm
19 referring to specifically on the previous one, it
20 said until the date, and it had 15 days from entry,
21 and this one is says 60 days from entry, right?

22 **A. That's correct.**

1 MR. DARROW: Objection.

2 BY MR. GUARD:

3 Q. Okay. And this one actually has a copy of
4 the stamp and telling them like explicitly how to
5 fill it out so they don't mess it up, correct?

6 A. **That's correct, I had a conversation with**
7 **the A chief and ask that they specifically annotate**
8 **exactly what needed to be done.**

9 Q. Fair enough. All right, and then I think
10 the e-mail on AR 22 is the same as the e-mail that
11 was on AR 17, so this is just a -- they took an old
12 e-mail and stuck the first -- the top e-mail on it;
13 is that correct?

14 A. **It appears to be similar, yes.**

15 Q. They're both from August 5th at 1:48 p.m.,
16 and it looks the same. All right, looking at AR 25
17 and 26, these again are just -- this is August 2nd of
18 2021, and again, it's just encounter data, right?

19 A. **That's correct.**

20 Q. All right.

21 A. **Detention and encounter data.**

22 Q. And you don't recall why this specific

1 e-mail was chosen versus the other ones you get every
2 day.

3 MR. DARROW: Objection.

4 A. No.

5 Q. Okay, all right. Now you're to the next
6 page, which is AR 28, and this is from July 31st,
7 right?

8 A. Yes.

9 Q. And again, this is an e-mail to Rio Grande
10 Valley?

11 A. That's correct.

12 Q. All right. And so this is -- so the
13 previous e-mail that we looked at was an August 5th
14 e-mail of 2021. This is -- this is, you know, five
15 days earlier, right, and this e-mail that went to --
16 I don't know again who it went to, but it looks like
17 it is going to Rio Grande just based on the content
18 on the first line of AR 28, this e-mail says family
19 units or single adults in the one -- well, it's the
20 paragraph that begins with, "Agents may consider,"
21 right?

22 A. That's correct.

1 Q. All right, so did -- between July 31st and
2 August 5th, was there a revision of the policy
3 between whether -- whether single adults are included
4 or not?

5 MR. DARROW: Objection. That would be
6 deliberative process.

7 BY MR. GUARD:

8 Q. Okay. So we have the memo, which says
9 family units only, right?

10 A. Yes.

11 Q. Okay, and then we have, in a series of
12 time, we have an e-mail from August 5th that says
13 family units, right?

14 A. Yes.

15 Q. And then we have an e-mail from July 31st
16 that says family units and single adults, correct?

17 A. That's correct.

18 Q. Okay. So when you issued the policy, it
19 was only family units, right?

20 MR. DARROW: Objection.

21 A. Yes.

22 Q. Okay. And if after the policy was issued,

1 at some point in time you added single adults, right?

2 MR. DARROW: Objection.

3 A. Yes.

4 Q. Okay. And most likely that would have been
5 communicated in an e-mail that would be similar to
6 this one, right?

7 MR. DARROW: Objection.

8 A. Yes.

9 Q. Would it necessarily require a new memo?

10 MR. DARROW: Objection.

11 A. Not necessarily.

12 Q. Okay, all right. You can put that aside.
13 What number are we on now?

14 MR. DARROW: Twenty-seven I believe.

15 MR. GUARD: Twenty-seven.

16 (Ortiz Exhibit No. 27
17 was marked for
18 identification.)

19 BY MR. GUARD:

20 Q. I'm going to mark this exhibit as Exhibit
21 27 to your deposition.

22 MR. DARROW: Thank you.

1 BY MR. GUARD:

2 Q. Have you seen Exhibit 27 before?

3 A. No.

4 Q. Okay, all right. It is a document that is
5 I believe signed by Mr. Barker, or excuse me, I
6 should call him Chief Barker. I need to call him the
7 right title, but Chief Barker?

