AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. Hrg. 111–1051

BORDER SECURITY: MOVING BEYOND THE VIRTUAL FENCE

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

APRIL 20, 2010

Available via the World Wide Web: http://www.fdsys.gov/

Printed for the use of the Committee on Homeland Security and Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

57–327 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000001 Fmt 05011 Sfmt 05011 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
THOMAS R. CARPER, Delaware
MARK L. PRYOR, Arkansas
MARY L. LANDRIEU, Louisiana
CLAIRE McCASKILL, Missouri
JON TESTER, Montana
ROLAND W. BURRIS, Illinois
EDWARD E. KAUFMAN, Delaware

SUSAN M. COLLINS, Maine
TOM COBURN, Oklahoma
SCOTT P. BROWN, Massachusetts
JOHN McCAIN, Arizona
GEORGE V. VOINOVICH, Ohio
JOHN ENSIGN, Nevada
LINDSEY GRAHAM, South Carolina

MICHAEL L. ALEXANDER, *Staff Director*
TROY H. CRIBB, *Counsel*
BLAS NUNEZ-NETO, *Professional Staff Member*
NICOLE M. MARTINEZ, *Research Assistant*
BRANDON L. MILHORN, *Minority Staff Director and Chief Counsel*
ROBERT L. STRAYER, *Minority Director for Homeland Security Affairs*
MATTHEW L. HANNA, *Minority CBP Detailee*
MOLLY A. WILKINSON, *Minority General Counsel*
TRINA DRIESSNACK TYRER, *Chief Clerk*
PATRICIA R. HOGAN, *Publications Clerk and GPO Detailee*
LAURA W. KILBRIDE, *Hearing Clerk*

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000002 Fmt 05904 Sfmt 05904 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

CONTENTS

	Page
Opening statements:	
Senator Lieberman	1
Senator McCain	3
Senator Burris	14
Prepared statements:	
Senator Lieberman	33
Senator McCain	36

WITNESSES

TUESDAY, APRIL 20, 2010

Hon. Alan D. Bersin, Commissioner, U.S. Customs and Border Protection, U.S. Department of Homeland Security	5
Hon. Dennis K. Burke, U.S. Attorney, District of Arizona, U.S. Department of Justice	17
Hon. Octavio Garcia-Von Borstel, Mayor, City of Nogales, Arizona	20
Larry A. Dever, Sheriff, County of Cochise, Arizona	23

ALPHABETICAL LIST OF WITNESSES

Bersin, Hon. Alan D.:	
Testimony	5
Prepared statement	57
Burke, Hon. Dennis K.:	
Testimony	17
Prepared statement	67
Garcia-Von Borstel, Hon. Octavio:	
Testimony	20
Prepared statement	79
Dever, Larry A.:	
Testimony	23
Prepared statement	86

APPENDIX

Tucson Weekly Articles submitted by Senator McCain	38
Photograph submitted by Mr. Garcia-Von Borstel	56
Richard M. Stana, Director, Homeland Security and Justice Issues, U.S. Government Accountability Office, statement for the Record	89
Responses to questions for the Record from Mr. Bersin	102

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000003 Fmt 05904 Sfmt 05904 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

BORDER SECURITY: MOVING BEYOND THE VIRTUAL FENCE

TUESDAY, APRIL 20, 2010

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 11:05 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Pryor, Burris, and McCain.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. I thank everybody for being here.

This is the third hearing our Committee has held to review America's border security programs in the wake of the stunning increase in violence caused by the Mexican drug cartels. In fact, and by coincidence, it was a year ago today that our Committee held a field hearing in Arizona—with some of the same witnesses who are on our second panel.

I regret to say that in the year that has passed, the situation has continued to deteriorate. Since 2006, more than 22,700 people have been murdered in Mexico by narco-terrorists in the ongoing war between the cartels and the cartels and the government. That number comes from a Mexican Government study. It is a multiple—22,700—of the number of Americans killed in the wars in Iraq and Afghanistan since 2001.

The pace of the murders unfortunately has been steadily escalating: 9,635 murders in 2009, an increase of 50 percent over the already unprecedented level in 2008 and three times the 2,837 killed in 2007—Mexican President Felipe Calderon's first year in office.

These statistics are of grave and great concern to the United States, as they are to Mexico and its strong and courageous President. I greatly admire his unwavering commitment to rid his country of the plague of narco-terrorism.

In the past year, the Mexican Government has arrested or killed literally scores of leading cartel figures, including Arturo Beltran-Leyva, known as the "boss of bosses," in December.

But as cartel leaders are taken out, the violence seems to increase as the cartels fight amongst themselves for the remaining pieces of the narco-trade. The obvious fact is that we have to do

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000005 Fmt 06633 Sfmt 06633 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

everything in our power to support our southern neighbors in the historic battle they are currently waging against the cartels.

And we have to be vigilant on the American side of the border because there are deeply troubling signs that the cartels and other smuggling groups are becoming more willing to bring their violence across the border and inflict it on U.S. citizens.

In the past month alone, as you know, three separate incidents have drawn our attention, concern, and anger: A pregnant U.S. Consulate employee, her husband, and the Mexican husband of another Consulate employee were all gunned down in Juarez as they left a children's party; the U.S. Consulate in Nuevo Laredo was attacked with an improvised explosive device (IED), which is a term we normally hear used with regard to the terrorist attacks against us and our allies in Iraq and Afghanistan; and then, of course, a well-known and much respected and beloved rancher in Arizona was murdered on his own property. All this follows the murder of an on-duty Border Patrol agent last year.

So the bottom line before our Committee today is what can the Federal, State, and local governments do together to control violence in Mexico, on the border between the United States and Mexico, and violence and other illegal behavior that will flow over the border into our country.

That brings me briefly to highlight a focus of this hearing, which is our efforts to use technology to control the border. When the "virtual fence," or SBInet project, was first launched, we were told that it would be extended across our entire Southwest Border—that is nearly 2,000 miles—by early fiscal year 2009.

Well, it is now, of course, April 2010, almost 4 years after SBInet began and $770 million has been spent directly on it, and we are still waiting on the testing of the first 23-mile stretch of SBInet, which will be in the Tucson Sector. That is it.

By any measure, SBInet has been a failure—a classic example of a program that was grossly oversold and has been badly underdelivered.

When SBInet first started, U.S. Customs and Border Protection (CBP) seems to have effectively told Boeing, the contractor, "Go ahead and do what you can do as quickly as you can."

Without clear goals and expectations, both CBP and Boeing underestimated the complexity of building the system, I believe. And the Border Patrol agents themselves—the people who would be relying on and implementing the system every day—were not, in my opinion, adequately consulted on what their actual needs were.

I am also troubled that the program office responsible for SBInet is heavily dependent on contractors, weakening CBP's own organic capability to manage the program and ensure capability.

And, of course, the structure of the SBInet contract—one overarching contract to a single contractor—means that CBP does not get the benefit of competition for individual tasks undertaken for the SBInet program.

From the beginning of SBInet, CBP's reports to Congress read like a quest to find that mystical point where parallel lines finally meet: It is always just over the horizon, but you never actually get there.

We have to get there. Our Committee staff visited the Tucson Sector over the recess, and once again, they heard, "We are almost there."

I do not think the Members of the Committee will believe that we are there until we are actually there and we can see so with our own eyes.

I am pleased that Secretary Napolitano has ordered a long overdue internal review of the SBInet program, which will consider its long-term viability and determine whether there are technological alternatives to providing better border control.

I welcome CBP Commissioner Alan Bersin today. In some sense maybe on this occasion he is fortunate that it took a long time to get him into office because he is not accountable for any of the delays that I just described, but now he has the responsibility, of course, to end them, and I look forward to his testimony and the questioning that will follow.

We are also honored to have a second panel of witnesses from Arizona to bring our Committee a firsthand, from-the-ground, local perspective on this crisis, which is a homeland security crisis.

I am honored to be joined as Ranking Member today by Senator John McCain of Arizona. He has an obvious interest in this crisis because it so disproportionately affects the people of Arizona. He has been a persistent advocate for better border security and urgent action to deal with the violence now pouring over the border into the United States, and I am proud to call on him now for an opening statement.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Well, thank you, Mr. Chairman, and, again, I thank you for holding this hearing—you and the Ranking Member, Susan Collins. This is an important hearing.

As you mentioned, it was exactly 1 year ago today that we had a hearing in Phoenix, and it was at that time that we called for the dispatch of 3,000 National Guard troops to the border. And, unfortunately, as our witnesses will testify, we are seeing an increase in violence. The situation has not improved. We are seeing serious spillover violence that affects Americans living near the border.

Mr. Chairman, I have three articles that I would like included in the record.[1]

Chairman LIEBERMAN. Without objection.

Senator MCCAIN. They are titled "The Chiricahua Corridor—Drug-trafficking and crime victimize residents and destroy the environment along the Southern Arizona-New Mexico border;" "Luck and Fear—A border-area home invasion has forced residents to take action;" and "Chico and the Monkey—How many times were a border coyote and his accomplice captured and released by law enforcement? Would you believe 35?"

These are all very interesting articles that I hope all of my colleagues would take the time to read so they can understand how serious and uncontrolled our border situation is.

[1] The articles submitted for the record by Senator McCain appear in the Appendix on page 38.

As you mentioned, just last month, three Americans were killed on the Mexican side of the border, and a third-generation Arizona rancher was found dead on his property near the Mexican Border, reportedly shot by a suspect that may have entered our country illegally. Interestingly, last week the *L.A. Times* reported that more than 22,000 deaths in Mexico during the past 3 years occurred because of drug violence with the cartels—22,000 Mexican citizens.

The violence is increasing and impeding the everyday life and the peace of mind of our citizens in the border region. Some believe that they are living in a lawless land where there is little or no consequence for the violation of their land, property, and well-being.

The President's most recent budget, unfortunately, seeks to cut 181 Border Patrol agent positions. Inexplicable. Inexplicable. This comes after the number of Border Patrol agents already declined between fiscal year 2009 to fiscal year 2010.

As all the witnesses know today, the Border Patrol in the Tucson Sector accounts for almost 50 percent of all illegal immigrant apprehensions across the country. Specifically, in fiscal year 2009, the Border Patrol in the Tucson Sector apprehended 241,453 individuals—the size of the population of Reno, Nevada. And we will hear from our witnesses what proportion are not apprehended. Some say three times, some say five, but regardless, that number is astonishing.

The Tucson Sector also accounts for 50 percent of all the marijuana seizures in the Nation. In fiscal year 2009, the Border Patrol seized more than 1.3 million pounds of marijuana in the Tucson Sector alone—the first time any Border Patrol sector had ever seized more than 1 million pounds of marijuana in one fiscal year. Additionally, 90 percent of the cocaine used in the United States comes through Mexico, and much of it is smuggled through Arizona, right up the I–10 highway. So it is for these reasons that in fiscal year 2009, 73 percent of the District of Arizona's criminal filings involved either immigration or drug charges.

As you know, Mr. Chairman, yesterday Senator Jon Kyl and I released a 10-point border security action plan that calls for 3,000 National Guard troops to be sent to patrol the Arizona-Mexico Border, 3,000 additional Border Patrol agents to the border, 24-hour-a-day surveillance by Predator B Unmanned Aerial Vehicles (UAVs), and construction of a fence that truly deters illegal entries, among other issues.

I hope the hearing today will highlight the outstanding work that our State and local officials are performing to provide for the safety of Americans, despite the inability of the Federal Government to secure the Southwest Border from the flow of drugs, money laundering, and illegal immigration. In our second panel, we will hear from the Mayor of Nogales, Arizona; the Sheriff of Cochise County, Larry Dever, who deals with these issues on a day-to-day basis; and our U.S. Attorney, Dennis Burke, who has increased the number of border-related prosecutions, I am happy to say.

Finally, Mr. Chairman, on SBInet, it is a disgraceful failure. At least $800 million so far has been wasted. Think of how that money could have been spent to try to improve our border security. There has been a lack of oversight; there has been a lack of account-

ability. And by most reports, this virtual fence, which has already consumed hundreds of millions of dollars of taxpayers' money, has been a complete failure.

I will look forward to hearing from Commissioner Bersin on this issue, along with other border security issues.

Again, I thank you for holding this hearing.

Chairman LIEBERMAN. Thank you, Senator McCain.

Commissioner Bersin, I am glad to welcome you here for your first appearance since you assumed the responsibilities of this critically important office. We look forward to working with you as the oversight Committee for the Department of Homeland Security (DHS), and we would invite your testimony at this time.

TESTIMONY OF HON. ALAN D. BERSIN,[1] COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BERSIN. Thank you, Mr. Chairman. Good morning, Senator McCain, Senator Pryor, Senator Burris, and staff. I appreciate this opportunity to return to testify before the Senate. I had many years, earlier years, in the 1990s, in which I watched the border from my home and the place where I worked in San Diego. And as I have come back during the past year, I understand that we face many of the same problems, but we have many more opportunities because of the resources and the support that the Congress and, in particular, this Committee have provided to Customs and Border Protection. I take the reins at CBP with honor and pride, and I understand that I am accountable to our people and to this Committee.

The Committee indicated it wishes to hear from me on three subjects:

The status of border security efforts—and that is our No. 1 priority, to protect the American people and our border communities from violence—to assure public safety, and to assure security on the border.

Second, the Committee wishes to hear about the status of our efforts in support of the Government of Mexico. As the Chairman noted, there has been a historic reversal of the past in terms of President Calderon's efforts, and I will be pleased this morning to report on efforts that CBP and DHS and the other elements of the U.S. Government have provided to President Calderon.

The third is to review the theory of action of our border security to go back over what the original theory was with regard to personnel and infrastructure and technology, with specific reference to SBInet, its current status, and the future prospects.

A year ago, actually beginning in the last quarter of 2008, the American people became aware of something that had actually started with the ascension to power of President Calderon in 2006. We discovered—and it hit our front pages—the kind of violence that has now escalated to the point where—as Senator McCain and the Chairman noted—an estimated 22,000 Mexicans have died as cartel takes on cartel and as the Mexican Government for the first time in its history takes on Mexican organized crime.

[1] The prepared statement of Mr. Bersin appears in the Appendix on page 57.

In March 2009, Secretary Napolitano—no stranger to the border—announced the Southwest Border Initiative that had three basic goals:

One was to see that the violence that was occurring in Mexico would not spill over in the same form and with the same frequency and the same devastating impact that it was having in northern Mexico.

The second goal was to reduce the movement of contraband and illegal crossings across our border in the Southwest.

And the third was to support Mexico in its campaign to crack down on cartels through technical assistance, through intelligence sharing, and through support on our side of the border of the operations that were taking place south of the border.

Significant resources were deployed to the border in terms of personnel, in terms of technology, non-intrusive inspection technology and X-ray machines, in terms of intelligence analysts, and in terms of redirected Stonegarden funds. As the Chairman and Senator McCain noted, support and partnership with our State, local, and tribal partners is absolutely essential to the Federal strategy on border security.

The results of the Southwest Border Initiative: We saw significant decreases in illegal crossings, and while this was attributable in some material part to the economy and the recession that we have experienced, both in North America and worldwide, it also reflected a heightened enforcement posture by the increase of Border Patrol agents that brought our total level of agent strength to 20,000 Border Patrol agents, an increase of 100 percent since 2004, and an increase, I should say, of 7½ to eight times from what it was when I last worked with the Border Patrol in the 1990s.

The statistics with regard to seizures of contraband, of narcotics, are set forth in the written testimony, and I will leave the staff in the Senate to refer to that testimony for the specific statistics.

With regard to the violence situation, we have two reports—one that is cautious in its optimism, but also in its recognition that vigilance is required; and a second that is not optimistic, but reflects the kind of tragedy that we saw in the murder of Robert Krentz, a rancher in Arizona.

The kind of violence that we have seen in Mexico, the shoot-outs in the plazas, the 200-day death toll in Ciudad Juarez that has converted that city into the most dangerous city in the Western Hemisphere, we have not seen in the United States in terms of mass impact. We are geared to prevent and to deter that impact from coming across our border. That is not to say, Senators, that we have not seen significant and disturbing trends of increased violence attributable to organized crime activities based in Mexico. We have, and we do, and we take it very seriously.

The murder of Mr. Krentz was the most recent incident in which an American citizen on our side of the border was the victim of organized criminal violence based in Mexico. Secretary Napolitano took very direct action in responding to that murder. Additional Border Patrol agents were deployed in the Douglas Station area of the Tucson Sector. We saw an immediate dispatch of air and marine assets to help track the suspected murderers, and we have reason to believe they did move back into Mexico. The investigation

continues, not only with Sheriff Dever in Cochise County, but also with Federal and State investigators, and we are also working with our Mexican colleagues. Secretary Napolitano wanted me to assure this Committee that she is committed to seeing that this murderer is apprehended and prosecuted to the fullest extent of the law.

We also see—and it is disturbing—the killings of American citizens and people connected to the Consulate in Juarez. The Committee asks whether that or the use of an IED against the Consulate in Nuevo Laredo represents a change in the cartels' approach to targeting or challenging U.S. law enforcement and U.S. personnel abroad. Senator, that inquiry continues, but we take that threat very seriously, and it would constitute a change in the way in which the cartels have operated with respect to U.S. law enforcement officials or U.S. officials stationed abroad.

Last, in terms of the relationship with Mexico, I can tell you from having returned to the border that indeed the future is not what it used to be with regard to our relationship with Mexico. Whereas the border used to be a place where U.S. law enforcement stopped and where sovereignty was still respected, the fact of the matter is that cooperative relationships with Mexico are at a level and at a depth that we have never seen before. This stems both from President Calderon's recognition of the extent to which organized crime has tainted Mexican politics and society and from the recognition by President Obama, Secretary Napolitano, and her colleagues in the Cabinet that we share a co-responsibility for the situation on the U.S.-Mexico Border, and that, in fact, the cycle of drugs coming north and guns and cash going south are part of one organized vicious cycle of crime and criminality that we have a joint responsibility to confront. And I am pleased to report to you, Mr. Chairman and Senators, that we have confronted that in cooperative ways not seen before. Let me give you three examples.

One is the extent to which we at CBP focus on the southbound movement of cash and guns. We have created an Outbound Programs Division in our Office of Field Operations. We have dedicated the resources. We have instituted the checks that look not only at people and things, cargo and goods coming north, but people and things going south. The result of that in concert with Immigration and Customs Enforcement has been an unprecedented level of seizure both of cash and also of weapons.

We have also seen for the first time in the history of the U.S.-Mexican Border the dispatch and the deployment of Federal police in Mexico in the Sonora area at Nogales to coordinate with the U.S. Border Patrol. This creation of a communication north and south of the border holds out great promise and indicates something that would have been unthinkable even 5 years ago.

On the prosecution front, we see our prosecutors—and Mr. Burke will be able to describe this with greater specificity—cooperating with the Attorney General of Mexico (PGR) to actually share prosecution authorities or responsibilities to see to it that law breakers are punished, whether in American courts and now in certain cases in Mexican courts.

With regard to personnel, infrastructure, and technology, we have increased Customs and Border Protection to where we have now almost 58,000 employees. We have 20,000 Border Patrol

agents and 24,000 field officers. We also have built the infrastructure that Congress asked us to do with regard to the fencing across the U.S.-Mexican Border. On the advice of Border Patrol and the professionals who live and work there, we have met in all material respects the obligations placed on the Department of Homeland Security with regard to the fence.

And last, Mr. Chairman and Senators, with regard to SBInet, as you know, when Secretary Napolitano came into office, because of her experience as the Governor of Arizona, she understood that the promise of the virtual fence from Brownsville to San Diego had not delivered and was not anywhere near being able to deliver. As a result, as you know, she ordered a midterm assessment and ordered some immediate steps with regard to funds under the American Recovery and Reinvestment Act (ARRA).

What the Secretary ordered—and it has taken place—was a reallocation of those funds under ARRA to see to it that we would not continue to spend on the Block 1 technology but, rather, use those funds to purchase and deploy technology at the border that had been trusted and tried by our Border Patrol agents and field officers, and that has been done with regard to the $50 million, and I will be pleased to answer the Committee's questions with regard to the specific allocation among the variety of devices that have been long in use on the U.S.-Mexican Border and have proven their value.

The Secretary also started a science-based assessment that is underway that will look at sector by sector across the U.S.-Mexican Border what mix of technology will best serve our agents on the ground and our communities at the border. And I would say that while the news regarding the wholesale integration at a border-wide level has proven to be beyond the capacity of the contractors and beyond the capacity of CBP to date, there are elements in the Block 1 technology that we would urge this Committee and its staff to work with us to see whether it actually functions in a way that can be integrated with a placement and a deployment of technology across the border so that, in fact, SBInet technology, if not the SBInet system as originally envisioned, would actually have a place as we move forward.

Mr. Chairman, I thank you again for this opportunity and look forward to responding to the Committee's questions.

Chairman LIEBERMAN. Thanks very much, Commissioner Bersin. We will have 7 minutes for each of the Senators on this round.

Let me begin my questioning, Commissioner, and I want you, just as briefly as you can for the benefit of those in the room and those who may be watching or listening, to contrast two things you said that are of interest to the Committee. The first is that, in your estimation—and you are fairly new at CBP—the Federal Government has met all of its obligations, you said, with regard to the fence along the border. Contrast that, if you will, with what everyone, including you, I gather, views as the failures of the SBInet virtual fence system.

Mr. BERSIN. Mr. Chairman, the fence is an element of infrastructure, and what we did, beginning actually back in the Clinton Administration with regard to the old landing-mat fence, and then carried forward with the resources provided by Congress as the

fence of approximately 700 miles—just about 675 miles to be more precise—was built, was very much more governed by differential terrain and differential circumstances. And the theory of the fence was to provide our Border Patrol agents with an opportunity, depending on the different terrain, to be able to respond to incursions.

Chairman LIEBERMAN. And what areas is that generally present in now?

Mr. BERSIN. It has been effective with regard to the different kinds of fences that have been built. So, for example, around ports of entry, you will see pedestrian fences of 15 feet or greater that will actually keep people from scaling the fence and moving into a town or a city in which they can then blend into the population and escape from apprehension.

Out in the middle of the desert, different kinds of infrastructures are required, largely to prevent the movement of vehicles across a flat terrain.

So I think what we have seen is a successful implementation of this differential application of infrastructure.

Chairman LIEBERMAN. Now, contrast that with the SBInet. That was intended as a back-up or to cover the whole border in a kind of virtual fence?

