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FEDERAL STRATEGIES TO END BORDER VIOLENCE

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

AND THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

OF THE

COMMITTEE ON THE JUDICIARY
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FEDERAL STRATEGIES TO END BORDER VIOLENCE

WEDNESDAY, MARCH 1, 2006

U.S. SENATE,
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY, AND SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP, OF THE COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittees met, pursuant to notice, at 9:02 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Jon Kyl, Chairman of the Subcommittee on Terrorism, Technology, and Homeland Security, presiding.

Present: Senators Kyl, Cornyn, Sessions, and Feinstein.

OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Chairman KYL. Welcome to this joint hearing between the Subcommittee on Terrorism, Technology and Homeland Security, and the Subcommittee on Immigration, Border Security and Citizenship, of the Senate Judiciary Committee.

I am Senator Kyl. Senator Feinstein and I are the Chairman and ranking member, respectively, of the first Subcommittee, and Senator Cornyn and Senator Kennedy are Chairman and ranking member of the other Subcommittee, and I am told will be here shortly.

A couple of housekeeping matters. We have got a couple of different panels here and we are supposed to be done by eleven o'clock, when we have a joint session of Congress with Silvio Berlusconi. But we have also been advised that at ten o'clock there is a final passage vote on the PATRIOT Act, which is a good thing, but it does disrupt our hearing. That vote will be held open for us, but in some way we will have to play musical chairs here. If I leave to vote, I will turn the gavel over to Senator Feinstein or we will figure out a way to deal with that.

So since the others will be arriving, let me begin with my statement. I want to begin by thanking our distinguished witnesses for joining us today to examine the problem of violence on the southern border of the United States.

Paul K. Charlton has served as the United States Attorney for the District of Arizona since 2001, when he was appointed by the President and confirmed by the Senate for that position. In his 16 years as a career prosecutor representing the United States and the citizens of Arizona, Mr. Charlton has become very familiar with

the smugglers and criminal networks that are responsible for the increasing levels of violent crime along the border.

David V. Aguilar assumed the position of Chief of the Office of the Border Patrol in 2004. He has served with the Border Patrol for over 26 years and spent a good portion of that time on the border in Arizona and Texas. He will testify on incursions into United States territory by what appear to be Mexican military units supporting drug traffickers and on the dangers encountered by Border Patrol agents everyday.

Marcy M. Forman is Director of the Office of Investigations for U.S. Immigration and Customs Enforcement, sometimes referred to as ICE. Ms. Forman began her 26-year law enforcement career with U.S. Customs. She presently oversees 5,600 special agents, whose mission is to protect Americans from threats arising from the movement of people and goods into the United States. She will testify about the Federal and State partnerships that are employed to combat criminal organizations on the border.

Our second panel of witnesses includes Larry Dever. He is Sheriff of Cochise County, Arizona, and a good friend. The people of Cochise County first elected him as their sheriff in 1996, following a 20-year career working with Cochise County law enforcement. Sheriff Dever will share his observations on the dangers that smugglers pose to Americans and to aliens illegally entering the United States.

Allen D'Wayne Jernigan is the Sheriff of Val Verde County, Texas. He was first elected to that position in 1996 and is a 40-year law enforcement veteran, a member of the Texas Border Sheriffs Coalition. Sheriff Jernigan will testify about the drug cartel violence he has witnessed in Texas.

Lavoyger J. Durham is the manager of El Tule Ranch in South Texas, located about 75 miles north of the Mexican border. Mr. Durham has managed El Tule Ranch for 16 years and in that time has directly experienced the miseries arising from human smuggling across the ranch.

Finally, T.J. Bonner is President of the National Border Patrol Council, which represents more than 10,000 front-line Border Patrol employees. Mr. Bonner is a 27-year veteran of the Border Patrol. He is familiar with Mexican military incursions into the United States and with the causes of increasing violence on the border.

In calling this joint hearing, Senator Cornyn and I wanted to reacquaint the public and our Senate colleagues with the dire consequences that have resulted from the Federal Government's failure to control the southern border of the United States. While the Senate is engaged in discussing comprehensive immigration reform, we want to remind our colleagues that no reform of the immigration system will be successful unless Congress makes a definitive commitment to ensure that the agencies responsible for interdicting illegal aliens and contraband have the resources they need to get the job done.

Our open border with Mexico has permitted a historically unprecedented number of foreign nationals from over 120 countries to enter the United States illegally. While recognizing that the majority of illegal migrants to our country only come here to seek better

wages and a better standard of living, we cannot ignore the fact that at least 10 percent of the aliens apprehended along the border are criminals.

In the last five months, the Border Patrol has arrested no less than 42,722 aliens with criminal records on the border, and that is just in 5 months—over 42,000. Among them were 6,770 felons, 148 persons wanted in connection with a homicide, 42 associated with kidnapping, 164 associated with a sexual assault, 298 associated with robbery, 1,957 wanted for assault, and 4,161 connected with drug crimes.

DHS recently advised us that about 139,000 of the 1.1 million people apprehended on the border in 2005 were criminal aliens seeking to illegally reenter the United States. The U.S. Government Accountability Office reported last year that criminal aliens made up nearly one-third of the Federal prison population, and that the number of aliens incarcerated jumped from 42,000 in 2001 to 49,000 in 2004. In 2003, State prisons held about 74,000 criminal aliens. Our Federal and State governments have expended hundreds of millions of dollar incarcerating them.

I share the belief that a temporary worker program will reduce some of the pressure along the southern border because those coming here for work will have a legal avenue to do so and will not resort to hiring violent smugglers to get them across. But you can be sure that the hundreds of thousands of criminal aliens who will be barred from participating in any temporary worker plan will continue trying to reenter the United States, as will the millions of hyper-violent drug cartels located just across the border. We must have the resources in place to defeat them.

I have frequently heard the argument that the United States cannot stop the flow of illegal immigrants and contraband across the border. That is wrong. First, while we have increased the presence of Border Patrol agents on the border, we have never had nearly enough of them. In 2005, the Border Patrol had 11,268 agents patrolling over 9,000 miles of U.S. border. That does not even compare favorably with the city of New York, which employs 39,110 police officers to patrol just its five boroughs.

Until we have an adequate force of Border Patrol agents to protect our borders and have equipped them with the technology and infrastructure they need to accomplish the mission, I will not buy into the notion that control of our borders is beyond our capability.

Second, the United States has been slow to make a concerted effort to place strategic fencing and vehicle barriers along the border to prevent narcotraffickers, human smugglers and illegal aliens from simply crossing the border at will. Much of our border with Mexico is simply delineated by a rusty strand of barbed wire that has beaten into the dirt by thousands of illegal crossers.

We know that fences work. The fence in the San Diego sector has dramatically reduced illegal immigration and drug trafficking across the sector. We must expand our strategic use of pedestrian fences and vehicle barriers around urban areas and more remote locations that we know are being used by smugglers. This will also help prevent confusion about the location of the border and prevent Mexican military units and law enforcement officers from inadvertently entering the United States.

Finally, I believe that the United States, like other nations, has both the obligation and the right to control its borders. Indeed, it is difficult to imagine a more fundamental primary role of government. The Federal Government alone is responsible for maintaining the integrity of the immigration system and for ensuring that foreign nationals who would harm our citizens and residents are denied entry. That is a great responsibility and we Members of Congress must live up to it.

Senator Feinstein.

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I would like to thank you and Senator Cornyn for holding this Subcommittee meeting, and I would also like to thank our witnesses and I look forward to their testimony.

I would agree that there are a number of alarming trends we have got to address. In response to the increased policing of our borders, smugglers are becoming evermore sophisticated and dangerous. Last week, in San Diego, I visited the site of an unbelievable tunnel. That tunnel was eight football fields long, ran half a mile from a new, bright, but kept-vacant warehouse in the United States under the border to a warehouse in Mexico.

It went down 60 to 80 feet. It was ventilated, had electricity, and contained a rail system to ferry contraband back and forth between our countries. I think at the time the Border Patrol found it, it had 2,000 pounds of marijuana at one end and 300 pounds at the other. So that is pretty well-defined evidence as to what it was used for.

Now, this is just one of 40 border tunnels discovered in the last 5 years, all but one of them on the southern border. Senator Kyl and I have prepared and will introduce legislation later this afternoon to help curb this practice, and I hope that we will act on this legislation as soon as possible.

Above ground, smugglers are also becoming more and more organized, to the extent that we have seen reports of outlaws with military-style uniforms and equipment and even moving in military-style formations. Violence against law enforcement agents and local residents is on the rise, and so too is illegal immigration of aliens other than Mexicans, many from countries of special national security interest. The OTM issue, which I know Senator Cornyn has been involved in, and I have as well, has more than tripled in the last 2 years.

Two weeks ago, I met with three of our counterparts in the Mexican Senate—Senators Hernandez and Osuna, of the Mexican Senate's Foreign Relations Committee, and Senator Cardenas, the vice president of the Mexican Senate. I was really very pleased by their attitude. They shared my concern about illegal activity on the border. They looked forward to working with the Border Patrol. They would like to see a new joint effort formed, and they indicated that the uniforms worn on our side of the border were not official Mexican uniforms, but were most likely cartel-designed and inspired uniforms. I very much welcome their assurances and I am pleased with the concrete advances we have seen in cooperation with the Mexican government.

Senator Kyl, I intend to send the President of Mexico and these Senators our legislation in hopes that Mexico will then introduce legislation making it a Federal Mexican crime to build a tunnel, just as our legislation would make it a Federal American crime. I didn't know that we don't have a Federal criminal penalty for building one of these tunnels, and so shortly I hope that we will.

In November of last year, the Mexican Supreme Court revisited a previous decision limiting the extradition of criminals wanted by the United States. This led last month to the capture and extradition of Jorge Aroyo Garcia in Michoacan. Now, this gentleman—he is not really a gentleman, he is a killer—has been wanted since 2002 for the murder of Los Angeles County Deputy Sheriff David March. This is indeed good news, because it had become almost standard operating procedure that if a Mexican national killed a law enforcement officer in this country, they headed across the border and by and large they were not then subject to extradition. This is now beginning to change and I would like to commend the Mexican government and the supreme court for taking this action. Again, I thank the panelists and I look forward to your testimony.

Chairman KYL. Thank you, Senator Feinstein.

Senator Cornyn.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Chairman CORNYN. Thank you, Senator Kyl. As you know, our two Subcommittees have done a great deal of work examining all aspects of our Nation's border security and immigration system. In past hearings, and in this one as well, the information that we have gathered will play an important role in our upcoming debates in the U.S. Senate on border security and immigration reform.

I would like to express my gratitude to the numerous ranchers and law enforcement officials who traveled quite a long way to join us today. It is good to see you here, and I know that what we will be discussing here will have a significant impact on your lives and I appreciate your presence.

Today's hearing comes on the heels of a well-publicized encounter—actually, a couple of them—in Texas between law enforcement officers and organized drug dealers. Capturing this incident on video allowed everyone to see the dangers associated with the Federal Government's continued failure to control our borders.

While this highly publicized encounter brought attention to the problem, border violence has long plagued our Federal and State law enforcement officers. In addition to this recent incident, law enforcement officers along the border routinely seize guns, ammunition, drugs and illegal aliens. Additionally, Border Patrol agents face hundreds of assaults each year. These range from shootings to rock-throwings to attempts to run them over. We will hear from tenured State and Federal law enforcement officers about strategies they believe will address these problems.

Unfortunately, however, this danger is no longer limited to our law enforcement personnel. Today, we will also hear from Lavoyger Durham, a longtime Texas rancher. Mr. Durham has lived and worked along the border for decades. He will describe to us how, as illegal immigration has increased, so too has the danger, the

threats and the violence to ordinary citizens who happen to live and work in the border region. As a matter of fact, movement across our border has existed as long as we have had a border, but what I am told by my constituents in South Texas and the Rio Grande Valley is that the nature of illegal immigration has changed completely, given Mexico's status as a transit point for international human smuggling. The situation is unacceptable and Congress must act to do everything within its power to end it now.

Combatting border violence will take a concerted and thoughtful effort by all parties involved. That is why I am disappointed that the Department of Homeland Security refused my request to send a witness to discuss how the Department of Homeland Security receives law enforcement support from Joint Task Force North. I believe it is important that the Federal Government use all of its resources, no matter what the Federal agency is, to gain control of the border.

Joint Task Force North in El Paso is required to support law enforcement efforts designed to deter drug trafficking and alien smuggling. The working relationship between the Department of Homeland Security and Joint Task Force North is a critical component to the Federal strategies designed to combat border violence.

There are no simple solutions. The United States shares almost 2,000 miles of border with Mexico and roughly 4,000 miles with Canada. My State alone accounts for the majority of the southern border, sharing about 1,285 miles, or 65 percent, of the southern border. In 2004, the Border Patrol apprehended 1,139,000 aliens along the southern border. In 2005, that number grew to 1,171,000, and this year the number has already reached 408,000 and it is only March 1.

I might add, Senator Kyl and Senator Feinstein, I am told by my visits to the border—and you may have experienced the same thing—that our Border Patrol and law enforcement personnel, notwithstanding the numbers that they have detained, maybe get one out of every three or one out of every four people that attempt a crossing.

A problem of this magnitude will not be solved by bumper sticker slogans. The Federal Government has ignored our porous border for decades—I should say ignored the necessary resources to deal with our border for decades, and to restore law and order will require comprehensive enforcement efforts that focus not just at the border, but also on interior enforcement in holding employers accountable for illegal hirings.

The legislation that Senator Kyl and I have introduced tackles this problem on every front. It begins by increasing the number of the most valuable asset we have, and that is our Border Patrol agents. We also call for the use of physical barriers in high-trafficked areas and the use of up-to-date technology, like unmanned aerial vehicles and ground sensors that today detect movement across the Syrian border into Iraq. We ought to be deploying all of the technology that is available to the Federal Government that the taxpayers have already paid for to assist our border protection officials. This combined approach controls the border by creating a virtual fence. Our legislation also streamlines deportation proceedings, requires foreign countries to do their part in combatting

illegal entry, and punishes employers who knowingly hire illegal aliens.

It is not possible to separate the increase in border violence and incursions from our broken immigration system. When half a million illegal aliens can come across our border each year, undetected and not stopped, it is no wonder that criminals and drug traffickers believe that they are somehow immune from the law. Unless and until Congress addresses the immigration problem across the board, we will continue to experience an unacceptable level of violence along the border.

Tomorrow, the full Judiciary Committee will begin the debate on border security and immigration reform. It won't be an easy process, but there are few issues of greater significance and greater importance than securing our borders. While there is not yet a consensus on how to address the millions of illegal aliens who already live in the United States, there is uniform agreement in the Congress that the Federal Government must do what it takes to achieve border security and to end border violence.

I look forward to today's testimony and thank each of the witnesses for your contribution.

Chairman KYL. Thank you, Senator Cornyn.

Senator Feinstein has some documents to be inserted in the record.

Senator FEINSTEIN. Thank you, Mr. Chairman. If I may, I would like to enter into the record my letter of February 14 to President Vicente Fox asking for his personal attention to the matter of the individuals dressed in military uniforms who have penetrated the border, and also a copy of the fact sheet produced by the Mexican Government on their investigation of this incident and incidents in which they conclude that the uniforms, insignia, armament and vehicles that appear on the initial video do not correspond to those utilized by the Armed Forces of Mexico. It goes on to say that the Under Secretary of North American Affairs, Mr. Gutierez, and Ambassador Icasa, the Mexican Ambassador, have recently met at the Embassy in Washington with officials of our Government to discuss this matter.

If I might enter those both in the record?

Chairman KYL. Without objection. And a letter that I have written to the Secretary of State will be admitted as well, without objection.

Let's begin with the first panel, and this is somewhat arbitrary, but I think I would like to start with Chief Aguilar and then U.S. Attorney Paul Charlton and conclude with Marcy Forman, unless the three of you think that is not a good idea.

All right. Go ahead, Chief Aguilar. Thank you.

STATEMENT OF DAVID AGUILAR, CHIEF, OFFICE OF BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. AGUILAR. Good morning, Chairman Kyl, Chairman Cornyn, Ranking Member Feinstein. It is a pleasure to be here this morning, and especially with our partner from ICE, Marcy Forman, and a true ally, friend and absolutely a great partner in Arizona, Paul Charlton, U.S. Attorney.

It is an honor and privilege to be here today to testify on behalf of the men and women of Customs and Border Protection in DHS. I am especially pleased to be here today to testify on our shared interest of security of our Nation, safety of our communities, and the safety of our officers as they patrol the borders of our country.

I welcome the opportunity to testify on the subject of border violence and threats that our officers face in carrying out their duties and efforts in securing our country's borders on a daily basis. One of the things that I think we are very familiar with is the dynamics of illegal immigration and illegal narcotics trafficking, such that criminal organizations typically seek out border areas that will support their illegal cross-border smuggling efforts. The organizations will look to base their staging, stashing and jump-off points into the United States at locations that have infrastructure to support their smuggling activities. Smugglers have historically exploited urban and populated areas along our border with Mexico.

While we have made great strides in increasing the levels of control along our border urban areas, we are continuing to resource and incrementally gain rate of control of the rural areas of our border with Mexico. Tactical infrastructure, personnel and technology become a much greater need and force multiplier.

The rural areas of our borders pose unique challenges. Vastness, remoteness, accessibility and mobility are but a few of the major challenges that we face in patrolling and protecting our Nation's rural border areas. A trend that has developed as we continue to expand our control of the border is a dramatic increase in border violence against our agents. Violence has always been a part of the environment in which the men and women of the United States Border Patrol operate and is recognized as an inherent part of securing our Nation's borders.

In fiscal year '05, we experienced 778 assaults against our officers, a 108-percent increase from the previous year. Through January 31 of this fiscal year, we experienced already 200 assaults against our officers. I personally attribute this increase in violence to the fact that the Border Patrol's achievements in gaining greater and expanded control of our borders has resulted in a greater reluctance of entrenched criminal organizations to give up areas in which they have either historically operated in the past or they are reluctant to give up areas where they have reestablished themselves as a reaction to our increased urban enforcement area efforts that have impacted upon them.

Our border with Mexico is long, it is vast, and in many cases a very remote, sometimes unmarked or poorly delineated border. We continue to increase our deployments in remote areas to counter and, resources allowing, anticipate criminal organizations' movements. In the last several weeks, as several of you have spoken about, we have seen reporting on past incursions attributed to government of Mexico entities. The reality along our border with Mexico is that there have been incursions into Mexico, incursions by both the Border Patrol into Mexico and incursions into the United States by government of Mexico entities.

Border incursions attributed to government of Mexico entities into the United States have occurred in both our urban and rural areas of operation. This is not a new phenomenon, and while it

does occur, it is a situation that is not taken lightly and it is of absolutely high concern to DHS and CBP. We recognize these incidents as having a high potential for serious consequences. In 2001, we recorded the highest number of these types of incursions, a total of 42. Last fiscal year, we recorded 19. This fiscal year, we have already recorded seven incursions through January 31.

We have worked with and urged the government of Mexico in the strongest terms and at the highest levels to investigate and do everything possible to mitigate and keep these incidents from occurring. We have received assurances from the government of Mexico that they too take these incidents very seriously, recognize the potential for serious international consequences, and that they are taking definitive actions to address them.

As examples, in the area of Fort Hancock, Texas, where we saw the crossing incident of January 23rd, we have now seen Mexican soldiers, Mexican military and PGR representatives working to deter that kind of activity from happening again. Our chief patrol agents are reaching out and meeting with their Mexican military counterparts at the general rank levels to better coordinate enforcement efforts and responsibilities along our Nation's borders.

The Federal Mexican Police Force has deployed approximately 300 officers in an effort to curtail border violence and illegal activities from Tijuana to Mexicali, and the PGR is now working in coordination with the Border Patrol sector chiefs in San Diego, Laredo and Rio Grande Valley sectors to target prosecution and deterrence efforts along our Nation's borders.

We have seen definitive actions taken on the part of the Mexican government to address these international concerns. Now, the one thing that I will state is that I do not want to in any way minimize the seriousness of each and every one of these incursion incidents, but I also do not want to leave the impression that our borders are under siege by government of Mexico entities or individuals attempting to pass themselves off as government of Mexico representatives.

In those instances where these individuals have been observed engaged in illegal activity, regardless of their apparel, regardless of their equipment or their motor transportation, they are plain and simply criminals. They are criminals that both countries must do everything we can to stop them from exploiting our borders, making our communities unsafe, and detracting from our ability to protect America's borders from those that would bring harm to our homeland.

I want to thank the Subcommittees specifically for not allowing the high media profile of recent incursion incidents to overshadow the seriousness and the nature and threats our front-line officers and agents face on the border in the form of rockings, assaults and shootings on an ongoing basis.

I understand that at this time you have graciously asked us to show a couple of slides relative to the types of assaults that our officers get. I would like to refer to a couple of the screens. I believe there is one for the audience and one up here.

This first one speaks to the increase of assaults on our Border Patrol officers and our officers at the ports of entry: in fiscal year

'04, 374; in fiscal year '05, 778. At our ports of entry, it went from 129 to 165. This is at the ports of entry.

Go to the next one, please.

This graph basically shows the elevated nature of the assaults against our officers; already in fiscal year 2006, at the end of January, 200.

Go to the next one, please.

This one depicts the type of assaults that our officers suffer: rocking assaults, 98; physical assaults, 48. Vehicle assaults where they are being overrun, firearms and weapons and other types of assaults that happen on a daily basis out there amount to 18.

Go to the next one.

This is not a pretty picture. The upper left-hand corner is the backside of an officer, lower back—you will see the bruising there—that was hit by a rock. This is in San Diego. The middle section depicts the inside of a vehicle of an officer in Douglas, Arizona, that took a rock through the driver's side window. You can see the blood, you can see the broken window and the damage done.

The lower left-hand side corner is going to be what we now refer to as a Molotov rock. It is a rock wrapped in cloth, soaked in some kind of fuel, lit and chunked at our officers. This is happening in San Diego, in El Centro sectors, and in El Paso.

The middle section is one of our officers that took a rock to the side of his head, a very serious situation. And the last one in the lower right-hand corner is an incident that happened the latter part of January in El Paso sector, Deming Station, 25 stitches to take that cut and suture it up.

Now, the reason we put this forth—go to the next one, I believe—the reason we put those slides up is because there needs to be an understanding that when our officers take actions that result in very serious consequences, the American public, I think, needs to understand the environment in which we operate.

This one here is the inside of a vehicle, one of our Border Patrol vehicles. Those are trajectory rods. You will see that they go into the passenger side of our Border Patrol vehicle. Had we had a Border Patrol agent as a passenger, that officer would not be with us today.

The middle section is the actual x-ray of the leg of one of our officers that was shot in June, in Nogales, Arizona, Senator Kyl—two officers shot, very serious, still going through rehabilitation, both are, and we are hoping to get them back on duty within a year or so.

The others depicts rounds, trajectory rods, shots at our vehicles; in one incident in El Centro, California, 23 rounds taken from an AR–15 into our vehicles. Luckily, our officer was able to be pulled out of that area. So, again, it just shows the sense of the situation as to what our officers are facing out there on a daily basis.

Technology, tactical infrastructure and personnel are the answers to securing our Nation's borders. The Secretary recently announced DHS's Security Border Initiative, now known as SBI Net. I am confident that this innovative and, as Senator Cornyn pointed out, comprehensive approach is going to be what brings us a solution that we are looking for.

I thank the Subcommittees and would look forward to any questions that you might have of me.

[The prepared statement of Mr. Aguilar appears as a submission for the record.]

Chairman KYL. Chief Aguilar, thank you very much for that very definitive testimony. We appreciate it.

U.S. Attorney Paul Charlton.

STATEMENT OF PAUL CHARLTON, UNITED STATES ATTORNEY, DISTRICT OF ARIZONA, PHOENIX, ARIZONA

Mr. CHARLTON. Chairman Kyl, Chairman Cornyn, Ranking Member Feinstein, good morning. My name is Paul Charlton. I am the United States Attorney for the District of Arizona and I am the Chairman of the Attorney General's Advisory Committee for the Border and Immigration Subcommittee, composed of a group of United States Attorneys from around the country that advise the Attorney General on border-related issues.

Thank you for the opportunity to testify this morning, and thank you as well for bringing attention to this very serious subject of border violence. As you know, it is an issue that affects residents from Brownsville to San Diego.

As the President said in his speech in November of last year, in Tucson, Arizona, securing our border is essential to securing the homeland. Arizona has a 370-mile border with the Republic of Mexico, and in fiscal year 2005 approximately 577,000 illegal aliens were apprehended by the Border Patrol. That means that almost 50 percent of all illegal aliens who were apprehended by the Border Patrol in the United States were apprehended in Arizona alone.

Chief Aguilar has already testified to the growing increases in assaults that are taking place nationwide on Border Patrol agents. I would like to, if I may, focus on the District of Arizona, an area that I am most familiar with, and begin with the most serious of offenses, homicides, and the most serious and the most vivid of those that I remember is the August 2002 killing of Kris Eggle, a National Park Service ranger who was a scholar, an athlete, an Eagle Scout, the son of a school teacher, the son of a Vietnam War veteran, and who was serving his country defending the border in August of 2002 when narcotraffickers crossed the border and executed him. We recently obtained the third in a series of convictions against the killers of Alexander Kirpnick, a Border Patrol agent who died defending the border in Arizona. He himself was an immigrant to this country.

But recently we have seen a more disturbing trend, and that is a greater degree of sophistication and development on behalf of those individuals who would harm or kill our Federal law enforcement officers defending the border. Chief Aguilar just referred to and showed you a picture of an injury that took place in June of 2005 with a Border Patrol agent. That even took place near the area of Nogales, Arizona, Senator Kyl, I know an area that you are very familiar with.

Two Border Patrol agents were patrolling there when they believed that they saw a stash of narcotics. Two shooters using high-powered rifles shot at and wounded both of those Border Patrol agents. What was sophisticated and more developed about this

event was that the shooters used extraordinary accuracy and showed some degree of trade craft as they retreated from the area, covered each other and went to their escape across the other line and back into Mexico. That event repeated itself almost exactly last month, although fortunately this time the Border Patrol agents escaped without injury.

Now, assaults and violence don't necessarily have to involve Federal officers as victims, nor do they have to involve the use of firearms. Last February, we obtained the convictions of two individuals, Jose Luis Zepeda-Cruz, a smuggling guide, and Jimir Valle Martinez, who was taking a load of 15 illegal aliens through the small town of Sierra Vista in a truck at extraordinary rates of speed, sometimes surpassing 100 miles per hour.

And as they were going through this town of Sierra Vista, they ran a red light and crashed directly into a vehicle containing newlyweds and they killed the newlyweds. They killed three of the illegal aliens who were in the vehicle. They killed the unborn child of another illegal alien. These smugglers think nothing of the individuals that they are moving into the United States. They care nothing for the lives of the Federal officers. They care nothing for innocent bystanders.

Now, we have also seen another disturbing trend that has been developing, and that is what is called in Spanish bajalores; that is, individuals who will take part in a rip-off or a hijacking of a rival smuggling organization. The most dramatic event that I can remember took place in November of 2003, when rival smuggling groups along Interstate 10 between Tucson and Phoenix attempted to steal a load of illegal aliens one from the other in a running gun battle that covered three miles. During that event, four individuals were killed and a number of innocent bystanders were injured.

Again, it doesn't have to be Federal agents, it doesn't have to be innocent bystanders. These smugglers care nothing for anybody, including the aliens they move into the United States. We have a number of cases right now that we are processing in which smugglers assaulted and threatened to kill the illegal aliens that they brought into the United States and were holding hostage. We have cases in which these individuals were assaulted with weapons, cut, had their teeth kicked in, or were raped. Smugglers are on a daily basis violently and ruthlessly exploiting human beings.

What are we doing in response? We are working very closely with our Federal, State, local and tribal law enforcement partners. We are integrally involved in the Arizona Border Control Initiative, an initiative led by the Border Patrol, but involving all levels of law enforcement, to attack the problem of illegal immigration, smuggling of narcotics and human beings, and the violence that is associated with those crimes.

We hope to soon stand up a border enforcement security task force which seeks to duplicate the success of Operation Blackjack that took place in Laredo, Texas, where a diverse group of law enforcement officials sought to diminish cross-border crime.

We have a zero-tolerance policy as it relates to assaults on Federal officers. Simply put, if you assault a Federal officer, you will be prosecuted. And we are seeking to focus our resources on those most violent offenders, hostage-takers. In 2002, we prosecuted one

case. In 2003, we prosecuted six cases. In 2004 and 2005, we now have 32 hostage-taking cases against these most violent offenders with multiple defendants.

Senators, thank you again for this opportunity to bring this matter to your attention and for your interest in this important issue. I stand ready to answer any questions you may have.

[The prepared statement of Mr. Charlton appears as a submission for the record.]

Chairman KYL. Thank you very, very much, Paul Charlton.

And now Marcy Forman.

STATEMENT OF MARCY M. FORMAN, DIRECTOR, OFFICE OF INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Ms. FORMAN. Thank you and good morning, Chairman Cornyn, Chairman Kyl, Ranking Member Feinstein. Thank you very much for having me. I am the Director of ICE in Washington, D.C. It is an honor for me to testify before you to discuss how ICE combines its immigration and customs authorities to attack the violence on the border.

Before coming to Washington, I spent nearly 19 years in Texas, even though with my New York accent you may not believe that, but 19 years in Texas supervising international drug smuggling and money laundering investigations. During this time, I supervised the major drug money laundering investigation involving the former deputy attorney general from Mexico which revealed that he had taken $9 million in drug bribes.

In addition, I oversaw some of the largest drug investigations on the border while I was in Houston, Texas, one called Operation Produce that resulted in the conviction of 16 drug smugglers, the seizure of over 1,700 kilos of cocaine and over 5,500 kilos of marijuana.

During my time in Texas, I thought I saw a lot, but what we are seeing today along the border is much worse and much more violent. In response, the Department of Homeland Security established the Border Enforcement and Security Task Force, simply known as BEST. We have made Laredo, Texas, ground zero for our fight against the smugglers, both human and drug smuggling. Through BEST, we partner with Federal, State and local law enforcement officials to bring their authorities and expertise to the table.

We focus our efforts by utilizing intelligence to drive and prioritize our targets. Just last week, I was in Laredo, Texas, and saw firsthand how ICE agents, along with ATF and FBI agents, work side by side with the Laredo Police Department in the BEST task force to combat this violence.