8 A. He likes to be called Dr. Barker, but
9 that's okay.

10 Q. I'll be glad to call him Dr. Barker.
11 Correct?

12 A. Yes.

13 Q. Okay, so on page 2 of the exhibit, it has
14 -- are you familiar with Mr. Barker's signature?

15 A. I am.

16 Q. Okay, and is that his signature on page 2?

17 MR. DARROW: Objection.

18 A. It appears to be.

19 Q. Okay, all right. If you look at the --
20 this one's not stamped with those nice numbers, but
21 if you look at the fourth page of the document,
22 there's a memo, correct?

1 **A. Yes.**

2 Q. And that is the -- I believe you earlier in
3 the deposition talked about the July 18th, 2022 memo,
4 correct?

5 **A. That's correct.**

6 Q. All right. Can you flip through this
7 document and see if your July 20th memo is anywhere
8 in here?

9 **A. I do not see it.**

10 Q. Okay, all right. And that -- your July
11 20th memo implements this memo?

12 **A. Typically when I receive a memo from the
13 secretary or the commissioner, I place a cover memo
14 and distribute it to the field for implementation.
15 So my July 20th memo would have been similar to this
16 memo without all of the additional information that I
17 don't -- I felt like, you know, the field didn't need
18 to have visibility on as far as, you know, some of
19 the policy issues.**

20 Q. Okay, all right. So it would have been a
21 -- kind of your summary of this memo with the points
22 that you believe to be relevant for Border Patrol.

1 MR. DARROW: Objection.

2 A. For implementation by the sector chiefs,
3 yes.

4 Q. Okay, all right. All right. And this memo
5 rescinds your previous memo, right?

6 A. That's correct.

7 Q. Okay. And like your memo, this memo's
8 premised on capacity and detention space, right?

9 MR. DARROW: Objection.

10 A. That's correct.

11 Q. And like your memo, your previous memo in
12 2021, this parole plus ATD memo is based on the
13 public benefit of disease mitigation, right?

14 MR. DARROW: Objection.

15 A. Yeah, it's based upon the health and
16 welfare of the migrant population, Border Patrol
17 personnel --

18 Q. Okay.

19 A. -- and overcrowded conditions within the
20 facilities.

21 Q. And like with your memo -- well, this
22 memo's not -- on its face not limited to just family

1 units, right?

2 **A. That's correct.**

3 Q. It applies to both family units and single
4 adults, correct?

5 **A. That's correct.**

6 Q. Okay. And so if the triggers in this memo,
7 which are slightly different than your triggers, are
8 met, then both single adults and family units would
9 be released, right?

10 MR. DARROW: Objection.

11 **A. Could be released, yes.**

12 Q. Okay. Would they only be released if they
13 didn't meet some other pathway, like bag and baggage
14 or -- or something like that?

15 MR. DARROW: Objection.

16 **A. There would be a few issues that would be**
17 **factored into the utilization of ATDP. Whether we**
18 **had an opportunity to decompress the population into**
19 **other facilities along the southwest border. We on**
20 **occasion will place some facilities or find a**
21 **solution to incur greater capacity numbers if we have**
22 **a repatriation flight scheduled in a certain**

1 location, and then if we know that ICE is going to be
2 able to receive certain populations, we will work
3 with them to try and transfer those individuals as
4 quickly as we possibly can.

5 Q. Okay, but barring those things, single
6 adults and family units, when the triggers are met,
7 will be released.

8 MR. DARROW: Objection.

9 A. Can be released.

10 Q. Okay. And they're going to be released
11 kind of as a class or a group, right?

12 MR. DARROW: Objection.

13 A. Well, it's supposed to be considered on a
14 case-by-case basis, and then a lot of it will depend
15 on our capacity to process the migrant population.
16 So I have folks assigned from -- or agents assigned
17 from all over the country supporting these processing
18 efforts, to include the northern -- northern border.

19 So if -- we use Yuma as an example. If we
20 start to see a spike in Yuma, we will empty out
21 facilities near southern Arizona to try and
22 accommodate those populations. And so if a sector

1 hits a trigger point, it doesn't automatically go
2 straight to ATD parole as a processing pathway. We
3 look at whether there are any other options available
4 to us before we leverage the ATD parole pathway.