Mr. BERSIN. The SBInet is a system that was to give us through a combination of video and radar an ability to both detect incursions on a screen and to identify the kind of incursion—the kind of person, the kind of car, and the number of people. And, in fact, Block 1, while the assessment is still going on, has shown some promise in being able to do precisely that.

What has not worked is the total integration of technology from each of the areas along the border into an overall system that would permit central monitoring and control. That technology integration at the very broadest level has been the complete failure that the Committee describes.

Chairman LIEBERMAN. So that is a helpful clarification. I presume you would not say that the combination of the fence and the virtual fence of SBInet, whatever parts of it are working, are stopping the flow of illegal immigrants from Mexico to the United States today.

Mr. BERSIN. No. It has not sealed the border such that there is no illegal movement.

Chairman LIEBERMAN. Right. So there continues to be illegal movement in and out, as it were. Do you have any relevant statistics, estimates—and this is a hard thing to do, I know, because of all the vagaries of making judgments like this since we are talking about essentially—of obviously illegal behavior?

Mr. BERSIN. In terms of the number of crossings?

Chairman LIEBERMAN. Yes. Has the number gone up? Has it gone down? There has been some theory that it may be going down because the economy is worse here.

Mr. BERSIN. The statistics, which are set forth in full, Mr. Chairman, in the testimony, indicate that in fiscal year 2009, we saw and encountered at the ports of entry 224,000 inadmissible aliens at the port of entry, and we apprehended more than 556,000 be-

tween the ports of entry, approximately in total 580,000 illegal or attempted illegal crossings.

In fiscal year 2010 to date, we have seen 113,000 aliens at the ports of entry and 245,000 between the ports of entry, somewhat greater but basically the same level.

Chairman LIEBERMAN. Still significant. Still about the same as the year before.

Mr. BERSIN. But compared to 2008 and 2007, we saw a decline in the apprehensions between the ports of 23 percent, more than 167,000 apprehensions.

Chairman LIEBERMAN. So let us go back to SBInet. You have a reputation for being a tough law enforcer and manager. Did I correctly infer, as I heard you talking about SBInet, that you think as a total system it is never going to go into effect and that the best we can do with it is to take pieces of the technology and use them well?

Mr. BERSIN. Mr. Chairman, that is one of the options on the table. I was out speaking to our employees in the Office of Information Technology today, and I remembered that the first trial I had in Federal court in the 1970s was about the Baltimore traffic control system in which there was an integration of all the technology and the traffic lights in the city of Baltimore. The expectation was that based on traffic flow, you could direct all the cars in the city. It was a horrible integration failure. That would be a piece of cake, technically speaking, today.

So I do not want to say that theoretically at some point you could not have the kind of sophisticated technological integration that SBInet originally projected. But in the near term, the Secretary has concluded, and I agree with her based on the advice that we have received, that wholesale integration is not a goal that is practicable or that would produce the kind of productive results that we would want to see.

Chairman LIEBERMAN. Let me ask you a final question, which is—in some sense you gave a response, but I want to clarify it, for myself anyway—whether the murders at the Consulate, whether the killing of the rancher, Mr. Krentz, whether other attacks on U.S. citizens indicate a change in tactics by the Mexican drug cartels, which have generally in the past avoided direct attacks on the United States. I would add to that the use of the improvised explosive device, which is essentially a bomb.

I think I heard you say that you are not sure. Should we worry that CBP personnel, American citizens, and others on this side of the border and American interests in locations in Mexico will be subject to more violent attacks by the drug cartels?

Mr. BERSIN. Mr. Chairman, the answer to the second question, should we be concerned, absolutely, and we need to take the possibility very seriously. At the same time, in response to the first question, we are not sure, and we continue to investigate.

So, for example, while an operating premise might be that Mr. Krentz had been killed by someone connected with a smuggling outfit, we have yet—and the investigation continues—to establish that in fact. But there are hypotheses, and certainly we need to take seriously the threat that the incidents you reference in Juarez and Nuevo Laredo represent a change in policy. We have not seen

the killing of an American law enforcement person in Mexico since that of Enrique Camarena in the 1980s.

Chairman LIEBERMAN. Right.

Mr. BERSIN. I hesitate to draw the same conclusion, and I do not. We need to investigate that because the situation in Mexico in terms of where the violence is coming from, the street gangs coupled with the cartel wars that are going on, make it unclear. But we need to take the possibility and the threat very seriously, and we do.

Chairman LIEBERMAN. I trust that our cooperative relationship with Mexican Government and law enforcement authorities includes sharing of intelligence so that they would be one of the resources we would have in determining whether the cartels had taken a turn and decided now to target Americans on either side of the border.

Mr. BERSIN. That is correct, Mr. Chairman. The information sharing is at a level that we have never experienced before. At the same time, given the weaknesses in Mexican law enforcement and security apparatus, they understand, just as we do, it is very much on a trust-but-verify basis. I suggest the Committee may wish in a more confidential setting to receive the briefing on exactly what we do know and do not yet know about that threat.

Chairman LIEBERMAN. Thank you, Commissioner. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Bersin, I am not sure if Sheriff Dever of Cochise County is here. I think he can provide you with information, which at least circumstantially and evidence-wise, shows that this murder of Robert Krentz was done by someone who had entered this country illegally and very likely involves drug trafficking. They have not reached a total conclusion, but certainly there are signs that Sheriff Dever will inform us about.

Do you believe that violence has increased or decreased on our border in the last year?

Mr. BERSIN. With regard to the so-called spillover from Mexico of the mass violence, we have not seen that. We are prepared for it, and we understand the risk. But we have this anomaly of——

Senator MCCAIN. Well, let me just interrupt you right there. Sheriff Dever and our other law enforcement people will tell you that there has been a significant change in the behavior of the drug traffickers, and that is that they are prone to violence, they are prone to trying to cause accidents on the freeway so they can get away, and they have become much more aggressive. The sophistication and types of their weaponry have dramatically increased. Would you agree with all that?

Mr. BERSIN. I acknowledge that. I do agree with that, and that does not gainsay the fact that we have Juarez, the most dangerous city in the Western Hemisphere, sitting next to El Paso, which is one of the safest cities in America. That does not deny everything that my old colleague in law enforcement Sheriff Dever has said. We have significant violence that is caused by organized crime based in Mexico, yes, sir.

Senator MCCAIN. Then would that not argue for increased enforcement on the border?

Mr. BERSIN. Yes, it does, and we have seen steadily increased enforcement, Senator McCain, from March 2009 on.

Senator MCCAIN. Actually, the budget proposal is a reduction in Border Patrol.

Mr. BERSIN. Sir, respectfully, with regard to this year compared to next year, the level of Border Patrol agents will remain level without a loss in Border Patrol force and strength.

Senator MCCAIN. So violence is increasing, and the Border Patrol numbers remain level.

Mr. BERSIN. This is not just about Border Patrol agents alone. It is about infrastructure, technology, tactical operations, and cooperation with law enforcement—local, State, and across the border.

Senator MCCAIN. And infrastructure that was supposed to provide us with surveillance all across the U.S.-Mexico Border has now turned out to be, at least in the assessment of the Government Accountability Office (GAO), an abysmal failure. So that is why Senator Kyl and I, in agreement with every law enforcement agency in the State of Arizona, have done what Secretary Napolitano asked for when she was Governor of the State of Arizona, to send the National Guard to the border until we are sure that we have some kind of control over the border.

Look, if you have 241,000 people apprehended just in the Tucson Sector of Arizona, if you have intercepted 1.3 million pounds of marijuana—and you can cite the statistics as to how many are apprehended versus how many get away—does that not indicate that our border is not under control?

Mr. BERSIN. Senator McCain, the threats that we face in all areas are taken seriously. We have deployed in March 2009, and we are preparing to deploy additional resources to the border.

Senator MCCAIN. And those resources are?

Mr. BERSIN. The threat is appreciated. The National Guard is one option that is under consideration, and I suspect the Secretary and the Administration will be making that decision in the near future.

Senator MCCAIN. Well, you just said that you are deploying additional resources to the border. What are they?

Mr. BERSIN. We have deployed, for example, in response to the murder of Mr. Krentz, agents into the immediate area.

Senator MCCAIN. On a temporary basis.

Mr. BERSIN. On a deployed basis until the threat level has resumed an acceptable place.

Senator MCCAIN. I do not see how, frankly, a situation where 241,000 people are apprehended in just one sector, in the Tucson Sector, and 1.3 million pounds of marijuana are intercepted does not argue for stronger measures to be taken, and in the short term, for what Secretary Napolitano asked for when she was Governor of Arizona, and that is, to get the National Guard to the border.

By the way, I have often cited the Goldwater Range as an example where the Marines and the Border Patrol got together. We had a huge problem with illegals coming across and had to shut down the missions over the Goldwater Range, and now because of their cooperation, it has worked. And it was with commercial off-the-shelf capability.

Let me get to fences for just a second. In San Diego, as you are very well aware, there has been construction of triple fences, and crime has gone down a great deal in San Diego. Is that correct?

Mr. BERSIN. That is correct, and the crossings in that particular portion of the sector have decreased dramatically. Yes, sir.

Senator MCCAIN. Does that not argue for double and triple fences in urban areas?

Mr. BERSIN. The placement of infrastructure has always depended, Senator McCain, on the professionals on the ground making their recommendations. So as you know, in the Nogales port of entry, you will have significant fences, and in other places in El Paso, you will have duplicate fences.

This is always about a professional judgment about how best to direct the traffic and to manage the flow. So I think as the Secretary has implemented the intent of Congress, it has been done strictly on the advice of our Border Patrol agents and other professionals on the ground.

Senator MCCAIN. Well, I do not want to get into too much detail, but obviously the Yuma Sector of our border has improved significantly, whereas the Tucson Sector has not. Maybe there is a little bit too much autonomy there and not enough attention to the lessons learned.

I see that my time has expired, but I just want to say, Mr. Bersin, I wish you luck in your position. This is an issue of utmost seriousness. Sheriff Dever and all of the sheriffs in Arizona will tell you that there has been a sea change in the last couple of years in the behavior of the drug and human smugglers. They are more violent, they are more provocative, and they fight back. They have little or no regard for the people that are doing the human trafficking and carrying the drugs. They are now using ultra lights to bring drugs across our border. We need UAVs that would be airborne 24 hours a day, rather than just during working hours. And people, the citizens of our State, are seeing their fundamental rights violated, their property being crossed, and their wildlife refuges being destroyed. And all of this has been ratcheted up over the last couple of years to a point where we are in a real conflict. And there is very little doubt that the cartels are becoming more brutal, more effective, and better armed and better equipped.

And so it cries out for action, and it seems to me in the short term that action is sending the Guard to the border, which has been effective in the past. It would not be the first time. And, second of all, implement a package of efforts along the lines of what Senator Kyl and I have recommended, which includes interoperability of communications with local and Federal authorities up to and including Operation Streamline, which has been effective in reducing the motivation and numbers of people crossing the border because they know that they are going to be incarcerated for a period of time.

And let me just throw one more number at you that is alarming, and that is, our law enforcement will tell you that 17 percent of the people they apprehend today illegally crossing our border have committed crimes previously in the United States of America. That alone is enough to concern us as far as the safety and security of our citizens. I thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator McCain, very much.

Senator MCCAIN. By the way, do you have a response to that diatribe? [Laughter.]

Mr. BERSIN. Senator McCain, as somebody who has lived and worked on the border for more than a quarter of a century, I appreciate your sense of urgency, and I have lived and worked to combat it for many years and look forward, with your support and the support of this Committee, to continue to do so ever more effectively.

Senator MCCAIN. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you. Senator Burris.

Senator BURRIS. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR BURRIS

Commissioner, I would just like to congratulate you and welcome you aboard.

Mr. BERSIN. Thank you, Senator.

Senator BURRIS. I recently had the opportunity to travel to the Southwest Border and get a close-up look at the work that DHS and its component agencies are doing down there. They have been fighting a tough battle, and I am grateful for the men and women who are working to protect our borders, and I want to take my hat off to them and let the American people know that it is not an easy position to be in, having visited there and seen it firsthand.

Commissioner, I am deeply concerned about SBInet. I am trying to get a clearer understanding of your testimony, which states that it is an overall combination of the various protections. But I want to know who actually authorized this particular contract. And, by the way, if my Boeing people are here—and I am not going to slam Boeing yet; they are headquartered in my State—but I do not want Boeing or any other company taking advantage of the taxpayers' dollars, and if they have spent all of this money and we do not have a system that works, I want to know why we are continuing to do it. My notes say that we spent over $1.2 billion on a system that is not working.

Can you clarify some of that for me, Commissioner?

Mr. BERSIN. Senator Burris, not that this is good news, but the expenditure is slightly over $700 million, not——

Senator BURRIS. It is not $1.2 billion?

Mr. BERSIN. That is the only good news, that it is not $1.2 billion. The problem is that the original conception has not been delivered. The requirements that had been set forth have not been met with regard to an integrated system. And Secretary Janet Napolitano, having recognized that, has taken the steps that I described both in the written testimony and briefly in response to the Chairman's questions to redeploy $50 million that had been added to the SBInet coffers, if you will, to other technologies, including thermal imaging devices and mobile surveillance systems that actually have demonstrated utility.

What the Secretary has also ordered and is in the process of being accomplished is an assessment of what are the next steps with regard to SBInet. And as I suggested, I think there will be an assessment of the one portion on the border in Tucson where the system has been in place——

Senator BURRIS. Well, pardon me, Commissioner, but this SBInet is supposed to cover almost 2,000 miles. We have done 23 miles initially, and Ajo–1 is only going to do another 30 miles, and we spent $700 million. Are we planning to try to use this on the other 1,900-plus miles that we have to go?

Mr. BERSIN. That will be the conclusion reached after the assessment the Secretary is——

Senator BURRIS. Why could we not have made the assessment up front? I understand Boeing is still working on it. Do you not have competition? And then evidently there is an exclusive contract here. We have not sought to get any competition to see if some other company could even do this better and cheaper. Why are we locked into Boeing so deeply in this process?

Mr. BERSIN. The contractual situation and the contract management are both matters that offer big lessons, and I hate to avail myself of the Chairman's temporary pass. I was not present at the creation of this. But I am accountable for it now and responsible for it now.

Senator BURRIS. Can we cancel the contract with Boeing?

Mr. BERSIN. I am not in a position to render that legal judgment, but it is a fair question that you ask.

Senator BURRIS. How can you do a pilot program that costs $700 million? The pilot evidently is not working, and we are expanding now into doing more, and we are not sure that it is going to work, but we are going to continue to pay. Taxpayers do not have unlimited pockets for Boeing or any other company.

Mr. BERSIN. I understand your frustration and anger, Senator.

Senator BURRIS. So is that under your purview now, to assess what is happening? Or is it the Secretary who has to assess the program?

Mr. BERSIN. On the front line, the buck stops with me with regard to SBInet.

Senator BURRIS. Well, Commissioner, can you find out just where the money has gone and where it is going to go in the future? We do not have unlimited funds to pour into something that is not going to work, regardless of who the corporation is. I am trying to find out how they got a contract of that magnitude. Mr. Chairman, there ought to be some type of investigation into this particular contract. I am deeply concerned about how a contract of this magnitude could be awarded and no one had tested whether or not it would work. There has to be some follow-up here. I do not know where the GAO is in reporting on this, but we have to get into just how this all took place and what deliverables were supposed to be coming out of this contract because that is just a total abuse of taxpayers' money.

Commissioner, is there actually triple fencing on the San Diego, California Border?

Mr. BERSIN. In a small portion of the border, you will find double and triple fencing in terms of the infrastructure, yes.

Senator BURRIS. The single fencing that I saw on the border was just a piece of tin metal stretched across the Mexican side, and all the trash is dumped onto our side, which we have to clean up. It is a garbage pit, and it all drains down toward the ocean, which we spend millions of dollars trying to clean up. And our Border Pa-

trol says that is just what we have to do. Has there been any talk with the Mexican Government about how we can work this out?

Mr. BERSIN. Actually, I know this because I am a resident of San Diego County, not because I am the Commissioner of Customs and Border Protection. The United States helped construct a sewage plant in the Tijuana River Valley, and as bad as it may have seemed to you, Senator Burris, on your visit, it used to be 10 times worse.

Senator BURRIS. So we are getting cooperation?

Mr. BERSIN. Yes, sir.

Senator BURRIS. We are doing the work, but we are getting the cooperation of the Mexican Government. Are there any type of penalties for using that as their garbage dump? That is what it is. Any help from the Mexican Government?

Mr. BERSIN. We are, Senator.

Senator BURRIS. My time has expired, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Burris. We all share your frustration and anger about the contract. The GAO has done some work on SBInet, and I am glad to talk to you more about what more we can do. But at this point, I think with Commissioner Bersin coming on now, with his background, I think we are counting on him really to give us a direct assessment and take action to either terminate the contract or take from it what will work. As Senator McCain indicated earlier, it may be that the best answer here to this continuing crisis and the continuing flow of illegal immigrants into the United States is to go back to the old-style fences, double and triple layered—unless that is topographically impossible in certain areas.

We are going to move on to the second panel, but I wanted to thank you for your testimony today. Look, bottom line from what we know and what you have testified today, the flow of illegal immigrants across the Mexican Border into the United States remains unacceptably high, hundreds of thousands per year, even at the reduced rate that we see occurring now. We know that the violence in Mexico is just stunning in its scope and brutality. And we know and, as you said, have reason to be concerned that Americans have been targeted more and that will happen more in the future.

So as you come on, I hope you will make this your No. 1 concern, and you have the background to really make a difference here. This whole operation, I am not saying it is easy. If it were easy, we would have solved it long ago. But this thing needs to be shaken up, and from your background, I think you are somebody who can do it.

I would also say about my colleagues, Senator McCain and Senator Kyl, in their program they put forward yesterday, including the request for Federal troop support temporarily at the border, I hope that you and the Administration will give this request the respect that I would want you to give me if I and my colleague from Connecticut were appealing for Federal help for a natural disaster that had occurred in our State because I do not think most of us in this country can appreciate what people in Arizona are living with every day. It is just not acceptable, and it is obvious that the State and local governments cannot handle it themselves, and we, together with our allies and partners in Mexico, have to do a better

job. So this is a big challenge, but you are a person with the background and experience and record, if anybody can, to turn it around. And I just urge you to be as tough and direct and aggressive as you feel you need to be to get this done.

Mr. BERSIN. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Commissioner.

Senator McCain, do you want to add anything?

Senator MCCAIN. No, except to say that I hope you will examine Senator Kyl's and my proposal and give us a response as to your assessment of our recommendations. We would appreciate that. Thank you very much.

Mr. BERSIN. We will, Senator, and thank you.

Chairman LIEBERMAN. Thanks, Commissioner.

We have a vote that has just begun. We will go over, vote, and come back quickly.

In the meantime, the hearing is in recess.

[Recess.]

Chairman LIEBERMAN. I would ask the witnesses on the second panel to come to the table, please, and we will go forward with the hearing.

We are really honored to have here—and I know they came some distance—the three participants on this panel: The Hon. Dennis Burke, U.S. Attorney for the District of Arizona; the Hon. Octavio Garcia-Von Borstel, Mayor of the City of Nogales—did I get that more or less correct?

Mr. GARCIA-VON BORSTEL. You did, Senator. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Mayor. It is good to see you again. And Larry Dever, Sheriff of the County of Cochise in Arizona; great to see you again, Sheriff. I appreciate your patience as we went to vote, and we will begin now with U.S. Attorney Burke.

TESTIMONY OF HON. DENNIS K. BURKE,[1] U.S. ATTORNEY, DISTRICT OF ARIZONA, U.S. DEPARTMENT OF JUSTICE

Mr. BURKE. Mr. Chairman, thank you very much. I have my lengthy comments I would like to submit for the record, and I would like to focus my oral comments on what we are doing today and how it differs from the past.

Senator McCain, you referenced a few times already that in the sector of Tucson, we have confiscated over 1.3 million pounds of marijuana in the last year——

Senator MCCAIN. Could I interrupt you for a second? In your position as U.S. Attorney, maybe you could give us a few words as to your assessment of the situation and then what you are doing. Could you do that?

Mr. BURKE. Sure.

Senator MCCAIN. I would appreciate that. I think it would be helpful for the record.

Mr. BURKE. Yes, the assessment of the situation is, from hearing the testimony of Commissioner Bersin and the questions earlier, I think the Committee is right on point, that the individuals who are involved in trafficking, drugs, and human smuggling are more vio-

[1] The prepared statement of Mr. Burke appears in the Appendix on page 67.

lent than we have seen in the past. We deal with more firearms cases than we have in the past. We deal with more smugglers carrying firearms and being willing to use those firearms. It has an impact on the agents who work in the sectors in Arizona, and it has an impact on our prosecutions.

We have seen an increased interest in smuggling weapons from Arizona to Mexico. We have numerous ongoing investigations working with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and local law enforcement with regard to gun trafficking headed to Mexico. We have seen an increase in bulk cash smuggling. We have increased our cases with regard to focusing on that. So you have the drugs and the humans heading north, and we are focusing on that. But at the same time, we have to focus on the money and the guns heading south. And we have seen an increase in all those particular areas.

My district once had a 500-pound threshold for marijuana trafficking. If you in the District of Arizona had 400 pounds, those cases were being declined. Why? Because the Federal prosecutors in my office were so overloaded with cases that they literally were not able to get to those types of cases. That threshold is now gone thanks to supplemental funding from Congress. We now have over 160 Federal prosecutors working for me. That is a 50-percent increase in prosecutors in just over the last 3 years. Because of Justice Department funding, I have just finished hiring six additional border security prosecutors for my Tucson office, very seasoned attorneys, and I am going to be receiving authority from the Justice Department in the near future to hire additional border security prosecutors.

So the prosecutors are there. They are on the ground. They are experienced, and they are incredibly focused and diligently working on these cases. So when it comes to resources, the Department has been backing the district. They do so because we produce, and we are making a difference. We filed over 3,200 felony immigration cases in fiscal year 2009. We filed 22,000 misdemeanor cases in the immigration area. We have increased our drug prosecutions by over 100 percent from fiscal year 2008 to fiscal year 2009. And these prosecution statistics in the District of Arizona are also consistent with recent trends across the entire Southwest Border.

