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THE ROLES AND MISSIONS OF THE NATIONAL GUARD IN SUPPORT OF THE BUREAU OF CUSTOMS AND BORDER PROTECTION

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

MAY 17, 2006

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THE ROLES AND MISSIONS OF THE NATIONAL GUARD IN SUPPORT OF THE BUREAU OF CUSTOMS AND BORDER PROTECTION

WEDNESDAY, MAY 17, 2006

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 4:10 p.m. in room SH–216, Hart Senate Office Building, Senator John Warner (chairman) presiding.

Committee members present: Senators Warner, Collins, Ensign, Talent, Thune, Byrd, Reed, Akaka, E. Benjamin Nelson, Dayton, and Clinton.

Committee staff members present: Charles S. Abell, staff director; Leah C. Brewer, nominations and hearings clerk; and John H. Quirk V, security clerk.

Majority staff members present: Regina A. Dubey, professional staff member; Ambrose R. Hock, professional staff member; Gregory T. Kiley, professional staff member; Sandra E. Luff, professional staff member; Derek J. Maurer, professional staff member; Elaine A. McCusker, professional staff member; David M. Morriss, counsel; Lucian L. Niemeyer, professional staff member; Lynn F. Rusten, professional staff member; Sean G. Stackley, professional staff member; Scott W. Stucky, general counsel; and Kristine L. Svinicki, professional staff member.

Minority staff members present: Richard D. DeBobes, Democratic staff director; Evelyn N. Farkas, professional staff member; Creighton Greene, professional staff member; Gerald J. Leeling, minority counsel; Peter K. Levine, minority counsel; and Michael J. McCord, professional staff member.

Staff assistants present: Jessica L. Kingston, Benjamin L. Rubin, Jill L. Simodejka, and Pendred K. Wilson.

Committee members' assistants present: Arch Galloway II, assistant to Senator Sessions; Mackenzie M. Eaglen, assistant to Senator Collins; D'Arcy Grisier, assistant to Senator Ensign; Lindsey R. Neas, assistant to Senator Talent; Clyde A. Taylor IV, assistant to Senator Chambliss; Greg Riels, assistant to Senator Dole; Russell J. Thomasson, assistant to Senator Cornyn; Christina Evans and Erik Raven, assistants to Senator Byrd; Elizabeth King and Neil D. Campbell, assistants to Senator Reed; Darcie Tokioka, assistant to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; Eric Pierce, assistant to Senator Ben Nelson; Kimberly

Jackson, assistant to Senator Dayton; and Andrew Shapiro, assistant to Senator Clinton.

OPENING STATEMENT OF SENATOR JOHN WARNER, CHAIRMAN

Chairman WARNER. Good afternoon, everyone.

I'll place my complete opening statement in the record, but I would want to first acknowledge the most important fact here, that today is your birthday, Senator Nelson. You may have an extra minute or two. [Laughter.]

Senator Collins, I thank you for your cooperation. The Department of Homeland Security (DHS), over which your committee has jurisdiction—has provided us a witness because there is a joint tasking, at the present time, between the Department of Defense (DOD) and the DHS. Perhaps that chain of command and tasking can be dealt with, Mr. Secretary in your testimony.

The President, I think, has made a bold and a correct decision—and I support the President in beginning to utilize one of America's most valuable assets—its National Guard—which goes back to the very origins of this republic, to come to the forefront to help their fellow Americans provide a greater measure of security on their borders. We're anxious to receive such details as we can from our distinguished panel of witnesses.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT BY SENATOR JOHN WARNER

Good afternoon, the Senate Armed Services Committee meets today to receive testimony regarding the roles and missions of National Guard Forces in support of civil authorities.

Specifically, we meet to discuss the recent announcement by President Bush that National Guard units will be deployed, on a temporary basis—in support of the Department of Homeland Security, Bureau of Customs and Border Protection.

We welcome our distinguished witnesses:

- The Honorable Paul McHale, Assistant Secretary of Defense for Homeland Defense;
- Chief David V. Aguilar, Chief of U.S. Border Patrol, U.S. Customs and Border Protection;
- Lieutenant General James T. Conway, Director of Operations, J–3, the Joint Staff; and,
- Lieutenant General Steven Blum, Chief, National Guard Bureau.

Over the past several weeks, there has been considerable debate within Congress, and throughout our Nation, regarding how best to stem the flow of illegal immigrants across our borders.

On Monday, May 15, our President addressed the Nation, and proposed to employ the National Guard in support of the Bureau of Customs and Border Protection, to assist them with their border security mission.

Based on the initial reports and meetings, I believe this proposal has considerable merit.

However, many unanswered questions remain.

Gentlemen, we seek your insight, as well as your own personal assessments, regarding the following:

- Under what statutory authority units and members of the National Guard would be deployed?
- What is the duration of this deployment?
- When do you expect the first units will be deployed?
- How will these deployments be funded?
- How will unity of command, as well as, unity of effort be accomplished? And,
- What are the rules for "the use of force" for these units?

We have much ground to cover on this very important topic.

Again, we welcome our witnesses this afternoon and look forward to their testimony.

Chairman WARNER. Senator Nelson, do you have an opening statement?

Senator BEN NELSON. I do, Mr. Chairman.

I have a statement that Senator Levin has asked me to introduce, which I will insert into the record at this time.

[The prepared statement of Senator Levin follows:]

PREPARED STATEMENT BY SENATOR CARL LEVIN

Let me join the Chairman in welcoming Secretary McHale, General Conway, General Blum, and Chief Aguilar. Let me thank the Chairman for holding this hearing. Given the demands being placed on the National Guard by operations in Iraq, Afghanistan, the global war on terrorism, and the need to be prepared to respond to natural disasters in the hurricane and fire seasons—which are upon us—it is incumbent upon this committee to examine the implications of the President's border security proposal for the U.S. military.

On Monday night, President Bush announced a plan to address illegal immigration, which included using the National Guard for a transitional period of time to strengthen border security. He stated that, starting next month, and over the course of the next year, up to 6,000 National Guard personnel will be helping border security and law enforcement officials secure the border with Mexico. In a briefing yesterday, Secretary McHale indicated that it is also possible that some—title 10—or Federal status—military personnel might also be assigned to this border security mission.

While chapter 18 of title 10 of the U.S.C. provides authority for military personnel to support law enforcement agencies under certain circumstances, and Congress has since 1989 provided temporary authority for the conduct of counterdrug activities in support of law enforcement agencies and, most recently, for counterterrorism activities, this new border security role does not appear to be specifically authorized by U.S. law. I hope Secretary McHale can tell us about the specific legal authority for this mission.

The President's plan has implications for our military, for the States, and for our international relations. We need to know more about how units and individuals will be affected. Some of the tasks that Secretary McHale outlined in briefings yesterday—such as engineering and aerial reconnaissance—involve so-called "high demand, low density" assets that are sorely needed in Iraq, Afghanistan, and for counterterrorist and counterdrug missions. Moreover, on reconnaissance, the Government Accountability Office's (GAO) report on Hurricane Katrina and lessons for the military that was just released on Monday, states that these same reconnaissance capabilities need to be better integrated into disaster support missions of the U.S. military. Do we have enough assets to meet all of the existing warfighting requirements, disaster relief planning and operational requirements, and now this new border support mission?

Our staff was informed that National Guard personnel returning from Iraq and Afghanistan would not be assigned to the border support mission for at least 6 months. Given that, will there be sufficient National Guard personnel to rotate through the border patrol mission for the next year at the levels envisioned by the plan? Also, what will be the readiness impact on the National Guard units who have not rotated through Iraq or Afghanistan, but do participate in the border security mission? For some military specializations, this border security mission will not provide them with training to maintain their warfighting skills. Moreover, since our staff was advised that the National Guard units would be acquiring training that equates to their mission essential tasks, would that exclude the participation of units such as most infantry and artillery and the like, whose skills do not appear to match up with what might be helpful to the border patrol?

I also hope to hear more about whether this plan has been coordinated with the governors of the southern States that would be receiving personnel and the States that would be supplying National Guard units and individuals, and how it will be executed in coordination with them. Given the problems experienced in coordinating large-scale, multi-State National Guard movements to assist the Gulf States after Hurricane Katrina, can we be confident that the Northern Command and the National Guard are now prepared to manage the deployments associated with responding to catastrophic natural disasters, and this new border security mission?

On the international front, the Mexican government stated yesterday that it will file lawsuits in U.S. courts if U.S. troops directly engage in detaining migrants. We have been told that this plan specifically prohibits the National Guard from undertaking any law enforcement missions, but I would like to hear more about where the lines will be drawn. Exactly what rules will apply to the use of force? In addition, it appears that the Mexican government was simply informed of this plan, rather than consulted or coordinated with. I am interested in hearing about whether there will be any coordination with Mexican law enforcement and military officials in the execution of U.S. missions.

Canadian officials have also expressed concern about the impact on the northern border. I would like to know whether we consulted with the Canadians on this initiative and what the impact will be on the northern border.

Finally, of course, we need to know what this will cost for the Department of Defense and how it will be paid for.

Thank you.

Senator BEN NELSON. Let me say that the 8 years that I was Governor of Nebraska, with an Adjutant General of extraordinary capabilities, Major General Stanley M. Heng, some of the proudest and most important moments that I had during those 8 years were when I had to have the support of the National Guard. On each and every occasion, when it was necessary, unfortunately, to ask for their help, they responded in a way—and I might say that General Heng has been experiencing some less-than-great health lately, and I know our thoughts and our prayers and best wishes go to him.

Let me join in welcoming Secretary McHale, General Conway, and General Blum. Thank you, Mr. Chairman, for holding this hearing, and in such a timely manner, given the demands placed on the National Guard by operations in Iraq, Afghanistan, the global war on terrorism, and the need to be prepared to respond to natural disasters in the hurricane and fire seasons, which are, unfortunately, upon us.

It's incumbent upon this committee to examine the implications of the President's border security proposal for the U.S. military, even though many may be in total support of that effort.

On Monday night, President Bush announced a plan to address illegal immigration, which included using the National Guard for a transitional period of time to strengthen border security. He stated that, starting next month and over the course of the next year, up to 6,000 National Guard personnel will be helping border security and law enforcement officials secure the border with Mexico. In a briefing yesterday, Secretary McHale indicated that it is also possible that some title 10 or Federal status military personnel might also be assigned to this border security mission.

While chapter 18 of title 10 of the U.S. Code provides authority for military personnel to support law enforcement agencies under certain circumstances, and Congress has, since 1989, provided temporary authority for the conduct of counterdrug activities in support of law enforcement agencies, and most recently, for counterterrorism activities, this new border security role doesn't appear to be specifically authorized by U.S. law. I hope Secretary McHale can tell us about the specific legal authority for this particular mission.

The President's plan has implications for our military, for our States, and for our international relations. We need to know more about how units and individuals will be affected. Some of the tasks that Secretary McHale outlined in briefings yesterday, such as engineering and aerial reconnaissance, involve so-called high-demand,

low-density assets that are sorely needed in Iraq, Afghanistan, and for counterterrorism and counterdrug missions. Moreover, on reconnaissance, the Government Accountability Office's (GAO) report on Hurricane Katrina and lessons for the military that was just released on Monday, states that these same reconnaissance capabilities need to be better integrated into disaster support missions of the U.S. military. So, do we have enough assets to meet all of the existing warfighting requirements, disaster relief planning, and operational requirements, and now this new border support mission? Those are questions that we'll have to address today.

Our staff was further informed that National Guard personnel returning from Iraq and Afghanistan wouldn't be assigned to the border support mission for at least 6 months. Given that, will there be sufficient National Guard personnel to rotate through the Border Patrol mission for the next year at the levels envisioned by the plan? Also, what will the readiness be for the impact on the National Guard units who have not yet rotated through Iraq or Afghanistan, but do participate in the border security mission? For some military specializations, this border security mission will not provide them with training to maintaining their warfighting skills. Moreover, since our staff was advised that the National Guard units would be acquiring training that equates to their mission-essential tasks, would that exclude the participation of units such as most infantry and artillery and the like whose skills do not appear to match up with what might be helpful to the Border Patrol?

I also hope to hear more about whether this plan has been coordinated with the Governors of the southern States that would be receiving personnel and the States that would be supplying National Guard units and individuals, and how it will be executed in coordination with them. Given the problems experienced at coordinating large-scale multi-State National Guard movements to assist the Gulf States after Hurricane Katrina, can we be confident that the Northern Command (NORTHCOM) and the National Guard are now prepared to manage the deployments associated with responding to catastrophic natural disasters and this new border security mission, and do so at the same time?

On the international front, finally, the Mexican government stated yesterday that it would file lawsuits in U.S. courts if U.S. troops directly engage in detaining migrants. We've been told that this plan specifically prohibits the National Guard from undertaking any law enforcement missions, but I'd like to hear more about where the lines will be drawn, exactly what rules will apply to the use of force. In addition, it appears that the Mexican government was simply informed of this plan, rather than consulted or coordinated with, so I'm interested in hearing about whether there will be any coordination with Mexican law enforcement and military officials in the execution of U.S. missions.

Finally, Canadian officials have also expressed concern about the impact on the northern border. So, we'd like to know whether we've consulted with the Canadians on this initiative and what will the impact be on the northern border?

Finally, as a matter of finances——

Chairman WARNER. Whoa, that's three "finallys."

Senator BEN NELSON. Three finallys. We need to know what it's going to cost the DOD, and how, ultimately, we'll pay for it.

Thank you, Mr. Chairman.

Chairman WARNER. The staff did quite a job. I'll remind them next time. [Laughter.]

I put a statement in the record. I have a similar litany of questions, which I thought I'd reserve. But I do want to include, what are the rules for the use of force by our forces?

Senator Byrd, did you have a comment you'd like to make?

Senator BYRD. I could make it now or later.

Chairman WARNER. Why don't we wait. Anyone else wish to make opening comments?

Senator BYRD. All right.

Chairman WARNER. If not, then, Secretary McHale, would you please lead off?

STATEMENT OF HON. PAUL MCHALE, ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE

Mr. MCHALE. Yes, sir.

Chairman Warner, Senator Nelson, Senator Byrd, Senator Reed, Senator Dayton, Senator Collins, Senator Ensign, and distinguished members of the committee, that was quite a litany of questions presented by Senator Nelson. In the interest of moving to those questions at the earliest opportunity, although I don't have a formal statement—we were not asked to present one to the committee—I have a very brief opening statement that may frame some of the issues that were referenced in the questions raised by Senator Nelson, and then, upon the conclusion of the testimony presented initially by my colleagues, we can move to those questions and others.

The task of maintaining the integrity of U.S. international borders is assigned, by law, to the DHS. For that reason, the deployment of military forces along the southwest border will be in support of the DHS.

The military forces, as noted by a number of the Senators, will be drawn largely from the National Guard. All National Guard Forces will be under the command and control of the Governor in whose State the forces are operating.

The initial commitment of up to 6,000 military forces, on a rotational basis for up to 12 months, will be the first phase of the operation. Military support will not exceed 3,000 personnel during a possible second year of deployments.

The DOD will pay the costs, on a reimbursable basis, and perhaps we can get into that in some detail in response to Senator Nelson's question.

The missions will include, for example, surveillance and reconnaissance, engineering support, transportation support, logistics support, vehicle dismantling, medical support, barrier and infrastructure construction, roadbuilding, and language support.

The DOD will play no role in the direct apprehension, custodial care, or security associated with those who are detained by civilian law enforcement authorities. Law enforcement along the border will remain a civilian function.

The National Guard missions will be substantially similar to the annual training missions executed as part of the counterdrug program along the southwest border for the past 2 decades. The difference is that, in size of the force and the commitment of resources, the scope will be far greater than anything we have done in the past.

In short, we will be doing essentially what we have been doing for 20 years, but with many more people, in many more locations, with significantly greater resources.

The missions assigned to our soldiers and airmen will be directly related to the military skills normally associated with their warfighting and disaster response missions. In addition, DOD and DHS will use civilian contractors, when appropriate.

The National Guard deployment along the southwest border in support of the DHS is an important, but temporary, bridge to improved civilian security capabilities. We will draw down our forces, consistent with ongoing mission requirements.

The men and women of the DOD will work diligently and professionally to support the DHS, improving our land border security while providing excellent training to our soldiers and airmen.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you very much.

General Conway?

STATEMENT OF LT. GEN. JAMES T. CONWAY, USMC, DIRECTOR OF OPERATIONS, J–3, THE JOINT STAFF

General CONWAY. Thank you, Mr. Chairman and members of the committee, first of all, for your continued support to our great young men and women in uniform, and second, for the opportunity to be here today and to offer a Joint Staff perspective on this pending deployment of our National Guard Forces to the border.

Simply stated and upfront, the Joint Staff perspective does not differ at all from that of Secretary McHale or what General Blum will speak to you about. There's no daylight in our positions. We've been engaged in the planning from the outset, and we're fairly well-convinced that, with approved funding request, that we will make these deployments successful, and ultimately, improve the security along our borders.