Our work is already paying off. On January 26, BEST task force agents conducted a series of raids after one of the targets sold a fully automatic AK–47 assault rifle and a small amount of cocaine to an undercover ICE agent. During the next 11 days, the BEST task force raided three locations and arrested two subjects. What you see in front of you are actual pictures of what we took off the street—fully automatic assault weapons, 10 live hand grenades, 9

pipe bombs and parts to create over 50 hand grenades, along with illegal drugs. That is a lot of fire power that was taken off the streets of Laredo, Texas.

Senator Cornyn, I would like to thank you for your support of the Laredo Police Department. They have been instrumental in the success of our BEST task force.

We have seen violence with human smuggling and trafficking organizations in Arizona. They commit murder, extortion, kidnapping, rape and home invasion. ICE's response to the violence in Arizona was Operation Ice Storm. During this operation, ICE worked side by side with local law enforcement officers in Phoenix and Tucson to stem the violence associated with human smuggling and trafficking.

Since 2003, ICE investigations into human smuggling and trafficking have resulted in more than 5,400 arrests, 2,800 criminal indictments and 2,300 criminal convictions related to the human smuggling and trafficking of individuals. Many of these impact the southwest border.

The threat of violence continues all along the border. A recent example is the incident that has been dubbed by the press as a military incursion in Hudspeth County, Texas. Based upon our investigation of the incident, ICE cannot conclude that this constituted an incursion into the U.S. by members of the Mexican military. However, we can conclude that these criminals were willing to cross the border to engage in illegal activity on American soil.

In some cases, our increased enforcement efforts have driven the smugglers underground, literally. January 24th, we uncovered a tunnel equipped with lighting, ventilation and cement flooring after ICE agents in San Diego, working with CBP and DEA agents, provided information to Mexican law enforcement officials, who then discovered a tunnel entrance in Tijuana, Mexico.

I have brought with me pictures of this tunnel, which extended nearly half a mile to a warehouse in the United States. Both ICE agents and Mexican law enforcement seized a combined total of 4,300 pounds of marijuana on both sides of the border.

Everything I have described today leads me to the lifeblood of these criminal organizations—the money. ICE agents have over 30 years of expertise in investigation of financial crimes. In August 2005, ICE partnered with CBP and the State Department to train our Mexican counterparts on the methods used to smuggle currency from profits derived primarily from human smuggling and drug trafficking. Working together, our Mexican counterparts have seized over $23 million in cash and negotiable instruments for violations of Mexican law.

We have been successful in the U.S. During fiscal year 2005, ICE investigations have resulted in the seizure of nearly $1 billion in currency and assets tied to illegal activity. Our agents and officers know the risks, they know the threats, and we know how to combat them. Our work is contributing to a more secure border.

The men and women of ICE are grateful to serve the American people, and on their behalf I thank you all.

Chairman KYL. Thank you very much. The tunnel that you are referring to is the upper left-hand chart and photograph, is that not correct?

Ms. FORMAN. That is correct.

[The prepared statement of Ms. Forman appears as a submission for the record.]

Chairman KYL. Well, let me begin. This is an astonishing picture of violence and crime at our border that has been escalating, and the first misunderstanding that I have perceived from some in the media is the concept that we have increased our Border Patrol and infrastructure on the border, but crime and violence have increased. Therefore, more law enforcement at the border is not the answer.

Now, I can understand the fallacy behind that. But, Chief Aguilar and others on the panel, would you like to address that specifically?

Mr. AGUILAR. Yes, sir. One of the dynamics that we are facing is what I refer to as the entrenchment of these criminal organizations in areas where they have historically operated in the past, and in some areas with impunity where they have controlled areas. With the adding resourcing and with the added equipment that we have had, we have been able to expand our operations along our Nation's borders, in Arizona, for example, and in Texas, where we are now working much more efficiently and much more effectively in areas that in the past we just couldn't get to, or if we got to them, we were merely a nuisance to some of these criminal organizations.

At the point that we are a nuisance is when the violence continues to escalate, until we become an overwhelming force to them and force them to no longer operate with the levels of impunity that they did in the past. What will happen is that they will move over to another area of operation because, as we stated, this is a vast border area.

We are just now at the point where we are getting resourced to the degree that as our maturation process continues, we are able to anticipate where these criminal organizations are moving to. And, fortunately, I think we are now able to anticipate where to place some of these resources.

Chairman KYL. So would it be fair to say that in the past there has been a lot of criminal activity that you, simply because you didn't have the resources, were not able to interdict; that as you have gained the resources, you have moved in on their territory, caused them more problems, as a result of which they have reacted violently, and that with more resources you will be able to continue to shut this activity down? Is that a quick summary?

Mr. AGUILAR. That is absolutely a very accurate statement, yes, sir.

Chairman KYL. Thank you. Do either of the other two of you want to add to that? Mr. Charlton.

Mr. CHARLTON. Senator, I would just add that during Operation Ice Storm which Ms. Forman referenced, the homicide rate in Phoenix decreased dramatically. Phoenix police officers indicate that that statistic was in large part due to the fact that Ice Storm was in place and that special agents were on the ground reducing the number of hostage-taking events that took place. So you are correct when you say that there is going to be an initial increase

in violence, but once you put sufficient resources on the ground, violence will decrease.

Chairman KYL. Thank you.

Ms. Forman.

Ms. FORMAN. Senator, if I may add, I mean certainly you do more with more, and ICE's approach working with our partners at CBP and State and local law enforcement is to go after those organizations. Normally, there is a displacement effect once you succeed and they move somewhere else. But with more coverage, we are able to dismantle and disrupt many of these organizations.

Chairman KYL. Great. Thank you.

Just my last question here: With regard to the incursions by Mexican governmental officials, Chief Aguilar, you indicated that there were some, not very many, but I forgot the exact number. And you have investigated those and had some cooperation from the Mexican government with respect to those.

What is the usual situation that occurs where you actually have Mexican governmental officials involved in an incursion?

Mr. AGUILAR. Of the ones that we have detained and apprehended that we have been able to clearly identify as Mexican government officials, the vast majority of those have been accidental, even though I must qualify that even in some of those accidental incursions there have been serious things occur, as in the example that we used in El Paso. It was an accidental incursion into the United States by Mexican military. Unfortunately, there were founds fired at our officers because the Mexican military believed that they were still on the Mexican side and were firing at criminal organizations.

Chairman KYL. So there is a significant danger associated when military units face each other because they have both got weapons.

Mr. AGUILAR. Yes, sir, absolutely.

Chairman KYL. One final thing. Are you aware of the incursion by a Mexican governmental helicopter over in the area of Yuma, Arizona, or San Luis not too long ago?

Mr. AGUILAR. Yes, sir. That was about a week-and-a-half ago.

Chairman KYL. Can you tell us about that?

Mr. AGUILAR. It made an incursion of about half a mile. It lasted for about 15 to 20 minutes. A couple of things happened simultaneously. Our Border Patrol agents actually saw it, called it in. Our AMOC over in California, in Riverside, picked it up and were able to immediately contact the Mexican embassy and identify it as such. Radio contact was made and it made back into Mexico very quickly, again the Mexican government assuring us that it was an accidental incursion.

Chairman KYL. Thank you very much.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much.

Chief, which are the most active cartels on the border? Obviously, Ariano Felix, but other than that?

Mr. AGUILAR. Right. The ones that are most problematic to us right now from a violence perspective are the Sinaloa and the Gulf cartels that are basically operating within the Novo Ladelo area of operation. I will leave it to my counterpart here from ICE to go into more detail on that, but those are the ones that are actually war-

ring factions that are causing some of the violent escalations that are occurring.

Senator FEINSTEIN. Ms. Forman, do you want to comment on that?

Ms. FORMAN. Yes. It's the Gulf cartel and the Alliance Federation cartel competing with each other, and both are extremely violent. I mean, compare it to the organized crime days in New York where they were competing for turf and for territory, and the brutality is unimaginable, what they are involved in.

Senator FEINSTEIN. If the penetration by these pseudo-military people is cartel-inspired, which I think the facts would lead us to believe, what is being done between our two governments to develop a regional approach to this and to really move in make the necessary arrests in Mexico?

Ms. FORMAN. If I could address that, we work closely with the Mexican government at all levels, at the Federal and State levels. We work with specialized groups side by side to address these issues and to work against these drug cartels, as well as the human smuggling cartels. We have ICE representatives in our attache offices working with the local government on a daily basis to address a number of these issues, and we have a number of task force operations where we are working with the Mexican government.

Senator FEINSTEIN. Yes, but this has been now increasing for 3 years. What cartel arrests have been made in Mexico to deal with this?

Ms. FORMAN. I will have to get back with you on the specifics of those arrests.

Senator FEINSTEIN. Chief, do you know of any?

Mr. AGUILAR. There have been some. Unfortunately, I don't have the numbers or the individuals in front of me, but we will get those back to you. Now, the one thing I would like to address is real-time things that are occurring right now as we speak.

The Federal Preventive Police in Mexico, the PGR, is working with us in very focused areas of the border, where they are operating in Mexico and we are operating, of course, in the U.S. to deter some of these situations that are occurring. San Diego—you just met with Chief Griffin about a week-and-a-half ago—is working very closely with the PGR and the PFP to include a lot of his area south in Mexico. In Laredo, Texas, we have got the same kind of relationship built up now as of about 2 weeks ago, and the same thing in the Rio Grande Valley sector in South Texas, deep South Texas.

Senator FEINSTEIN. Is there currently any joint Mexican-American border patrol effort with the sharing of intelligence on the tunnels, which I suspect are also moving weapons back and forth as well, particularly from the United States? Is there any indication that high-powered sniper rifles like the 50-caliber are turning up on the border?

Mr. AGUILAR. We have had information that I am aware of. I do not believe we have detained any 50-caliber weapons. We have some intelligence to that degree. As far as joint operations, there is a lot of intelligence-sharing that is occurring especially at the ICE level and at the Border Patrol level in the field.

Senator FEINSTEIN. But is there any precise working unit, binational unit?

Ms. FORMAN. I mean, we have task forces where there is——

Senator FEINSTEIN. That wasn't my question. Of Border Patrol?

Mr. AGUILAR. No. The closest thing that Mexico has to a border patrol is going to be the Policia Federal Preventiva, the PFP. They used to have a component of that that was actually Border Patrol-comparable. It went away about four or 5 years ago while I was the chief in Tucson. They were very effective.

We are actually working toward that with Mexico right now. It is still at the informal stages. It has not been formed to the degree that I think both countries want to see, but we are trying to move in that direction.

Senator FEINSTEIN. This is just my view, but I was so heartened by the meeting I had with the Mexican senators. It was the first time I have really seen a willingness to want to work together, and I think it would be just excellent if that effort could be put together and there could be a binational effort so that the Mexicans would really buy into this.

Mr. AGUILAR. Senator, if I may, I think it is important to make this statement. In my almost 28 years of service, this is the best we have ever seen Mexico step up to the plate and do something along their border. A lot more needs to be done; absolutely, a not more needs to be done.

Right now, we are at the point that Mexico is being responsive and reactive to our call-outs. We need to get to the point where we are proactive and we are preemptive, and I think that is what you would like to see happening and I believe that that is what we are moving toward.

Senator FEINSTEIN. That is excellent. Thank you very much. Thank you, Mr. Chairman.

Chairman KYL. Thank you, Senator Feinstein.

We are joined by Senator Sessions, and Senator Cornyn is next and if you could take the Chair briefly while I step out, I would appreciate it.

Senator CORNYN [presiding]. I would be happy to.

Ms. Forman, what is the role of Immigration and Customs Enforcement in the Hudspeth County investigation? Can you please provide us with an update?

Ms. FORMAN. ICE is the lead Federal investigator for this incident and we are in the process of pursuing leads. It is an ongoing investigation and right now we are looking at it as primarily a narcotics investigation so we can identify those that are involved in this incident to see if, in fact, they were truly Mexican military officials.

Chairman CORNYN. We have a number of sheriffs from Texas, and also we have a sheriff from Arizona that is going to testify, and obviously their jurisdictions are located along the border.

Is there anything that you believe that we can do—and I am talking about Congress and I am talking about the Federal Government—to provide additional support for local law enforcement officials and to further integrate them into the overall law enforcement efforts along the border?

Ms. FORMAN. Historically, ICE, with their legacy components, have worked very closely with State and local law enforcement, and it is very important that those partnerships continue and strengthen.

I know many of these sheriff's offices have very few personnel. So working with them and supplementing them with the Federal personnel at the ICE level and at CBP certainly will make them stronger, in addition to additional technology so we all have the capability of speaking to each other with the same quality of technology.

Chairman CORNYN. Well, I know there are—I think they are called 287(g) partnerships that exist between Federal law enforcement officials and local law enforcement officials. Do you see room to grow in terms of perhaps Congress providing additional funds and additional training and additional support for local law enforcement to help them further supplement the efforts of Federal law enforcement along the border?

Ms. FORMAN. Absolutely. 287(g) is a powerful tool. Currently, ICE has memorandums of agreement with 5 police departments throughout the United States. We have two pending and eleven more requests. I think it is important that we make that an opportunity and make that available to State and locals, with the appropriate technology that goes along with it as well as the ICE resources to work together side by side with them.

Chairman CORNYN. Well, I am glad to hear your answer. Obviously, this is a Federal responsibility, and local and State law enforcement are having to step up because unfortunately the Federal Government has not provided the human and technological resources necessary for the Federal authorities to do the job. So it just makes sense that we would support local and State law enforcement the desire to be involved in any way that we can through training and additional funding, and obviously in a coordinated effort.

Chief Aguilar, I mentioned in my opening statement Joint Task Force North that is located at El Paso, as you know.

Mr. AGUILAR. Yes, sir.

Chairman CORNYN. This is a Department of Defense task force, and I understand that it has supported the Department of Homeland Security on a number of joint border security operations. For example, Operation Winter Freeze, Operation San Juan, Operation Western Vigilance are all examples of the Joint Task Force North supporting the Border Patrol, which is the lead Federal agency.

Historically, of course, we haven't had the Department of Defense taking the lead because of a variety of reasons, some legal and some policy judgments. And I certainly don't believe that the Department of Defense should take the lead. I believe they should be supportive of the law enforcement agencies like the Border Patrol and ICE.

But I worry that we are not seeing the same sort of commitment by the Federal Government when it comes to supporting Federal law enforcement along the border that we provide to our war-fighters through funding and through access to technology through funding for the Department of Defense.

The Department of Defense has a homeland defense responsibility. Obviously, the civilian agency, the Department of Homeland Security, has a law enforcement function. But they are all paid for by the Federal taxpayer and I would like to see development of a joint interagency task force in El Paso—in other words, like we have in Florida—where we see all assets of the Federal Government, all agencies of the Federal Government who are concerned with law enforcement and border security—that we make sure they are operating in a coordinated effort and that all assets that are available even to the war-fighter in the Middle East or Afghanistan—more UAVs, more ground sensors and the like—that those are supplied to our border protection efforts.

Could you comment on where we are now and where you would like to see us go in that connection?

Mr. AGUILAR. Absolutely. Senator, I can only speak, because that is what we are getting from DOD, in very glaringly positive terms about JTF North and DOD. Now, could we use more help? Absolutely, yes.

JTF North, besides the operations that you just mentioned, has been very, very supportive of us. In fiscal year '05, they supported us with 49 specific missions, everything from sensor technology to flying some UAVs for us, building infrastructure, building roadways, fences and things of this nature that are a tremendous force multiplier.

For fiscal year '06, we have approximately 240 mission requests outstanding for fiscal year '06, of which several are ongoing as we speak. I don't know how many they are going to be able to actually source for us because of the two-theater war that we are fighting as a Nation. In 2007, we again have over 250 mission requests for them. They work very hard to get us what we need, and when we do get their support it serves as a tremendous force multiplier for us.

As we speak, the border infrastructure system in San Diego, for example—they do a tremendous amount of work for us in building the triple fencing, setting up the camera sites and things of that nature. The relationship is very, very positive.

Two weeks ago, one of my senior associate chiefs sat down with the National Guard bureau commanders here in Washington, D.C., to brief them up on our National strategy, our rationale for the way we do business and our path forward, if you will. The reason for that was to do just as you explained, to create some synergy between what they have available to them—this, of course, in an informal manner—and then apply that in support of our National strategy. We are working toward that end. I myself will be meeting with the National Guard commander here very soon to cement that effort.

But anything that the DOD can do for us is a tremendous asset, a tremendous asset, especially in the way of building infrastructure, giving us the ability to even get to some of our border areas that in the past we just didn't have any means of getting to, building roadways and things of this nature.

Chairman CORNYN. Well, I appreciate your response. Yesterday, I met with Secretary Paul McHale, who is the—I believe his title is Under Secretary for Homeland Defense at the Department of De-

fense, and he was very forthcoming in terms of the support that he said the Department of Defense was willing to offer to the Department of Homeland Security, although they made clear their primary mission was war-fighting.

But there are many more assets available to the Federal Government and I think should be made available along the border other than those that are currently dedicated to the Department of Homeland Security and the Border Patrol. And I am glad to say that Senator Sessions and I serve on the Armed Services Committee, and speaking for myself I intend to make sure that we push very hard to make sure that there is the kind of cooperation which you have already indicated has been indicated but which is not yet there. For example, I understand there is only a single UAV available to the Department of Homeland Security now. We need to fix that problem.

Thank you, Mr. Chairman.

Chairman KYL. Thank you, Senator Cornyn.

Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman, for this hearing. I have been watching with some concern the reports in the papers about violence at the border and I couldn't be more pleased that the Chairmen have called this hearing to air that problem.

I feel very much that we have a responsibility to our agents that are out there. We have a couple of responsibilities, I believe. First and foremost is to make sure that they are supported and that they are not subjected to violence, and that we can protect them from that and we can do better job and we have to do a better job. We can't ask people to go out and put their lives at risk and not be able to protect them.

Second, I believe we owe them a commitment that we are going to enforce the law, that they are not out there by themselves in a hopeless effort, that nobody cares, that we really don't want the law enforced and that we are just going through some sorts of motions, oftentimes placing them at personal risk that suggests that we are not serious about it. So I think there is a growing consensus in our Congress that we need to have a lawful immigration system.

Mr. Charlton, as U.S. Attorney for 12 years in Arizona, you have come to have an affinity for the law, a pride in the law, and a belief that in your district you enforce the law. Is it troubling to you that on a wholesale scale, you are having, what, 575,000 people arrested in your State, and obviously many more not being arrested, and that it appears from the surface that we really don't have a very lawful area there?

Would you share with us your thoughts as the chief law enforcement officer, I guess, in the State of Arizona, how you feel about a circumstance like that?

Mr. CHARLTON. Thank you, Senator. I know as a former U.S. Attorney yourself, you understand the responsibilities that are involved in these issues. As you indicated, there are approximately 577,000 individuals who were apprehended by the Border Patrol along the Arizona border. And as I indicated earlier, that rep-

resents approximately 50 percent of all the illegal aliens who were detained in the whole of the United States detained in Arizona alone. That is an extraordinary responsibility for the men and women in law enforcement there.

It is an extraordinary responsibility for the prosecutors in our office who work very hard to move those cases through the system. And they do an extraordinary job, Senator. I think you would be very proud if you saw the caseloads that these people were carrying. It is of grave concern to us and we are working very hard to address the issue.

Senator SESSIONS. Well, I would like to proceed in a moment and follow through how cases are typically handled and what those challenges are. But I agree; 577,000 apprehensions indicates that somebody is working hard. And they are not out there doing that at nine o'clock in the morning. A lot of times it is at 2 a.m. and that kind of thing that people are doing the work to protect the laws of the United States and our borders. So I salute them.

I just believe we need to be sure that they know and we are committed to backing them up, and that this has meaning; it is not a meaningless exercise. I don't know how you maintain the morale that you do. You apparently have pretty good morale, but it seems too much like the old days of the revolving doors. People would arrest people and they were released the next day, and years would go by before they had a trial and then they got probation and you wondered why you went through the process. We have changed that as a country and crime has dropped by half, nearly. We have made tremendous progress and I think we can do that here.

With regard to the local police, you have mentioned, Ms. Forman, the 287(g) agreements. I believe that is the agreement you signed with the State of Alabama that you have been referring to.

Ms. FORMAN. Yes.

Senator SESSIONS. How many more of those are in existence in the country today?

Ms. FORMAN. We have 11 requests pending and we have 2 requiring signature that will be forthcoming. So that will be a total of approximately 18 in place.

Senator SESSIONS. So that will total 18 in place?

Ms. FORMAN. Yes.

Senator SESSIONS. Well, wouldn't you agree that is a pretty small effort?

Ms. FORMAN. I can tell you that we have an aggressive recruitment effort out there. We have 26 special agent-in-charge offices. We have instructed our special agent-in-charge offices to go meet with their State and local representatives, let them know what 287(g) is and see what their interests are.

Senator SESSIONS. And basically this allows local law enforcement officers to be trained and to be able to participate voluntarily. There is not any mandate on them, but if they choose to be able to partner with the Border Patrol or ICE to process people they may apprehend in the normal course of their business. Is that correct?

Ms. FORMAN. That is correct.

Senator SESSIONS. Well, I remember about two or 3 years ago when we started pushing for this agreement for Alabama, it took

quite a long time. I have got to tell you ICE was dragging their feet. Florida and I think Alabama at the time were the only two States that signed such an agreement, and now you have got 18, which is pretty small.

I want to know right now, and you tell us directly, do you believe this is a good process and are you actively promoting it and seeking more law enforcement agencies to participate in this program?

Ms. FORMAN. Yes, I do believe it is a good program. I believe it is also important to make sure that the governing boards of the State and local law enforcement officers are also engaged in the program and that they support the program, because oftentimes we have had a number of other requests where the State and locals may make the request, but the governing body may be opposed to it for one reason or another.

Senator SESSIONS. Who is that? Do you mean the mayor?

Ms. FORMAN. Mayor, Governor. Some have governing councils.

Senator SESSIONS. Well, I think it would be good to know what mayors and what Governors wouldn't support that. But there are, I think, 750,000 State and local law enforcement officers. How many ICE investigators do you have?

Ms. FORMAN. There are approximately 5,500 ICE special agent investigators.

Senator SESSIONS. And what about Border Patrol enforcement officers?

Mr. AGUILAR. 11,300, currently.

Senator SESSIONS. So you have got about 16,000 Federal officers and we have about 750,000 State and local, and I believe it is appropriate for them to participate in this process.

Would you agree, Mr. Aguilar?

Mr. AGUILAR. Senator, 287(g) is absolutely a very, very good tool.

Senator SESSIONS. Now, who promotes that? Is it ICE or is it Border Patrol?

Mr. AGUILAR. 287(g) is managed by ICE, yes, sir. We are the beneficiaries of 287(g) when it does occur in a border State area. The one thing I would like to add here is that there are certain things that are already tried and true that the State, local and tribal entities which are absolutely essential from a partnership perspective to bring control of the border can do; Operation Stonegarden, for example, where the State homeland security directors are able now to utilize some of the grant money to border enforcement efforts to support the State, local and tribal entities to work in coordination with the Border Patrol in a very focused manner along our Nation's border with Mexico.

Senator SESSIONS. Well, what happens today in Alabama if a police officer apprehends someone who has had a wreck and they approach them and discover they are in the country illegally? Do you know what as a practical matter happens?

Mr. AGUILAR. In Alabama, we do not have a big presence of Border Patrol, sir, but we would, of course, welcome the call if we happened to receive it. But I believe ICE would be the one that would be responsive to that, to those calls.

Senator SESSIONS. What would ICE do, Ms. Forman?

Ms. FORMAN. If it is a 287(g) cross-designated, or even if it is not, the State and local law enforcement——

Senator SESSIONS. Let's say it is not.

Ms. FORMAN. OK.

Senator SESSIONS. Just a police officer in a town in Alabama.

Ms. FORMAN. Seven by twenty-four, ICE oversees the Law Enforcement Support Center that is available 24 hours a day to State and local law enforcement officers to call, and it is manned. What they get is they will run the individual's name, the LESC, and they will let the individual know—we have eight immigration data bases located at the LESC. They will be able to tell whether this individual is legal, whether this individual may be a gang member, and whatever other history that is contained in that data base.

Senator SESSIONS. Well, if it is somebody that is there illegally, what the officers tell me—and I ask them as I travel the State—is that basically the rule in Alabama was it was 15 or more, we might come and pick them up; otherwise, basically don't bother to call.

Isn't that the real fact, that you do not even attempt to respond to the calls of local law enforcement who, in the course of their normal duties, have apprehended someone who might be here illegally for less than a serious felony offense?

Ms. FORMAN. Senator, I will not agree with that across the board. I will tell you that, with 5,500 special agents, we have to prioritize, and our prioritization entails national security and public safety, those individuals who are involved in violent crimes, and then those individuals who are in this country illegally.

Senator SESSIONS. I don't want to argue with you, but I am just telling you that is the way it is. Now, we can talk about this any way we want to, but the fact is that in most States of this country, if people are apprehended by a local law enforcement officer for any number of matters and they are determined to be illegally here, you don't respond. I had one officer tell me, well, I would take them to Birmingham if they would at least pay me my mileage.

Will you pay them the mileage to bring them to the ICE headquarters in the State? Is there any plan to do that for the State?

Ms. FORMAN. I will tell you funding is an issue.

Senator SESSIONS. What is that?

Ms. FORMAN. Funding is an issue.

Senator SESSIONS. So you don't have the money to do that?

Ms. FORMAN. Funding is a consideration in terms of what we are able to do.

Senator SESSIONS. And we are not doing that. That is the true fact.

Mr. Chairman, my time has run. I am sorry.

Chairman KYL. Yes. We are going to do a quick second round. The vote is on, and what I would suggest right after I ask this first question—Senator Sessions, you might want to hear it, and then why don't you go ahead and vote? And we are going to play tag team, as I indicated earlier.

This problem that Senator Sessions is talking about is not just a problem in a State like Alabama, which you might expect wouldn't have a lot of ICE agents. It is a problem in Arizona. It happens all the time that police officers are called to a drop house or they stop a van and it turns out there are a bunch of illegal immigrants there. And, yes, they are able to do the quick criminal

check, but frequently when they call somebody to take custody of the illegal immigrants, there is nobody available. And I think it is a matter of resources; it is also a matter of will.

Now, let me ask you two questions. First of all, in a State that is highly impacted like Arizona, for example, wouldn't it be relatively easy to have a small fleet of old school buses available and some officers who could be deputized under the statute to take custody of illegal immigrants and return them, if they are Mexicans, to the border, with a response time of maybe 20 or 30 minutes maximum so that our police officers don't have to spend all of their time sitting with the illegal immigrants?

Wouldn't it be possible in a city like Tucson or Phoenix to have this kind of capability available at a relatively low cost?

Ms. FORMAN. I think the issues again go, Senator, into resources in terms of prioritizing our resource usage. Right now, our agents are focused on the root of these problems, and that is the criminal organizations that bring this——

Chairman KYL. I understand that, OK. What I would like from you in writing as soon as you can get it to me is what it would take in terms of resources to respond to the challenge that Senator Sessions and I have laid out. I have been talking about this for 2 years and it seems to me it wouldn't take very much in the way of resources to have some old school buses and some retired officers who could easily be deputized under current statutes to take custody of people.

It diverts resources that are devoted to high-priority in Phoenix, Arizona. Phoenix Police Department officials come to me and complain that they show up at a drop house; there are 200 illegal immigrants there or 100 illegal immigrants. And by the way, the person that tipped them off is usually the smuggler because he has got another load coming in that night and needs to make room for them, and they have already been robbed and sometimes raped. It is a bad, bad deal. And yet they have to turn them loose because they call ICE and there is just nobody that is immediately available.

It seems to me to be fairly easy in a place like Arizona. Now, I can understand that in a place like Alabama you don't have as much call for them and cost/benefit-wise it is more difficult. So provide for us what it would take in resources, because if you ask, Congress is likely to respond by providing the resources because this is a serious problem. And it is even more serious with the detention—or the failure to detain the other than Mexicans who, of course, are simply released into our society and very rarely show up to be removed when their home country finally gets around to saying that they will take them back. That is another whole problem.

But what I have not been able to get from the Department of Homeland Security is a commitment to quickly deal with this problem. We are told that in another year we should be able to have sufficient detention space available with regard to the other than Mexicans. That is not acceptable as far as I am concerned.

If you want to respond orally, fine. Otherwise, I would appreciate it in writing.

Ms. FORMAN. OK.

Chairman KYL. OK. Now, Chief Aguilar, as you know, the Tohono O'odham Indian Tribe is located on the border with Mexico, in southern Arizona, and they have been part of our law enforcement community working with the Border Patrol. I know you are familiar with them and try to work as closely as possible with the Tohono O'odham so they can do their part in securing their part of the border.

How is the Border Patrol responding to the kind of violence that is occurring also on the Tohono O'odham Indian Nation land? What can you tell us about what we can expect there to improve the situation there?

Mr. AGUILAR. Yes, sir. First of all, the number of Border Patrol agents that are not patrolling the Tohono O'odham Nation has grown tremendously, about 30 percent in the last couple of years. So that augmentation of enforcement resources has helped tremendously. There has been a drop of about 19 percent in the number of arrests that are occurring on the Tohono O'odham Nation.

You will remember, Senator, that the arrests were tremendous out there. So a 19-percent drop is, in fact, dramatic. In addition to that, we get what we call third-party indicators from the Tohono O'odham Nation itself—pursuits that are occurring on the Nation, call-outs to the police departments due to illegal alien activity and things of this nature.

We have seen a dramatic drop in those instances. For example, when I was there as the chief patrol agent, we were still in the process of resourcing. It would not be unusual for the Tohono O'odham Police Department to be involved in high-speed pursuits on an average of five to eight times a day. We are now seeing it averaging about once to twice a week, and sometimes it is even less than that. The medical facility on the Tohono O'odham has dropped dramatically in the number of medical responses that they have to do.

One of the things that we are looking forward to this coming year is because of Congress allocating $35 million specifically to Tucson sector, the Tohono O'odham Nation is going to be the beneficiary of what we refer to as a drive-through barrier, a drive-through barrier almost along the entire length of the Tohono O'odham Nation's border with Mexico, which will be a tremendous enforcement resource for us because the biggest problem that we have on that Nation is drive-throughs, people driving across that border and nothing to stop them. So it is going to mirror kind of like what was done on the Oregon Pipe National Forest. That dropped almost overnight when that was constructed.