From 2007 to 2009, the five Southwest Border districts increased their felony caseloads by 42 percent. Indeed, the Southwest Border districts file 41 percent of all the Federal felony cases in the entire Nation. I speak weekly with my counterparts in the other Southwest Border districts. We are constantly sharing intelligence, prosecution tips, and trends. Indeed, two of the border security prosecutors that I mentioned earlier I am hiring from our Texas districts, and they are two of the best in the country.

Aside from the reactive border-related caseloads we handle on a daily basis, we are also very involved in a significant number of complex, long-term investigations involving transnational organized criminal activity, including, as I mentioned earlier, drug and firearm trafficking, human smuggling, and currency exportation. This reflects the Department of Justice's cartel-targeted strategy, and as I said, as much as we need to stop the drugs and humans heading north, we are focusing more and more than we have in the

past on stopping the guns and the money heading south. It was reflected in Commissioner Bersin's testimony. There is more attention in our district devoted to southbound smuggling than there has ever been before.

Our investigative tools are more advanced than just a few years back. We are doing 50 percent more wiretap cases than we did a year ago. This is in conjunction with the Drug Enforcement Administration's (DEA) state-of-the-art wire room as part of their multi-agency strike force.

I mentioned our bulk cash commitment, and we are working with ATF, and I would also like to mention that just last week in the district we unveiled the indictments in Operation In Plain Sight. It was an investigation that was 2 years in the making, in which 49 arrests were made, 30 search warrants were executed, and 50 vehicles were seized. We targeted a cross-border human smuggling organization. We removed the entire infrastructure of their network. We had Immigration and Customs Enforcement (ICE), CBP, Federal Bureau of Investigation (FBI), DEA, the Marshals Service, ATF; Arizona Department of Public Safety was involved, Phoenix and Tucson Police Departments, and the Pima County Sheriff's Office all worked in conjunction on that investigation.

I think that case also highlights the strengthening ties that we have been building with Mexican Federal law enforcement agencies. The Mexican Federal Police (SSP) arrested one of the main targets in that case and executed search and arrest warrants simultaneously with our operation in Arizona.

This level of cooperation and coordination with Mexico is unprecedented, and, in fact, for the first time ever, we refer port of entry drug-trafficking cases back to Mexico for prosecution. So we have drug traffickers who are being prosecuted in their own country under their own laws, and the sentences are severe: 10 years each in the cases we have so far referred.

Let me finally mention with regard to our contacts and relationships and cooperation with Mexico, a few weeks back, Attorney General Holder convened a meeting in Arizona with his counterpart, the Mexican Attorney General, Auturo Chavez Chavez, and the Attorney General included Southwest Border U.S. Attorneys and other U.S. Attorneys with drug-trafficking organization connections in their districts to work on joint cross-border prosecution strategies. So we are making more and more advancements than we have ever in the past with Mexico. The work of President Calderon, his courageous effort, is being reflected in his prosecutors, and it has developed relationships and work that we have not ever had in the past. In fact, indeed Mexico has been assisting us at the Federal level with our efforts to track the horrendous murder of Robert Krentz in the Cochise County area.

So, Mr. Chairman, thank you for the opportunity to give a general overview of my comments, and I appreciate the opportunity to be here today.

Chairman LIEBERMAN. Thanks, Mr. Burke. That is a good beginning in giving the Committee a sense of the impact of this homeland security crisis on the ground in Arizona.

Mayor, thanks for coming. Again, it is good to see you. Your testimony was very important to us last year, and we look forward to hearing from you now.

TESTIMONY OF HON. OCTAVIO GARCIA-VON BORSTEL,[1] MAYOR, CITY OF NOGALES, ARIZONA

Mr. GARCIA-VON BORSTEL. Very well, thank you. Chairman Lieberman, good morning. Senator McCain, good morning. As you mentioned, I am the proud mayor of the City of Nogales, Arizona. Before I start with the key issues that I will raise with you here today, I want to thank you for this rare occurrence, an opportunity to participate in this hearing.

With that being said, allow me to get to the heart of the matter. Gentlemen, Nogales needs your help. Nogales is a community that is extremely dependent on the border and our neighbors to the south. The ability to cross the border effectively, efficiently, and in a secure and safe environment is vital.

Since September 11, 2001, we have all recognized that our world is different. We now must look at security at the same time that we look at commerce, trade, and tourism. But that is also the key point that I would like to make today, that we must not lose sight that we are working to secure the homeland so that we can conduct our normal lives.

We have all seen or have experienced an increase in violence on border communities. I was deeply saddened recently when I heard the news of the deaths of our very own people, Americans from the U.S. Embassy in Ciudad Juarez who became victims of the drug cartel violence. In fact, I was just at that embassy last week, and I met with the sub-Consulate and discussed the horror of the situation affecting American citizens.

The assassination of the local rancher in Cochise County is evidence that the violence is, in fact, spilling over to the United States. Perhaps part of the solution we identified is to involve all governments—local, State, and Federal. Although I respect and understand it is a Federal issue, the local governments have to be able to form part of the strategy because, after all, we are the ones who are directly impacted the most. I, for one, would like better communication in order to better support and address the violence and border initiatives.

To give you an idea, our community has three land ports of entry: Morley Gate, which is a pedestrian-only crossing; DeConcini, which is a pedestrian, private vehicles, train, and bus crossing; and Mariposa, which is our commercial crossing, but we also cross pedestrians and private vehicles. Our three border stations currently process in excess of 15 million people, over 300,000 trucks, and well over 3 million cars each year—in a northbound direction. Two-way traffic is approximately 30 million people, 600,000 trucks, and over 6 million cars.

I want to thank our congressional delegation—in particular, Senator McCain, who is with us today, and Senator Jon Kyl as well—for their active and continued support for the issues that we face in Nogales. And, yes, we are making great headway on some very

[1] The prepared statement of Mr. Garcia-von Borstel appears in the Appendix on page 79.

important border issues. For instance, the Mariposa port of entry is currently undergoing a major reconfiguration, a project funded to the tune of $200 million under the American Recovery and Reinvestment Act. This project will double, if not triple, our throughput for inspection of both commercial and non-commercial traffic at Mariposa. This project, which started in September of last year, should be completed by 2013. We are currently working with the Arizona Department of Transportation and the Federal Highway Administration to improve the connectivity from the port of entry to the Federal highway system. Additionally, we are working with our Mexican counterparts to ensure that necessary improvements are made to the Mexican side of Mariposa.

In recent years, we have seen a clear focus at securing the border between the ports of entry. But there has been little attention to the ports of entry themselves. I truly believe that in order to have a safe and efficient border, you must have an effective border. Customs and Border Protection has identified some $5 to $6 billion worth of projects on the U.S.-Mexico Border, yet the budget proposed for fiscal year 2011 shows only $93 million for one project. Our ports of entry are a national asset. However, the budget does not reflect that.

The violence between drug cartels has certainly created a paranoia across both countries and has had a direct impact on border communities. Tourists going both south to north and north to south have lost confidence and are now afraid for their safety when traveling through Nogales. We continue to see human trafficking and drug trafficking, I believe, as a result of a lack of resources for our border communities.

Our current wait times in Nogales are well in excess of an hour, easily 2 hours or more during peak hours every day. Due to long waits, we have seen a dramatic transition from people crossing the border in their cars to crossing on foot. But we were not ready for this transition, and the increase of pedestrian traffic means that there are now wait times to cross on foot in excess of an hour. I have brought a copy of a recent article that was published in our local newspaper which shows the long pedestrian line at the border, and I believe you do have a picture of that, Mr. Chairman.[1]

Chairman LIEBERMAN. Yes, I am going to enter that in the record. Thank you.

Mr. GARCIA-VON BORSTEL. Very well. Thank you, sir.

At the same time, Secretary Napolitano recently issued a press release commemorating the first anniversary of the Southwest Border Initiative and touted the great results from an enforcement perspective. Yes, the program has seized many weapons and stopped many millions of dollars that were being laundered and shipped back to Mexico, but at what cost to Nogales and all the other border communities? The DHS initiative is centered on conducting inspections of trains, trucks, and vehicles leaving the United States. The unintended consequence and one of the key points that I want to make before you today, gentlemen, was not a consideration when this initiative was planned and deployed.

[1] The photograph referenced by Mr. Garcia-Von Borstel appears in the Appendix on page 56.

None of the ports of entry at Nogales is equipped to handle southbound inspections. CBP lays down a few cones on the road, perhaps some jersey barriers, and simply stops every vehicle departing from the United States to Mexico. And although everyone talks about the random efforts at Nogales, Customs and Border Protection has notified us that they are inspecting every truck leaving the United States through that port of entry. The traffic backups on a southbound basis reach well over an hour or more during the peak hours.

The end result, and thus the unanticipated consequence, is that people are now crossing less frequently as they have to wait 1 or 2 hours coming in and out from our ports of entry.

Chairman LIEBERMAN. Excuse me for interrupting. To the extent that you can, if you can summarize the rest of your statement.

Mr. GARCIA-VON BORSTEL. Very well. I will move over to perhaps, respectfully, the recommendations that I would have presented before you.

Chairman LIEBERMAN. Good.

Mr. GARCIA-VON BORSTEL. If that would be OK, Mr. Chairman.

Chairman LIEBERMAN. Excellent.

Mr. GARCIA-VON BORSTEL. Thank you.

First of all, I would respectfully recommend to staff our ports of entry to the capacity that is required.

Second, provide additional funding in an expedited and confirmed manner to our ports of entry.

Third, DHS needs to come up with a plan to address the congestion, safety, and other unintended consequences of the southbound inspection program.

Fourth, find ways to deploy trusted traveler programs for southbound traffic. For instance, the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program that is working so well for northbound travelers should be considered for southbound traffic as well.

Finally, there needs to be better coordination and sharing of information and intelligence with Mexico to help reduce the duplication of efforts and to ensure that we maximize the return of investment. Include all governments—local, State, and Federal—in these efforts to increase the success of tackling the drug wars at the border.

Mr. Chairman, Senators, Senator McCain, again let me thank you for the opportunity to be here to communicate our issues and needs. Please be assured that for me and Nogales, security and facilitation are our top priorities, as that is essentially our livelihood.

I thank you for your attention, and I look forward to your questions and comments.

Chairman LIEBERMAN. Thanks, Mayor. That was an excellent statement, and we appreciate your recommendations also.

The last person on the panel, Sheriff Larry Dever, thanks for making the trip. We remember your testimony very well from last year, and we look forward to an update this morning.

Obviously, we would be particularly interested in, though it is an open investigation, what you can tell us about the murder of Robert Krentz.

TESTIMONY OF LARRY A. DEVER,[1] SHERIFF, COUNTY OF COCHISE, ARIZONA

Mr. DEVER. Thank you, Senator Lieberman, and Senator McCain. It is a privilege and a pleasure to be here. We did meet a year ago to discuss border violence in Phoenix, Arizona.

You know, I have heard a lot of numbers here today, and I have a hard time wrapping my mind around all those numbers. But I can tell you all of them added together came up with a great big fat zero for Robert Krentz. And it comes up with a big fat zero for the people living out in the eastern part of Cochise County right now who suffer daily burglaries, thefts, home invasions, and for the couple that was tied up in their home and left forever had it not been fortunate enough for somebody to come by, all their stuff stolen. The guy who gave aid to a couple of illegals and was tied up, duct-taped in his own home, managed to get his tongue free from the duct tape around his mouth and dial 911 on his cell phone with his tongue. I can tell you stories about people who have lived out there for 3 or 4 years, one who has been burglarized 18 times. And it is a vast, large area.

The murder of Robert Krentz was particularly senseless. My lead detective on the case, who has seen some gruesome murders, while this one was not unnecessarily gruesome, just the circumstances, and she has dealt with all kinds of horrible things, brought her to tears because of the senseless nature of the whole thing.

So I cannot tell you a lot specifically about the investigation, although we have made great progress beyond what I had initially hoped we would. I can tell you that with surety—I have been challenged on this. How do you know he was an illegal alien or a drug smuggler? Mr. Chairman, Mr. McCain, it is a 35,000-acre remote cattle ranch. There are jackrabbits, rattlesnakes, and a few cattle grazing on that barren pasture. Illegal aliens and drug smugglers are out there, and that is it. This was not somebody walking to Walmart to shoplift something.

So that said, we do know and have reason to believe that this man was a scout for a drug-smuggling organization, and that is about the extent that I can talk to you about what we know about who this individual is.

It was said earlier—there was a term used about people flowing across the border. I can tell you there was a time that was the case. But today the people who are crossing the border illegally are led, and they are led by very ruthless, armed, and well-equipped individuals who are prepared to do whatever is necessary to protect their financial interests in that smuggling operation.

A few years ago, we would jump loads of dope on the fence. People would just give it up and run. The people who entered the country illegally were coming on their own and then looking for rides. Today everything is much more organized, much more dangerous, and much more dire.

I mentioned the scouts. The scouts sit on mountaintops, high places with radio communications, and they are armed, and they set up little camps, and they simply relay via radio the location of the Border Patrol or ICE or sheriff's deputies who are working in

[1] The prepared statement of Mr. Dever appears in the Appendix on page 86.

the area, and that is how they defeat the law enforcement presence. And they are very good at it. And speaking of communications, they are better equipped than we are, certainly, in many cases using encrypted radio transmissions.

After September 11, 2001, all the language that came out in grant funding and this talk about the need to partner with State and local agencies, the Federal Government's need to partner in order to better protect our homeland, included language about the need for interoperability, referring to radio communications and hard land-line communications. In our pursuit of the shooter of Robert Krentz, we had State Department of Corrections dog-tracking teams, ICE agents, sheriff's deputies, and two Border Patrol sector representatives who could not talk to each other. And none of us could talk with each other. That is inexcusable. And until that problem is resolved, all of our law enforcement efforts, no matter how well coordinated, are going to have a soft under belly, and the bad guys are going to continue to win.

Senator McCain mentioned that 17 percent of the people captured crossing the border are criminal aliens, people who have previously committed crimes in this country. That number comes from the Douglas Station of the Tucson Sector of the Border Patrol. I confirmed that before I came here. That means that of all those millions of people, the hundreds of thousands of people that enter here, the bad guys keep coming, no matter whether the apprehension rates rise or fall, the numbers of criminal aliens rise.

That, gentlemen, is the threat to our homeland security in this country. Catastrophic events are of great concern, and the vulnerability at the border for crossing materials and people with that intent, but the daily crossing of criminal minds arriving in communities throughout this country, throughout this entire Nation, is the real threat to our peace and harmony.

There are a thousand other things I would like to talk about. My time is up, and I will yield to questions.

Chairman LIEBERMAN. Thanks very much, Sheriff. Thanks for trying to describe the impact of this crisis on people who live in the area because as I said earlier, I do not think people around the rest of the country appreciate it—people on your property, people burglarizing, and then, of course, worse. And what you describe as a change is significant, which is it is not largely what it has been before, as you see it, which is a movement of illegal immigrants. This is now a movement which is being led by armed individuals who are protecting a business, basically, and human smuggling.

Let me ask each of you whether I am correct in concluding that—and let us take a year ago when we happen to have been in Arizona holding the hearing—this situation along the border and the spillover of violence is worse today than it was a year ago. Would you agree with that, Sheriff?

Mr. DEVER. Absolutely. And there is reference after incident after case to verify and prove that, and we could talk about them all day. I would just like to emphasize that it is worse, and it is getting worse. And I hope you understand, I hope Congress can wrap their minds around the idea and the concept, and the President and this Administration, if we do not get this right this time, when are we and how will we?

You know, 1997 was my first testimony before Congress about border violence. Ten years prior to that, the Tucson Sector Chief of the Border Patrol was quoted as saying, "Congress has mandated we get control of our border, whether it is illegal aliens, narcotics, terrorists, whatever. And that is what we are going to do."

So here we are 23 years later, and how many chances, when is momentum ever going to gather again? What event will it take to cause us to finally take action and bring this to a stop?

Chairman LIEBERMAN. Well, those words should echo in our minds because whatever we have done is obviously not working, and the problem, which you live with every day, is continuing.

Mayor, is it worse today than a year ago?

Mr. GARCIA-VON BORSTEL. I would certainly echo the sheriff's comments, and I would confirm that, yes, sir. Previously, Senator McCain mentioned there has been 22,000 killings in Mexico. It is a full-blown war, and we need to do all the diligence we can to make sure that we prevent that violence from continuing to spill over the border.

Chairman LIEBERMAN. Mr. Burke.

Mr. BURKE. Mr. Chairman, I would agree, although I would also add that in some respects some of the steps that have been taken on the border have led to increased violence. These are criminal organizations competing over turf and routes and so forth. And as the sheriff mentioned, in the past there might have been a flow of people who would come back and forth across the border. Now those routes are much more limited, and they are controlled by particular organizations. And they are much more violent organizations, and they are taking it out on each other. And they are also taking the opportunity because of the tightening in certain spots to actually steal another organization's drugs or humans. But what we see a lot of in the Phoenix area are drug rip-offs or human rip-offs where an organization, instead of having a connection to Mexico to bring up drugs or humans, will just get a sense of some other organization having a drop house of drugs and humans and will go do a violent rip-off of that other organization.

So that is a new phenomenon in the last couple years. You did not see that 5 to 10 years ago. Now we have an epidemic amount of that in the Phoenix area.

Chairman LIEBERMAN. Let me ask you this question from a law enforcement point of view. Obviously, we all admire President Calderon of Mexico for taking on the drug cartels, and I infer from your answer that part of what is happening now is that the violence in Mexico is partially the cartels turning on people in government, local or regional or higher, but also the cartels fighting each other because the turf has been constricted by the government. Does that continue to be a reality?

Mr. BURKE. I believe that is correct, Mr. Chairman. We have seen that in Arizona with regard to how the cartels battle over their routes. It is evident in our conversations with the PGR. The PGR is the Attorney General of Mexico. It is reflected in our conversations with them as to what they are dealing with.

But I will say—and as I said with regard to President Calderon—that the PGR, the people we are dealing with, are unbelievably courageous for what they are taking on.

Chairman LIEBERMAN. Yes. I agree, it is a real tribute to them. You just made a point that, again, I want to emphasize. Part of the way in which the violence does come over the border from Mexico is with the cartels competing for the pathways north.

Mr. BURKE. That is correct.

Chairman LIEBERMAN. And you see it there.

Incidentally, just to state for the record, at an earlier hearing, we had a representative from the FBI, and he told the Committee that the Mexican drug cartels are the No. 1 organized crime threat in America today, obviously not just at the border, but in cities from Anchorage, Alaska, to Hartford, Connecticut, and pretty much everywhere in between.

Again, from a law enforcement point of view, you would think at some point, as the government in Mexico is steadfast and really courageous in continuing this battle not to yield control of much of the country to criminal elements, that we would turn a corner and the violence would begin to recede. But that has not happened yet. So I would ask you and the sheriff about that because you are from law enforcement. Can we hope for such a turning point, Mr. Burke, that the good guys will win here?

Mr. BURKE. I do not know at this stage and this juncture, Mr. Chairman. I can say that the steps we are taking and the cooperation, the partnerships we have with Mexico are the best we have ever had. I think the concern by a lot of officials in law enforcement is this is a window of opportunity that we only have with President Calderon.

Chairman LIEBERMAN. Yes. Sheriff, what would you say?

Mr. DEVER. Well, there are so many unknowns. What we do know is that the population in Mexico is growing very rapidly, and, therefore, the financial pressures and temptations increase in conjunction with that. All of that produces a future threat to this country as well. I do not know, if we cannot get our arms wrapped around the violence in our own country, why we would expect Mexico should be able to do it before we do.

So I think we do need to continue to work together. Mr. Burke is correct. Cooperation is better than ever before. It is still lacking in some areas, but improvement is always on the horizon, and we will continue to work to that end.

Chairman LIEBERMAN. Thanks. My time is up. Senator McCain.

Senator MCCAIN. Following up on the Chairman's line of questioning, do you believe that we can secure the border?

Mr. DEVER. Absolutely, sir. It can be done. You know, when the Minutemen were in Cochise County in April 2005, they were there for 30 days. It was a bunch of guys with gray hair and most were old fat guys like me, but in the section of the border where they deployed 24/7 for 30 days, not a single crossing occurred. It can be done. It takes political will, and it takes the proper strategy and a proper mix, as has been discussed here today, of people and technology to include some serious aerial assets to bring that under control.

Senator MCCAIN. Mr. Burke.

Mr. BURKE. Yes, sir, I do believe so. It is a tough challenge. I think the Chairman had said it is not a simple problem, so it is not going to be a simple solution. And we have seen where we have

tightened in certain areas, where there has been effective fencing, they have gone to other steps. I think you made a reference earlier to the ultra lights. That is a new method that they are using to bring drugs over. We have never seen that before. We have seen an emergence of tunneling. So their only limitation is their own creativity. They are sophisticated criminal organizations, and they are going to continue to operate as long as they can make money doing this.

Senator MCCAIN. Mayor, what percentage of the City of Nogales, Arizona, is Hispanic?

Mr. GARCIA-VON BORSTEL. Ninety-eight percent.

Senator MCCAIN. How do the citizens of Nogales, Arizona, feel about this issue?

Mr. GARCIA-VON BORSTEL. Senator McCain, I think we all recognize there is a desperate need to secure the border. It has been very frustrating, and to be quite frank with you, it has been very scary to live on the border.

We need your support, and let me just lay it on the table. We are willing to do our part and work diligently with our Federal and State governments to make sure that the border is secure and build confidence back to our constituents and our tourists.

Senator MCCAIN. Mr. Burke, this Operation Streamline seems to have had a beneficial effect. For the record, that is illegal border crossers are incarcerated for 15 to 60 to 90 days after apprehension. How important do you think that methodology is in discouraging illegal immigration?

Mr. BURKE. Senator, I think it has been an effective program. In our Tucson office, we process about 70 individuals a day. In Yuma, we process about 40. According to CBP, their records on recidivism are effective with regard to Streamline. That said, for all the programs and all the activity that goes on, it is one small element of an overall program. On any given day, 700 to 1,100 people are arrested in the Tucson Sector by the Border Patrol, and Streamline processes 70 of them. So it is still just a small percentage of the overall amount of people that are crossing any day, but it has been effective.

Senator MCCAIN. How do you decide?

Mr. BURKE. It is a geographic determination made by the Border Patrol, and they target a particular geographic area, and those individuals are brought in by that determination, and then we give, obviously, priority for people with records, and that is a determination that is made every day by the Border Patrol and working with our prosecutors.

