AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

THREAT CONVERGENCE AT THE BORDER: HOW CAN WE IMPROVE THE FEDERAL EFFORT TO DISMANTLE CRIMINAL SMUGGLING ORGANIZATIONS?

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JULY 12, 2005

Serial No. 109–75

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

23–850 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON GOVERNMENT REFORM

TOM DAVIS, Virginia, *Chairman*

CHRISTOPHER SHAYS, Connecticut
DAN BURTON, Indiana
ILEANA ROS-LEHTINEN, Florida
JOHN M. MCHUGH, New York
JOHN L. MICA, Florida
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
STEVEN C. LATOURETTE, Ohio
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, JR., Tennessee
CANDICE S. MILLER, Michigan
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
GINNY BROWN-WAITE, Florida
JON C. PORTER, Nevada
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. MCHENRY, North Carolina
CHARLES W. DENT, Pennsylvania
VIRGINIA FOXX, North Carolina

HENRY A. WAXMAN, California
TOM LANTOS, California
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
CHRIS VAN HOLLEN, Maryland
LINDA T. SANCHEZ, California
C.A. DUTCH RUPPERSBERGER, Maryland
BRIAN HIGGINS, New York
ELEANOR HOLMES NORTON, District of Columbia

BERNARD SANDERS, Vermont (Independent)

MELISSA WOJCIAK, *Staff Director*
DAVID MARIN, *Deputy Staff Director/Communications Director*
ROB BORDEN, *Parliamentarian/Senior Counsel*
TERESA AUSTIN, *Chief Clerk*
PHIL BARNETT, *Minority Chief of Staff/Chief Counsel*

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

MARK E. SOUDER, Indiana, *Chairman*

PATRICK T. MCHENRY, North Carolina
DAN BURTON, Indiana
JOHN L. MICA, Florida
GIL GUTKNECHT, Minnesota
STEVEN C. LATOURETTE, Ohio
CHRIS CANNON, Utah
CANDICE S. MILLER, Michigan
GINNY BROWN-WAITE, Florida
VIRGINIA FOXX, North Carolina

ELIJAH E. CUMMINGS, Maryland
BERNARD SANDERS, Vermont
DANNY K. DAVIS, Illinois
DIANE E. WATSON, California
LINDA T. SANCHEZ, California
C.A. DUTCH RUPPERSBERGER, Maryland
MAJOR R. OWENS, New York
ELEANOR HOLMES NORTON, District of Columbia

EX OFFICIO

TOM DAVIS, Virginia
HENRY A. WAXMAN, California

J. MARC WHEAT, *Staff Director*
MALIA HOLST, *Clerk*
TONY HAYWOOD, *Minority Counsel*

CONTENTS

	Page
Hearing held on July 12, 2005	1
Statement of:	
Stana, Richard M., Director, Homeland Security and Justice, U.S. Government Accountability Office, accompanied by Dan R. Burton, Assistant Director, Homeland Security and Justice	20
Letters, statements, etc., submitted for the record by:	
Cummings, Hon. Elijah E., a Representative in Congress from the State of Maryland, prepared statement of	10
Souder, Hon. Mark E., a Representative in Congress from the State of Indiana, prepared statement of	5
Stana, Richard M., Director, Homeland Security and Justice, U.S. Government Accountability Office, prepared statement of	23
Watson, Hon. Diane E., a Representative in Congress from the State of California, prepared statement of	16

THREAT CONVERGENCE AT THE BORDER: HOW CAN WE IMPROVE THE FEDERAL EFFORT TO DISMANTLE CRIMINAL SMUGGLING ORGANIZATIONS?

TUESDAY, JULY 12, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2154, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder, Cummings, Watson, Ruppersberger, Foxx, Sanchez, and Norton.

Staff present: J. Marc Wheat, staff director and chief counsel; Pat DeQuattro, congressional fellow; Malia Holst, clerk; Tony Haywood, minority counsel; and Jean Gosa, minority assistant clerk.

Mr. SOUDER. The subcommittee will come to order.

Good afternoon, and thank you all for coming. This hearing will continue the subcommittee's ongoing study of how criminal smuggling organizations have impacted our ability to secure our borders. Today's hearing is a followup to the June 14th hearing concerning smuggling organizations that are capable of transporting not only drugs, but also aliens, terrorists and weapons.

Mr. Richard Stana, of the Government Accountability Office, the investigatory arm of Congress, will help us understand the resource, management and legal gaps that frustrate our efforts of the dismantling of these organizations. His testimony will bring further clarity to the organization and efforts of the U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement to address the critical issue of alien smuggling.

It is critically important that the Department of Homeland Security and Congress address these issues. This subcommittee is very anxious to review the administration's "Second Stage Review" process and the impact it will have on the agencies and missions that we are discussing today.

Smuggling pipelines used by unauthorized aliens and criminals seeking to enter the United States could also be used by terrorists to gain entrance into the United States. It is estimated that the international alien smuggling and sex trafficking trade generates $9½ billion for criminal organizations worldwide, and the profits are used to finance additional criminal enterprises, such as the

trafficking of drugs, weapons, and other contraband. Nonetheless, it is unknown how many people are smuggled into the United States each year.

Most alien smuggling occurs along the U.S.-Mexico border. Mexico is a staging area for aliens from Mexico and other parts of the world to attempt to illegally enter the United States. As the Border Patrol makes it more difficult for smugglers to cross at one point along the border, the smugglers move their operations elsewhere. The success of Operation Gatekeeper in San Diego and Operation Hold the Line in El Paso has been cited as one of the causes for the increase in smuggling in the Arizona corridor.

In addition, smuggling organizations are attracted to the Arizona corridor because the border terrain is challenging for law enforcement; the area is a major transportation hub with a highly developed highway system and an international airport; the corridor has an extensive staging area comprised of homes, hotels and apartments; and the area has a robust financial services infrastructure.

Many policymakers are troubled by the apparent increase in the number of organized cartels ferrying people into the country illegally. The 9/11 Commission voiced strong concerns that terrorists use these human smuggling networks to cross borders in order to evade detection at official points of entry.

The Department of Homeland Security is absolutely a crucial player in our efforts to secure the borders. When DHS was created in March 2003, it combined some of the most important border security agencies in the Federal Government: the Border Patrol, the former INS and Customs inspectors and agents, and the U.S. Coast Guard, all of which represented America's front line against smugglers and drug traffickers.

Although there are certainly other Federal agencies with vital roles in our fight to achieve some type of border control, DHS, and specifically Customs and Border Protection [CBP], and Immigration and Customs Enforcement [ICE], are largely responsible for manning the front lines in this mission. ICE is a primary component for investigating alien smuggling, combating the smuggling of aliens into the country, and the U.S. Border Patrol is the primary front line defender between the ports of entry. Without them, we will have little or no defense against the smugglers, people or drugs, at our borders. It is vitally important that these DHS components be fully coordinated and integrated as they attempt to secure the borders, and that they be provided the proper tools, resources and authorities to do their job.

The Government Accountability Office recently released a study entitled "Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response," which provides an in-depth review and critique of the current issues that impact U.S. alien smuggling enforcement efforts. The alien smuggling issues being discussed in this report are not new nor surprising to this subcommittee. As a matter of fact, they are the same types of issues and challenges that we frequently hear about from DHS agencies and law enforcement officials involved in drug enforcement and interdiction efforts. Stovepiping of responsibilities, limited information sharing and a lack of coordinated, cohesive strategy, combined with limited resources, are all common critiques.

Now is the time for Department of Homeland Security in general, and Immigration Customs Enforcement and Customs and Border Protection, in particular, to establish a strategic approach to these problems. It is vitally important that these component agencies remain focused and adaptive to various threats as they attempt to secure the borders and that they be provided the tools and authorities to do their jobs.

The GAO report which we are discussing today does a good job of identifying some of the potential gaps in our current alien smuggling enforcement efforts. These gaps must be addressed to ensure that work can be done to deal with correcting these troubled areas.

The first and most important issue centers on the strategic operating plan that DHS is employing to address this issue. If each component agency employs a different operational structure, effective interagency cooperation cannot result. Intelligence sharing, coordinated investigations and operational deconfliction must also be addressed if CBP and ICE are to maximize their effectiveness along the borders and against smuggling organizations.

Second, the report discusses an apparent disconnect between ICE and Border Patrol. That is, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation. Without such a mechanism, there may be missed opportunities for identifying and developing cases on significant alien smuggling organizations.

This subcommittee has repeatedly discussed the merits and problems facing DHS, as agencies like legacy Customs were literally split in two. Now may be the appropriate time to ask, what are the benefits of an ICE and CBP merger? Merging the two agencies may be the most appropriate and necessary means to achieve a seamless enforcement effort. Would joining the two agencies strengthen our Nation's resolve in the fight against illegal smuggling organizations on the southwest border?

Third, why is the dismantling of alien smuggling organizations seemingly a low priority? The primary Government agency tasked with immigration smuggling investigations, ICE, devoted only 7 percent of all investigative hours in the last fiscal year to this issue. This is simply not acceptable. If DHS is going to break up alien smuggling organizations, the lead investigative agency will need to devote greater resources for that specific mission.

Fourth, what improvements can be made to the existing immigration laws that can bring greater priority to alien smuggling cases and more effective enforcement and prosecutions? The GAO report highlights a concern raised by ICE and the Department of Justice regarding the lack of adequate statutory civil forfeiture authority for seizing real property, such as "stash" houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the Nation. Creating human smuggling penalties that are parallel with drug smuggling mandatory minimums may serve to increase convictions and decrease smuggling events. Statutory sentencing guidelines need to be enforced to send the message that the current alien smuggling situation is unacceptable.

These issues are all very important and extremely urgent, and we look forward to hearing from our witness today about ways to

improve them. I would like to thank again Mr. Richard Stana from the Government Accountability Office for being here with us today to discuss this important issue.

We thank everyone for taking the time this afternoon to join us for this important hearing.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

Threat Convergence at the Border: How Can We Improve the Federal Effort To Dismantle Criminal Smuggling Organizations?

Subcommittee on Criminal Justice, Drug Policy
And Human Resources
Committee on Government Reform

July 12, 2005

Good afternoon and thank you all for coming. This hearing will continue the Subcommittee's ongoing study of how criminal smuggling organizations have impacted our ability to secure our borders. Today's hearing is a follow-up to the June 14 hearing concerning smuggling organizations that are capable of transporting not only drugs, but also aliens, terrorists, and weapons.

Mr. Richard Stana of the Government Accountability Office (the investigatory arm of Congress) will help us understand the resource, management, and legal gaps that frustrate our efforts of the dismantling of these organizations. His testimony will bring further clarity to the organization and efforts of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) to address the critical issue of alien smuggling.

It is critically important that the Department of Homeland Security and Congress address these issues. This Subcommittee is very anxious to review the Administrations "Second Stage Review" process and the impact it will have on the agencies and missions that we are discussing today.

Smuggling pipelines used by unauthorized aliens and criminals seeking to enter the country could also be used by terrorists to gain entrance into the United States. It is estimated that the international alien smuggling and sex trafficking trade generates $9.5 billion for criminal organizations worldwide, and the profits are used to finance additional criminal enterprises, such as the trafficking of drugs, weapons, or other contraband.[1] Nonetheless, it is unknown how many people are smuggled into the United States each year.

Most alien smuggling occurs along the U.S.— Mexico border. Mexico is a staging area for aliens from Mexico and other parts of the world to attempt to illegally enter the United States. As the Border Patrol makes it more difficult for smugglers to cross at one point along the border, the smugglers move their operations elsewhere. The success of Operation Gatekeeper in San Diego, and Operation Hold the Line in El Paso, have been cited as one of the causes for the increase in smuggling in the Arizona corridor. In addition, smuggling organizations are attracted

[1] Testimony of ICE Deputy Assistant Director John P. Torres, in Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, Alien Smuggling: New Tools and Intelligence Initiatives, May 18, 2004.

to the Arizona corridor because the border terrain is challenging for law enforcement; the area is a major transportation hub with a highly developed highway system and an international airport; the corridor has an extensive staging area comprised of homes, hotels and apartments; and the area has a robust financial services infrastructure.

Many policy makers are troubled by the apparent increase in the number of organized cartels ferrying people into the country illegally. The 9/11 Commission voiced strong concerns that terrorists use these human smuggling networks to cross borders in order to evade detection at official points of entry.[2]

The Department of Homeland Security (DHS) is an absolutely crucial player in our efforts to secure the borders. When DHS was created in March 2003, it combined some of the most important border security agencies in the Federal government – the Border Patrol, the former INS and Customs inspectors and agents, and U.S. Coast Guard, all of which represented America's front line against smugglers and drug traffickers.

Although there are certainly other federal agencies with vital roles in our fight to achieve some type of border control, DHS, and specifically Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), are largely responsible for manning the "front lines" in this mission. ICE is a primary component for investigating alien smuggling, combating the smuggling of aliens into the country, and the U.S. Border Patrol is the primary "front-line defender" between the ports of entry. Without them, we will have little or no defense against the smugglers, people or drug, at our borders. It is vitally important that these DHS components be fully coordinated and integrated as they attempt to secure the borders, and that they be provided the proper tools, resources and authorities to do their jobs.

The Government Accountability Office (GAO) recently released a study entitled "Combating Alien Smuggling; Opportunities Exist to Improve the Federal Response" which provides an in-depth review and critique of the current issues that impact U.S. alien smuggling enforcement efforts.

The alien smuggling issues being discussed in this report are not new or surprising to this Subcommittee. As a matter of fact, they are the same type of issues and challenges that we frequently hear about from DHS agencies and law enforcement officials involved in drug enforcement and interdiction efforts. Stovepiping of responsibilities; limited information sharing; and a lack of a coordinated, cohesive strategy; combined with limited resources are all common critiques.