5 Q. Okay. When those options max out, then
6 everyone after that certain point is going to be
7 going to parole ATD point unless there is a criminal
8 threat, you know, national security threat or some
9 other kind of threat to the United States, right?

10 MR. DARROW: Objection.

11 A. Yeah, if they're public safety, flight
12 risk, and then if -- that will happen until we can
13 get those facilities under what we would consider,
14 you know, acceptable detention conditions.

15 Q. Okay. Now, you mentioned decompression.

16 A. Yes.

17 Q. Now, earlier on, I showed you some budget
18 documents where ICE had gotten rid of, you know,
19 thousands of beds, detention beds, right?

20 A. Yes.

21 Q. If they had not gotten rid of those
22 thousands of beds, there would have been another

1 place where you could have transferred aliens to,
2 right?

3 MR. DARROW: Objection.

4 A. Yeah, potentially there would have been an
5 opportunity to transfer more of the non-citizens or
6 migrants to ICE/ERO, but their capacity was -- even
7 at 50,000 weren't going to be enough to support the
8 amount of encounters we were experiencing.

9 Q. Okay. And I appreciate that, but at
10 50,000, that's possibly another, you know, average
11 daily population of 20,000 additional migrants or
12 25,000 additional migrants being detained, right?

13 MR. DARROW: Objection.

14 A. Yes.

15 Q. And that would have taken the pressure off
16 of Border Patrol and its detention facilities,
17 correct?

18 MR. DARROW: Objection.

19 A. For a short period of time, it would have.

20 Q. Okay.

21 A. But when you're apprehending 65, 70
22 thousand migrants in a 24-hour period, you can do the

1 **math. It's not going to take long for them -- for us**
2 **to exceed their capacity also.**

3 Q. Okay. And if the -- and that was a
4 decision by the Biden administration to not go
5 forward and to limit the capacity of ICE, right?

6 MR. DARROW: Objection. That calls for
7 deliberative process information.

8 BY MR. GUARD:

9 Q. I'm just asking what administration made
10 that decision. The decision's made in public.

11 **A. It would have been under this**
12 **administration, yes.**

13 Q. Okay. And the Biden administration decided
14 to narrow other pathways too, correct?

15 MR. DARROW: Objection.

16 **A. There were other pathways that were**
17 **eliminated, yes.**

18 Q. Okay. And each one of those decisions in
19 the midst of a historic flood of aliens to the
20 southern border increased the pressure on Border
21 Patrol and its limited capacity, right?

22 MR. DARROW: Objection.

1 **A. Yes.**

2 Q. And as that pressure build, there's no
3 other choice other than to release, right?

4 MR. DARROW: Objection.

5 **A. That's correct.**

6 Q. If you'll look at -- again, there's not
7 numbers on the bottom, but it's an e-mail -- there's
8 an e-mail from July 22nd, 2022. Do you see that?

9 **A. I do.**

10 Q. All right. Now, the policy's dated July
11 18th, 2022, right?

12 **A. That's correct.**

13 Q. So this e-mail couldn't possibly have been
14 considered by Commissioner Magnus and Mr. Johnson in
15 forming the policy, right, because it postdates the
16 policy.

17 MR. DARROW: Objection.

18 **A. That's correct.**

19 Q. And is this an e-mail that you received?

20 MR. DARROW: Objection. That information
21 is blacked out for privilege reasons.

22 MR. GUARD: What is your assertion of

1 privilege?

2 MR. DARROW: Same -- same assertion as
3 before, PII based on law enforcement.

4 BY MR. GUARD:

5 Q. Well, you're going to enjoy defending them
6 in front of the judge, but we'll deal with that
7 later. Now, if you'll look behind that, are these
8 your -- your dashboards that you were talking about?