Importantly, and partially, sir, to your question, Senator Nelson, we have seen a decreasing number of National Guard and Reserve in our recent deployment to—rotations to Iraq and to Afghanistan. Therefore, I'm confident that these operations on the border will not lessen our ability to continue to prosecute this global war on terrorism.

There's still a lot of planning to do. We're fairly early in the process, but we look forward to the planning with our DOD and DHS counterparts, again, with ultimate confidence that the mission will be a success.

Thank you for the opportunity, sir, and I look forward to your questions.

Chairman WARNER. Thank you very much, General.

General Blum.

STATEMENT OF LTG H. STEVEN BLUM, USA, CHIEF, NATIONAL GUARD BUREAU

General BLUM. Chairman Warner, Senator Nelson, happy birthday.

Senator BEN NELSON. Thank you.

General BLUM. Distinguished members of the committee, it's an honor to be before you today to talk about the President's southwest border support mission.

I will keep my remarks short, because most of you are very familiar with the National Guard and what we're doing. Secretary McHale and General Conway have outlined, very clearly, the concept of operation. I think it is probably useful to remind members that we are building on a long-lasting, time-proving, effective model that we have used for nearly 20 years on the southwest border. We are going to leverage all of the relationships and experience that we've gained since 1989 in the southwest border of our Nation with support of the civilian law enforcement agencies, to include Border Patrol, Immigration's Control and Enforcement, as well as the Drug Enforcement Agency (DEA) and the Federal Bureau of Investigation (FBI).

The National Guard is superbly suited for this mission, in my view, because of these relationships, and because of the fact that the forces, while they will be paid for by the Federal Government, and the resources will be provided by the Federal Government, they will remain under the control of the Governors. That is good because the Governors are very concerned with what's happening within their State and the border with Mexico.

At the same time, their National Guard Forces, while federally supported, will be supporting a Federal law enforcement agency for the DHS. So, in my view, it's the perfect selection of a force that's going to have to walk a balance between shared authorities and responsibilities between the State and the Federal Government. The resources are provided to the Governors. The flexibility is extended to the Governors, yet the support is rendered to Chief Aguilar for the Border Patrol in that area.

As far as the Mexican side of the border, the States of California, New Mexico, Arizona, and Texas all have long-lasting existing relationships between the State agencies and their National Guard and the military and law enforcement forces in Mexico. There's even some relationships that can be leveraged between the Governors of the States and the governors of the states of Mexico.

So, for all of these reasons, I am comfortable with the mission. The resources have been identified that we will need, and I'm comfortable they will be provided. I am absolutely certain that the National Guard is up to the challenge to do this, because it is nothing new for us. This is not a new mission; it's just an existing mission that will be done at a much grander scale than we have done in the past.

Sir, I await your questions.

Chairman WARNER. Chief Aguilar?

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

Mr. AGUILAR. Chairman Warner, good afternoon distinguished members. It's a great opportunity for me to be here, to be able to speak to you and answer any questions that you might have relative to this undertaking.

This undertaking is a continuing buildup of our partnership that has existed for over 20 years with the DOD and with the National Guard. That partnership has been a tremendous asset to the protection of this country.

Off to my right here, I will point out, very quickly, the type of help that the National Guard has been involved with in the past in supporting us: building tactical infrastructure such as bollard fencing, low water crossings in areas that are very inaccessible to the Border Patrol. Accessibility and mobility to our border are absolutely critical in augmenting our capacity and our capabilities as we work towards protecting our border.

As most of you have heard, our operations now are centered very much in very rural and remote areas of our country. The capabilities, the equipment, and the capacity that the National Guard will be bringing to our support will be a tremendous force multiplier. I, again, just want to revisit that the type of work that they will be doing for us is engineering. They will be playing the part of eyes and ears for our enforcement personnel, thereby building up a tremendous capacity even for the Border Patrol Agency that we now have currently on the ground.

Now, this is an interim, it is a bridge, towards the buildup of the 6,000 Border Patrol agents, between the beginning of fiscal year 2007 and the end of calendar year 2008. So, there will be a melding and a transition, if you will, of the resourcing on the borders between the National Guard augmentation that's going to start and the actual permanent resourcing of the Border Patrol assets that are being continued to build through the end of calendar year 2008.

So, again, I thank the panel here for the opportunity, and I will close out my oral statement just by saying that we are very proud of our past partnership with DOD and the National Guard, and we are very much looking forward to our continued joint efforts in continuing to work to protect our country.

Chairman WARNER. Thank you very much.

We'll go into a round of 6 minutes each, and we'll invite our distinguished colleague, Senator Craig, to join us in this.

Senator Craig was among the very first who recognized the value of this option and spoke frequently about it, and, indeed, did counsel the President on it. We thank you for joining us.

I invited other Members of the Senate on border States, so they may appear from time to time.

I'll go right into the questions.

You said, very clearly, that the role and mission of the National Guard would not be law enforcement, even though under the law of Posse Comitatus, they could perform law enforcement. Then it was stated clearly that these troops will be under the command and control with respect to Governors. The Governors might take a different view as to whether or not they wish to have their forces

participate in some measure of law enforcement. So, I think we'd better get it clear, if they have command and control, how can we take away from them one of the major features of that responsibility of guardsmen?

Mr. MCHALE. Sir, we can only do it by agreement with the Governors. They have to voluntarily relinquish that power.

Chairman WARNER. All right.

Mr. MCHALE. It's a prerequisite for Federal funding under title 32. Your observation is correct. In title 32, these forces could be used for law enforcement. A policy decision has been made not to use our National Guard for law enforcement. In order to receive the Federal funding for title 32, in a memorandum of understanding, a draft of which is being prepared now, the Governors would have to agree to use these forces in support of Customs and Border Protection, and not for law enforcement.

Chairman WARNER. Is that generally understood, with all of our witnesses? General Conway? General Blum?

General BLUM. Yes, sir. Because it's federally funded, that means what we do with those Federal funds, even while it is under the command and control of the Governor, must be vetted and approved by the Joint Director of Military Support (JDOMS) or the DOD. So, the Governors, as long as they use their forces operating——

Chairman WARNER. You giveth with one hand, and taketh away with the other, I think.

General BLUM. Yes, sir. Now, if the——

Mr. MCHALE. Take a little bit away with the other.

General BLUM. If the Governor——

Mr. MCHALE. If it's significant——

General BLUM. If the Governor wants to——

Chairman WARNER. I'm not arguing the point. I want to lay it out clearly.

Mr. MCHALE. Yes, sir.

General BLUM. You have it correct, Mr. Chairman.

Chairman WARNER. Senator Collins' committee, of which I am a member, went into the command-and-control structure in Hurricane Katrina and other situations, and there were clearly some problems there.

Second, Chief, as you well know, better than all of us, there's a variation in that border. There are variations in the terrain, all types of situations there. One Governor might look at how best to enforce that border in his or her perspective, another may have a different view. Supposing two Governors are of different views as to how this augmented border patrol by the National Guard should perform in their respective States?

Mr. AGUILAR. One of the things that I think we need to go back on, Mr. Chairman, is the history. We have consistently operated under these sets of rules that we're going to continue to operate under. That has never occurred. Should that occur, though, there is an understanding that the Customs and Border Protection will basically build the strategy and the implementation plan as to what will be followed in building the tactical infrastructure.

Now, one of the things that we have done is, each one of the Governors, and each one of their State homeland security directors, has

been briefed, in prior instances, on our plan, on our strategy, on our requirements.

Chairman WARNER. That's very helpful.

There's concern across America for the welfare of the National Guard and their families. They have performed brilliantly in operations—and still are—in Afghanistan and Iraq. There's concern that they're stretched. I use that word simply because it's the word in the discussions all across America around the dinner table.

Mr. MCHALE. Yes, sir.

Chairman WARNER. So, I want to first ask General Conway, then General Blum, are you satisfied that this will not be overtasking or stretching the National Guard?

General CONWAY. Sir, I am, for a couple of different reasons. One, the National Guard and the Reserve——

Chairman WARNER. Let me stop you—there are roughly 460,000 guardsmen. Is that correct?

General CONWAY. Yes, sir. 462,000—I think, was the figure I saw this morning.

Chairman WARNER. 462,000—and this initial cadre will amount to somewhere between 6,000 and 7,000, correct?

General BLUM. Yes, sir.

General CONWAY. Yes, sir.

Chairman WARNER. So, it's a relatively small part.

General CONWAY. Yes, sir.

Sir, from a larger picture, we have seen, as I mentioned in the opening comment, a decreasing scale regards the employment of the National Guard and the Reserve and the rotations into Iraq and Afghanistan. For 2005–2007, it was roughly 40 percent. For 2006–2008, it was 28 percent. For 2007–2009, it's going to be down to about 19 percent. So, they have served their country beautifully, and now the United States Army, with modularization, doesn't put so much of a drain on them.

Senator Nelson did comment, where there is a requirement, now persists more with the low-density/high-use types of folks, and we're going to watch closely what this deployment means in that context.

But the other thing that I would offer is that the period of time that they will be employed on the border very much is going to match up to their annual Active-Duty training requirements to begin with. This is purposefully done this way to help limit the stress on them and their families.

Chairman WARNER. Thank you.

I'm looking at that wife and two or three children around their dinner table waiting for their guardsman to get back from a deployment to Iraq or Afghanistan, and learning of this. Give us the assurance that that individual, as he comes back, has, at my understanding, at least 90 days to 6 months in which to reunite with this family and his local National Guard unit before any further deployments. As such, that individual case will not exacerbate that family and its stress on it, at this time.

Am I correct?

General BLUM. Mr. Chairman, you are absolutely correct. In no case will a returning veteran from a global war on terrorism or an extended deployment be required to be part of this mission. This

mission is designed to have great flexibility in title 32, where we can help the employer and the family use the skills of these citizen soldiers and air men and women in the same model of their normal expectations. Their 15-days annual training a year will be applied to this. Those that will be part of a duration force, or those that will be there longer, will be there with their own consent and will be volunteers.

We feel very comfortable there's enough of those out there.

Chairman WARNER. While you've been drawing initially on the guardsmen in the respective States, will those guardsmen, first, work on their border, or will they be used on other borders? Second, will you not be accessing guardsmen from the other States, all across America, much like you did in Katrina?

General BLUM. Sir, you again have it correct. The people from California will mostly be working on their own borders. Of course, they have a seam with their neighboring State. That's why the rules of engagement (ROE) and rules for the use of force (RUF) are going to be common amongst all four States and are being vetted with the attorneys general and the DOD general counsel to make sure that we don't have any contradictions in the ROE or RUF. We're going to basically use the existing ROE and RUF from the counternarcotics National Guard effort to use that as our model, because we would like to keep them exactly the same for both missions, if we possibly can.

Chairman WARNER. Last question to you, Secretary McHale. In listening to your opening statement very carefully, you said, "They'll bring a lot of resources with them." Let's talk about those resources because there's tremendous technological advancements in how to detect and provide security on a border. I think it would be wise if you shared with us a pretty full menu of what you're going to bring. For instance, you have motion detectors, you have infrared; indeed, you can utilize satellites. You have the unmanned aerial vehicles (UAVs). So, let's talk about that. That's what a lot of these guardsmen will bring with them not only the material itself, but the knowledge as to how to use it.

Mr. MCHALE. Sir, I think you made a pretty good start in listing the kinds of capabilities that we would expect to use along the southwest border. Those are the same capabilities, for the most part, that we have been using along the southwest border and on other occasions at other locations throughout the United States. Last year, we had Operation Winter Freeze along the Canadian border and upstate New York and Vermont, and used many of the same capabilities in that region at that time.

Let me just give you some examples. Because we do not engage in law enforcement either in the counternarcotics mission or in the mission that we propose, we provide support to law enforcement agents within the Border Patrol. So, a typical mission—I flew on one of these shortly after I became the Assistant Secretary, went down to the Texas border with Mexico. It was an Active-Duty unit, not a National Guard unit. It was a Marine Reserve aviation unit, helicopter unit. We went up at night. We had what's called a forward-looking infrared (FLIR) capability, a really extraordinary capability. General Conway can speak more authoritatively on it than I can. But, just as a civilian, using the right kinds of goggles with

an infrared searchlight invisible to the naked eye, you can scan vast areas of the desert and note any movement below, observe that movement, and then get on the radio or by other means of communication notify Customs and Border Protection where to interdict, with that invisible observation capability, someone illegally crossing the border. That's an example.

Chairman WARNER. Basically technologically will provide a virtual wall. Is that a correct statement?

Mr. MCHALE. I think that's a good way to describe it. I don't want to give the false impression that it would be an impenetrable wall, but certainly it is a major improvement for border security.

Chairman WARNER. Right. I think we should close one gap here, General Blum. Unfortunately, some of these people who are coming in illegally carry weapons and pose a danger, whether it's Border Patrol—the Chief can speak to that, because I—by the way, I saw you on television. I thought you handled your questions very well, Chief, in an in-depth interview.

Mr. AGUILAR. Thank you, sir.

Chairman WARNER. You addressed the fact that you had lost some men, brave men, who are down there trying to defend that border. But our guardsmen will have live ammunition in the event they have to defend themselves, is that correct?

General BLUM. Yes, sir. Everybody that is employed in this mission that would be in a mission set where their life would be threatened or we think that they could encounter danger will have the right of self-protection, and will be armed and able to do that.

Chairman WARNER. Accordingly. Thank you.

Senator Nelson.

Senator BEN NELSON. Thank you very much, Mr. Chairman.

Since I asked too many questions earlier, I'll try to limit it right now.

Chairman WARNER. Oh, no, you go ahead. It's your birthday. [Laughter.]

Senator BEN NELSON. First of all, in terms of the number of personnel that would be required, I believe you've stated, General Blum, that as many as 156,000 troops would be required, on a rotational basis, to deploy 6,000 in the first year and 3,000 in the second year, and that the approach would be to try to have as many of the National Guard troops from the States where the mission will be accomplished. If that's the case, there are about 50,000 guardsmen in those States. So, with my quick math, we're going to be taking people from other States, no matter how many we try to keep locally involved. How are we going to not be able to accomplish that?

General BLUM. Sir, that'll be through prearrangement agreements between the donor Governors and the recipient Governors. It works exceedingly well. I think you saw it in evidence in the crucible of time constraints and urgency in Hurricane Katrina. We don't have those constraints. We have the time to coordinate—precoordinate. There's great flexibility here. If there is a reason that a Governor has a capability that we desire that is not available, even at the worst case, let's say it's 160,000 citizen soldiers and airmen—because I'm going to leverage the capabilities of the Air National Guard, as well—even if that were the case, I still have

300,000 other soldiers to rotate through here. You have to remember that we regenerate our force at about 60,000 a year. So, in a 2-year period, we'll have an additional 50,000 or 60,000 trained troops to add to the inventory that we already have. I don't see this as an insurmountable challenge. I certainly don't see less than 2 percent of the force being dedicated to this mission, distracting from our ability to do hurricane relief or flood relief or generate forces overseas.

Senator BEN NELSON. What does this do to the proposal that we've considered from time to time so that somebody who signs up for the National Guard could anticipate a deployment once every 5 years, or for a multiple period of time where they wouldn't expect a deployment? What does this do to that?

General BLUM. It doesn't alter that contract in any way, shape, or form, sir. Every National Guardsman knows they have 15 days of annual training that they're going to have to perform during the year. The only difference is, they didn't know they were going to have to perform it on the southwest border. That will be a surprise for them, but probably a welcome surprise, because engineers, as you well know, having so many of them in your home State, like to do things that are enduring. They like to build something that lasts after they leave. To go to some training area and build a road and then push the dirt back over when you leave is kind of demoralizing. For them to leave enduring projects like this, actually gives them a great deal of self-satisfaction. I think they'll welcome this mission.

Senator BEN NELSON. What about the equipment shortage that we've been dealing with as a result of the equipment that's being left in Iraq and Afghanistan and the equipment shortage we're trying to figure out a way to replenish? Are we going to have the adequate equipment?

General BLUM. That's clearly a challenge, but when Chief Aguilar gives us the requirements, we will identify the equipment one time, and we'll leave it in place for the duration of the mission, so it won't require additional sets. We will put a maintenance team down there to make sure that the equipment stays operational. Then we'll just rotate the soldiers and airmen onto the equipment, rather than to incur the expense of moving the equipment for each rotation.

Senator BEN NELSON. What about the medical mission? That seems like it's a new idea. It's not something that we've heard of in conjunction with some of the other missions.

General BLUM. Anytime we put soldiers and airmen in any kind of an operational mission in any kind of numbers, we provide medical support. The medical support would be required for our own forces to maintain——

Senator BEN NELSON. For our own forces.

General BLUM.—their health and in case they're injured in the construction work or in—it is—as the chief said, it's a rural—I mean, they could get a spider bite or a tarantula bite or a snake bite, so we'll have medics there for that. The fact that there are additional medical people there is not going to be bad, either, because they can also render assistance to some of these people that are in

dire condition when they come across the terrain that you see on these maps.