Now is the time for Department of Homeland Security in general, and Immigration Customs Enforcement and Customs and Border Protection, in particular, to establish a strategic approach to these problems. It is vitally important that these component agencies remain focused and adaptive to various threats as they attempt to secure the borders, and that they be provided the tools and authorities to do their jobs.

---

[2] The 9/11 Commission Report, *Final Report of the National Commission on Terrorist Attacks Upon the United States*, U.S. Government Printing Office, July 2004, p. 384.

The GAO report, which we are discussing today, does a good job of identifying some of the potential "gaps" in our current alien smuggling enforcement efforts. These "gaps" must be addressed to ensure that work can be done to deal with correcting those trouble areas.

The first and most important issue centers on the strategic operating plan that DHS is employing to address this issue. If each component agency employs a different operational structure, effective interagency cooperation can not result. Intelligence sharing, coordinated investigations, and operational deconfliction must also be addressed if CBP and ICE are to maximize their effectiveness along the borders and against smuggling organizations.

Second, the report discusses an apparent disconnect between ICE and Border Patrol; that is, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation. Without such a mechanism, there may be missed opportunities for identifying and developing cases on significant alien-smuggling organizations. This Subcommittee has repeatedly discussed the merits and problems facing DHS, as agencies like legacy Customs were literally split into two. Now may be the appropriate time to ask what are the benefits of an ICE and CBP merger? Merging the two agencies may be the most appropriate and necessary means to achieve a seamless enforcement effort. Would joining the two agencies strengthen our nations resolve in the fight against illegal smuggling organizations on the Southwest border?

Third, why is the dismantling of alien smuggling organizations seemingly a low priority? The primary government agency tasked with immigration smuggling investigations, Immigration and Customs Enforcement (ICE), devoted only seven percent of all investigative hours in the last fiscal year (FY 04) to this issue. This is simply not acceptable. If DHS is going to break up alien smuggling organizations, the lead investigative agency will need to devote greater resources for that specific mission.

Fourth, what improvements can be made to the existing immigration laws that can bring greater priority to alien smuggling cases and more effective enforcement and prosecutions? The GAO report highlights a concern raised by ICE and the Department of Justice regarding the lack of adequate statutory civil forfeiture authority for seizing real property, such as "stash" houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation. Creating human smuggling penalties that are parallel with drug smuggling mandatory minimums may serve to increase convictions and decrease smuggling events. Statutory sentencing guidelines need to be enforced to send the message that the current alien smuggling situation is unacceptable.

These issues are all very important and extremely urgent, and we look forward to hearing from our witness today about ways to improve them. I would like to thank Mr. Richard Stana from the Government Accountability Office for being here with us today to discuss this important issue.

We thank everyone for taking the time this afternoon to join us for this important hearing.

Mr. SOUDER. Now I will yield to our ranking member, Mr. Cummings, for an opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, for holding this important hearing to examine efforts by the Department of Homeland Security and other Federal agencies to address alien smuggling as one among many serious threats to homeland security at the U.S.-Mexico border.

The smuggling and trafficking of people across the border has been a serious problem for many years and was a top immigration policy priority even prior to September 11th. But September 11th has given new urgency to anti-smuggling efforts.

As the independent, bipartisan National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission, noted in its July 2004 report on the September 11th terrorist attacks, "In the decade before September 11, 2001, border security-encompassing travel, entry and immigration was not seen as a national security matter. Public figures voiced concern about the war on drugs, the right level and kind of immigration, problems along the southwest border, migration crises originating in the Caribbean and elsewhere, or the growing criminal trafficking of humans. The immigration system as a whole was widely viewed as increasingly dysfunctional and badly in need of reform. In national security circles, however, only smuggling of weapons of mass destruction carried weight, not the entry of terrorists who might use such weapons or the presence of associated foreign-born terrorists."

Today, policymakers and citizens have a greater awareness of the prospect that terrorists could enlist the assistance of smuggling organizations or otherwise exploit existing weaknesses in the U.S. border security to advance deadly terrorist objectives.

The creation of the Department of Homeland Security in March 2003 has been viewed as an opportunity to use financial investigative techniques to combat alien smugglers by targeting and seizing their monetary assets. In particular, the inclusion of the legacy Customs Service within the Bureau of Immigration and Customs Enforcement [ICE], equips ICE to be a primary investigative agency for dismantling criminal organizations that engage in the smuggling and/or trafficking of people across our borders. Meanwhile, Customs and Border Protection plays a vital complementary role as front line enforcer of immigration laws at the border.

Apart from DHS, agencies like ICE, CBP and the U.S. Coast Guard, which enforces immigration laws at sea, numerous components within the Departments of Justice, State and Treasury play important roles in the prosecution and investigation of alien smuggling and trafficking, and related crimes such as travel document fraud and money laundering. International cooperation and assistance, including through bilateral U.S. agreements with Mexico and Canada, also is crucial.

In May 2005, GAO issued a report evaluating Federal anti-smuggling efforts entitled, "Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response," the report examined the implementation status of DHS' anti-smuggling strategy and the results of ICE anti-smuggling investigations in terms of convictions and seized assets. According to the report, roughly 2,400 criminal defendants were convicted in Federal district courts under the pri-

mary anti-smuggling statute in fiscal year 2004, and during that year, ICE reported seizures totaling $7.3 million from anti-smuggling operations. For the first 6 months of fiscal year 2005, ICE anti-smuggling investigations yielded $7.8 million in seizures.

The report also identified two areas in which Federal anti-smuggling efforts might be improved. GAO found that establishing a mechanism for tracking referrals of cases from CBP to ICE would help to ensure that investigative leads provided by CBP are pursued by ICE, or if ICE resources are unavailable, that CBP continues to develop the information for further investigation.

In addition, anti-smuggling prosecutions by the Department of Justice could be bolstered by augmenting civil forfeiture authority to enable the seizure of real property assets such as stash houses used to harbor smuggled aliens before they reach their final destinations throughout the United States. Although the Justice Department raised the concern about inadequate civil forfeiture, the Attorney General had yet to formulate a legislative proposal at the time of the report's release.

Today's hearing offers the subcommittee an opportunity to hear from GAO concerning the findings and recommendations set forth in the May 2005 report, as well as about any subsequent actions taken by DHS and the Justice Department to carry out GAO's recommendations.

Finally, Mr. Chairman, I would like to extend a warm welcome to Richard M. Stana, GAO's Director for Homeland Security and Justice, who appears before us today. I look forward to hearing his testimony.

With that, Mr. Chairman, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

Representative Elijah E. Cummings, D-MD7
Ranking Minority Member
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives
109th Congress

Hearing on "Threat Convergence Along the Border: How Can We Improve the Federal Effort to Dismantle Criminal Smuggling Organizations?"

July 12, 2005

Mr. Chairman,

Thank you for holding this important hearing to examine efforts by the Department of Homeland Security and other federal agencies to address alien smuggling as one among many serious threats to homeland security at the U.S.-Mexico border.

The smuggling and trafficking of people across the border has been a serious problem for many years and was a top immigration policy priority even prior to 9-11. But 9-11 has given new urgency to anti-smuggling efforts.

As the independent, bipartisan National Commission on Terrorist Attacks Upon the United States (also known as the 9-11 Commission) noted in its July 2004 report on the 9-11 terrorist attacks,

> "In the decade before September 11, 2001, border security-encompassing travel, entry, and immigration was not seen as a national security matter. Public figures voiced concern about the "war on drugs," the right level and kind of immigration, problems along the southwest border, migration crises originating in the Caribbean and elsewhere, or the growing criminal traffic in humans. The immigration system as a whole was widely viewed as increasingly dysfunctional and badly in need of reform. In national security circles, however, only smuggling of weapons of mass destruction carried weight, not the entry of terrorists who might use such weapons or the presence of associated foreign-born terrorists."

Today, policymakers and citizens have a greater awareness of the prospect that terrorists could enlist the assistance of smuggling organizations or otherwise exploit existing weaknesses in U.S. border security to advance deadly terrorist objectives.

The creation of the Department of Homeland Security in March 2003 has been viewed as an opportunity to use financial investigative techniques

to combat alien smugglers by targeting and seizing their monetary assets. In particular, the inclusion of the legacy Customs Service within the Bureau of Immigration and Customs Enforcement (ICE) equips ICE to be a primary investigative agency for dismantling criminal organizations that engage in the smuggling and/or trafficking of people across our borders. Meanwhile, Customs and Border Protection plays a vital complementary role as "front line" enforcer of immigration laws at the border.

Apart from DHS agencies like ICE, CBP, and the U.S. Coast Guard, which enforces immigration laws at sea, numerous components within the Departments of Justice, State and the Treasury play important roles in the prosecution and investigation of alien smuggling and trafficking, and related crimes such as travel document fraud and money laundering. International cooperation and assistance, including through bilateral U.S. agreements with Mexico and Canada, also is crucial.

In May 2005, GAO issued a report evaluating federal anti-smuggling efforts. Entitled "Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response," the report examined the implementation status of DHS's anti-smuggling strategy and the results of ICE anti-smuggling

investigations in terms of convictions and seized assets. According to the report, roughly 2,400 criminal defendants were convicted in federal district courts under the primary anti-smuggling statute in fiscal year 2004, and, during that year, ICE reported seizures totaling $7.3 million from anti-smuggling operations. For the first six months of FY 2005, ICE anti-smuggling investigations yielded $7.8 million in seizures.

The report also identified two areas in which federal anti-smuggling efforts might be improved. GAO found that establishing a mechanism for tracking referrals of cases from CBP to ICE would help to ensure that investigative leads provided by CBP are pursued by ICE or, if ICE resources are unavailable, that CBP continues to develop the information for further investigation. In addition, anti-smuggling prosecutions by the Department of Justice could be bolstered by augmenting civil forfeiture authority to enable the seizure of real property assets such as "stash" houses used to harbor smuggled aliens before they reach their final destinations throughout the United States. Although the Justice Department raised the concern about inadequate civil forfeiture, the Attorney General had yet to formulate a legislative proposal at the time of the report's release.

Today's hearing offers the Subcommittee an opportunity to hear from GAO concerning the findings and recommendations set forth in the May 2005 report, as well as about any subsequent actions taken by DHS and the Justice Department to carry out GAO's recommendations.

Finally, Mr. Chairman, I would like to extend a warm welcome to Richard M. Stana, GAO's Director for Homeland Security and Justice, who appears before us today.

I look forward to Mr. Stana's testimony and yield back the balance of my time.

##

Mr. SOUDER. Congresswoman Watson, do you have an opening statement?

Ms. WATSON. Yes, thank you so much, Mr. Chairman. I want to join with my colleague and thank you for holding this critical hearing.

The Department of Homeland Security contends that in my home State of California, we have the largest number of illegal immigrants in the Nation. Additionally, it is estimated that each year since the end of the Immigration Reform and Control Act legalization program in 1988, the undocumented population of California has grown by an average of about 100,000. These numbers display the fact that human smuggling organizations are continuously succeeding in getting people into the United States illegally.

Human smuggling gangs are financially driven and are not concerned with the identity of their clients. Terrorists and criminals have the ability to utilize these smuggling organizations as a ticket into our Nation. Another concern with these organizations is the increased violence of rival gangs fighting for control of the trafficking routes and clients. Some of the gangs have even taken hostages and killed migrants in order to deny profit to their competing organizations.

The process of smuggling is putting the lives of migrants and the American people at risk. Human smuggling and trafficking gangs must be targeted and we must work to effectively dismantle them.

The ICE organization launched Operation ICE Storm in 2003 to dismantle the smuggling gangs in Phoenix, AZ. One of ICE Storm's objectives is to target money used by these gangs in order to weaken their operational yield. Since its inception, ICE Storm has seized more than $7.4 million in criminal currency, they have seized 302 weapons, 387 defendants have been prosecuted and over 8,700 undocumented aliens have been detained.

Furthermore, the crime rate in the Phoenix area has dropped, with a significant decrease in smuggling-related violence. Programs like these should become widespread so that we can combat this problem nationwide.

After the launch of ICE Storm, the Department of Homeland Security introduced the LAX Initiative in June 2004. LAX, as you know, is the Los Angeles International Airport. It is a significant West Coast transportation hub used by smuggling gangs to move migrants across the Nation. The LAX Initiative uses ICE investigators and the U.S. Customs and Border Protection to operate in various parts of the airport in hopes of preventing the service of any human smuggling organization. We must continue to support programs like these in order to dismantle the remaining criminal human smuggling organizations across the Nation.

Mr. Chairman, I want to thank you again for putting together this most important hearing. I would also like to thank the witnesses that are here for their willingness to come and testify. Thank you.

[The prepared statement of Hon. Diane E. Watson follows:]

Opening Statement
Congresswoman Diane E. Watson
Government Reform Committee
Subcommittee on Criminal Justice, Drug Policy & Human Resources
Hearing: Threat Convergence at the Border: How Can We Improve the Federal Effort to Dismantle Criminal Smuggling Organizations?

Mr. Chairman, I thank you for holding this hearing that is critical to improving the national security of our nation. Eliminating criminal smuggling into the United States is necessary in order to preserve the safety of our borders.

The Department of Homeland Security contends that in my home state of California, we have the largest number of illegal immigrants in the nation. Additionally, it is estimated that each year since the end of the Immigration Reform and Control Act legalization program in 1988, the undocumented population of California has grown by an average of about 100,000. These numbers display the fact that human smuggling organizations are continuously succeeding in getting people into the United States illegally.

Human smuggling gangs are financially driven and are not concerned with the identity of their clients. Terrorists and criminals have the ability to utilize these smuggling organizations as a ticket into our nation. Another concern with these organizations is the increased violence of rival gangs fighting for control of the trafficking routes and clients. Some of the gangs have even taken hostages and killed migrants in order to deny profit to their competing organizations. The process of smuggling is putting the lives of migrants and the American people at risk. Human smuggling and trafficking gangs must be targeted and we must work to effectively dismantle them.