Chairman KYL. When you say drive-through barrier, you had better describe what you are talking about because it is not really a drive-through barrier.

Mr. AGUILAR. No. It is a barrier that is constructed in such a way that it does not allow motorized vehicles to basically drive with impunity from Mexico into the United States. Right now, as you know, and I think both of you have seen, we literally have a line in the sand, nothing that keeps these smugglers out of the Tohono O'odham Nation.

So once we put up that drive-through barrier, it will not allow that level of illegal traffic to go and come into the Tohono O'odham Nation. We expect tremendous results out of that.

Chairman KYL. These are basically bollards embedded in concrete.

Mr. AGUILAR. Yes, sir, bollards, rail upon rail and things of this nature, yes, sir.

Chairman KYL. OK, thank you.

Senator Cornyn.

Chairman CORNYN. Chief Aguilar——

Chairman KYL. Would you excuse me? I had one question for Paul Charlton that I don't want to forget.

We talk about resources, more Border Patrol agents, more ICE agents, and so on. What kinds of problems are created by more law enforcement personnel with regard to your job and the rest of the tale of the criminal justice system?

Excuse me. I am sorry.

Chairman CORNYN. No problem.

Mr. CHARLTON. We have seen an extraordinary increase in the demands upon our office and all of the United States Attorneys' offices along the Southwest border, Senator, and we have asked the Department of Justice to take a look at our resources and the allocations so that they can make a determination as to what kind of adjustment needs to be made as a result of the dramatic increase in law enforcement so that we can service the agencies that are working so hard to impact this problem.

Chairman KYL. We need to ensure that the court system, the public defenders, the jail facilities, the U.S. Attorney complement and all of the rest of the parts of the criminal justice system can keep up with the increase in the law enforcement agents that we have.

Mr. CHARLTON. Thank you, Senator.

Chairman KYL. Senator Cornyn, what I am going to do is go vote right now. I will make sure they hold it open for you and then when I come back, you can take off.

Senator CORNYN [presiding]. It sounds good.

Chief Aguilar, the House of Representatives, as I understand it, has proposed a 700-mile fence between Mexico and the United States. Do you support that 700-mile fence?

Mr. AGUILAR. What we support, Senator, is going to be a fence that we can manage. We should not build a fence that is built just for the purposes of building a fence. What we prefer and need as a country is a fence that is inclusive of technology and supporting infrastructure that can allow the enforcement assets to support that fence, because if we build a fence and we cannot access it, we cannot get to it, we cannot patrol it appropriately, it will actually prove to be beneficial to the smugglers if we are not careful.

So when we talk about a fence, we need to talk about a comprehensive model, if you will, that sometimes does require a fence. At other times, it may require a drive-through barrier. At other times, it may require just a combination of technology that will give us what the Secretary and we are now calling a 21st century fence that will give those eyes and ears on the border.

So I guess a short answer to the 700-mile fence is probably not. We need to have those eyes and ears on those 700 miles of border that will give us the capability to create the deterrence that we are looking for.

Chairman CORNYN. What I hear you saying is that there is a place for strategic physical barriers, including fencing in some appropriate locations to help the Border Patrol manage the flow of people across the border in your law enforcement efforts.

Mr. AGUILAR. Absolutely, yes, sir, and if I may use this as an example, I was talking to Sheriff Larry Dever right before I stepped up here. We started the fencing project in Cochise County about 3 years before I got there in 1999, but it took a maturation process and a comprehensive approach of the fences, the technology, the cameras, the roadway-building, the bollard-building, and even building culverts by the military that got us to where we are today.

Today, as we speak, our Douglas border patrol station has dropped by 43 percent as compared to the year before in the number of apprehensions. Our Wilcox station, also, in Cochise County has dropped by over 48 percent. Our Naco station has dropped by over 44 percent—the lowest numbers in 10 years. So it is that comprehensive approach.

And by the way, I don't want to pass up an opportunity. One of the very critical pieces of this is that U.S. Attorney Charlton's office, speaking to the cost of his office, prosecuted last year 2,300 felony cases for the Border Patrol, only the Border Patrol, in the District of Arizona, and over 1,200 misdemeanor cases. So it is that comprehensive approach that really gets us to where we need to go.

Chairman CORNYN. Well, I welcome your response to the question about the 700 miles in fencing. I hate to see us use a 19th century solution to a 21st century problem.

Mr. AGUILAR. Exactly, yes, sir.

Chairman CORNYN. And I agree with your description that a 21st century virtual fence, a combination of technology and strategically placed physical barriers, makes a lot more sense. The problem is we built a wall, or even assuming we could accomplish that, we would still have problems with the kinds of tunnels that you see here, or as someone suggested to me yesterday, if we built a 50-foot fence or wall around our southern border, then there would be an explosion in the demand for 51-foot ladders.

Mr. AGUILAR. Yes, sir.

Chairman CORNYN. Ms. Forman, over the detentions of non-Mexican nationals come from El Salvador. In 2005, just in the Rio Grande Valley alone, there were approximately 20,000 Salvadorans detained. Yet, the Department of Homeland Security is not able to apply expedited removal proceedings to these illegal aliens because of a 17-year-old injunction that prohibits them from applying that streamlined process that I can tell you Congress is eager for the Department of Homeland Security to use because of that injunction.

Without going into the specifics of the litigation, can you tell me whether the Department of Homeland Security is taking steps to revisit that injunction?

Ms. FORMAN. I am aware that the Homeland Security Secretary is taking steps to address the injunction. I am not prepared to give you the specifics of those at the Department level.

Chairman CORNYN. Well, my understanding in talking to the Attorney General of the United States is that there is litigation being planned. I am surprised that an injunction is still in place after 20 years. It seems to me that injunctions that affect our border security and frustrate the Government's ability to stop illegal immigration should be more narrowly tailored. So I certainly would support an effort to go back to the court and to seek either an elimination or a vacation of that injunction, or at the very minimum something more narrowly tailored.

Would you agree with that general proposition?

Ms. FORMAN. Yes, I would.

Chairman CORNYN. What we have heard from each of you, I think, with regard to what we are doing on, for example, drug smuggling—we have seen this tunnel in California that was used clearly for illegal drug traffic.

My understanding is that at the Department of Defense, the money that Congress has appropriated, Chief—and maybe you would be the best person to respond to this—is primarily related to illegal drug traffic. And you may not know the budget of the Department of Defense. I wouldn't expect you to.

Mr. AGUILAR. I do not, sir.

Chairman CORNYN. But I am told by Secretary McHale that Congress needs to provide additional funding to deal with human smuggling and not just drug smuggling, the premise of that being that what we are seeing is organized crime smuggling or bringing across anything and everything that they can make a buck in.

And they don't really care—and I think U.S. Attorney Charlton mentioned this earlier—they don't care about the people, they don't care about who gets hurt. They just care about making the money, and they will smuggle guns, they will smuggle people, they will traffic in human beings, they will bring across weapons of mass destruction, they will smuggle terrorists if they can make money doing it.

Would you agree with that, Chief Aguilar?

Mr. AGUILAR. Absolutely, sir, and I would absolutely agree with Under Secretary McHale's statement. One of the critical things I think here is that we need to take an approach of not anti-alien smuggling, not anti-narcotics smuggling, but all threats coming across that border. That is what we need to get to and that is that virtual fence that we are talking about.

Chairman CORNYN. Attorney Charlton, would you agree with that approach that we need to not just necessarily fund and focus on anti-drug traffic, but all of the above?

Mr. CHARLTON. That is correct, Senator. The issues have now merged and become one. The threat of one of violence by all organized crime as they attempt to infiltrate our border, and that is where we need to focus our resources.

Chairman CORNYN. Well, I think as Senator Kyl votes and comes back and as I go vote, I do believe that—well, let me double-check.

I was just checking to make sure that we had satisfied the members' desire to have an opportunity to question this panel. So let

me thank you for your being here and thank you for your service. You are performing very important jobs and serving our Nation.

And I hope you understand that when we criticize—that is, Members of Congress criticize the lack of a Federal response, a proportional response to this threat, that we are not directing that criticism at you. In fact, you are the solution to the problem. We just need to give you more manpower, more men and women, to help, and we need to give you the resources and tools that you need in order to be successful in the very important job that you have undertaken on our behalf. So thank you very much for being here today. Thank you for your testimony and your continued service.

We are going to now move to the second panel and we will take a short break while they assemble.

[The Subcommittees stood in recess from 10:33 a.m. to 10:39 a.m.]

Chairman KYL. The Subcommittee hearing will resume. There were questions that some of the members of the panel had for the first panel that will be submitted for the record so that we can move on to our second panel, and I appreciate your indulgence in the disruption that we had here.

On the second panel we will hear, as I said before, from the Sheriff of Cochise County, Arizona, Larry Dever; the Sheriff of Val Verde County, Texas, Wayne Jernigan; Lavoyger Durham, the manager of the El Tule Ranch in Falfurrias, Texas; and T.J. Bonner, who is President of the National Border Patrol Council. We are very appreciative that all of you are here.

Since I don't have a particular order, maybe I can just start at this end of the table and we will move this way, if that would be all right with you, Mr. Bonner. You will be the clean-up hitter.

Let me start with my friend, Larry Dever. Welcome.

STATEMENT OF LARRY A. DEVER, SHERIFF, COCHISE COUNTY, ARIZONA

Sheriff DEVER. Mr. Chairman, thank you for the opportunity to testify here today. I was here in 1997 testifying before the Foreign Relations Committee on border violence, as well, and it seems like we are still pretty much mired in the same muck that we were at that time, or if anything it is a little bit worse.

You have heard some interesting testimony about some suggested needs and methods of trying to mitigate the violence that is going on down there. I would just like to take a moment and read to you from Arizona Sheriffs magazine a quote from the Border Patrol chief of the Tucson sector, at that time Chief Jerald Jondall.

He said, "Within the last year, we have been mandated by Congress to gain control of that border, and we are going to do that along the southern border, whether it is narcotics, illegal aliens, terrorists, criminals, or whatever." That, sir, is dated autumn of 1987. I don't need to tell you at what juncture we are at today. 1987 was the year that we first organized the joint narcotics task force in Cochise County in response to the cocaine trade that had entered that part of the country. Cocaine Alley was the common name for that particular corridor.

At that time, there were no DEA agents in Cochise County. There was no FBI. The Customs Office of Enforcement had maybe 4 agents, and Border Patrol possibly a total of 100. Today, the FBI is there, DEA is there. Customs has increased many-fold, and there are well over 1,200 Border Patrol agents stationed in Cochise County. Yet, the violence continues to increase, as you have heard here today, and whether that is because of the law enforcement presence or in spite of it, nobody can dispute that it has markedly increased.

Twenty to twenty–5 years ago, working along the border in drug interdiction, we actually jumped smugglers right on the fence and they would just simply give up. Some of them would run back into Mexico, but they always dropped their contraband and there was no fight to be had. Today, it is just the opposite. We anticipate that we will be in a fight, a very violent confrontation in every interdiction effort, with running gun battles down congested public roadways, populated residential areas, high-speed chases.

Paul Charlton talked earlier about the prosecution of two smugglers who caused a very serious accident, a fatal accident in Sierra Vista just recently, driving recklessly in an overloaded truck. Most of the vehicles that are used to transport illegals are, in fact, stolen from the Tucson and Phoenix areas. They are overloaded and their drivers are inexperienced.

The people-smuggling culture is marked by little, if any, value for life or respect for persons or property. One study estimates that 80 percent of all illegal aliens that enter this country become victims of crime before they ever get here, and that those atrocities continue after they cross the border.

We have come across an interesting phenomenon—or not a phenomenon, a situation where smugglers mark their trails or locations where rape has occurred of one of the illegal aliens being smuggled as a sign to others that they must cooperate with the smuggler. They hang women's undergarments in the tree to mark that location as a signal of their prowess and their dominance in the smuggling environment.

I mentioned running gun battles, fleeing felons, placing law enforcement officers at great risk, as well as the general public. I could tell you of many car-jackings. I was counseled by staff of a Congressman yesterday that I shouldn't talk too much about specific examples of car-jackings because it is so commonplace in the Washington area that it wouldn't carry much weight.

Well, sir, you will forgive me, but that is just not acceptable in my environment and the people that I work for. If it becomes commonplace there, it certainly will be a sad day and a sad situation.

We desperately need your attention and your assistance. You have heard today about several Federal initiatives and joint initiatives. I would just like to emphasize that every Federal initiative, every strategy that is implemented at the Federal level has a local consequence, and those consequences aren't always considered in the planning process. I would encourage whatever influence or requirement that can be included in funding that would require, in fact, that local participation be considered so that those consequences will be totally understood before they are implemented.

I thank you again for the opportunity and would invite any questions, sir.

[The prepared statement of Sheriff Dever appears as a submission for the record.]

Chairman KYL. Thank you very much, Sheriff Dever.

Sheriff Jernigan.

STATEMENT OF A. D'WAYNE JERNIGAN, SHERIFF, VAL VERDE COUNTY, TEXAS

Sheriff JERNIGAN. Thank you, Mr. Chairman. Mr. Chairman, my written testimony and its attachments provide you with somewhat of a thumbnail view of the organizations and their weaponry that are currently engaged in the violent trade of illegal drugs and human smuggling on the Texas-Mexico border. Just in the last few days, we apprehended illegal aliens during a burglary near the port of entry. One of the aliens fled on foot and was apprehended by the deputies and agents of the U.S. Border Patrol. The alien that was apprehended inside the residence was later identified as a career criminal with a 24-page rap sheet. His criminal career included offenses in Florida and Texas, and his clothing was still wet from his illegal entry.

For over a year, groups of male subjects illegally crossed the river into the United States and burglarized remote ranch homes. These subjects took items from the homes that they burglarized and would actually abandon the items they took from one home at the next burglary as they moved north into the U.S. The only items that they routinely kept were the firearms. Yes, the firearms.

During one of the burglaries, the subjects brought with them, of all things, electric hair clippers, with which they actually took the time at the scene of the burglary to cut their hair in a rather distinctive manner which we recognize as one of the distinctive details that are used by some of the gang members in the areas south of us.

When these subjects would encounter law enforcement, they would conduct sophisticated escape and evasion tactics to break contact with law enforcement. In one incident, the subjects traveled 20 miles a day on foot across harsh landscape. The last subject that was apprehended in that group had traveled over 80 miles on foot before his arrest and apprehension. We noted that these particular subjects were always physically fit, and it is my humble opinion that these subjects had received prior training for escape and evasion.

The Texas Border Sheriff's Coalition is very concerned, Mr. Chairman, about the unique problems along our border that I have addressed in my written testimony. The United States Border Patrol and ICE are doing the best they can with the resources that they have been provided. Immediate help is needed for them for the protection of our country.

We have implemented Operation Linebacker, a second line of defense in the protection of our country. This program allows us to work in partnership with our Federal partners in border security. The problems along the border are Federal problems. Our Governor, the Honorable Rick Perry, did not wait for an officer to be killed along the border to take action. He, just as we, is very much

concerned. He has allocated some $6 million for us to initiate Operation Linebacker. Just last month, he announced an additional $3.8 million that he will grant the coalition.

This much-needed assistance provided by Governor Perry has already produced measurable results, but this assistance is only a stop-gap measure. More help is necessary if we are to see an acceptable level of security exist on the border. The problems along the border will continue unless our Federal Government does something soon. Must we wait until additional officers are killed or assaulted or injured, or until another terrorist act occurs?

I have addressed many of the enforcement issues facing the border today in my written testimony, but another crisis faces us, Mr. Chairman. The judicial system on the border is strained to failure. In Val Verde County alone, the annual budget for jury trials will be exhausted this month, in March, only halfway through the fiscal year. An examination of the caseload of the United States District Court for the Western District of Texas demonstrates this crisis irrefutably.

I have attached a report that demonstrates a 10-year record of civil filings within the Western District of Texas. It is marked as Attachment 6. The number of filings of civil cases across the district has remained fairly level, with only minor increases consistent with our population growth.

However, if you examine the criminal filings for the same period, an alarming trend is quite evident, Mr. Chairman. The two district courts on the border have seen a dramatic caseload increase, with little or no population increase. As you will note in, I believe, Attachment 8, it shows that the caseload of the two United States magistrates just in Del Rio—you will see that each of their caseloads equals the caseload of the other magistrates in the Western District combined. The other district judges in the Western District have seen small increases in their caseloads.

What is not reflected in these stats is the number of criminal subjects who are apprehended with commercial quantities of drugs, but who fall under the quantity threshold arbitrarily established by the United States Attorney's office. These subjects who have been apprehended by authorities are released without prosecution. Remember that only a small percentage of all drug and alien traffickers are apprehended, and then a portion of those apprehended are released without prosecution due to budgetary constraints. The criminals grow more educated by a system that is broken and allows them to continue engaging in a criminal enterprise that is destroying rural Texas communities.

Mr. Chairman and Committee members, we must restore justice to the border. I am convinced that by funding additional deputy sheriffs on the border, as well as the other issues I have brought to your attention, our Nation will accomplish a cost-effective and immediate solution to the burgeoning scourge of violence that is creeping north into our Nation.

Along most of the border, it is a deputy sheriff who receives the first 911 call and responds accordingly. No matter how much more efficient we are made by the utilization of emerging technology, it is still necessary that a trained and experienced officer be available to respond to the identified threat.

I want to express my sincere appreciation to you for having me here today, and I welcome any questions that you may have.

[The prepared statement of Sheriff Jernigan appears as a submission for the record.]

Chairman KYL. Thank you, Sheriff Jernigan.

Mr. Durham.

STATEMENT OF LAVOYGER DURHAM, MANAGER, EL TULE RANCH, FALFURRIAS, TEXAS

Mr. DURHAM. Good morning, ladies and gentlemen. My name is Lavoyger Durham. I am the manager of the El Tule Ranch in south Texas, located about 75 miles north of the Mexican border. I would like to thank Senator Sessions, Senator Cornyn, Senator Kyl, Senator Feinstein and the members of your Subcommittees for allowing me to appear before you this morning.

I would also like to recognize the people in the audience who have traveled here from Texas in support of my testimony.

My purpose in being here today is simple, to try to convince you that Federal law enforcement agencies, with the assistance of their State and local counterparts, must control illegal immigration across the Mexican border. Everyday, I see the reality of what is being reported on a regular basis in the news media. While most of those reports are fairly accurate, none give a complete picture of what is really happening in south Texas, and consequently our entire country.

South Texas has been my family's home for three generations. Both my mother, who was of Mexican dissent, and my father, who was of Irish ancestry, were steeped in ranching tradition. I have been very fortunate to have been able to carry on this legacy for the past 45 years. But now things have changed. My neighbors and I are facing circumstances that can best be described as deplorable. We now must live with the constant possibility that we could be attacked or killed on our own properties.

Literally thousands of illegal immigrants cross through south Texas on a daily basis, mostly by foot. The Border Patrol has told me that within just a five-mile radius of my ranch, 2 to 300 illegal immigrants move through every night. The trail and tracks are there. Most are coming to fill labor shortages in our Nation. Many, however, have less noble ambitions, and many of those are other than Mexicans, or OTMS, who are entering this country from all over the world.

Some are drug-runners who cut our fences so they can carry their backpacks full of contraband north for nationwide distribution. Others are members of what the news media has described as the most violent crime organizations in the United States, the El Savadoran gang known as the Mara Salvatrucha, or the MS–13. Still others might well be terrorists who are infiltrating for no other purpose than to cause death and destruction.

I do not know how to adequately describe the consequences of our unmanaged border in south Texas. The stories are endless and are only getting worse. I can provide accounts of ranchers being fired upon, ranch security guards being beaten and held at gunpoint, women being threatened near their own homes by belligerent aliens, and youths being confronted by gangs dressed in dark cam-

ouflage clothing at night. These types of occurrences are all too common and are entirely unacceptable in a civilized society.

It is also sad to report that we often find immigrants on our properties that are dead or dying. Whenever possible, we take them for medical care, but often it is too late. I hesitate to share photographs of deceased victims whom I have personally found on my property, but I think that it is important to communicate this reality to you.

In my county alone, over 40 illegal immigrants are known to have died last year. These unfortunate and ill-prepared people die not only because of exposure to the harsh elements of blazing heat and bitter cold, but also because of encounters with diamondback rattle snakes and other dangers of the vast, rugged terrain.

Sometimes, however, these people die at the hands of human smugglers, or as they are called along the border, coyotes. Coyotes are criminals who deal in human misery. They charge very large fees of thousands of dollars to smuggle unsuspecting immigrants across the U.S.-Mexican border, often deserting them far short of the destinations they had promised. In performing their so-called services, coyotes will leave behind the weak, sick or injured to die if they cannot keep up with the group. Sometimes, the coyotes will even kill their impaired clients outright so they will not be able to alert authorities.

Coyotes now control a huge percentage of all illegal immigration along the Mexican border, especially among illegal immigrants who want to come to this country for the first time. They are part of the crime syndicates that have become big business. Some of the other witnesses today can testify to that fact. As inconceivable as it may be, coyotes are often equipped with technological devices that are equivalent or superior to those available to our own Border Patrol.

What then can be done to manage the border with Mexico and provide for the safety and security of American citizens? First and foremost, the Border Patrol must be given the manpower to enforce the laws of the land. They must also be provided with the technological equipment that they need to stay ahead of their adversaries.

Second, Congress must reevaluate existing immigration laws to determine realistically whether or not they are enforceable. In my opinion, the Border Patrol will never be able to control illegal immigration until some sort of strictly enforced guest worker program is implemented. Until immigrants who are entering this country for a productive purpose are distinguished from those who are entering for a destructive purpose, I cannot imagine how the Border Patrol could ever have enough resources to effectively enforce immigration laws.

Last spring, I helped organized a meeting in south Texas, including law enforcement officials and policymakers from all levels of government who were concerned about illegal immigration and border security. At that meeting, our distinguished friend, Tobin Armstrong, who we lost to cancer this fall, provided us with the benefit of his wisdom on these subjects.

I would like to conclude my testimony quoting some of Mr. Armstrong's remarks, and I quote, "You are not going to build a wall around the United States to help to keep these people out. There

is only one way to do this job and that is to pass legislation that provides for the people that you need to stay here and provides for the return of all the criminals, the terrorists, the deadbeats and people carrying communicable diseases. That is the only way it is going to work, and then give the ones that do stay here some kind of forge-proof identification card. And then anybody who employs somebody who does not have that card would be committing a felony and would be sanctioned heavily. Now, you say, well, how do you get that done? Well, it isn't a question of how you get it done. You have got to get it done," end of quote.

I would like again to thank Senator Cornyn, Senator Kyl, Senator Sessions, Senator Feinstein and members of your Subcommittees for allowing me to address you this morning. I trust that you all agree that Federal inaction is no longer an option. We will help in any way we can, but ultimately we are counting on you for your leadership to get this job done.

[The prepared statement of Mr. Durham appears as a submission for the record.]

Chairman KYL. Thanks very much, Mr. Durham.

T.J. Bonner.

STATEMENT OF T.J. BONNER, NATIONAL PRESIDENT, NATIONAL BORDER PATROL COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO, CAMPO, CALIFORNIA

Mr. BONNER. Thank you, Mr. Chairman, Chairman Cornyn, Ranking Member Feinstein, Senator Sessions. I had the distinct privilege over the weekend of assembling with a group of about 50 front-line U.S. Border Patrol agents and support personnel, and I wish every one of you and, in fact, every member of the Senate and the House of Representatives could have been there to hear the concerns of these people and to personally thank them for their dedicated service.

I must say it is quite a contrast, the picture that they painted, from the one that I heard from the previous panel of everything is going along smoothly and we are going to get control of this border. When they launched the initiative about a dozen years ago to gain control of the border, they claimed they were going to do it inch by inch. To date, they claim that they have control of 150 miles of our southwest border. Let's take that at face value. At that rate, it will take 400 years to gain control of our southern and northern borders. To put that in historical perspective, Jamestown 400 years ago was still a year off. We don't have the luxury of waiting 400 years to gain control of our borders. This is something we need to do now.

Violence along our borders was one of the foremost concerns raised by these agents and the support personnel, because they are the victims of this violence, too. We have civilian employees who are not agents who go down to work on the fence, to work on that equipment, and they get rocked just as heavily as our agents do. They get shot at the same way our agents get shot at. The difference is they are not armed.

Violence is an incredible problem. Incursions by the Mexican military—yes, the Mexican military—are a problem. If it has

webbed feet, feathers, waddles and quacks, it is a duck. For the government of Mexico to claim that some of these incursions were not their soldiers is just incredulous. In fact, when Chief Aguilar was the chief of the Tucson Border Patrol sector, he had these cards printed up, "Military Incursion," and it talks about how to respond when the Mexican military is making incursions, essentially telling the agents to get out of the area as quickly as possible.

We have had documented instances where the Mexican military has crossed the border, has shot at our U.S. Border Patrol agents, and then the government of Mexico denies any involvement. That claim is simply incredible. And now they are claiming that these are the cartels masquerading as the Mexican military to somehow sour relations between the two nations. That would make absolutely no sense. Why would the cartels do anything to bring more attention, more law enforcement, perhaps even the U.S. military down along the border? That would only make their job of smuggling drugs and people across the border that much more difficult.

And make no mistake about it, the cartels are actively involved in smuggling people now. That trade has become so lucrative. Where it used to be at the beginning of the crackdown $2 to $300 to cross that border, it is now ten times that amount. So the cartels have squeezed out the small-time operations and have gained control over many of these smuggling operations and are charging exorbitant amounts of money which people are willing to pay.

The only meaningful solution to dealing with this is to go after the root of the problem, recognize that the overwhelming majority of people come to the United States looking for work. We have to cutoff that access to people having jobs in the country who have no right to be here. The only way to do that is to have a single counterfeit-proof document, not two documents, one to establish employment eligibility and another to establish identity, because then you will just have an overnight explosion of counterfeit documents. And the GAO warned about that with the current basic pilot program. It has to be a single counterfeit-proof document incorporating identity and employment eligibility, and it has to be provided to everyone who wants a job in this country, not just to immigrants, but to U.S. citizens as well. Otherwise, illegal aliens will claim that they are U.S. citizens and therefore don't need the card.

With respect to the Mexican military incursions, other steps need to be taken as well. Obviously, we need to augment the size of the Border Patrol, but I implore you to stop the foreign aid going to Mexico for the purpose of counter-narcotics interdiction. It is not being used for that purpose. It is being used against our officers, against local sheriffs and law enforcement.

And the other recommendation is to have the U.S. military on standby to respond to these incursions, not to enforce our immigration laws, but to deal with these incursions. Border Patrol and local law enforcement are not equipped and not trained to deal with military engagements.

I thank you for the opportunity to present the views of the frontline agents and I welcome any questions you might have.

[The prepared statement of Mr. Bonner appears as a submission for the record.]

Chairman KYL. We appreciate your testimony. We have got some real experts here, law enforcement experts on the border that have been working at it for decades—Mr. Bonner, with communication with agents all along the border, who gets reports of what is going on all the time on a real-time basis, and a rancher who is living this and has lived it all your life, I gather, Mr. Durham, at least so far.

Mr. DURHAM. Yes, sir.

Chairman KYL. I remember former Senator Simpson was up celebrating his 90th birthday in Cody, Wyoming, and a reporter said, well, have you lived here all your life? He said not yet. So I should have qualified that.

Let me start, Mr. Bonner, with you. You said the value of this human cargo is ten times as much. That would make it about $2,000 per illegal immigrant. Is that about what they pay now?

Mr. BONNER. About $2 to $3,000, and we are talking people from Mexico. The farther away you are from that southwest border, the higher the charge. For people from China, for example, it can $40 to $50,000. And you may think, well, where do they get that money? They don't have that money. They sell themselves into indentured servitude 7 to 10 years, generally, where they work for nothing before they become a free person. This is human slavery.

Chairman KYL. So there is a value to the number of illegal immigrants, which is one of the reasons why the coyotes and smugglers are willing to commit violence to protect that cargo.

Mr. BONNER. Absolutely.

Chairman KYL. Now, you mentioned the need for an identification card, and you made a very important point that I would like to ask you to repeat because it is something that Senator Cornyn and I have tried to persuade our colleagues of, but sometimes I am afraid we have not succeeded in doing it.

It is easy enough to give a document to a temporary worker, a person who is willing to volunteer to sign up to be a temporary worker, like a laser visa, for example. And they are going to carry that with them and when they seek employment, they are going to display that and become employed. But as you pointed out, there are millions of people in this country illegally who are trying to work illegally and will claim to be a United States citizen and have plenty of forged documents in their possession to back up that claim.

So why would everybody who gets a job, therefore, need to have some kind of worker identification number and status?

Mr. BONNER. Quite simply for the reason you point out, Senator, because otherwise people just claim that they were born here or that they have a legal right to be here. If we don't close the back door to illegal immigration, no guest worker program will be utilized by any employer or employee in their right mind.

As an employer, it means that you have to then pay at least minimum wage, that you have to pay all of the taxes, when your competitor is not doing that and they are driving you out of business. And as an employee, why would you volunteer for this program which identifies you as a person who should leave the country within a set period of time, when if you cross the border illegally, you can stay here as long as you want and still get a job?

Chairman KYL. So would it be, in your opinion, to say that the two—and I will ask all of you this—the two critical components to ensure that we can eventually stop illegal immigration in the country are, No. 1, to control the border and, No. 2, to have a worker verification system that works and will be enforced?

Mr. BONNER. Yes.

Chairman KYL. If you any of you have a different opinion, let me know, but I want to ask Sheriff Dever one question before my time runs out. You talked about the need to consider local consequences to Federal action. Give me some examples of some things that we need to do a better job of at the Federal level when we take action here that can have an impact on you and your operations and the other folks in a place like Cochise County, Arizona, for example.

Sheriff DEVER. Thank you, Senator. A couple of things. One is when there is increased Federal enforcement activity—it was mentioned earlier that 10 percent of the people who are apprehended have criminal records in this country. Many of them have active warrants. Those people are then transported to a county jail which the sheriffs maintain and we begin to incur costs at that point. There are extradition charges. Very often, they have medical issues to be dealt with that the county ends up paying. So just the increased enforcement activity alone creates that kind of a bottleneck in our already overwhelmed jails, where we have no bed space.