Senator BEN NELSON. I'm glad you've pre-warned them about the spider bites.

General BLUM. Yes, sir.

Senator BEN NELSON. Thank you very much.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you very much.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

General Blum, some border State Governors have welcomed the prospect of National Guard troops supporting border security missions. For example, Arizona's Governor has welcomed this. But others, such as California's Governor, have expressed reservations. So, help us understand better what would happen in a State where the Governor does not want to deploy National Guard Forces? I understand that the Federal Government would bear the financial burden of that decision, but would National Guard troops from other States be sent in for border security purposes, into a State where the Governor does not want that mission assigned to the National Guard?

General BLUM. No, ma'am. You've asked a very good and difficult question. Here's my honest take on it. I've talked to all of the Adjutants General who are appointed by the Governors. So, they're fairly close to the Governors' thinking. They welcome the mission, which tells me that the Governors, once the mission is clearly explained to them and they understand the parameters to it, will probably be receptive to it. The Governors have their own prerogative. If a Governor truly did not want this mission performed in their State, then the option is there for the President and the Secretary of Defense to federalize the National Guard, and then the mission would be conducted, and then it would be without the control of the Governor of their forces. Most of the Governors were most concerned of who was going to pay for it—the Federal Government's paying for it—who's going to provide the forces—if it's going to be National Guard Forces, all of the Governors that I have had any conversation with were very concerned that they remain in charge of their forces within their State. This proposal allows both of those to occur. I think once the concept is well understood, because there's a lot of misinformation out there, because we didn't have it all put together until very recently—it is now time to make sure that the information gets out to all concerned parties—and once they see the goodness of it, I would be quite surprised if any of the Governors balked at having this activity occur in their State. All of the border State Governors are concerned that the border is secure. They are the immediate recipients of the ill effects of that nonsecure border. So, anything that we can do to help the Federal law enforcement agency—in this case, the Border Patrol and Customs—to do a better or a more effective job on the border that happens to be part of their State, I think they would welcome, especially when they don't incur the cost to do it.

Senator COLLINS. General, another issue is that the plan apparently envisions that the troops would deploy for 2 to 3 weeks at a time, as part of their annual training requirement. Do you have

concerns that you're going to be taking away from the training that normally would occur during that sustained training period, training that helps our troops be better prepared if they're deployed overseas or if they're used in a natural disaster? Aren't you taking away from vital training time?

General BLUM. I would be if we were not being selective on the skill sets that we're using for this mission. Chief Aguilar has outlined what he thinks he needs the National Guard to do, and we will match the military's skill set. For instance, if he needs medical support, we will put medical people in there. So, the training that they are doing is equally applicable to their overseas war mission as it is to their homeland defense mission or their hurricane relief mission or the support to civilian law enforcement mission. If there are communications specialists that are needed to bridge some places where there are communications gaps, that is exactly the same military communications skills. This is a rather remote area. It really represents a lot of our expeditionary locations that we operate around the world. It's a perfect training area, frankly for about three-fourths of our mission sets. So, helicopter training will not be degraded by this. As a matter of fact, I think they'll probably get more night-vision flying in this mission than they would normally, because of the airspace along the border and because of the mission-set requirement the Border Patrol has. I could go on and on with this, but I—the engineers, I already told you, normally we build things and then knock them down, because they're just done at a training area. To build something that's enduring and has an operational purpose to it, to me, is a win-win for the taxpayer. You get better military training, you have more motivation on the part of the soldiers to do this, and they know that it's important and it's going to make a difference in securing their national borders. For the National Guard not to help guard the Nation would be a little inconsistent. So, I think they can see the wisdom of this, and they'll see it as a very worthwhile mission.

Senator COLLINS. Thank you.

Chief, you've previously told my committee that the Border Patrol could not train more than 1,500 additional agents per year. I know you're ramping that up, but that is the current capacity. There are a lot of significant differences in how the National Guard is trained, versus how Border Patrol agents are trained. Would you agree with that?

Mr. AGUILAR. Absolutely. Yes, ma'am.

Senator COLLINS. I understand that this mission is going to be structured in a way that you're not going to expect National Guard units to perform the kind of enforcement activities that Border Patrol agents perform. I think that's very important. But I'm still very concerned about whether we're going to be putting National Guard troops into positions for which Border Patrol personnel train extensively and intensively over a great period of time. We don't want people who aren't trained put in positions where they're simply not equipped to deal with the challenges. Do you have any concerns about that at all?

Mr. AGUILAR. Absolutely, ma'am. But the beauty of this mission is the following, right now, by the National Guard supporting us, what it is going to allow us to do is take those highly-trained, pro-

fessional, and properly-trained Border Patrol agents that are now not deployed, doing what they were trained for, because we lack the capacity to resource, for example, surveillance posts or missions, sensor missions, or have them as spotters on some of our aviation flights, that they are having to perform those duties. When the National Guard steps in and does those jobs, not in the area of detention or arresting and things of that nature—it will allow us to place those properly-trained officers on the line, being supported by the National Guard, and the National Guard acting as a force multiplier, to give us greater capacity.

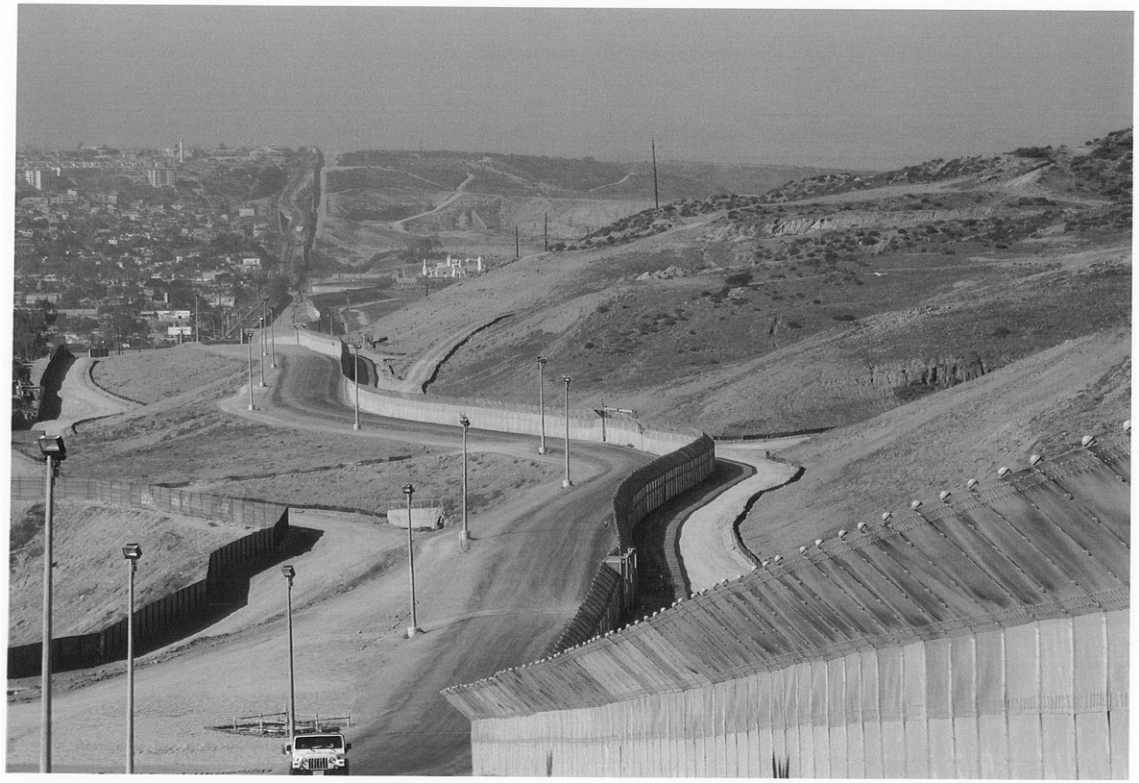
When the National Guard builds for us, engineering missions—and the reason I put this fence up here, by the way, this depicts the border in San Diego. This is what I call a "mature border." Most of the tactical infrastructure that you see here, the primary fence, the middle road, the lighting, sensors that are in this area that you don't see, and remote video systems, were actually placed by the National Guard. So, that kind of placement of engineering work gives us a tremendous amount of force multiplier. In the past, where it would take us upwards of 100 agents in some areas to take care of a mile of border, it's now taking us five or six, because of this force multiplication factor.

[The information referred to follows:]

All Weather Patrol Road
Drainage Structure
Temporary Vehicle
Border Barrier
High Intensity Lighting

Bollard Fence
Vehicle Border Barrier
Low Water Crossing
Ornamental Pedestrian Fence

Tactical Infrastructure



Bollard Fencing

Senator COLLINS. Thank you.

General BLUM. Senator, they were also done—those missions were performed in the 2-week rotations.

Mr. AGUILAR. Yes.

General BLUM. So, as I say, I don't want to make this look too simple, because it's not that simple. But it's not something that's new and unusual to us. We're taking a time-proven model and just expanding it. The Secretary of Defense was very specific to General Conway, myself, and Secretary McHale, that the National Guard would not be approved to perform law enforcement operations where it would take a trained Border Patrol or Customs enforcement officer to do the training, because we're not trained to do what they do. So, we don't do what they do. We are trained to do, that enables them to do what they're trained to do, even better.

Chairman WARNER. Thank you very much.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator.

Senator Byrd.

Senator BYRD. Thank you, Mr. Chairman.

I know that the fine members of the National Guard can handle virtually any mission that is thrown at them. Their ability to adapt and perform extraordinary missions is legendary, whether responding to disasters here at home—and we've seen much of that in West Virginia—or fighting wars overseas. But Congress has the responsibility to ask questions about whether adding new missions to the National Guard is the best use of these citizen soldiers.

Nine times, I have offered amendments in the Senate to increase funding for border security and to hire thousands of new Border Patrol agents. Nine times, the administration has opposed my amendments as being extraneous, unnecessary spending that would expand the size of government. If we had spent that money beginning in 2002, we wouldn't be calling on the National Guard for so much today. This latest proposal to send troops to the border should not distract from the consistent record of this administration of opposing my amendments to tighten our borders.

What is the rationale, Secretary McHale, for determining that 6,000 National Guard troops should be sent to the border? How is that number justified? Was it pulled out of the air? How did we reach that number?

Mr. MCHALE. Sir, the number that has appeared in the proposal is up to 6,000. We don't know the precise number, at this point, for the first year of deployment. For the second year of deployment, it's up to 3,000, for a possible second year. That number was a professional judgment based on a number of factors, in close consultation, beginning the middle of last week, with Customs and Border Protection. We have a joint planning group that's working these issues. We viewed the missions as an extension of the type that we had been performing for counternarcotics over the past 2 decades. We asked Customs and Border Protection, "Beginning with those missions, assuming you'd like us to ramp up our support for the kinds of things that I referenced to Senator Warner a few minutes ago, the aviation reconnaissance, what else would you want us to do in order to free up those agents," that the Chief talked about

a few minutes ago, "so they could do law enforcement?" They gave us some preliminary assessments as to the mission sets.

We also look at deconfliction of those numbers to determine what size of force we could sustain over a period of time without adversely affecting the National Guard's ability to contribute to overseas warfighting or a potential response, let's say, to a hurricane in the Gulf coming up during this summer's and fall's hurricane season.

So, we took our past experience from the counternarcotics program, we built mission sets upon it that would be unique—just a few, but would be unique to the missions that we now have in mind, and then we tried to determine sustainability. We came up with a professional judgment that was an approximation of 6,000.

Senator BYRD. Were there any suggestions contrary to that? Any proposal that it should be 8,000 or 5,000? Was there any discussion or debate?

Mr. MCHALE. Sir, for due diligence, if we didn't have alternative views presented, we wouldn't have been doing our job. So, the answer to your question, sir, is yes, there were alternative proposals presented, with different numbers. They were considered. They were evaluated. At the end of the day, we thought 6,000, or a number up to 6,000 in that first year, was the most appropriate.

Senator BYRD. I'm told that the DHS is still trying to work out what these 6,000 troops will actually be doing. Why did the administration announce that troops should be sent to the border, 6,000 of them—up to 6,000, as you say—before the administration could plan for the mission?

Mr. MCHALE. Sir, I think an accurate way to describe that is, while we didn't know how many roads we would build, or for what distance, we knew for sure we'd be building roads. We didn't know how many helicopters, precisely, we would put up for aviation reconnaissance, but we knew we'd be putting a substantial number up. I could go through the mission sets in that manner. So, we knew the kinds of things we'd be doing, and we knew it at approximately what level of activity we'd be involved. But, sir, you are correct, by close of business today, I believe, the DHS is to present to the DOD, coming out of that joint planning group, a more detailed picture of these missions. We have until Friday to finish our preliminary assessment of how we, in DOD, working with the Joint Staff and the National Guard Bureau, will match resources to the requirements.

So, we expect a clearer picture by close of business today, and we expect to have a DOD response by Friday.

Senator BYRD. General Conway, you're the expert in military planning. Is it standard military procedure to determine how many troops will be deployed before the military determines what tasks need to be accomplished? Isn't this mission turning the military planning process on its head?

General CONWAY. Sir, it may be atypical, but it's not totally out of the ordinary or unusual. In this case, we have been given a concept—a general concept—a verbal concept, albeit, at this point. We have assessed what we thought might be a rough troop-to-task associated with that, given the various functions that the DHS and

the Border Patrol thinks that they would need. We continue to flesh it out as we go. So, the answer is both yes and no, sir.

Senator BYRD. Do you have any questions about this number? Are you satisfied?

General CONWAY. Sir, I think it's the high end. General Blum could probably answer it better than I. But I think we have the opportunity to employ up to 6,000. Whether or not we'll actually come to that number will, again, be determined as we examine the details. I don't think it will exceed 6,000.

Senator BYRD. How do you feel about that, General Blum?

General BLUM. I was asked early on, sir, as Secretary McHale alluded to. The planners or the people considering the employment of the National Guard were very sensitive to our responsibilities with the upcoming hurricanes. They were very sensitive to the ongoing weather patterns that we respond to every year, whether they're hurricane seasons or not. They were also mindful that we are absolutely essential to the deployment of overseas Army and Air Force forces for the combatant commanders. So, the question was asked, how many National Guardsmen could we use, without mobilizing them, that would be on a volunteer basis, where it would not interrupt their civilian employment, where it would not interrupt or break the contract with our one-in-six utilization for overseas, where it would be a normal expectation on the part of the citizen soldier, his family, and his employer, and still be able to do all of these things? I told them that I could handle somewhere on the high end of about 6,000. That may have been what drove the number, "up to 6,000," sir, but I am not absolutely certain as to how that happened. But that is a very logical outcome of how the number 6,000 took a life of its own.

Chairman WARNER. Thank you, Senator Byrd.

Senator BYRD. Thank you.

Chairman WARNER. Thank you very much.

I think it would be important if Chief Aguilar had an opportunity to respond to the important line of questioning by Senator Byrd. Did you have anything to contribute as to this end strength? Were you consulted, and you're comfortable?

Mr. AGUILAR. Yes, sir. I believe that the universe of 6,000 is where we started our conceptual planning. One of the things that's very critical here, that, as the Secretary mentioned, this afternoon we will start aligning the universe of 6,000 that's going to be available to us, our requirements and needs, and how those two match up.

Chairman WARNER. Good.

Mr. AGUILAR. I feel pretty confident that we will be utilizing up to 6,000, or close to it, in the first year.

Chairman WARNER. Thank you very much.

Senator Ensign.

Senator ENSIGN. Thank you, Mr. Chairman. Thank you for having this timely hearing, as the bill that we have on the floor, obviously, dealing with immigration, makes this a very timely hearing.

Chief, I went down to, about a little over a month ago, Yuma, Arizona, and just a couple of observations. One, that the Border Patrol—your folks are very professional and very dedicated.

Mr. AGUILAR. Thank you.

Senator ENSIGN. One thing that really struck me was that since September 11, and where the whole idea of terrorists coming into our country—even the Border Patrol agents take their jobs a lot more seriously than they did pre-September 11.

Mr. AGUILAR. Yes, sir.

Senator ENSIGN. You can just see it in their attitudes and hear it from them. I was very impressed by a lot of the work that you all are doing down there. I was also impressed that you're overwhelmed, that this help with the National Guard is something that is very needed. A little over a month ago, I had an amendment to the immigration bill for the States to be reimbursed for their National Guard troops to be used on the border down there, and I asked the question before all this became public while I was down there, if you all could use the help. We received similar responses to what you are doing today. So, I think it is an initiative whose time has come. I have an amendment to this current bill that hopefully will be debated in the next couple of days. We're working with you all, with the National Guard, with this committee and the administration, trying to craft the exact language that what we first had. But it basically will have the same effect as what the President has called for.

One of the side benefits that I thought about, as you were just talking—because when I was down there—you have difficulty not only in training new Border Patrol agents, but in recruiting.

Mr. AGUILAR. Yes, sir.