9 A. **They are similar to the dashboards.**

10 Q. Okay.

11 A. **These are actually dashboards that the**
12 **operations directorate uses. The dashboard I use is**
13 **a little bit different, but I think it contains some**
14 **of the same information.**

15 Q. Okay. Is -- and you can flip --
16 unfortunately, again, there's not numbers on the
17 bottom of this. There's another kind of different
18 dashboard. I was just curious what you're actually
19 looking at. This one has more than just "Border
20 Patrol" on it. It says "Daily Snapshot" on the top
21 of it, and I'm trying to show it to you to make it
22 easier to find. You got it right there. You got it

1 right there. Does that look like your -- your -- no,
2 all right.

3 **A. I'm going to tell you, I don't look at this**
4 **dashboard. It's too busy for me, and it -- I've**
5 **asked the team to get rid of it actually several**
6 **times.**

7 Q. Okay.

8 **A. They like it, so --**

9 Q. All right.

10 **A. As long as they use it for whatever**
11 **purposes they use it for, it's fine.**

12 Q. Okay, and then if you'll flip forward,
13 there's a third kind of dashboard in here. It looks
14 like -- it's called SWB daily snapshot.

15 MR. DARROW: Is this the one we're up to,
16 SAR 32? Sorry, it's kind of small at the bottom.

17 MR. GUARD: Forty-six --

18 MR. DARROW: Oh, 46?

19 BY MR. GUARD:

20 Q. -- is the one I got --

21 **A. Got it.**

22 Q. Okay. Does that look like -- more like the

1 dashboard you use, or still not.

2 **A. I don't like any of these, no.**

3 Q. Okay, all right.

4 **A. Sorry.**

5 Q. That's fine. I was just curious. All
6 right, and then if you look at -- actually, I now see
7 the SAR numbers. I apologize for that. If you look
8 at SAR 85 --

9 **A. Okay.**

10 Q. And there's temporary injunction entered
11 prohibiting the repeal of Title 42?

12 **A. Yeah.**

13 Q. Okay, all right. You can put that aside.
14 I'm trying to speed this up. The next I think 40
15 pages are what we previously looked at for your --
16 that were in your administrative record before, and
17 then at SAR122, it's something from the CDC?

18 **A. Yeah.**

19 Q. Okay. And this is about the repeal of the
20 Title 42 order?

21 **A. That's correct.**

22 Q. All right, and then moving to SAR 152, this

1 -- is this the order that you were referring to
2 before about Yuma, or Tucson, the injunction?

3 **A. I believe it's the -- it pertains to the**
4 **Doe litigation, yes.**

5 Q. Okay, all right. All right, you can put
6 that aside. If I can have -- if we can take a break
7 for about ten minutes, I can just go through my
8 questions to see if I've got that down. We may come
9 back and rest and then I'll move the corporate rep
10 deposition pretty quickly.

11 THE VIDEOGRAPHER: We're now off the record
12 at 16:10.

13 (Recessed at 4:10 p.m.)

14 (Reconvened at 4:27 p.m.)

15 THE VIDEOGRAPHER: We're now back on the
16 record at 16:27.

17 MR. GUARD: I have no further questions for
18 you, Chief. I thank you for your service to this
19 country, and I'll pass the witness.

20 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

21 BY MR. DARROW:

22 Q. Thank you. Just have a few questions,

1 Chief. Try not to prolong things any longer than we
2 have to. I believe you testified before, and correct
3 me if I'm wrong, that the government is currently
4 using MPP, the migrant protection protocol, less than
5 it was before; is that correct?

6 **A. That's correct.**

7 **Q. Okay, and why is that?**

8 **A. There are a couple other factors that have**
9 **forced or reduced the number of enrollees in the MPP**
10 **program. First, the coordination with the government**
11 **of Mexico has to occur, and currently as it exists,**
12 **the one sector that is accepting MPP enrollees are,**
13 **or the one area is South Texas. Two, one of the**
14 **things we have seen is that many of the individuals**
15 **that are enrolled in the MPP program claim protected**
16 **status, whether they are part of a protected group.**
17 **And so once that happens, they are no longer -- or**
18 **they're removed from the MPP program or process.**

19 **Q. Okay. Any other factors?**

20 **A. No.**

21 **Q. We talked before about expedited removal.**
22 **Which agency is primarily responsible for doing the**

1 credible fears -- credible fear interviews of
2 non-citizens in expedited removal?