Senator MCCAIN. My understanding from a letter from Judge John Roll is that we, in Arizona, would like to see an additional magistrate and also an increase in physical infrastructure that could handle an increase in the number of people who would be subject to incarceration. Is that correct?

Mr. BURKE. I am not aware of Judge Roll's letter. I am aware of Judge Roll's concerns about his physical infrastructure capacity to take on a larger Streamline program. That is a major concern of his.

I do know that in the Tucson district court, the increased magistrates have helped considerably with regard to our ability to prosecute cases.

Senator MCCAIN. I was struck by what you mentioned, the previous rules where anything under 500 pounds of marijuana was not prosecuted?

Mr. BURKE. That is correct.

Senator MCCAIN. Under 500 pounds.

Mr. BURKE. That is correct.

Senator MCCAIN. Sheriff Dever, you have been sheriff since 1996.

Mr. DEVER. Yes, sir.

Senator MCCAIN. Maybe you could give us a little perspective. We all know about the terrible tragedy of the Krentz family. What are people being subjected to that, frankly, citizens in the rest of the country are not? Has that deteriorated over time? And, clearly, the U.S. Government has an obligation to protect people's lives and property. Is that obligation being fulfilled down in Cochise County?

Mr. DEVER. From a criminal activities standpoint, I think most disturbing has been the number of home invasions versus a burglary, when people are actually at home watching television or in bed or whatever and somebody breaks into their home, which obviously, predictably, will lead ultimately to some kind of conflict, physical confrontation and one side loses. Those home invasions have been increasing very rapidly.

With the burglary problem, there is an ebb and flow. Most of the home burglaries we have in the eastern part of the county actually are southbound traffic, smugglers who have hauled their contraband north, dropped it off to the transportation, and are headed back south and steal guns, jewelry, and cash and then just hop back across the border.

So you get a picture in your mind. These are people who successfully crossed the border carrying backpacks, defeated the enforcement effort, hauled it many miles north, and then are going back south and committing additional crimes.

So I have said for a long time that the situation at the border today is if you want to cross the border, you will ultimately succeed. And until that changes, we are going to continue to face the kinds of conflict and confrontation and death and carnage that comes with it.

Senator MCCAIN. I understand recently there was a crackdown and coordination of different enforcement agencies of a transportation network where illegals were in vans and being transported up to Phoenix and from Phoenix to all parts of the country. Can you tell us the extent of that network, how far-reaching they were, how many people they were transporting, and how sophisticated an operation it was?

Mr. BURKE. Senator, they were transporting thousands of individuals, and what would happen is that the crossers would go past a port of entry somewhere on the Arizona-Mexico Border and have information that they received from Mexico, which was part of the criminal organization, to either go to a spot in Nogales or to work their way up to Tucson where they would be picked up by shuttle vans that were part of the criminal organization and transported up to the Phoenix area, which serves as a hub for the network for

the entire country. And so this spread out into the east. The investigation led us to North Carolina, Tennessee, Illinois, and throughout the country. And as I referenced in my testimony earlier, we ended up arresting 49 individuals who were involved in this organization, seized over 50 of their vehicles, and had tremendous cooperation from Mexico with regard to targeting and arresting the individuals who were involved in Mexico. They would assist the individuals in getting them lined up as to where they would go in Arizona to find their shuttles.

Senator MCCAIN. Were they transporting drugs as well?

Mr. BURKE. No, there was no evidence of that. Based on that question, Senator, let me indicate also that the plazas—the areas of just the northernmost part of Mexico on the Arizona Border are referred to as "plazas." Those are controlled by the drug-trafficking organizations. They determine who can come back and forth through that area. And so when human smuggling operations that are distinct from the drug trafficking organizations come through there, they are usually paying some kind of tax to the drug traffickers. So these organizations were human smuggling organizations. They were not drug trafficking organizations. But at some point or another, they probably had some connection to a drug-trafficking organization because they had to pay a tax to get in.

Senator MCCAIN. It seems that we have a lot of work to do. Could I just finally ask your opinion, do we need the National Guard on the border?

Mr. BURKE. As Commissioner Bersin said, I know the Administration is evaluating that. There was success with Operation Jump Start in Arizona in the past, but I know from where I was at that time when those decisions were made, they were pretty complex. They involved a lot of input from the Department of Defense and Customs and Border Protection with regard to defining the missions and so forth. So I know it is under evaluation. I know there was a lot of success with Operation Jump Start, and I saw the impact specifically, directly in Arizona.

Senator MCCAIN. You would agree we need more personnel on the border?

Mr. BURKE. I always support more personnel on the border, Senator.

Senator MCCAIN. Mr. Dever.

Mr. DEVER. The National Guard has been on the top of my list for a long time, clear back in 1998 when this first really took off, and I asked our governor to deploy the Guard. She did not. I asked Governor Napolitano to deploy the Guard when she was governor of Arizona. She did not. Just a year ago, I had a face-to-face meeting with Secretary Napolitano and asked her if deploying the Guard on the border was still on the DHS table. I was informed that it was, and it was a matter of deciding a specific mission and number of resources. That was a year ago.

Senator MCCAIN. And the fact is you informed me, and others have informed me, that a person in uniform on the border has a strong psychological impact on the criminal elements in Mexico. Is that correct?

Mr. DEVER. That is correct, and it is true in much of Latin America. I lived for 2 years in Central America, and the local law en-

forcement has very little effect, if it exists. But people have a very deep respect and often a fear of the military in those countries. And so the military presence creates a whole new level of deterrent just by being visible in the culture and the mind-set of the people coming north.

Senator MCCAIN. Mayor Garcia-Von Borstel.

Mr. GARCIA-VON BORSTEL. Yes, Senator, I would favor the Guard at the border. However, I would ask for them not to disturb the quality of life of our community. But probably even more so I would support allocating more funds to CBP to have more agents at the facilities as well, for them to be more efficient with legal crossings.

Senator MCCAIN. Well, I thank the witnesses, and I thank you, Mr. Chairman, for your patience and for holding this hearing, for coming to Arizona as you did a year ago, and for your commitment and concern for the people of my State, but also for the people of this Nation. As Dennis Burke just pointed out, there was a network that reached all over America that they were recently involved in cracking down on, and so this is not just an Arizona issue. I think it is a national issue and a homeland security issue, and I appreciate your involvement and commitment on the issue. Thank you.

Chairman LIEBERMAN. Thanks, Senator McCain. Obviously, you have helped to motivate the Committee, but it really is our responsibility. This is a homeland security problem, and it is as critical as any we have at this moment in terms of its impact day to day on people's lives.

We are going to stay involved in this, and we will do periodic hearings as they are productive and they make sense. But I do not want to come back again a year from now and have witnesses I really respect and trust tell me that things have gotten worse. That is why I think the request for the National Guard that my two colleagues from Arizona have made makes sense, just to try it, because I think it is common sense that the more people you have, the less likely it is going to be that this kind of bad behavior, unacceptable, societally destructive, sometimes deadly behavior, is going to go on.

Incidentally, a very small point, but we have focused in one of our interim hearings on what we could do with southbound traffic inspections, and at the advocacy of this Committee, the appropriators increased the number of CBP personnel at the ports of entry southbound. For some reason, the fiscal year 2011 budget submission proposes cutting funding for 50 positions that are now involved in southbound inspections. And I just want to assure you that the Committee is going to be communicating with both the Administration and the Appropriations Committee to say that would be a very serious mistake.

But, my thanks to you for coming up here. You make it real, and thank you for doing everything you can to uphold the rule of law, really, and trying to provide a decent environment in which the people of the State and the community and the county can live, which is no more than anybody in the rest of the country wants.

So, with that, we will leave the record of the hearing open for 15 days for additional statements or questions. I am very grateful for what you have done. I pray for your success as you go back

home, and, again, I thank Senator McCain for his persistent leadership on this critical issue.

The hearing is adjourned.

[Whereupon, at 1:13 p.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Joseph Lieberman
Homeland Security and Governmental Affairs Committee
Border Security: Moving Beyond the Virtual Fence
April 20, 2010

This is the third hearing our Committee has held to review America's border security programs in the wake of the stunning increase in violence caused by Mexican drug cartels.

In fact, it was a year ago today that we held a field hearing in Arizona – with some of the same witnesses who are on our second panel.

I regret to say that in the year that has passed, the situation has continued to deteriorate.

Since 2006, more than 22,700 people have been murdered in Mexico by narco-terrorists in the ongoing war between the cartels and the cartels and the government. That's a multiple of the number of Americans killed in the wars in Iraq and Afghanistan since 2001.

The pace of the murders has been steadily escalating - 9,635 murders in 2009 – an increase of 50% from the already unprecedented level in 2008 and three times the 2,837 killed in 2007 – Mexican President Felipe Calderon's first year in office.

These statistics are of grave and great concern to the United States, as they are to Mexico and its strong and courageous President. I greatly admire his unwavering commitment to literally rid his country of the plague of narco-terrorism.

In the past year, the Mexican government has arrested or killed scores of leading cartel figures, including Arturo Beltran-Leyva (Are-too-roh Bell-trann Lay-vah), known as the "boss of bosses," in December.

But as cartel leaders are taken out, the violence seems to increase as the cartels fight amongst themselves for the remaining pieces of the narco-trade.

We must do everything in our power to support our southern neighbors in the historic battle they are currently waging there against the cartels.

And we must continue to be vigilant on the American side of the border because there are deeply troubling signs that the cartels and other smuggling groups are becoming more willing to bring their violence across the border and inflict it on U.S. citizens.

In the past month, three separate incidents have drawn our attention, concern and anger: A pregnant U.S. Consulate employee, her husband and the Mexican husband of another consulate employee were all gunned down in Juarez as they left a children's party; the U.S. Consulate in Nuevo Laredo was attacked with an Improvised Explosives Device;

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000037 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.001

and, of course, a well-known and much beloved rancher in Arizona was murdered on his own property. All this follows the murder of an on-duty Border Patrol Agent last year.

So, the bottom line is that our federal, state and local governments must work together to do everything in our power to control the border between the United States and Mexico.

That brings me to a focus of this hearing – our efforts to use technology to control the border. When the "virtual fence," or SBInet, was first launched, we were told that it would be extended across our entire southwest border -- nearly 2,000 miles -- by early fiscal year 2009.

Well, it is now April of 2010, almost four years after SBInet began, after $770 million has been spent directly on SBInet and we are still waiting on the testing of a 23-mile stretch in the Tucson sector.

That's it!

By any measure, SBInet, has been a failure – a classic example of a program that was grossly oversold and has badly under delivered.

When SBInet first started, U.S. Customs and Border Protection seems to have effectively told Boeing – the contractor – "Go ahead and do what you can do as quickly as you can."

Without clear goals and expectations, both CBP and Boeing underestimated the complexity of building the system. And the Border Patrol agents themselves – the people who would be implementing and relying on the system everyday – were not consulted on what their actual needs were.

I am also troubled that the program office responsible for SBInet is heavily dependent on contractors, weakening CBP's own organic capability to manage the program and ensure capability.

And, of course, the structure of the SBInet contract -- one overarching contract to a single contractor -- means that CBP does not get the benefit of competition for individual tasks undertaken for the SBInet program.

From the very beginning of SBInet, CBP's reports to Congress read like a quest to find that mystical point where parallel lines finally meet – it's always just over the horizon but you never actually get there.

Our committee staff visited the Tucson sector over the recess, and once again, they heard: "We're almost there!"

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000038 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.002

I, for one, don't think members of this Committee will believe it until we actually get there.

I am pleased that the Secretary has ordered a long overdue internal review of the SBInet program, which will consider its long-term viability, and determine whether there are technological alternatives to providing border control.

I welcome CBP Commissioner Alan Bersin today and look forward to ask more from him about how DHS will approach that review, and how we can better secure our border with Mexico and contain the violence and drug smuggling.

We are also honored to have a second panel of witnesses from Arizona to bring our Committee a first-hand, from the ground, local perspective on this crisis, which is a homeland security crisis.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000039 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.003

OPENING REMARKS BY SENATOR McCAIN
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
Hearing on Border Security: Moving Beyond the Virtual Fence
April 20, 2010

I want to thank Chairman Lieberman and Ranking Member Collins for holding this important hearing today. It was exactly one year ago today that Chairman Lieberman joined me in Phoenix for a field hearing to study the effects of the Mexican drug cartel violence on our border security. I am saddened that one year later the situation in Mexico has not improved and we are seeing serious spillover violence affecting Americans living near the border.

Just last month, three Americans were killed on the Mexican side of the border as they made their way home to the United States. Also last month, a third generation Arizona rancher was found dead on his property near the Mexican border reportedly shot by suspect that may have illegally entered our country. Last week it was reported that the death toll from the Mexican government's war on drug cartels is far higher than previously reported – more than 22,000 deaths in the past three years according to an April 14, 2010 article in *The Los Angeles Times* citing a confidential Mexican government report.

The violence along our southern border is increasing and impeding everyday life and the peace of mind of our citizens in the border region. Some believe that they are living in a lawless land where there is little or no consequence for the violation of their land, property and well-being. The federal government must do all it can within its power to curb this violence and protect its citizens from criminals coming across the border from Mexico. Americans living anywhere, but especially along the border, must feel safe and secure in their homes and on their property.

Unfortunately, during these violent and stressful times, the President's most recent budget submission seeks to cut 181 Border Patrol agents. This comes after the number of border patrol agents already declined from FY 2009 to FY 2010. I was pleased that Secretary Napolitano testified before this Committee that she will not let the number of Border Patrol agents along the southwest border decline, but I continue to be baffled by the Administration's proposal.

As all the witnesses here today well know, the Border Patrol Tucson Sector accounts for almost 50 percent of all illegal immigrant apprehensions across the country. Specifically, in FY 2009, the Border Patrol apprehended 241,453 individuals in Tucson Sector, which is the size of the population of Reno, Nevada.

The Tucson sector also accounts for almost 50 percent of all the marijuana seizures in the nation. In FY 2009, the Border Patrol seized more than 1.3 million pounds of marijuana in the Tucson Sector – the first time any Border Patrol Sector had every before seized one million pounds of marijuana in a fiscal year. Additionally, 90 percent of the cocaine used in the United State comes through Mexico and much of it is smuggled though Arizona right up the I-10 highway. It is for these reasons, that in FY 2009, 73 percent of all the District of Arizona's criminal filings involved either immigration or drug charges.

57327.004

Our Federal, state and local courts and law enforcement are overwhelmed attempting to investigate and prosecute these crimes. Citizens living near and along the border are frightened in their own homes. For these reasons, we must move immediately to fully secure our border.

Yesterday, Senator Kyl and I released a ten point border security action plan that calls for 3,000 National Guard troops to be sent to patrol the Arizona-Mexico border, 3,000 additional Border Patrol Agents to the Arizona-Mexico border, 24 hour-a-day surveillance by Predator B Unmanned Aerial Vehicles, construction of a fence that truly deters illegal entries among other issues. Many of these items are legislative issues Senator Kyl and I have pursued for many years and we will be introducing legislation in the near future related to these ten points.

I hope that the hearing today will highlight the outstanding work that our state and local officials are performing to provide for the safety of Americans despite the inability of the Federal government to secure the Southwest border from the flow of drugs, money laundering and illegal immigration. Additional federal action is urgently needed and in my judgment, our failure to do more puts at risk the safety and security of our citizens each and every day.

Finally, Mr. Chairman on SBI*net*. Hundreds of millions of dollars of taxpayer money so far has been wasted. There has been a lack of oversight and a lack of accountability. The virtual fence has been a complete failure.

I look forward to hearing from honorable Alan Bersin on this issue, along with border security issues.

Thank you Mr. Chairman.

Submitted for the record by
Sen. McCain
April 20, 2010

Tucson Weekly

CURRENTS - CURRENTS FEATURE February 04, 2010

Luck and Fear

A border-area home invasion has forced residents to take action

by Leo W. Banks

LEO W. BANKS

Howard Hunt demonstrates how two home invaders duct-taped his hands to the post of a bed. Because he takes Coumadin and bruises easily, the tape left a nasty mark on his wrist

Howard and Rosie Hunt might be the luckiest people in Arizona—and that's saying something for an elderly couple who lived through a home invasion on Jan. 20.

Two young men from Chihuahua, Mexico, one carrying a machete, allegedly pushed their way into the Hunts' home, bound them and searched for valuables. The Hunts live right off State Highway 80, 15 miles south of the Chiricahua Mountains town of Portal, along the notorious smuggling route known as the Chiricahua Corridor.

For some time, residents here have been fighting to keep themselves and their property safe from cross-border smugglers and illegal aliens, who—cut off from their groups, lost and desperate—often break into homes.

Life around Portal and its sister town of Rodeo, N.M., 12 miles away across the state line, has become a grim litany of cut phone lines, roof vents removed to get inside, barking dogs at night, trucks stolen, half-eaten food in the kitchen and men peering in windows.

"Thirty years ago, we had workers moving through, and they'd ask for water and a sandwich," says Nancy Cloudt, who runs Rodeo Grocery and Cafe. "Then they started demanding water and a sandwich. Then they didn't like peanut butter. Then they wanted to use your phone to call New York.

"Now, if you hear something at night, you don't even go out to check. It gets worse all the time."

On Friday, Jan. 22, Cloudt says, Border Patrol arrested 63 illegals near her store in one shift. Lousy weather brought them out of hiding places in the mountains and washes. They wanted to be captured and sent home.

But the Hunt episode has left people here really shaken.

Rosie Hunt, 74, was cooking supper at about 5 p.m. when she heard a knock at the front door. When she responded, she saw two men, one an English speaker, who asked if Rosie would drive them to town. Through his booking photo, she later identified the suspect as 21-year-old Eriberto Marquez.

She said no to the request, and so did Howard, who'd joined her at the door. Marquez kept asking, and Howard kept saying no. "I says, 'It's only two miles up the road. You can walk.'"

Marquez said, "We're tired of walking, and nobody will give us a ride."

Howard said, "Well, I'm not going to give you a ride, sir."

When Rosie moved to return to the kitchen, Marquez pushed her into the house. Howard turned to protect his wife and felt a sharp object poking his back.

The object was an 18-inch machete held by the second suspect, identified as 19-year-old Martin Chavira-Morquecho. Howard swung his hand to swipe at the blade and got a tiny cut on his thumb—not a serious problem for most people. But Howard, 75, has had six strokes and takes the blood-thinning medicine Coumadin, which caused the cut to bleed a lot. In addition, he has emphysema and has had a knee replaced, a stent put in his heart and two shoulder surgeries.

"It went downhill from there," says Howard of the front-door confrontation.

Marquez took Rosie down the hall into a bedroom, giving her a push. She turned and punched him on the side of the head. A stunned Marquez said, "You hit me hard!"

Rosie said, "Yeah, I'm sorry."

Rosie says now, "That probably wasn't very smart, because he could have beaten me up."

Howard wound up in the same bedroom. "I told Rosie, 'Don't be scared, but we're going to get it,'" he says. "I figured then and there we were dead."

Howard's main concern was keeping Rosie safe. He told Marquez, "You harm her, and I'll kill your ass. If I was in Korea right now, I'd shoot you."

That prompted an improbable conversation between Howard and Marquez.

"You were in the service, too, huh?" Marquez asked.

"Yeah, I was," Howard said.

"Bad one, huh?"

"Yeah, it was bad."

Marquez said, "I was in the Navy."

Howard worked in the mailroom of the *Chicago-Sun Times* before retiring in 1996. The Hunts have eight children and have lived outside Portal for 13 years.

Eventually, Marquez asked Rosie for money. He first asked for $400 or $500. She said she didn't have it. He then asked for $200 or $300, and the answer was the same.

He said, "Why don't you have any money?"

"Because we're retired," she said.

Marquez sat Rosie at the kitchen table and told her to write down the pin number for her debit card. He also wanted her address, promising to send back whatever money he spent.

Rosie and Howard were taken to a back bedroom, where Marquez asked for duct tape. "Like a damn fool, I told him where it was at," says Howard, who was then taped to a bed, and Rosie to a chair.

The Hunts say the alleged machete man, Morquecho, spoke no English and was the more threatening of the two. In fact, say Rosie and Howard, Marquez was almost gentlemanly. "You'd think nothing of having a conversation with him," says Rosie. "This guy was so polite."

He kept saying, "'We'll be leaving soon.'" Without prompting, he went to the kitchen stove and turned off the heat under Rosie's potatoes so they wouldn't boil over.

The episode lasted about 70 minutes.

While tied up in the bedroom, the Hunts could hear the bandits going through the house; Marquez wearing socks on his hands, say the Hunts, presumably to avoid leaving fingerprints. When Marquez was leaving, he said to Rosie, "Do you want me to turn the air conditioning on? It's hot in here."

Rosie said no. Then he asked, "Do you want me to turn the fan on?"

"No," Rosie said. "Howard's blood is too thin, and he'll get cold."

Moments after they left, Rosie wriggled her wrists free, then slid off the chair and out of the jacket she was wearing, bypassing the tape around her chest.

The bandits stole the couple's Chevy Avalanche and about $100.

Within 20 minutes, a Cochise County sheriff's deputy responded to Rosie's call, and an alert went out. Marquez and Chavira-Morquecho were arrested a short time later when a police officer saw them leaving a Lordsburg, N.M., McDonald's.

They're now in jail in Bisbee, says Alma Barth, a spokesperson for the Cochise County Sheriff's Office. Each will face 14 criminal charges, including two counts of burglary, two counts of aggravated assault with a deadly weapon, two counts of kidnapping, three counts of theft and one of armed robbery.

Howard says a Cochise County detective told him the two men had been previously deported following an armed robbery, but that could not be independently confirmed.

The important thing, says Howard, is that neither he nor Rosie was hurt. "But they did hurt us one way," he says. "They took our trust. It's going to make it rougher on us, because we like to travel, and how are we going to leave this house now?"

He adds: "There are a lot of dope-runners coming up this valley. But you've also got a lot of people who got no more intention of trying to do anything other than bettering their lives. Are you going to shoot them, too? You can't tell the difference. I tell you, it's a bad situation."

On a drive up Highway 80 from Douglas eight days after the incident, more Border Patrol agents were visible than civilians. It looked like a valley at war, and in a sense, it is.

All this is happening as Homeland Security Secretary Janet Napolitano—who in April of last year told CNN that crossing the border is not a crime—is publicly suggesting the border is secure enough to push again for amnesty.