Senator ENSIGN. It takes you, and I forget the numbers, it was something like 300 recruits for going out there to get one agent. It would seem to me that if you have people going through down there for a 2-week period of time, you may end up with recruits, somebody who said, "You know what? This is a line of work that I may want to go into," and they're part of the National Guard, and now, as a citizen, they may want to be part of the Border Patrol down there. I thought that would be a very positive thing to do.

Chairman WARNER. Senator, I have to tell you that, at lunch, Senator Craig and I talked about that very concept. We may try and formulate something by way of an incentive——

Senator CRAIG. The legislation is under writing.

Chairman WARNER.—an incentive for people to look into that.

Senator ENSIGN. Yes, it is desperately needed. Senator Byrd mentioned—I know he's walking out of the room, but, Senator Byrd, you mentioned your amendments the administration had opposed on increasing the number of Border Patrol agents. I offered the amendments to Senator Collins' intelligence reform bill, for the 10,000. We had actually cooperation from the administration. So, I don't know—I felt that there was a lot of cooperation for increasing the number of Border Patrol agents. The key now is to make sure that we continue to fund the new ones that are going forward so that this National Guard duty is temporary, it's not a permanent thing. I think it's absolutely critical that we do that.

But, General Blum, I wanted to address with you the issue of the National Guard, the willingness it would seem to me that people who signed up from the National Guard are there, they believe in what they're doing, because they want to help the country. I think, across the country, what they saw with Hurricane Katrina, those

were all volunteers, as I remember you coming in and briefing us and told us, "Those were all volunteers." It would seem to me that you would have a lot of people in the National Guard—even if they weren't called up, there would be a lot of people in the National Guard who understand what a huge national problem this is—from a security problem, from an immigration problem, from a drug problem, from all kinds of problems—that they would even cherish going down there, and look forward to this mission. Any comments that you have on that?

General BLUM. Senator, as I said a little bit earlier, it's tough to call yourself to the National Guard or be a member of the National Guard as a volunteer for a force with that label that is not going to guard the Nation. All of our citizen soldiers and airmen understand that this is a very serious issue facing our Nation, and it has security implications. There will be no problem supporting the numbers of citizen soldiers that we've described here today, in a volunteer status, in an annual training rotational status, where it doesn't require involuntary mobilization and long periods away from home. We can sustain this operation. I think, as I said, they will walk away leaving their time on the southwest border feeling a great sense of satisfaction that they did make a difference and they did make the borders of their country safer, or at least attempted to.

Senator ENSIGN. Right. You made a comment about the Governors and the misunderstanding. I remember hearing yesterday, I was watching the press, and I saw the Governor from New Mexico on. He was talking that he needed his National Guard for fighting wildfires and things like that. The proposal—my proposal—and I know the administration's proposal—isn't just Arizona's National Guard or just New Mexico's National Guard or just Texas's National Guard. This is the National Guard coming from all 50 States. So, no one National Guard is going to be burdened tremendously, from what I understand the administration's proposal, as well as mine.

So, I think you're correct—and, Secretary McHale, you may want to comment on this—that if the Federal Government is paying the bill, and they're coming as a volunteer basis from all over the country, it would seem to me that most of the concerns that the Governors, at least, have expressed in the press would be taken care of. Would you like to comment on that?

Mr. MCHALE. Senator, I think that's true. I want to be absolutely candid with the members of the committee. This is an evolving mission requirement. As we work through challenging questions every day, we come up with additional answers that appropriately modify the mission.

So, let me just give you a quick example. We had originally thought that this mission would be performed overwhelmingly by National Guard doing their annual duty. It then was brought to our attention that some Governors, taking a point of view different from that, apparently, of the Governor of New Mexico, expressed an interest in using guardsmen from their States for extended periods of time in greater numbers, beyond 2 or 3 weeks. The Secretary of Defense made a decision that we would accommodate that. We want this to be a partnership. So, if there's a Governor who says,

"I have additional National Guard Forces. I want to bring them on Active-Duty for 6 weeks, or 2 months, from my State, on our own border with Mexico. Will DOD work with us on that?", the answer is yes.

Senator ENSIGN. In that evolving mission—I don't know if you want to look at this, as well—because sometimes when you're in the National Guard, you may actually be in between jobs or something like that.

Mr. MCHALE. Yes, sir.

Senator ENSIGN. The accommodation—that's one of the reasons some people do volunteer at various times. It would seem to me that would also be a good thing to look into, not just from a State perspective, but from an individual, that maybe it would be a good kind of a bridge for them, as well.

Mr. MCHALE. I think that's true. At the end of the day, this requires a partnership with the Governor, who will be the commander of forces, all National Guard Forces, within his or her State. So, if there are National Guard Forces from the State that the Governor would like to roll into the task force in greater numbers for a longer period of time, we'll try to accommodate that. If there is a Governor who has a concern similar to that of Governor Richardson where he feels that he has a small number of forces and would prefer to have National Guardsmen come in from outside the State on annual training duty, we'll accommodate that, as well.

Senator ENSIGN. Thank you, Mr. Chairman.

Chairman WARNER. Thank you very much, Senator.

Senator Dayton and colleagues, would you permit the chair to recognize Senator Craig for just 2 minutes, to put his statement into the record?

Senator Craig.

STATEMENT OF SENATOR LARRY E. CRAIG, U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Mr. Chairman, first and foremost, thank you for holding this hearing. It is so timely, as with the President's announcement and the crafting of the mission that this is at hand.

To you, Mr. Secretary, to the generals, to you, Chief, thank you very much for what we have learned and gained today. From the time that many of us looked at this, and I recognized, as some clearly did, that this was not only an issue that would allow us to shape a more comprehensive immigration reform bill, with the satisfaction of the American people, that we were working overtime to secure the border, but it really was a national security issue—and the Chief knows it better than anyone else—of the kind of OTMs, or other-than-Mexican nationals, that are coming across the border at this moment.

Mr. AGUILAR. Yes, sir.

Senator CRAIG. Chief, let me go to what the Senator from Nevada just said. The chairman and I had a dialogue today about the potential of crafting legislation that created some degree of incentive for those young men and women who will come to the border in this new mission, who might see their life as a member of your organization. Obviously, we would think they would be a leg up

from the beginning because of their experience in the National Guard, in our military, and then to move into your system. Your reaction to that idea?

Mr. AGUILAR. I think it's absolutely great. We would proudly welcome any members of the National Guard or the military. We, in fact, have several members of the United States Border Patrol that are actually in the National Guard, and that are serving foreign as we speak. The training, the experience that they bring, is in fact something that we welcome, yes, sir.

Senator CRAIG. We'll work on that. I'll work on that with the chairman and see if we can't offer that to our colleagues.

I'd ask unanimous consent that my full statement be made part of the record.

Chairman WARNER. Without objection.

Senator CRAIG. To the members of this committee, thank you for the courtesy.

[The prepared statement of Senator Craig follows:]

PREPARED STATEMENT BY SENATOR LARRY E. CRAIG

Chairman Warner, members of the committee, thank you for giving me this opportunity to discuss with you the recent announcement by the President to send National Guard troops to the southern border to provide assistance to the Border Patrol.

Mr. Chairman, let me first remind the members of the committee of a certain event in our recent history. On September 11, 2001, our Nation was stunned. On that very day our National Guard was sent to secure borders, airports, nuclear facilities, and other critically important infrastructures. Further, we cannot forget that on the heels of September 11, the National Guard stepped up and provided the security for the 2002 Winter Olympics in Salt Lake City.

It was the National Guard who filled in the security gap at our airports until the Transportation Security Agency (TSA) agents could be stood up and trained. I cannot stress enough how this is the perfect example of how well our National Guard can provide emergency assistance and a stop-gap until more Border Patrol agents are trained and the Nation reaches a solution for our borders and illegal immigration. Simply put, the National Guard's performance during times of crisis and emergency is indicative of their future performance on the border.

The National Guard, without question, already has the expertise and capability to provide for this short-term mission and provide strong support to Border Patrol agents. The National Guard's effective communications, personnel, and command and control operations will provide a quick boost to the Border Patrol.

As we look toward hiring more Border Patrol agents, I am hopeful that many guardsmen and women, with expertise in the field, will look at this opportunity to become full-time Border Patrol agents with the Customs and Border Protection (CBP) agency. I would like to encourage the Senate Armed Services Committee to work with the CBP on how to best facilitate those guardsmen who may want to become Border Patrol agents.

Mr. Chairman, I have no doubt that our National Guard will perform admirably in this mission. It is a mission that is important to our national security.

However, I must clarify that this idea must be implemented in a way that does not make border presence a permanent mission of the National Guard. The committee must make certain that the Department of Defense (DOD) does not seize on this move and relegate the National Guard to a permanent border mission of this type. Border Patrol and security must remain a civilian law enforcement responsibility under the Department of Homeland Security.

We know how critically important our National Guard is in fighting the global war on terror overseas. Without the National Guard, our missions in Iraq, Afghanistan, and around the world would be severely hamstrung. Our National Guardsmen are proud of their role they are playing in the war on terrorism and protecting our freedoms here at home and abroad.

That being said, I am certain that our National Guard will welcome this new, short-term, mission on the borders until the Border Patrol, like TSA, is propped-up and meeting the needs and wills of United States citizens. However, please be

certain that I will be watching with keen eyes how the DOD handles this mission and the National Guard.

Chairman WARNER. I'll address that issue of stealing some of your guardsmen for the Border Patrol later.

Senator CRAIG. Good, thank you.

Chairman WARNER. Now, Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman. I want to also thank you for holding this hearing so swiftly.

Chairman WARNER. I thank you, all members, for attending. We've had good attendance today.

Senator DAYTON. I sympathize with your predicament, gentlemen. I recall that we had in Minnesota once a very innovative corporation, Control Data Corporation, with a very creative chairman, and one of the senior vice presidents was once asked, "What is your job assignment?" He said, "The chairman decrees that the corporate elephant and the corporate mosquito will meet, and my job is to make it happen." I think that's what you are—and I appreciate the best face you're putting on what your Commander in Chief has declared will occur here. But, I will echo what I think all of my colleagues have said. I have the utmost respect in the National Guard, and confidence that they will carry out superbly any mission that they're assigned, as will other branches of the military, and, I know, the Border Patrol will also. But I think that some real questions need to be raised whether this is the most efficient and effective way of responding to the lack of border control, which I think we all agree, with the President, exists.

I would just point out—and I'm sorry that he left, but Senator Ensign, since he amended what Senator Byrd had pointed out. I believe Senator Ensign, according to my information, is correct that the 2004 National Intelligence Reform Act, which he says was his amendment with the support of the administration, did authorize the additional hiring of 2,000 additional border agents each year from fiscal year 2006 to fiscal year 2010. However, the President's 2006 budget included funding to appropriate to hire only 1,000 of those 2,000 authorized agents for that fiscal year. Now it's incumbent on Congress to make sure that the 2007 budget does include the actual funding to fulfill that authorized complement of 2,000 additional agents.

I also note, if this information is correct, General Blum, if it's not please correct it, but according to one report, the National Guard's 400-strong force of full-time National Guard members who are now assisting the border security personnel in countering the drug trafficking in the four border States has existed, as some of you have alluded, since 1989, that operating partnership, but it is strung from about 1,000 National Guardsmen in 1999 to the 400-strong force today, because of a 44-percent cut in its budget, according to the National Guard figures. One National Guard counterdrug official at the National Guard Bureau, who spoke on the condition of anonymity, according to this report, said, "We could very quickly ramp up and double the effort if the funding was available." So, on the one hand, it seems we've been depleting those resources and that capability. Now we're in a position of trying to catch up with ourselves and—in a related area, not exactly counterdrug, but, as

he said, you're asking—using the same techniques to find illegal drug traffickers or to find a person.

I do have a question at the end of this, for Secretary McHale or to General Blum—you talk about building on this experience, this partnership between the National Guard and the Border Patrol, but isn't it correct that these 400 people are a full-time force there? Wouldn't that experience suggest, then, that it's going to be—would be far more effective and efficient to have—if we're going to need up to 6,000 additional, that that be a full-time force for that period of time, rather than men and women who are rotating in and out every 2 to 3 weeks, involving 156,000 guardsmen over the next 2 years because of that kind of rotational number? That just seems like a very inefficient way to accomplish what you want to do here.

Mr. MCHALE. Senator, I'm going to ask General Blum to comment in just a moment, but it's my informed understanding that the vast majority of the counternarcotics missions executed since 1989 have been on a rotational basis identical, or nearly identical, to what we propose here.

I think it may have been before you entered the room, it was pointed out that the kinds of barriers that you see depicted on the graphics to my right were (see previous slides), in fact, constructed not only by National Guardsmen, but utilizing their annual training in 2-week rotations. I'm not sure. I guess I'll really have to ask General Blum. But it had been my impression that the 400 soldiers—a little bit less than 400 right now—but the 400 soldiers involved currently along the southwest border in counterdrug operations were, for the most part, involved in annual training status.

In any event, I can assure you that, over the last 20 years, the vast majority of counternarcotics missions funded by Congress for the National Guard have involved the deployment of National Guardsmen in 2-week rotational status.

Senator DAYTON. General Blum.

General BLUM. Both of you gentlemen are correct, but you'd have to put, as you said, the mosquito and the elephant together to get the whole picture. There are full-time people. There will be full-time people in this mission. The duration force, those that are the planners, the liaisons, those that are the project managers, the leaders, the synchronizers and coordinators of the plan, will probably be on extended duration force so that we don't have to introduce Chief Aguilar and his subordinates to new leaders every 2 weeks. However, for over 25 years, we have done these missions, not only on the southern border, but the northern border. Right after September 11, the National Guard was on the borders of this country. As soon as the Border Patrol was able to develop their capabilities, we came off. Right after September 11, we were in every airport in this Nation, until the Transportation Security Agency could stand up its capability; we're off. We did cargo inspection on the southwest border for years, until Customs could develop their own capability. Now, the National Guard is no longer doing that. It is fully my intent that we work ourselves out of a job on the southwest border as quickly as we can. Does that mean there won't be some National Guard in the same kind of arrangement that you're describing indefinitely? Yes. But not nearly at the scope that we're talking about here this morning.

I might also add that in the United States Southern Command (SOUTHCOM) there are no United States forces apportioned to that combatant commander. Most of all of the work that has been done in South and Central America has been done by National Guard Forces, Army and Air, rotating down there for 2-week periods of time. Of course, we had a duration force down there to coordinate that.

So, we're going to leverage that successful model, the successful 19-year model that we've seen on the southwest border. We're going to take that combination of a smaller full-time cadre and leverage the capabilities of our young men and women citizen soldiers and airmen who already know that they are going to have to perform 15 days of training, and just target that training where it makes sense, where the right skill meets the right requirement. The location will happen to be the southwest border instead of Camp Swampy or some other place this year.

Your comments are fair and accurate on counternarcotics. There's great competition for—and for prioritizing the money that we have, or the resources that we have in the DOD against its mission array. So, there were some hard calls that had to be made, and our counternarcotics contribution and budget has been degraded or made smaller in the last several years because of other pressures to do things that are absolutely essential for the global war on terror.

So, there are hard calls to be made. If more resources are applied, obviously we can regenerate those capabilities.

Mr. MCHALE. It's important to recognize that that figure of 156,000, while we believed it to be accurate at the time that we first calculated it, has been coming down ever since. General Blum has reached the correct conclusion, that, with the rotation of forces in, you have to have a steady-state leadership team in place. So, there will be personnel from the National Guard on Active-Duty for periods of time beyond 2 or 3 weeks to maintain that continuity of leadership. In addition, as I had mentioned earlier, we're going to try and accommodate the desire of some Governors to call up their own forces from within their States for an extended period of time, not in annual training status, and for beyond a 2-week period of time.

So, as we keep the leadership team in place, as we try to work with the Governors for longer periods of duty drawn from the forces within the State, that affects the number of guardsmen who have to rotate through in the 2- and 3-week rotations. Frankly, we now anticipate that the number will be substantially less than 156,000.

General BLUM. The genius, if there is any in this plan, is that it is not a one-size-fits-all solution. What happens in California will be worked out between the Governor of California and the supported lead Federal agency, the DHS or the Border Patrol or Customs. Accommodations will be made for both to make sure mission surety, but we're not going to prescribe how it is done precisely.

Chairman WARNER. Thank you.

General BLUM. What they do, we will.

Senator DAYTON. Thank you.

Thank you, Mr. Chairman. My time is expired.

Chairman WARNER. Thank you very much.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman. Thank you, gentlemen.

General Blum, I think the two precedents that you're operating on are training exercises, either along the border or in other areas, like Central America, and the counterdrug operations. The counterdrug operations are authorized by statute. What statute authorizes the surveillance activities, the operating sensors, providing airlift, those things that might be training, but are more like operations?

General BLUM. I would—probably Secretary McHale is best to answer this, but it's my understanding that we're going to use title 32, U.S.C., section (f), which says, "Other Duties," which means that the Secretary of Defense can prescribe the other duties of the National Guard in a Federal-funded status.