3 **A. So that responsibility falls to U.S. CIS,**
4 **Citizenship and Immigration Services. They have**
5 **asylum officers that are assigned to conduct these**
6 **credible fear claims or CF claims.**

7 Q. Have there been border surges under other
8 administrations?

9 **A. I've been a Border Patrol agent for 31**
10 **years and I've been chasing traffic since 1996. I**
11 **have worked in South Texas in '96. In '98, I worked**
12 **in Southern California when traffic surged there. In**
13 **2000, I worked in Arizona when traffic surged there,**
14 **and then I was the deputy chief or acting chief under**
15 **the 2014 UAC crisis and the 2019 family unit surge,**
16 **and so yeah, there have been surges throughout my**
17 **career.**

18 Q. Were there any surges under the previous
19 Trump administration?

20 **A. Yes.**

21 Q. I believe you also said before, and also,
22 please correct the record if I'm wrong on this, that

1 the border crisis is making things unsafe for
2 Americans and aliens alike. Do you remember saying
3 that?

4 A. Yes.

5 Q. And why is that?

6 A. Well, what typically happens is the
7 criminal organizations use the migrant populations as
8 pawns in this effort. They place them in harm's way,
9 as we saw last month when 53 migrants perished in the
10 back of a tractor trailer. They promise and provide
11 information that is inaccurate, and quite often, that
12 puts them in peril.

13 And then what we also see is that, you
14 know, these criminal organizations are putting these
15 border communities in danger because they are hiring
16 smugglers and traffickers, and quite often we see
17 these second effects in the -- manifest themselves in
18 stash houses in neighborhoods. We see, you know,
19 damage to property, ranchers and farmers or, you
20 know, having to repair fences and, you know,
21 accommodate for livestock that are lost when these
22 smugglers drive through their property, so -- and

1 **then you have these smugglers that are just -- you**
2 **know, have little regard for the safety of the**
3 **community out there.**

4 Q. I'd like to go back to what I believe is
5 marked as Exhibit 6 briefly. It's this document
6 that's top line points. Is it all right if I have
7 the witness look at my copy?

8 MR. GUARD: That'll speed things up.

9 MR. DARROW: Yeah, here you go.

10 MR. GUARD: That's fine.

11 THE WITNESS: Sorry.

12 BY MR. DARROW:

13 Q. It's okay. I opened it to the second page
14 --

15 **A. All right.**

16 Q. -- so we're all looking at the same --
17 there is there at the top a list of bullet points
18 with push-pull factors that we spoke about before.
19 Do you recall that?

20 **A. Yes, I do.**

21 Q. Are there any push-pull factors that you
22 have experienced that are not included in that list?

1 A. Yeah, one of the things that, you know,
2 that we were just talking about is the criminal
3 organizations or the transnational criminal
4 organizations that are reaping all kinds of benefits
5 from migration and the surges that we're experiencing
6 right now, both from a -- the fees that they charge
7 the migrants that they're trafficking, and the fact
8 that they continue to flood the border area with, you
9 know, narcotics and whatnot.

10 So those are the criminal organizations'
11 ability to drive migration, not just in and along the
12 border area, but you know, in specific locations.
13 Cartel violence occurs south of many of our sectors,
14 and as we've seen acts of violence perpetrated
15 against our officers quite often. We've had more
16 agents assaulted this year than we ever have, and we
17 continue to see increase in firearm seizures. So
18 certainly the criminal organizations drive, you know,
19 these migrant populations because it's a billion
20 dollar business for them.

21 Previously cartels focused principally on
22 narcotics trafficking. Now based upon some of the

1 information that we receive from our intelligence
2 sources, it isn't uncommon for us to see these plaza
3 bosses or cartel bosses reap as much proceeds from
4 immigration smuggling as they do from narcotics
5 trafficking.