The Hunts would dispute that, as would the Cochise County deputy who advised them to keep a pistol by the front door. When a deputy knocked on neighbor Bill Meloy's door and told him of the break-in, Meloy asked: "Is there anything we can do?"

"Keep your pistol handy," the deputy said.

"I can't believe my country, a county of laws, allows this to go on," says retired Cochise County Superior Court Judge Richard Winkler, who lives outside Rodeo.

Residents of the valley are angry and organizing. The Rodeo market, about two miles from the Hunts' home, is posting signs announcing a meeting on Friday, Feb. 5, at the community center, in an effort to try to head off a bloody tragedy.

But many feel such an event is inevitable.

"The Hunts don't know how lucky they were those guys weren't badder than they were," says Cloudt. "And those two guys don't know how lucky *they* were that it was the Hunts. I can think of four or five people living around the Hunts who would've blown them away if they'd tried coming into their houses with a machete."

57327.008

Submitted for the record by
Sen. McCain
April 20, 2010

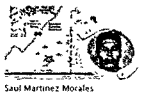
Tucson Weekly

CURRENTS - FEATURE September 17, 2009

Chico and the Monkey

How many times were a border coyote and his accomplice captured and released by law enforcement? Would you believe 35?

by Leo W. Banks



Saul Martinez Morales

A new security safe is the most potent symbol of Louie and Susan Pope's life today. It cost $750, and when the couple goes for an after-supper walk, or on a dawn horseback ride in the Chiricahua Mountains, they load it up with household valuables.

Susan puts her purse inside, as well as jewelry, small electronics and handguns. Even though they live about 30 miles north of the border, the Popes can no longer lock their doors, take off and trust that their possessions will be there when they return.

It's one of the indignities suffered by residents north and east of Douglas along the Chiricahua Corridor. (See "The Chiricahua Corridor," Sept. 11, 2008.) Beginning in the winter and continuing through June, residents on the Arizona and New Mexico sides of this heavily trafficked smuggling route have experienced a surge of home break-ins by cross-border smugglers.

The tiny bird-watching town of Portal, on the east slope of the Chiricahuas, has become a major hub within the corridor. A watchful resident estimates that there have been about 100 burglaries around town in the past five years. But hard numbers are difficult to acquire, in part because many residents don't report incidents for fear of losing their insurance. The situation has created a tinderbox of emotion in this part of rural southeast Arizona.

The Popes feel the impact throughout their lives, not just at home. Susan works as a bus driver and teacher at the Apache Elementary School, a one-room schoolhouse with a teacherage beside it. It sits on Highway 80, 35 miles north of Douglas, and serves six students. Since 2005, these structures have been broken into seven times, all when the kids and the two employees have been gone.

The glass windows have been busted out so often, they've been replaced with Plexiglas. All the valuables once kept there—like a camera and a DVD player—have been stolen. In 2007, officials built a fence around the school, but the thieves jump it. An alarm was installed in June this year—costing $500, plus $60 a month—but the school keeps getting hit.

"Sometimes I don't know whether to laugh or cry," says Susan. "Americans shouldn't have to live like this."

As for the Popes' new safe, they bought it after a March 17 break-in at their home near Portal. For safety reasons, the *Tucson Weekly* will not name the canyon in which the Popes live. They also declined to be photographed.

The home burglary was the Popes' third, which, in this area, almost makes them sweepstakes winners. A close neighbor claims to have been hit 17 times, with the last burglar leaving a spray of blood over the home's interior when the thief sliced an artery after breaking a window.

Many of these crimes are committed by what locals call south-bounders—drug mules and *coyotes* who run loads up to Portal, 46 miles above the border, then turn around and head back to Mexico. The number of south-bounders has skyrocketed as drug-smuggling has increased. They're a dangerous breed—young, often gang members, sometimes desperate for food, and on the hunt for whatever they can steal to convert to quick cash.

Due to vast distances and law-enforcement response times that can range up to two hours or longer, these thieves often get away.

But they didn't in the Pope break-in. The coyotes responsible were caught and prosecuted. Louie and Susan—who grew up in the area, raised their kids there and wouldn't dream of living elsewhere—agreed to talk about the episode in hopes that something will change. It's a brave decision. But they're fighting for something they cherish—their way of life.

The story they tell opens a window on the world of alien- and drug-smuggling, and the criminals who operate within it. It also shines a light on a system that fails citizens in multiple ways, the most maddening being the number of times these crooks are set free to strike again.

The *Weekly* has learned that prior to the Pope burglaries, the two men responsible had been released by law enforcement and the courts at least 35 times between the two of them.

"The people are gut full of this," says Louie, an unpretentious retiree whose manner and straw cowboy hat speak to the years he's spent working on ranches, as well as for the U.S. Forest Service in southeast Arizona. "It isn't mainly workers anymore. It's dopers and bandits, and we're seeing a lot more weapons. I really expect to get death threats from this, but we have the opportunity to tell an important story about what's happening out here, and we need to do it before something bad happens."

Louie and Susan discovered the March 17 burglary at about 8:40 a.m. when they returned from their horse corrals. The thieves came in through a bedroom window. They stole $100 from Susan's wallet, two sets of Bushnell binoculars, an MP3 player, a cell phone, some jewelry and coins, and they ate food from the refrigerator. Total loss: $700.

But the thieves also broke into the Popes' new Dodge pickup, which the couple had brought home three days before. They busted the door handle with a screw driver and tore apart the steering column trying to steal it, doing $3,000 in damage.

"If they'd just waited, we would've fed and watered 'em," says Louie. But now he was mad and wanted his stuff back. Louie, who probably knows the Chiricahua range better than any man alive, grabbed his 30-power Bausch and Lomb spotting scope, used for hunting, and hurried to a nearby mountaintop.

"This mountain is the closest place I could get altitude and start glassing," says Louie. "After an hour, I saw them walking near the mouth of Horseshoe Canyon." He radioed the location to sheriff's deputies and Border Patrol. It was just before noon.

One of the thieves, later identified as Luis Arturo Ventura Chico, from Agua Prieta, Sonora, across from Douglas, gave up quickly. The second was 26-year-old Saul Martinez Morales, also from Agua Prieta. He's nicknamed Chango—in English, monkey—and he showed why: He bolted straight up the mountainside and kept running, easily outpacing Border Patrol agents, who later returned empty-handed and completely drained.

"This guy Chango was like a man from hell," says Louie. "He went clear over the top of that mountain in less than 15 minutes, through some hellacious country."

Later, at 4:30 p.m., Louie reached a second vantage point, a mile south of Horseshoe on Sunrise Road, overlooking the entire San Bernardino Valley. Within 15 minutes, he spotted Chango again. The goal of Border Patrol and sheriff's deputies was to get ahead of him. "But it was hard, because this guy was moving so fast," says Louie. He sat atop Sunrise until dark watching Chango make his mad dash to the border, fearing he might get away.

But pursuers caught a break at 8:30 a.m. on March 18.

About 10 miles south of Horseshoe, two cowboys out checking waters spotted a man running south along a dirt road. Thinking he was trying to go for help, they approached and asked what he needed. But the man wasn't in the mood to chat. He said he was headed to Mexico and kept moving swiftly south.

The cowboys rode back to ranch headquarters, still unaware of the break-in at the Popes and the manhunt for Chango. But a ranch employee—the wife of Louie's brother-in-law—filled them in on the excitement, and the cowboys, who still hadn't unsaddled, rode back out to see if the man fit Chango's description. He did.

This time, the cowboys stayed with him as Border Patrol closed in. It wasn't quite a chase, but the cowboys weren't going to let him out of their sight. Chango ran through brush and along roads, moving so swiftly that the cowboys had to trot their horses to keep up. When he was on roads, the cowboys trotted alongside him, one on each shoulder.

Twice, Chango darted at the horses to scare them, and he jabbered at the cowboys most of the way, cussing, threatening and pleading with them to go away. He kept saying to the older cowboy, "Come on, man, let me go back. Go take care of your cows." At one point, Chango jumped a barbed-wire fence, turned and taunted the cowboys, saying, "Bad luck for you. I'm behind a fence." One of the cowboys pulled wire cutters from his jacket, held them up and said, "Bad luck for you. I'm cutting the fence."

This went on for six miles. Chango got within a mile of the border near Geronimo Trail east of Douglas, and the Border Patrol arrested him there about noon. He'd traveled 25 miles in 28 hours, yet, as the cowboys said, he was barely winded. But they did see him pick up a discarded water bottle, with murky, brownish water inside, bring it to his lips and chug it.

"He reached down," said one cowboy, "grabbed it without breaking stride, chug-a-lug, and the water came running out of both sides of his mouth. He made a face like it didn't taste too good and threw the bottle down. He had to have a thirst on."

At their request, the *Weekly* is withholding cowboys' identities and the name of their ranch.

But Chango still had the energy for one more getaway. While being hauled to jail in a Border Patrol truck through downtown Douglas, he reached out a rear window, grabbed the outside door handle, jumped out and raced toward the Mexican line. He sprinted 16 blocks and was close to hopping the border fence when agents nabbed him, Pope said.

But the crimes these men committed didn't have to happen in the first place. They should've been in jail already.

The *Weekly* has learned that at the time of the Pope break-in, Chico had three prior arrests for alien-smuggling—on June 8 and July 22, 2008, and on Jan. 2, 2009, according to a law-enforcement source. All took place around Douglas, and each time, instead of being prosecuted, Border Patrol pushed him back into Mexico.

It's called voluntary removal, and it's a sweet deal for crooks—but lousy for American citizens.

When Border Patrol arrests an alien near the border, they take their name and fingerprints and run them through computers. If the individual can't be linked to a current crime—other than illegal entry, a federal misdemeanor—and if he isn't wanted for a serious past crime, he gets a sandwich and a free trip back to Mexico. Illegals taken into custody in most areas around Douglas get up to 12 arrests before they're charged with entry without inspection. If, on the 13th arrest, they're taken before a judge and found guilty, they're formally deported. If caught entering the country after a formal deportation, they're charged with a felony.

The system, which Border Patrol is working to change, creates a revolving door in which agents arrest the same people again and again, often on the same day. According to agency spokesman Mike Scioli, of the roughly 317,000 aliens arrested in the Tucson Sector last year, 17 percent were prosecuted—and that's actually a big number, considering the amount of resources it takes to prosecute a single case.

Of the 83 percent not prosecuted, some were put through one of the alternative programs the Border Patrol has established to cut the number of voluntary removals. The majority, however, were pushed back into Mexico. "We can't prosecute them all," says Scioli. "Due to the influx of traffic here, the court system really can't handle that load."

But how could a coyote win release three times for alien smuggling, a felony? Scioli declined to comment, saying the matter is "too sensitive" to discuss. "It would actually be illegal for me to talk about it," he said.

Sandy Raynor, spokesman for the U.S. Attorney's Office in Arizona, also declined to discuss individual cases.

Retired agent Zack Taylor, a former supervisor of Border Patrol's prosecutions unit, says it's not that unusual for coyotes to be set free, and there could be multiple reasons—the Border Patrol being unable to arrange transport and arraignment within the required time limit, the unwillingness of swamped U.S. attorneys to take what can be viewed as low-priority cases, and a lack of detention space.

"Some days, I'd go to muster at 6 a.m. and see a message from U.S. Marshals or Tucson detention that they had no bed space and weren't taking any prosecutions," says Taylor. "So you catch a guy, do the paperwork, document him as a smuggler and walk him out the front door back to Mexico."

Taylor said he sometimes got three or four good, prosecutable cases in a day, even criminal cases, and had to turn them loose. Often it had to do with what the system could handle. "Sometimes, you had to weigh which case was most important and cut the least important because of the amount of paperwork involved and other factors," says Taylor.

But think of the damage a crook can do with 12 arrests—that's at least 12 chances to sneak into the United States to break into houses, steal trucks, run drugs and people, wreck property, frighten citizens, set forest fires and foul the landscape with trash.

In a post-arrest interview with Cochise County sheriff's deputies, Chico admitted to the Pope burglary and said he and Chango had been leading a group of 14 illegals toward Portal, and ultimately Phoenix, when the Border Patrol jumped them. He said he was paid $900 to help lead the group.

And he went further, saying he'd previously led 15 to 20 groups north—again, all felonies. The shoes he wore bore the sign of a practiced smuggler; they were several sizes too large, a common tactic to throw off trackers. Asked where he got them, Chico said: "Well, I bought these shoes from a gang member in Agua Prieta for 250 pesos."

When the deputy asked Chico how many times he'd committed burglary, he seemed insulted, saying, "I'm not a burglar. I'm a coyote. But this is my first time."

We know by these arrests that Chico had been in custody at least three times. But the number rises to four if we count the traffic ticket he received from Douglas cops in early June 2008, according to court records. He was cited for speeding, having no license, no ID, no registration and no insurance, strong indicators he was in the country illegally. He could've been arrested for not having ID and the likelihood he'd abscond without paying his fines, but Douglas police couldn't confirm for the *Weekly* whether or not that occurred.

It's likely Douglas handed him to Border Patrol and Chico got his first voluntary removal.

Needless to say, his traffic fines have gone unpaid.

But Saul Martinez Morales, the man known as Chango, makes Chico look like a rank amateur. While in custody in Maricopa County in 2007, he told authorities he'd been arrested and voluntarily removed from the United States an astounding 27 times.

The *Weekly* has also learned, through law-enforcement sources, that Chango had been formally deported on June 29, 2007. Later that *same day*, he was arrested again for transporting aliens back into the country. In Chico's police interview, when asked what Chango did for a living, Chico said. "He smokes marijuana, but mainly he smuggles illegal aliens."

Information gleaned from court papers state that Chango is a longtime drug and alcohol abuser. He told authorities he began drinking at age 8, and has been smoking marijuana daily and snorting coke monthly since he was 14. But he said he had recently quit booze and coke.

At the time of these statements, made to Maricopa County authorities in August 2007, he'd been living illegally in Phoenix for 10 years, but he'd recently been laid off from a $500-a-week construction job. He has a long criminal past. In Phoenix on June 6, 2007, police spotted Chango driving slowly past a known drug house. After he made an illegal lane change, police confronted him at a Circle K and tried to arrest him for not having an ID.

But Chango bolted as he was being cuffed, starting a wild chase down alleys, through backyards and over fences, according to police reports. When pursuing cops approached him, he tried to force his way into a private home by pushing on the front door, as the terrified homeowner pushed back from inside. Even though surrounded by cops, Chango wouldn't submit until they used a Taser on him.

He was booked for two felonies—escape and criminal trespass—and then released on his own recognizance. When the inevitable happened and he failed to appear in court on June 21, a warrant was issued for his arrest.

After that June 29 arrest for alien smuggling—which, following a formal deportation, should've resulted in a felony charge—Chango must've been released again, because the following month, he was back in Phoenix leading police on another chase.

It happened July 21. He was driving a stolen Ford F-250 pickup when a cruiser pulled in behind him, and before police even turned on their lights, he jumped out and ran. Chango hid under a parked car and resisted commands to come out; this time, police had to use pepper spray to subdue him. He was booked for auto theft, another felony.

Prosecutors combined these cases, and on Aug. 10, Chango pleaded guilty to criminal trespass and one count of felony theft. He got three months in county jail and 18 months of probation. He was ordered to pay $1,995 to the owner of the pickup for damages he caused and reimburse the owner's insurance company for more than $9,000.

But Chango wasn't done yet. On Oct. 18, 2007, while still in jail, he was hit with a money-laundering charge dating to June 2003. According to the Arizona Attorney General's Office, he used an alias and a fake Social Security number to obtain $9,400 in Western Union transfers. State investigators suspected he was moving far larger sums as part of people- and drug-smuggling operations.

Given the time that had passed and other factors, the state didn't have enough evidence to charge him with those crimes. This time, Chango pleaded guilty to a single felony count of money laundering. In February 2008, he was sentenced to four months in Maricopa County jail and three years of probation. He was ordered to pay $9,400 to the Attorney General's anti-racketeering fund.

In his sentencing report, Assistant AG Todd Lawson wrote that probation was appropriate, because this was Martinez Morales' "first state-level offense." Knowing Chango would be deported to Mexico after his jail term, Lawson insisted on three years of probation, the maximum allowable, to deter him from again entering the country. If caught re-entering within that time, he faced potential prison for the probation violation. "The state's sincere hope," wrote Lawson, "is that the result of this sentence is that the defendant does not return to the United States."

Not a chance. Not only was Chango released without reimbursing the owner of the truck in the felony theft, without reimbursing the insurance company, and without paying his state fine for money laundering; he went right back to his old line of work, smuggling—which is how he wound up at the Popes' bedroom window.

Like Chico, Chango did a lot of talking to a Cochise County deputy after his arrest. He admitted to the break-ins, described how they were done and even talked about the sandwich he stole from the Pope's refrigerator. "It was bacon and cheese, and it tasted all right," he said. Chango also said he found a yellow wallet belonging to the Popes and was asked if he took money from it. He replied: "Well, if there was any money in it, I would have taken it, too. I only had $33 on me."

Chango also said that months before he broke into the Pope's truck and home, he also burglarized the Apache School. He did $200 damage and stole a number of food items, including sugar cubes, because "he'd never seen sugar in cube form before." After this admission, and after all of his other arrests, charges and probations, Chango made a startling remark that speaks volumes about his lack of fear of our laws: "I hope all this doesn't hurt me. I just want to be sent back to Mexico."

This time, he didn't get his wish. Last Friday, Sept. 11, in Superior Court in Bisbee, he pleaded guilty to the Pope burglaries and was sentenced to six years in prison, with a requirement to serve 85 percent of it. With his history, Martinez Morales faced 11 to 20 years, but Deputy County Attorney Gregory Johnson made a deal, saying he didn't want to "risk taking the case to trial and seeing a jury set him free."

The Popes were pleased with the result.

In the Chico case, however, the Popes are fuming mad. Right now, he is back in Mexico after claiming to be 17 years old, thereby winning a favorable sentence in juvenile court in Sierra Vista.

But there's reason to suspect Chico lied about his age.

After his arrest, law enforcement began processing Chico to send him to the Cochise County jail in Bisbee, meaning they thought he was an adult. Adults go to the Cochise County Jail, while juveniles go to the Juvenile Detention Center

in Sierra Vista. But the destination changed when Chico suddenly claimed to be a juvenile. To settle the matter, a call was made to his mother in Agua Prieta, and she gave his birthdate as Dec. 11, 1991, which would make him 17—and off to juvenile he went.

But Chico has a habit of being confused about when he was born. In each of his three prior arrests for alien smuggling, he gave different birthdates. Sources say he used Dec. 11 all three times, but the year changed, from 1988 to 1989 to 1991.

The options available to judges dealing with juvenile defendants from Mexico are narrow, at best. The defendants can either be sent to juvenile prison here, or turn-styled back to Mexico. But the latter effectively means no punishment, because the juvenile is then beyond the court's supervision.

At a hearing in Sierra Vista on April 28, Presiding Juvenile Court Judge Ann Littrell said she wouldn't send Chico to juvenile prison, fearing the impact that contact with such a population might have on him. But she wanted to hold him for a time in the local juvenile jail, during which he could earn money in a work program and repay the Popes. Littrell initially considered a 30-day sentence. She upped it to 60 in response to complaints by the Popes and 15 frustrated citizens of Cochise County who attended the hearing.

When she issued the sentence, however, Littrell was unaware of Chico's prior arrest record and his use of multiple birthdates. While he was still in custody, the *Weekly* informed Littrell of these facts and asked if they merited re-opening the case, perhaps to obtain better evidence of his birthdate. After all, if Chico is an adult, the judge had no jurisdiction in the case.

"It's not something I'm going to pursue," said Littrell. "Luckily, judges don't have to go out and enforce the law." Based on the call to his mother and Chico swearing in court to being 17, Littrell expressed confidence the court had the correct date—and she might be right. But the odds aren't good. Chico had three shots to give law enforcement his correct birthdate, and we know he lied at least twice, maybe all three times.

After serving 60 days, Chico was sent back to Agua Prieta, but probably not to his mother's home. According to court documents, the mother told juvenile-court authorities that her son was living with his girlfriend, a 35-year-old woman, and the mother didn't approve of the relationship and didn't want her son returning home.

Those 15 citizens of Cochise County left the courtroom in agreement that 60 days is better than 30, but still not enough. They were also certain Chico won't be deterred by his probation terms. One requires him to notify his probation officer within 30 minutes of entering the United States. When Littrell read that aloud, a disgusted grumble passed through the gallery as they imagined Chico, the veteran coyote, leading yet another group, stopping just over the U.S. line and saying: "Would you folks mind waiting a sec? I'm supposed to call my probation officer."

Another probation requirement was for Chico to write a letter of apology to the Popes. He never did. Another was to repay the Popes $750 from his jail work. He didn't do that, either—until the *Weekly* notified Littrell of that fact on Aug. 4, weeks after his release. Within two days, the Popes got a check for $453. But they're still short $297.

It gets worse. After the sentencing, Louie talked with Chico's probation officer about setting up a meeting with Chico. Louie wanted to ask where he ditched the Popes' binoculars, cell phone and jewelry so he could try to find them. The probation officer told Louie he was busy and asked Louie to get back to him. Louie later left a message with the probation officer to set up a meeting, but he never called. Rather than keep trying, Louie dropped the matter in frustration. "I didn't push it too hard. But it's the point of the thing, not the money," he says. "Don't just blow me off."

"I'm mad," says Susan. "The court did not hold Chico accountable."

As for the Popes' response to the news of 35 releases, Louie says, "It just blows us away. But at the same time, we're not surprised." For years, he and Susan have watched local, county and federal agencies try to cope with the border crisis, rarely communicate with each other, and mostly flail around against these smart and fast-moving criminal operations. And Louie doesn't believe his family's nightmare is over.

Chango is gone for several years—and that's a good breather. But there are many others to take his place, and they'll continue making life a misery for residents of the Chiricahua Corridor. The Popes count Chico among them. "I'm sure

he'll be back leading groups past our house again, if he hasn't already," says Louie. "The best thing for him would've been to sit in jail for a long time to think about what he did."

But these cross-border criminals have learned not to fear the system, it doesn't deter. The result is a kind of Groundhog Day in which the same bad guys keep committing the same crimes. This has created a corrosive cynicism among law enforcement, who often see the men they arrest turned loose, and among overwhelmed prosecutors, who lack the money and time to take cases to court.

In the middle stand citizens just trying to live their lives in a 21st century frontier.