Senator REED. Is that your opinion?

Mr. MCHALE. I promised the General Counsel of the DOD that I would not practice law while serving in my current position, but urging much further review by appropriate attorneys here on Capitol Hill, in consultation with DOD, the two sections that I am told we are looking at are title 32, section 502(a), and title 32, section 502(f), which is the one that General Blum just referenced. Section 502(a) covers annual training. The attorneys in DOD have concluded that that authority in 502(a) for training allows us to execute missions in a training status, so long as those missions are directly related to the title 10 responsibilities that those forces would be assigned, were they brought into Federal service. This is not the first time that we've done that.

Senator REED. No, that's not controversial.

Mr. MCHALE. Senator, you're right. There are times when the use of a training status comes very close, or in fact, becomes an operational status. In certain other areas of title 32, we have amended title 32 to directly reflect the reality of the employment of training in an operational status. Section 502(f) deals with periods of duty exceeding the annual training, where it is other duties, as, I think, prescribed by the Secretary. That is likely the section that we would use to accommodate the request of a Governor who might want to bring to Active-Duty, in title 32 status, forces from within the State for periods of time exceeding annual training—4 weeks, 6 weeks, 8 weeks. Section 502(f) would likely be the authority that would allow that to take place.

Senator REED. I take it, then, you're not contemplating requesting a specific legislative authority to conduct any of these activities.

Mr. MCHALE. The advice that has been given to our office at this point, from the General Counsel's Office, is that additional authority is not required, and that sections 502(a) and 502(f) meet the requirement.

Senator REED. I wonder why you have specific authority for the drug interdiction program, since it's very similar to what you're practically doing on the ground now. Instead of interdicting drugs, you are interdicting illegal entrants.

Mr. MCHALE. I'm hesitant to address that, in terms of how close some of the activity in the past has been between National Guard

Forces and Customs and Border Protection in certain kinds of counterdrug missions that come up to the line of law enforcement activity. Also, I think the separate authority reflects the history of the central transfer account, where Congress has determined that those missions should be funded directly and exclusively within a central transfer account, subject to very tight limitations, in terms of how that funding can be used, and can only be used for counternarcotics.

Senator REED. Let me slightly change the focus, because I think it——

Chairman WARNER. Senator, if I could interrupt. I think those are important lines of questions, and I would ask our witness if you would consult with counsel, let him review these important questions, and such others that draw on it, and provide this committee with a legal opinion.

Mr. MCHALE. Yes, sir. We will do that.

[The information referred to follows:]

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GENERAL COUNSEL

JUN 08 2006

The Honorable John Warner
Chairman, Committee on Armed Services
United States Senate
Washington, DC 20510-6500

Dear Mr. Chairman,

On May 17, 2006, Department of Defense representatives appeared before your Committee to discuss the National Guard's role in border security. This responds to questions regarding the authority for the National Guard to provide support to the Department of Homeland Security (DHS) Customs and Border Protection (CBP) border security efforts.

As Paul McHale, Assistant Secretary of Defense for Homeland Defense, told the Committee, National Guard personnel will conduct a variety of training activities that will support DHS CBP border security efforts. These training activities will be conducted under the authority of Title 32 United States Code (U.S.C.) section 502. Most of the National Guard personnel participating in this training will do so under Title 32 U.S.C. section 502(a), which requires annual training activities at least 15 days each year. Participating National Guard personnel will engage in activities that will provide training in the mission essential tasks they must be able to perform if they are ordered to active duty.

A limited number of National Guard personnel may perform training for a longer period than that typically performed under Title 32 U.S.C. section 502(a), or may perform non-training duties. The Secretary of Defense may authorize those individuals to perform training or other duty under the authority of Title 32 U.S.C. section 502(f), which authorizes training or other duty in addition to the training prescribed under Title 32 U.S.C. section 502(a).

There is no prohibition against training activities providing a benefit to another government entity. Title 32 U.S.C. section 502(a) training must be conducted annually. At the President's direction, and with the cooperation of the governors, this training will be conducted in a manner that is beneficial to DHS.

Please let me know if you have any further questions.

Sincerely,

William J. Haynes II

Chairman WARNER. Thank you, Senator.

Senator REED. Thank you, Mr. Chairman.

General Blum, this potentially is a very convoluted command structure. You have a National Guard supporting, directly, the Border Patrol and Customs enforcement, yet the National Guard is operationally under the control of a Governor. Does that mean the

Governor will somehow collaborate—direct border patrolmen—how does it work, in practice?

General BLUM. No, sir, it's not convoluted at all. Let me try to describe it, because maybe we didn't do a good job of that.

The Commander in Chief in California would be the Governor of California, and the same for each State, moving east to Texas. They have an Adjutant General. That is the senior military leader of the National Guard. They have a Joint Force Headquarters of Army and Air National Guard and others. They have a Joint Task Force (JTF) commander, that is pre-schooled, pre-trained, and pre-designated, that will be the military commander of all of the National Guard Forces that are supporting the law enforcement agency within that State. They have no authority outside of that State boundary, political boundary. So, the areas of operation will be drawn around the political boundaries of the State. Each JTF will coordinate and command and control the military forces that are in support of the DHS mission.

The National Guard Bureau will coordinate with the Joint Staff to make sure that all of those four State plans are nested, coordinated, and do not contradict one another. If there is a contradiction, I have liaison officers going to each of the State Joint Force Headquarters to ensure that there is no seam. We don't want seams in his border.

Senator REED. Will there be a formal plan presented by the Governor, through his military commanders in each State, to you?

General BLUM. Yes, sir, that's correct.

Senator REED. But the Governor retains complete flexibility in the final outline of that plan.

General BLUM. No, he does not have complete flexibility. He has—the plan will be approved with certain parameters, left and right limits, certain rules of engagement, and certain rules of use of force, certain mission sets that are authorized by the Secretary of Defense, certain mission sets that are prohibited by the Secretary of Defense, if they're going to use Federal funding to do those missions. The Governor will also have part of his National Guard that is not in Federal-funded status that he or she can call under State Active-Duty to do—to enforce the laws of that State if he or she so chooses. But that will be paid for out of the resources of the State coffers, not the Federal Government.

Senator REED. So, essentially, even though the Governor is formally in charge of these troops when they're not in a direct Federal capacity; if he or she is to be reimbursed for their use, they would have to agree to at least the outlines of the plan that you propose and you approve.

General BLUM. Yes, sir, except that it's even better than that. They're getting the money upfront. But to accept that money, they have to accept the conditions of the rules of engagement, rules of use of force, and the approved mission.

Senator REED. A final question. Will we see those plans before they're finalized?

General BLUM. Sir, if you desire to see them, absolutely.

Chairman WARNER. That's correct, they'll be provided to this committee.

Senator REED. Thank you very much, Mr. Chairman.

Chairman WARNER. Thank you.

I have a few questions, and then this hearing will conclude, gentlemen. I know each of you have committed to the committee a specified time. Thank you for your attendance.

I want you to be able to get back to work on those plans that you're finishing up tonight.

General BLUM. Thank you, sir.

Chairman WARNER. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman, and thank you for holding this timely hearing.

Secretary Chertoff has said that, "Without a guest-worker program, it is going to be extraordinarily difficult for Border Patrol agents"—and I'm quoting him—"to stem the tide that is driven by a huge economic engine of employers looking for people to do work that won't be done by Americans."

While providing more troops for the southwestern border, the President's plan does not in any way address the underlying issues spelled out by Secretary Chertoff. In fact, T.J. Bonner, President of the National Border Patrol Council, the agent's union, has called the administration's plan "a smokescreen, a diversion."

Given that neither Secretary Chertoff nor the President of the National Border Patrol Council seem to believe that this plan will not result in any long-term solutions to the immigration challenges facing this Nation, my question to you is, how do you justify the costs of this program?

Mr. MCHALE. Sir, of course, I am the DOD, not the DHS. It's our committed belief that the temporary use of National Guard Forces over the next 1- or 2-year period of time will allow for a substantial and permanent improvement within the law enforcement and administrative capabilities of Customs and Border Protection and elsewhere throughout the DHS. Our job is to assist DHS in moving to a higher level of capability. Although I can't speak for DHS, and perhaps the chief would want to make a comment, I've been in Secretary Chertoff's presence frequently in the last couple of days, on these issues, and I have heard him speak with knowledge, conviction, and passion about the opportunity that the use of National Guard Forces will now provide, augmented by increased funding to train and equip, and then deploy, a substantially larger number of Border Patrol agents, Customs and Border Protection agents, as a direct result of the DOD assistance.

So, all I can really address is the fact that we're offering a helping hand that I think will make a big difference in the next 2 years. Utilizing that period of time, it is very likely that we'll have a DHS that is then able to take the baton and run forward at a more effective rate of speed to secure our borders and ensure a comprehensive strategy for immigration reform.

Chief, I don't know if you have comments on that.

Mr. AGUILAR. The comments that I would make is that in the President's speech he talked about immigration reform, and he also talked—and I believe we need a comprehensive approach to the issue of illegal immigration into this country, of which this initiative supports one very important component of that comprehensive approach, and that is nothing less than security of our borders, security of our borders first, while, at the same time, stemming that

illegal flow of illegal incursions, which includes many illegal aliens coming into this country, and many tons of narcotics also coming into this country.

So, I think I am—like the Secretary, I speak to my responsibility. My responsibility is the immediate border. There are two other components that the President addressed. One of them, I can speak to, on the periphery, is interior enforcement, because our sister agency, Immigration and Customs Enforcement (ICE), will be addressing that. Then, of course, any kind of potential regulatory issues having to do with regulating the labor requirements of this country would also help mitigate that illegal incursion flow between the ports of entry.

Senator AKAKA. Thank you.

General Blum, the President's plan to send 6,000 National Guard troops to the border occurs just as we're getting ready to face another hurricane season. I'm concerned that our National Guard is already stretched thin by operations in Iraq and Iran. Can you comment on whether sending our National Guardsmen to the borders will, or will not, interfere with the ability for troops to rapidly respond to natural disaster or unanticipated national crisis?

General BLUM. Senator Akaka, your concerns are valid. But we are going to be very careful that the units, the personnel, the capabilities, and the equipment that are sent in support of DHS on the southwest border in no way reduce our effectiveness to respond to what we know is inevitably going to come our way in the next few months. The hurricanes are going to come. Where? I don't know. But I know they're coming, and we are prepared this year with more troops, more equipment, better plans, and better-rehearsed plans than we were last year. This mission will in no way undermine or lessen our ability to do that, and it will also not impact negatively our ability to generate Army and Air Force forces overseas, as our Nation requires.

Senator AKAKA. Thank you. General Blum, I'd like to correct my question. When I said it is "stretched thin by operations in Iraq," I should have said, "and Afghanistan."

General BLUM. Sir, I know what you meant to say.

Senator AKAKA. Thank you.

General Blum, the National Guard is facing severe equipment shortfalls that hamper the Guard's ability to operate at full capacity. In addition, at this time, the National Guard does not have the funds available to do the necessary resetting of its equipment. I'm concerned about that and about the cost that would—sending National Guard troops and equipment to the border would—and wonder whether it would hinder the ability of the National Guard to replace and refurbish the equipment it needs to respond to State emergencies.

What will be done to ensure the costs of this program do not further exacerbate the National Guard's equipment shortages?

General BLUM. Senator Akaka, again, very valid concern. I'm glad you are concerned about it. This body, this Congress, graciously provided the National Guard $800 million after Hurricane Katrina. We requested $1.3 billion. We received $800 million. Because of that, those resources that Congress provided, we now have much better capability in interoperable communications and some

transportation assets that we were woefully short here at home last year for Hurricane Katrina. So, that situation has improved.

I think the use of the National Guard overseas and at home is right. That's what we exist for. But we need to be resourced to, in fact, deliver these capabilities, because we are not going to be held as a strategic reserve, an unlikely use, I think, is very predictable that the use of the National Guard will actually increase in future years, because we deliver great capabilities at a bargain on the taxpayer's dollar. So, the attention and assistance from Congress to equip the National Guard as an operational force, not a strategic reserve, is absolutely the right thing to do for this Nation. We're moving in that direction as we speak. We're not going as fast as I'd like, but the direction is correct. The Army has $21 billion committed to re-equipping the Army National Guard. That will make a huge difference if that money sticks across the Future Years Defense Program and we really get all of it, as it's programmed. If we don't, then our ability to do what you're suggesting will be diminished, sir.

Chairman WARNER. Thank you very much, Senator.

Senator AKAKA. Thank you very much.

Chairman WARNER. Gentlemen, I want to thank you for an excellent hearing, promptly coming forward and advising Congress. I know each of you have to return and continue this work this evening.

Senators Ensign, Craig, and I were looking at a concept whereby people on Active service in the military, who have received a lot of training, whether it's National Guard, Reserve, or regular, who might be interested in this, we'll look at it. I think it's something that has to be studied pretty carefully. We will invite you, General Blum, and, indeed, General Conway and the DOD, to look at it, in conjunction with the DHS, because this is a very urgent need, but, at the same time, we have to take note, General Blum, that you fell short of your recruiting goals last month. Am I correct on that?

General BLUM. Sir, we set our goals very high. Yes, you're correct, we fell short. But I might want to make sure, for the record, that everyone knows that we have had the best 7 consecutive recruiting months in the last 13 years. We are showing a net gain of over 1,000 every month, recruiting 1,000 more people than we're losing. We're retaining our soldiers. We're re-enlisting our soldiers, still, at an unprecedented rate. So, I am absolutely confident that you will not be able to say that to me again in the future months, sir.

Chairman WARNER. That's a magnificent measure of a great patriotism that permeates this great land in which we're privileged to live.

General BLUM. Yes, sir, it is.

Chairman WARNER. Thank you all. The hearing is now adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN CORNYN

EFFICIENCY OF USE OF THE NATIONAL GUARD

1. Senator CORNYN. Secretary McHale, according to recent statements, the deployment of 6,000 members of the National Guard to the border will free up about 500

Border Patrol agents who could be redeployed from administrative to front-line enforcement positions. This is a 12-to-1 ratio of guardsmen to Border Patrol agents who could be moved to more effective positions. Does this 12-to-1 ratio indicate that use of the National Guard is efficient as a means to increase enforcement resources for the Border Patrol?

Mr. MCHALE. The National Guard is augmenting and enhancing the U.S. Border Patrol's ability to carry out its mission. The missions assigned to the National Guard soldiers and airmen are directly related to their military skills (e.g., medics, aviation, infantry, public affairs, administrative and personnel, and maintenance personnel), normally associated with their warfighting and disaster-response missions. The National Guard is not replacing or performing the functions of the U.S. Border Patrol or the Customs Enforcement Agency. In fact, the National Guard will not be engaged in law enforcement duties. The National Guard deployment along the southwest border in support of the Department of Homeland Security (DHS) is an important. but temporary bridge to improve civilian security capabilities. This is not a new mission for the National Guard; rather, we are building on a time-proven model that has been in use on the southwest border now for almost two decades. Since 1989, the National Guard has been conducting or performing counternarcotics support to civilian law enforcement agencies such as the Drug Enforcement Agency, the Bureau of Immigration and Customs Enforcement (ICE), and the Bureau of Customs and Border Protection (CBP). The National Guard personnel are performing this mission on a much larger scale to provide the U.S. Border Patrol expanded capabilities time while it is recruiting and training agents and developing new capabilities of their own.

2. Senator CORNYN. Secretary McHale, is there a more cost-effective way to quickly increase the enforcement resources of the Border Patrol?

Mr. MCHALE. In the Department's view, providing the National Guard with relevant training opportunities, while also enhancing the security of our Nation's southwest border, is very cost-effective.

3. Senator CORNYN. Secretary McHale, could other Federal and State law enforcement resources, such as the Federal Bureau of Investigation, the U.S. Marshals Service, and State Police, or recent retirees of those law enforcement organizations, be used to better rapidly increase the enforcement capability of the Border Patrol on a temporary basis?

Mr. MCHALE. National Guard personnel participating in Operation Jump Start are not performing law enforcement duties. Nor are National Guard personnel replacing or performing the functions of the U.S. Border Patrol or ICE. The National Guard is augmenting and enhancing the Border Patrol's ability to carry out its mission. The missions assigned to the National Guard soldiers and airmen are related to their military skills (e.g., medics, aviation, infantry, public affairs, admin and personnel, and maintenance personnel), normally associated with their warfighting and disaster-response missions. As to the ability of other Federal and State law enforcement resources to increase rapidly the law enforcement capability of the border patrol on a temporary basis, this question would best be answered by the DHS.

PLANS FOR LOGISTICS SUPPORT

4. Senator CORNYN. General Conway and General Blum, it has often been noted in the study of the history of planning military operations that "Amateurs talk about tactics, but Professionals study logistics." While the National Guard will be acting in a supporting role for the Bureau of Customs and Border Protection, has the Department of Defense (DOD) considered a plan for the housing, feeding, and other logistical support for the 6,000 National Guardsmen to be deployed in support of this mission?