The U.S. Immigration and Customs Enforcement (ICE) launched Operation ICE Storm in 2003 to dismantle the smuggling gangs in Phoenix, Arizona. One of ICE Storm's objectives is to target money used by these gangs in order to weaken their operational yield. Since its inception, ICE Storm has seized more than $7.4 million in criminal currency, 302 weapons, 387 defendants have been persecuted and over 8,700 undocumented aliens have been

detained. Furthermore, the crime rate in the Phoenix area has dropped, with a significant decrease in smuggling-related violence. Programs like these should become widespread so that we can combat this problem nationwide.

After the launch of ICE Storm, the Department of Homeland Security introduced the LAX Initiative in June of 2004. Los Angeles International Airport (LAX) is a significant West Coast transportation hub used by smuggling gangs to move migrants across the nation. The LAX Initiative uses ICE investigators and U.S. Customs and Border Protection (CBP) to operate in various parts of the airport in hopes of preventing the service of any human smuggling organization. We must continue to support programs like these in order to dismantle the remaining criminal human struggling organizations across the nation.

Thank you again Mr. Chairman for putting together this important hearing. Also, I would like to thank the witnesses for their willingness to come testify. I hope that

that we can all work together to effectively tackle the problem at hand.

I yield back.

Mr. SOUDER. Thank you very much.

I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record and that any answers to written questions provided by the witnesses also be included in the record. Without objection, so ordered.

I also ask unanimous consent that all exhibits, documents and other materials referred to by Members may be included in the hearing record, that all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

Our first and only panel is composed of Mr. Richard M. Stana, Director of Homeland Security and Justice, Government Accountability Office. Joining Mr. Stana is Mr. Dan R. Burton, Assistant Director of Homeland Security and Justice Issues at GAO.

Would you each stand and raise your right hand? As you know, it is our standard practice in this committee to swear all witnesses in.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that both witnesses responded in the affirmative.

We are not going to have the light on, you are our only witnesses today and we want to hear your summary of this important report. Just so you know that with the policy committee led by John Shadegg and the Speaker, we are trying to work out a number of these border issues. This is one of the primary ones, which is why we are focusing on your study here. It seems to be one of the only documents out there right now trying to figure out the larger organizations, rather than just arresting individuals here and there, how can we get to the larger organizations behind it.

So thank you for coming today.

STATEMENT OF RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, ACCOMPANIED BY DAN R. BURTON, ASSISTANT DIRECTOR, HOMELAND SECURITY AND JUSTICE

Mr. STANA. Chairman Souder, Mr. Cummings and members of the subcommittee, I appreciate the opportunity to testify today on Federal efforts to combat alien smuggling. This transnational crime globally generates billions of dollars annually and is a significant and growing problem that can pose serious security threats to the United States. Although most aliens smuggled into the country are seeking economic opportunities, some are brought here as part of criminal enterprises. This concern has heightened since September 11th.

The creation of the Department of Homeland Security in March 2003 presented new opportunities to more effectively combat alien smuggling, particularly by placing in tandem the financial expertise of legacy Customs with the immigration expertise of legacy INS to target and seize the monetary assets of smuggling organizations. Stripping away monetary assets has been done with some success in drug trafficking investigations. At congressional hearings 2 years ago, ICE officials testified that ICE was developing a national strategy to apply this technique to alien smuggling inves-

tigations. In my oral statement, I would like to highlight two points about this from our report.

My first point is that more needs to be done to articulate strategy and working relationships. As of last week, the ICE strategy for combating alien smuggling had not been finalized. ICE officials gave various reasons for this. They said the draft strategy was being adjusted to broadly cover all aspects of smuggling, including aliens as well as drugs and other illegal contraband, and to incorporate lessons learned from ongoing follow-the-money approaches such as the one used in Operation ICE Storm in Arizona.

Also, the working relationship of ICE and CBP is still evolving. The strategy's effectiveness depends partly on having clearly defined roles and responsibilities for these two DHS components. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for information sharing and intelligence.

However, there is no mechanism in place for tracking the number and results of the referrals or leads made by CBP to ICE for investigation. Establishing a tracking mechanism could have benefits for both agencies. It would help ICE ensure that appropriate action is taken on CBP's referrals. Also, CBP could continue to pursue certain leads if ICE, for lack of available resources or other reasons, cannot take action on the referrals. We recommended that DHS establish a referral-tracking mechanism, and DHS agreed to do so.

My second point is that although the investigative results achieved in terms of seizures of smugglers' monetary assets have been modest so far, this approach has potential. In fiscal year 2004, about 2,400 criminal defendants were convicted in Federal district courts under Section 274 of the INA, which is the primary statute for prosecuting alien smuggling. In that same fiscal year, ICE reported seizures totaling $7.3 million from its anti-smuggling investigations, plus an additional $5.3 million generated by the State of Arizona under Operation ICE Storm.

For the first 6 months of fiscal year 2005, ICE officials reported seizures of $7.8 million, an upward trend. ICE officials anticipate increased seizures from alien-smuggling investigations in future years, as ICE continues to apply its financial expertise. The officials said, however, that there are competing demands for investigative resources and also noted that alien smuggling cases, in contrast to drug trafficking cases, are much less likely to result in large seizures of currency.

But even absent seizures of money or other assets from alien smugglers, ICE officials noted the importance of applying financial expertise to determine the scope and operational patterns of alien smuggling organizations, to identify the principals and to obtain evidence to build prosecutable cases.

Regarding potential forfeitures in alien smuggling cases, the Government lacks statutory civil authority for seizing real property, such as the stash houses used to facilitate alien smuggling. In these cases, the current civil forfeiture authority covers only personal property, such as vehicles used to facilitate the crime, but not real property, unless it was purchased with the proceeds of the crime.

Justice officials told us that the Department has not developed and submitted to Congress a legislative proposal because their legislative policy resources have been focused on other priorities. We recommended that Justice, in collaboration with DHS, consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for alien smuggling. Justice agreed to do this.

In closing, although our work focused mainly on ICE's and CBP's roles in addressing alien smuggling, their investigations can involve numerous Federal agencies, as well as the cooperation and assistance of foreign governments. Opportunities exist to more effectively marshal DHS resources in this important task, with the possibility that the operations of other agencies would be enhanced as well.

This concludes my oral statement. Dan Burton and I would be happy to address any questions the subcommittee may have.

[The prepared statement of Mr. Stana follows:]

United States Government Accountability Office

GAO

Testimony

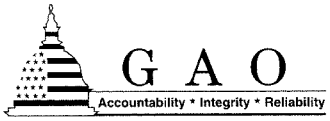
Before the Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
Tuesday, July 12, 2005

COMBATING ALIEN SMUGGLING

The Federal Response Can Be Improved

Statement of Richard M. Stana
Director, Homeland Security and Justice



GAO-05-892T

July 2005

GAO
Accountability·Integrity·Reliability
Highlights

Highlights of GAO-05-892T, a testimony before the Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, House of Representatives

COMBATING ALIEN SMUGGLING

The Federal Response Can Be Improved

Why GAO Did This Study

Globally, alien smuggling generates billions of dollars in illicit revenues annually and poses a threat to the nation's security. Creation of the Department of Homeland Security (DHS) in March 2003 has provided an opportunity to use financial investigative techniques to combat alien smugglers by targeting and seizing their monetary assets. For instance, the composition of DHS's largest investigative component—U.S. Immigration and Customs Enforcement (ICE)—includes the legacy Customs Service, which has extensive experience with money laundering and other financial crimes. Another DHS component, U.S. Customs and Border Protection (CBP) has primary responsibility for interdictions between ports of entry. In summer 2003, ICE announced that it was developing a national strategy for combating alien smuggling. This testimony is based on GAO's May 2005 report on the implementation status of the strategy and investigative results in terms of convictions and seized assets.

What GAO Recommends

GAO's May 2005 report recommended that (1) the Secretary of Homeland Security establish a mechanism for tracking the results of referrals made by CBP to ICE and (2) the Attorney General consider developing and submitting to Congress a legislative proposal for amending the civil forfeiture authority for alien smuggling. The departments agreed with the recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-05-892T.

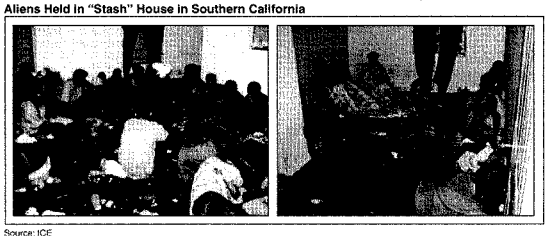
To view the full product, including the scope and methodology, click on the link above. For more information, contact Rich Stana at (202) 512-8777 or stanar@gao.gov.

What GAO Found

As of July 5, 2005, ICE had not finalized its strategy for combating alien smuggling. ICE was adjusting the draft strategy to focus on the southwest border and encompass all aspects of smuggling, aliens as well as drugs and other contraband. In adjusting the strategy, ICE officials stressed the importance of incorporating lessons learned from ongoing follow-the-money approaches such as Operation ICE Storm, a multi-agency task force launched in October 2003 to crack down on migrant smuggling and related violence in Arizona. Also, the strategy's effectiveness depends partly on having clearly defined roles and responsibilities for ICE and CBP, two DHS components that have complementary antismuggling missions. CBP is primarily responsible for interdictions between ports of entry and ICE for investigations that extend to the U.S. interior. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for sharing information and intelligence. Currently, however, there is no mechanism in place for tracking the number and the results of referrals made by CBP to ICE for investigation. CBP and ICE officials acknowledged that establishing a tracking mechanism could have benefits for both DHS components. Such a mechanism would help ICE ensure that appropriate action is taken on the referrals. Also, CBP could continue to pursue certain leads if ICE—for lack of available resources or other reasons—cannot take action on the referrals.

In fiscal year 2004, about 2,400 criminal defendants were convicted in federal district courts under the primary alien-smuggling statute, and ICE reported seizures totaling $7.3 million from its alien-smuggling investigations. For the first 6 months of fiscal year 2005, ICE reported $7.8 million in seizures from alien-smuggling investigations. A concern raised by ICE and the Department of Justice is the lack of adequate statutory civil forfeiture authority for seizing real property, such as "stash" houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation. However, Justice does not have a legislative proposal on this subject pending before Congress because the department's legislative policy resources have been focused on other priorities.

Aliens Held in "Stash" House in Southern California



Source: ICE

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss federal efforts to combat alien smuggling. This transnational crime globally generates illicit revenues estimated to total billions of dollars annually and is recognized as a significant and growing problem that can pose a serious threat to the security of the United States, a primary destination country. Although it is likely that most aliens smuggled into the United States seek economic opportunities, some are brought into the United States as part of criminal or terrorist enterprises. This concern has heightened since September 11, 2001. Creation of the Department of Homeland Security (DHS) in March 2003 has provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling organizations. For instance, the department's largest investigative component—U.S. Immigration and Customs Enforcement (ICE)—integrates the legal authorities and investigative tools of the legacy Immigration and Naturalization Service (INS) and the U.S. Customs Service, which has extensive experience in combating money laundering and other financial crimes. Another DHS component, U.S. Customs and Border Protection (CBP), has a complementary antismuggling mission with primary responsibility for interdictions between ports of entry. Given their complementary antismuggling missions, CBP makes referrals to ICE on alien-smuggling interdictions that may warrant further investigation.

At congressional hearings 2 years ago, in June and July 2003, ICE officials testified that ICE was developing a national strategy to dismantle criminal and terrorist organizations that smuggle or traffic in people by tracing and stripping away their monetary assets. My testimony today will address two principal questions:

- First, what is the implementation status of ICE's strategy for combating alien smuggling, particularly regarding efforts to use financial investigative techniques to follow the money trail and seize the monetary assets of smuggling organizations?

- Second, since the creation of DHS and ICE, what results have been achieved from alien-smuggling investigations in terms of prosecutions and convictions, as well as seizures of smugglers' monetary assets?

My testimony is based on a report we issued in May 2005 to the House Judiciary Subcommittee on Immigration, Border Security, and Claims.[1] Also, on July 5, 2005, we contacted ICE headquarters to obtain an update on the implementation status of ICE's strategy for combating alien smuggling.

Summary

Although its development was announced as early as June 2003, ICE's national strategy for combating alien smuggling had not been finalized as of July 5, 2005. In the absence of a national strategy, ICE has used various means to provide interim guidance to investigators. ICE officials said the draft strategy was being adjusted to broadly cover all aspects of smuggling, encompassing aliens as well as drugs and other illegal contraband, and to focus initially on the southwest border. In its official response to our report, DHS said "This narrowed focus on the southwest border will allow ICE to review best practices and evaluate lessons learned before an expanded nationwide strategy is finalized." For example, DHS cited Operation ICE Storm as a strategic model for antismuggling operations in other parts of the nation. Operation ICE Storm is a multi-agency task force launched in October 2003 to crack down on migrant smuggling and related violence in Arizona. Another reason for the strategy's continuing development period is that the working relationship of ICE and CBP is still evolving. The strategy's effectiveness depends partly on having clearly defined roles and responsibilities for these two DHS components, which have complementary antismuggling missions. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for sharing information and intelligence. Currently, however, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation. Without such a mechanism, there may be missed opportunities for identifying and developing cases on large or significant alien-smuggling organizations. CBP and ICE officials acknowledged that establishing a tracking mechanism could have benefits for both agencies. Such a mechanism would help ICE ensure that appropriate action is taken on the referrals. Also, CBP could continue to pursue certain leads if ICE—for lack of available resources or other reasons—cannot take action on the referrals. Our May 2005 report recommended that the Secretary of Homeland

[1]GAO, *Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response*, GAO-05-305 (Washington, D.C.: May 27, 2005).