Cochise County Attorney Ed Rheinheimer says he understands the severity of the situation, especially in Portal, and admits law enforcement is playing catch-up there. But he says his office is trying to respond. "If we can aggressively prosecute a few of these cases, we might be able to deter some of this and accomplish something for the people of Portal," says Rheinheimer. "We know they've been suffering."

That response stems from work done by people like the Popes and others who don't wish to be named. They've met with Cochise County officials, the Border Patrol and the U.S. Attorney's Office to describe the siege conditions under which they live and agitate for help in the fight to win back their way of life.

The effort has paid dividends. Louie says the Cochise County Sheriff's Office and Border Patrol have cracked down the past two months, easing the scary wave of break-ins that occurred during the winter and early summer. But calm on this border is usually just calm before another storm.

"Law enforcement has proven that if they keep a presence here, they can shut down a lot of this stuff," says Louie. "But if it gets slow, and they pull out, the trouble will come right back again."

From February through the end of June, residents of the Chiricahua Corridor suffered through break-ins and drug incidents with regularity. The *Weekly* has compiled a list of incidents, but it is partial. From the start of this year through May, for instance, Bill Wilbur had nine break-ins at his rental house, but only one is listed here. Other victims are not named to protect the privacy of an already nervous population:

Feb. 27: Attempted break-in at a residence 5 miles south of Portal. Alarm drives off thieves.

Feb 27: Break-in at Apache Elementary School. Digital camera and food stolen. Saul Martinez Morales pleads guilty.

March 17: Break-in at the Popes' house near Portal. Stolen items and truck damage almost $4,000. Martinez Morales pleads guilty.

April 30: Thirteenth break-in at ranch east of Arizona line in Peloncillo Mountains. $750 worth of tools stolen.

May 3: Break-in at Wilbur's rental east of Portal, near New Mexico state line. Thieves are so hungry that they try to boil birdseed in a pot on a stove to make it edible. Nine men are arrested, several carrying marijuana backpacks.

May 3: Break-in at Apache Elementary School. Administrators vow to install alarm system. Damage: $100.

May 5: Break-in at residence in Apache, near Geronimo Surrender Monument. Burglars leave freezer door open; all food spoils.

May 6: Break-in at residence on Rock Springs Road, just off Highway 80. Food stolen.

May 8: Break-in at residence off Sulphur Canyon Road south of Portal. Thieves steal two automatic pistols.

May 15: Attempted break-in at a ranch in Rucker Canyon. A rancher sitting on a toilet sees men staring in a window at him.

May 15: Eighth break-in at cabin in Rucker. Nothing left to steal.

May 18: Break-in at teacherage next to Apache Elementary School. Nothing left to steal. Damage: $138.

May 18: Break-in at residence at mouth of Horseshoe Canyon near Highway 80. Thieves kick in front door, steal clothes, and food.

May 27: Break-in at residence on Sunrise Road, 10 miles south of Horseshoe Canyon.

May 28: Break-in at residence east of Horseshoe Canyon. $800 in cash stolen. Thieves leave filthy clothes piled on floor.

June 9: Commercial trailer found parked 100 yards from Apache Elementary School on Highway 80. Inside, Border Patrol finds 2,000 pounds of marijuana. Value: $1.7 million.

June 18: Break-in at Apache Elementary School. Nothing left to steal. Damage: $100.

June 19: Break-in at residence on Sanford Hill, 4 miles south of Portal.

June 22: Four drug mules arrested at Stateline Road.

June 24: Homeowner off Sulphur Canyon Road south of Portal sees six drug mules walking near his house. Law enforcement arrives. Five captured.

June 30: Break-in at residence in Portal. Thieves throw rock through window and try to steal a truck.

Feature archives »

Facebook Recommendations

Rez Ball | Feature | Tucson Weekly
177 people shared this.

Where Beer and Art Collide: Borderlands Brewing Company Opening Downtown | The Range. The Tucson Wee
44 people shared this.

Bungaard Police Report: How Big a Creep Is the Senate Majority Leader? | The Range. The Tucson Weekl
35 people shared this.

Create a free account

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000052 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.074

Submitted for the record by
Sen. McCain
April 20, 2010

Tucson Weekly

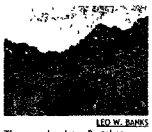
CURRENTS - FEATURE

September 11, 2008

The Chiricahua Corridor

Drug-trafficking and crime victimize residents and destroy the environment along the Southern Arizona-New Mexico border

by Leo W. Banks



LEO W. BANKS

These peaks above Portal are called Twin Peaks. The illegal alien trail goes along Horseshoe Saddle and drops to the base of the peaks into South Fork.

The roar of an ATV is hard to miss at 3 a.m. on a dark night in the Chiricahua Mountains. The sound carries a mighty distance, ricocheting through the canyons--and to anyone living in that place, in these times, it's recognized immediately as the sound of trouble.

So it was the night of July 16, when an ATV, almost certainly loaded with drugs, rumbled north across the Mexican border. It likely crossed the line on the west end of the San Bernardino National Wildlife Refuge, east of Douglas, came north along Black Draw through the heart of the San Bernardino Valley, then swung west across State Highway 80 into the Pedregosa Mountains.

From there, the smuggler bulled his way north through draws and washes up to Rucker Canyon on the west side of the Chiricahuas, possibly as far as Turkey Creek. It was a mad dash for sure, and the best evidence indicates he rode the entire distance, as much as 40 miles, in a single night, his wheels turned backward to foil trackers.

Residents view the ATV incursion, the first of several, as an escalation in an already intense battle with smugglers working the so-called Chiricahua Corridor. Perhaps optimistically, some view this pathway through southeast Arizona as one of the last wide-open border smuggling routes, and they fear the traffickers will grow more desperate as they fight to keep it open.

Already, residents have had to make room in their lives for everything the traffickers bring with them--suspicion, constant watchfulness, vandalism and break-ins. As a matter of course, few people dare leave their homes without a sitter. Alex Stone, a helicopter specialist for the Forest Service who owns a house near Portal, on the east side of the Chiricahuas, says flatly, "If you leave your house empty, it *will* be occupied."

Law enforcement? Border Patrol might be an hour away on a good day, and on a bad day, residents have to fend for themselves when the agency dispatcher in Douglas says, as sometimes happens, "Sorry, we have nobody to send."

The traffic has also brought to the Chiricahua Mountains, one of Arizona's special places, the same ugliness we see in other sanctuaries closer to the border. Piles of trash now foul major canyons and waters in the northeastern part of the range. Erosion bedevils established hiking trails, and illegals are making new trails in areas as high as 9,000 feet.

What's happening in the corridor challenges the government's campaign of using this year's decrease in arrests, nearing 25 percent in some areas, to convince citizens they're finally getting the border under control. It also shows the relentless northward march of the smugglers. After all, those who cross the Chiricahuas and walk all the way to Interstate 10, at the northern end of the corridor, have trekked nearly 70 punishing miles--evading law enforcement--putting them deep into the United States.

The siege of the Chiricahuas can best be described as a low-level guerilla war, intermittent but always simmering, the scenes of trouble shifting regularly.

How much it affects your life depends in part on luck. One family can live in relative peace while a close neighbor, a mere mile away, finds himself caught in a genuine nightmare, because his home sits along a smuggling trail. It's that way in Portal, on the northeastern slopes of the Chiricahuas, a quaint and cool town of pickup trucks, funny hats, a

general store from a different century and bird-watchers from a different planet. They flock to this part of the Chiricahuas hoping to catch a glimpse of the Elegant Trogon, or some other airborne superstar, and to them, Portal looks like paradise.

It doesn't look like a bull's-eye in the border war. But illegals and drug smugglers have opened trails that spider-web the town, 46 miles north of the line. Those who live in the village proper will tell you life is good, and on most days, it is. There are enough people, and enough eyes, to keep the worst of the illegal elements at bay. Move into the outlying areas, though, and it's a fight for survival.

In March 2007, Stone, whose house sits a mile and a half outside Portal, went on a bicycling vacation in the east, leaving his place empty. Drug runners broke in and basically took up residence for five days. They found Black Angus steaks in a freezer and grilled them on the stove. They dismantled Stone's 8-inch mirror telescope, pulling out lenses and undoing all of the tiny screws, possibly because they were stoned. They left a brick of marijuana atop his desk in the living room.

They drove away in his pickup truck, loaded down with two motorcycles, a stereo, pots and pans, 30 years worth of tools and his shower curtain. They made $1,700 in calls to Agua Prieta, Mexico, and left the place trashed. No one noticed. The nearest neighbor lives 800 feet away, and that house faces the other way.

"I built the house myself, and that was hard to come home to," says Stone, adding that he got none of his stuff back, although MCI did forgive the phone bill. "But break-ins are a fact of life now in that vicinity."

Some in the area have responded by turning their homes into forts. One man described for the *Tucson Weekly* the steps he has taken to secure his house--installing metal shutters over windows and doors; burying gas lines and a propane tank; concealing all water valves or placing them under lock and key. He also rigged his vehicles so they'll turn over but not start, tricking thieves into thinking the battery is dead.

"I've spent a lot of time the past few years trying to think like a criminal," he says.

Like many of the more than 35 people interviewed for this article, this man asked for anonymity. Everyone in the Chiricahua region follows the cartel violence in Mexico, where grotesque blood-letting has become routine. In June and July alone, four Mexican cops were murdered in Agua Prieta, Douglas' sister town, and several more crossed into this country for asylum, according to a recent *Washington Times* article. The paper cites a report--by the Arizona Counter Terrorism Information Center and the High-Intensity Drug Trafficking Investigative Support Group--warning that cartel turf wars are spreading into the United States.

News like that travels the corridor like a virus. So do reports of traffickers threatening ranchers if they work with law enforcement.

It has happened. The legal Mexican workers of some ranchers have also been compromised--by druggies threatening to kill their families in Mexico--which flips a cowboy's loyalty. Bottom line: Everyone in the corridor knows that cartel soldiers could be in their backyards tonight.

Even so, the man quoted above doesn't base his desire for anonymity on fear. He's not afraid. But between 2001 and 2006, his home on the east side of the Chiricahuas was broken into 15 times, and he believes it's important to live defensively.

He says: "People in cities have no idea what's happening out here. The volume of traffic is huge, and we never know who we're dealing with. We don't know who's coming into the country, and we don't know who in the community is sympathetic to illegal activity. These break-ins usually occur when they know people are gone. So I assume they're watching our homes. Everything is blurred. A lot of these illegals are also drug mules. When people say it's just someone looking for a job, I always ask, 'Why would you break into someone's house if you're looking for a job?'"

And if you're looking for a job, why steal someone's guns? Ed Ashurst manages an 84-square-mile ranch on the east side of the Chiricahuas, near the tiny town of Apache. On March 6, thieves broke into his home and made off with $5,000 worth of guns, including an AK-47, as well as jewelry, credit cards, Social Security cards and all of his clean socks. The thieves were never caught, and Ashurst's guns are still out there.

But the episode continues to rankle because of what happened later that day. Ashurst called the Border Patrol to tell them he'd found the thieves' tracks, and to ask if they could please send agents back. No one came. Three hours later, Ashurst called again and asked the shift supervisor why they hadn't responded. "I was told if there's somebody out there with an AK-47, don't bother calling us, because we're not coming," says Ashurst. "He wouldn't put his agents in that kind of jeopardy. I said, 'Then what good are you?'"

In recent months, the worst of the traffic has shifted to the west side of the Chiricahuas, where the number of break-ins has been shocking. Those who commit them are either illegals or drug mules who've gotten lost, or perhaps Border Patrol has jumped them and they've quailed in 10 directions. After a while, they get hungry and start kicking in doors looking for food. Nobody who breaks into a house is harmless, and that's especially true in border country. As Border Patrol reports, 10 to 15 percent of arrested illegals have criminal records in the United States.

This new boldness jacks up the nerve level. Twice last year--in January and December--an elderly woman living on the corridor's west side encountered men she believes were druggies trying to break into her house--while she was inside. In the first episode, at 10 a.m., two men tried to force open the glass door in her dining room. In the second, they pounded on her carport door, planning, she believes, to rush in if she opened it. The woman says she now lives frightened in her own home.

The December episode occurred days after home break-ins in nearby Pearce and Elfrida, both of which abut the corridor to the west, and a third in Willcox to the north. The four thieves, who'd crossed from Mexico, stole firearms in the Elfrida and Willcox jobs and used them in the Pearce episode, which proved especially dangerous. Three of the men invaded the guest house of a 58-year-old woman and tied her up in her bathroom at gunpoint. She was able to get free after the men left. The alleged perpetrators were caught the next day, Dec. 6, and charged with a number of felonies.

Several west-side ranchers talked to the *Weekly* about this new wave of trouble. One rancher, sitting at his kitchen table, told of suffering three break-ins between June and August--one at home, two at his garage. This fellow also rattled off the names of neighbors similarly besieged. One has been hit three times in the past three months, another twice. A third, the prize winner, has had nine break-ins over the summer.

This rancher, who doesn't share Ashurst's view of Border Patrol, says: "We're targeted here on the west side of the Chiricahuas, because Border Patrol is few and far between. They're busting their butts trying to help us, but they have no backup, and they're frustrated to no end. There aren't enough of them.

"What really worries me is what's happening in Mexico. The cartels are going into ranches on the Mexican side, around Juarez,and saying, 'We're taking over; shut your mouth, or we'll shoot you.' We're afraid that's going to start happening on this side.

"If we get our names printed, we might wind up on some cartel list. We're not scared, and we're not running. But the situation is getting worse, and we need to be very careful."

The Chiricahua Corridor has for decades been a major pathway into the U.S. from Mexico. It begins at the Mexican line east of Douglas, with the Geronimo Trail forming much of its southern boundary. This 32-mile gravel road runs along the border east from downtown Douglas out to the New Mexico state line.

The corridor's eastern boundary extends beyond the state line into Hidalgo County, N.M., and north beyond the little town of Rodeo, N.M. Arizona's Swisshelm Mountains and State Highway 181 form the corridor's western side. The north is bordered by I-10 and the tumbleweed towns of San Simon and Bowie, which the *coyotes* use as pickup destinations.

In its early years, in the '60s, '70s and into the '80s, the corridor's main trail was Stateline Road, a dirt track running north from the border along the boundary between Arizona and New Mexico. Most of those walking it were farm laborers from Chihuahua.

Louie Pope, who has lived in the Chiricahuas all his life, says that up until 1986, when it became illegal to hire them, he'd sometimes offer these men wages to do jobs around his ranch. He says they were good workers and good

people, the Popes gave them the run of the place. They taught his children how to speak Spanish and how to cook tortillas, and the family never had a worry.

He tells of once hiring some of them to build a cattle guard. The workers included an older fellow whom Pope called the Maestro. He was returning to Mexico after doing seasonal labor in the fields around Safford. With the cattle guard complete, the Maestro resumed his trip home, not realizing he had Pope's tape measure in his pocket. The next year, on the way up to Safford again, he stopped at Pope's house to hand over the tape measure.

"That's how honest these guys were," says Pope.

But those days are gone. Residents stressed to the *Weekly* that these farm workers have been, to a large extent, replaced by drug mules and their handlers--men with tattoos, piercings, AR-15 assault rifles, black camis, expensive boots and water bottles painted black to keep them from glowing in the moonlight.

They'll do anything to get their loads through, including roaring down Geronimo Trail at high speeds, sometimes running citizens off the road. Nothing is beyond being stolen. In February, a $270,000 Caterpillar road grader belonging to Cochise County disappeared from Geronimo Trail. The thieves got it started, but couldn't figure out how to raise the blade. So they drove it a handful of miles into Mexico on a cattle trail, making gouges in the ground as they went.

Life isn't much better on the corridor's east side. Retired Judge Richard Winkler saw his home outside of Rodeo broken into three times in 2007, and he had 10 break-ins at his second residence in the Peloncillo Mountains, part of his cattle operation. At his mountain home, Winkler leaves the door unlocked with food out in an effort to win the bad guys' favor. "You don't want to be seen as too mean, or they'll retaliate," says Winkler, a well-known figure in southeast Arizona. He worked for 12 years as a Superior Court judge in Bisbee, often handling drug cases, and for 10 years had a law office in Douglas.

Winkler endured a particularly harrowing day in the fall of 2007, when he returned from Douglas to find his Rodeo home had been broken into. That same night, about 8 p.m., after sheriff's deputies and the Border Patrol had departed, an exhausted Winkler retired to his bedroom for the night. While on the phone with a neighbor describing the events of the day, Winkler heard noises at the far end of the house. He said, "Wait a minute; I hear something. I think they're breaking in again."

Determined to defend himself, Winkler, 69, grabbed a gun and started down the hallway. Luckily, the thieves departed the house before he reached them. Back came law enforcement. From assorted evidence, investigators determined the criminals were drug runners who probably hid in a nearby wash after their first effort, waiting to return after dark.

Winkler now has big dogs and a fence around his dream house.

North of Winkler, Randy and Sheila Massey operate a farm with land in Arizona's San Simon Valley and in New Mexico. Their home is near Animas, N.M., just east of Portal, Ariz. In February 2006, the Masseys made a disturbing discovery in a bunkhouse where illegals often hole up during their treks north: Someone had tagged the door with the words La Mara Salvatruca-13, a hyper-violent Salvadoran gang commonly referred to as MS-13. It now has branches in cities across the U.S.

"To think my grandbabies are growing up not a mile from where these people were," says Sheila Massey, who no longer leaves the kids alone at the farm, even while driving a mile to Animas to pick up the mail. "It curls your toenails to know the kind of people that are coming into our country."

The Border Patrol once believed that mountains were its salvation, a natural barrier. The theory was: Cover the valleys, and leave the crossers no choice but to trek over the mountains, and they'll quit and go home. It hasn't worked--not in the Huachucas and the Baboquivaris near Sierra Vista and Sasabe, or in the Peloncillo and Chiricahuas inside the corridor. The traffickers want in too badly, and the profits are too big.

So into the mountains they've gone, into ever more remote terrain, pushed there by the Border Patrol themselves. Even if law enforcement flies over in a chopper and spots them, the agents have no option but to wait until they come out. And the traffickers can decide where and when they emerge.

To understand how the traffickers use the corridor's mountains, look at a map of the terrain east of Douglas. The San Bernardino Valley stretches north from Geronimo Trail, with State Highway 80 angling northeast across it, eventually blending with the San Simon Valley farther north. The San Bernardino encompasses a vast area, much of it crossed by smuggling trails that follow the natural cover of drainages and underbrush.

But a group headed for Portal, and walking strictly in the San Bernardino and San Simon Valleys, would have to expose themselves at points along the way. To avoid that, more sophisticated crossers might jump the border on the east end of Geronimo Trail, go into the shelter of Guadalupe Canyon, then over the Peloncillo Mountains, which straddle the Arizona-New Mexico line. The group walks north through the Peloncillos about 25 miles before exiting to the west through Skull Canyon.

Before them stretches 6 to 7 miles of mostly flat ground across San Simon Valley. They walk that, crossing Highway 80 between mileposts 402 and 423, and head straight into the shelter of Horseshoe Canyon or Jack Wood Canyon in the Chiricahuas. From there, it's due north through the high, rugged mountains to their pickups in Portal, or off Forest Road 42. An equal number walk north all the way to Interstate 10, 28 miles above Portal.

The traffickers have a big advantage here, because the corridor's east flank runs along the seam between the Border Patrol's Douglas and Lordsburg sectors. Military tacticians have long understood the advantage of riding the divide between adjacent enemy commands and exploiting the resulting confusion in communication and coordination. Louie Pope's wife, Susan, sees that situation firsthand.

She works at the schoolhouse on Highway 80 in Apache, about 35 miles north of Douglas. She also drives the school bus and often sees illegals walking the highway. She estimates that between her and the other woman at the school, they call Douglas Border Patrol 30 times each school year. "Douglas usually tells us they have nobody to send," says Susan. "I'll call Lordsburg, and they'll say, 'We're 2 1/2 hours away; do you still want us to come?' I'll say yes, and they come. Lordsburg saves us. This area is Douglas' responsibility, but 90 percent of the time, they don't come."

The reason, as Susan has learned, is that agents' cell phones quit past a certain point on 80, and their truck radios lose contact with dispatch. The traffickers know this as well. And they know that residents' cell phones don't work, either, and the Cochise County Sheriff's Department doesn't regularly patrol that far south on Highway 80.

As a result, the traffickers ride the corridor's eastern seam through a kind of law-enforcement no-man's land.

Located in the spot where the Rocky Mountains, the Sonoran and Chihuahuan deserts and the Mexican Sierra Madre Mountains all come together, the Chiricahuas are a special place. Many consider them Arizona's most beautiful mountains, and photogs would certainly agree. They've made the range famous worldwide with images of their soaring cliffs and teetering stacks of boulders that seem to grow from the ground itself into the sky.

But tourist photographers steer clear of the alien garbage piling up in the mountains. Although the dumps aren't of monster size, as they are in the Huachucas or around Sasabe and Arivaca, they're still gross and depressing.

"People in Tucson need to know the illegals have moved into the Chiricahuas, and if we don't get a handle on it, they'll ruin them," says Louie Pope, who worked for the Forest Service in the Chiricahuas for 35 years and probably knows the range better than anyone. "All the pristine waters are trashed. It's nasty. On the major creeks, you see clothes, milk jugs. When it rains, all that junk goes down the canyons."

Three years ago, Burro Springs--pictured above on this page--was a crystal-clear water source in the Chiricahua Wilderness. Now it's a 2-acre garbage dump.

Located in Horseshoe Canyon on the east side of the range, the site is a scatter of backpacks, tin cans, sanitary napkins and more. Some of this debris floats 2 feet deep in the waters of the spring. The only way to get it out would be by pack mule, and it'd take 10 animals to get it all. The illegals have also dragged to the site half of a metal water tank. Flipped upside down, it becomes a hooch for sleeping and shelter.

Burro Springs is 33 miles north of the border, at 6,800 feet. Another dumpsite scars the ground at Horseshoe Pass, half a mile above Burro. Many of the main canyons in the Chiricahuas have a place as bad as Burro Springs, and some

of these dumps are at 9,000 feet or higher. Illegals have trashed the top of Pothole Canyon as well as the top of Sulphur Draw, often called Sulphur Canyon, and both are next to impossible to reach.

"The country they're walking in is so rough, you measure progress not in miles per hour, but feet per hour," says Pope. "It's like walking off the side of the Grand Canyon. It blows my mind. I tried to get up to the alien camp in Sulphur Canyon with my hounds, but it was too rough. I had to pull the dogs back. Those tall peaks above Portal? They're coming over those."