6 Q. So among the factors, the ones listed on
7 the page and the ones that you just enumerated, and
8 feel free to review them further if you need to,
9 would you say that some factors are more significant
10 than others in -- in pushing as a push/pull factor?

11 A. Yes, most definitely. I think almost every
12 single one of the migrants that we encounter are
13 being driven by economic opportunities that exist or
14 the lack of economic opportunities in their home
15 country, and so that certainly is a factor that is
16 considered. I track the remittances that occur
17 between the U.S. and Central America and Mexico, and
18 what is an indicator as to what type of migration
19 trends we may begin to see, and what I've seen over
20 the last several years is an uptick in those
21 remittances.

22 And so this is certainly in a COVID global

1 environment, and lack of opportunities in some of
2 these countries is certainly pushing migrant -- these
3 migrant populations to an area where, you know, our
4 medical care and facilities are much better than what
5 they may be experiencing in Central America, South
6 America. You see the political unrest that's
7 occurring in Peru and Venezuela and some of the other
8 countries is a significant driver of the population
9 into the U.S.

10 Q. All right, we don't need to look at that
11 exhibit anymore. How has Border Patrol's processing
12 capacity changed since January 20th, 2021?

13 A. One of the things that question have been
14 able to invest in considerably is our ability to
15 process the migrant populations much more
16 efficiently. We have made some significant
17 investments in our ability to begin the process much
18 sooner. We have and are currently working on an
19 electronic A file. Traditionally Border Patrol, when
20 they would issue an A file, everything was done via
21 computer and printed out and signed and stored in a
22 paper file system.

1 We are rolling out our electronic A file
2 system across the country. We are working on our
3 unified processing module, which will allow us to
4 transfer information from us to the other component
5 agencies to include CIS and ICE, Immigration and
6 Customs Enforcement. We are able to take biometrics
7 in the field and determine immediately whether
8 somebody has been apprehended previously, whether
9 they have a criminal record, and whether they are a
10 threat to our national security or to our officers.

11 So what we've been able to do is speed up
12 the processing in some locations by as much as, you
13 know, half, or cut the processing times in half in
14 many locations, and this is -- you know, we do not
15 have unfortunately mobile devices in every Border
16 Patrol agent's hands, but we're working on
17 prioritizing that in those sectors that are seeing
18 the highest increases of flow. Yuma's a hundred
19 percent conducting mobile intake, and our plan is to
20 roll it out to Del Rio and Rio Grande Valley, and
21 then continue to expand that across both the
22 southwest border and the northern border.

1 So on top of being able to make some
2 investments in some of our processing centers, to
3 include the one I mentioned earlier, the Ursula
4 facility, which has the ability to house about a
5 thousand people in a hardened structure, we continue
6 to also update and modernize our processing programs
7 because they certainly were in need of improvement.

8 Q. And what impact does -- does cutting
9 processing time have on the immigration process as a
10 whole?

11 A. Well, one, it's going to make it more
12 efficient, and two, it allows us to segregate the no-
13 threat humanitarian asylum seeker population from
14 what would -- what I would consider my normal or
15 traditional border security work, which are those
16 migrants that are seeking to come to the U.S. for
17 strictly economic reasons and would not, you know, be
18 eligible for some sort of immigration benefit based
19 upon, you know, humanitarian or political conditions.

20 MR. DARROW: All right. Thank you very
21 much, Chief. That's it for us.

22 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF

1 BY MR. GUARD:

2 Q. Okay, just a couple follow-ups. You were
3 just asked about MPP. That program was suspended
4 after the Biden administration took over, correct?

5 A. Yes.

6 Q. All right, and then it had to be restarted
7 as a result of a court order; is that correct?

8 A. Yes.

9 Q. Okay, and so the fact that it's only
10 available in one sector reflects its suspension and
11 the court order, right?