Security establish a referral-tracking mechanism. DHS agreed with our recommendation. DHS said CBP and ICE, in consultation with Border and Transportation Security, would work together to identify and implement a solution to address our recommendation.

In fiscal year 2004, about 2,400 criminal defendants were convicted in federal district courts under section 274 of the Immigration and Nationality Act, the primary statute for prosecuting alien smuggling.[2] Further, for fiscal year 2004, ICE reported seizures totaling $7.3 million from its alien-smuggling investigations—plus an additional $5.3 million generated by the state of Arizona under Operation ICE Storm. ICE officials anticipate increased seizures from alien-smuggling investigations in future years, as ICE more broadly applies its financial and money-laundering expertise. For the first 6 months of fiscal year 2005, for instance, ICE officials reported seizures of $7.8 million. The officials said, however, that there are competing demands for investigative resources and also noted that alien-smuggling cases, in contrast to drug-trafficking cases, are much less likely to result in large seizures of currency. But, even absent seizures of money or other assets from alien smugglers, ICE officials noted the importance of applying financial investigative expertise in appropriate cases to determine the scope and operational patterns of alien-smuggling organizations, identify the principals, and obtain evidence to build prosecutable cases. Regarding potential forfeitures in alien-smuggling cases, ICE and Department of Justice officials said that a concern for investigators is lack of adequate statutory civil forfeiture authority for seizing real property, such as "stash" houses, used to facilitate the smuggling of aliens. According to Justice, analysis of civil and criminal forfeiture statutes generally has led the department to conclude that a statute that provides only for criminal and not civil forfeiture of facilitating property will be inadequate in such cases, and investigative experience indicates that these cases are numerous. Justice officials noted, however, that the department has not developed and submitted to Congress a legislative proposal because the department's legislative policy resources have been focused on other priorities. Our May 2005 report recommended that the Attorney General, in collaboration with the Secretary of Homeland Security, consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture

[2]Also, according to the Department of Justice, alien-smuggling-related activity may have been prosecuted under a variety of other federal criminal statutes covering, for example, passport fraud, immigration document fraud, bribery of a public official, and racketeering activity.

authority for alien smuggling. The Department of Justice agreed with our recommendation and said it plans to move forward with a proposal as GAO recommended.

Background

By definition, alien smuggling (sometimes called people smuggling or human smuggling) is transnational in that it involves more than one country and also usually involves persons who have consented to be transported to another country. This activity generally produces short-term profits for the smugglers. That is, after the aliens reach their final destinations, they have no continuing relationship with the smugglers. In legal and diplomatic references, alien smuggling is distinct from human trafficking, although both smuggling and trafficking may have similarities or common elements. In human trafficking, the criminality and human rights abuses—such as coercion for prostitution, labor sweat shops, or other exploitative purposes and servitude arrangements—may continue after the migrants reach the United States in order to produce both short-term and long-term profits. Whereas a trafficked person is a victim, an alien who consents to be smuggled is subject to criminal processing and deportation.

Given the underground nature of alien smuggling, exact figures quantifying the size or scope of this transnational crime are not available. Nonetheless, estimates by the United Nations and the federal law enforcement and intelligence communities indicate that people smuggling is a huge and highly profitable business worldwide, involving billions of dollars annually, and the United States is a major destination country. People smuggling is a continuously growing phenomenon, according to the International Criminal Police Organization (Interpol). The types of smugglers can range from opportunistic business owners who seek cheap labor to well-organized criminal groups that engage in alien smuggling, drug trafficking, and other illegal activities. Partly because of increased border monitoring by governments, Interpol has noted that criminal networks increasingly control the transnational flow of migrants. That is, willing illegal migrants increasingly rely on the services of criminal syndicates that specialize in people smuggling, even though traveling conditions may be inhumane and unsafe.

Alien smuggling generally is prosecuted under section 274 of the Immigration and Nationality Act, which prohibits knowingly or recklessly

bringing in, transporting, or harboring certain aliens.[3] Depending on the conduct charged, a conviction under section 274 could result in a maximum penalty of 10 years' imprisonment per alien smuggled. Moreover, significant enhanced penalties are provided for some section 274 violations that involve serious bodily injury or placing life in jeopardy. If certain violations result in the death of any person, the convicted defendant may be punished by imprisonment for any term of years or be subjected to a death sentence.[4] Other federal criminal statutes may also be applicable. Specifically, alien-smuggling-related offenses are among the list of Racketeer Influenced and Corrupt Organizations predicate offenses (18 U.S.C. § 1961(1)) and also are included within the definition of specified unlawful activity for purposes of the money-laundering statute (18 U.S.C. § 1956). Further, criminal and civil forfeiture statutes may apply to alien-smuggling cases.

Although ICE is a primary DHS component for investigating alien smuggling, combating the smuggling of aliens into the United States can involve numerous federal agencies, as well as the cooperation and assistance of foreign governments. In addition to ICE, other relevant DHS components are the Border Patrol (a "front-line defender"), which is now part of CBP, and the U.S. Coast Guard, which is tasked with enforcing immigration law at sea. Additionally, significant roles in combating alien smuggling are carried out by Department of Justice components, including the Criminal Division, the Federal Bureau of Investigation (FBI), and U.S. Attorney's Offices, and Department of the Treasury components, such as Internal Revenue Service (Criminal Investigation) and the Financial Crimes Enforcement Network (FinCEN). Further, Department of State components have significant roles. For instance, the Bureau of Diplomatic Security—the law enforcement arm of the State Department—is statutorily responsible for protecting the integrity of U.S. travel

[3]See 8 U.S.C. § 1324. Also, as mentioned previously, alien-smuggling-related activity may be prosecuted under a variety of other federal criminal statutes covering, for example, passport fraud, immigration document fraud, bribery of public officials, and racketeering activity.

[4]There are various differences in penalty provisions applicable to alien smuggling. For instance, there are mandatory minimum penalties for certain violations of 8 U.S.C. § 1324(a)(2) but not for similar violations of 8 U.S.C. § 1324(a)(1)(A). Also, enhanced penalties for causing serious bodily injury or placing life in jeopardy apply to violations of 8 U.S.C. § 1324(a)(1)(A) but not to similar violations of 8 U.S.C. § 1324(a)(2). Further, the death penalty or imprisonment for life may be imposed for violations of 8 U.S.C. § 1324(a)(1)(A) in which death results, but such penalties are not available for similar violations of 8 U.S.C. § 1324(a)(2).

documents. Perhaps the most coveted and sought after travel documents in the world are U.S. passports and visas. Alien smuggling and travel document fraud often are inextricably linked.

An interagency coordination mechanism to help ensure that available resources are effectively leveraged is the National Security Council's Migrant Smuggling and Trafficking Interagency Working Group, which is cochaired by State and Justice. The Interagency Working Group has a targeting subgroup, whose role is to identify for investigation and prosecution the most dangerous international alien smuggling networks, especially those that pose a threat to national security. Another coordination mechanism is the Human Smuggling and Trafficking Center, an interagency entity for disseminating intelligence and other information to address the separate but related issues of alien smuggling, trafficking in persons, and clandestine terrorist travel. Although its establishment was announced in December 2000, the center was not operational until July 2004.

The March 2003 creation of DHS, including its largest investigative component (ICE), ushered in an opportunity for developing a strategy to combat alien smuggling by, among other means, using financial investigative techniques. Two months later, in May 2003, ICE used such techniques to follow the money and prosecute the perpetrators of a smuggling operation that had resulted in the deaths of 19 aliens in Victoria, Texas. The Victoria 19 case has been cited by ICE as representing a new model for fighting alien smuggling—a model that ICE (1) subsequently used to launch a multi-agency task force (Operation ICE Storm) in the Phoenix (Arizona) metropolitan area and (2) reportedly was using to develop ICE's national "Antismuggling/Human-Trafficking Strategy."

ICE's Strategy for Combating Alien Smuggling Not Yet Issued

Although its development was announced as early as June 2003, a national strategy for combating alien smuggling had not been finalized and implemented by ICE as of July 5, 2005. During congressional testimony,[5] an ICE official said ICE was developing a strategy that would address alien smuggling (and human trafficking) at the national and international level because as in the war on terrorism, the most effective means of addressing these issues is by attacking the problem in source and transit countries to prevent entry into the United States. In the absence of a national strategy to combat alien smuggling, including investigating the money trail, ICE has used various means to provide interim guidance to investigators. Such guidance included, for instance, the formation of working groups with members from various field offices and disciplines, as well as a presentation at a March 2004 conference of special-agents-in-charge and attachés. Moreover, ICE said it continues to provide guidance to the field in the form of training seminars and managerial conferences. Also, ICE indicated that it has posted guidance and policy memorandums to the field on its Web site, which is available and accessible to agents at their desktops for reference. According to ICE, the Web site is regularly reviewed and updated to ensure that the most recent guidance is available to the field. Additionally, ICE officials said that headquarters staff routinely travel to field offices to review ongoing undercover operations and large-scale investigations to help ensure compliance with existing policies and priorities.

ICE officials indicated that the draft strategy was being adjusted to broadly cover all aspects of smuggling—encompassing aliens, as well as drugs and other illegal contraband—and to focus initially on the Southwest border, between the United States and Mexico—the most active area in terms of smuggling activity and open investigations. The officials explained that ICE was developing a comprehensive southwest border strategy, given the anticipated displacement of smuggling activity to other areas along the border resulting from Operation ICE Storm and its expansion statewide under the Arizona Border Control Initiative. The officials explained that criminal enterprises tend to smuggle not only people but also drugs, weapons, counterfeit trade goods, and other illegal contraband. The ICE officials emphasized that irrespective of whether smuggling involves aliens or contraband, ICE can use similar investigative

[5]Statement of Tom Homan, ICE Interim Resident Agent-In-Charge (San Antonio, Tex.), at a hearing ("Deadly Consequences of Illegal Alien Smuggling") before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary, House of Representatives, June 24, 2003.

techniques for following the money trail. Moreover, the officials said that, following a certain period of implementation, the Southwest border strategy would be evaluated and expanded into a nationwide strategy. The officials noted, for instance, that although there is no one law enforcement strategy totally effective in all areas of the nation, the methodologies applied in Arizona with both Operation ICE Storm and the Arizona Border Control Initiative would be evaluated and tailored for use in other parts of the country.

The strategy's continuing development period is attributable partly to organizational and training needs associated with integrating the separate and distinct investigative functions of the legacy INS and the U.S. Customs Service, following creation of DHS in March 2003. Also, ICE and CBP—two DHS components with complementary antismuggling missions—signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions to ensure proper and timely sharing of information and intelligence. CBP has primary responsibility for interdictions between ports of entry while ICE has primary responsibility for investigations, including those resulting from alien smuggling interdictions referred by CBP. Accordingly, sharing of information between the two components is critical to achieving ICE's investigative objective of determining how each single violation ties into the larger mosaic of systemic vulnerabilities and organized crime. The ability to make such determinations should be enhanced when DHS components have compatible or interoperable information technology systems—which is a long-term goal of an ongoing, multiyear project called the Consolidated Enforcement Environment. Currently, however, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation, including even whether ICE declined to act on the referrals. Without such a mechanism, there may be missed opportunities for identifying and developing cases on large or significant alien-smuggling organizations. For instance, if a tracking mechanism were in place, CBP could continue pursuing certain leads if ICE—for lack of available resources or other reasons—does not take action on the referrals.

Prosecutions and Convictions Pursued in Alien-Smuggling Cases; Asset Seizures Expected to Increase

The principal federal statute used to prosecute alien smugglers is section 274 of the Immigration and Nationality Act, which prohibits knowingly or recklessly bringing in, transporting, or harboring certain aliens. Under this statute, which is codified at 8 U.S.C. § 1324, about 2,400 criminal defendants were convicted in federal district courts in fiscal year 2004. According to federal officials we interviewed, most alien-smuggling prosecutions stem from reactive or interdiction-type cases at the border, wherein in-depth investigations to follow a money trail are not warranted.

However, during our field visits in September 2004 to Phoenix and Houston, we asked U.S. Attorney's Office officials for their observations regarding whether there has been an increasing emphasis on the financial aspects of alien-smuggling investigations since the creation of DHS and ICE. In Arizona, federal prosecutors emphasized that Operation ICE Storm is a clear indication of ICE's efforts to become more proactive in alien-smuggling investigations. Also, federal prosecutors in Texas (Houston) said the money trail is being pursued when appropriate, such as proactive cases involving smuggling organizations that are based in the Far East (e.g., Thailand and certain provinces in the People's Republic of China) and have networks in Latin America and Mexico. The federal officials noted that investigations of these cases may include FBI participation and the use of undercover agents and electronic surveillance and may result in assets being seized and suspects being charged with money laundering and violations of the Racketeer Influenced and Corrupt Organizations Act. More recently, in December 2004, ICE headquarters officials told us that ongoing alien-smuggling cases in other areas of the nation—Florida, Georgia, New York, and Washington—were also using financial investigative techniques and are expected to result in asset seizures. Because these cases were ongoing, the officials declined to provide specific details, other than information already made available to the public.

For fiscal year 2004, ICE reported seizures totaling $7.3 million from its alien-smuggling investigations—plus an additional $5.3 million generated by the state of Arizona under Operation ICE Storm. To obtain additional perspectives on the results of alien-smuggling investigations in terms of recovered funds or seized assets, we contacted Treasury's Executive Office for Asset Forfeiture, which provides management oversight of the Treasury Forfeiture Fund—the receipt account for the deposit of nontax forfeitures made pursuant to laws enforced or administered by the Internal Revenue Service-Criminal Investigation and DHS components (including ICE, CBP, the U.S. Secret Service, and the U.S. Coast Guard). The Treasury officials told us they anticipate that ICE will have increased seizures in

fiscal year 2005 or later, as ICE further applies its financial and money-laundering expertise to address alien smuggling. Similarly, ICE officials anticipate increased seizures. In this regard, for the first 6 months of fiscal year 2005, ICE reported seizures of $7.8 million from alien-smuggling investigations.