General CONWAY. Logistics are always in the forefront of any military commander's decision process when committing troops to the field, whether it is the lieutenant in charge of his platoon or the general in charge of the Army. The State Adjutants General, with the assistance of Lieutenant General Blum, have the responsibility for ensuring members of the National Guard deploy with the right amount of logistical support. In addition, it should be noted annual training usually entails field conditions, meaning billeting in less than desirable accommodations. The southwest border will provide an outstanding yet demanding training environment.

General BLUM. Yes. The specifics of plan are being executed by the Joint Force Headquarters (JFHQ) of each of the southwest border States (California, New Mex-

ico, Arizona, and Texas). Their Joint Task Forces are responsible for the planning and provisioning of the housing and feeding of the troops who are responding to this mission in their respective States. Each of the supported States has assumed responsibility for these requirements and National Guard Bureau is merely a coordinator for assistance to these States.

5. Senator CORNYN. General Conway and General Blum, who will be responsible for the coordination of logistical support?

General CONWAY. The State Adjutants General, with the assistance of the National Guard Bureau, are responsible for the coordination of logistical support.

General BLUM. The JFHQ of each of the States (California, New Mexico, Arizona, and Texas), through their Joint Task Forces with Liaison Officers from Bureau of Customs and Border Protection and National Guard Bureau, will coordinate all logistic requirements, such as provisioning of supplies and lodging.

6. Senator CORNYN. General Conway and General Blum, can you describe the plan in terms of the types of facilities and infrastructure, locations, and estimate of the costs to provide logistical support for these personnel?

General CONWAY. I defer to Lieutenant General Blum in answering this question.

General BLUM. The JFHQ are still working on their assessments and identifying requirements. Once those steps are completed, we will have an accurate picture of the types of facilities and infrastructures, locations, and cost estimates to provide logistical support for our National Guard personnel.

7. Senator CORNYN. General Conway and General Blum, has a timeline been established for the construction of these facilities?

General CONWAY. I defer this question to Lieutenant General Blum.

General BLUM. A specific timeline cannot be established until the full mission set, location, and numbers of personnel are identified. We are still working on those requirements and anticipate having a better timeline in the near future. However, we expect these facilities to be up and running in a timely manner to meet requirements.

8. Senator CORNYN. General Conway and General Blum, will the National Guard be required to bring vehicles and other equipment from their home units to accomplish this mission?

General CONWAY. I defer this question to Lieutenant General Blum.

General BLUM. Yes, in some cases. The vehicles and equipment required will be situational dependent. Use of vehicles and other equipment are not to negatively impact the readiness of units in those States to perform their Federal mission. The Adjutant General for each of the participating States will make a determination as to what personnel and equipment it can provide to this mission without negatively affecting their own ability to meet planned and anticipated State and Federal missions.

USE OF THE GUARD IN ANNUAL TRAINING STATUS

9. Senator CORNYN. General Blum, I understand it is proposed that the National Guard units will provide this support as annual training under section 502 of title 32, United States Code. How does the National Guard Bureau expect that members will get the training required by law and regulation while they are supporting Customs and Border Protection?

General BLUM. Members of the Army and Air National Guard are required to conduct 2 weeks of annual training each year; therefore we're simply changing the location of this scheduled training in many cases. So, we'll be looking to move the appropriate numbers of soldiers and airmen to the border States—New Mexico, California, Texas, and Arizona—to conduct their annual training. While the environment may be different, the training will be the same, and you can rest assured that your National Guard will receive all the appropriate/required training during this mission. Your National Guard is well-suited for this mission on the border

10. Senator CORNYN. General Blum, does the National Guard Bureau regard this as appropriate training duty?

General BLUM. This training is very appropriate. Again, the soldiers and airmen are not changing their training regiment only the environment. They will be able to hone the skills that they have been trained to do within the military. I might add that this is the very reason your National Guard is the best solution for con-

ducting this mission. First of all, we have the 'hometown' connection, and second, this mission will simply allow our soldiers and airmen to receive real-world training. Real-world training is always beneficial to the troops because it allows them to hone their skills and it also gives them a sense of pride and purpose in knowing they are doing something to help the country.

11. Senator CORNYN. General Blum, how many National Guard troops would be involved at any one time?

General BLUM. The President has authorized your National Guard to provide 6,000 personnel in the first year of the operation and then tapering off to 3,000 in the second year of the operation.

12. Senator CORNYN. General Blum, how many National Guard troops would be required over the course of rotations to support the mission?

General BLUM. The President has authorized 6,000 personnel for the first year of the operation. We'll support this mission request by taking advantage of the 2-week annual training rotation for the most part, with a percentage of the total force package there on a longer-term rotation. The intent of the long-term rotation is to ensure continuity for the operation as well as a smooth rotation for the troops that are rotating every 2 weeks. We want to be sure that our contacts within the Bureau of Customs and Border Protection are seeing the same faces, in regards to leadership, to avoid issues. We're very confident this will ensure the overall success of the mission.

13. Senator CORNYN. General Blum, if Guard members will only be assigned for short rotations, how will this impact the cost of providing the support?

General BLUM. National Guard personnel will not only be in short rotations; as previously stated, we will have a contingent of long-term troops in each of the four border States—New Mexico, Arizona, Texas, and California—to ensure that we are providing the support that the President and Bureau of Customs and Border Protection envisioned when the call was made to the National Guard.

14. Senator CORNYN. General Blum, how will the National Guard be able to come up to speed fast enough to make a lasting contribution on long-term projects with such short rotations?

General BLUM. The National Guard will be able to make a lasting contribution to long-term projects through the use of short-term unit rotations because the units will be performing tasks for which they have long trained as units or individuals. We have long experience in doing this successfully. Short rotations of National Guard engineer units have very successfully contributed to the construction of fencing along the southwest border for years. This is possible because the units and the people rotating in for short periods arrive with a set of skills which can be put to work effectively right away. Additionally, their contribution will be assured by the oversight and leadership of our long-term headquarters element that will be in place in each State.

RESTRICTIONS ON UTILIZATION OF THE GUARD IN ANNUAL TRAINING STATUS

15. Senator CORNYN. Secretary McHale, if National Guard troops are deployed along the border to accomplish their annual training, will they be able to lawfully conduct surveillance and intelligence analysis that results in actionable intelligence that leads to arrests and detention of individuals?

Mr. MCHALE. Yes. There is no Federal prohibition against the National Guard, acting under the command and control of a State Governor, providing this type of information. The intelligence plan that supports this mission was reviewed carefully to ensure that National Guard personnel are in strict compliance with all applicable laws and procedures. Of note, National Guard personnel participating in Operation Jump Start are not conducting domestic intelligence collection activities.

16. Senator CORNYN. Secretary McHale, are there restrictions on the surveillance and intelligence analysis that National Guard personnel will be able to perform?

Mr. MCHALE. Yes. The intelligence plan that supports this mission was reviewed carefully to ensure that National Guard personnel are in strict compliance with all applicable laws and procedures. Of note, National Guard personnel participating in Operation Jump Start are not conducting domestic intelligence collection activities.

National Guard personnel collection, retention, and dissemination of information on U.S. persons (e.g., a United States citizen, an alien known to be a permanent

resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, at a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments) is limited to specific exceptions related to foreign intelligence or counterintelligence; international terrorist activities; international narcotic activities; the protection of DOD employees, property, facilities, and information systems; or violations of Federal, State, or local law.

17. Senator CORNYN. Secretary McHale, will National Guard personnel be gathering intelligence on U.S. citizens who cross the border, or who provide support to illegal aliens?

Mr. MCHALE. National Guard personnel are not gathering intelligence on U.S. persons. However, current law, executive orders, and regulations do permit collection, retention, and dissemination of incidentally obtained information that may indicate involvement in activities that may violate Federal, State, local, or foreign laws. National Guard personnel participating in Operation Jump Start provide to U.S. Border Patrol agents any incidentally obtained information on suspected violations of the law.

PREPARATION OF NATIONAL GUARD UNITS FOR THE MISSION

18. Senator CORNYN. Secretary McHale and General Blum, will the National Guard Forces be armed?

Mr. MCHALE. As National Guard personnel operating in the border States are under State control, the decision to arm them is made by the Governors of the border States. In the Department's view, the Governors' decisions have been largely dependent on the nature and location of the mission that National Guard personnel are performing. For instance, the majority of missions that are performed by National Guard personnel do not place them in any physical danger or jeopardy. As such, the majority of National Guard personnel have not been armed. However, to the best of our knowledge, the Governors have ensured that National Guard personnel operating in dangerous areas along the southwest border are properly armed.

General BLUM. Some will be armed. Some will not. Their arming status will be determined by their mission. All Operation Jump Start National Guard Forces are subject to Rules for Use of Force (RUF) which are common to all four southwest border States. As drafted and adopted, the RUF complies with the laws of the four States, and it has been agreed to by their Governors and the DOD. Prior to its adoption the RUF was reviewed by the White House, DHS, and Department of Justice. The RUF permits National Guard Forces to be armed for self-defense as well as the defense of others. The decision to arm National Guard Forces is in the hands of the Adjutant General of each border State or his designee.

19. Senator CORNYN. Secretary McHale and General Blum, understanding that National Guard troops would not be involved in direct law enforcement duties, what are the rules for use of force for the troops deployed in support of this initiative?

Mr. MCHALE. There are uniform rules for the use of force (attached) across the southwest border in support of this operation. All National Guard personnel are informed fully in advance on the rules for the use of force, including their right of self-defense. These rules for the use of force have been incorporated into a memorandum of understanding among the State Governors under whose command and control these forces will be serving.

OPERATION JUMP START
REGIONAL RULES FOR THE USE OF FORCE (RUF)

1. **FORCE MAY BE USED IN:**

a. SELF-DEFENSE: You have the right to use the minimum force necessary to defend yourself.

b. DEFENSE OF OTHERS: You have the right to use the minimum force necessary to defend others as you would defend yourself.

2. **LEVELS OF FORCE:**

a. MINIMUM FORCE: You will consider and, if necessary, employ an escalating level of force. An escalation of force may not be possible under all circumstances; however, you will use only the minimum level of force necessary to control the situation and to defend yourself and others. The force used must be proportional to the threat. Force, whether non-deadly or deadly, will not be used in response to verbal provocation alone.

b. LEVELS OF FORCE:

(1) **Non-Deadly Force:**

(A) Non-deadly force is: Physical force or restraint that could not reasonably be expected to result in, or be capable of, causing death or serious bodily injury. When properly applied, non-deadly force results in minimal or no risk of causing death or serious bodily injury.

(B) Levels of non-deadly force are:

i. Show of Force (Presence of Guardsmen) - The appearance of properly equipped and well disciplined guardsmen may reduce the potential for conflict.

ii. Verbal Persuasion - firmly order persons to comply with your direction.

iii. Defensive Techniques:

- Order aggressor to the prone position;
- Restraint tactics; and
Physical force that does not amount to deadly force.

(2) **Deadly Force:**

(A) Deadly force is: Physical force or restraint that could reasonable be expected to result in, or is capable of, causing death or serious bodily injury, whether or not death is intended. Deadly force means force that the guardsman intends to cause, believes will cause, or by the manner of its use is capable of causing, death or serious bodily injury. Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protected loss or impairment of the function of any bodily member or organ.

(B) Before using deadly force: Deadly force may be used only when **ALL THREE** of the following conditions are met:

1. When necessary, that is, when you have a reasonable belief that the subject of such force poses an imminent danger of death or serious bodily injury to yourself or to another person;

2. All other means have been exhausted or are not readily available, or the situation does not permit use of lesser force; **AND**

3. The use of deadly force does not unreasonably increase the risk of death or serious bodily injury to innocent bystanders.

Firing a weapon is always considered deadly force. WARNING SHOTS ARE NOT AUTHORIZED. When using deadly force, shoot to stop the threat. Deadly force will not be used solely to protect property. Deadly force may not be used solely to prevent the escape of a fleeing suspect.

3. **ARMING ORDERS:**

a. Arming orders are not necessarily sequential. The Adjutant General of the Supported State, or his designee, will determine and may modify the arming order as the situation dictates.

b. The Supported State Adjutant General, or his designee, may authorize deployment of National Guard personnel without weapons.

ARMING ORDER MATRIX

Arming Order	Rifle	Pistol	Magazine	Chamber
AO-1	Sling	In Holster	Ammo Pouch	Empty
AO-2	Port*	In Holster	Ammo Pouch	Empty
AO-3	Port*	In Holster	In Weapon	Empty
AO-4	Port*	In Hand	In Weapon	Locked/Loaded

* Port arms is defined as having the rifle at the ready

4. **WEAPON LIMITATIONS:**

a. If required by the supported state, a locking plate must be installed on the M-16/M-4 series rifles to prevent automatic firing.

b. Armed personnel must be trained, qualified, and tested on the type of weapon issued, in accordance with current qualification standards.

c. Arms and ammunition will be secured at all times in accordance with appropriate regulations and policies.

d. Except upon express order of the Supported State's Adjutant General, automatic weapons or shotguns will not be deployed.

e. Rounds will be chambered only on order of the Supported State's Adjutant General, or his designee. The Supported State Adjutant General may delegate this authority to any member of the force.

f. Privately owned ammunition or firearms will not be carried or used. Armor piercing rounds, expanding ammunition, and blank ammunition will not be issued or fired.

5. **CHANGES TO RUF:**

These RUF shall not be changed except upon order of the Support States' Adjutants General.

ADDENDUM

1. These rules for the use of force will apply to all National Guard personnel in support of Operation JUMP START.

2. Carry out your assigned duties in a military manner and present a professional military appearance at all times. Be sure that everything you do reflects credit upon your states and country, the military service, your unit and your self. The standard uniform will be worn when the potential for interaction with the public exists. Exception to this will only be granted by the Supported State's Adjutant General, or his designee.

3. Respect the human rights of all persons. Be as courteous to all persons as possible under the circumstances. Do not mistreat anyone or withhold emergency medical attention from anyone needing it. Do not damage property unnecessarily.

4. Do not talk about this operation or pass on information or rumors about it to unauthorized persons. Refer all civilians, including members of the media, who ask for information about what you are doing to your commanding officer or to a public affairs officer.

5. Become familiar with these special orders and the rules for the use of force, and carry this information on your person at all times when engaged in border operations.

6. Pay careful attention to the specific orders, briefings and instructions you will be or have been given that relate to the specific border operation you will be supporting.

7. When the use of force is required, or any discharge of a weapon occurs (including accidental discharge), or when there is an injury or alleged injury, guardsmen will:

a. Secure and isolate the area

b. Administer first aid, request medical support, and evacuate casualties as necessary

c. Get unit status of personnel, weapons, and ammunition, if possible

d. Ensure initial reports have been sent to higher headquarters by quickest means

e. Get witness names and vital information from all involved personnel

f. Follow up with serious incident report

g. Make no statement to anyone except the following:

(1) Chain of command

(2) Military investigating officer

(3) Law enforcement officer

General BLUM. The RUF permits National Guard Forces to defend themselves and others in a manner that is acceptable under the law of each southwest border State. You are respectfully referred to the RUF below. A laminated copy of the RUF will be distributed to each National Guard soldier and airman performing law enforcement support duly in support of Operation Jump Start.

OPERATION JUMP START
REGIONAL RULES FOR THE
USE OF FORCE (RUF)

1. ***FORCE MAY BE USED IN:***

a. SELF-DEFENSE: You have the right to use the minimum force necessary to defend yourself.

b. DEFENSE OF OTHERS: You have the right to use the minimum force necessary to defend others as you would defend yourself.

2. ***LEVELS OF FORCE:***

a. MINIMUM FORCE: You will consider and, if necessary, employ an escalating level of force. An escalation of force may not be possible under all circumstances; however, you will use only the minimum level of force necessary to control the situation and to defend yourself or others. The force used must be proportional to the threat. Force, whether non-deadly or deadly, will not be used in response to verbal provocation alone.

b. LEVELS OF FORCE:

(1) ***Non-Deadly Force:***

(A) Non-deadly force is: Physical force or restraint that could not reasonably be expected to result in, or be capable of, causing death or serious bodily injury. When properly applied, non-deadly force, results in minimal or no risk of causing death or serious bodily injury.

(B) Levels of non-deadly force are:

i. Show of Force (Presence of Guardsmen) The appearance of properly equipped and well disciplined guardsmen may reduce potential for conflict.

ii. Verbal Persuasion – firmly order persons to comply with your direction.

iii. Defensive Techniques:

- *Order aggressor to the prone position;*
- *Restraint tactics; and*

- *Physical force that does not amount to deadly force.*

(2) ***Deadly Force:***

(A) Deadly force is: Physical force or restraint that could reasonably be expected to result in, or is capable of, causing death or serious bodily injury, whether or not death is intended. Deadly force means force that the guardsman intends to cause, believes will cause, or by the manner of its use is capable of causing, death or serious bodily injury. Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(B) Before using deadly force: Deadly force may be used only when ***ALL THREE*** *of the following conditions are met:*

1. When necessary, that is, when you have a reasonable belief that the subject of such force poses an imminent danger of death or serious bodily injury to yourself or to another person;

2. All other means have been exhausted or are not readily available, or the situation does not permit use of lesser force; ***AND***

3. The use of deadly force does not unreasonably increase the risk of death or serious bodily injury to innocent bystanders.