12 MR. DARROW: Objection.

13 A. Yes.

14 Q. Okay. You mention the protected group.
15 Can you -- what is -- what --

16 A. LGBTQ2 -- QT.

17 Q. Okay.

18 A. Yeah.

19 Q. Okay.

20 A. Sorry.

21 Q. I just wanted to make sure I understood
22 what that was.

1 A. Uh-huh.

2 Q. And then finally -- well, I may have two
3 questions. You mentioned that you had been chasing
4 traffic since you got on the job and had seen
5 previous surges, right? Have you ever seen traffic
6 like this before?

7 A. Yes, in -- let me explain. In 1991, when I
8 started, we had about 4,000 Border Patrol agents, and
9 the amount of apprehensions didn't even come close to
10 the amount of people that got away from us. There --
11 I mean, we couldn't even count how many people got
12 away from us. So I can tell you that, you know,
13 those first couple of years in my career weren't even
14 close, and that was -- and I was only one sector. I
15 didn't have the national perspective, but I'm sure
16 that played out in multiple sectors.

17 Two, the population that we're experiencing
18 now is a little bit different than what we've
19 experienced in other surges. When I was assigned to
20 South Texas in '96, Arizona in 2000, Southern
21 California in '98, during those surges, that
22 population wasn't turning themselves in to our Border

1 Patrol agents. They were all trying to evade
2 apprehension. What we're experiencing now,
3 specifically in Yuma, Del Rio, and to some degree Rio
4 Grande Valley is, you know, 75 percent of that
5 population is turning themselves in, and then roughly
6 25 or maybe a little bit more than that are actually
7 trying to evade apprehension.

8 This isn't a matter of us not having the
9 ability to encounter those groups. This is when you
10 break down the 1.8 million apprehensions that we've
11 already made so far this year, I would imagine quite
12 a few of those large groups are this no-threat
13 humanitarian population that, you know, should be
14 processed at a port of entry.

15 Q. Are the individuals that are turning
16 themselves in -- are they turning themselves in
17 because they believe they're going to be paroled?

18 MR. DARROW: Objection.

19 THE WITNESS: I would imagine that they're
20 turning themselves in because they think they're
21 going to be released, yes.

22 MR. GUARD: Okay, all right. I don't think

1 I have any further questions. Do you want to explain
2 read versus waive? Or I guess by -- I guess if you
3 can have follow-ups.

4 MR. DARROW: No, no, no, that -- yeah,
5 we're going to -- we're going to read.

6 MR. GUARD: Okay, all right.

7 MR. DARROW: And could we also request
8 scans of the marketed exhibits for the witness?

9 MR. GUARD: Sure, I'm going to have her
10 make electronic copies of them.

11 MR. DARROW: Okay.

12 MR. GUARD: So I'm -- I'm fine with that
13 because that's easier for me too.

14 MR. DARROW: Okay, great.

15 MR. GUARD: All right. We're going to go
16 off the record and then back on for the corporate rep
17 deposition, which is going to be extremely short.

18 THE VIDEOGRAPHER: This concludes today's
19 deposition. We're now off the record at 16:44.

20 (Whereupon, at 4:44 p.m., the taking of the
21 instant deposition ceased.)

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CERTIFICATE OF DEPONENT

I have read and examined the foregoing pages and find the answers contained therein with changes made by me, if any, to be true and correct.

Signature of the Witness

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public in and for

My Commission Expires _____.

1 UNITED STATES OF AMERICA)

2 ss:

3 COMMONWEALTH OF VIRGINIA)

4 I, KAREN C. YOUNG, a Notary Public within
5 and for the Commonwealth of Virginia, do hereby
6 certify that the witness whose deposition is
7 hereinbefore set forth was duly sworn and that the
8 within transcript is a true record of the testimony
9 given by such witness.

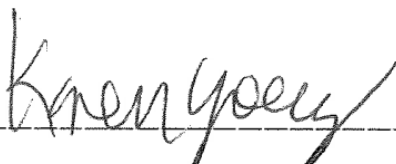
10 I further certify that I am not related to
11 any of the parties to this action by blood or
12 marriage and that I am in no way interested in the
13 outcome of this matter.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand this 4th day of August, 2022.

16

17

18



19

20 My commission expires:

21 June 30, 2026

22 Registration No. 7046852

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