But another example is roadside checkpoints. You know, when the Border Patrol sets those up on a temporary or permanent basis and they do not have adequate resources to patrol and work and protect the perimeters of those checkpoints and the areas in between, then the consequences of that fall to us. People start circumventing the checkpoint and they drive across pastures and through fences, and traverse people's backyards. So the number of our calls for service just spike incredibly.

Those are just a couple of examples, but each and every strategy again has some kind of a—probably the biggest ones were Operation Gatekeeper and Hold the Line in San Diego and El Paso that funneled all these illegals outside of those two transportation hubs into more rural areas. It was billed initially as an unintended consequence of that strategy. Clearly, it was a planned part of the strategy to force them into the area in order to discourage them from crossing. That didn't happen.

Dead bodies. Local mortuaries have refused to continue to go pick those up, and so it falls to the sheriff to go retrieve those. Each one of those cases has to be treated as a homicide investigation. So there are all those additional costs that we incur. We are already extremely overburdened with those costs.

287(g) was mentioned earlier. That is all well and wonderful, but you can only work people so many hours of overtime before they just can't work anymore. It doesn't make a whole lot of sense to be spending a lot of overtime and expending fuel when you can put that money into full-time employees that would better and more permanently address the problem.

Chairman KYL. Thank you. I am sure you could go on and list 40 different things, but those are good examples and I appreciate that very much.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much. Just in response to the sheriff, Operation Gatekeeper does work in California, and to me it has shown me that if you are prepared to put enough Border Patrol agents out there in the right way, it works.

Now, I will agree that it was an inadvertent situation that pushed the illegal immigration further east, but I don't want you to think that Operation Gatekeeper has not worked, because I was just on the border this past week. It is a very different place in California than it was in the early and mid-1990's. So I was very pleased to see that.

Mr. Bonner, let me ask you a question. Chief Aguilar commented that presently the Border Patrol is at 11,300. In your judgment, what would it take to bring it to a level that we could say, first, the southwest border is reasonably in control, and then second what it would take to say both borders, Canadian and southwest, are in reasonable control?

Mr. BONNER. It really depends on whether you are going to turn off the employment magnet. If you don't, I would say you could put several million Border Patrol agents along those borders and you——

Senator FEINSTEIN. I don't understand what you mean by the employment magnet.

Mr. BONNER. In other words, make it impossible to get a job in this country unless you have a right to work in this country, whether you were born in the United States or given a legal right to work here. As long as illegal aliens can come here and get employment, they will continue to come here. And right now what we have is a revolving door. Personally, I have caught the same group of people four times in one 8-hour shift.

Senator FEINSTEIN. Let me ask you this. Do you think that a guest worker program is a magnet to illegal immigration?

Mr. BONNER. I think that the ability to get a job in the United States without proper documentation, or however you get a job in the United States, is a magnet. You have people who are making, on average, in Mexico four dollars a day. They can come north, earn 20 to 50 times that much doing unskilled work. Of course, they are going to come. We can't blame them for coming across. You and I would do the same thing if we were in their shoes. But until that magnet is turned off, we can throw all the resources we want to at that problem and it will not prevent impoverished, hungry people from coming across the border looking for work.

Senator FEINSTEIN. Where I am going with the question on the Border Patrol is that we have been trying to increase the Border Patrol by about 1,000 agents a year, and I am trying to find what number and I suspect the number rests between 15 and 20,000. Would you concur with that or do you have another number?

Mr. BONNER. I think we can do more. I think that reasonably a law enforcement agency can absorb no more than 25 percent of its total force in any given year, and that is pushing the limit. But I think we should do——

Senator FEINSTEIN. No, no. I am saying what should we aim for, the gross numbers of the Border Patrol.

Mr. BONNER. I believe we should be aiming for that 25 percent for the near term until we can get to——

Senator FEINSTEIN. In terms of gross numbers of Border Patrol.

Mr. BONNER. The overall number?

Senator FEINSTEIN. Overall number.

Mr. BONNER. Assuming that you are willing to crack down at the worksites, I think that overall you would probably need about 25,000 Border Patrol agents, maybe 30,000, to deal with the criminal elements that would be left, that other 2 percent of what is crossing the border.

Now, we are only catching a fraction of what is crossing the border now, perhaps 25, 33 percent. But rather than dealing with millions of people, we would be dealing with thousands of criminals and terrorists. And I think that along with local law enforcement assistance, we could do it with about 25,000.

Senator FEINSTEIN. Now, you mentioned that you believe that the so-called military intrusions were actually military intrusions rather than anybody masquerading in false uniforms with false equipment. Do you have any evidence of that that you could submit to us?

Mr. BONNER. I have no evidence other than eyewitness accounts. I mean, obviously we have evidence of the incident in Santa Teresa, New Mexico, where we captured nine Mexican soldiers who were firing at their counterparts. There were actually two Humvees in that incident. We captured nine and about another seven were firing at our agents. We did not capture them. Within hours, they were sent back to Mexico with their weapons, with their Humvee.

Senator FEINSTEIN. And they were validated as Mexican military?

Mr. BONNER. They were bona fide—yes, they had the credentials, and Mexico acknowledged that they were their soldiers.

Senator FEINSTEIN. And what reason did they give?

Mr. BONNER. Well, they claimed that they thought that we were trespassing in their country. But I just find it unimaginable that the United States would act the same way if we believed that other law enforcement agencies had trespassed into our country. And they could not mistake us for smugglers, as they claimed, because we were in marked vehicles with the emergency lights activated. You can't buy those at a swap meet, and you can't buy a military Humvee such as was used in the January 23rd incident in Hudspeth County. You can't buy those at swap meets either. It is not a Hummer. It is a military Humvee.

Senator FEINSTEIN. Thank you, Mr. Bonner. Thank you, Mr. Chairman.

Chairman KYL. Thank you, Senator Feinstein.

Senator Cornyn.

Chairman CORNYN. Thank you, Senator Kyl.

I want to say thank you to each of you for being here today, but particularly Sheriff Jernigan and Mr. Durham for your participation. I think it is important for my colleagues from other parts of the country to hear your testimony. And I assure you they will be taking due note of what you have to say and what you have had to offer.

I think it is another unfortunate sign of the Federal Government's failure, Sheriff Jernigan, to secure our border that has

caused our border sheriffs in Texas to have to band together, all 16 of you, to try to do what the Federal Government has not done. And Governor Perry, I know, has dedicated some funding to that effort, but I would like to see more resources being made available to our local law enforcement agencies that are willing to help support the primary Federal role of border security. So I welcome all of you here and thank you for your dedication and your service.

Let me ask you first, Sheriff, you have a long and distinguished career in law enforcement, having worked with the Treasury Department and the U.S. Customs Service before you came sheriff of Val Verde County. I was looking at one of the attachments to your statement and, you know, people, I think, have this image that the only people coming across the border are people who want to come here to work. And certainly that is true, but it is not only people who want to come here to work.

Certainly, as you indicate in Attachment 3—and it is people coming across from countries other than Mexico by country from October 2003 to June 30, 2004—for example, it indicates that 10 came from Iran, not exactly a friend of this country and a country that is in the process of making, if they don't already have them, nuclear weapons, a state sponsor of international terrorism.

We have seven from Iraq, if I am reading this correctly, where the central war on terrorism is being fought today by our troops against foreign fighters and other jihadists. We have eight on this from North Korea, another self-avowed enemy of the United States and one that in all probability already has nuclear weapons.

Can you perhaps expand on why you think the threat is different than it has been in the past to this Nation because of facts like that and other concerns?

Sheriff JERNIGAN. Senator, I have been on this border for approximately 30 years. I have worked all up and down the border, from San Diego to Brownsville. Thirty years ago, even 15 years ago, just as my colleague Sheriff Dever mentioned earlier, we were dealing with a much different class of people. They were very docile, very submissive. At worst, they would turn and flee from you and flee back into Mexico.

But now my deputies and the Border Patrol are facing a different class of individual and groups coming across that are much more combative when confronted and stopped by my deputies. Generally, the deputies are operating alone out in the field. They come upon groups of 20, 30, 50 at a time. And they make it known to the deputies that they are going through; we are not stopping. You are not going to stop us; we are going.

Ten years ago, 15 years ago, like I said, they would literally flee back to Mexico upon simply being asked, who are you, where are you going. No more. They are determined they are going north one way or the other. Come hell or high water, they are going north.

Chairman CORNYN. Well, it sounds like if nothing else, there is at least an attitude of entitlement on the part of people coming into the country.

Sheriff JERNIGAN. Absolutely, absolutely, Senator.

Chairman CORNYN. And obviously we have talked about the weapons, the assaults on Border Patrol and the like.

Mr. Durham, I appreciate your being here and representing the ranching community in south Texas that is directly impacted by this, and I especially appreciate your invoking the name of Tobin Armstrong. His daughter and granddaughter are here, I know, and they appreciate your kind words.

I recall him saying what you said, and that is that we need to separate the criminals and potential terrorists and those engaged in drug activity from people who want to come here to work. And you indicated that you believe that a guest worker program, what I would call a temporary worker program, is an essential component of getting security along our border. Now, that is a little counterintuitive, I think, to some people, but it makes perfect sense to me.

If we know who is coming across to work, if we have screened them, if they have been provided with this counterfeit-proof or as close as we can create document that can be verified and let our law enforcement officials focus on the bad guys, it seems to me we have made their job easier, not harder.

Would you agree with that?

Mr. DURHAM. Yes, I would. Thank you, Senator. You know, like Mr. Wayne Jernigan was talking about here, the class of people—it used to be that people that would come across were mostly from the interior of Mexico, San Luis Potosi, Michoacan, and so on down the line. And they were just honest people. You would invite them to your house, you would feed them, you would do whatever to help them out and stuff.

And then a little different class of people started coming across. They are mainly just across the river and they would come up here for a couple of weeks and figure out the game, and so on down the line, and then they would go back and get their buddies, and so on.

Now, you don't know what is coming across. You know, 50 percent of the people that you catch now around Falfurrias are OTMs, other than Mexicans, and stuff, and the count has just quadruples and it just keeps on increasing. Like I said in my statement, there are 2 or 300 coming through there every night, and the tracks and the trails indicate it and the Border Patrol is just being overpowered. I can go up there and show them the trails and the trash, and fences being cut and cattle gates being opened and all kinds of things.

At that meeting where Mr. Armstrong was there, he kind of chaired the meeting anyhow, and I had 75 to 100 people there, law enforcement officers from all over the place. And there were anywhere between 4 and 5 million acres represented there between owners and managers, and I made it a point there that the meeting was not going to be, one, criticizing the Border Patrol in any way; two, that we weren't going to tell any horror stories because everybody as far as the ranching community down there has lots of horror stories and that would take up the whole meeting, period. So, yes, I agree with Tobin as far as the guest worker program and trying to have identification, a forge-proof card that makes you work, and work legally.

Chairman CORNYN. Thank you, Mr. Chairman.

Chairman KYL. I really appreciate your testimony, Mr. Durham.

Senator Sessions.

Senator SESSIONS. Sheriff Jernigan and Sheriff Dever, have you seen this change in terms of the criminal element that is involved in people coming across? I have been told that we have had a real surge in custody of individuals in Alabama that have criminal histories or have been involved in crime.

Is something changing out there from your observation about who may be coming over?

Sheriff JERNIGAN. Absolutely. More and more of them that are coming across do have criminal histories, considerable, lengthy criminal histories, not only in our own country, but in whatever country they are coming from.

If I may, I would like to expand on something that Mr. Durham mentioned a while ago, if I may.

Senator SESSIONS. We have just got a minute, but go ahead, please.

Sheriff JERNIGAN. Crime-stoppers. Do you know what crime-stoppers is in rural America along the border? You know, the ranchers at least in my area go to Wal-Mart or HEB and buy water, food, and plant it around their house outdoors in the hopes that as the aliens come through their ranch, they won't break into their home when they are away from home. They actually leave the food and water planted around their home. That has become a way of life along the border.

It didn't used to be that way. It used to be you could leave your keys in your truck. You know, you didn't worry about it, or leave your rifle hanging in the back of the truck overnight. No more. That is what crime-stoppers has become in rural America. It is a sad commentary.

Senator SESSIONS. Sheriff Dever.

Sheriff DEVER. The short answer to your question, Senator, is absolutely. Even the general nature or character of the illegals themselves is extremely controversial. You know, agents, deputies and law enforcement officers in general have to be on their guard every moment that they are in contact with groups, where they used to feel relatively comfortable that they have just encountered some poor, hapless souls wandering through the countryside. The number of assaults on Border Patrol agents, deputy sheriffs, and the number of hostile confrontations has increased dramatically.

Senator SESSIONS. With regard to 287(g), I believe, Sheriff Dever, you made some comment that that is not the full answer to the question. Was that you that made reference to that?

Sheriff DEVER. Yes, sir.

Senator SESSIONS. It is a training program that can be helpful. What happens if your deputies arrest people? Down there on the border, do you have a relationship with the Border Patrol so that they would come and apprehend somebody? What if they had been presumably in the country for a while and not right on the border? Would they come and get them, and are you compensated in any way for the expense that you may have gone to to make this transfer?

Sheriff DEVER. We currently do not arrest people for immigration violations. That is still a big, controversial issue being worked out in the courts, and there have been several bills introduced to provide authority for local law enforcement to do that. But those that

we do house and incarcerate are aliens who have committed crimes against the State—burglary, assault, theft or something like that.

The SCAAP fund, the State Criminal Alien Assistance Program, original allocation was $585 million, five, 6 years ago, Senator, something like that. That has been reduced over the years. It was eliminated from the President's budget the last 2 years. Congress restored $200 million the first year and then I think $300 million the next. That reimburses sheriffs, counties, for incarcerating criminal aliens under certain criteria, not all of them. Only certain ones meet the criteria and the criteria has become so limited that it is a very small percentage of them that are reimbursed, but about ten cents on the dollar.

Senator SESSIONS. Well, you know, this is a Federal problem, Federal, national issue. When local law enforcement are prepared to help and participate voluntarily, they ought to be compensated, don't you think, for the expenses?

Sheriff DEVER. I couldn't agree with you more, sir.

Senator SESSIONS. I am singing your song on that.

Sheriff DEVER. Absolutely. That is what we are here for.

Senator SESSIONS. Well, they really should. I wrote a law review article. I never thought I would be in the U.S. Senate, and I really never thought I would write a law review article for the Stanford University School of Law, but it was on the power of local law enforcement. For those who come across the border illegally, even the Ninth Circuit concludes that local law enforcement does have the authority to detain.

There is some question based on a Ninth Circuit ruling that local law enforcement can detain for overstays. So the lawyers for the sheriff departments and the mayors and the county commissions say, you know, this is scary; I am not sure and we might get sued, and they are not going to come and get them anyway, so just forget it.

Isn't that basically what is happening, Mr. Bonner?

Mr. BONNER. Sadly, yes.

Senator SESSIONS. And so what we need to do, if we are serious about this thing, is give, as we have the power to do, authority to law enforcement officers to detain for a short period of time until people can be handed over those who are here illegally.

Wouldn't you agree, Mr. Bonner, that that would help?

Mr. BONNER. Absolutely, it would help. We welcome all the help we can get. Obviously, we are overwhelmed down at the border, and it shouldn't be a 50-yard dash and you are home free. People who have broken the laws should have every expectation that someday somehow is going to tap them on the shoulder and hold them accountable, and that is not having.

Senator SESSIONS. And that is sort of a question of—would you say it is almost a test of our will as a Congress and a Nation that if we are not willing to do that, then we are really not serious about having a lawful system?

Mr. BONNER. When you look around the country and see a minimum of 12 million people in this country illegally, it is obvious that we are not serious about this problem.

Senator SESSIONS. Just briefly, you mentioned that we need to control the border and we need to have workplace enforcement. As

I have looked at this more and more, I have become somewhat optimistic. If we increase the Border Patrol officers and we control the border and we build fences where we needed and we do other things that get us to that point of enforcement, and then a workplace, do you think we could reach a tipping point and we could be more successful than a lot of people even think today?

Mr. BONNER. This problem is absolutely solvable. We could put the human smugglers out of business almost overnight if we take away the reason that people are coming here, which is jobs. Why would anyone in their right mind pay $3,000 and risk their life crossing through the desert if at the end of that journey no one will give them a job? They would stay home, and people who are here illegally now would go home because four dollars a day may not sound like much, but it is more than nothing. And if you can't get a job, you are not earning a penny.

Senator SESSIONS. Thank you. Some from around the world are dangerous elements, as we have noted, and that is important for national security. But, fundamentally, I would agree with that.

Thank you, Mr. Chairman.

Chairman KYL. Thank you, Senator Sessions.

There are a couple of things that are kind of subtle that I feel a need to express here. Mr. Durham didn't come here to beat on a big drum and blow a bugle and complain, but he was invited to come here and share experiences. And I gather there is almost a reluctance in the way you have described it; it is certainly more in disappointment than in anger.

You have got two very fine sheriffs here. These guys put their lives on the line everyday. They are confronted with danger. It has gotten very, very hard for them. I don't know Sheriff Jernigan, but I know Sheriff Dever. He works very, very well with all of the different Federal and State law enforcement folks. They have a very good relationship. They are trying to confront these problems together from a very professional law enforcement point of view. They have all of these problems, and yet they are not trying to exaggerate anything. T.J. Bonner's folks see this stuff everyday and they could easily get out there and exaggerate, but they have to live with it, and they don't.

What is occurring on the ranches—Mr. Durham, I hear this from folks in Arizona all the time. I know that Sheriff Dever has, too. It didn't used to be that way. Of course, it didn't used to be illegal to hire an illegal immigrant. It was illegal to harbor somebody that came into the country illegally. And people did help folks and there was no problem with it.

My sister and brother-in-law used to live in Cochise County, and he worked out in one of the game refuges and when he first went down there, it was the same way. And by the time they left, they couldn't wait to leave because it was dangerous. There were bad actors coming through there all the time.

The purpose of this hearing today was to remind folks that it isn't just people coming across for a better life, but bad, dangerous, nasty people, with an increase in violence, with a 108-percent increase in assaults on the officers, with a huge increase in the number of criminals coming across. And whatever we do about the ille-

gal immigrants, we are going to want to control the border to stop that criminal behavior and those criminals from coming across.

But as Mr. Bonner points out, one way to do that is, in addition to getting control of the border, having a very firm but fair way to check employee eligibility so that only legal people, whether through a temporary work program or as citizens or some other kind of visa, would be able to work here. Remove that and the value of that human smuggling goes way, way down. Instead of $2 or $3,000, it loses most of its value. So I wanted to express my appreciation to all of you.

We do need to increase SCAAP funding. The States, by the way, need to support the counties more, because counties are political subdivisions of the States. But the Federal Government needs to provide support there, as well.

Just primarily to the two sheriffs here, and to all of you, when illegal immigrants are actually apprehended or held or detained, does ICE respond to the need to take custody and return them to the border as much as it needs to, Sheriff Dever?

Sheriff DEVER. Mr. Chairman, they do. That wasn't always the case, but we are in a unique situation at least where I am because we are right on the border. We have the largest Border Patrol station on the entire southwest border in Douglas, Arizona, and so we have pretty immediate access. But I can speak to my colleagues just to the north and the answer to that question is no.

Chairman KYL. So where they have the resources, they can get it done. They just need to tell us what kind of resources they need so we can try to provide it.

Sheriff Jernigan, same thing?

Sheriff JERNIGAN. That is very correct, sir.

Chairman KYL. Mr. Durham, you have seen this.

Mr. DURHAM. Yes, but we don't communicate too much with ICE. As you well know, we have got two main highways, 77 that goes down to Brownsville, Texas, and 281 that goes to McAllen, and each one of those stations has their Border Patrol stations on them. We just happen to be in the walk-around as far as all these illegals coming and walking around. The coyote brings them from the border, dumps them before they get to the Border Patrol station, and they walk around. So all we deal with is the Border Patrol.

Chairman KYL. Well, again I want to personally express my appreciation to all of you for your testimony. I think it is enlightening. It is our job now to amplify this to our colleagues and explain some of the problems to them so that they will join us in trying to respond urgently to these needs by providing the resources necessary, the legal authority, and the other changes that are necessary to our laws to be able to solve the problem in both of the ways that T.J. Bonner identified. We are both committed to that. You are probably aware that we have cosponsored legislation together that tries to solve the problem in the way that you have recommended.

Senator Cornyn.

Chairman CORNYN. Well, Mr. Chairman, thank you for working with my Subcommittee. Senator Kyl and I have worked together and had a series of hearings which I think have helped shined some light on and better inform all of our colleagues about the

challenge we have and the responsibility we have to step up and make up for years of inaction.

It is going to require an extensive commitment, financial and otherwise, but this is a Federal responsibility. We ought to be grateful we have local law enforcement and Federal law enforcement agencies that are seriously undermanned because of lack of proper funding, but we have a lot of wonderful people who are willing to help and step up, and we appreciate that very much. But we are going to have to make a significant investment in human resources and technology in order to address this problem and provide support to local law enforcement, and training as well.

But I think in the end, we have to have credible deterrence, and I think what Senator Kyl talked about in terms of what we do at the border, what we do in the interior, what we do at the workplace, is going to establish a credible deterrence so people don't start out on that long journey unless they have some reason to believe that they are going to qualify to work within the law. That is what we don't have now and what we need sorely is that deterrence.

So thank you for each of you being here and your contribution. I thank the rest of the Border Sheriff's Coalition from Texas for all of your good work, and hopefully we can say with some credibility that help is on the way.

Sheriff JERNIGAN. Thank you. We thank you for your time and interest.

Chairman KYL. You bet.

I also want to mention there are no people more committed to resolving this problem than Senator Cornyn, than Senator Sessions, whom you heard. I love the way he puts things; he gets right to the heart of the matter. Senator Feinstein has been my Ranking Member ever since I came to the Senate and is very, very committed to working on these issues. The fact is that we have got a joint session of Congress over in the House of Representatives right now, or others of our colleagues would be here. So don't take the absence of other Senators as a lack of interest.

We will attack this problem, and one reason I have some confidence we will be successful is because we have had the testimony from you all, and I know that we will have your backing in trying to get this situation under control. I want to thank you all very, very much for what you have done here today.

This hearing is adjourned.

[Whereupon, at 11:45 a.m., the Subcommittees were adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

STATEMENT OF

DAVID AGUILAR
CHIEF
OFFICE OF BORDER PATROL
U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

U.S SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY
AND
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

REGARDING
"Confronting the Problem of Border Incursions and Violence"

WEDNESDAY, MARCH 1, 2006

CHAIRMAN KYL, CHAIRMAN CORNYN, AND DISTINGUISHED COMMITTEE MEMBERS: My name is David Aguilar, and I am the Chief of the Border Patrol, a component of U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS). I am honored to appear on behalf of CBP and the Border Patrol. Like you, we have no higher priority than the safety of U.S. citizens, as well as our dedicated agents that serve along the border. CBP remains steadfast in its commitment to securing our borders. It is a matter of national security, and through efforts like the Secure Border Initiative and the Arizona Border Control Initiative, we are consistently minimizing and shutting down vulnerabilities at the border. Criminal networks present a serious threat to border security and their lawlessness is not going unchecked. We take very seriously and investigate fully any alleged incident of criminal activity, threats against our agents or possible incursions.

I would like to begin by giving you a brief overview of our agency and mission.

CBP acts as the guardian of the Nation's borders, safeguarding the homeland by protecting the American public against terrorists and the instruments of terrorism, while enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. Within CBP's larger mission, the Border Patrol's time-honored duty of interdicting illegal aliens and drugs and those who attempt to smuggle them across our borders between the Ports of Entry remains a priority. We are concerned that terrorists and violent criminals may exploit smuggling routes to enter the

United States illegally. Reducing illegal migration across our borders will help mitigate the danger of possible attempts by terrorists or violent criminals to enter our country.

As Secretary Chertoff noted in his June 9 statement before the Government Reform Committee, DHS has established a crosscutting initiative to protect the southwest border. It encompasses the efforts of several DHS agencies, and each agency plays an integral role. The operations themselves involve patrolling the border, apprehending illegal border crossers and seizing contraband, generating, sharing and analyzing information, detaining and removing illegal aliens, investigating smuggling organizations, and deterring illegal activity. One of the critical benefits of the creation of DHS is that the capability to take all of these enforcement actions along the continuum of border security now resides in one department within the Executive Branch.

With regard to CBP, the Border Patrol's National Strategy has made a centralized chain of command a priority and has increased the effectiveness of our agents by using intelligence-driven operations to deploy our resources. The Strategy recognizes that border awareness and cooperation with our law enforcement partners is critical. Partnerships with Immigration and Customs Enforcement (ICE), Department of the Interior, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Department of Transportation, as well as other interagency partners, state, local, and tribal law enforcement agencies and state Homeland Security offices play a vital role in collecting and disseminating information and tactical intelligence that assists in a quick and flexible responses, which are essential to mission success.

I have been asked to speak about border incursions by military and law enforcement personnel. Although decreasing in frequency, incursions into U.S. territory by units of Mexican military and law enforcement personnel have occurred. The reverse is also true – there have been incidents where U.S. Border Patrol agents have accidentally strayed into Mexico. These incidents often take place in remote areas where the international border is unmarked or unclear. Each and every incursion is of the greatest concern to the Border Patrol. Each individual incursion requires and receives an in-depth review.

From FY 2001 through the end of FY 2005, there have been 144 documented incursions into the United States. The Border Patrol definition of an incursion is identified as the unauthorized crossing of the international border by individuals who are, or appear to be, Mexican government personnel, whether intentional or not. Incursions have declined by more than 50% since 2001, and we have open dialogue with the Government of Mexico to continue to reduce the frequency of incursions. Although a declining trend, all incursions have the potential to result in violence, which is of significant concern to CBP.

Most incursion cases have been resolved at the field level by U.S. and Mexican authorities without the need for high-level diplomatic dialogue. Border Patrol does not have evidence of systematic incursions of the Nation's borders by Mexican military personnel.

At the local level, our enforcement leadership is using various mechanisms to establish periodic dialogue and interaction with Mexican police and military leaders to resolve and prevent accidental incursions. Protocols are in place throughout the southwestern border to handle incursions at a local level and to also implement measures to prevent future events. These protocols involve maintaining frequent communication with their counterparts within Mexican agencies, exchange of area maps, and briefings on the local terrain for units new to the area.

We are, indeed, aware of criminal organizations that wear military-style uniforms, use military-style equipment and weapons, and employ military-type vehicles and tactics while conducting illegal activity in border areas. Trafficking of persons and contraband constitutes a major threat, regardless of the perpetrators' identity. Border Patrol does not have proof that recent trafficking incidents we have seen involving individuals dressed in military or law enforcement attire were in fact Mexican Government personnel. However, we address each of these incidents as the serious criminal acts that they are, and these cases are actively pursued.

I recently returned from a visit with our agents on the southwestern border. During this trip, I met with our agents, Mexican Government officials and others in a continued effort to address critical border issues, including incursions. We have found that by working in partnership with Mexican officials we are able to lessen tensions and reduce the likelihood of an unfortunate incident. Mexican officials work with us on a daily basis in

regards to our priority mission against terrorism. I believe that we can build on our efforts so far to make progress with this current problem.

DHS remains focused on monitoring and responding to these criminal threats and will continue to assess, develop, and deploy the appropriate mix of technology, personnel, and infrastructure to gain, maintain, and expand coverage of the border in an effort to use our resources in the most efficient fashion. As an example, the use of technology, including the expansion of camera systems, biometrics, sensors, air assets, and improving communications systems can provide the force multiplier that the Border Patrol needs to be more effective. Tactical infrastructure improvements will greatly assist DHS' ability to deter and respond to illegal activity crossing our border. Examples of tactical infrastructure include: strategically-placed fencing, vehicle barriers, all-weather access roads, land clearings, and bridge-crossings. The ongoing efforts of the Secure Border Initiative will further enhance our border integrity through the targeted deployment of assets, which will assist in preventing future incursions.

CBP's Border Patrol is the first line of defense in DHS' multi-agency effort to dismantle the violent smuggling organizations that threaten the American quality of life. This line of defense does come at a price, and our dedicated agents face significant risks. In fact, 192 Border Patrol Agents have been assaulted already in FY 2006. These statistics continue to reflect an upward trend; in FY 2005, 778 agents were assaulted, more than doubling the FY 2004 total of 374.

As we continue to bring larger areas of the border under operational control, we can expect spikes in border violence as border criminals discover they can no longer operate with impunity and are prevented from using the border for their criminal activities. These violent reactions to our increased law enforcement effectiveness should abate, however, as we solidify operational control in a new area. Our agents are trained, equipped and instructed on how to handle border violence as well as incursions. We will continue to work to advance public safety and the legitimate flow of commerce along our border.

Recognizing that we cannot control our borders by merely focusing on the immediate border, our Border Patrol strategy incorporates a "defense in depth" approach including detection, rapid response, and the use of checkpoints away from the border. These checkpoints are critical to our patrol efforts, for they deny major routes of egress from the borders to smugglers intent on delivering people, drugs, and other contraband into the interior of the United States. Permanent checkpoints allow the Border Patrol to establish an important second layer of defense and help deter illegal entries through improved enforcement.

The Border Patrol is also working with ICE, other DHS components, and the Department of Justice on an integrated approach to dismantling the criminal groups that perpetuate cross-order criminal activity. Border Patrol and ICE will partner in the Department's newly established Border Enforcement and Security Task Forces (BESTs), which build on the Department's experiences fighting violent cross-border

crime in Laredo, Texas, during Operation Black Jack. Operation Black Jack has been a focused effort to coordinate ICE, CBP, DEA, FBI, Bureau of Alcohol Tobacco Firearms and Explosives, U.S. Marshals Service, and other state and local law enforcement agencies with significant support from the United States Attorney's Office and the District Attorney's Office. BESTs will focus on every element of the enforcement process, from interdiction to prosecution and removal, with the goal of eliminating the top leadership and supporting infrastructure that sustains these cross-border organizations. They will leverage federal, state, tribal, local, and intelligence entities to focus resources on identifying and combating emerging or existing threats.