Firing a weapon is always considered deadly force. WARNING SHOTS ARE NOT AUTHORIZED. When using deadly force, shoot to stop the threat. Deadly force will not be used solely to protect property. Deadly force may not be used solely to prevent the escape of a fleeing suspect.

3. ***ARMING ORDERS:***

a. Arming orders are not necessarily sequential. The Adjutant General of the Supported State, or his designee, will determine and may modify the arming order as the situation dictates.

b. The Supported State Adjutant General, or his designee, may authorize deployment of National Guard personnel without weapons.

ARMING ORDER MATRIX

Arming order	*Rifle*	*Pistol*	*Magazine*	*Chamber*
AO-1	*Sling*	*In Holster*	*Ammo Pouch*	*Empty*
AO-2	*Port**	*In Holster*	*Ammo Pouch*	*Empty*
AO-3	*Port**	*In Holster*	*In Weapon*	*Empty*
AO-4	*Port**	*In Hand*	*In Weapon*	*Locked/ Loaded*

** Port arms is defined as having the rifle at the ready.*

4. ***WEAPON LIMITATIONS:***

a. If required by the supported state, a locking plate must be installed on the M16 /M-4 series rifles to prevent automatic firing.

b. Armed personnel must be trained, qualified, and tested on the type of weapon issued, in accordance with current qualification standards.

c. Arms and ammunition will be secured at all times in accordance with appropriate regulations and policies.

d. Except upon express order of the Supported State's Adjutant General, automatic weapons or shotguns will not be deployed.

e. Rounds will be chambered only on order of the Supported State's Adjutant General, or his designee. The Supported State Adjutant General may delegate this authority to any member of the force.

f. Privately owned ammunition or firearms will not be carried or used. Armor piercing rounds, expanding ammunition, and blank ammunition will not be issued or fired.

*5. **CHANGES TO RUF**:*

These RUF shall not be changed except upon order of the Supported States' Adjutants General.

ADDENDUM

1. These rules for the use of force will apply to all National Guard personnel in support of Operation Jump Start.

2. Carry out your assigned duties in a military manner and present a professional military appearance at all times. Be sure that everything you do reflects credit upon your state and country, the military service, your unit and your self. The standard uniform will be worn when the potential for interaction with the public exists. Exception to this will only be granted by the Supported State's Adjutant General, or his designee.

3. Respect the human rights of all persons. Be as courteous to all persons as possible under the circumstances. Do not mistreat anyone or withhold emergency medical attention from anyone needing it. Do not damage property unnecessarily.

4. Do not talk about this operation or pass on information or rumors about it to unauthorized persons. Refer all civilians, including members of the media, who ask for information about what you are doing to your commanding officer or to a public affairs officer.

5. Become familiar with these special orders and the rules for the use of force, and carry this information on your person at all times when engaged in border operations.

6. Pay careful attention to the specific orders, briefings and instructions you will be or have been given that relate to the specific border operation you will be supporting.

7. When the use of force is required, or any discharge of a weapon occurs (including accidental discharge), or when there is an injury or alleged injury, guardsmen will:

a. Secure and isolate the area

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c. Get unit status of personnel, weapons, and ammunition, if possible

d. Ensure initial reports have been sent to higher headquarters by quickest means

e. Get witness names and vital information from all involved personnel

f. Follow up with serious incident report

g. Make no statement to anyone except the following:

(1) Chain of command

(2) Military investigating officer

(3) Law enforcement officer

20. Senator CORNYN. Secretary McHale and General Blum, what happens when National Guard troops witness what appears to be unlawful activity by illegal aliens?

Mr. MCHALE. What happens will depend on the circumstances of the unlawful activity witnessed by National Guard personnel.

National Guard personnel who witness illegal activity that directly and immediately threatens the life of a person (or persons) are permitted by State law to intercede to protect the life of that person (or persons).

National Guard personnel conducting activities to enhance the security of the southwestern border report, as part of their routine reporting procedures, any suspected illegal activities taking place on the territory of the United Mexican States that they detect.

National Guard personnel conducting activities to enhance the security of the southwestern border report immediately any information regarding suspected illegal activities taking place on the territory of the United States to U.S. Border Patrol agents operating in their sector.

General BLUM. The National Guard soldier or airman is expected to report the activity to law enforcement personnel.

21. Senator CORNYN. Secretary McHale and General Blum, what training will servicemembers, as well as their chain of command, receive prior to employment regarding rules for use of force?

Mr. MCHALE. National Guard personnel, who are scheduled to deploy to conduct activities to enhance the security of the southwestern border, receive careful training in the uniform rules for the use of force prior to their deployment. In addition, each member is provided with a laminated card containing the rules for the use of force for their ready reference when they are in the area of operations.

General BLUM. All National Guard Forces supporting Operation Jump Start will be issued a laminated copy of the RUF upon entering upon duty. Further, all National Guard Forces will be trained on the RUF, and will be required to keep a copy of the RUF on his or her person at all times while on duty.

22. Senator CORNYN. Secretary McHale and General Blum, are State rules for use of force across all southwestern border States the same?

Mr. MCHALE. Yes. The Governors of the southwestern border States agreed to uniform rules for the use of force that apply to all National Guard Forces conducting border support duties in those States.

General BLUM. Yes. The Regional RUF is common to all four southwest border States.

CONSISTENCY WITH NATIONAL GUARD AUTHORITY FOR COUNTERDRUG OPERATIONS

23. Senator CORNYN. Secretary McHale, under section 112 of title 32, the National Guard is authorized to provide support to States under an approved State drug interdiction and counterdrug activities plan. This includes, for example, authority for the National Guard to assist in the transportation of aliens who have violated Federal or State law regarding the possession, use, or distribution of a controlled substance. How is the new plan for use of the National Guard consistent with existing statutory authority to assist the States for counterdrug operations, and do the requirements and limitations of the existing authority for National Guard support for counterdrug operations indicate a need for specific statutory authority for this mission?

Mr. MCHALE. Although National Guard missions conducted in support of the security of the southwest U.S. border are substantially similar to the annual training missions executed as part of the counterdrug program along the southwest border since 1989, these missions are conducted not under the authority of section 112 of title 32, U.S.C., but under the authorities of section 502(a) and section 502(f) of title 32, U.S.C. The former authorizes training activities, and the latter authorizes a member of the National Guard to be ordered, with or without his or her consent, to perform training or other duties.

SUPPORT TO CIVILIAN LAW ENFORCEMENT UNDER TITLE 10

24. Senator CORNYN. Secretary McHale, chapter 18 of title 10 provides authority to use the Armed Forces to support civilian law enforcement. Since it is not expected that members of the National Guard will engage in searches, seizures, arrests, or other activity that Active-Duty Forces are prohibited from engaging in under title 10, why not use the National Guard in title 10 status?

Mr. MCHALE. We are building on a long history of very successful military activities that have worked. Since 1989, military activities conducted at the southwest

border in support of the counterdrug mission have largely been carried out by National Guard personnel under the command and control of State Governors. Additionally, National Guard personnel have provided military support to civil authorities for many years in the normal course of military training or in activities that have resulted in a benefit to a military unit or to military personnel providing such support that is substantially equivalent to that which would otherwise be obtained from military training (e.g., medics, aviation, infantry, public affairs, admin and personnel, and maintenance personnel). Nation Guard personnel require training to prepare for the Federal mission, and this operation will not only provide them realistic training opportunities but will also serve to improve our Nation's land border security.

INVOLVEMENT OF THE GOVERNORS AND THE ADJUTANTS GENERAL OF THE STATES

25. Senator CORNYN. Secretary McHale and General Blum, were the Governors of the southwestern border States and the Adjutants General of those States involved in the discussion and planning of this proposal?

Mr. MCHALE. The Governors and the Adjutants General of the supported southwestern border States have been closely involved in the planning of this operation. The deployment and operation of their National Guard personnel, as well as those of supporting States, to enhance the security of our border has been conducted with their full consent and cooperation.

General BLUM. Yes, we have included the Adjutants General and Governor of each of the supported States as well as the States being asked to supply troops in all planning and coordination.

26. Senator CORNYN. Secretary McHale and General Blum, have the Governors and the Adjutants General of the States that may be asked to contribute National Guard troops been consulted?

Mr. MCHALE. The Governors and the Adjutants General of the supporting States—those States that may be asked to provide National Guard personnel to southwestern border States—have been consulted, and the deployment and operations of their National Guard personnel in support of the security of our border has been conducted with their full consent and cooperation.

General BLUM. Yes, we have included the Adjutants General and Governor of each of the supported States as well as the States being asked to supply troops in all planning and coordination.

ROLE OF U.S. NORTHERN COMMAND

27. Senator CORNYN. Secretary McHale and General Conway, U.S. Northern Command (NORTHCOM) was established in 2002 with the mission of planning, organizing, and executing homeland defense and civil support missions within the continental United States, Alaska, and our territorial waters. NORTHCOM is also responsible for the DOD's security cooperation efforts with Canada and Mexico. That said, what will NORTHCOM's role be in this operation?

Mr. MCHALE. U.S. NORTHCOM's role in border security has been to provide support to civilian authorities, principally the DHS, when directed by the President or the Secretary of Defense. For the current effort, military support is provided by National Guard Forces operating under the command and control of the State Governors. The National Guard emphasis is not new to efforts to support CBP.

Currently, there are no plans to deploy additional Active-Duty personnel to the border. However, as we gain more information related to the mission, there may be some capabilities found in Active-Duty units that can be employed to gain and maintain increased security along the border. If Active-Duty personnel are used, their employment would be on a very limited and reimbursable basis to provide specific skills and capabilities. These personnel would operate under the command and control authority of the Commander, U.S. NORTHCOM.

Additionally, Joint Task Force North, a subordinate command of U.S. NORTHCOM, has, for the last 2 years, supported CBP on border security operations in numerous northern and southern U.S. Border Patrol sectors. Since it is likely that Joint Task Force North will continue to conduct such operations, U.S. NORTHCOM will liaise closely with the National Guard Bureau to ensure that Federal and State military forces involved in border security operations have a common understanding of the locations, tasks, and purposes of all military forces providing military support in the vicinity of the borders.

General CONWAY. NORTHCOM will continue to provide support to DOJ and DHS in regard to counternarcotic operations. These missions will, as they have in the past, be accomplished with title 10 members and are completely separate from the National Guard support to Operation Jump Start. These missions may be complementary but are separate from Operation Jump Start.

While there are no plans currently to do so, if Active-Duty personnel were required, due to their unique capabilities, to support Operation Jump Start, they would deploy and operate under the command and control of the Commander, NORTHCOM. NORTHCOM will synchronize missions with the State National Guard Joint Task Force Headquarters to ensure operations are synchronized.

28. Senator CORNYN. Secretary McHale and General Conway, will a joint task force be established to coordinate the efforts of the National Guard in each State, and if so, who will command the joint task force, and how will that officer coordinate with the Governors, the Adjutants General, and Bureau of Customs and Border Protection?

Mr. MCHALE. Each of the four southwest border States (California, Arizona, New Mexico, and Texas) have established a joint task force that is responsible, under the authority of the Governor and the Adjutant General of that State, for operational control of all National Guard personnel executing missions in support of border security within that State.

General CONWAY. I defer this question to Lieutenant General Blum.

DEPARTMENT OF HOMELAND SECURITY IDENTIFICATION OF MISSIONS SETS

29. Senator CORNYN. Chief Aguilar, it is my understanding that the DHS intended to submit a set of missions to the DOD regarding the type of support the Bureau of Customs and Border Protection will require. Has that list of missions been finalized, and, if so, has it been relayed to the DOD? If not, when is this expected to occur?

Chief AGUILAR. Since the inception of Operation Jump Start, U.S. Customs and Border Protection, Office of Border Patrol, has worked hand-in-hand with the National Guard Bureau to identify the personnel requirements, the mission sets, and critical skills needed to reach the ultimate goal of deploying 6,000 National Guard troops to the border. Under the Operations Plans, developed by the Border Patrol, all of the missions place the National Guard in supporting roles to augment Border Patrol operations.

Mission sets were established around like job skills that would augment Border Patrol operations. One such mission set was command, control, communications, computers, and intelligence (C^4I), which included the following job skills: joint task force headquarters; intelligence support; communications support; electronics maintenance; mapping and imagery support; and data and voice support.

In conjunction with the Nation's Governors, the National Guard has deployed 6,000 soldiers to the southwest border and they are currently filling the mission requirements of Customs and Border Protection.

30. Senator CORNYN. Chief Aguilar, can you elaborate on the specific missions by State that the National Guard will be asked to perform?

Chief AGUILAR. All four States have National Guard performing jobs that fall into a variety of mission sets. Each sector, however, has some variation in the way guardsmen are employed and deployed. In Rio Grande Valley, Texas, for example, more guardsmen are utilized at checkpoint operations, unloading vehicles, and dismantling cars for drugs, than they are being used in New Mexico, where the Guard is deployed in entry identification teams in the desert searching for illegal aliens. On any given day the jobs performed vary. The majority of missions conducted applied to all four States.

The specific missions outlined in the Border Patrol Operations Plans for Operation Jump Start include: fence maintenance; general maintenance; law enforcement communications assistance; infra red scope operators; remote video surveillance camera operators; entry identification teams; intelligence/statistical analysis; aviation support; engineering of vehicle barriers and fencing; vehicle mechanics; transportation support; sensor monitoring; training support; road maintenance; IT support; command and control elements; and brush removal. Jump Start Operations Plans envision that the National Guard will perform these missions in all four States on the southwest border where they are deployed.

31. Senator CORNYN. Chief Aguilar, do you have a cost estimate of these support operations?

Chief AGUILAR. The recent supplemental budgeted $708 million for the current fiscal year and fiscal year 2007 to the National Guard to support Operation Jump Start.

32. Senator CORNYN. Chief Aguilar, will DHS reimburse DOD for costs that are beyond the National Guard's normal annual training requirements?

Chief AGUILAR. The recent supplemental provided $708 million for this current fiscal year and fiscal year 2007, in direct funding to the National Guard for Operation Jump Start.

USE OF UNMANNED AERIAL VEHICLES

33. Senator CORNYN. Secretary McHale and General Blum, do you envision the use of unmanned aerial vehicles (UAV) as part of the effort? If so, to what extent?

Mr. MCHALE. To date, the Bureau of CBP has not requested DOD UAV support for activities to enhance the security of the southwest border of the United States.

In the past, DOD has provided UAV support through Joint Task Force North at the United States. Additionally, DOD has provided Hunter and Hermes UAV support to DHS for the Arizona Border Control Initiative in the summer and fall of 2004.

If UAV support is requested, the request would be subject to approval by the Secretary of Defense.

General BLUM. To date, Bureau of CBP has not requested DOD UAV support for Operation Jump Start. The National Guard has limited inventory of UAVs. However, if the request is made by CBP and approved by the Secretary of Defense, the UAVs would most likely come from the Federal Active-Duty inventory. If the request is made and approved, a mission analysis will be conducted to determine the appropriate platform and quantity required to accomplish the mission.

34. Senator CORNYN. Secretary McHale and General Blum, do you anticipate any problems getting timely authorization from the Federal Aviation Administration (FAA)?

Mr. MCHALE. FAA requires that DOD submit a Certificate of Authorization (COA), no later than 60 days in advance, in order to fly UAVs in the National Airspace System. Both DOD and FAA have recognized the need for, and are working on, expedited procedures to meet short notice operational requirements.

General BLUM. No request for UAV support has been made at this time. However, in the event of such a request, the DOD will request a COA from the FAA to fly UAVs in the National Airspace System. Requests are made as far in advance as possible, but no later than 60 days prior to the operational dates, based on current FAA requirements. Both DOD and FAA have recognized a need for expedited procedures to meet short notice operational requirements.

35. Senator CORNYN. Secretary McHale and General Blum, where would such units be based?

Mr. MCHALE. As noted in the response to question 33, CBP has not requested DOD UAV support. If UAV support is requested by CBP, and approved by the Secretary of Defense, the Department will, at that time, determine the optimal basing locations for UAV operations.

In the past, when DOD has provided UAV support to CBP at the southwest border, we have based UAV operations out of Fort Huachuca's Libby Army Airfield and Yuma Proving Grounds in Arizona.

General BLUM. No request for UAV support has been received. Presumably, any basing decisions that may have to be made in the future would be heavily shaped by the nature of the support mission requested. As a result, it is impossible to provide a specific basing plan now. As a general matter, however, the southwest border region has many military and civilian air fields from which such operations could be mounted should the need arise.