As mentioned previously, alien smuggling globally generates billions of dollars in illicit revenues annually, according to some estimates. How much of the total involves aliens smuggled into the United States is not known, although the United States is often a primary destination country. Also, according to ICE officials, much of the U.S.-related smuggling revenues either may not be paid in this country or, if paid here, may be transported or transmitted abroad quickly. As such, federal efforts to combat alien smuggling by following the money trail frequently may present investigators and prosecutors with opportunities and challenges related to identifying and seizing funds or assets not located in the United States.

To help investigators and prosecutors meet the opportunities and challenges associated with transnational crime, the United States has negotiated and signed more than 50 bilateral mutual legal assistance treaties (MLAT) with law enforcement partners around the world, according to the Department of Justice. Such treaties—which are a mechanism for obtaining evidence in a form admissible in a prosecution—provide for a broad range of cooperation in criminal matters, such as locating or identifying persons, taking testimonies and statements, obtaining bank and business records, and assisting in proceedings related to immobilization and forfeiture of assets.

To get a sense of the extent to which federal law enforcement agencies were using the MLAT process to follow the money trail abroad in alien smuggling cases, we contacted Justice's Office of International Affairs, which is responsible for coordinating the gathering of international evidence and in concert with the State Department, engages in the negotiation of new MLATs. According to the Deputy Director, the number of outgoing requests for formal law enforcement assistance in alien-smuggling cases is few in comparison with cases in drug trafficking, money laundering, fraud, and various other offenses. For matters considered to be alien-smuggling cases, the Deputy Director noted that it would be very difficult to quantify the exact number of requests made to foreign countries because, among other reasons, the Office of International Affairs' database was not originally designed to include a category of "alien smuggling."

Also, we asked ICE headquarters for information regarding use of MLAT requests made in attempts to follow the money trail on alien-smuggling investigations that have extended overseas. That is, we asked how many MLAT requests were made in fiscal years 2003 and 2004, to which countries, and what have been the results in terms of assets tracked or seized. ICE's Office of Investigations' Asset Forfeiture Unit responded that it had no way of determining the number of MLAT requests. ICE officials noted, however, that none of ICE's reported seizures from alien-smuggling cases in fiscal year 2004 ($7.3 million) and the first 6 months of fiscal year 2005 ($7.8 million) were made abroad.

Generally, regarding asset seizures and forfeitures, ICE officials noted that there can be competing demands for investigative resources. The mission of ICE's Office of Investigations—which has more than 5,000 agents in 26 field offices nationwide—encompasses a broad array of national security, financial, and smuggling violations, including narcotics smuggling, financial crimes, illegal arms exports, commercial fraud, child pornography or exploitation, immigration fraud, and human trafficking. ICE headquarters officials cautioned that alien-smuggling cases, in comparison with drug cases, are much less likely to result in seizures of money. The officials explained that almost all drug deals are conducted in cash, and it is not unusual for law enforcement to arrest criminals handling hundreds of thousands or even millions of dollars in drug money. In contrast, the officials noted that alien-smuggling fees per person generally involve less money and the alien smuggler is not arrested with large cash amounts. However, even absent the significant differences in amounts of seized money or other assets from alien smugglers, ICE headquarters and field office officials stressed the importance and utility of applying investigative expertise for determining the scope and operational patterns of alien-smuggling organizations, identifying the principals, and obtaining evidence to build prosecutable cases.

Both criminal and civil forfeiture authority have limitations that affect the government's ability to seize real property in alien smuggling cases—particularly stash houses used by smugglers.[6] Asset forfeiture law has long been used by federal prosecutors and law enforcement as a tool for punishing criminals and preventing the use of property for further illegal

[6] These houses sometimes are also referred to as "drop" houses or "safe" houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation.

activity. In a criminal forfeiture action, upon conviction, the defendant forfeits and the government takes ownership of property that the defendant used to commit or facilitate the offense or property that constituted the proceeds of the illegal activity. Criminal asset forfeiture is rarely an option in alien-smuggling cases for two reasons. First, because criminal asset forfeiture is dependent on conviction of the defendant, it is not available if the defendant is a fugitive, which alien smugglers often are according to Justice. Second, because the stash house is often rental property, it is rare that the property owner is convicted as it is difficult to establish the owner's knowledge of the smuggling.

In contrast to criminal forfeiture, in a civil forfeiture action, the government is not required to charge the owner of the property with a federal offense. However, to forfeit property used to facilitate the offense but purchased with legitimately earned funds, the government must establish a substantial connection between the use of the property and the offense. Once that connection is established, the government can forfeit the house if the owner cannot show innocent ownership due to the owner's willful blindness to the criminal activity. However, taking civil action as an alternative to criminal action for real property seizures is not an option in alien smuggling cases. Civil forfeiture in alien smuggling cases is generally limited to personal property such as vessels, vehicles, and aircraft and does not extend to real property.[7] Thus, the house used to hide the aliens and conduct the alien-smuggling business could not be forfeited in a civil forfeiture action. Civil forfeiture of real property is available in cases where the house was used to conduct drug transactions, including the storing of drugs and money, child pornography, and money laundering.[8] In the view of Justice and ICE, this statutory distinction between alien smuggling and other criminal offenses is inappropriate.

An amendment to the civil forfeiture authority, according to Justice, would enhance federal efforts to dismantle smuggling organizations because would-be defendants often are fugitives, which makes criminal forfeiture unavailable. Also, a civil forfeiture authority for real property used to facilitate alien smuggling would enable the government to establish willful blindness arguments against landlords who hope to profit from such ventures without becoming directly involved. However, our May 2005 report noted that Justice does not have a legislative proposal on this

[7] 8 U.S.C. § 1324(b).

[8] See 18 U.S.C. §§ 881, 981, 2254.

subject pending before Congress because the department's legislative policy resources have been focused on other priorities.

Expanding civil forfeiture authority in alien smuggling cases to include real property used to facilitate the offense may raise concerns, including the potential for abuse of this type of forfeiture and the adequacy of protection for the rights of innocent property owners. In 2000, several reforms were made to civil asset forfeiture law to provide procedural protections for innocent property owners. These reforms were part of a compromise that was developed over several years by Congress, the executive branch, and interest groups. Some observers felt that the legislation did not provide enough reforms and protections, while others felt that it went too far and would curtail a legitimate law enforcement tool.

Conclusions

Creation of DHS in March 2003 has provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling organizations. However, after more than 2 years, the federal response to alien smuggling is still evolving, including development and implementation of a strategy to follow the money trail. Also evolving is the working relationship of ICE and CBP, two DHS components that have the primary responsibility for investigating and interdicting alien smugglers. Having clearly defined roles and responsibilities for these components is important, given their complementary antismuggling missions. In this regard, ICE's and CBP's November 2004 memorandum of understanding did not address a mechanism for tracking the number and the results of leads referred by CBP to ICE for investigation. If a tracking mechanism were in place, CBP could continue pursuing certain leads if ICE—for lack of available resources or other reasons—does not take action on the referrals. As such, a tracking mechanism would help to further ensure that large or significant alien-smuggling organizations are identified and investigated.

Federal law enforcement has concerns that efforts to dismantle alien-smuggling organizations are constrained by the current absence of civil forfeiture authority for real property used to facilitate the smuggling of aliens. In contrast, for drug trafficking and various other criminal offense categories, civil forfeiture authority is available for seizing real property used to facilitate these crimes. According to Justice and ICE, the absence of civil forfeiture authority for real property used to facilitate the smuggling of aliens is inappropriate because law enforcement is unable in

many cases to seize stash houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation.

To enhance the federal response to alien smuggling, our May 2005 report made two recommendations. Specifically, we recommended that

- the Secretary of Homeland Security establish a cost-effective mechanism for tracking the number and results of referrals by CBP to ICE, and
- the Attorney General, in collaboration with the Secretary of Homeland Security, consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for real property used to facilitate the smuggling of aliens.

DHS and Justice expressed agreement with the respective recommendation. DHS said CBP and ICE, in consultation with Border and Transportation Security, would work together to identify and implement a solution to address our recommendation. Justice said it plans to move forward with a proposal as GAO recommended.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

Contact and Staff Acknowledgments

For information about this testimony, please contact Richard Stana, Director, Homeland Security and Justice Issues, at (202) 512-8777, or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other individuals making key contributions to this testimony include Danny Burton, Grace Coleman, Frances Cook, Odilon Cuero, and Kathleen Ebert.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

PRINTED ON RECYCLED PAPER

Mr. SOUDER. Mr. Burton, did you have any opening statement?

Mr. BURTON. No, thank you, Mr. Chairman.

Mr. SOUDER. I am going to do this a little differently. I have a whole series of policy questions, but I want to ask some particular questions about some basic research to lay out what your study focused on before I get into a few of those broader questions.

How long did you conduct your study, the GAO?

Mr. STANA. About 10 months.

Mr. SOUDER. About 10 months. And all along the southwest border?

Mr. STANA. Yes, we visited field offices, ICE field offices and CBP offices all along the southwest border.

Mr. SOUDER. Did you go into Mexico at all?

Mr. STANA. No, we did not.

Mr. SOUDER. Did you investigate, do any research on what was happening on the side of Mexico and Central America?

Mr. STANA. We read reports and other publications about what is happening on the Mexican side of the border, but we did not go over and pursue those issues.

Mr. SOUDER. Anything on Florida?

Mr. STANA. No.

Mr. SOUDER. Was this only southwest border?

Mr. STANA. Southwest border, and that was mainly because the ICE strategy seemed to be focusing on the southwest border.

Mr. SOUDER. Anything regarding airports or seaports, or was it mostly the land border?

Mr. STANA. Mostly land border. But the same investigative issues would occur whether at land, sea or airports.

Mr. SOUDER. It would also apply to the Canadian border in Florida in the case of civil forfeitures.

Mr. STANA. That is correct.

Mr. SOUDER. In other words, in the policies—but you focused predominantly on the land border. Did you notice any major differences in how organizations as opposed to individuals came across, or did you see whether the Department of Homeland Security had such information, between those who came across at legitimate border crossings as opposed to in between the borders?

Mr. STANA. Well, I think in terms of how people get to use a smuggler and get across the border, there is good news and there is bad news. The good news is that there are enough interdiction resources on the southwest border now that using an alien smuggler is the preferred way to go, if you can afford one. The prices for using a smuggler are going up.

The bad news is that by using a smuggler, you can often defeat or overcome the resources on the southwest border and gain entry into the United States, mostly between ports of entry.

Mr. SOUDER. My impression, and I want to see if you believe this is accurate, is that at San Ysidro in March they said that when I said, since you have no effective penalties unless somebody has other criminal activities for holding anyone you catch who crosses illegally, and supposedly we catch 20 percent, roughly, in other words at El Paso 2 years ago, this subcommittee held a hearing and they said after 17 times they detained them. The last time we were in El Paso they said they no longer have that policy; they are

no longer detained at all. If they are from Mexico they go back to Mexico if they have a clean criminal record other than that.

I said, well, then why does anybody go, if you are just sent back, why don't you just keep coming back? They said, well, it is inefficient for criminal smuggling organizations to use the border because if we are catching 20 percent and they are bringing 20 people across, 2 of them get caught, they have to wait a day across the other side of the border for those 2 people to get through the next day, and one of them might get caught again, meaning they would have to hold up the whole group if they are headed to Indiana, my home State, or somewhere.

That suggests that those organizations might be operating at a higher percent between the borders. Why wouldn't that kind of problem be true of almost everybody, every criminal organization, smuggling organization moving through a legitimate point of entry?

Mr. STANA. Well, first off, I don't know if that 20 percent is caught en masse. People just group together without a smuggler trying to cross the border and they get caught. I suspect that there is a lot of that. So I don't know where that 20 percent comes from, first point.

Mr. SOUDER. My understanding is, we have had witnesses that estimate basically one of five illegals coming across is caught at some point. That does not mean that if you take that percentage, it was not talking about organizations.

Mr. STANA. Right, and my only point is, I don't know if that 20 percent of the population is not using a smuggler. Because those who use smugglers can have the benefit of having a very sophisticated organization, cell phones, global positioning and so on. In talking with the border patrol, they feel that in some ways, the sophistication of that equipment is such that it is just difficult for them to do their work.

But if your basic point is where are our resources, and are they placed in the correct positions to combat and defeat the smuggling operations, well, we have 10,000 people on the southwest border, on the Border Patrol between the ports of entry. Of course, you divide that by the shifts, and you take some out for administrative tax and so on. There is a good number of people down there devoted to this activity.

My concern is that what the southwest border strategy did, in effect, it started with San Diego and El Paso, and got control of the border in those locations, spread along the Rio Grande, if you can picture it along Texas, but in effect funneling folks into Arizona. So Arizona, I think Mr. Cummings mentioned that Arizona is the prime location to bring people through. But it is not because it is difficult for law enforcement. It is, but the reason they funnel people into Arizona, the Border Patrol, is that they felt they had the tactical advantage, long, flat terrain, easy to use helicopters for interdiction and apprehension and so on.

Now, having said that, it is also easier for a smuggler to identify where the resources are posted. This happens often. I was observing night operations last October, for example, in the Tucson sector. If you can imagine, you have been down there, you can imagine the ridges along the mountains and the trails of people trying to get through after dark. It is almost like ants up an anthill, so to

speak. I know we are talking about human beings, maybe that is not the best analogy.

But all this goes to, the point I am trying to make here is that it is difficult to position assets in one way to defeat all methods of smuggling. The Border Patrol has a multi-layered approach, patrol behind the border, check points, major regress routes from the border, they do what they can.

The bigger, I think, and this gets to the prioritization issue, is we put an awful lot of people on the line of scrimmage, so to speak, with 10,000 Border Patrol. Where is the interior enforcement? Is that keeping pace? Once you penetrate the line of scrimmage, are you going to score a touchdown?