Another example of how interagency efforts benefit this layered defense is the partnership between DHS and the Department of Justice to develop the IDENT/IAFIS integrated workstation, which captures a single set of fingerprints and submits them simultaneously to DHS' Automated Biometric Identification System (IDENT) and DOJ's Integrated Automated Fingerprint Identification System (IAFIS) for identity checks. With immediate access to IAFIS nationwide, Border Patrol agents have identified thousands of egregious offenders in the past year, including 513 homicide suspects, 648 sex crime suspects, 6439 subjects previously charged or convicted of aggravated assault, and 11,844 suspects involved in dangerous drugs or trafficking, which otherwise may have gone undetected. With 31,414 major crime hits and 120,268 total IAFIS hits through fiscal year 2005, we have made significant strides towards improving national security and greatly enhancing our ability to secure our Nation's borders. Recently, the Border Patrol arrested an individual who was wanted for a 1994 double-homicide committed in

Grant County, CA. The Grant County Prosecutors' Office charged the individual after Border Patrol agents turned him over to the local sheriff's office. Also in February, Border Patrol Agents in Albuquerque, New Mexico, assisted the Albuquerque Fugitive Operations Unit with the arrest of a subject who was wanted in Mexico for a triple homicide. Information was shared with the Albuquerque Fugitive Operations Unit. This information subsequently led to his arrest and turn over to Border Patrol. This individual was turned over to Mexican authorities. These are just two very recent examples of the criminal element present at the Nation's border. This important initiative was made possible through the joint efforts of the US-VISIT Program, which provided the funding and overall project coordination, and CBP, which installed the workstations and conducted training.

The United States continues to experience a rising influx of nationals other than Mexicans (OTMs) illegally entering the country. OTM apprehensions totaled 165,175 for FY05, whereas FY 04's number of OTM apprehensions was 75,389. The 119% increase in the apprehension of OTM illegal entrant aliens has created additional challenges in bringing a level of operational control to the border. In response, DHS expanded the use of Expedited Removal (ER) proceedings for OTMs across the entire border. ER proceedings, unlike section 240 removal hearings between apprehension and removal, shorten the duration of time between apprehension and removal. A significant increase in bed space was allocated to support this expansion. Brazilian nationals were the initial focus for the ER program, and the influx of Brazilian nationals

across the southwest border has been significantly reduced. ER has proven to be an effective enforcement tool for the southwest border.

Both DHS and Mexican authorities have a shared interest in addressing assaults on law enforcement personnel, increased lawlessness, and the victimization of innocent people occurring in border areas. In response to the recent incursion and the apparent escalation in violence across the border, the Department and the Government of Mexico have been engaging in renewed discussions on collaborative border security and safety initiatives.

For example, CBP is working with the Government of Mexico on various initiatives to increase the security and safety of our shared border including:

- **Information Sharing:** Border Patrol Liaison Program units share information related to terrorist threats and special interest aliens with the Government of Mexico. This effort has resulted in 468 arrests of non-Mexicans in violation of Mexican immigration laws. We know that Mexican authorities have identified many criminal organizations and issued multiple arrest warrants for alien smuggling.
- **Operation Against Smugglers Initiative on Safety and Security (OASISS):** In an effort to reduce the increasing number of human smugglers operating along the southwest border, CBP, in cooperation with the Government of Mexico, implemented OASISS, a bilateral Alien Smuggler Prosecutions Program. The

OASISS program expands upon previous efforts to identify and prosecute violent human smugglers and save the lives of migrants who are put at risk by smuggling organizations.

- **Cooperative Enforcement Efforts:** In response to the escalating border violence, in coordination with CBP, the Government of Mexico has deployed several hundred enforcement and prosecutorial personnel from the PGR and PFP. In addition, the Government of Mexico has also deployed over 300 Mexican state police officers to target criminal organizations, human smugglers, and transnational gangs. These deployments of resources are to be based on assessments of existing border security threats in the San Diego, Tucson, Laredo, and McAllen areas.
- **Border Safety Initiative:** As security and safety on the border are inextricably linked, I would like to mention the Border Patrol's "Border Safety Initiative" or BSI. In Fiscal Year 2005, southwest border deaths increased by 41% (464 in FY05 vs. 330 in FY04) and southwest border rescues have increased by 91% (2570 in FY05 vs. 1347 in FY04). These statistics indicate that a secure border will not only have an important law enforcement component, but also yield the humanitarian benefit of saving lives.

The Border Patrol's objective is nothing less than securing operational control of the border. We recognize the challenges that lie ahead, which includes incursions and increasing violence, and the need for a comprehensive enforcement approach. Our national strategy gives us the overall framework to achieve our ambitious goal. It is a

matter of national security, and through efforts like the Secure Border Initiative, Operation Stonegarden, and the Arizona Border Control Initiative, we are consistently minimizing and shutting down vulnerabilities at the border. We face these challenges every day with vigilance, dedication to service, and integrity as we work to strengthen national security and protect America and its citizens. I would like to thank you for the opportunity to present this testimony today and for your support of CBP and DHS. I would be pleased to respond to any questions that you might have at this time.

STATEMENT OF THE

NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

AND

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

FEDERAL STRATEGIES TO END BORDER VIOLENCE

PRESENTED BY

T.J. BONNER
NATIONAL PRESIDENT

MARCH 1, 2006

The National Border Patrol Council thanks the Subcommittees for the opportunity to present the views and concerns of the 10,500 front-line Border Patrol employees that it represents regarding the very serious problem of rapidly escalating violence along the borders of the United States. Border violence is by no means a new problem. Over the past century, thousands of law enforcement officers have been victims of border violence, and hundreds of them have died in the line of duty, including nearly one hundred Border Patrol agents. The latest trends, however, are cause for alarm on both sides of the border:

- Violence perpetrated by the cartels battling for control of the highly-lucrative smuggling routes into the United States has increased dramatically, and is now spilling over into some American communities. During the past year alone, more than 200 people have been murdered in the town of Nuevo Laredo, Mexico, just south of the U.S. border town of Laredo, Texas. This situation caused the U.S. Department of State to issue a travel advisory last year warning tourists of the potential dangers associated with that region.
- The number of assaults against Border Patrol agents has more than doubled, increasing from 374 in Fiscal Year 2004 to 778 in Fiscal Year 2005. These assaults included physical altercations; throwing objects such as large rocks, bricks and Molotov cocktails; shooting bullets from firearms; and using vehicles to ram agents and/or their vehicles.
- Armed confrontations between Mexican soldiers and police with U.S. law enforcement officers have also increased dramatically. Four recent incidents where shots were fired at Border Patrol agents are described below:

  March 14, 2000, shortly after 10:00 p.m., near Santa Teresa, New Mexico (about fifteen miles west of El Paso, Texas): Two Mexican Army High Mobility Multipurpose Wheeled Vehicles (HMMWVs or Humvees) carrying about sixteen armed soldiers drove across the international boundary and into the United States. The vehicles pursued a Border Patrol Ford Expedition outfitted with decals and emergency lights (which were activated for much of the

time that it was being pursued) over a mile into the United States. The lead vehicle, containing nine soldiers armed with seven automatic assault rifles, one submachine gun, and two .45 caliber pistols, was captured by the Border Patrol after it became stuck in sand. The second vehicle pursued a Border Patrol agent on horseback and fired a shot at him. The soldiers then disembarked from the vehicle, fired upon one more Border Patrol agent and chased another agent before fleeing to Mexico in their vehicle. After being held by the Border Patrol for several hours, the captured soldiers and their vehicle, weapons, and ammunition were returned to Mexico. The Mexican government later denied that its soldiers had fired any shots.

October 24, 2000, around 12:00 p.m., near Copper Canyon, about thirteen miles east of San Ysidro, California: Two U.S. Border Patrol agents observed a group of ten men dressed in military-style uniforms with tactical vests and carrying high-powered military rifles, at least two of which had bayonets affixed. Approximately eight shots were fired toward the location of the agents. The agents took cover in thick brush and identified themselves in Spanish as Border Patrol agents, but were nonetheless pursued by some of the soldiers, who entered the United States by crossing a well-maintained barbed-wire fence. The other Mexican soldiers set up two sniper positions, one in Mexico and another in the United States. The soldiers searched the area, pointing their weapons in the direction of the Border Patrol agents and ordering them in Spanish to come out of the brush. The agents did not comply, but instead identified themselves again and told the soldiers to return to Mexico. When more Border Patrol agents neared the scene, the soldiers retreated to Mexico and drove off in a minivan. The agents returned to the scene of the incident on their own time two days later by legally crossing into Mexico through the Tecate Port of Entry. They took photographs of relevant evidence, recovered two recently-fired .380 caliber brass cartridges,

and submitted all of this evidence to their supervisors. The government of Mexico subsequently confirmed that one of its military units had been operating in that area, but denied that any shots had been fired.

May 17, 2002, at approximately 8:30 p.m., near Papago Farms, about 90 miles southwest of Tucson, Arizona: A U.S. Border Patrol agent patrolling about five miles north of the international border spotted a military helicopter flying toward Mexico. Shortly afterwards, the agent encountered a Humvee with three heavily-armed soldiers in the back. As the agent was quickly departing the area to avoid an armed confrontation, his vehicle was struck by a bullet that entered a rear window on the passenger's side and exited through a window on the driver's side. About four-and-a-half hours earlier, a Tohono O'odham police ranger patrolling near that location reported being chased by a Humvee containing several armed men wearing military-style uniforms. The Mexican government denied that any of its military units were operating in that area.

June 30, 2005, at approximately 12:30 p.m., east of Nogales, Arizona: Two U.S. Border Patrol agents encountered a group of ten to twelve men wearing black military-style uniforms about a mile north of the international border. Some of the men opened fire on the agents, and at least one of them utilized a hand-held radio to direct the gunfire of several hidden shooters. A total of more than fifty high-powered rifle rounds were fired at the agents, both of whom were seriously wounded. The gunmen retreated back to Mexico using military-style cover and concealment tactics. Nearly five hundred pounds of marijuana were recovered during a search of the area.

These four armed encounters are particularly troubling for several reasons. Even though it is clear that *bona fide* Mexican military units were involved in at least the first three incidents, the government of Mexico continues to deny any wrongdoing. Although it is possible that the latter

assault may have been perpetrated by henchmen of the drug cartels,[1] the Mexican government cannot avoid responsibility for the actions of these renegade groups by simply denying any official involvement. By allowing them to operate with impunity along its northern border, Mexico bears some of the responsibility for their actions. It is inconceivable that our government would turn a blind eye to groups of armed criminals furthering the illegal entry of contraband into one of its neighboring nations, especially if they were threatening and/or shooting at foreign law enforcement officers.

As the foregoing examples convincingly demonstrate, violence along our borders is increasing at an alarming rate despite the fact that substantial additional resources have been allocated to those areas. While this phenomenon may be puzzling at first glance, upon closer examination its causes become more evident.

In the early 1990's, the Federal Government began to significantly augment the resources dedicated to the enforcement of immigration laws along our borders. At the same time, however, the enforcement of immigration laws in the interior of the country was being de-emphasized. Most of the Border Patrol's resources were concentrated near large cities along the border in hopes that the smuggling traffic would be pushed to isolated areas where it was believed that the harsh climate and terrain would serve as a natural deterrent. Many agents were assigned to park their vehicles in highly-visible positions a few feet away from the international boundary. In addition to being ineffective at deterring illegal immigration, this needlessly exposed agents to increasing assaults. This strategy achieved the first part of its objective by pushing the smuggling traffic elsewhere, but utterly failed to reduce the flow of illegal immigration because its architects severely underestimated

[1] One such group, Los Zetas, works for the Gulf Cartel, and many of its members received training from the U.S. military and/or law enforcement agencies while they were employed by the government of Mexico as soldiers or law enforcement officers.

the level of desperation of impoverished people in developing countries. As long as the disparity between unskilled wages in developing nations and the United States remains high and worksite enforcement remains a low priority, millions of people will continue to cross our borders illegally every year in search of employment.

Long before the recent enhanced enforcement efforts commenced at the border, drug cartels also engaged in a limited amount of alien smuggling to facilitate their primary illicit operations. As the difficulty of being smuggled into the United States increased, the cost of being smuggled into the United States also began to rise, and small-time smugglers were squeezed out of the picture. The current cost of passage into the United States is about ten times greater than it was before the crackdown began. Gangs such as Mara Salvatrucha, commonly known as MS-13, have also entered the smuggling arena. All of these factors have resulted in violent struggles for control of these lucrative smuggling operations. Although much of this violence is directed at rival organizations, there is an inevitable spillover that touches innocent civilians and law enforcement officials on both sides of the border. Moreover, cartels are far more inclined to utilize violence as a means of achieving their goal of successfully smuggling contraband and people.

The culture of corruption that permeates every level of Mexico's military and law enforcement agencies also adds to the violence along the border, with crooked officials aiding and abetting the cartels. Law enforcement officers in Mexico are paid very low wages, and it is widely known and accepted that they augment their income by taking and extorting bribes. While the salary of Mexican soldiers is slightly higher, the temptation of large payoffs from the drug cartels is too much for many of them to resist, especially when there are few, if any, adverse consequences for doing so. Given this environment, the large number of corrupt Mexican police and soldiers should not surprise anyone. Although some politicians and high-level bureaucrats attempt to downplay the severity of this widespread problem, it negatively affects international law enforcement cooperation

at the field level, as America's front-line law enforcement officers are unable to trust their counterparts south of the border.

The combination of all of these factors has converged to create an environment that is extremely conducive to violence. In order to address this growing problem, effective counter-measures need to be taken. Reemphasizing the same failed strategies will only exacerbate the problem. As counter-intuitive as it might sound, the most meaningful step that can be taken to reduce border violence is effectively addressing the underlying cause of illegal immigration. The overwhelming majority of people who enter our country illegally do so for the primary purpose of finding employment that pays much more than jobs in their own countries.

Until the employment magnet is dramatically weakened or eliminated, millions of impoverished people will continue to attempt to enter the United States illegally every year. Their desperation will cause them to do whatever it takes, including paying whatever price is asked, to be smuggled across our borders. This is problematic for two reasons: First, it perpetuates an extremely profitable illicit trade that fosters violence by cartels and gangs. Second, the massive volume of this influx makes it nearly impossible for law enforcement agencies to focus on vital anti-terrorism efforts or effectively prevent other criminals from illegally entering the United States.

Although most politicians acknowledge this principle, very few of them have embraced legislation that incorporates it. In fact, despite the prevalent rhetoric about worksite enforcement, none of the pending legislative proposals in the United States Senate contain provisions that would effectively reduce the employment magnet. Even the allegedly tough immigration enforcement bill passed by the House of Representatives last year fails miserably in that regard. The common flaw in all of these approaches is the utilization of separate documents to establish employment eligibility and identity. In a recent report, the Government Accountability Office warned that this would lead

to widespread identity fraud and would seriously undermine worksite enforcement efforts.[2] In order to avoid this undesirable result, a single counterfeit-proof document that establishes both employment eligibility and identity must be adopted and required of all persons seeking employment in the United States. Such a system would enable employers to easily verify a job applicant's identity and eligibility to work in this country, while at the same time making it simple for the government to hold employers accountable if they ignore or circumvent the law. The only legislative proposal that achieves this goal is H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005.

Beyond the elimination of the employment magnet, there are a number of other steps that need to be taken to reduce violence at the border:

- The United States needs to recognize that it cannot rely upon its southern neighbor to stop the flow of illegal drugs across the southwest border, and must stop supplying financial aid to Mexico for that purpose. Currently, nearly $60 million a year of our tax dollars are provided to Mexico to assist in drug interdiction efforts, and some of that money is undoubtedly being used to assist the cartels and threaten and attack U.S. law enforcement officers.
- Officials at the highest levels of our government must inform officials at the highest levels of the government of Mexico in clear and unambiguous terms that armed incursions across our border will no longer be tolerated.
- The border between the United States and Mexico must be clearly marked in order to eliminate confusion and prevent unintentional incursions.
- The ineffective and unsafe tactic of stationing Border Patrol agents at fixed positions in close proximity to the international boundary must be discontinued immediately.

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[2] Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts (GAO-05-813 – August 2005)

- The Border Patrol and other border law enforcement agencies must also be provided with the tools, training, and support necessary to accomplish their vital missions. H.R. 4044, the Rapid Response Border Protection Act of 2005, would provide many of these desperately-needed measures.
- United States military units should be stationed at strategic locations near the southwest border in order to be able to quickly respond to and deal with future armed incursions by the Mexican military. The Border Patrol and other civilian law enforcement agencies do not have the proper equipment nor training to safely and effectively respond to such incursions.[3]

In conclusion, the growing problem of border violence is largely attributable to inaction and ineffective policies that have fostered a climate of lawlessness. Decisive and forceful actions need to be taken immediately in order to reverse this disturbing trend before another tragedy occurs.

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[3] This should not be construed as a call for the military to enforce our immigration laws, which would be problematic for two principal reasons. First, it requires a great deal of training to ensure that someone is prepared to effectively enforce our complex immigration laws. Border Patrol agents receive nineteen intensive weeks of basic academy training in a wide variety of topics, and an additional six months of on-the-job training. Attempting to shorten this training would likely result in numerous civil rights violations, including wrongfully arresting and incarcerating people who have a legal right to be in this country. Second, training soldiers to enforce civilian laws would needlessly endanger them during military combat situations, as the rules of engagement between the two settings differ dramatically. In civilian law enforcement situations, the use of force is permissible only in self-defense or the defense of an innocent third-party, and even then only as a last resort. It is well-established that people instinctively react in a crisis according to their training. At best, people who are trained as both soldiers and law enforcement officers would hesitate in a crisis situation, endangering themselves. At worst, they would respond inappropriately, potentially endangering innocent people. An unfortunate incident that occurred near Redford, Texas on May 20, 1997 illustrates this problem. A squad of four U.S. Marines was conducting counter-drug border surveillance when it was fired upon by an 18-year-old high school student who was tending his family's herd of goats. The Marines outflanked the youth and fired a single fatal shot at him. While this response would have been appropriate in a military combat situation, it was entirely inappropriate in a civilian law enforcement setting.

Department of Justice

STATEMENT

OF

PAUL K. CHARLTON
UNITED STATES ATTORNEY
FOR THE DISTRICT OF ARIZONA

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP
AND
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

"FEDERAL STRATEGIES TO END BORDER VIOLENCE"

PRESENTED ON

MARCH 1, 2006

INTRODUCTION

Chairman Kyl, Chairman Cornyn, Senators Kennedy and Feinstein, and Members of the Subcommittees on Immigration, Border Security and Citizenship, and Terrorism, Technology and Homeland Security: I am Paul Charlton, the United States Attorney for the District of Arizona. I am the current Chair of the Subcommittee on Border and Immigration Law Enforcement, a Subcommittee of the Attorney General's Advisory Committee, made up of United States Attorneys from around the country. Thank you for the opportunity to appear before you today as you examine the problem of border violence. I appreciate the Committee's decision to devote attention to this issue because this is a significant and growing problem. This problem presents a significant threat to our national security and to the safety and quality of life of communities along the border between the United States and Mexico. As the President said in Tucson, Arizona on November 28, 2005, "securing our border is essential to securing the homeland."

In my testimony, I want to focus on the increase in border-related violent crime that we have seen in Arizona, the increasing sophistication of the criminal networks that smuggle people and drugs across our border, and some of the programs that we have implemented in the United States Attorney's Office to address these problems.

BACKGROUND

As the Members of the Subcommittees probably know, almost fifty percent of all illegal aliens apprehended by the Border Patrol in the United States are caught in Arizona. In Fiscal Year 2005, approximately 577,000 illegal aliens were apprehended along Arizona's 370-mile border with Mexico. Our border with Mexico is an increasingly violent place. The Border Patrol recently reported that in Fiscal Year 2005, assaults on Border Patrol agents increased 108

percent over Fiscal Year 2004, from 118 assaults to 246 assaults. The Fiscal Year 2006 assault numbers are on track to exceed the number from 2005. In part, that is because our efforts to restrict illegal crossings are having an effect. I will generally confine my remarks to the issues of border violence in Arizona, with which I am most familiar.

Because criminals who traffic in drugs or human beings make their profits through illegal crossings, they are increasingly targeting Border Patrol agents in violent attacks as the Department of Homeland Security's border enforcement grows. "Rocking" incidents continue to rise along the Arizona border.

Violence against agents is not limited to rock throwing. Federal agents working at or near the border have been murdered. Those terrible acts highlight the threat of armed drug smugglers coming through the border ready, willing and able to confront law enforcement in order to pass their cargo to its intended destination. National Park Service Ranger Kris Eggle was murdered after he intercepted one of a group of carjackers who drove across the Arizona border while being chased by Mexican police in a stolen car. Border Patrol Agent Alexander Kirpnick was murdered when he confronted a group of individuals who were backpacking drugs into the United States. In June 2005, two Border Patrol Agents were ambushed as they were moving in to intercept a group of backpackers carrying drugs into the United States. Multiple shooters who had been guarding the backpackers opened fire with assault rifles and seriously wounded both agents, who were fortunate to survive. Just last month, a similar ambush occurred as agents were attempting to intercept a group of drug backpackers. Fortunately, the agents escaped injury in that incident. Similar ambush incidents have targeted the U.S. Custom and Border Protection's (CBP) Shadow Wolves unit on the Tohono O'Odham Indian Reservation.

When confronted, these smugglers will do anything necessary to escape. For instance, in one case the smuggler shot and wounded a Border Patrol agent after being pulled over. The ensuing chase and shootout resulted in the death of a juvenile smuggled alien who was being transported in the trunk of the defendant's vehicle. Our Office obtained a conviction against defendant Shane Bobby Chiago in that case and he was sentenced to 217 months of imprisonment. In another case the smugglers fled from local police, driving over 15 miles at speeds exceeding 100 miles per hour, running red lights and driving into oncoming traffic, until the smugglers crashed head-on into a car occupied by two newlyweds. The crash killed the newlyweds as well as three of the fifteen aliens who were being transported. In addition, a pregnant female alien lost her unborn child in the crash. Our Office obtained a conviction after trial against Jose Luis Zepeda-Cruz and Jimir Valle Martinez, both of whom are now awaiting sentencing. Just last month, a suspected smuggler noticed that he was under surveillance by undercover agents. He drove away, then turned around and rammed one agent's car just as the agent was trying to get out. He then escaped into Mexico.

These types of incidents demonstrate that threats to officer safety are at an all-time high and require our utmost attention.

Violent drug traffickers have seen the lucrative opportunity that human smuggling offers and are employing their organizational and operational methods in this sphere. As a result, violence among smugglers has grown exponentially. For example, since 1999 we have seen a pattern emerge in which alien smugglers will hijack loads of aliens from other smugglers. The criminal motives for these hijackings vary, but generally involve efforts to extort additional money from the aliens' families or simply to reap the profit from the other smugglers' successful efforts in getting the aliens across the border and through our security network. We have seen

numerous cases in Arizona in which loads of illegal aliens have been hijacked while being driven on our streets and highways. In one case, the hijackers kidnapped a load of illegal aliens at gunpoint near Marana, Arizona, and took them on Interstate 10 toward Phoenix. The driver of the hijacked load contacted his boss, who in turn contacted others, provided them with guns, and traveled down I-10 looking for the hijackers. When they saw the hijacked vehicles, they pulled alongside and opened fire, killing four people, including some of their own "clients." Another similar shootout between smugglers occurred at an auto parts store in Phoenix and resulted in three deaths. Our Office took that case to trial and obtained convictions against five defendants, all of whom received sentences of life plus 235 years of imprisonment. Another shooting occurred at a restaurant in Phoenix and resulted in one death, and yet another border-related shootout near the town of Red Rock, Arizona, resulted in two deaths.

Likewise, smugglers have turned to violence to extort payment from their own clients. In some instances, when a smuggled alien cannot pay the full amount, the smugglers use violence to convince the alien or family members to pay the smuggling fee. In other cases, the smugglers agree to a certain price for their services, but when the alien arrives at a drop house in the United States the fee is raised dramatically, often to a price that the alien cannot afford. Smugglers use threats and actual violence to compel payment. Often these threats are backed up by the presence of firearms, other weapons and physical abuse.

For instance, in one case, the defendants threatened smuggled aliens with an AK-47 and told them they would be killed and left in black bags in the desert if they did not pay. In another case, witnesses have testified that the smuggler cut and stabbed smuggled aliens with a knife and screwdriver, and even used the screwdriver to knock out the front teeth of a smuggled alien, all to force the victim to pay more money. Other cases have involved rapes and other forms of

sexual abuse against the smuggled aliens, including children. This ruthless exploitation of human beings is despicable.

The smugglers themselves are not the only problem facing our agents. The Border Patrol has reported that approximately ten percent of the aliens they apprehend have criminal records in the United States or elsewhere. Many of the criminal aliens that Border Patrol agents apprehend have violent criminal histories and are not afraid to use violence to avoid apprehension. As a result, every field encounter must be treated as a potential hostile situation, and agents constantly must be alert to potential violence.

These types of cases used to be a rarity in Arizona. Not anymore. Unfortunately they have become commonplace.

THE DISTRICT OF ARIZONA'S RESPONSE TO THE GROWING PROBLEM

In response to the growing problem of violence, our Office has worked closely with various components of the Department of Homeland Security (DHS), including U.S. Immigration and Customs Enforcement (ICE) and CBP, components from the Department of Justice, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and state and local law enforcement agencies and prosecutors' offices to develop prosecutorial programs and policies to ensure the most efficient handling of violent cases and to achieve the most appropriate sentences in the best forum.

In the District of Arizona, we have adopted a zero tolerance policy toward those who commit assaults on our federal law enforcement officers. Simply put, anyone who assaults a federal law enforcement officer will be prosecuted. Period. And when someone murders a

federal agent, we will pursue that person relentlessly until we are able to bring the perpetrator to justice.

We worked closely with Mexican authorities to extradite and convict the murderers of Border Patrol Agent Alexander Kirpnick, and to extradite a fugitive who is now awaiting trial for the murder Drug Enforcement Agent Richard Fass. In the case of the murder of National Park Service Ranger Kris Eggle, we worked closely with our counterparts in Mexico to help Mexican victims come to the United States to testify against the individual who set into motion the chain of events that led to the murder and brought that person to justice as well.

Similarly, we have taken a strong stand against human smugglers and hostage takers. Provable cases are accepted for prosecution, and cases involving violence receive top priority. In the past two years, my Office has taken dozens of violent smugglers off the street and seen them receive lengthy prison sentences. In Fiscal Years 2004 and 2005 we brought a total of 32 smuggling-related hostage taking cases, most of which involved multiple defendants. Comparatively, we brought two such cases in Fiscal Year 2001 one in Fiscal Year 2002 and six in Fiscal Year 2003.

In the District of Arizona we are cooperating closely with our state and local counterparts to ensure the best possible result in a given case. For instance, in the cases involving rapes and murders that I mentioned earlier, we have coordinated our prosecutive efforts with local prosecutors to ensure that the smugglers are prosecuted for charges that best fit their crimes and in the forum with jurisdiction over those charges. In some cases it has been appropriate to file charges both federally and in state courts, and we have worked closely with our counterparts to achieve successful concurrent prosecutions, in turn maximizing the sentence exposure of the defendants in those cases.

The Department of Justice and the Department of Homeland Security also are cooperating with the government of Mexico to stem border-related violence. Under the leadership of Secretary Chertoff, law enforcement officials from the United States and Mexico are working together to increase communication and develop cooperative strategies all along the border. Our agencies are working with our Mexican counterparts to coordinate tactical law enforcement efforts and share intelligence in both directions. The Department of Justice is providing technical assistance to help strengthen Mexico's forensic evidence gathering and examination, prison security, victim/witness security, firearms tracing capabilities and, in coordination with the DHS port-of-entry security and cross-border currency controls. These efforts are in support of the United States and Mexico Attorney Generals' efforts to quell the narco-terrorism and related criminal activity stemming from the drug cartel feuds. Similarly, we are providing assistance to aid the Mexican government's response to internal violence among narcotic trafficking organizations that often leads to spillover violence inside the United States.

Likewise, the Department of Homeland Security is working with the Department of Justice on an integrated approach to dismantling the criminal groups that perpetrate cross-border criminal activity. The ongoing Arizona Border Control Initiative (ABCI) illustrates how interagency partnerships and integration have increased border enforcement capabilities in Arizona over the past two years. ABCI, a collaborative effort among components of DHS, DOJ and state and local law enforcement agencies, is an integrated enforcement effort focused on border violence and other crimes associated with human and narcotics trafficking in Arizona. Another collaborative effort to coordinate state, local, and tribal enforcement efforts with DHS and DOJ assets was Operation Stonegarden, which designated the Border Patrol as the lead agency to direct and focus state, local, and tribal law enforcement resources in support of

enhanced border security efforts. In addition, CBP and ICE will partner in the Department's newly established Border Enforcement and Security Task Forces (BESTs), which build on the Department's experiences fighting violent cross-border crime in Laredo, Texas, during "Operation Black Jack." "Operation Black Jack" has been a focused effort to coordinate ICE, CBP, DEA, FBI, ATF, the U.S. Marshals Service, and other state and local law enforcement agencies, with significant support from the United States Attorney's Office and the District Attorney's Office. BESTs will focus on every element of the enforcement process, from interdiction to prosecution and removal, with the goal of eliminating the top leadership and supporting infrastructure that sustains these cross-border organizations. They will leverage federal, state, tribal, local, and intelligence entities to focus resources on identifying and combating emerging or existing threats. The Department of Homeland Security's Secure Border Initiative (SBI) incorporates these border enforcement efforts with interior immigration enforcement to create a seamless strategy to reduce and deter illegal migration into the United States, and in turn reduce the level of violence at the border.

CONCLUSION

I thank Members of the Committee for the opportunity to address them today on this important issue, and I stand ready to answer any questions.

Testimony of The Honorable Larry A. Dever
to the Senate Judiciary Subcommittees on
Immigration, Border Security, and Citizenship
and
Terrorism, Technology and Homeland Security

March 1, 2006

Mr. Chairman, members of the committee, thank you for inviting me to share with you today a local perspective of the current situation along the southern Arizona border. I come to you as a lifetime southern Arizona resident and a thirty-year law enforcement career working in that environment.

Some of the testimony you have received this day has suggested needs and methods of enhancing security along the border and the urgency which attends these voiced concerns. I quote a former Chief of the Tucson Sector of the Border Patrol. "Within the last year, we've been mandated by Congress to gain control of that border. And we're going to do that along the Southern border, whether it's narcotics, illegal aliens, terrorists, criminals or whatever." (Chief Jerald Jondall, as quoted in *The Arizona Sheriff* magazine, Autumn 1987.)