36. Senator CORNYN. Secretary McHale and General Blum, would additional support facilities be needed?

Mr. MCHALE. If CBP requests UAV support, and the Secretary of Defense approves this request, DOD will evaluate the operational requirements of the request and, on that basis, determine what support facilities are needed.

General BLUM. Probably not, but it is impossible to say for certain since no mission has been requested.

HOT PURSUIT

37. Senator CORNYN. Secretary McHale, General Blum, and Chief Aguilar, will surveillance of suspected illegal activity that begins outside U.S. territory continue within U.S. territory? If so, for how far, for how long, and what are the rules?

Mr. MCHALE. National Guard personnel surveillance of suspected illegal activities that originate outside U.S. territory may continue within U.S. territory until such time as U.S. Border Patrol agents or other appropriate law enforcement authorities are able to apprehend the suspects.

National Guard personnel collection, retention, and dissemination of information on U.S. persons (e.g., a U.S. citizen, an alien known to be a permanent resident alien, an unincorporated association substantially composed of U.S. citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments) is limited to specific exceptions related to foreign intelligence or counterintelligence; international terrorist activities; international narcotics activities; the protection of DOD employees, property, facilities, and information systems; or violations of Federal, State, or local law.

The intelligence collection plan that supports this mission was reviewed carefully to ensure that we are in strict compliance with all applicable laws and procedures, as they relate to the domestic collection of information by military authorities.

General BLUM. National Guard personnel are providing support to Federal law enforcement authorities. In that context, if a suspected illegal activity outside the United Slates, under the surveillance of National Guard assets, appears about to enter into the United States, the appropriate law enforcement agency will be notified at once. The precise rules and procedures will vary from location to location and from means to means.

Chief AGUILAR. The National Guard will maintain observation of those persons/vehicles observed in Mexico that enter illegally into the United States.

There is no set answer as to how far or long observation will continue in the above situation. If National Guard Air support observes traffic they could maintain observation for quite some time and distance until a BP interdiction occurs. An Entry Identification Team (EIT) working near the border would be overtly positioned, probably well within a mile of the border. They would maintain observation as long and as far as they could, dependent upon the terrain and whatever vision enhancing device they have. Generally, observation is maintained and limited to 5 miles. Interdictions would probably occur within a few miles of the border. An EIT could observe the traffic for some time until a Border Patrol unit was directed in, especially if the traffic tried to hide. Border Patrol "mobile enforcement response" maintains "line of sight support" for an EIT. A response to an EIT alert typically occurs within 5 minutes, so foot traffic shouldn't get too far off but a vehicle could probably travel several miles from the border before it was out of sight.

"Rules": The National Guard will not interdict, detain, or arrest anyone.

QUESTIONS SUBMITTED BY SENATOR CARL LEVIN

COMPARISON TO COUNTERDRUG AUTHORITY

38. Senator LEVIN. Secretary McHale, the counterdrug activities of the National Guard authorized by section 112 of title 32, United States Code, are in support of a State drug interdiction and counterdrug plan developed by the State Governor and approved by the Secretary of Defense. The border security operation is in support of a Federal agency—the Bureau of Customs and Border Protection—not the State, even though the National Guard would be under the operational control of the Governor. Isn't there something inconsistent about National Guard in a State status under the operational control of a Governor performing a Federal mission in support of a Federal agency? Wouldn't it be more appropriate to perform Federal missions in a Federal status?

Mr. MCHALE. We are building on a long history of very successful military activities that have worked. Since 1989, military activities conducted at the southwest border in support of the counterdrug mission have largely been carried out by National Guard personnel under the command and control of State Governors. Additionally, National Guard personnel have provided military support to civil authorities for many years in the normal course of military training or in activities that

have resulted in a benefit to a military unit or to military personnel providing such support that is substantially equivalent to that which would otherwise be obtained from military training (e.g., medics, aviation, infantry, public affairs, admin and personnel, and maintenance personnel). National Guard personnel require training to prepare for the Federal mission, and this operation will not only provide them realistic training opportunities but will also serve to improve our Nation's land border security.

39. Senator LEVIN. Secretary McHale, will the DHS, the State Governors, or any other agency submit a plan similar to the plan required by the statute authorizing counterdrug activities?

Mr. MCHALE. No, DOD, DHS, State Governors, and the Adjutants General have worked together to develop a single, comprehensive plan for National Guard border security operations.

ANNUAL TRAINING

40. Senator LEVIN. General Blum, one of the underlying principles of using annual training to perform this border security mission is that the National Guard personnel involved will receive training in mission essential tasks for their military occupational specialty. Do you anticipate that infantry and other combat units may be asked to perform their annual training in support of this border security mission, or will this duty be restricted to combat support and combat service support units?

General BLUM. I really see no restriction to the type of units that will be sent to support Operation Jump Start. Every soldier is trained in basic soldier skills to include camouflage, map reading, medical aid, and communication techniques regardless of their specific military occupation, and these skills will be needed on the border as well as specific skills such as engineers and mechanics.

41. Senator LEVIN. General Blum, if combat troops will be used, what mission essential tasks will infantry soldiers train for? How will this affect artillery units? What percentage, if any, of their mission essential tasks will they be able to perform? What training for warfighting missions will these Guard units receive?

General BLUM. Mission essential tasks will be specific to the southwest border mission, not specific to a certain Military Occupational Specialty (MOS). Those mission sets are varied and diverse enough that each type of MOS will bring certain capabilities to the table. While an infantry platoon may have a higher compliment of collective and individual tasks satisfied by an EIT mission, the basic skills needed to accomplish that mission (navigation, movement, observation, etc.) are all baseline skill sets to guardsmen of any MOS.

42. Senator LEVIN. General Blum, if you are not going to use combat troops, but will be diverting only the supporting units, such as engineering and logistics, to this mission, won't this prevent the Army Guard's enhanced separate brigades from training together as a brigade, which would run exactly counter to the intent of the Army's "modularity" program to embed all the support forces necessary to sustain a deployment into a unified brigade structure?

General BLUM. There is no specific MOS that will be targeted for this mission. There will be a mixture of Combat Arms, Combat Support, and Combat Service Support units.

NATIONAL GUARD PERSONNEL REQUIREMENT

43. Senator LEVIN. General Blum, Secretary McHale was quoted in the press last week saying that the force "will consist mainly of National Guard troops from California, Texas, Arizona, and New Mexico." According to the DOD talking points, these four States currently have a combined total of about 50,000 guardsmen assigned. Have you determined how many of these 50,000 guardsmen in these four States are in the military occupational specialty areas that you will need for the mission?

General BLUM. Approximately half of the forces required will be performing EIT missions. This involves basic soldier skills that all of our combat arms troops are capable of performing. Approximately 25 percent of the force will be engineers assisting the border patrol with development and improvement of tactical infrastructure. Approximately 10 percent of the force will be aviation (primarily rotary wing). The remaining 15 percent will consist of troops assisting with command, control, administrative support, logistics, and maintenance. Each State has identified the por-

tion of the mission they expect to complete with their own forces. We currently anticipate a requirement to source combat arms, engineering, and aviation from those supporting States.

AVAILABILITY OF ASSETS AND PERSONNEL

44. Senator LEVIN. General Blum, the administration's proposal relies heavily on using the National Guard to operate surveillance systems and analyzing intelligence. Aren't these the same skill sets that have been extensively utilized in the global war on terror and in counterdrug activities? Do we have enough personnel with these skills to keep asking more and more from them?

General BLUM. The skills you speak of—operation of surveillance systems and intelligence analysis—are indeed very valuable skill sets to this mission, counterdrug missions, and the global war on terror. While specialized in their scope, we are confident that we can continue to fill each of the mission areas you speak of with qualified, capable, and ready guardsmen. We accomplish this by spreading those mission sets, when appropriate, to several different capabilities that can deliver the desired end state. For example, surveillance can be conducted by dismounted entry identification teams, rotor aircraft, or by fixed wing aircraft. We are able to fill those critical positions when needed, but we can also spread a given requirement across a myriad of capabilities that can deliver the desired end result.

45. Senator LEVIN. General Blum, both the Army and Air Force National Guard fell short of their recruiting goals in April, the last reports we have received. Are you concerned about recruiting and retention of personnel with these critical specialties if we continue to use them at the current rates?

General BLUM. I always pay particular attention to recruiting and retention, as our soldiers and airmen are our most important asset, and I'm encouraged at the most recent numbers that I've seen. For example, the Army National Guard has attained over 15,000 more accessions than at the same time last year. Retention rates continue at an all-time high for the Army National Guard at more than 117 percent of our goal. I'm also encouraged by the fact that the Army National Guard had a net increase in end strength of nearly 7,000 soldiers year to date, which is the largest growth in recent history. I'm equally pleased with the results in the Air National Guard, which has exceeded recruiting goals by attaining nearly 113 percent of our goal.

ARMY GUARD EQUIPMENT

46. Senator LEVIN. General Blum, earlier this year you stated repeatedly that the Army Guard was short of equipment to perform all its assigned missions. The total Army does not have enough equipment to do all its required training at home and missions in Iraq and Afghanistan while performing the maintenance needed to counter the impact of all this wear and tear from this heavy usage of our equipment. So where is the Army Guard going to get the equipment you plan to leave as an equipment set on the southern border to support these guard rotations over the next 2 years?

General BLUM. Equipment and funding issues have and will continue to be an issue for the National Guard. We have received some funding to address some of our equipment shortfalls over the last year; however, the issue is ongoing. Our biggest equipment shortfall from last year, which was identified during Hurricanes Katrina and Rita, involved interoperability of our communications assets. We have addressed the issue and are prepared for the hurricane season; we will continue to work to identify these issues and address the needs with the appropriate people.

COORDINATION WITH GOVERNORS

47. Senator LEVIN. Secretary McHale and General Blum, please describe any predecisional coordination and consultation with the Nation's Governors about use of their National Guard's annual training to support the Border Patrol to secure our southern border. We know from the Hurricane Katrina response that coordinating a large multi-State Guard operation like this is something that the States and National Guard had problems with just in the last year. Who will coordinate this effort, and how will it be de-conflicted with other missions that may emerge like disaster assistance during this hurricane season?

Mr. MCHALE. The Governors and the Adjutants General of the supported southwestern border States, as well as those States that may be asked to provide Na-

tional Guard personnel to the southwestern border States, have been closely involved in the planning of this operation, and the activities of their National Guard personnel in this operation have been conducted with their full consent.

The National Guard Bureau, in accordance with sections 10501 and 10503 of title 10, U.S.C., is coordinating this effort with the Adjutants General and assisting in de-conflicting the demands of this effort with those of overseas operations and domestic emergencies such us hurricanes, earthquakes, tornados, floods, and wildfires.

General BLUM. I'll first start with the issue of command and control. Each "supported" State—New Mexico, Arizona, California, and Texas—has created a Joint Task Force (JTF) which will be responsible for the command and control of all forces related to this operation. This includes forces that are coming in from "supporting" States. The "supporting" States will retain administrative control of the troops to ensure pay and other support needs are met. The "supported" State JTF commander, however, will own the operational/tactical control. Since we will employ our soldiers and airmen in title 32 status, the Governor of each respective State will have total control of these National Guard Forces. The National Guard Bureau will work with each of the States to provide any assistance necessary, as well as serving as the conduit to NORTHCOM.

48. Senator LEVIN. Secretary McHale and General Blum, what will be the role for the NORTHCOM, and what changes have been made to the system and arrangements that were used to respond to Hurricane Katrina?

Mr. MCHALE. U.S. NORTHCOM's role in border security has been to provide support to civilian authorities, principally the DHS, when directed by the President or the Secretary of Defense. For the current effort, military support is provided by National Guard Forces operating under the command and control of the State Governors. The National Guard emphasis is not new to efforts to support CBP.

Currently, there are no plans to deploy additional Active-Duty personnel to the border. However, as we gain more information related to the mission, there may be some capabilities found in Active-Duty units that can be employed to gain and maintain increased security along the border. If Active-Duty personnel are used their employment would be on a very limited and reimbursable basis, to provide specific skills and capabilities. These personnel would operate under the command and control authority of the Commander, U.S. NORTHCOM.

Additionally, Joint Task Force North, a subordinate command of U.S. NORTHCOM, has, for the last 2 years, supported CBP on border security operations in numerous northern and southern U.S. Border Patrol Sectors. Since it is likely that Joint Task Force North will continue to conduct such operations, U.S. NORTHCOM will liaise closely with the National Guard Bureau to ensure that Federal and State military forces involved in border security operations have a common understanding of the locations, tasks, and purposes of all military forces providing military support in the vicinity of the borders.

General BLUM. The relationship between the National Guard Bureau and NORTHCOM has only strengthened since Hurricane Katrina. The National Guard Bureau will continue to coordinate with the NORTHCOM to ensure they have the "common operating picture" of this mission and understand the amount and types of troops that are on the ground to conduct this mission. With that said, I want to reiterate that the State Governors own the command and control of these soldiers and airmen since they will be in either title 32 or State status, not title 10.

COORDINATION AND ROLE OF THE JOINT STAFF

49. Senator LEVIN. General Conway, one of the problems involved with the deployment of National Guard units in connection with Hurricane Katrina was that the receiving States and the Joint Task Force Commander did not know the skill sets of the units that were deploying to support them. The Joint Staff has been deploying units for decades and has honed the process to a fine art. What role will the Joint Staff play, if any, in the identification and deployment of National Guard units to the border States?

General CONWAY. National Guard personnel deploying to and operating in the border States will be doing so under the authority of title 32, U.S.C. The State Adjutants General, with the assistance of the National Guard Bureau and in accordance with the Emergency Management Assistance Compact and a State-to-State memorandum of agreement, will coordinate the identification, deployment, and redeployment of National Guard personnel in support of this activity. Command and control of these personnel will be exercised by State Governors. The Joint Staff will not have a role in this process.

50. Senator LEVIN. General Conway, has any thought been given to the impact that the deployment of National Guard units to the border States could have on combatant command war plans?

General CONWAY. This limited, temporary deployment will not adversely affect operational readiness or DOD's ability to conduct the global war on terrorism, nor hinder the National Guard's ability or capacity to aid their States in the event of a natural disaster or other emergency. It will, however, provide Guard forces with realistic training opportunities, while also providing support to the DHS.

51. Senator LEVIN. General Conway, another problem related to Hurricane Katrina was the lack of a single chain of command and the impact on unity of effort. What will the command relationship be between the National Guard units and the Active units that will be involved in this effort?

General CONWAY. There are currently no Active-Duty title 10 forces involved in this mission. NORTHCOM, with the assistance of the National Guard Bureau, will coordinate missions with the National Guard Joint Task Forces operating in the four southwestern border States to ensure operations are synchronized.

QUESTIONS SUBMITTED BY SENATOR HILLARY RODHAM CLINTON

UAVS OPERATING IN DOMESTIC AIRSPACE

52. Senator CLINTON. Secretary McHale, one of the difficulties in using many of the UAVs that are used by our military forces is in using airspace that also is used by commercial or civilian aircraft. At this point, DOD forces must seek permission for individual flights from the FAA to use such airspace well ahead when they intend to operate the UAVs. As I understand it, granting this permission can require up to 60 days or more. If we are to have the National Guard employ UAVs effectively in this mission, it would seem to me that this administrative lead time would be unworkable. What steps are the FAA and DOD taking to reduce or eliminate such lead times in being able to fly UAVs regularly along the border in support of this initiative?

Mr. MCHALE. FAA requires that DOD submit a COA, no later than 60 days in advance, in order to fly UAVs in the National Airspace System. Both DOD and FAA have recognized the need for, and are working on, expedited procedures to meet short notice operational requirements.

To date, CBP has not requested DOD UAV support as part of the effort to enhance the security of the southwestern border.

In the past, DOD has provided UAV support through Joint Task Force North at the request of CBP in support of its counterdrug mission on the southern border of the United States. Additionally, DOD has provided Hunter and Hermes UAV support to DHS for the Arizona Border Control Initiative in the summer and fall of 2004.

If CBP does request UAV support, that request would be subject to approval by the Secretary of Defense.

PREDATOR UAV SYSTEMS

53. Senator CLINTON. General Conway, one of the systems that has been in short supply in the Iraq and Afghanistan theaters has been the Predator UAV providing streaming video capability. Will the DOD be diverting Predator UAV systems that had been scheduled to support forces deployed to U.S. Central Command in favor of sending them to the southwest border?

General CONWAY. To date, the Bureau of Customs and Border Protection has not requested DOD UAV support for activities to enhance the security of the southwest border of the United States. If DOD were to receive such a request, we are required by section 376 of title 10, U.S.C., to ensure that the provision of any such military support to law enforcement does not adversely affect the military preparedness of the United States. Right now, there is no plan to pull any UAV assets away from operations in Iraq and Afghanistan for use on the southwest border. As the President stated earlier, the mission on the southwest border will have no impact on the global war on terror.

[Whereupon, at 5:40 p.m., the committee adjourned.]

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