The trails through Pothole, Sulfur and Horseshoe canyons constitute the three main alien pathways over the east side of the Chiricahuas. The trail over Horseshoe goes right into the picnic ground at the South Fork of Cave Creek, one of the major tourist birding areas in the U.S.

The heavy traffic has created an erosion problem, too, and this is a serious and long-lasting issue for the health of the forest. In steep terrain, instead of walking switchbacks, the illegals slide on their butts from one switchback down to the next, and when it rains, the water washes out the hillside. The smuggling trail that emerges at South Fork bears the scars from hundreds of butt-sliders. The same occurs on the aliens' hillside trails. When the water comes, the trail becomes a flowing gully.

There's more: The traffickers have also begun painting rocks in the Chiricahuas with black and orange Xs and dots, probably directional signals for groups coming later or markers for GPS positioning. Whatever they mean, they're vandalism.

Much of the badly impacted land, like Burro Springs, is in the 87,700-acre Chiricahua Wilderness. It offers a preview of what could be in store for the Tumacacori Highlands northeast of Nogales, if Rep. Raúl Grijalva gets his way and wins a wilderness designation for that land. Trash dumps will grow. Underbrush will expand. Trails won't be maintained. The land will fall out of the control of the people who should be managing it and under the control of those who don't belong there.

Kimrod Murphy, a retired Arizona Game and Fish officer who lives in the eastern Chiricahuas, says this has already happened in his area. "The Forest Service has no field presence whatsoever in the Chiricahuas," says Murphy. "They've turned their backs on the trash, and they don't maintain established trails. Nobody maintains trails anymore except the aliens. They make new trails, and good ones, too, sometimes 3 feet wide."

Bill Edwards, the Forest Service district ranger in charge of the Chiricahuas, says they do maintain "a few trails every year, but not the hundreds of miles that are in the Chiricahuas." He says he lacks the budget and manpower to do more, and that applies to the trash as well. "You can't see what's going on and feel good about it," says Edwards. "But we're limited in what we can do. A lot of times, Congress dictates how we allocate our budget, and cleaning up after illegals isn't high on their list."

Edwards predicted the situation will worsen soon. He says traffic across the Peloncillo Mountains today mirrors what it was 10 years ago in the Huachuca Mountains around Sierra Vista and in the Canelo Hills, just before it exploded. "Because of enforcement elsewhere, I think we're about to see a large increase across the Peloncillos and the Animas Valley, and the Chiricahuas will draw some of that traffic."

Murphy says it's already there in spades. He regularly rides horseback in the Chiricahuas and encounters so many illegals that he usually doesn't call Border Patrol. "I'd stay on the phone all day if I reported everything I saw," says Murphy. "People are moving north all the time. If it's just illegals, Border Patrol isn't interested. It's like swatting mosquitoes in a swamp."

But the Forest Service's Alex Stone appreciates what Border Patrol faces in the Chiricahua region. "They're as good as they can be," he says. "We're talking thousands of square miles."

The escalating trouble in southeast Arizona has drawn the attention of Democrat Gabrielle Giffords, whose congressional district includes the corridor. She has brokered meetings to bring landowners together with Border Patrol to find solutions, and has generally won praise for doing so. At its Douglas headquarters, the Border Patrol now hosts monthly meetings at which citizens can offer suggestions and air gripes.

For some, though, those sessions are too late. Ashurst, still smarting from the Border Patrol's unwillingness to respond to his second call for help, went to the first meeting in mid-April and says he was treated "like a hot-headed cowboy with an anger problem."

"I'm not mad at the Mexicans," says Ashurst. "They've got a good deal going· If you're starving in Mexico and running drugs, the U.S. government purposely lets you run all over us. I'm mad at the complete incompetence and indifference of the U.S. government. I refuse to go to any more of those meetings and be sneered at."

Louie Pope is close to giving up on the meetings, too, citing the Border Patrol's entrenched political bureaucracy, which he believes keeps good agents from doing their jobs. Plus, his message is already well-known: Rather than rotate agents to different sections of the border, assign them to the same area for extended periods. That way, they get to know the traffic, the trails, the people, the land.

"As it is, they've got new guys from New Jersey out here, and they don't even know where they are," says Pope. "Then they quit or transfer out. But if they had enough veteran agents to train them, and they stayed in the same place long enough, a mouse couldn't burp in those areas without them knowing it."

In spite of the problems, few residents of the corridor would consider living elsewhere. They love their homes and cherish their land, and face the challenges with a grim resolve--the border means trouble, always has, always will.

A bit of gallows humor helps. Anna and Matt Magoffin live along the Geronimo Trail, and they refer to the constant traffic past their place as the Sonoran Hiking Club.

Others wear their frustration more openly, asking why the law seems to protect aliens and smugglers more than American citizens and their property. A number of those interviewed brought up the names Ignacio Ramos and Jose Campeon. These are Border Patrol agents who, in an incident near Fabens, Texas, in 2005, shot a fleeing drug-smuggler in the butt and wound up going to jail for 11 and 12 years, respectively. The U.S. attorney gave the drug-runner immunity to testify against the agents.

When it comes to the law versus the smugglers, the message that sends is crystal-clear. It's also difficult to reach any other conclusion when you hear a federal judge rule that illegal aliens have a right to interstate travel, as John Roll did in March, in a civil-rights case involving high-profile rancher Roger Barnett, a corridor resident.

Roll would do well to discuss his views with those who live and work inside the corridor, especially the Border Patrol, which evidently has been violating the interstate travel rights of illegal aliens for decades with their highway checkpoints and those handcuffs they keep putting on.

And he'd do well to hear residents of the corridor talk about how they'd love to have the same right to travel. These are, remember, American citizens who can't drive to Tucson to shop, or to Phoenix for a weekend, because there's a good chance their homes will be broken into in their absence.

Roll also would do well to walk in the shoes of Richard Winkler, the retired judge. After all, when you're in your late 60s, inching down a hallway in the dark, gun in hand, not knowing what you'll face from the thugs ransacking your home after enjoying their right of interstate travel, you tend to have a different view of things.

"I was scared," says Winkler. "I'm thinking, 'Oh, I don't want to shoot anybody.' I don't even hunt anymore. I did when I was young. But I don't want to shoot stuff. But if they came through the door at me, I would've fired. This was twice in one day, and I'd had enough."

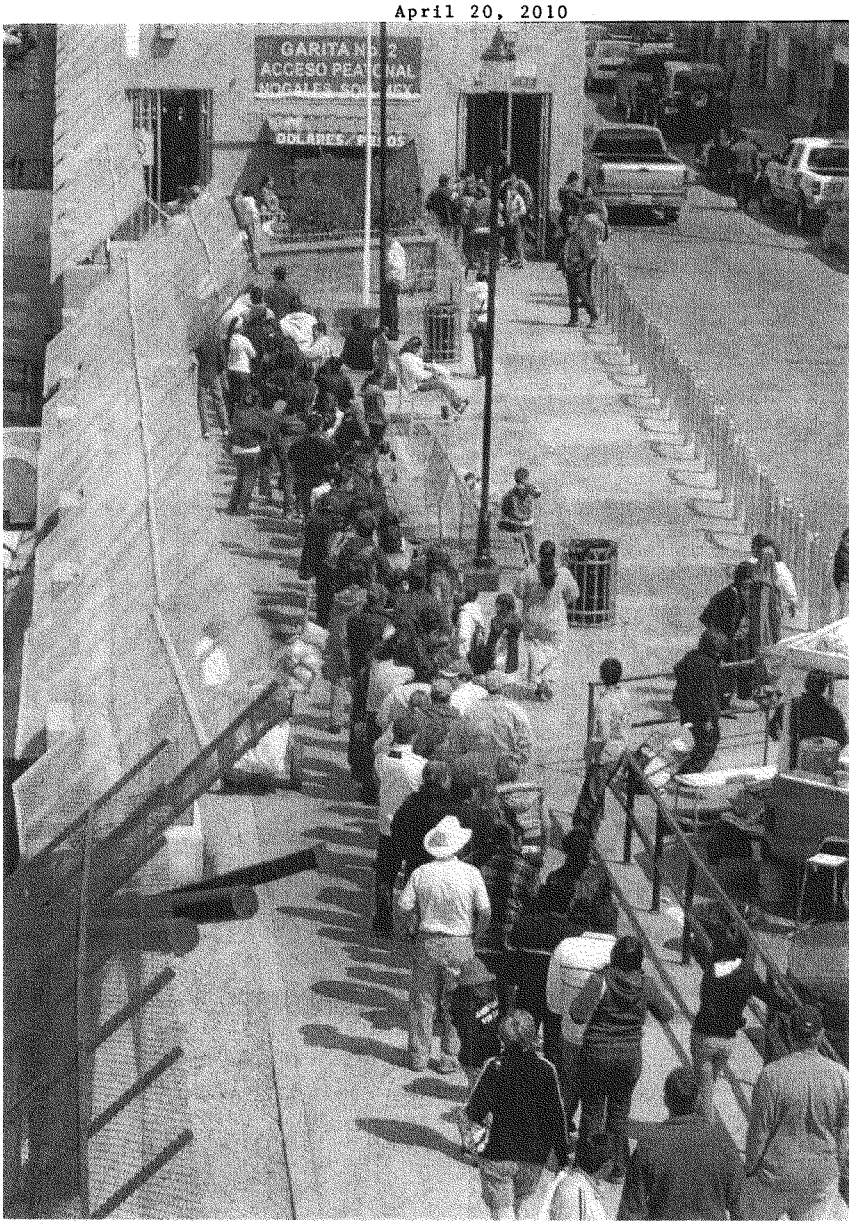
That could serve as a motto for the whole Chiricahua Corridor--enough is enough.

Winkler, a longtime Democrat, adds a coda to his story, about the bias of the media. Asked how the press would've played it if he'd shot one of the intruders, Winkler didn't hesitate in his answer: "The headline next day would've been 'Retired Judge Kills Hungry Mexican Immigrant.' That's just the attitude."

He continues· "I read the national press, and the articles are all the same. I don't know how they get the idea illegal immigration is OK. They mix it all together and put Lou Dobbs down for being against illegal immigration. I'm against anything illegal, too. I was a judge. The law means a lot to me. Both my grandparents came here from foreign countries, and I love immigration. But you have to do it the right way.

"The press makes it sound as if they're all hard-working, wonderful people, and a lot are. But they have their bad people, too, who do bad stuff, and that's what we live with out here."

Submitted for record by:
Mayor Garcia-Von Borstel
April 20, 2010



TESTIMONY OF

ALAN BERSIN
COMMISSIONER

Chairman Lieberman, Ranking Member Collins, Members of the Committee, it is a privilege and an honor to appear before you today to discuss the work of U.S. Customs and Border Protection (CBP), particularly the tremendous dedication of our men and women in the field, both within and between our ports of entry.

My testimony today focuses on CBP's outbound operational efforts, and the technology and partnerships that we leverage to combat violence on the southwest border.

I would like to first begin by expressing my ongoing gratitude to the Committee for its continued support of the mission and people of CBP. It is clear that the Committee is committed to providing CBP with the resources we need in order to increase and maintain the security of our borders. We greatly appreciate your efforts and assistance, and I look forward to working with you on these issues in the future.

With over 58,000 employees, CBP is the largest uniformed federal law enforcement agency in the country. Fiscal Year 2009 was a record year for CBP, with data showing a significant increase in drug seizures, coupled with a decline in border apprehensions. CBP seized more than 4.47 million pounds of drugs, encountered more than 224,000 inadmissible aliens at our ports of entry, and apprehended more than 556,000 between our ports of entry. Outbound currency seizures nationwide also increased 74 percent, surpassing $57.9 million. CBP's Office of Field Operations (OFO) completed its most successful drug enforcement year in the past five fiscal years, seizing nearly 1.5 million pounds of drugs at ports of entry – an increase of 53 percent for cocaine, 19 percent for marijuana and 11 percent for ephedrine. Additionally, the number of apprehensions between the ports of entry has declined by more than 23 percent, or more than 167,000 apprehensions.

During the first six months of FY 2010, we seized nearly half a million pounds of drugs and encountered more than 113,000 inadmissible aliens at our ports of entry. We also seized over 1.3 million pounds of drugs, apprehended more than 245,000 and seized more than $8 million in currency between our ports of entry. These numbers demonstrate the effectiveness of

57327.024

our layered approach to security, comprised of a balance of tactical infrastructure, technology, and personnel at our borders.

Southwest Border Updates

Southwest Border Initiatives

In March 2009, in support of the President's Southwest Border Initiative, Secretary Napolitano unveiled efforts designed to support three goals: guard against the spillover of violent crime into the United States, support Mexico's campaign to crack down on drug cartels in Mexico, and reduce movement of contraband across the border. This initiative called for additional personnel, increased intelligence capability, and better coordination with state, local and Mexican law enforcement authorities. Since the Secretary's announcement, DHS has continued working with federal, state, local, and tribal authorities and the Government of Mexico to secure the southwest border.

To support this initiative, the FY 2010 President's Budget provided $26.1 million for 65 additional CBP Officers, 44 additional Border Patrol agents, and support for the expansion of CBP's License Plate Reader program, which assists in combating southbound firearms and currency smuggling. Additionally, Congress provided $20 million for Non-Intrusive Inspection equipment, $19.5 million for 100 additional Border Patrol agents, and $7 million for 50 additional CBP Officers focused on outbound operations. This financial support has enabled CBP to significantly increase southbound seizures and mitigate U.S. effects of cartel violence in Mexico. CBP remains committed to continuing southbound border enforcement efforts to combat the smuggling of firearms and currency to Mexico.

In March 2009, CBP also created the Outbound Programs Division within its Office of Field Operations. This division creates plans to stem the outbound flow of firearms, currency, stolen vehicles, and fugitives out of the country. CBP also increased its use of "pulse and surge" strategies for outbound operations on the southwest border. In FY 2011, we will continue to strengthen the use of these operations along the southwest border and to build on the current cooperative efforts with federal, state, local, and tribal law enforcement agencies.

57327.025

As a result of increased southwest border outbound security operations implemented as part of this initiative, as of December 2009, CBP had seized more than $38.3 million in southbound currency—an increase of more than $29.3 million over the same time period in 2008. Moreover, CBP officers at the southwest border ports of entry seized approximately $8.7 million in currency and 71 firearms in the first six months of FY 2010. Current statistics show a relative increase in the effectiveness of interdicting outbound currency since the start of these increased operations: $11.1 million in currency was seized in FY 2007, $10.1 million in FY 2008, and $37.1 million in FY 2009.

Thanks to the continued support of Congress, CBP now has 261 large-scale Non-Intrusive Inspection (NII) systems deployed to our ports of entry. Of the 261 NII systems deployed, 51 are deployed on the northern border, 117 are deployed on the southern border, and 93 are deployed to seaports. To date, CBP has used the deployed systems to conduct over 32 million examinations resulting in over 7,600 narcotic seizures with a total weight of 2.4 million pounds of narcotics, and the seizure of over $19.2 million in undeclared currency. Used in combination with our layered enforcement strategy, these tools provide CBP with a significant capability to detect contraband, including illicit nuclear or radiological materials. The deployment of NII technologies has enabled our staff to efficiently process a significant volume of passengers and trade.

Border Security Between the Ports of Entry: Personnel, Infrastructure, and Technology

Two basic conditions must exist to ensure that our agents can safely and effectively secure our borders between the ports of entry. First, we must have precise and timely situational awareness—that is, we must have knowledge about what is happening between the ports of entry. Situational awareness allows us to understand and assess where the greatest threats and vulnerabilities lie, and deploy resources accordingly. Second, we must have the capability to react in a lawful manner best suited for a specific situation.

In deploying resources between the ports of entry, CBP seeks to incorporate the appropriate mix of personnel, infrastructure, and technology that will allow us to confront the criminal element. This three-pronged strategic balance of resources reflects the reality that one of

57327.026

these elements cannot, in and of itself, secure our nation's borders. Personnel provide the flexibility to engage the criminal element; tactical infrastructure supports response by either providing access or extending the time needed for the response; and technology allows us to detect entries and to identify and classify threats.

Over the past year, we have significantly strengthened each of the three major elements of our border security approach. At the end of FY 2009, we had 20,119 Border Patrol Agents on board nationwide. As of April 2, 2010, we had approximately 646 miles of fence constructed along the southwest border. Our target, based on Border Patrol's operational assessments of fencing needs, is approximately 655 miles. Most of the remaining mileage is under construction, and is projected to be completed in December 2010. With respect to technology, we have purchased and deployed 41 mobile surveillance systems (MSSs) to provide radar and camera coverage along the borders. Currently there are 38 MSS units deployed along the southwest border and 3 MSS units deployed along the northern border.

CBP personnel involved in border security between the ports of entry include Border Patrol agents and Air and Marine Interdiction agents. These personnel are highly effective in observing and providing the situational awareness necessary. However, without tactical infrastructure and technology, the volume of personnel required to perform the entire border security mission would be prohibitive.

Tactical infrastructure includes, among other things, pedestrian fence, vehicle fence, roads and lighting, all of which support CBP's ability to respond. For example, fence is a fixed resource that provides a constant and continuous barrier, but again, alone cannot provide effective security. However, fence successfully provides what we call "persistent impedance," which deters and/or delays illicit cross-border incursions, buying time for our agents to respond. This is critical in areas near cities, for example, where illicit border crossers could easily blend into the population before we would be able to interdict them. It is also critical in areas where, without persistent impedance, vehicles could reach nearby roads faster than we could otherwise respond.

Technology between the ports of entry includes sensors, command and control systems, and communications. Although some refer to technology as a "virtual fence," technology does not have the persistent impedance capability of a real fence. Technology, however, is a powerful force multiplier because it has the capability to provide situational awareness that is critical to effective control – technology can continuously "watch" the border. Guided by command and control systems that help sort the incoming data, sensors provide our agents with timely access to critical information. Technology also supports response capability by providing our agents with accurate information to identify and classify illicit incursions and therefore determine the best options for response. Improved communications capability also ensures our response forces are properly directed and coordinated.

Currently, CBP is deploying proven surveillance systems across the southwest border, as well as to the Detroit and Buffalo Sectors, and additional funds will be used to demonstrate and deploy additional capabilities against priority threats by providing immediate, enhanced situational awareness to the field.

The work done by our Office of Air and Marine augments these systems. Since 2006, CBP has introduced six Predator B long duration remotely piloted aircraft, one of which was converted to a maritime variant, named the Guardian, through a joint CBP/USCG program office. The Predator B has seen service along the southwest border in support of the Border Patrol since 2005, and in February 2009, a second Predator was delivered to North Dakota. CBP's Office of Air and Marine is aggressively executing its homeland security missions with 284 aircraft and 253 marine vessels located at 79 operating branches, units, and support sites across the nation. Operations along and beyond our borders are achieving impressive results, and as new aircraft, vessels, improved sensors and additional personnel increase our strength and flexibility, the office will continue to push hard not just to accomplish our current mission set, but to be prepared for future missions as the threats change.

CBP is leading the initiative within the department to provide video and mission-related critical data to major operational centers and senior government leadership. The Office of Air and Marine along with the Office of Information Technology has developed a robust capability

57327.028

to provide real-time and near real-time video and other mission-related data to senior leadership during natural disasters and law enforcement operations, and is playing a vital role in closing gaps in coverage along the Northern Border. This information is critical to the leadership decision-making process.

Increased Partnerships in Support of Southwest Border Initiatives

Working with our partners, our strategy is to secure the nation's border by employing and enhancing our layers of defense throughout the continuum that impacts our borders – starting from the point of origin, through transit to the United States, arrival and entry at our borders, routes of egress, and ultimately to final destination in the United States. This strategy relies upon increased intelligence and risk-management strategies regarding both the movement and flow of travelers and trade. We can accomplish our mission of expediting trade and travel by separating the knowns from the unknowns. Employing risk segmentation allows us to enhance security by focusing more attention on stopping illegitimate trade, while at the same time facilitating legitimate travel and commerce.

We are continuing to enhance and build upon our robust partnerships with our Western Hemisphere Neighbors – Mexico and Canada. Opportunities to secure our borders are aggressively being identified on an ongoing basis through our partnerships and collaboration efforts. Building upon these relationships will be at the forefront of our priorities and strategies.

CBP remains committed to the Mérida Initiative, a multi-year assistance plan to help Mexico, Central America, the Dominican Republic and Haiti combat the threats of drug trafficking, transnational crime, and money laundering. In FY 2009, CBP established an inter-office Merida Committee to coordinate with the Department of State (the U.S. Government lead for Merida), DHS, DOJ and other law enforcement components on implementation actions.

Additionally, CBP has a Mexico Attaché office located at the U.S. Embassy in Mexico City. This office oversees CBP operations in Mexico, including, border operational support at and between the Ports of Entry, bilateral coordination to secure the shared border, as well as training for Mexican government agencies. Additionally, the Attaché's office is the

57327.029

Commissioner's representative in Mexico and provides CBP subject matter expertise to the Ambassador and U.S. interagency groups within the U.S. Embassy in Mexico City in support of the U.S. government's trade, traveler and security agendas. Interagency cooperation at the Embassy level is essential to ensure that the right structures and mechanisms are in place to oversee the implementation of Merida programs.

CBP continues to work with its partners in the Drug Enforcement Administration (DEA) and the High Intensity Drug Trafficking Area centers to expand the National License Plate Reader (LPR) initiative to exploit intelligence on drug traffickers and drug trafficking organizations. The LPR initiative utilizes established locations to gather information regarding travel patterns and border nexus on drug traffickers for intelligence-driven operations and interdictions. We have also established positions at the El Paso Intelligence Center (EPIC), the Organized Crime Drug Enforcement Task Force Fusion Center, and the DEA Special Operations Division.

These partnerships enhance interaction with the Intelligence Community and law enforcement agencies to more effectively facilitate the collection, analysis, and dissemination of actionable drug-related intelligence in support of drug trafficking and money laundering investigations throughout the SW Border, Mexico and the U.S. CBP remains a partner with ICE in the Border Enforcement Security Teams (BEST) to prevent the illegal flow of drugs, weapons, and currency across the southwest border, including the interdiction of outbound shipments of firearms and bulk currency.