1987. That was the year we first organized the Border Alliance Group narcotics task force in Cochise County to jointly combat the burgeoning cocaine smuggling business that had developed in the area. At that time there were no DEA agents in Cochise County, no FBI, only four Customs Office of Enforcement agents and maybe a total of 100 border patrol agents. Today, they are all there, along with over a thousand Border Patrol agents. And yet, as you have also heard, in spite of the tremendous increase in the law enforcement presence, or as some suggest, because of it, violence associated with narcotics and people smuggling activities has markedly increased.

Twenty to twenty-five years ago, we would intercept smugglers right on the border fence. Most would simply abandon their cargo and flee on foot back south. It wasn't unusual to have some just give up. Today, the expected response to an attempted interdiction is a fight. Smugglers are armed with high capacity assault weapons and with orders to protect their cargo at all costs. They operate under the watchful eye of scouts equipped with sophisticated observation and communications equipment. Failure to make safe delivery is not acceptable and many who do fail are executed. The stakes are extremely high.

High speed chases on congested public highways and through populated residential areas are common. Most of the vehicles they are driving are stolen from the Phoenix and Tucson areas. Just recently two local residents were killed and several others seriously injured when a ruthless smuggler driving a stolen truck at reckless speeds crashed head on into a group of vehicles sitting at a stop light.

The people smuggling culture is one marked by little if any value of life or respect for persons or property. This is reflected in their response to authority and their treatment of their human cargo. One study estimates that over 80% of people being smuggled into this country become the victims of criminal activity before they ever cross the border. And in many cases the atrocities continue even after they successfully enter. Smuggling routes are often marked with "rape trees"—women's under garments hung on tree limbs where a raped occurred, warning everyone of the failure to cooperate with the coyotes who prey on them.

Running gun battles with fleeing felons occur much too frequently placing law-enforcement officers and the public alike at great risk of serious consequences. Gang activity and its associated violence are on the rise as these groups become more competitive in the lucrative people smuggling trade. Just last week one of my deputies, the supervisor of the narcotics task force, was the victim of a drive-by shooting at his home. Thankfully, no one was injured.

The law-enforcement effort and the communities we serve desperately need your attention to our situation along the border. You should be aware that in our area, almost ten percent of the illegal aliens that are apprehended have criminal records in this country. When we are unsuccessful in catching them there, these predators find their way to communities all over the nation where they threaten the safety and welfare of local populations.

When planning strategies for improved enforcement efforts and providing adequate resources, it is important to remember that every federal initiative has a local consequence. It is critical that local authorities be involved in the early stages of the planning process to assure that these consequences are clearly understood and considered.

Again, I thank you for the opportunity to address you, and would gladly answer any of your questions.

Testimony of Lavoyger Durham
to the Senate Judiciary Subcommittees on
Immigration, Border Security, and Citizenship
and
Terrorism, Technology and Homeland Security

March 1, 2006

Good morning ladies and gentlemen.

My name is Lavoyger Durham. I am the manager of El Tule Ranch in South Texas, located about 75 miles north of the Mexican border.

I would like to thank Senator Cornyn, Senator Kyl, and the members of your subcommittees for allowing me to appear before you this morning. I would also like to recognize the people in the audience who have traveled here from Texas in support of my testimony.

My purpose in being here today is simple: to try to convince you that federal law enforcement agencies, with the assistance of their state and local counterparts, must control illegal immigration along the Mexican border.

Every day, I see the reality of what is being reported on a regular basis in the news media. While most of those reports are fairly accurate, none give a complete picture of what is really happening in South Texas, and consequently, our entire country.

South Texas has been my family's home for three generations. Both my mother, who was of Mexican descent, and my father, who was of Irish ancestry, were steeped in ranching tradition. I have been very fortunate to have been able to carry on this legacy for the past 45 years.

But now things have changed. My neighbors and I are facing circumstances that can best be described as deplorable. We now must live with the constant possibility that we could be attacked or killed on our own properties.

Literally thousands of illegal immigrants cross through South Texas on a daily basis, mostly by foot. The Border Patrol has told me that within just a five-mile radius of my ranch, two to three hundred illegal immigrants move through every night.

Most are coming to fill labor shortages throughout our nation. Many, however, have less noble ambitions. And many of those are "other than Mexicans", or "OTMs", who are entering this country from all over the world.

Some are drug runners who cut our fences so they can carry their backpacks full of contraband north for nation-wide distribution. Others are members of what the news media have described as the most violent crime organization in the United States, the El Salvadoran gang known as Mara Salvatrucha or MS 13. Still others might well be terrorists, who are infiltrating for no other purpose than to cause death and destruction.

I do not know how to adequately describe the consequences of our unmanaged border in South Texas. The stories are endless and are only getting worse. I can provide accounts of ranchers being fired upon, ranch security guards being beaten and held at gunpoint, women being threatened near their own homes by belligerent aliens, and youth being confronted by gangs dressed in dark camouflage clothing at night. These types of occurrences are all too common and are entirely unacceptable in a civilized society.

It is also sad to report that we often find immigrants on our properties that are dead or dying. Whenever possible, we take them for medical care, but often, it is too late. I hesitate to share photographs of deceased victims whom I have personally found on my property, but I think that it is important to communicate this reality to you.

In my county alone, over 40 illegal immigrants are known to have died last year. These unfortunate and ill-prepared people die not only because of exposure to the harsh elements of blazing heat and bitter cold, but also because of encounters with diamondback rattlesnakes and other dangers of the vast, rugged terrain. Sometimes, however, these people die at the hands of human smugglers, or as they are called along the border, "Coyotes".

"Coyotes" are criminals who deal in human misery. They charge very large fees of thousands of dollars to smuggle unsuspecting immigrants across the U.S - Mexican border, often deserting them far short of the destinations that they had promised. In performing their so-called services, "Coyotes" will leave behind the weak, sick, or injured to die if they cannot keep up with the group. Sometimes, the "Coyotes" will even kill their impaired clients outright so that they will not be able to alert authorities.

"Coyotes" now control a huge percentage of all illegal immigration along the Mexican border, especially among illegal immigrants who want to come to this country for the first time. They are part of crime syndicates that have become big business. Some of the other witnesses today can testify to that fact. As inconceivable as it may be, "Coyotes" are often equipped with technological devices that are equivalent or superior to those available to our own Border Patrol.

What, then, can be done to manage the border with Mexico and provide for the safety and security of American citizens? First and foremost, the Border Patrol must be given the manpower to enforce the laws of the land. They must also be provided with the technological equipment that they need to stay ahead of their adversaries.

Secondly, Congress must re-evaluate existing immigration laws to determine realistically whether or not they are enforceable. In my opinion, the Border Patrol will never be able

to control illegal immigration until some sort of strictly enforced guest worker program is implemented. Until immigrants who are entering this country for a productive purpose are distinguished from those who are entering for a destructive purpose, I cannot imagine how the Border Patrol could ever have enough resources to effectively enforce immigration laws.

Last spring, I helped organize a meeting of South Texans, including law enforcement officials and policy-makers from all levels of government, who were concerned about illegal immigration and border security. At that meeting, our distinguished friend, Tobin Armstrong, who we lost to cancer this fall, provided us with the benefit of his wisdom on these subjects. I would like to conclude my testimony by quoting some of Mr. Armstrong's remarks.

And I quote, "*You are not going to build a wall around the United States to keep these people out. There is only one way to do this job and that is to pass legislation that provides for the people that you need to stay here and provides for the return of all the criminals, the terrorists, the deadbeats, and people carrying communicable diseases. That is the only way it is going to work.*

And then give the ones that do stay here some kind of forge-proof identification card. And then anybody who employs somebody who does not have that card would be committing a felony and would be sanctioned heavily.

Now you say, 'Well, how do we get that done?' Well, it isn't a question of how you get it done. You've got to get it done!", end of quote.

I would like to again thank Senator Cornyn, Senator Kyl, and the members of your subcommittees for allowing me to address you this morning. I trust that you all agree that federal inaction is no longer an option. We will help any way we can, but ultimately, we are counting on your leadership to get this job done.

Respectfully submitted,

Lavoyger Durham

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

February 14, 2005

President Vicente Fox
The Republic of Mexico
Residencia Oficial de los Pinos
Puerta 1
Col. San Miguel Chapultepec
Delegación Miguel Hidalgo
México, D.F., c.p. 11850

Dear President Fox,

I write to express my concern about recent reports concerning incidents in which individuals, some dressed in military uniforms, have crossed from Mexico into the United States.

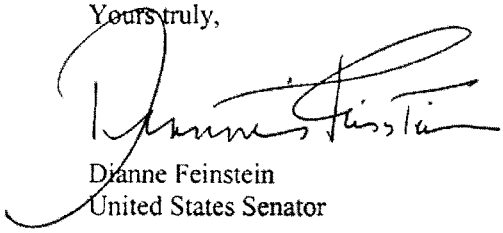
Incidents such as the January 23, 2006 intrusion in Hudspeth County, Texas are illustrative of the problem. Coupled with increasing violence at the border, and reports that U.S. border security personnel have been assaulted, these events are disturbing.

I recognize that further investigation must be done before we fully understand who is responsible for these incursions, and applaud the Government of Mexico's preliminary efforts as evidenced by the "Fact Sheet – Border Incident" released by your embassy on February 7, 2006, a copy of which is enclosed. But regardless of whether the perpetrators are drug smugglers posing as Mexican army troops or not, it is critical that our two countries work closely together to stop this problem.

I would greatly appreciate your personal attention to this matter, and hope you can share with me the results of your investigation, your analysis of the problem, and a review of the actions you believe would best address this problem.

I hope you will undertake this effort, and I stand ready to assist you in any way I can. Thank you in advance for your attention to this matter of critical importance to both our nations.

Yours truly,



Dianne Feinstein
United States Senator

Enclosure as described

cc: The Honorable Condoleezza Rice
United States Secretary of State

The Honorable Alberto Gonzales
United States Attorney General

The Honorable Michael Chertoff
United States Secretary of Homeland Security

DF:sac

FACT SHEET – BORDER INCIDENT
February 7, 2006

- **The Foreign Ministry of Mexico has communicated to the United States Government its official position regarding the border incident that occurred in Hudspeth County, Texas, on January 23.**

- **The Government of Mexico proposes several measures to improve communication and to facilitate cooperation on both sides of the U.S.-Mexico border when involuntary crossings take place.**

√ Today, Mexico's Foreign Ministry officially communicated to the United States Government the preliminary results of the investigations of the border incident that occurred on January 23 in Hudspeth County, Texas. Findings are as follows:

- After an extensive investigation by the Military Prosecutor, it has been determined that the uniforms, insignia, armament and vehicles that appear on the initial video do not correspond to those utilized by the Armed Forces of Mexico.

- It has further been established that no personnel of the Mexican Army participated in the aforementioned incident.

- Mexico's Secretariat of Defense in conjunction with the Attorney General of Mexico have determined that the people involved in the incident in Hudspeth County were criminals linked to Rodolfo Escajeda drug-trafficking organization. Escajeda, along with other identified individuals, appear in the previously-stated video.

- Notwithstanding the Military Prosecutor's conclusion of its investigation, the Mexican Attorney General will continue to be in charge of the investigation.

√ With regards to the issue of involuntary crossings, the Government of Mexico coincides with the United States Government that, over the course of the last decade, several crossings on both sides of the border have occurred and, at no time, have resulted in violence or aggression.

√ As efforts to strengthen border security in both countries are implemented, the Government of Mexico proposes, as an effective means of dealing with involuntary crossings, the improvement of Border Liaison Mechanism's to allow for a greater coordination of U.S./Mexico federal and local authorities as well as the establishment of a Communications Protocol to improve the response of authorities at all levels of government when dealing with involuntary crossings or any other emergency situation at the border.

√ Today, the Undersecretary for North American Affairs, Geronimo Gutierrez, and the Ambassador of Mexico, Carlos de Icaza, met in Washington, DC with officials from the Departments of State and Homeland Security, and other high-level authorities, including members of Congress, and shared with them this information.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

MARCY M. FORMAN
DIRECTOR
OFFICE OF INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

COMMITTEE ON THE JUDICIARY
IMMIGRATION, BORDER SECURITY AND CITIZENSHIP SUBCOMMITTEE
TERRORISM, TECHNOLOGY AND HOMELAND SECURITY SUBCOMMITTEE

UNITED STATE SENATE

MARCH 1, 2006
WASHINGTON, D.C.

INTRODUCTION

Chairman Cornyn, Chairman Kyl, Ranking Members Kennedy and Feinstein, and distinguished Members of these subcommittees: It is an honor for me to appear before you today to share U.S. Immigration and Customs Enforcement's (ICE's) latest assessment of the criminal threat and vulnerabilities along the southern border.

THE ICE MISSION

Among the Department of Homeland Security (DHS) law enforcement agencies, ICE has the most expansive investigative authority and largest force of investigators. Our mission is to protect the American people by combating terrorists and other criminals who cross the Nation's borders and threaten us here at home. The men and women of ICE accomplish this by investigating and enforcing the Nation's immigration and customs laws. Working overseas, along the Nation's borders, and throughout the Nation's interior, ICE agents and officers are demonstrating that the newly merged customs and immigration authorities constitute an effective mechanism to identify, disrupt, and dismantle criminal organizations that violate the Nation's borders and the Nation's customs and immigration laws.

By leveraging the full enforcement potential provided by the new and unique blend of customs and immigration authorities, ICE agents and officers—together with our DHS and other federal counterparts and with the assistance of tribal, state and local law enforcement entities—are making it more difficult for potential terrorists and transnational criminal groups to move themselves, their supporters, or their weapons

across the Nation's borders through traditional human, drug, contraband, or financial smuggling networks, routes, and methods. Specifically, this work serves to dismantle the criminal business networks that seek to exploit the Nation's borders. Moreover, our presence extends from the border well into the interior of the United States and deters illegal immigration by making clear, that it is not acceptable to fail to fully comply with the Nation's immigration laws. These efforts implement the Nation's critical homeland security priorities and strengthen respect for the Nation's laws.

It is important to understand that special agents within the ICE Office of Investigations work closely with our enforcement and interdiction counterparts within the ICE Office of Detention and Removal (DRO). ICE/DRO fields "Fugitive Operation Teams" along the Southwest border and throughout the Nation's interior to help ensure the national security and public safety. These teams aggressively target immigration violators who are considered the most dangerous to the general public. In addition to coordinating with the other elements within ICE, we also cooperate externally with our sister agency, U.S. Customs and Border Protection (CBP), as well as other federal, state, and local law enforcement authorities, such as Tobacco, Firearms and Explosives (ATFE), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and others.

Our law enforcement presence extends beyond our borders. ICE has agents stationed in Attaché offices in embassies and consulates throughout the world. I am particularly proud of these agents, who maintain productive working relationships with their foreign

counterparts to combat crime that originates overseas but is aimed at crossing the Nation's borders.

THREAT ASSESSMENT

As the DHS agency with the broadest law enforcement authority, ICE has established intelligence and investigative operations at the Nation's Ports of Entry, as well as between them and throughout the Nation's interior. Consequently, ICE is uniquely able to assess the vulnerabilities and threats to the American people that arise from the Nation's borders. This assessment is comprised of three elements, beginning with a discussion of the criminal business of human and contraband smuggling in both directions across the Nation's borders. The second element focuses on how that illegal activity — its networks, infrastructure, routes, and skilled guides — may afford potential terrorists and other criminal organizations the opportunity to introduce themselves, their weapons, or their supporters into the United States. The final element discusses the primary motivation for crime — the financial rewards — and how the infrastructure and financial system of this country can be exploited to the criminal's advantage.

CRIMINAL THREATS

Our southern border is a particularly vulnerable region where cross-border criminal enterprises occur. To understand the criminal activity we see along the Nation's border, it is helpful to be reminded that criminal enterprises are businesses. They are run to make money. It is estimated that human smuggling through Mexico into the United States puts hundreds of millions of dollars into criminal hands — and the drug trade is much larger.

The related crimes that we see — the killings, hostage taking, robberies, money laundering — are all methods that criminals employ in order to gain and expand market share and maximize profit in their criminal business enterprises.

Most of these activities involve at some stage the illegal movement of people or goods across the Nation's borders. Our understanding of the border guides ICE's strategy for targeting, dismantling, and deterring these organizations through enforcement actions that are designed to defeat or disrupt the way they do business. In other words, we hit them where it hurts—their wallets—to undermine their ability to fund their criminal activity and employ their accomplices. Every dollar of criminal proceeds seized is one less dollar criminals can use to sustain and grow their violent enterprises.

ICE investigations complement another critically important element that exists within the larger border security effort. The additional element is interdiction, which we share responsibility with CBP. The Department's Secure Border Initiative (SBI) strategy is our roadmap for synchronizing ICE investigations, interdiction and detention and removal processes along with CBP inspections and interdiction into a seamless enforcement capability that protects the American people.

ICE is acutely aware of the recent increase in violence along both sides of the border. In direct response to the increased violence, ICE first partnered with other federal, state, and local law enforcement officials in Laredo, Texas to create a multi-agency operation called Operation Blackjack. Operation Blackjack has subsequently evolved into the Department

of Homeland Security's Border Enforcement and Security Task Force, known as "BEST."

The BEST task force incorporates personnel from ICE, CBP, ATF, FBI, DEA, U.S. Marshals Service, U.S. Attorney's Office, and key state and local law enforcement agencies. The BEST task force concept incorporates personnel from existing intelligence groups — involved in both collection and analysis — to help identify and disseminate information relating to violent smuggling organizations. The BEST task force has been a highly successful and effective tool to combat violence in the Laredo area.

This coordinated approach among federal, state and local law enforcement officers has led to significant enforcement successes. For example, in late January of this year, ICE agents from our Laredo office, along with ATF agents and Laredo Police Department officers assigned to BEST, arrested one suspect for federal firearms violations, following his previous sale to an undercover ICE agent of a fully automatic AK-47-type assault rifle and approximately 26 grams of cocaine. Along with this arrest, BEST agents executed a federal search warrant at a residence and seized a cache of automatic weapons, parts to manufacture automatic weapons, a silencer, and other firearms paraphernalia. Additionally, agents seized 1.5 pounds of methamphetamine, approximately one pound of cocaine, and other paraphernalia related to drugs and guns. However, this is not the end of the story.

The day after that enforcement action, BEST task force agents — acting on information from the FBI — executed a federal search warrant for a commercial storage locker that was being used by this criminal's associates. Agents seized five grenade shells, nine pipe bombs, 26 grenade triggers, 31 grenade spoons, 40 grenade pins, and other parts that are used to assemble explosive devices. This is still not the end of the story.

A week later, ICE agents from Laredo, along with ATF agents and Laredo police officers, executed a federal search warrant at a related residence and seized 81 grenade casings, ten live grenades, two AK-47 assault rifles, one Uzi submachine gun, and miscellaneous items. Following these seizures, BEST task force agents arrested a second subject for federal firearms violations four days later.

These seizures are clearly related to the violence along the border, particularly in the Nuevo Laredo and Juarez area. This violence is caused by intense competition between the remnants of the Gulf Cartel and the Federation. The Gulf Cartel continues to be supervised by Osiel Cardenas Guillen despite his arrest in 2003, and Joaquin "Chapo." Guzman Loera and Arturo Beltran Leyva are members of the "Federation" which is attempting to take control of this important "Plaza" from the Gulf Cartel. The phrase "Plaza" is used to describe the corridor that extends from Southern Mexico up to the Nuevo Laredo area. Each of these competing cartels has established relationships with violent criminal gangs that act as enforcers and foment violence in support of their cartels. The Gulf Cartel is supported by Los Zetas, a paramilitary organization, and other criminal gangs Los Negros, the Mexican Mafia and other criminal entities, support the

Federation. The competition between these two cartels and the criminal gangs that support them provides the fuel for the increase in violence that we have seen in the last several years.

Control of the "Plaza" corridor translates into control of all smuggling, both of humans and drugs, in the area and any organization that wants to operate in this area has to pay a tax to the cartel. This area is also important because of the infrastructure on the U.S. side of the border. First, the Laredo Port of Entry is the busiest land Port of Entry on the Southwest border, handling approximately 6,000 commercial vehicles a day. U.S. Interstate Highway 35 starts in Laredo, Texas and provides ready access to both San Antonio and Dallas, where both drugs and aliens can be staged prior to movement to other parts of the United States.

We hope that this overview will provide some helpful context for discussing recent incidents on the Nation's border with Mexico.

BORDER INCURSIONS

In a recent incident in Hudspeth County, Texas, several individuals wearing military-style camouflage clothing and carrying long guns provided protection for a cross-border smuggling attempt that included illegal entry into the United States. Further, at least one vehicle employed in this effort was a military-style vehicle that is more popularly known as a "Humvee" or "Hummer." Regardless of the affiliation of the individuals involved, the Hudspeth incident was highly dangerous because of the firepower, tensions, and

ambiguities faced by American law enforcement — and by Americans who live adjacent to the border and who routinely are confronted by such activities. The evidence and intelligence gathered to date, however, do not support a conclusion that the Hudspeth incident, constituted an incursion onto U.S. soil by the Mexican military, intentional or otherwise. Nonetheless, for ICE's investigators, all types of smuggling reflect unacceptable vulnerabilities that we seek to close.

TUNNEL ACTIVITY

In recent weeks, we have all been reminded that illegal efforts to cross the border occur not only on the surface, but also underground. As many of you know, ICE worked with its Mexican law enforcement counterparts, along with DEA and CBP in the United States, to discover a tunnel beneath the border between San Diego and Tijuana in January 2006. Two days later, Mexican officials executed a search warrant at the warehouse and seized 4,351 pounds of marijuana. The subsequent inspection of the tunnel revealed it to be highly sophisticated and equipped with lighting, ventilation, and cement flooring. The tunnel was 2,477 feet long and descended to a maximum depth of 81 feet below ground level. An exit was found inside a warehouse in the United States, in Otay Mesa. Approximately 300 additional pounds of marijuana were seized there.

The discovery of the tunnel between San Diego and Tijuana indicates that smuggling organizations are turning to increasingly advanced and costly smuggling methods, those

requiring significant start-up costs, but that we have confidence in the abilities of the dedicated officers on both sides of the border to detect and seal tunnels such as these.

The criminal business enterprises we face are sophisticated, nimble, and adaptive. As the Department of Homeland Security continues to strengthen the Nation's capacity to detect and defeat traditional forms of smuggling, criminals are increasingly making the business decision to invest substantial money and time into the creation of new and more sophisticated methods for continuing their illicit enterprises.

While federal law enforcement must address criminal threats operating across our borders, there is an additional important strategic reason for DHS and ICE to combat these threats and organizations. Intelligence reporting indicates that terrorists have both the interest and desire to exploit the existing vulnerabilities in our border security to enter the United States and perpetrate an attack against our citizens or our interests.

By aggressively targeting and defeating the criminal networks and the methods they use and simultaneously working to improve the security of the Nation's borders, we make it more difficult for potential terrorists to bring themselves, their supporters and their weapons into this country.

THE LONG REACH OF BORDER CRIME

The preceding examples are highly visible examples of the challenges ICE agents have faced in the battle to combat crime and violence along the border. However, beyond the

significance of these incidents is the underlying fact that the violence and sophistication of these organizations is rooted in the commission of border crime of all types, which often extend well beyond the border and into the interior cities of the Nation. As such, I would like to take this opportunity to make you aware of ICE's efforts to vigorously investigate and prosecute crime that originates along our borders in order to protect the public at and between our border ports of entry and throughout the Nation's interior.

One of the most significant threats to the border and the interior of the United States is posed by transnational street gangs. Many members of violent street gangs are foreign-born persons who are actively involved in crimes such as human and contraband smuggling, robbery, extortion, rape, and murder. The foreign nationals who belong to these gangs often ignore our immigration laws, regularly entering the United States illegally. They then travel to the Nation's interior cities to join with other gang members and participate in criminal activity.

In response to the threat posed by transnational gang members who violate our borders and travel throughout the United States, ICE initiated Operation "Community Shield" in February 2005. Initially, Community Shield targeted the MS-13 street gang, one of the largest and most violent gangs of its kind. However, because of the successes of Operation Community Shield in combating MS-13, the program was subsequently expanded to investigate all criminal street gangs. ICE has partnered with state and local law enforcement and worked closely with other federal agencies such as ATF, CBP, and FBI to combat violent street gangs.

To date, ICE's efforts in Community Shield have resulted in the arrest of 1,933 transnational gang members and associates. ICE has determined that the majority of them are foreign nationals who are illegally present in this country. Moreover, ICE has also found that approximately half of the apprehended gang members have violent criminal histories, with arrests and convictions for crimes such as robbery, assault, rape, and murder. And, of course, this figure includes only those whose criminal histories are known.

The violence associated with illegal immigration over our borders is not limited to transnational gang members. It also encompasses innocent victims who are smuggled, or even worse, die during their journey into or within the United States. In case after case, we see the disregard smugglers and traffickers have for the lives hanging in their charge. Often we find that victims have fled poverty or abuse, only to be forced to travel in squalid conditions without adequate food, water, or even air. Moreover, they are frequently subject to brutal violence, forced labor, and sexual exploitation after arriving at their destination — in the United States, in our country. In a recent smuggling case in Arizona, 12 illegal aliens were held against their will at a Phoenix residence. Two smugglers threatened to kill the migrants if their smuggling fees were not paid. One of the aliens, a young woman, was threatened with rape. An enforcement action conducted by ICE and the Phoenix Police Department resulted in the rescue of the migrants and arrest of both smugglers. In a trafficking case in McAllen, Texas, two smuggled women from Central America were found on the side of a road beaten and without clothing.

Their captors intimidated the victims by shooting weapons into the walls and ceiling as they raped them. ICE's enforcement efforts led to the rescue of two additional victims and the arrest of seven traffickers. The lead defendant was sentenced to 23 years imprisonment, which is one of the longest sentences ever obtained under the Trafficking Victims Protection Act.

Since the creation of ICE in March 2003, investigations into human trafficking and human smuggling have resulted in more than 5,400 arrests, 2,800 criminal indictments, and 2,300 criminal convictions of these violent criminal smugglers. The amount of assets seized from human smugglers and human trafficking organizations has gone from almost none before 2003 to nearly $27.0 million in 2005.

COMBATING THE BUSINESS OF BORDER CRIME

ICE is uniquely equipped with the right mix of authorities to target the financial lifeblood that sustains the violent criminal activities we see along our borders, including human smuggling and trafficking and the illegal movement of drugs and weapons. While ICE is a relatively new law enforcement agency, its predecessor agencies and many of our agents bring to bear over thirty years of expertise in the investigation of financial crimes. Building on this expertise, ICE has achieved great success in choking off the illicit finances that fuel criminal operations, through the aggressive investigation of bulk cash smuggling, money laundering, and other financial crimes.

Over the past decade, ICE agents have observed several important and emerging money-laundering trends — and many of them are described in the recently published U.S. Money Laundering Threat Assessment (MLTA). The MLTA is the first interagency assessment that identifies vulnerabilities that terrorist and criminal organizations seek to exploit to earn, move, and store their illegal funds. ICE played a major role in preparing the MLTA, and I am proud of our contributions to this important document.

A number of the money laundering trends we have observed have developed in response to the compliance and anti-money laundering programs instituted by the U.S. financial industry. As the opportunity to exploit our financial institutions diminishes, criminal organizations are being forced to use non-traditional and riskier methods to move their proceeds, such as bulk cash smuggling. This contributes to violence along the border and throughout the Nation.

The smuggling of bulk currency out of the United States, and especially across the Southwest border, has become one of the preferred methods of moving illicit proceeds out of the country. As such, criminal organizations now seek to exploit vulnerabilities in border security. ICE is the lead agency responsible for the investigation of financial crimes occurring at our borders. This is a critical part of the overall strategy to dismantle and destroy these smuggling organizations by taking away their illegal profits. , Congress criminalized the act of smuggling large amounts of cash into or out of the U.S. in the USA PATRIOT Act one of the provisions of the USA PATRIOT Act, 31 U.S.C. 5332 – Bulk Cash Smuggling makes it a crime to conceal and smuggle over $10,000 in currency

and monetary instruments into or out of the United States with the intent to evade in an attempt to violate U.S. currency-reporting requirements. ICE agents have utilized this authority since the statute was enacted to arrest over 330 individuals for bulk cash smuggling violations. In addition to these arrests, ICE and our partners at CBP have cumulatively seized over $160 million of the funds that were involved in these bulk cash smuggling violations.

ICE's enforcement of the law against bulk cash smuggling does not end at our Nation's borders. In August 2005, ICE partnered with CBP and the State Department to initiate a training program with our Mexican counterparts on ways to combat cash smuggling. As a result of this training and working with us on this joint financial initiative together, our Mexican counterparts have seized over $18 million in cash and $5 million in negotiable instruments that were involved in violations of Mexican currency- reporting requirements.

In addition to our efforts to combat bulk cash smuggling, ICE works aggressively to identify and investigate other financial methods that criminals use to move their illicit funds out of the United States — such as the use of unlicensed money- services businesses. These unlicensed businesses operate outside of the traditional banking system and governmental oversight and have been long recognized by law enforcement as vulnerable to abuse. The enhancements in 18 U.S.C. 1960, Prohibition of Unlicensed Money Transmitting Business, enacted through the USA PATRIOT Act, provide law enforcement with the authority to investigate unlicensed money remitters.

Since the passage of the PATRIOT Act, ICE investigations of unlicensed money-services businesses have resulted in over 171 arrests and the seizure of over $25 million in currency. Additionally, during fiscal year 2005, ICE investigations resulted in the seizure of nearly $1 billion in currency and assets from the criminals who exploit our borders.

Many of ICE's successful financial investigations that I have outlined for you today are related to our efforts to combat drug smuggling activity. Drug smuggling organizations are responsible for much of the violence we see at and near our Nations border with Mexico. Last year, our investigations resulted in the seizure of over 300,000 pounds of cocaine, 2.2 million pounds of marijuana, nearly 4,000 pounds of heroin, 2,200 pounds of methamphetamine, and hundreds of thousands of pounds of other smuggled drugs. These successes have disrupted these violent smuggling organizations by taking away their product and profits.

CONCLUSION

While the overwhelming bulk of the smuggling activity we combat today represents an array of traditional criminal threats, this illegal business is evolving in dangerous ways. The violators are better armed, and more willing to use force. The stakes are getting higher as we continue to strengthen the barriers against this activity. The urgent need to combat these criminal threats is more compelling than ever, because of the known

potential of terrorists to exploit this criminal activity, and the Nation's border vulnerabilities, to enter or attack the United States.