Mr. SOUDER. Well, let me ask a couple more questions about your report directly. Did you see, or did you investigate, my assumption is if you are coming in between points of entry you pretty much are going to use a smuggling organization. You can maybe cross on your own and go through at a point of entry.

But if you are in between, you pretty much have to. Did you investigate or has anybody investigated where the vehicles are, are there certain dealers that sell vehicles to smugglers? Is there a pattern of looking at the vehicles? Clearly vehicles are waiting as they come up through. They are clearly coordinated. Anybody who has been down there knows those vehicles are there.

We focus so much on individual deportation, what about the groups? Have there been studies on the vehicles?

Mr. STANA. If you wanted to seek the services of a smuggler, if you go to the near U.S. border Mexican towns, it is not too hard to find one. Some cross the border on foot, and that is a good number of them, because we did set up fencing and certain brims and barriers to try to stop vehicular traffic. But some still come across in trucks, or they say, get 3 miles inside on this route, I will meet you there or one of my partners will meet you there and take you the rest of the way.

But the Border Patrol and the Federal Government do have the legal authority to seize trucks involved in the smuggling. So either we can seize them, they get through, or they are abandoned.

Mr. SOUDER. Do they check to see whether any of those are coordinated? What I want to know is, in a normal criminal investigation, what I assume is there are like travel agencies that are functioning here. The question is, has there been any kind of study or do we need to request such a study of looking at, are there patterns? In my district we could not survive, bluntly put, without the illegals coming in. They are a critical part of our manufacturing. So clearly, to get them there, there is a system that is working. They have taken down multiple green card manufacturing places.

So one of my questions is, has there been any investigation of who is making the green cards that they should up with? We have huge thefts of Social Security numbers that are on these green cards. Is anybody doing an investigation of that? You mentioned financial.

Also, there has to be somebody putting together a job market list that says, up in Elkhart, IN, they need people in the RV industry. If you come in, here's how you can be put up, here is how we will

get the vehicle there. Because people aren't just going to wander across and think of coming to Elkhart, IN.

The question is, are we breaking down the components like we would any other, if you broke down travel, you would look at, where is this travel agency, who do they book with, what airlines. Are we doing that? Have we studied that?

Mr. STANA. We haven't studied that yet, although we are in negotiations with the House Judiciary Committee to undertake such a study. If your subcommittee would be interested in signing onto that, you might consult with staff and members over there.

But having said that, part of contract smuggling can involve employment, it can involve getting you to a certain destination through overnights at a series of stash houses, it can involve a number of things, giving you a full set of documentation that looks pretty tamper-proof. A while ago, on an identity theft review, I happened to be in the Dallas office of the Secret Service.

Within 15 minutes, a person who had only worked there for a week had made me a Nebraska driver's license and a Marine Midland Bank credit card which looked pretty good to me. I'm sure a bartender could probably pick them out as a phony, somebody who looks at those things all the time. But for just a casual individual like you or me, they are pretty good documents.

And I am told that you can go to Adams Morgan in the District and buy documents like that as well for a modest amount of money. So I don't know if document production and phony document production is only something that's done in connection with a formal alien smuggling organization. It can be bought almost anywhere.

Mr. SOUDER. Thank you. Mr. Cummings.

Mr. CUMMINGS. I just want to pick up where you just left off. Travel document fraud and money laundering crimes are inextricably linked with smuggling. But they also are distinct crimes and may involve different culprits and fall under the jurisdiction of different Federal agencies, would you agree?

Mr. STANA. Yes.

Mr. CUMMINGS. Could you discuss in general the importance of the interagency cooperation and information sharing with regard to anti-smuggling efforts, and in particular, the roles and effectiveness of the Migrant Smuggling and Trafficking Interagency Working Group and the Human Smuggling and Trafficking Center?

Mr. STANA. Those two organizations, those two task forces, are key components of an effective Federal response to alien smuggling. They are sort of overarching organizations, if you will, that marshal and direct the operations of component agencies. Now, ICE is a big player in the first you mentioned, the Interagency Working Group. In fact, our information is that about 15 or so kingpins of smuggling organizations have been brought down through the efforts of that working group with ICE in control of most of those investigations. So we are not talking about ICE working independently and not in connection, but more of that needs to be done.

The Human Smuggling and Trafficking Group, the committee, is less mature. It really only got underway last summer, and they are

not fully staffed. So I think we can expect more out of that group than we are getting right now.

But those kinds of organizations are key. And when we talk about priorities, 7 percent, is that the right number or the wrong number? But these kinds of organizations, if properly run, and if properly staffed by component agencies, can overcome some of these resource constraints and bring to bear a whole Federal approach and the full brunt of the Federal Government to combat this crime.

Mr. CUMMINGS. When you were talking about Arizona, I was just wondering, did you look into whether or not there was sufficient Border Patrol? Not just Arizona, but the southwest border.

Mr. STANA. That was not part of this particular review. But we have looked at the numbers on the southwest border in connection with other reviews, and the difficulty that the Border Patrol has had over the years in recruiting and retaining people to work in those jobs.

Mr. CUMMINGS. You talked about forfeiture, and dealing with the forfeiture laws. How would that help you overall?

Mr. STANA. The Federal Government has this power in drug trafficking investigations. We are talking about civil forfeiture authority. For example, if I am a landlord, and I rent a house or an apartment building or something to you, I would assume that you are going to live there and just go about your business, non-criminal business, every day. But as the owner of that, I have some responsibility to know what goes on on my property.

If I visit my property from time to time and I see bars on the windows and doors and I see lots of comings and goings and strange things happening there, it is incumbent on me as a landlord to notify the authorities that maybe something illegal is going on there. Now, if that's a stash house and through a criminal prosecution we take down an organization that used that stash house, you cannot now under civil authority go after the landlord who was an enabler in that whole process.

So the kind of authority that Justice would be seeking would be to extend the same kinds of laws and protections afforded the landlords in drug trafficking investigations to alien smuggling investigations. It is another way of attacking the whole totality of the crime.

Mr. CUMMINGS. So you see that as a way of getting—it is not just what is forfeited, but you see that as a sort of a preventive measure?

Mr. STANA. Well, it is not preventive. It is a way of taking an asset out of play that is used by a smuggling organization.

In our report, we have pictures on the highlights page of individuals in a stash house waiting for the next leg of the journey or waiting, they are there waiting for payment and the smugglers won't let them out of the house. If you can take that out of play, take that out of the whole organization, it makes it much more difficult to smuggle aliens into the United States.

Mr. SOUDER. Will the gentleman yield?

Mr. CUMMINGS. Yes, surely.

Mr. SOUDER. In Fort Wayne, we have a crack house ordinance. They are a lot of times the abandoned homes and you can seize it

if the property owner does not supervise his property. Is that similar to what you are saying?

Mr. STANA. It's similar to that. But some of these stash houses are located in well-to-do neighborhoods, depending on who you are trying to smuggle. If you are trying to smuggle the garden variety guest worker, I suppose you could say they would be in certain areas. But if you are a criminal organization looking to smuggle a different type of person, which is the concern, I think, of the 9/11 Commission, then you don't just look to bad neighborhoods for stash houses. You could look to other places, places that for example, and I believe in one of the cases we found, they had property that was nearby a country club that was used as a stash house.

So yes, it is the same principle.

Mr. CUMMINGS. We had a hearing not very long ago on this Minute Man situation. It was very interesting that they, did you get into that at all, the Minute people?

Mr. STANA. Not on this particular assignment. I don't know much more about the Minute Men than what I read in the paper and the studies.

Mr. CUMMINGS. OK. Because what we found is that they seemed like they were just the neighborhood watch—that is what they claimed—with guns.

Mr. STANA. I don't know about the gun part, but they struck me as almost human sensors. They saw aliens coming across the border illegally and they notified the authorities, the same as sensors do.

Mr. CUMMINGS. So what is it that you need, other than this forfeiture authority, that would help you do your job? Not to help you do your job, but to make it more effective for us to deal with this border situation? In other words, your recommendations beyond the forfeiture provisions are what, if any?

Mr. STANA. In the report we made two recommendations. One dealt with the tracking mechanism, so that if ICE was not going to do anything with the referral, at least notify CBP so that they can, or if ICE does do something with the referral, that they can notify CBP of the types of referrals that they are interested in pursuing, and CBP can produce more of the same. So that was one of the recommendations.

The other recommendation had to do with Justice preparing a civil forfeiture proposal for congressional consideration. Beyond that, and we did not get into this in too big of a way, it would seem to me that the possibilities presented by these interagency working groups would be an area for the Federal Government to put more interest and resources. Having this agency do one thing and that agency do another goes well as far as that jurisdiction goes.

But to bring the full force of the FBI, the ATF, as well as INS, FinCEN and all the others, you can get some sort of a synergy going that helps with these investigations, taking down the larger ones.

Mr. CUMMINGS. Do we have in law the necessary tools to do what you just said? In other words, is this a situation where you have all these agencies out there doing their thing and would it take, I mean, could they just sort of come together, if the President said, look, guys, and ladies and gentlemen, let's work together and do

this thing, or do we have a situation like we appeared to have had with the FBI and the CIA and you almost have to have a law and create this super czar type person to bring them all together?

Mr. STANA. When you create a czar or a super type person to bring them all together, oftentimes you are fighting against things that aren't the authority to undertake investigation, and oftentimes you are trying to break down turf or just the organizational rivalries that sometimes need to be overcome.

When these working groups work well together, it is usually because you have people on the working group who get along and are committed to the task. It is usually not a matter of having insufficient authority to pursue the crime.

Mr. CUMMINGS. But that takes somebody's leadership, to make that happen, though, right?

Mr. STANA. Yes, it does, and to be fair to the agencies involved, they need to have sufficient resources to cover their own agency priorities as well.

Mr. CUMMINGS. But you are saying that we could probably be much more effective with regard to the borders if we had these agencies working closer together? Is that a fair statement?

Mr. STANA. Yes. If you look at the results of the interagency working group, the information that you cited, 15 kingpins of major smuggling organizations being brought down by that sort of effort, that goes beyond what we see in ICE Storm or some of the other anti-smuggling efforts that are only ICE's or only CBP's.

So sure, if you can bring the full force of the Federal Government together in an appropriate way, it would help.

Mr. CUMMINGS. Thank you.

Mr. SOUDER. Ms. Watson.

Ms. WATSON. I am going to try and do this in a hurry, because I have to leave in a few minutes. But No. 1, in the State of California, I was able to have a law passed that would fine an apartment owner for the assessed valuation of a unit if drugs and guns and so on are being stashed or sold from that particular facility, that particular apartment. So we have that on the books.

I mentioned to you about the LAX Initiative, and I also mentioned to you about the ICE Storm over in Arizona, where they picked up 304 weapons. I have a problem that is ongoing now, and I represent Los Angeles, CA. Those of us from California see the illegal immigration over the border constantly.

What would stop a terrorist who probably has a profile that matches Mexicans' profile, in terms of looks and all? I have reported an illegal gun shop right in the center of my district to AFT and to Customs. I found out that the gun shop sells guns to foreign governments, to the military and to LAPD. Fine. But we can't get them closed down. For the last 15 years, we had a hearing, they were in violation, they are non-complaint. What is going to stop someone coming in, putting a gun to the head of the owner and taking all those weapons out and using them, the terrorists using them?

I can't get the cooperation from Customs. They are dragging their feet. I am being stonewalled. I don't know who they are supplying weapons to. They don't have a conditional use permit. And

I was told at ATF that they, if they didn't comply with the local provisions, they would not have their license renewed.

Now, they were supposed to be out of there by March 5th, and I believe that is about 4 or 5 months ago. I cannot get any of these Federal departments to move. I have called, I have written, I have even recorded their conversations.

So my frustration is, we see these things every day on the streets. I cannot get the cooperation of our Federal departments.

Can you help me with trying to No. 1, have that gun shop comply with the law? No. 2, sharing information with congressional Members, why is there that kind of block? Why is it they won't let us know what is going on? And I am sure this particular person is well connected here in Washington and locally.

Mr. STANA. I can understand your concern, because having that kind of an operation in your district or in your city would certainly be a cause for alarm. At GAO, we have studied those kinds of gun shops and found that oftentimes they are linked to crime.

Now, I don't know——

Ms. WATSON. This one is.

Mr. STANA. Yes, I don't know the particular facts and circumstances of the case that you mention. You talked in your oral statement about California being one of the largest, if not the largest destinations——

Ms. WATSON. Exactly.

Mr. STANA [continuing]. Or inhabitance of illegal aliens. I can also tell you, and it is not a source of comfort, I am sure, that it is the leading location for criminal aliens, Arizona, California and Texas. Each one of these criminal aliens, and that is another priority of ICE that maybe is perhaps understaffed, in the study that we did, we found 8 arrests and 13 offenses, and they are still on the street.

So I understand your concern. I don't know what can be done to rectify it or at least address it. But it would seem to me that you are calling all the right locations to get some action. It is just a shame that nothing is happening.

Ms. WATSON. Well, I just want to say that our Chair has been very sensitive to these issues. I can't thank him enough, because I have sat in these hearings. I was so frustrated this morning at 4:51 a.m., I just wake up with these thoughts, and I said, well, I am going to see if we can have a congressional hearing, if I can't get something happening at the local level, and I can't get the Federal departments at least sharing information with me, maybe the Chair, if I give you the background information, would call an oversight hearing. I want to know why Customs and Immigration will not respond to my queries and will not respond to the fact that the gun shop is operating illegally according to the provisions of the municipal laws.

So I will share that with you and with that, thank you so much for your report. We will followup with you, Mr. Chairman.

Mr. SOUDER. Thank you. Ms. Sanchez.

Ms. SANCHEZ. Thank you.