While ICE is a new agency, with newly integrated authorities, many of our agents and officers have a long history in the field, with extensive experience gained from their previous service with the former U.S. Customs Service and INS. We are seeking to leverage the best of our former agencies' expertise, cultures, and techniques, while building a new federal law enforcement agency that is greater and more effective than the sum of its parts. In case after case, our agents and officers are putting into practice the powerful advantages that flow from our newly merged authorities and are putting them to great use on behalf of the American people. The net result is a greater contribution to the Nation's border security, which is a critical element of national security.

We know the threats; we know the risks; and we know that there can be no homeland security with anything less than vigorous enforcement against those who seek to use the Nation's borders against U.S. citizens.

The men and women of ICE are grateful for the chance to serve the American people and, on their behalf, I thank you and your colleagues for your continued support of our ongoing operations.

I would be pleased to answer your questions.

Sheriff A. D'Wayne Jernigan

Val Verde County, Texas

Texas Border Sheriff's Coalition

Wednesday, March 1, 2006

Written Testimony on

"Federal Strategies to End Border Violence"

Before the

Senate Judiciary Committee

Subcommittee on Immigration, Border Security and Citizenship
And
Subcommittee on Terrorism, Technology, and Homeland Security

Mr. Chairman and Members of the Subcommittees, it is an honor and a privilege to be invited to appear before you to discuss strategies to combat Border Violence along the United States border and the Republic of Mexico.

On April 18th, 2005, Sheriff Sigi Gonzales sent out letters to the 16 Texas Sheriff's whose counties border the Republic of Mexico. The letter invited us to a meeting to discuss unique problems that we face along the border. This was done out of frustration in what we felt was the inadequacy of our federal government to protect our border in preventing a potential terrorist from entering our country. We felt that as citizens of this great country, our almost 2,000 miles of border was very porous, that many people whose intentions were unknown were coming into our country. If their intentions were to commit acts similar to or worse than what happened on September 11, 2001, then very little was being done to stop them. All of us expressed the same frustration since we had mentioned this many times to federal and state legislators. We felt that perhaps speaking as one voice we would be heard. We realize that we are a bi-partisan multi ethnic coalition of Law Enforcement professionals. The crisis that we face on our border is not a racial issue, or even one of politics. This crisis is a red white and blue national security crisis.

On May 4th, 2005, we met in Laredo, Texas. As a result we formed the Texas Border Sheriff's Coalition. The first and foremost priority of our coalition is protecting all residents of this country against a terrorist act without regard to race, sex, or ethnicity. We continue to believe that many persons have entered our country with intentions of harming us. We are sincere when we tell you that we are not blaming the agents of the United States Border Patrol but, rather, we criticize the policies that they have been shackled with.

I want to make you aware that the Law Enforcement experience of the member sheriffs of this coalition total almost 460 years including 101 years of experience as sheriffs. The oldest serving sheriff of this coalition is El Paso County Sheriff Samaniego with 22 years. I have attached the list of member sheriffs of the coalition with their years of experience and have marked it as Attachment #1. I have served more than 29 of the 42 years of my Law Enforcement career on the Texas/Mexico border. We have seen the border become more violent and criminally active than at any point in our careers. Our officers rarely encounter the socio-economic illegal alien of the past, but routinely encounter criminal illegal aliens.

I have been asked to briefly relate to you some of the problems that we have encountered along the border, specifically the violence along the border and incursions, among other matters. Most of the sheriffs that have encountered these problems are present to answer any questions you may have as they relate to their counties.

The areas of Val Verde and Maverick Counties, specifically, continue to see many persons from countries other that Mexico entering the country and being let loose in our

counties. I and Sheriff Tomas Herrera have been very concerned with these persons since it is not known how many potential special interest aliens were being released into our great country with what we term as a "notice to disappear". We did not know what diseases, if any, these persons may have had. These persons, when released, would trek into town through day care centers and schools. After we complained of this practice, Border Patrol, changed their policy and began to transport them to bus stations. The most damaging part of the "catch and release policy" was the debilitating effect on agent moral. These illegal immigrants who were apprehended and then released would photograph themselves and send the pictures back to their respective countries to show that they had made it to America. I have attached one such photograph and marked it as Attachment #2. The photograph shows them holding their "permission" papers.

All of us are concerned that the border with Mexico is being used as the open door to this country. Most of the illegal immigrants from countries of special interest that are apprehended are apprehended along the southwest border. I have attached these lists and have marked them as Attachment #3.

Through intelligence information we have also learned that several murders in Laredo, Webb County, Texas, have been orchestrated by members of drug cartels operating in both countries. These drug cartel enforcers cross the Rio Grande River, commit their murders in the United States, then head back to Mexico, again, via the Rio Grande River. We have all seen in the media the reports of the murders in Nuevo Laredo, 24 so far in the first 36 days of 2006. These murders are connected to organizations in both Mexico and the United States. In February, a Task Force in Laredo Texas confiscated Improvised Explosive Devices as well as items used to make explosive devices. Border Patrol agents and deputy sheriffs have been shot at from Mexico on a routine basis. Just last month a sniper in Mexico shot at agents that were working along the banks of the river in the area of the cities of Rio Bravo/El Cenizo. This continued, sporadically, for three days. Agents reported seeing several individuals wearing military style uniforms on a hill on the Mexican side, one of them was using what was believed to be a high powered rifle with scope.

The Rio Grande Valley, Cameron, Hidalgo, and Starr Counties, have continuous problems with pseudo-cops coming from Mexico to extort and kidnap citizens in these counties. This area is the fastest growing area in the nation. They have seen their share of terrorist activity as it relates to the migration of many members of ruthless gangs that come into this country for reasons other than legitimate employment. Sometime last year, a woman was taken off an airplane at the McAllen, Texas, airport. She had come in from Mexico, through the river, as her clothes were still wet, and had a passport from Africa. She was from a special interest country and had come in to Mexico using a passport from a friendly country to avoid detection. Who knows what her intentions were. Thanks to an officer at the airport she was taken off the plane.

During this same time period, a high-ranking member of the *Mara Salvatrucha*, or MS-13, was apprehended in the Brooks County area, also in south Texas. He had entered the country illegally. This MS-13 member is believed to have been responsible for the

killing of close to 30 persons, or more, in a bus explosion in his native country. It is my understanding that he had a lengthy criminal record in the United States. This person, as many others, find it very easy to come into our country through a very porous, wide-open, and unprotected border. Twenty seven members of the MS-13 were apprehended entering the United States in the Del Rio area of operations during the month of January, 2006.

We have received information that the drug trafficking organizations immediately across our border are planning on killing as many police officers as possible on the United States side. This is being planned for the purpose of attempting to "scare us" away from the border. The recent activities of the drug trafficking organization operating in the Hudspeth, El Paso County areas have included threats against the families of Deputy Sheriff's. In one incident subjects made threats to the wife of a Hudspeth County Sheriff's Sergeant at their home. The drug trafficking organizations have the money, equipment, and stamina to carry out their threats. They are determined to protect their illicit trade. It is my opinion that these drug trafficking organizations may form an alliance with Islamo Fascist terrorist organizations. The Department of Homeland Security recently issued Officer Alerts warning their agents of such potential threats. We, the local officers, learned about the warning through the news media.

The cartels operating in Mexico and the United States have demonstrated that the weapons they posses can and will be used in protecting their caches. I have attached photographs showing some of the weapons that these cartels possess. The photos have been marked as Attachment #4. In Val Verde County a fragmentation hand grenade was discovered on one of the trails near the Rio Grande where drugs are frequently smuggled into the United States.

Local, state, and federal officers have found many items along the banks of the Rio Grande River that indicate possible ties to terrorist organizations or members of military units of Mexico. Currency, clothing, are common finds. Recently, a jacket with patches was found in Jim Hogg County, Texas, by agents of U. S. Border Patrol. The patches on the jacket show an Arabic military badge with one depicting an airplane flying over a building and heading towards a tower, and another showing an image of a lion's head with wings and a parachute emanating from the animal (lion). It is believed from an undisclosed document that Department of Homeland Security translators concluded that the patches read "defense center", "minister of defense", or "defense headquarters". The bottom of one patch read "martyr", "way to eternal life" or "way to immortality".

On January 28th, 2006, USBP Chief David Aguilar was asked by a reporter from KGNS television station in Laredo, Texas, what the outcome of the investigation of the jacket was. Chief Aguilar responded that the patches were not from Al Qaeda but from countries in which Al Qaeda was known to operate. He also stated that the investigation was turned over to the proper authorities who had already concluded their investigation. He knew nothing further.

On February 2nd of this year, deputies in Zavala County discovered an 18" duffle bag approximately 8 miles North of Zapata by the highway right of way. This duffel bag had "Armada de Mexico" embroidered on the bag. Inside the bag were several items that are commonly used to maintain higher levels of physical exertion. Inside the bag, a bus ticket with an origin of Veracruz, Mexico was found. I have attached photographs of the duffle bag and marked it as Attachment #5.

Employees of our offices have also seen incursions into this country of persons dressed in battle dress uniforms (BDUs), carrying what officers believe to be automatic weapons, very clean cut, and in very good physical condition. On March 3rd, 2005, several officers assigned to do surveillance by the Rio Grande River by the Zapata/Webb County line observed approximately 20-25 subjects dressed as indicated above. The subjects were walking on a gravel road, coming from riverbank, and marching in a cadence. The deputy observed these individuals through his borrowed night vision goggles. These individuals were carrying large duffle bags and walking two abreast. They were each armed with assault rifles.

In the town site of Zapata, residents report subjects getting off boats wearing BDUs, backpacks, and carrying weapons. The residents describe them as soldiers.

In Val Verde County, two illegal aliens were apprehended during a burglary near the Port of Entry. One of the aliens fled on foot and was apprehended by Deputies and Agents of the Border Patrol. The alien who was apprehended inside the residence was later identified as a career criminal with a twenty four page rap sheet. His criminal career included offenses in Florida and Texas. His clothing was still wet from his illegal entry that night. For over a year, groups of male subjects illegally crossed the river into the United States and burglarized remote ranch homes. These subjects took items from the homes that they burglarized, and would abandon the property at the next home that they burglarized. The only items that they routinely kept were firearms. During one burglary the subjects brought electric hair clippers with them and cut their hair in a distinctive pattern. When theses subjects would encounter law enforcement they conducted sophisticated escape and evasion tactics to break contact. In one incident the subjects traveled twenty miles a day on foot across harsh landscape. The last subject apprehended in that group had traveled over eighty miles on foot before his arrest. The subjects were always physically fit. It is my opinion that these subjects were trained for escape and evasion.

The Texas Border Sheriff's Coalition is very concerned about the unique problems along our border. The United States Border Patrol is doing the best that they can with the resources they have been provided. Immediate help is needed for them and for the protection of our country. We have implemented Operation Linebacker, a second line of defense in the protection of our country. The problems along the border are federal problems. Our governor, the Honorable Rick Perry, did not wait for a peace officer to get killed along the border to take action. He, just as we, is very much concerned. He has appropriated $6 million for us to start the operation. Just last month he announced an additional $3.8 million that he will grant our coalition. This much

needed assistance provided by Governor Perry has already produced measurable results, but this assistance is only a stopgap measure. More help is necessary if we are to see an acceptable level of security exist on the border. The problems along the border will continue unless our federal government does something about it soon. Must we wait until an officer gets killed or until another terrorist act occurs?

I have addressed many of the enforcement issues facing the border today in my written testimony, but another crisis faces us. The Judicial system on the border is strained to failure. In Val Verde County, the annual budget for jury trials will be exhausted in March, only half way through the fiscal year. An examination of the caseload of the United States District Court, Western District, demonstrates this crisis irrefutably. I have attached a report that demonstrates the ten year record of civil filings within the Western District of Texas. It is marked as Attachment 6. The number of filings of civil cases across the District has remained fairly level with only minor increases consistent with population growth. If you examine the criminal filings, Attachment 7, for the same period an alarming trend is evident. The two District Courts on the border have seen dramatic caseload increases with little or no population increase. Attachment 8 shows the caseload of the two United States Magistrates in Del Rio. As you can see each of their caseloads equals the caseload of the other Magistrates in the Western District combined. The other District Courts in the Western District have seen small increases in their caseloads. What is not reflected in these statistics is the number of criminal subjects who are apprehended with commercial quantities of drugs, but who fall under the quantity threshold arbitrarily established by the United States Attorney's office. These subjects who have been apprehended by authorities are released without prosecution. Remember that only a percentage of all drug and alien traffickers are apprehended, and then, a portion of those apprehended are released without prosecution due to budgetary constraints. The criminals grow more educated by the system each time we handle them. We must restore Justice to the Border by immediately providing additional District Judges, Magistrates and Prosecuting Attorneys, as well as economic subsidies to effected State District Courts and Prosecuting Attorneys who have become incapacitated by the increasing crime on the border.

I am convinced that by funding additional Deputy Sheriff's on the border, our nation will accomplish a cost effective, and immediate solution to the burgeoning scourge of violence creeping North into our nation. Along most of the border, it is a Deputy Sheriff who receives the first call of suspicious activity and encounters subjects who may be crossing the border only for a new and better life in the North, or who may have far more sinister intentions. No matter how much more efficient we are made by the utilization of emerging technology, it is still necessary that a trained and experienced officer be available to respond to the identified threat.

I want to express my most sincere appreciation for allowing us the opportunity to appear before you and thank you for the work you do for our country, the United States of America.

Border Sheriff's Experience

COUNTY	SHERIFF	YRS.-SHERIFF	YRS.-OTHER	YRS.-TOTAL
El Paso	Leo Samaniego	22	28	50
Hudspeth	Arvin West	6	17	23
Culberson	Oscar E. Carrillo	6	10	16
Jeff Davis	Thomas "Tom" F. Roberts, Sr.	1	21	22
Presidio	Danny C. Dominguez	9	5	14
Brewster	Ronny D. Dodson	6	19	25
Terrell	William "Clint" McDonald, Jr.	2	18	20
Val Verde	A D'Wayne Jernigan	9	33	42
Kinney	Leland K. Burgess	10	30	40
Maverick	Tom Herrera	1	27	28
Dimmit	Michael "Doug" Sample	2.5	28	30.5
Webb	Rick Flores	1	16	17
Zapata	Sigifredo Gonzalez, Jr.	11.5	18	29.5
Starr	Reymundo "Ray" Guerra	8	20	28
Hidalgo	Guadalupe "Lupe" Trevino	1	29.8	30.8
Cameron	Omar Lucio	5	38	43
	TOTALS	101	357.8	458.8

ATTACHMENT #1

ATTACHMENT #2

OTMS BY COUNTRY 10/01/02 - 6/30/03
NORTHERN & SOUTHERN BORDER

DATA SOURCE: PAS

Sum of TOTAL OTMS	BORDER		
COUNTRY CODE	Northern Border	Southern Border	Grand Total
AFGHANISTAN	3	1	4
ALBANIA	30	63	93
ALGERIA	2	3	5
ANTIGUA-BARBUDA	1	1	2
ARGENTINA	14	69	83
ARMENIA	1	17	18
AUSTRALIA	13	6	19
AUSTRIA	1	1	2
BAHAMAS	1	1	2
BAHRAIN		1	1
BANGLADESH	10	7	17
BARBADOS	1		1
BELARUS	2	2	4
BELGIUM	3	3	6
BELIZE	1	23	24
BOLIVIA	2	27	29
BOSNIA-HERZEGOVINA		1	1
BOTSWANA		1	1
BRAZIL	105	3179	3284
BULGARIA	7	10	17
BURKINA FASO	1		1
BURMA	1	4	5
CAMEROON	1	2	3
CANADA	825	22	847
CAPE VERDE	1		1
CHILE	10	58	68
CHINA PEOPLES REPUBLIC OF	167	222	389
COLOMBIA	23	121	144
CONGO	1		1
COSTA RICA	135	116	251
CROATIA		1	1
CUBA	17	61	78
CZECH REPUBLIC	3	25	28
CZECHOSLOVAKIA	6	4	10
DENMARK		2	2
DJIBOUTI	1		1
DOMINICA	1		1
DOMINICAN REPUBLIC	51	276	327
ECUADOR	40	314	354
EGYPT	4	6	10
EL SALVADOR	61	6408	6469
ERITREA	2	3	5
ESTONIA	1	2	3
ETHIOPIA	2	5	7
FIJI	1		1

ATTACHMENT #3

FRANCE	12	7	19
FRENCH POLYNESIA	1		1
GAMBIA	2	3	5
GEORGIA	5	8	13
GERMANY	13	9	22
GHANA	10	9	19
GREECE	4	1	5
GRENADA	1		1
GUATEMALA	185	4971	5156
GUINEA	1	2	3
GUINEA-BISSAU		1	1
GUYANA	4	15	19
HAITI	9	14	23
HONDURAS	103	9810	9913
HONG KONG	6		6
HUNGARY	3	9	12
INDIA	113	65	178
INDONESIA	12	23	35
IRAN	4	10	14
IRAQ	5	8	13
IRELAND	5	10	15
ISRAEL	28	36	64
ITALY	7	7	14
IVORY COAST		4	4
JAMAICA	36	30	66
JAPAN	9	10	19
JORDAN	2	11	13
KAMPUCHEA	1	2	3
KAZAKHSTAN	4		4
KENYA	11	27	38
KYRGYZSTAN		1	1
LAOS	4	3	7
LATVIA		2	2
LEBANON	8	8	16
LIBERIA		5	5
LITHUANIA	9	7	16
MACEDONIA	2	23	25
MALAYSIA	7	6	13
MALI	5	1	6
MAURITANIA	1		1
MICRONESIA FEDERATED STATES OF	2		2
MOLDOVA	6	1	7
MONGOLIA	3	2	5
MOROCCO	5	7	12
NEPAL	1	4	5
NETHERLANDS	4	5	9
NETHERLANDS ANTILLES	2		2
NEW ZEALAND	12	4	16
NICARAGUA	7	519	526
NIGERIA	11	21	32
NORTH KOREA	1		1
NORWAY	1	3	4

ATTACHMENT #3

PAKISTAN	122	20	142
PANAMA	3	7	10
PARAGUAY	1	7	8
PERU	33	165	198
PHILIPPINES	10	51	61
POLAND	24	123	147
PORTUGAL	1	1	2
QATAR	2	1	3
ROMANIA	23	11	34
RUSSIA	24	19	43
RWANDA	1		1
SAUDI ARABIA		1	1
SENEGAL	5	3	8
SIERRA LEONE	2		2
SINGAPORE	1		1
SLOVAKIA	9	8	17
SLOVENIA		2	2
SOMALIA	1		1
SOUTH AFRICA	4	8	12
SOUTH KOREA	62	41	103
SPAIN	3	6	9
SRI LANKA	5	2	7
ST. LUCIA	1	1	2
SUDAN	3	4	7
SWEDEN	1	1	2
SWITZERLAND	2		2
SYRIA	4	3	7
TAIWAN	6	4	10
TANZANIA		1	1
THAILAND	4	3	7
TOGO		1	1
TRINIDAD AND TOBAGO	9	2	11
TUNISIA	1		1
TURKEY	21	10	31
UGANDA	5	2	7
UKRAINE	7	15	22
UNITED ARAB EMIRATES	3		3
UNITED KINGDOM	19	16	35
URUGUAY	16	9	25
UZBEKISTAN	8	2	10
VENEZUELA	14	37	51
VIETNAM	10	12	22
WESTERN SAHARA		3	3
YEMEN	3	5	8
YUGOSLAVIA	4	27	31
ZAMBIA	1	2	3
ZIMBABWE	1	1	2
Grand Total	**2,718**	**27,429**	**30,147**

ATTACHMENT #3

OTMS BY COUNTRY 10/01/03 - 6/30/04
NORTHERN & SOUTHERN BORDER

DATA SOURCE: PAS

Sum of TOTAL OTMS	BORDER		
COUNTRY CODE	Northern Border	Southern Border	Grand Total
AFGHANISTAN		8	8
ALBANIA	22	64	86
ALGERIA	3	3	6
ANGOLA	1	1	2
ANGUILLA		1	1
ARGENTINA	22	63	85
ARMENIA	5	8	13
AUSTRALIA	5	3	8
AUSTRIA	2	3	5
BANGLADESH	6	15	21
BARBADOS	1		1
BELARUS	6		6
BELGIUM	1	1	2
BELIZE	3	26	29
BENIN	1		1
BOLIVIA	4	70	74
BRAZIL	122	4911	5033
BULGARIA	16	19	35
BURKINA FASO	2		2
BURMA	3	3	6
BURUNDI	1		1
CAMEROON	1		1
CANADA	712	12	724
CHAD	1		1
CHILE	7	41	48
CHINA PEOPLES REPUBLIC OF	144	460	604
COLOMBIA	55	105	160
CONGO	1	1	2
COSTA RICA	122	205	327
CROATIA		2	2
CUBA	16	91	107
CZECH REPUBLIC	13	12	25
CZECHOSLOVAKIA	1	4	5
DENMARK	3		3
DOMINICA	2		2
DOMINICAN REPUBLIC	42	253	295
ECUADOR	68	380	448
EGYPT	4	9	13
EL SALVADOR	75	11105	11180
ERITREA		15	15
ESTONIA	2		2
ETHIOPIA	2	28	30
FIJI		1	1
FRANCE	18	5	23

ATTACHMENT #3

GAMBIA	1	2	3
GEORGIA	1		1
GERMANY	8	8	16
GHANA	10	8	18
GREECE	3	1	4
GRENADA	6	1	7
GUATEMALA	227	6901	7128
GUINEA	6		6
GUYANA	10	1	11
HAITI	8	50	58
HONDURAS	138	14906	15044
HONG KONG	1		1
HUNGARY	6	5	11
INDIA	201	36	237
INDONESIA	7	13	20
IRAN	3	7	10
IRAQ	2	5	7
IRELAND	8	3	11
ISRAEL	32	23	55
ITALY	7	9	16
IVORY COAST	5	2	7
JAMAICA	33	34	67
JAPAN	5	5	10
JORDAN	5	9	14
KAMPUCHEA		6	6
KAZAKHSTAN	2		2
KENYA	8	19	27
KOREA	5	20	25
KUWAIT		3	3
KYRGYZSTAN		1	1
LAOS	11	3	14
LATVIA	5	1	6
LEBANON	5	8	13
LIBERIA		7	7
LITHUANIA	3	4	7
MACEDONIA	5	16	21
MALAWI	1	2	3
MALAYSIA	4	1	5
MALI	5	2	7
MALTA		10	10
MARSHALL ISLANDS	1		1
MAURITANIA	1	1	2
MOLDOVA	3		3
MONGOLIA	1	7	8
MOROCCO	3	2	5
NEPAL	9	11	20
NETHERLANDS	7	4	11
NETHERLANDS ANTILLES		1	1
NEW ZEALAND	10	2	12
NICARAGUA	9	898	907
NIGER		1	1

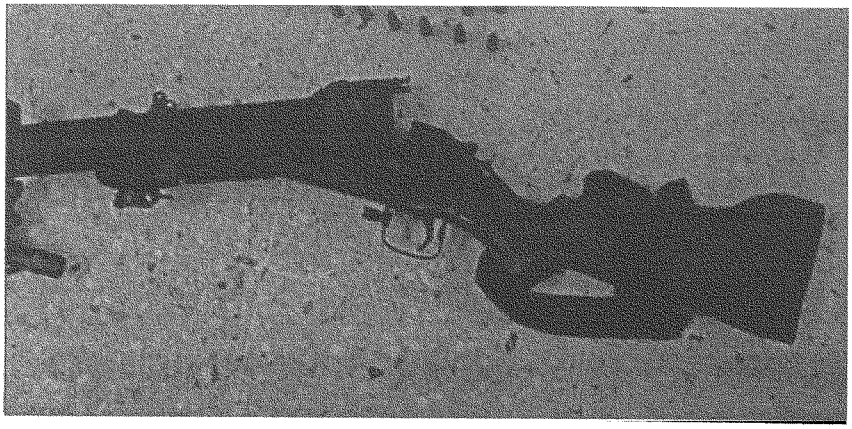
ATTACHMENT #3

NIGERIA	12	20	32
NORTH KOREA	8		8
NORWAY		1	1
OMAN	1		1
PAKISTAN	103	19	122
PANAMA	1	20	21
PAPUA NEW GUINEA		1	1
PARAGUAY	7	14	21
PERU	42	172	214
PHILIPPINES	16	37	53
POLAND	36	126	162
PORTUGAL	11	2	13
QATAR	1		1
ROMANIA	16	27	43
RUSSIA	21	10	31
SAUDI ARABIA		6	6
SENEGAL	5		5
SIERRA LEONE	1	2	3
SINGAPORE	2	1	3
SLOVAKIA	15	2	17
SOMALIA	3	3	6
SOUTH AFRICA	2	4	6
SOUTH KOREA	60	63	123
SPAIN	3	4	7
SRI LANKA	6	2	8
ST. LUCIA	4		4
ST. VINCENT-GRENADINES	2		2
STATELESS	1		1
SUDAN	2	3	5
SURINAME		1	1
SWAZILAND	1	1	2
SWEDEN		1	1
SWITZERLAND	1	2	3
SYRIA	1	5	6
TAIWAN	5	1	6
TAJIKISTAN	2		2
TANZANIA	1	2	3
THAILAND	8	7	15
TONGA		6	6
TRINIDAD AND TOBAGO	16	4	20
TUNISIA		4	4
TURKEY	11	11	22
UGANDA	3	2	5
UKRAINE	15	8	23
UNITED KINGDOM	27	20	47
UNKNOWN	6	2	8
URUGUAY	13	21	34
USSR	1		1
UZBEKISTAN	8	2	10
VENEZUELA	9	55	64
VIETNAM	5	6	11

ATTACHMENT #3

WEST GERMANY	1		1
WESTERN SAHARA		2	2
YEMEN	2		2
YUGOSLAVIA	4	49	53
ZAMBIA	2	2	4
ZIMBABWE	1	2	3
(blank)	2		2
Grand Total	**2,872**	**41,742**	**44,614**

ATTACHMENT #3



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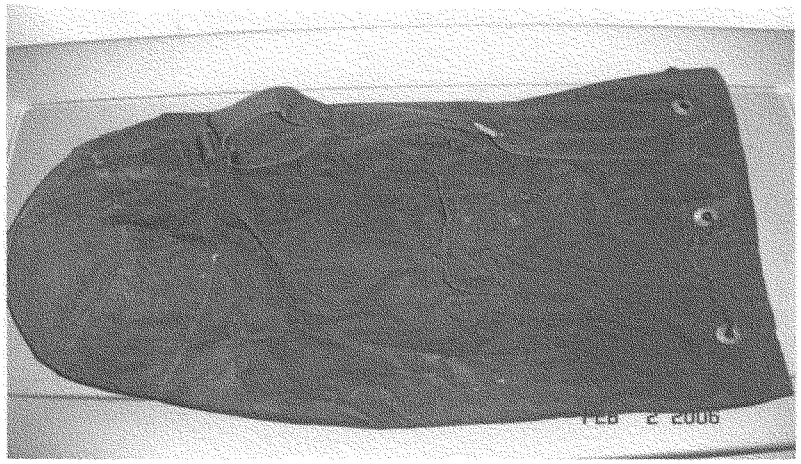
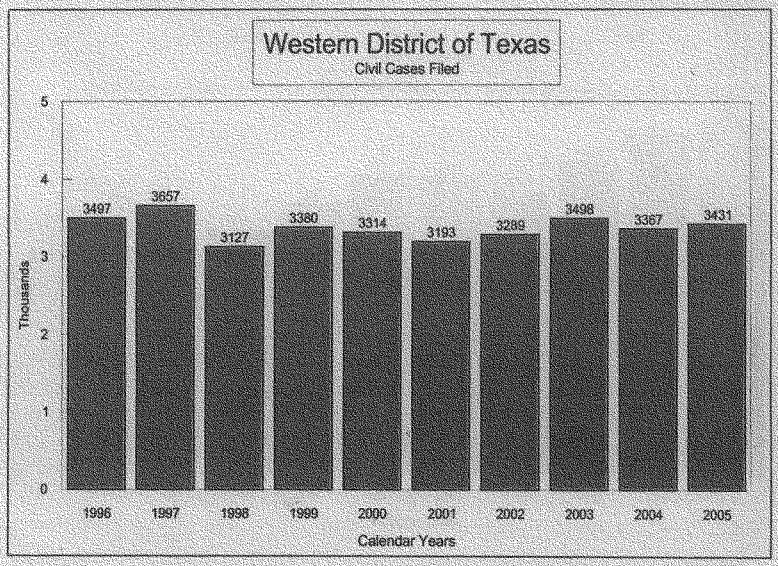


ATTACHMENT #5

CIVIL CASES FILED – TEXAS WESTERN TEN-YEAR REPORT

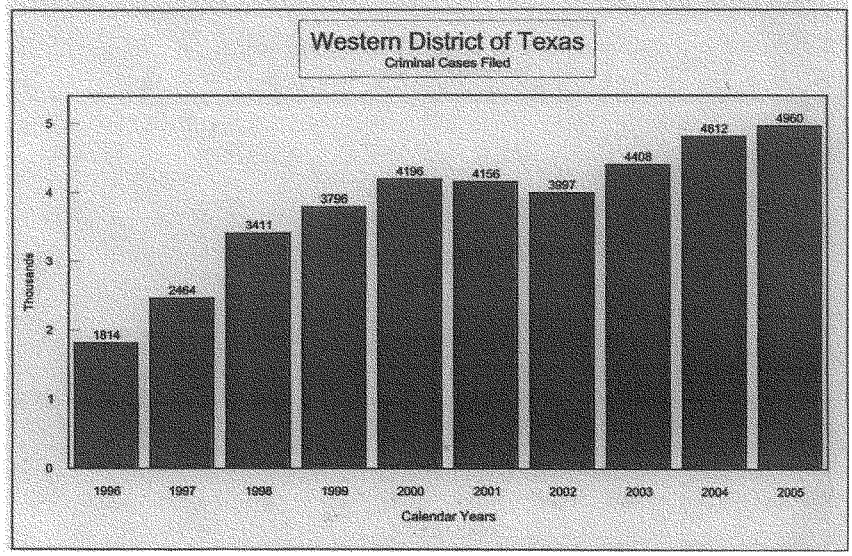
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Austin	845	862	787	805	802	872	817	933	1073	1044
Del Rio	101	82	53	73	69	82	64	86	78	95
El Paso	518	508	491	414	381	452	573	507	442	478
Midland	197	212	168	159	143	159	176	179	158	170
Pecos	76	106	71	65	52	71	107	127	98	91
San Antonio	1309	1526	1197	1494	1539	1187	1192	1247	1114	1129
Waco	451	361	360	370	328	370	360	419	404	424
Total:	3497	3657	3127	3380	3314	3193	3289	3498	3367	3431
+/-		160	-530	253	-66	-121	96	209	-131	64
% Change		5%	-14%	8%	-2%	-4%	3%	6%	-4%	2%



ATTACHMENT #6

CRIMINAL CASES FILED-- TEXAS WESTERN TEN-YEAR REPORT

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Austin	162	163	254	238	257	211	273	261	227	205
Del Rio	285	499	606	757	740	669	696	839	917	1072
El Paso	827	1109	1659	1802	2045	2146	1930	2186	2552	2559
Midland	78	73	134	119	156	144	111	151	220	205
Pecos	106	222	283	386	447	427	386	346	300	243
San Antonio	260	274	361	416	437	420	450	431	416	477
Waco	96	124	114	78	114	139	151	194	180	199
Total:	1814	2464	3411	3796	4196	4156	3997	4408	4812	4960
+/-		650	947	385	400	-40	-159	411	404	148
% Change		36%	38%	11%	11%	-1%	-4%	10%	9%	3%



ATTACHMENT #7

MAGISTRATE JUDGE STATISTICS

WESTERN DISTRICT OF TEXAS

JANUARY 1, 2006 TO JANUARY 31, 2006

Division	No. Mag. Judges	Total	Avg per MJ	Avg per MJ/Mo
Alpine/Pecos	(1)	258	258	258
Austin	(2)	158	79	79
Del Rio	(2)	3,493	1,747	1,747
El Paso	(3)	1,932	644	644
Midland	(1)	231	231	231
Waco	(1)	246	246	246
San Antonio	(3)	211	70	70

TOTAL:	6,529
Average per Mag. Judge per month	502
Total Border Divisions (Del Rio & El Paso)	5,425
Average per Border Mag. Judge per month	*1,085*
Total Non-Border Divisions	1,104
Average per Non-Border Mag. Judge per month	*138*

ATTACHMENT #8

JON KYL
ARIZONA
730 HART SENATE OFFICE BUILDING
(202) 224-4521
COMMITTEES:
FINANCE
JUDICIARY
CHAIRMAN
REPUBLICAN POLICY COMMITTEE

United States Senate
WASHINGTON, DC 20510-0304

STATE OFFICES:
2200 EAST CAMELBACK ROAD
SUITE 120
PHOENIX, AZ 85016
(602) 840-1891

7315 NORTH ORACLE ROAD
SUITE 220
TUCSON, AZ 85704
(520) 575-8633

January 19, 2006

The Honorable Condoleezza Rice
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Madam Secretary:

I have learned from a variety of sources of incursions by Mexican military units into the southwestern United States. I am deeply concerned about reports that these units are protecting drug and human smugglers as they cross our southern border.