It is always interesting to me when we talk about criminal smuggling, because I think that like the immigration debate in general, everybody has these wonderful ideas for these proposals, but some-

times the proposals put the cart before the horse. By that I mean, some people think that by simply throwing money at border security or granting law enforcement increased powers or making the penalties for illegal immigration or smuggling more severe, that is going to wipe out those problems.

What we find oftentimes is that despite increasingly stiffer and stiffer penalties, the incidences do not in fact drop. And one of the issues that I am interested in exploring with you, Mr. Stana, is the idea that in order to eliminate sort of the incentive for criminal smuggling, we need to sort of eliminate the incentive for illegal border crossing.

One of the questions that I have for you is, when the GAO completed its report on combating alien smuggling, did you look at how a change in immigration law might reduce alien smuggling and eliminate the effectiveness of criminal smuggling organizations?

Mr. STANA. No, if you are talking about neutralizing the need for a smuggler or neutralizing the need for an illegal approach to immigration, no, that wasn't part of our scope.

Ms. SANCHEZ. So you didn't look at the idea that, for example, if there were a labor program which would allow workers from Mexico, which seems to be the primary spot, to temporarily enter the United States legally under work visas, that the need for illegal border crossings might actually decrease?

Mr. STANA. No, we didn't look at that, although I am aware of the issue. I think Mr. Souder mentioned in his question just a few minutes ago about the realization that many people who work in the United States and work productively and contribute in any number of ways may be here illegally.

We did not look at the possibility of bringing a guest worker program online as a way of taking smugglers out of business, or lessening the need for any sort of a work site enforcement program.

Ms. SANCHEZ. Do you think that perhaps if there were some kind of comprehensive immigration reform that would make it easier for workers who were purely seeking employment opportunities to come across legally and be part of a system, that might decrease the incidence of smuggling of people?

Mr. STANA. Well, any kind of a program like what you are suggesting that would bring order to the movement of people across the borders would obviously lessen the need for smuggling, or if that particular individual was not part of the few who were granted work visas or some sort of status to come into the country, it may increase it. So I am not sure exactly which direction that would go.

I do know that the jobs magnet is really the driver here in bringing people into the country. So addressing that in some sort of a way through either a guest worker program or other way is something that's under consideration.

Ms. SANCHEZ. That's my thinking on the matters, that if you could put them into a regular process where it could be regulated and reducing, for perhaps not all, but a large chunk of the people who are crossing illegally, that might allow CBP and ICE to focus their efforts on the smaller pool of people that are——

Mr. STANA. Right, from a national security standpoint, any way that you can reduce the size of the haystack that you are looking

for that needle, that terrorist, any way you can do that, it is going to serve the purposes of national security. It really wasn't part of our study to determine what effect any kind of a guest worker program would have on smuggling or our efforts to combat it.

Ms. SANCHEZ. One last quick question for you. The GAO report raised concerns about how CBP and ICE are collaborating on the alien smuggling issue. I also sit on the Immigration Subcommittee of the Judiciary Committee. We have held hearings on alien smuggling as well.

One of the concerns that was raised was about interagency cooperation. One of the primary concerns that we had was that the State Department has primary responsibility for dealing with the issue of alien smuggling abroad, which is where typically the smugglers enter into the contracts with the folks that are trying to come across and be smuggled.

What recommendations if any would you have for improving the cooperation between CBP, ICE and the Department of State to deter those kinds of interactions from happening prior to when it actually becomes an issue of concern at the border?

Mr. STANA. The Department of State is working with the Department of Justice on the human smuggling and trafficking team. That is one avenue for State to participate in these kinds of investigations and address it that way.

The other way is, and State has negotiated a number of these mutual legal assistance treaties [MLATs]. They are rarely used, perhaps for a good reason, but they are rarely used in these alien smuggling investigations because oftentimes it is just easier to go to the law enforcement authorities on the other side of the border, whether it is Mexico or Canada or wherever, to get the assistance that they need in these investigations. So perhaps State in those roles could enhance the overall Government effort to combat alien smuggling.

But State has not been a major player in anti-smuggling investigations. Now, human trafficking is a different concern. You know the distinction between the two. With human trafficking, the Department of State publishes a report every year on efforts and sanctions. It is much easier to get international cooperation in human trafficking, because of the victimization of the individuals involved.

Ms. SANCHEZ. Thank you very much.

Mr. SOUDER. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Actually, I was frankly surprised to learn about this gap in the law that one couldn't seize the real property, the stash house, as it were. It is so obvious. It really does speak to our lack of real strategy at the border. Because this might have been the first thing you come to. I suspect if these houses cannot be seized, let me just ask you while we are there, does that mean that once they are discovered they are at least vacated, they are abandoned?

Mr. STANA. We are talking about stash houses that are not owned by the criminal organization that is doing the smuggling, a stash house that is rented from a landlord who may or may not know what is going on inside the house.

But you raised another point, which I think is really important, and I think we probably will get to it so this is a good time to talk about it anyway. That is the lack of a strategic plan. We have a mission for homeland security and we have a lot of people that work every day trying to do their best to serve the mission. But without a strategic plan, that interprets the mission and gives guidance to the people to do their jobs, you are just not sure that people are focusing their efforts on the right things, or the things with the highest priority.

With respect to stash houses, just getting back to that for a second, this authority was given for drug investigations, civil seizures, back in the year 2000, I believe. I am not exactly sure why alien smuggling organizations were not included with drug trafficking organizations. I don't know if it was an oversight or if it was intentionally dropped. But the Justice people feel that they have the justification to go forward with this proposal and it is very important that it would help them with the smuggling investigations. It just takes a major asset out of the equation.

Ms. NORTON. Did the 9/11 Commission recognize this, is this gap just lying there, do you know?

Mr. STANA. I am not sure that the 9/11 Commission specifically addressed the stash house issue. But they were very concerned about the ability of a terrorist or someone belonging to a criminal enterprise using a smuggling organization to gain entry into the United States.

Ms. NORTON. Well, seizing a real property is one thing, but again, assuming one knows that a stash house exists, is the law powerless to do anything at the moment? Does the stash house continue to operate once it becomes a known stash house?

Mr. STANA. Once the smuggling organization is brought down, I would imagine that the stash house would be vacated. What we are talking about here is making sure that landlords, and these are landlords who know what is going on, or they know that something is going on. It is not the innocent landlords. There are provisions in law to protect innocent landlords. And there should be. But these are landlords who knowingly either turn a blind eye or understand what is going on in their stash houses, so it makes them liable for the actions of people using their house.

Ms. NORTON. I am interested in, well, the Justice Department of course had the authority for drug smuggling, because that is what the danger was, and 4 years after September 11th, we haven't woken up to human smuggling and what it may mean in terms of its crossover effects. We know that the lion's share of this human smuggling is exploiting people looking for jobs. They will mostly be people from Central and Latin America.

I wonder how hard or easy you think it would be to simply cross over, perhaps an organization who wanted to set up shop smuggling people in to do security harm of one kind or another to the United States? Do you think that would, given the state of the law and the absence of a strategic plan, be just as easy to do as smuggling human beings over to work in people's gardens or to do labor?

Mr. STANA. Any type of individual, whether it is a dangerous individual or just an economic migrant, can and have been smuggled into the country. So the idea here is to use whatever asset or law

we have at our disposal to not only get to the people who are most immediately involved with the episode, but to work up the chain to get the kingpins, so that you can take down the broader organization.

One thing that the 9/11 Commission focused on, you mentioned that, is that one by one, we seem to be addressing a number of these vulnerabilities that we identified through investigation of the September 11th incident, the vulnerabilities that existed, whether it is the loose visa laws or if it is not checking adequately at airports for bag contents, whatever. The fact that they focused on smuggling tells you that in addition to those vulnerabilities, this is a vulnerability that has to be addressed from that aspect, that this isn't anything that is out of bounds for a terrorist.

Admittedly, now that we are focusing more on regular Border Patrol operations, apprehensions are going up again, there are more people being put to bear, like everyday economic migrants, terrorists would need to use the services of a smuggler. I think it was just last month that there were some Middle Eastern men stopped by Mexican authorities in Mexico, trying to get across the border.

So we know that these opportunities exist, we know that they are known to terrorist organizations and that we need to address those with our own law enforcement.

Ms. NORTON. I don't know what is taking them so long to get into this business. I think it is absolutely terrifying.

Thank you, Mr. Chairman.

Mr. SOUDER. Thank you.

I have a series of different questions I want to make sure I ask for the record. According to your report, about 7 percent of ICE resource hours are devoted to alien smuggling. One of the fundamental questions is, is this resource driven or due to an agency prioritization. One of the questions is a followup with this, despite that it is only 7 percent, Federal law enforcement officers in Arizona told congressional staffers that ICE no longer participates in drug interdiction in order to work alien smuggling cases.

How can it be true that only 7 percent of the resources are devoted to alien smuggling cases, yet they are telling staffers of this committee and other committees that they have diverted from narcotics because they are doing alien smuggling.

Mr. STANA. Well, both may be true if it is episodic. In other words, if in Arizona they are devoting themselves to alien smuggling but not in Montana or upper Michigan.

Mr. SOUDER. So do you think that figures are significantly higher in Arizona?

Mr. STANA. It may be. Because the main smuggling corridors are through Arizona right now. As the border is controlled in other locations, as I mentioned earlier, the funnel of aliens, illegal aliens into the United States seems to have come through Arizona more than anywhere else.

Mr. SOUDER. A technical question, because you do a report, but we are dealing with this on a day to day basis. When you arrived at the 7 percent number, can you give us how you got that number, so that we can continue to ask them? Because presumably if they can give you a 7 percent number, they can give us a number by zone.

Mr. STANA. They should be able to do that. These were numbers generated by ICE through their agent work hours system with the 5,000 agents, and you multiply that by the number of hours in a year, take out training and vacations and so on, you arrive at 7 percent.

I would note also that there is another 2 percent added to that is devoted to human trafficking. So if you put the two together, it is 9 percent. I would consider that probably a lower limit, but probably more accurate than the 29 percent that ICE claimed that it could be as high as, because they brought in some drug trafficking time and some financial crime time and so on. But 7 to 9 percent is something we know about and are pretty confident in. Those are ICE numbers.

Mr. SOUDER. Thank you.

A CBP spokesman told a Government executive in May that "Mexican nationals caught illegally trying to enter the country are bused back to the border if they do not have a criminal record. Other than Mexicans, however, are sent to ICE detention centers where they are released into the U.S. public if they do not have a felony conviction and do not pose a threat to national security. ICE is required by law to release illegal aliens who pose no threat. Those migrants are given notice to appear in court. Border Patrol agents call it a notice to disappear."

I have heard this at multiple border hearings. Congressman Reyes has been bringing this up about those other than Mexicans. What can be done to reverse the trend of having them released into society? Second, do you know if they are screened for anything other than a felony conviction? And why are OTMs held until repatriated? I saw several caught from Brazil that were going to be repatriated, but that presumes they are going to show up for their hearing.

Mr. STANA. Yes, much of this hinges upon the availability of detention space. That space just is not there, particularly in the southwest border.

I have heard those stories, too, and actually have seen it. They will bring in people apprehended crossing the border, they will identify them, to check to see if there are any other criminal violations, and there are stories there that we have heard of and seen where the ident was not proof positive either. So there is a concern there.

But they do identify them and if they, like in your example, if it is not their 17th time, they will take them to the border and tell them to go home, sometimes to see them another day.

With respect to OTMs, there is just no space in the detention facilities to hold them, so they will give them a notice to appear at a certain proceeding for deportation and release them to the general population.

Mr. SOUDER. Isn't this ironically discriminatory against Mexicans?

Mr. STANA. Well, I think, I don't know if I would use that term. What I would say is, what kind of protection is afforded to people? I mean, America is a great place to live. Someone who comes from Brazil, for example, all the way to the southwest border and gets caught has a choice to make: do I want to show up and be deported

or do I want to blend in with the population, knowing that chances are I am never going to get caught, provided I don't do anything stupid.

Well, the fact of the matter is, you are going to stay. This is a great place to live, you can find employment, you can wash your car with clean water, lots of things that are great here. So again, it all hinges on the availability of detention space.

Mr. SOUDER. From a non-illegal immigration question, from a non-narcotics question, but from a homeland security angle, would you say that if you were going to release somebody into the United States, wherein they potentially are a sleeper cell or whatever, that you would be more concerned about the OTMs than you would about the others?

Mr. STANA. I think you are highlighting a potential vulnerability here. Certainly if you don't know someone, because they have no criminal history, that does not necessarily say that they pose no risk to our national security or our well-being.

Mr. SOUDER. While we worry that Mexicans in fact could become the mules or carriers for biological-chemical type things, just because so many come across, and if we don't deal with the OHIST Act, that it is impossible to find and they may learn to use mules. Do you know any, in studying homeland security, I certainly don't, being on the committee, of anybody who is a Mexican risk on our homeland security radar. They are all pretty much OTMs.

Mr. STANA. I don't have any basis to say one is more dangerous than another. I think it is an individual by individual thing.

Mr. SOUDER. Except that we have, we keep data by countries of interest and persons of interest.

Mr. STANA. Yes.

Mr. SOUDER. I think it is fairly safe to say that persons of interest are skewed to OTMs. I think it is very safe and accurate to say that the countries of interest, none of them are Mexico. It doesn't mean that people are not going to hide in Mexico, that we are not going to see that pattern developing because of the ease if we don't deal with our immigration question.

But the irony here is that we seem to be weaker on OTM than we are on Mexico. Because there at least if we catch a small percentage, we send them back. They come back the next day in many cases, but at least it is a strategy.

Mr. STANA. Yes, I didn't mean to imply that OTMs are not dangerous or that Mexicans are.

Mr. SOUDER. And most OTMs are in fact not dangerous. I want to say that for the record, and you are pointing that out, too. Most people who come in from anywhere for immigration are not coming here for terrorist purposes.