I understand that there have been 231 incursions by Mexican military and law-enforcement members over the last nine years, including instances of gunfire directed toward U.S. Border Patrol agents.

These incidents pose a significant threat to our national security, as I'm sure you agree. I request that the State Department initiate an official investigation of these reports and open a dialogue with Mexico to prevent any future incursions.

Sincerely,

Jon Kyl

JON KYL
United States Senator

JK:GB

Dear Senator John Cornyn

Within the past two years Nvo. Laredo, Tamaulipas Mexico has become a war zone, this war zone is minutes from the U.S. border and one of the largest land ports in the U.S. You may ask why the United States should be involved in what happens in a sovereign country; the answer is that innocent American citizens are being kidnapped from the streets of Nvo. Laredo and the Mexican government is doing nothing, and the leadership from Laredo, Texas in Webb County and the state of Texas is doing less.

For months now, the families of the victims have been ignored by both governments; meeting after meeting between governors and law enforcement

officials only unsuccessfully attempt to answer the problem of the drug violence crossing the border, but no one is addressing the fact that over two dozen American citizens have disappeared. The mayor of Laredo has gone as far as to say that the kidnapped victims were ALL involved in some sort of illegal activity; that irresponsible comment has done nothing more than enable these criminals to continue their heinous acts and get away with it because their crimes are being justified by the same people who are sworn to protect us.

During this past summer, the office of Congressman Henry Cuellar began to assist us in getting answers from the Mexican government, but one man alone can not do it. In a meeting set up by Congressman Cuellar, a representative from the Mexican government showed up to answer questions, but instead of wanting to help, he reminded everyone that Mexico is a sovereign country and the U.S. had no jurisdiction in it. And that was the end of that.

I ask this committee, is Mexico not an ally of the United States; does Mexico not depend on the United States for foreign aid; do you as the leaders of the greatest country in the world have any leverage over our neighbor to the south? I know that there are relationships that must be

kept in order to keep diplomacy, but should we sacrifice American lives?

What is more important, to be cordial and friendly, or the fact that Americans are being picked-up off the streets of our friendly neighbor?

There is evidence that the criminals/kidnappers are the same people who are supposed to protect the public in Mexico, but that country has done nothing to stop them.

We have turned to our local leaders for support, but they have only criticized us for wanting answers. The FBI claims that it can not investigate any crimes in Mexico, but twice I have heard and seen reports where the FBI was involved in an investigation in Mexico and both have been for missing person's reports. Although I do not want to think that the reason we can't get answers is because we are of Hispanic origin, it seems more and more that it may be the case; just look at the Anglo young lady

that disappeared in Aruba or the countless other tragic victims that happen not to be Hispanic. What is it going to take for the U.S. to get serious about this issue? At what point will the U.S. demand answers from Vicente Fox and Mexico? As I had stated before, there have been over two-dozen kidnappings reported, but there have been countless others which have not been reported for fear of retaliation. Less than a month ago a mother was abducted, but after a week and a paid ransom, she was release- of course she said she was not kidnapped, but hiding at her house. Fear is running rampant and these criminals have nothing to be afraid of because our leaders look the other way. It is just a matter of time before people are kidnapped from the U.S. and taken to Mexico.

Ladies and Gentlemen, we need your help. We have gone through every level of government available and you are our last hope. You are our last hope for these families and my own family to finally get closure one day.

Benjamin Franklin once said, 'A great empire, like a great cake, is most

easily diminished at the edges." The edges, ladies and gentlemen, are the borders of this great country- and we need help. Let's not mistake the actions to prevent border crime from the real issue, the missing Americans which have been taken from their children, parents, brother and sisters.
My
daughter has been missing for one year and six months. We would very much love to bring her home and we need your help to make this possible.

Thank you,

William C. Slemaker
Spokesperson for Laredo's
Missing

Sheriff T. Michael O'Connor
Victoria County Texas
Sheriff Earl Petroupolis
Refugio County Sheriff
South Texas Coastal Sheriffs' Alliance

Wednesday, March 1, 2006

Statement for the record on
"Federal Strategies to End Border Violence"

Before the United States Senate Committee on the Judiciary

Subcommittee on Immigration, Border Security and Citizenship
And
Subcommittee on Terrorism, Technology and Homeland Security

Chairman Cornyn, Chaiman Kyl, and distinguished members of the subcommittees, I appreciate the opportunity to include a statement for the record on Federal Strategies to Combat Border Violence. I represent the Sheriffs of fourteen South Texas and coastal counties whose citizens' lives are daily put in jeopardy by the illegal trafficking of persons and drugs from the Republic of Mexico into the United States and the counter flow of money and weapons out of the United States. The Federal efforts to control the border are not working; and, as a result, our citizens are placed in danger. We in the alliance sincerely want to be part of the solution and are working daily to not only protect the citizens of our counties but the citizens of our great nation.

The counties that the Sheriffs of our alliance serve are primarily rural farming and ranching communities. As such, these communities do not have large law enforcement agencies; many of these counties may only have one or two deputies on patrol for extremely large geographic areas. The networks of illegal trafficking rings have capitalized on this reality and have designated numerous locations in our counties as staging areas for their shipments of illegal cargo and persons. Furthermore, our counties, though not on the border, are in a unique position between the Rio Grande Valley and Houston, which is a major hub of the illegal trafficking activity. The roads of our counties, which include major U.S. highways and lightly traveled farm-to-market roads, have seen caravans of traffickers traveling recklessly and at extremely high rates of speed. These traffickers often employ the use of stolen and uninsured vehicles and will stop for nothing or no one. Our deputies are almost always outnumbered; however, they have still managed to make a modest dent in the activities of the traffickers. For example, the two patrol deputies in one of the alliance counties apprehended and turned over to the Border Patrol 203 illegal aliens in the period from December 1, 2005 through February 27, 2006. Since January 2005, the alliance counties have apprehended and turned over to the Border Patrol over 4000 illegal aliens; however, we estimate that were are successful in making apprehensions in only 20% of the contacts with traffickers. Our deputies are, at times, apprehending twenty to thirty persons with

limited back up and resources. As first responders, our deputies encounter the traffickers. Invariably, the traffickers will attempt to evade law enforcement personnel, and this is where the potential for violence escalates. If these traffickers perceive that they may be captured, they run their vehicles off of the road into private property including cornfields, pastures, creeks, and even into our rural area school grounds. Our agency encountered a situation that demanded an immediate lock-down for an elementary school. Our citizens routinely have desperate people on their property and near their homes.

Just as the illegal traffickers have networks, we have formed a network to address these issues. The evolution of this South Texas Alliance was established out of necessity. As I visited with the Sheriffs of my neighboring counties, we discovered that we were all in a similar position. The position that we find ourselves in is one where we are forced to deal with trafficking and national security issues in order to protect the citizens of our counties.

Without a doubt, we understand and support the position of the Sheriffs of the border counties. However, our position has a multiplier effect due to what we refer to as the "FATAL FUNNEL." Many of the traffickers and drugs that enter the United States through the many Texas border counties make their way to Houston for nationwide dispersal; thus, on the way to Houston the routes come together in the counties of our alliance. Based on our observations, we believe that anyone who wants to enter our country illegally may do so. We also believe that our counties can make a major contribution in securing the border between the United States and Mexico. Our efforts could evolve into an additional layer of defense until the Federal Government can build the Federal agencies to a point where they can mitigate the problem.

The border violence is not limited to acts against law enforcement and citizens. My county has the unfortunate designation as the location of the Nation's deadliest human trafficking attempt. In May 2003, a tractor-trailer carrying illegal immigrants destined for Houston was abandoned in Victoria County. Inside the trailer was a literal "pile" of 17 dead immigrants including a five-year-old boy in the arms of his father. This is an image that will remain with me for the rest of my life. A "triage" was set up on location to accommodate the "survivors" who were in dire condition. It is estimated that the temperatures inside the trailer reached upwards of one hundred seventy-three degrees. Two others died later as a result of the incident. These deaths are a horrific tragedy, and we must not allow this to happen again.

There are numerous accounts of sexual assault, physical violence, and extortion waged by the traffickers against their human cargo. We have recent intelligence indicating that the traffickers are falsely convincing illegal immigrants that American law enforcement policy and tactics is to severely harm or kill illegal immigrants. We are now encountering situations where illegal immigrants are terrified when they encounter our deputies. Last summer, our agency encountered a situation where an immigrant fleeing our deputies fled into a body of water and drowned. For generations Texans have a long history of coming together to overcome obstacles, and this alliance is another example of that commitment to community and our nation. We are prepared to work toward a solution to protect the citizens and property of our counties and our great nation.

We believe that a Federal strategy should incorporate the initiatives of our alliance. We implore the members of the Subcommittee on Immigration, Border Security and Citizenship and the members of the Subcommittee on Terrorism, Technology and Homeland Security to take our offer seriously. The suggestions that we have to offer are rich in common sense and would not require a large burden on the cost of the operation. Our Alliance offers solutions that will utilize existing resources and equipment. Upon your request, representatives of our SOUTH TEXAS COASTAL SHERIFFS' ALLIANCE are prepared to discuss our suggestions of solutions with the committees. On behalf of our alliance, we thank you for the opportunity to offer our perspective, and we look forward to working with you.

SENATE JUDICIARY SUBCOMMITTEES ON IMMIGRATION, BORDER SECURITY & CITIZENSHIP, and TERRORISM, TECHNOLOGY & HOMELAND SECURITY

March 1, 2006 Hearing: "Federal Strategies to End Border Violence"

STATEMENT OF THE
TOHONO O'ODHAM NATION-ARIZONA

I. INTRODUCTION

This statement is submitted by the Tohono O'odham Nation ("Nation") to apprise the Subcommittees of the Nation's unique border security challenges that derive from the 75-mile stretch of shared international with Mexico, and to assist the Subcommittees in developing federal strategies to end border violence. Before addressing the specifics of these issues, my statement will provide general background about the Nation and the historical background that created our current border security crises. The Nation would also like to specifically recognize and commend Senator Kyl for his leadership and support in advocating on our behalf to address the pressing challenges more fully described in this statement.

II. BACKGROUND

The Tohono O'odham Nation ("Nation") is a federally recognized Indian Tribe in South Central Arizona with over 28,000 enrolled tribal members. The Tohono O'odham Reservation consists of four non-contiguous parcels totaling more than 2.8 million acres in the Sonoran Desert, and is the second largest Indian Reservation in the United States. The largest community, Sells, is the Nation's capital.

As a federally recognized Indian Tribe, the Nation possesses sovereign governmental authority over its members and territory. Accordingly, the Nation provides governmental services to one of the largest Indian populations in America and is responsible for managing one of the largest Indian reservations in the America. Moreover, the Nation spends approximately $7 million annually from tribal revenues to meet the United States' border security responsibilities. The 75-mile southern border of our Reservation is the longest shared international border of any Indian Tribe in the United States and has created an unprecedented homeland security crisis for America.

Prior to European contact, the aboriginal lands of the O'odham extended east to the San Pedro River, West to the Colorado River, South to the Gulf of California, and North to the Gila River. In 1848 the United States and Mexico negotiated the terms of the Treaty of Guadalupe Hidalgo, which among other things, established the southern boundary of the United States. The Treaty placed the aboriginal lands of the O'odham in Mexico. In 1854 through the Gadsden Purchase, the United States and Mexico further defined the southern boundary by placing the boundary at its present location cutting into the heart of our aboriginal territory. The establishment of the boundary displaced the O'odham on both sides of the international border bisecting O'odham lands thereby separating the Nation's people from relations, cultural sites and ceremonies, and ultimately blocking access to much needed health care, housing, and transportation. Not surprisingly, neither the United States nor Mexico consulted with the O'odham during the Treaty negotiations in 1848 and 1854. Respect for the sovereign status of the O'odham was simply ignored.

The lack of consultation or input from the O'odham continued throughout the generations leaving the Nation with a modern-day border security crisis that has caused shocking devastation of the Nation's

lands and resources. The genesis of this crisis stems principally from the development and implementation of the U.S. government's border policy in the last decade. Again, without the benefit of consulting with the Nation, federal border security policy was developed focusing on closing down what were considered to be key points of entry along the U.S. southern border. This policy was implemented by extensively increasing manpower and resources at ports of entry and located at popular entry points such as San Diego (CA), Yuma (AZ), and El Paso (TX). Rather than preventing illegal immigration into America, this policy created a funnel effect causing the flow of undocumented immigrants, drug traffickers, and other illegal activity to shift to other less regulated spots on the border.

Due to the lack of border security resources and attention to the Nation, illegal immigration through the Reservation has become a prime avenue of choice for undocumented immigrants and drug trafficking activities traveling into the United States. This has created urgent challenges to protect against possible terrorists coming through a very vulnerable location on our Reservation and has resulted in an increase in crimes, gangs and violence. Although the Nation has neither the sufficient manpower nor the resources to adequately address this crisis, it continues to be the first line of defense in protecting America's homeland security interests in this highly volatile and dangerous region.

III. BORDER SECURITY CRISIS AND BORDER VIOLENCE ON THE TOHONO O'ODHAM NATION

The modern day consequences of the border security crisis facing the Nation are indeed devastating to our members, our lands, our culture and precious resources. While immigrant and drug trafficking have decreased on other parts of the southern border of the United States, levels have sky rocketed on the Nation causing a flood of crime, violence, chaos and environmental destruction on our Reservation.

Currently, it has been conservatively estimated that over 1,500 immigrants illegally cross daily into the United States via our Reservation. A Border Patrol spokesman recently reported that the Nation is in the "busiest corridor of illegal immigration in the [America]." Tribal members live in fear for the safety of their families and their properties. Often times, homes are broken into by those desperate for food, water and shelter. Indeed, the statistics on border violence and crime are staggering:

- In 2004 alone, 27,130 undocumented immigrants were detained and arrested crossing the border on the Nation's Reservation.
- Since October 2003, approximately 180,000 pounds of narcotics have been seized.
- When combining federal and Tribal law enforcement efforts, more than 300,000 pounds of illegal narcotics were seized on the Nation's lands in 2004.
- In 2004, TOPD officers responded to over 6,000 calls for assistance with undocumented immigrant apprehensions; Border Protection estimates over 111,000 individual apprehensions on the Nation's lands in 2004.
- Illegal narcotics seizures more than doubled in the last 4 years to over 70,000 lbs. in 2004.
- Narcotics seizures on the Reservation have included marijuana, cocaine and methamphetamine.
- In January 2006 and February 2006 alone, the Nation seized approximately 9,900 pounds of illegal drugs with an estimated street value worth $7.3 million.

In 2005, U.S. Customs and Border Protection (USCBP) apprehended 122,319 undocumented aliens (UDA), of which 7,383 were criminal aliens. A significant number of these UDAs are involved in human and or drug smuggling and an alarming number of the Nation's members have been either coerced and or voluntarily participate in this criminal activity. The social impact of these crimes has resulted in gang and domestic violence, burglaries, dysfunctional families, seven suicides in a one year period, and an increase

in social disorder placing enormous demands on the resources of the Nation.

Recent activities along the border clearly demonstrate an increase in drug smuggling and reported sightings of what appears to be a Mexican military at the southern edge of the border and attacks against drug "back packers" have increased. On February 6, 2006, a Tohono O'odham Nation Tribal Police responded to a village approximately 28 miles north of the International Border where a Mexican National Individual had been murdered execution style with a gunshot to his head and several shots to his torso. The murder was witnessed by the victim's brother who had fled on foot and called for help at a nearby residence. The location of the incident occurred within yards of a home where children and elders were at and later discovered to be a high narcotics traffic area. Further investigation was conducted by Tohono O'odham Nation Tribal Police, USCBP and the FBI. The victim and at least five other Mexican Nationals were believed to be marijuana backpackers, the suspect shooter was believed to be a Mexican National and attempting to steal the narcotics from the backpackers. As of today, the suspect and accomplice have not been located.

Other problems of violence and of national concern have also occurred recently on the Reservation. On February 10, 2006 a husband and wife tribal members were out gathering wood for cooking in the desert near their village when they were approached by an individual Mexican national male asking for food and water. The individual then pulled a handgun out of his waistband and pointed it at both victims stating he was taking their 1981 ford pick up truck and was going to leave it in Mexico. The two Tribal members were left stranded out in the desert for a period of time until they walked back to the village and reported the incident to Tribal Police.

On February 24, 2006, the Tohono O'odham Nation Tribal Police assisted USCBP agents at the home of a tribal member in the village of Sells, the capital of the TON. Subsequently, an Iraqi national was removed from that same home after it was discovered that the individual had lived at the home undetected for several months. The individual was apprehended by Customs and Border Protection agents. This incident further emphasizes our need to have an effective intelligence component for our operations.

Recent intelligence sharing of information between the Nation and USCBP has revealed that they are starting to see an increase of border-related activity. Such activity includes an increase in the amount of undocumented alien foot traffic, narcotics smuggling and vehicular traffic, abandoned vehicles, and stolen vehicle recoveries within the Tohono O'odham Nation. all of which directly impact the every day lives of the Tohono O'odham Nation. The increase in problems have forced the Tohono O'odham Police Department (TOPD), a seventy-one (71) member police force, to address the unrelenting and increased traffic of undocumented immigrants and drug traffickers who cross our border into America and related problems they create.

IV. ADDRESSING BORDER VIOLENCE THROUGH INCREASED SECURITY

TOPD provides primary border security law enforcement services in addition to public safety within the Nation itself. There are at least 160 known illegal crossing sites along the Nation's 75-mile shared border with Mexico, in 36 locations, and there are no barriers at all. Thus, TOPD Officers travel in excess of 200 miles per shift or a yearly total of 48,000 miles. On average, each TOPD officer spends 60% of his or her time working on border related issues, decreasing the amount of time spent on public safety and threatening not only our members but threatening the safety of the United States as well.

Daily confrontations with UDAs require the Nation's Police Officers to possess weaponry and protective equipment to ensure the safety of their own lives as well as the safety of the tribal community. TOPD is

the first in line to confront these individuals, which often include criminals and possible terrorists. In addition to apprehending UDAs, TOPD officers investigate crimes committed by UDAs, including homicides and unattended deaths. In 2005 alone, TOPD investigated 62 deaths.

In an effort to combat the increase of border security issues and border violence, TOPD has increased efforts and expended scarce resources to reduce crime on the Nation to improve the quality of life for its residents and visitors. The Nation has sustained a loss of millions of dollars annually to needed manpower, increased public safety, health care, sanitation, theft and destruction of our property and lands from the relentless flow of illegal immigration. Equally devastating is the adverse impact on our cultural resources and traditions as our Tribal elders no longer gather ceremonial plants in the desert for fear of their safety. For example:

- In 2003, sixty-nine people died on the Reservation crossing the border, leaving the Nation to pay for the burial and related costs. The Nation pays for autopsy costs at $1,400.00 per body out of tribal police funds.
- The Nation loses approximately $2 million annually from its allocation of Indian Health Care funding due to emergency health care treatment of undocumented immigrants taken to our health clinic.
- The Nation is forced to address the 6 tons of trash a day that is littered on the Nation's Reservation by fleeing undocumented immigrants. This predicament has caused serious environmental problems and contributes to the 113 open pit dumps on the Nation's Reservation that need to be cleaned up.

Homeland Security is clearly a federal responsibility. However, TOP has stretched its resources to the limit. To date, the Nation has spent more than $10 million dollars in tribal resources on Homeland Security issues and now spends over $3 million annually, over half the TOPD budget, in direct response to border related incidents. Despite the Nation's position on the front line of this crisis, we do not receive any funding from the federal government.

V. INCREASED BORDER SECURITY COSTS ARE IMPACTING OTHER PROGRAMS WITHIN THE NATION

Many other areas on the Nation, such as our limited heath care clinic and ambulance services, have been similarly negatively affected by the increased homeland security expenses. Overall, it is estimated that the Nation expends an additional $4 million of its tribal resources annually on services related to border issues for a total of $7 million. Part of the expenditure relates to health care and environmental clean up services. When the Nation pays for federal responsibilities, we are unable to address much needed education, health care, housing, roads, infrastructure issues, to name a few. Below are a couple of key examples.

- In 2003, the Indian Health Service (IHS) Sells Service Unit spent $500,000.00 on emergency health care services to undocumented immigrants, for example, for those at risk of dying from dehydration. These funds are not reimbursed to IHS and result in the inability of certain tribal members to receive health care services that are allocated for their benefit.
- The Nation spends millions of dollars a year to pay for the 6 tons of trash per day left by undocumented immigrants and the Nation is faced with cleaning up the 113 open pit dumps on the Reservation.
- 758 homes on the Reservation (20% of all homes on the Reservation) are without potable water and 1,393 (38% of all homes) are without a sewer or water system. Many of the residents at these

homes use either hand-dug or agricultural wells for drinking water and are exposed to contaminants such as fecal coliform, arsenic and fluoride in excess of the federal Safe Drinking Water Act standards. The total need to construct suitable drinking water and waste water systems for these homes is estimated at $24.4 million.

The Nation has been forced to deal with homeland security and border issues because we must protect our lands and tribal members. The Nation's efforts are complemented by the USCBP, which has increased its presence on our lands. However, this is not without concern over reports that USCBP is harassing tribal members, creating unnecessary roads, and slow in the implementation of their duties to reach the level of trust required in developing a partnership with the Nation.

TOPD is also assisted by Tribal Rangers, whose primary duties are to monitor the undeveloped areas of the Nation. Because the Rangers often confront UDAs, it has become necessary to enhance the Rangers' ability to formally assist TOPD Officers. This will enable TOPD Officers to handle other growing problems of human and drug smuggling and the accompanying crimes, gangs and youth violence. However, the Nation needs support for equipment and training to assist in the development or enhancement of the Tribal Ranger program. By supporting this program, Tribal Rangers will be able to provide more manpower resources to law enforcement and strengthen services to the community and surrounding areas.

VI. THE TOHONO O'ODHAM NATION NEEDS FUNDING TO ADDRESS BORDER VIOLENCE AND BORDER SECURITY NEEDS.

We are thankful for the support from the Border Patrol and the Tribal Ranger program. However, the financial need is overwhelming and for the most part, the Nation has not received any significant federal funding to address our law enforcement/border security activities, notwithstanding 9-11. Therefore, the Nation respectfully assistance from the Committee to ensure that the Nation is consulted and an active partner in the development and implementation of federal border security initiatives headed up by the Department of Homeland Security (DHS). The Nation also seeks the Committee's support in securing legislative reform to authorize the direct funding of funding and other resources to support our efforts in providing homeland and border security for America.

Under the DHS organic legislation, Indian Nations are not eligible to obtain direct funding for homeland security purposes. This barrier is particularly unfair to the Nation given our unique circumstances in protecting the 75-mile international border with Mexico on our Reservation and the increase in crime and violence as a result of the border issues. The lack of consultation and lack of access to direct funding has strained the Nation's Government-to-Government relationship with the United States placing us in a difficult and untenable position of having to react to policy decisions as opposed to proactively working together in a unified fashion with the proper respect accorded to the Nation's sovereign stat

As explained above, the Nation is spending approximately $3 million annually to directly address these border security related needs and an additional $4 million related to the border security crisis. Our police department has stretched its resources beyond to provide border security, our health care dollars are siphoned to pay for emergency health care for undocumented immigrants, and our lands are littered with tons of garbage daily creating disastrous environmental and public health damage. The Nation has an identified a compelling and urgent need for more funds to assist us in meeting these challenges. Therefore, the Nation respectfully requests the Committee's support and assistance in securing funding in the FY 2007 Homeland Security Appropriation bill.

In addition, the Arizona Department of Public Safety (DPS) currently has a significant backlog of cases from the Nation, which ultimately impacts the Nation and TOPD. The Nation submitted 58 cases to DPS in January 2006, of which 34 cases have been completed (analyzed, tested and processed) and returned back to TOPD. In February 2006, the Nation submitted 54 cases to DPS and 32 were completed. However, that leaves 43 back logged cases. The total number of TOPD cases and related evidence submitted to DPS is significant in comparison to other Indian Country Law Enforcement Agencies as well as Federal counterparts and TOPD is second only to the Navajo Nation in submitting cases to DPS. The Nation is concerned that the backlog will negatively impact TOPD efforts to address crime. In addition, the Nation believes that DPS should be communicating directly with Indian Country Chiefs of Police and Tribal Officials on this matter rather than BIA Law Enforcement. TOPD has a very well established evidence management system administered by a full time Evidence Technician and is currently identifying funding to add additional staff to support that function.

Funding will assist the Nation with our current efforts and allow us to enhance our training, planning, equipment and related border security efforts to keep people safe from the violence that often breaks out as a result of border crossings.

VI. CONCLUSION

In closing, on behalf of the Tohono O'odham Nation, I appreciate the opportunity to present this statement to the Committee and respectfully request the Committee's favorable consideration of the Nation's requests. If you have any questions, please do not hesitate to contact me at (520) 383-2028, or your staff can contact our legal counsel in Washington D.C., Shenan Atcitty at (202) 457-7128. Thank you.

Vivian Juan-Saunders,
Chairwoman

Ned Norris, Jr
Vice-Chairman

OFFICE OF THE CHAIRWOMAN
& VICE CHAIRMAN
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March 14, 2006

Hon. Jon Kyl, Chair
Subcommittee on Terrorism, Technology
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U.S. Senate
730 Senate Hart Building
Washington, D.C. 20510

Hon. Dianne Feinstein, Ranking Member
Subcommittee on Terrorism, Technology
and Homeland Security
U.S. Senate
331 Senate Hart Building
Washington, D.C. 20510

Hon. John Cornyn, Chair
Subcommittee on Immigration, Border
Security and Citizenship
U.S. Senate
517 Senate Hart Building
Washington, D.C. 20510

Hon. Edward Kennedy, Ranking Member
Subcommittee on Immigration, Border
Security and Citizenship
U.S. Senate
317 Senate Russell Building
Washington, D.C. 20510

Re: March 1, 2006 Joint Subcommittee Border Violence Hearing

Dear Chairmen and Ranking Members:

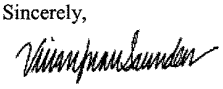
The Tohono O'odham Nation ("Nation") of Arizona is a federally recognized Indian tribe that has unique border security challenges that derive from the 75-mile stretch of international border that the Nation shares with Mexico. As a result, the Nation has a direct interest in the subcommittees' investigation of border violence problems.

On behalf of the Nation, I am submitting the attached written testimony to supplement the record on the subcommittee's recent joint hearing, "Federal Strategies to End Border Violence." The Nation requests that the subcommittees consider the Nation's interests in further investigations on ending border violence. The Nation faces the same, if not more, problems expressed by local and county sheriffs during the hearing. Furthermore, the Nation is aware of statements made at

the joint hearing regarding the positive efforts of the Border Patrol in increasing the number of agents patrolling the Nation's border and the drop in arrests, as well an increase in Tucson sector funding that will provide for a drive-through barrier along the Nation's border. Although the Nation appreciates such efforts, I would like to remind the subcommittees that the Nation still faces an overwhelming need to further secure its border and the pressing need for resources from Congress to do so, as detailed in the written testimony submitted herewith.

If you have any questions regarding the written testimony, please contact our Washington, D.C. counsel, Shenan Atcitty, at (202) 457-7128. Thank you for your consideration of our comments.

Sincerely,



Vivian Juan-Saunders
Chairwoman
TOHONO O'ODHAM NATION

Enclosure

cc: Subcommittee on Terrorism, Technology, and Homeland Security
Subcommittee on Immigration, Border Security and Citizenship

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