Mr. STANA. Right.

Mr. SOUDER. The question is, just release people, then totally losing track of them, where there are OTMs coming across the Mexican border, which is itself particularly, when we were down at San Ysidro and the Texas border earlier this year, in one 30-day period they had 128 they caught who were from countries of interest. I think it was 18 persons of interest in just 30 days at San Ysidro.

In the homeland security question, unless we can address this type of question, who is smuggling these people in, and the Home-

land Security Department testified in front of this subcommittee that it was $8,000 to $12,000 at that point, I think it is higher now, was a guaranteed 7-day into the United States or money back for a Mexican, $30,000 to $40,000 for somebody from a country of interest, predominantly in one central section of the border. But they testified in an open hearing, a Homeland Security hearing, it was not this committee, it was Homeland Security, that in fact $30,000 to $40,000 will guarantee you the food, overnight, passages, placement, into the United States or your money back.

Now, we have a huge problem here, and obviously the risk level is being reflected in the price level. But if you get in and get caught, all you have to do is show up again. Which means that the OTMs that are willing to pay that probably are even a higher risk, because they may not make the first felony screening or the persons of interest screening.

Mr. STANA. Yes, I understand your point. It is a good one. In fact, I have heard of fees as high as $60,000 to $80,000 from the Far East. But there are as many ways to get in here as there are smuggling organizations.

But the vulnerability that you discuss here, if you are an OTM you are going to be released pending notice to appear, is a concern, yes.

Mr. SOUDER. The Border Patrol told congressional staffers that there are more smugglers prosecuted under 8 U.S.C. 1325, improper entry by an alien, than 8 U.S.C. 1324, bringing in and harboring certain aliens. You cited in your report 2,400 convictions under the bringing in and harboring. Did you investigate the other category, which would be improper entry? I presume that number is the bulk of it.

Mr. BURTON. Yes, we reported the 1324 and have a footnote in reference to that. There may be prosecution under other statutes, including illegal re-entry, document fraud, that type of thing.

Mr. SOUDER. But you didn't study that?

Mr. BURTON. No.

Mr. STANA. Do you believe it would be useful to have that data?

Mr. BURTON. I think so. Did you report, Rich, on criminal aliens, have that?

Mr. STANA. We issued a report on criminal aliens in the United States about 2 months ago. I can't recall off the top of my head whether we had that figure, but I can look and see.

Mr. SOUDER. One thing I would appreciate after the hearing, because we will followup with the Judiciary requests and also I will talk to Chairman Lundgren at Homeland Security. Does it help if it is a committee request to you, to get it prioritized for speed?

Mr. STANA. The priority system works that a chair or ranking member of any committee or subcommittee has priority. But obviously the more interest that we see in a certain type of request, it could get staffed perhaps a little faster.

Mr. SOUDER. If it comes from leadership, does it go faster?

Mr. STANA. We do what we can.

Mr. SOUDER. But could you work with our staff to see which report, often we each work in kind of our own isolated—we talk about the Federal Government executive branch being stovepiped,

and then we stovepipe our committee process. But when we have the mic, we complain about the executive branch doing that.

But could you help us work through which reports you have done fairly recently, so we can see these as a cluster? Second, where you see some gaps in between the different studies and also some of those studies that might need a refresher. Because we are systematically trying to look at what we can do. Obviously Fox News has really upped it every time the so-called Minute Men focus on this, and anybody who works with homeland security realizes that until you secure your borders you are not safe.

We may try to deal with the, which I believe we need to, the immigration question, because unless you get that haystack reduced, when you are looking through 900,000 people, it is hard to find the risk. We may or may not be able to get that. But we are going to have the criminal smuggling organization question, which may even become more critical, if we in fact get the workers separated out.

But to do this, we need to ask logical questions, where are the gaps and not each try to do this in isolation. But the leadership is trying to pull together a working group to try to address this, and we need to make sure we have good data.

Mr. STANA. I would be happy to work with your staff on what we have done recently, where some of the gaps in information lie and what would be good areas to pursue.

Mr. SOUDER. Do you know whether or not, when someone is prosecuted, there was a case of a smuggler having a car wreck and he was getting prosecuted for killing five people in murder, do you know if when they have somebody, if murder is a charge, whether they also charge them with smuggling? Do they do that? Did you look at any of that?

Mr. STANA. It depends on the facts and circumstances of the case. We didn't look to see what systematic methods are used to bring different charges. In Appendix 5 in our report, we cite 23 cases, I believe, the facts and circumstances of the case, a sentence is given. You can see there is just a range of outcomes.

Mr. SOUDER. Does the Border Patrol have a good system to track their interviews of detained aliens? In other words, if they are just going to detain them, check them and release them, do they at least do any questioning about who brought them? Could something be addressed here where we say that if you are non-cooperative, that you are going to be detained and build some detention centers particularly for non-cooperative people?

Mr. STANA. The results of those kinds of interviews should go into their intelligence system. I am not really sure what happens with that information once those interviews are finished. That might be a good area to pursue.

Mr. SOUDER. Do you know whether the Border Patrol is supposed to be doing this, have you looked at that at all?

Mr. STANA. No, we did not.

Mr. SOUDER. Because it seems like they are sitting on a lot of information, and collecting that information would be very critical. Because it is difficult to establish what a smuggling organization is if you don't pool the data that you are getting to know—because then you are just dealing with isolated cases you are picking up,

from what I see in narcotics, that we are gradually building backward.

But there are obvious transportation networks. And all of a sudden we have learned that in the Yakima, Washington area, it was showing up in three different counties in my district, and it showed up in Nathan Deal's district. Backward we are piecing together for the executive branch that hey, you have a transportation system that looks like it is coming up from Mexico, bringing up Colombian heroin and cocaine, swapping for BC Bud, instead of coming through Juarez, they are going way over into Indiana and Georgia, you have a trucking company at work here.

But unless you get enough data in to kind of establish where the networks are going, you are just randomly putting dots on a map and trying to figure out where the dotted lines are.

Mr. STANA. I think you are bringing up a really good point. I think CBP and ICE folks who work in this area could tell stories along those lines. We know that this is a hub and this city is a transit point and the job market is here and those kinds of things. What I am not sure is happening is whether that information is turned into intelligence and sent out to the field so it is usable and actionable. That would be an interesting thing to pursue.

Mr. SOUDER. Last, the National Security Council has a migrant smuggling and trafficking interagency working group. Do you know if they are coordinating with the Human Smuggling and Trafficking Center?

Mr. BURTON. I think there are some of the same players on both of those groups.

Mr. SOUDER. But you don't know how much they cooperate or whether they are duplicative or whether either of them are doing much?

Mr. BURTON. Reportedly, they are not duplicative. As Rich mentioned earlier, the Human Smuggling and Trafficking Center, even though it was first announced as early as December 2000, I believe it was, it did not become operational, partly operational, until this past July. They are about halfway staffed. I think the total projection was about 24 or 25 staff. I think they are about halfway there at this point in time.

Mr. SOUDER. Do you know whether this working group has forced ICE and CBP to cooperate more? They are not even passing the data inside the Department of Homeland Security. Can these working groups push that? They have the data.

Mr. BURTON. I think that is a role that those groups could play. I think the November 2004 Memorandum of Understanding between CBP and ICE is an important document. Hopefully, by this August, we will have a better feel for how that MOU is being implemented. Our understanding is that the first initial review of that MOU is scheduled to be completed this August. So that will be an important milestone as to how much progress has been made.

Mr. STANA. If I can just add to that, this is a theme that has recurred in other reports we have done about coordinating efforts within Homeland Security among components. So it is going to be interesting to see what the results of this MOU are. When I heard

about the MOU for the first time, it was in connection with terror financing investigations.

One wonders why components, these are two sub-components within another sub-component, need an MOU to coordinate.

Mr. SOUDER. That is what I was just going to say. One of the conclusions I have had, and don't feel forced to agree with me, I would really like to have your input, is that the split is not logical, that it just, it tried to separate something that is difficult to separate. Then they are trying to do memoranda of understanding inside divisions that are in the same agency.

Mr. STANA. I put it in this context. INS was not performing to expectations for years, and discontent with INS was exacerbated in the mid to late 1990's, when so much did not seem to go right. In fact, in the homeland security legislation of a couple of years ago, the only agency that was specifically disbanded was the INS.

So then the question became, well, how do we put these components together into an organization that can work? Well, when they put CBP together, they put together components that were pretty alike, or had a mission that was not too much different than the mission they had under their old agency. Border Patrol came over pretty much intact. Customs had its air, sea and land port operations. The former legacy INS folks that came over, they were pretty much doing many of the same duties or at the same locations as the Customs folks. So there was not much of a new learning process, if you will.

But ICE was a different story. It had a completely different function, it had different pay systems, it had different administrative systems, it had a lot of things that had to be addressed.

Given that, when ICE was set up, and began operations, it also was among the last components to get its administration in shape. By that I mean getting its mission statements, its strategic plans, which still are not out there yet, and getting its guidance to the field. It is sad but true that so many of the former INS people that landed in CBP feel a bit sorry for the folks that landed in ICE, because it has just been such a difficulty and challenge to bring it into one functioning organization, budget-wise, administration-wise, mission-wise and so on.

Having said that, the context piece of this I want to bring out is, the temptation is to try to put the organizations back together again by function, immigration, customs, drugs, smuggling, and to make it easier from that standpoint. We found in looking at mergers, and this is a merger, if you will, in the public and private sector is it takes about 5 to 7 years for the dust to settle and for the cultures to become established. Here we are after 2½ years now, I don't think anybody is particularly satisfied with the progress of some of these components, but it is not unexpected that it is going to take a little bit longer.

The other thing I would note is, one of the problems INS had in its last decade of existence was frequent reorganization. When they ran into problems, instead of creating managerial and organizational crosswalks between components, like you might expect here with CBP and ICE, and having a management that says, do it or else, they reorganized. It got to the point where there were three, four major reorganizations in INS during the 1990's, but the field

folks did not understand completely what their new mission was, what they were supposed to do, what the guidance said and how they were supposed to approach their interrelations with other components within the same agency.

So Congress can do what it wishes, and there are good arguments to bring it together. But I would also point out that frequent reorganizations sometimes, without knowing exactly why we are reorganizing or what we are trying to fix, can be counter-productive. So I do not know what the 2 S.R. result is going to be tomorrow from Secretary Chertoff. I have heard rumors, and I am sure you have, too.

But while we are a little impatient with the progress, I think it is also fair to recognize that maybe a reorganization would not be a silver bullet.

Mr. SOUDER. Let me, if I may, probe this a little bit further, because we are trying to figure out, and the reaction will be interesting, that while I find what you say very true and very interesting, there are a couple of other things. I think part of the problem with the INS question has to deal with, they are dealing with a much more politically explosive question where there are deep divisions. It is not so much necessarily traditional management type problems they are having, it is changing expectations of what the public wants, what the different President wants, what Congress wants, should they arrest, shouldn't they arrest, what will it do to the economy, what does it not do to the economy, what is the political reaction in a different community.

It is not really going to be fixed in the immediate future, no matter where it is located. The question is, in trying, the difficulty of that is have they messed up things that were actually working and in fact endangered some of our—in the narcotics area, it has clearly been problematic. One of the agencies that was working was Air and Marine, and they are on a picket fence, so they do not fit either one. They do investigations, they are down in Colombia, they are in the water, they are inland. If you put them under CBP, they are a picket fence. If you put them under ICE, they are investigators.

It has busted up the Shadow Wolves, because they want to line them on the picket fence. It has made it very difficult to deal with Akwesasne on the north border and develop a similar thing, because they want to patrol the Tohono O'odham, which is one of our huge vulnerabilities right now in Arizona, you can't really penetrate Indian nations with outside agents. You need them inside. They are not going to line up inside the reservation inside the border. They need to be able to patrol within.

They either need some kind of accommodation inside CBP that changes a picket fence strategy. That is one element. So in narcotics, it has actually endangered some of what we are doing, which is probably even how the Coast Guard fits.

But then second, this stovepiping of information, because the information is being collected at the CBP, and it is needed in the investigation section. If they don't have the same boss and they are not promoted, you don't have that. I am not saying immigration does not need to be a sub-category. But when you do not view yourselves as the same effort, they start standing up different, I mean, drug intelligence right now, not to mention immigration intel-

ligence, is a disaster. Everybody wants their own little sub-part. The more divisions we get, the more sub-parts we get.

Mr. STANA. You are raising a lot of interesting points, and they go beyond, particularly in the drug area, beyond the issues that I have studied personally. But I do know in the formulation of DHS, one of the issues that was brought up time and again is how can we bring the asset groups together so that we do not have two air forces or three air forces, or why do we need five intelligence shops or those kinds of issues.

There is always an up side and a down side to bringing things together. The up side is maybe there are some managerial or financial efficiencies. The down side is you are leaving behind missions, in many cases, that were effectively addressed and now we are going into something new.

I guess my only point is, there are a number of ways to attack this problem, and I don't know that reorganizing is the only way or the best way. It is one way, and it is certainly within the prerogative of the Congress to go that way. I am just not sure in the totality of the situation that is the only way.

Mr. SOUDER. I thank you very much for your testimony today. If you can help us kind of refine where our gaps are and where we need to go, because clearly it is potentially going to be one of the top two or three topics in the next year or two. It is clearly one of the major vulnerabilities in homeland security, in narcotics, the border is basically everything, not to mention immigration and work flow questions we have in our home States.

Mr. STANA. Thank you very much, and we are glad to help out in any future effort you have planned.

Mr. SOUDER. Thank you. With that, the subcommittee stands adjourned.

[NOTE.—The Government Accountability Office report entitled, "Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response," may be found in subcommittee files, or at www.gao.gov.]

[Whereupon, at 3:45 p.m., the subcommittee was adjourned.]

○