Intelligence and Operational Coordination

CBP, in cooperation with the DHS Office of Intelligence and Analysis, continues its work to become a more integrated, intelligence-driven organization. Intelligence gathering and predictive analysis require new collection and processing capabilities. CBP is designing systems to process and analyze imagery collected from aircraft and other platforms. CBP is also developing the Analytical Framework for Intelligence, a set of data processing tools to improve the effectiveness of CBP and other DHS analysts in detecting, locating, and analyzing terrorist

57327.030

networks, drug trafficking networks, and similar threats. These intelligence and operational coordination initiatives complement the Secure Border Initiative's technology programs.

CBP's Office of Intelligence and Operations Coordination has established a National Post Seizure Analysis Team at the National Targeting Center-Cargo and is in the process of establishing Intelligence Operations Coordination Centers (IOCC). The IOCCs will link intelligence efforts and products to operations and interdictions, making CBP a more fully integrated, intelligence-driven organization and increasing our capability to expeditiously move feedback from end users back to the originator. In March 2010, the first Intelligence and Operations Coordination Center (IOCC) was opened in Tucson, Arizona. This facility will serve as the "one-stop-shop" for operations coordination and information sharing across the operational entities within the agency, including Border Patrol, Field Operations, and Air and Marine.

CBP also participates in Operation Panama Express, a multi-agency international drug flow investigation that combines detection and monitoring, investigative work and intelligence resources to provide actionable intelligence to Joint Interagency Task Force-South (JIATF-South) operations to interdict the flow of cocaine from northern South America to the United States. JIATF-South interdiction operations in the transit zone are supported by CBP P-3 Airborne Early Warning, CBP P-3 Tracker aircraft, Coast Guard HC-130 Long Range Surveillance (LRS) aircraft, and Coast Guard vessels, which interdict large, sometimes multi-ton, shipments before they can be split into smaller loads for movement across the southwest border and distribution in the United States.

CBP continues to work with the Mexican Government in the development of increased law enforcement surveillance and interdiction capabilities, including the detection of U.S./Mexican border air intrusions. The primary means of detecting air intrusions is a large radar network, monitored at the CBP Air and Marine Operations Center (AMOC) in Riverside, California. Information is fed to the AMOC through a network of airborne early warning, aerostat, Federal Aviation Administration and ground based radar systems. Personnel at the AMOC detect northbound aircraft that land just south of the U.S./Mexico border, and coordinate

57327.031

CBP Air and Marine and Mexican interdiction assets to intercept, track, and apprehend smugglers as they attempt to traverse the border.

CBP will continue to assist the Government of Mexico in maintaining a counter-drug effort, including command, control, communications and information support.

Secure Border Initiative (SBI)

Our most recent activity has been focused on SBI*net* Block 1, which we continue to deploy along a segment of the border in Arizona. We have developed a robust program for SBI*net* Block 1, and have completed most of the engineering design and testing, which identified some areas for improvement. We have taken steps to address these areas, including opting to delay some program activities while we await the results of further testing and analysis.

While we are deploying SBI*net* Block 1 system and continuing to evaluate and strengthen the requirements, we are also taking steps to improve our competence in the management of complex acquisition programs. We have redesigned our SBI organization to develop and retain skilled government personnel in the disciplines that are key to successful program management. We are also strengthening our oversight and management of contractor activities and ensuring that requirements are clearly and concisely communicated.

I also want to briefly discuss the Department-wide reassessment that was ordered by the Secretary back in January. As the Governor of Arizona, Secretary Napolitano became uniquely aware of the promises that were made about SBI*net* and the shortfalls it has faced. When she came into the Department, she took a hard look at our progress with SBI*net*. She gave CBP a fair chance to prove that we were on the right track. She asked hard questions about the future of the program and the feasibility of where we were headed and directed then-Acting Commissioner Jayson Ahern to provide his assessment of the path forward for SBI*net*. Based upon the results of that review, she ordered a Department-wide reassessment of the program to determine if there are alternatives that may more efficiently, effectively and economically meet our nation's border security needs.

57327.032

The assessment has an immediate and a long-term phase. In March 2010, the Department announced that $50 million in American Recovery and Reinvestment Act (ARRA) funding planned to accelerate the deployment of the SBI*net* Block 1 technology was reapplied to acquire and deploy commercially available, stand-alone technologies along the southwest border. These investments address a wide array of priority, near-term operational needs and include: $31.7M for truck-mounted systems with cameras and radar called Mobile Surveillance Systems (MSSs); $4.5 million for technologies addressing priority Air & Marine needs, to include thermal imaging devices and aerial observation cameras; $1.5 million for pursuit camera systems supporting the operational needs of the Office of Field Operations; $12.3 million for technologies supporting Border Patrol operations, to include backscatter technology and thermal imaging devices.

In the long-term phase, we will conduct a comprehensive, science-based assessment of alternatives to SBI*net* to ensure that we are utilizing the most efficient and effective technological and operational solutions in all of our border security efforts. If this analysis suggests that the SBI*net* capabilities are worth the cost, this administration will extend deployment of these capabilities. If this analysis suggests that alternative technology options represent the best balance of capability and cost-effectiveness, this administration will immediately begin redirecting resources currently allocated for border security efforts to these stronger options.

Conclusion

Mr. Chairman and members of the Committee, thank you for this opportunity to testify about the work of U.S. Customs and Border Protection, and particularly about our efforts to increase security along the southwest border. CBP is committed to aggressively and proactively securing our nation's borders and safeguarding our way of life. Your continued support of CBP has led to significant improvements in the security of our borders, and made our nation safer. I will be glad to answer any questions you may have.

57327.033

Department of Justice

STATEMENT OF

DENNIS K. BURKE
UNITED STATES ATTORNEY
DISTRICT OF ARIZONA

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

HEARING ENTITLED

"BORDER SECURITY: MOVING BEYOND THE VIRTUAL FENCE"

PRESENTED

APRIL 20, 2010

Statement of Dennis K. Burke
United States Attorney, District of Arizona
Before the U.S. Senate Committee on Homeland Security and Governmental Affairs
April 20, 2010

Introduction

Chairman Lieberman, Ranking Member Collins, and Members of the Committee, my name is Dennis Burke, and I am the United States Attorney for the District of Arizona. I also serve as the Chair of the Border and Immigration Law Enforcement Subcommittee of the Attorney General's Advisory Committee.

District of Arizona Background

Before discussing our southwest border prosecutions and the trends we're seeing, I would like to tell you a little about my district. The District of Arizona encompasses the entire State of Arizona, which has a population of approximately 6.5 million people and approximately 114,000 square miles of land. Approximately 70% of the land in Arizona is federal land, and approximately 40% of the federal land is held by the 21 federally recognized Indian tribes in Arizona. Arizona has the largest Native American population in the U.S.: approximately 394,000. Our largest reservation, the Navajo Indian Reservation in northeastern Arizona, is roughly the size of West Virginia geographically, and has a population of approximately 275,000. Meanwhile, the Tohono O'Odham Nation in southern Arizona resides in an area roughly the size of Connecticut. The Tohono O'Odham lands straddle 75 miles of the Mexican border. The remainder of our federal land consists primarily of National Forests (approximately 11.2 million acres), National Parks (including the Grand Canyon in the north and the Organ Pipe Cactus National Monument in the south), BLM land, and military bases (four active duty military bases–Luke, Davis-Monthan, Ft. Huachuca and MCAS Yuma– as well as Yuma Proving Grounds and two sizable National Guard bases).

Arizona is home to a diverse array of industry, including the Palo Verde Nuclear Generating Station, U.S. Airways, Raytheon, Medicis, and Freeport McMoRan Copper & Gold. Phoenix Sky Harbor International Airport is among the busiest airports in the United States, serving the fifth largest city in the U.S. (Phoenix) and a metropolitan area that is home to 60% of the population in Arizona.

Over the past few years, our office has grown significantly. The increase in resources followed a dramatic increase in the number of Border Patrol and other federal law enforcement agents in Arizona over the past 10-plus years. Presently we have 160 AUSA full-time equivalent positions (FTEs) after having added 30 AUSA positions since 2006. This number represents a 54% increase in the number of AUSAs in the past 10 years. We have 143 support staff FTEs, bringing our office population to over 300 full-time employees.

Arizona has slightly over 6,000 federal law enforcement agents, approximately 3,600 of whom are employed by the United States Border Patrol. We share a 376-mile border with

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000072 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.035

Mexico. Naturally, the border is the most significant factor in the size and nature of most of our criminal caseload. Many assume that our numbers are extraordinary solely as a result of our heavy immigration caseload, but statistics maintained by the Executive Office for U.S. Attorneys show that our district has ranked highly in the number of non-immigration prosecutions as well as immigration prosecutions over the past five fiscal years.

The caseload in our district is as diverse as the many communities we serve. We handle cases ranging from firearms trafficking to fraud relating to tribal gaming, and from bank robberies to theft of artifacts, protected plants, wildlife and cultural resources, as well as violent crime in Indian Country and mortgage fraud.

As a border district, we naturally carry a very heavy load of drug prosecutions, both long-term, complex cases investigated and prosecuted under the Organized Crime Drug Enforcement Task Forces (OCDETF) Program as well as more locally focused non-OCDETF cases. Our office abolished the threshold for drug trafficking cases in January 2009. As a result, we increased our non-OCDETF drug case filings by 481 (an increase of 105%) and non-OCDETF drug defendants by 753 (an increase of 110%) from Fiscal Year 2008 to Fiscal Year 2009.[1] These increases did not come at the expense of the complex, multi-agency, multi-jurisdictional cases that are the hallmark of the OCDETF Program. On the contrary, new OCDETF cases in the District of Arizona increased by 29% from FY 2007 to FY 2009. During the same time period, OCDETF defendants indicted rose 25% and convictions were up 38%.Our prosecution statistics are consistent with recent trends across the Southwest Border. From 2007 to 2009, the five Southwest Border districts increased their felony caseloads by 8,218 felony cases – a 42% increase. Felony immigration cases rose by 6,966 cases – a 59.14% increase. Drug cases (non-OCDETF) rose by 550 cases – an 11% increase, and new OCDETF cases rose by 5.5%. In 2007, the 5 Southwest Border districts filed 32.7% of the nation's federal felony cases (19,370/59,228). In 2009, the Southwest Border districts filed 40.65% of the nation's federal felony cases (27,588/67,864).

All along the Southwest Border and within the Department, we are approaching the problem of transnational organized crime with vigorous, creative strategies. Our cooperation and coordination is strong, and new programs designed to improve intelligence sharing and coordination with Mexican law enforcement and intelligence agencies already are bearing fruit. Our robust efforts to interdict and prosecute southbound firearms and currency violators, to eliminate free passes for imposters using stolen or purchased entry documents, to refer cases to Mexican authorities for prosecution, and to provide comprehensive training for Mexican law enforcement by the Department, all represent the Administration's strong commitment to combat cross-border crime and associated violence.

Overview of Department of Justice's Mexico and Border Strategy

The violence along the Southwest border comes primarily from a limited number of large, sophisticated and vicious criminal organizations. Indeed, the Department's National Drug

---

[1] In FY08 the District of Arizona filed 458 non-OCDETF cases with 675 defendants. In FY09 the District of Arizona filed 939 non-OCDETF cases with 1,418 defendants.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000073 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.036

Intelligence Center has identified the Mexican drug trafficking organizations (DTOs) as the greatest organized crime threat facing the United States today. The Department's Strategy for Combating the Mexican Cartels (the DOJ Cartel Strategy) is built on the Department's proven track record in dismantling transnational organized criminal groups, such as the mafia in the 1980s and 1990s, and confronts the Mexican cartels as criminal organizations. Vigorous pursuit of this strategy, in coordination with the efforts of the Departments of State and Homeland Security and with the full cooperation of the Government of Mexico, can and will neutralize the organizations causing the violence.

The Strategy has five key elements. *First*, the Strategy employs extensive and coordinated intelligence capabilities. The Department pools information generated by our law enforcement agencies and federal, state and local government partners, and then uses the product systematically to direct operations in the United States and assist the efforts of the Mexican authorities to attack the cartels and the corruption that facilitates their operations. *Second*, led by experienced prosecutors, the Department focuses its efforts on investigation, extradition, prosecution, and punishment of key cartel leaders. As the Department has demonstrated in attacking other major criminal enterprises, destroying the leadership and financial assets of the cartels will undermine the entire organizations. *Third*, the Department pursues investigations and prosecutions related to the smuggling of guns, cash, and contraband for drug-making facilities from the United States into Mexico. The violence and corruption in Mexico are fueled by these resources that come from our side of the border. *Fourth*, the Department uses traditional law enforcement approaches to anticipate and address cartel violence in the United States. These effects include the distribution of drugs on our streets and in our neighborhoods and battles between members of rival cartels on American soil. *Fifth*, the Department prosecutes criminals responsible for the smuggling, kidnapping and violence in federal court. The ultimate goals of these operations are to neutralize the cartels and bring the criminals to justice.

In most places, along the Southwest Border and throughout the country, the OCDETF Program provides an effective mechanism for law enforcement agencies from within DOJ, from elsewhere in the federal government (including DHS and Treasury), and state and local law enforcement, to combine with federal prosecutors to form a "virtual task force" for the purpose of investigating and prosecuting a particular high-value drug trafficking organization. In certain key locales, OCDETF has established actual, brick-and-mortar Co-Located Strike Forces, for the pursuit of the highest level traffickers of drugs, guns, and money.

OCDETF Co-Located Strike Forces are currently operating all along the Southwest Border, in San Diego, Phoenix/Tucson, El Paso, and in Houston/Laredo/McAllen. The San Diego Major Mexican Traffickers Task Force has been responsible for coordinating the U.S. government's successful efforts against the notorious Tijuana Cartel, the Arellano-Felix Organization, which has been severely disrupted by the arrest and successful federal conviction of almost its entire original leadership structure. The Houston OCDETF Strike Force has directed damaging blows against the Gulf Cartel. And in the first several months of its existence, the Arizona OCDETF Strike Force was responsible for the indictment of a leader and other members of a major Mexican cartel and the seizure of millions of dollars in cartel assets.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000074 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.037

The Department uses a full range of strategic, operational, and tactical intelligence against the Mexican cartels. Since 2003, the Department has worked with the drug enforcement community to develop the Attorney General's Consolidated Priority Organization Target (CPOT) list of international "Most Wanted" drug kingpins. Of the 63 worldwide CPOTs currently on the list, 20 of them are Mexican enterprises. This list helps the Department and our federal agency partners focus critical resources on the greatest threats. In fact, we are continually increasing our efforts to do so. For example, in FY 2009, the five Southwest Border districts opened 220 new cases targeting CPOTs or DTOs linked to CPOTs, an increase of 15% since FY 2007. During the same period, the District of Arizona saw a 33% increase in the number of CPOT cases.

In addition, the Department leads multi-agency intelligence centers that are particularly important to the provision of tactical intelligence and operational support in targeting the largest and most dangerous Mexican cartels. These include the DEA-led El Paso Intelligence Center in El Paso, Texas, as well as the DEA-led Special Operations Division and the OCDETF Fusion Center.

As part of the Department's overall Southwest Border strategy, ATF is pursuing firearms trafficking across the Southwest Border through its Operation Gunrunner. In April 2009, ATF deployed 100 employees, including 68 agents, along the Southwest Border, for 120 days to support Project Gunrunner. During the 4-month surge, ATF's Gunrunner Impacts Teams (GRITs) seized almost 450 illegal firearms and our state and local partners seized approximately 170 more based on leads developed by ATF. The GRITs focus ATF's violent crime-fighting and firearms trafficking expertise, along with its regulatory authority and strategic partnerships, to disrupt firearms trafficking to Mexico, combat violence along the U.S.-Mexico border, and ensure greater compliance of firearms regulations by licensed gun dealers. The GRITs follow leads generated from crime guns recovered in Mexico, using a combination of inspections of FFLs and investigations of both FFLs and their customers, to target and disrupt gun trafficking groups who supply the drug cartels. ATF continues to deploy additional investigative resources to effectively attack the sources of the firearms making their way to the drug trafficking organizations in Mexico. As of mid-February 2010, ATF has approximately 190 Special Agents, 145 IOIs, and 25 support staff assigned to Project Gunrunner.

A particular point of emphasis in recent years has also been the dismantlement of the financial infrastructure of the drug trafficking organizations. These efforts have been hampered by the fact that financial cases are complex and time-consuming, and the pool of experienced financial investigators is finite. Since the curtailment of IRS involvement in drug investigations in 2005, ATF, DEA, FBI, and USMS have hired additional financial investigators and forfeiture specialists. OCDETF has established the Financial Investigative Contractor (FIC) Program to bring additional experienced financial investigators to bear on the largest cartels, and has buttressed the analytical and document exploitation capabilities of its Co-Located Strike Forces in San Diego, Phoenix, El Paso, Houston, and Atlanta. DEA has implemented Financial Investigation Teams (FITs) in its field divisions to target the financial assets of drug traffickers. Analysts and attorneys in the U.S. Attorney's Offices and in the Department's Asset Forfeiture and Money Laundering Section have also stepped up their efforts to assist in prosecuting money laundering activities of all types. In addition, Southwest Region federal agencies are working

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000075 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.038

with state and local law enforcement agencies on an OCDETF bulk currency initiative that targets the highest-level drug cartels and their transportation routes in the Southwest.

Southwest Border Trends

Although we have recently seen a decline in the number of hostage-taking cases in the District of Arizona, that type of activity continues to occur in Arizona and elsewhere. To increase their profits, alien smugglers occasionally turn to physical and sexual abuse, threats of death and other forms of violence, usually involving firearms, to extract payment and/or increase the smuggling fee once the smuggled person reaches a hub city such as Phoenix, Tucson or Houston.

This type of violent activity associated with human smuggling has increased in the Southern District of Texas, which has an active docket regarding human smuggling-related hostage-taking and alien-smuggling cases. In one such case, *United States v. Heriberto Perez-Pinon*, six defendants are charged with alien smuggling, hostage taking, and hijacking another group of aliens from a competing alien smuggling/hostage-taking enterprise. Four of the six defendants engaged in a gun battle with the competing smuggling group. The defendants hijacked and took possession of 13 aliens who were being transported by the competitor smugglers. The 13 aliens were transported to a stash house where they were held at gunpoint, and ransom demands were made to the families of the smuggled and hijacked aliens.

One reason hostage-taking activity has decreased in the District of Arizona is the aggressive stance our office and our federal, state and local partners have taken in response. Working with ICE, the Arizona Department of Public Safety's Illegal Immigration Prevention & Apprehension Co-op Team (IIMPACT), the Phoenix Police Department's Home Invasion and Kidnapping Enforcement (HIKE) squad, the Maricopa County Attorney's office, and the Arizona Attorney General's office, we work tirelessly to rescue victims and to track down and prosecute those who hold smuggled aliens hostage. Last year, my office obtained a conviction and 137-year prison sentence against Carlos Alvarez-Espinoza following a jury trial in which the evidence showed Alvarez-Espinoza was responsible for holding at least 23 illegal aliens hostage in a house in Phoenix. Not only were the victims held at gunpoint, some were beaten and pistol whipped and all were threatened with death.

The violence among competing smuggling enterprises that engage in violent attempts to steal each other's "inventory" of smuggled aliens reflects the reality that these organizations treat smuggled aliens as mere commodities. Last year, my office prosecuted one such case under the Hobbs Act, the first known use of the Hobbs Act to respond to hijacking in the alien smuggling context, and obtained a conviction and prison sentence for Adriel Laurel-Vasquez, the leader of a group that took a group of illegal aliens from a rival organization at gunpoint.

Similarly, the Southwest Border U.S. Attorneys are seeing drug- and non-drug-related kidnappings tied to transnational organized crime. In the Southern District of Texas, a jury recently returned a guilty verdict in the case of *United States v. Luis Alberto Avila-Hernandez*. Nine defendants were indicted for conspiracy to kidnap and various substantive counts of kidnapping. Testimony showed persons known to be involved in the drug trafficking trade were

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000076 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.039

approached by Gulf Cartel members who demanded 'declarations' of allegiance with the Cartel for subsequent drug trafficking activities. A local businessman, Daniel Ramirez, Jr., had refused the Cartel's demands. Avila, who was responsible for kidnappings in the Weslaco and Mission areas of South Texas, was tasked with kidnapping Ramirez. Ramirez was taken at gunpoint and transported to Reynosa, Mexico, and his captors demanded $100,000 for his release. The family paid approximately $40,000 toward the ransom. Ramirez was murdered after other conspirators came to suspect federal and state law enforcement had been called to investigate.

In the Southern District of California, a multi-agency Cross-Border Kidnapping Task Force responds to the problem of people being kidnapped in the United States, transported into Mexico, and held for ransom. DTOs carry out most of these kidnappings, many of which involve "drug rips," in which both kidnaper and victim have connections to DTOs. The numbers of cross-border kidnapping victims in the Southern District of California has risen steadily since 2006. Of the total number of kidnapping victims since 2007, 32 were U.S. citizens or legal residents. Since early 2007, approximately 22 Chula Vista, California residents, including U.S. citizens, resident aliens, and foreign nationals who commute back and forth across the border, have been kidnapped in the Tijuana area; half of them were killed.

The recent murder of Southern Arizona rancher Robert Krentz is a tragic example of cross-border violence. It is too early in the investigation to link the murder conclusively to any particular organization. We continue to cooperate with our federal, state, and local partners to follow leads in the case. Presently, we are culling our cases emanating from that area for leads, and I have directed prosecutors in my office to work with agents in their cases to pursue any and all investigative and intelligence leads related to Mr. Krentz's murder. In addition, I have met with my counterpart in Mexico to lay the groundwork for extradition of anyone responsible for the murder apprehended there.

In another tragic case in which we know the murder was directly tied to drug-trafficking and alien-smuggling activity, Border Patrol Agent Robert Rosas was murdered in July 2009, near Campo, California, by members associated with the "Tecate Plaza" (the territorial area in which DTOs and ASOs operate), which extends from Tecate, California to Jacumba, California. Agent Rosas was following a group of suspicious individuals and had radioed for backup. The group split up before the backup agents arrived at the location and Agent Rosas began to follow one of the smaller groups. Shortly thereafter, several subjects converged on Agent Rosas and shot him in his upper torso and head, killing him instantly. One of these men, Christian Daniel Castro-Alvarez, has entered a guilty plea in U.S. District Court in San Diego and is pending sentencing. In his guilty plea, Castro-Alvarez admitted he and others crossed the U.S.- Mexico border and lured Agent Rosas out of his vehicle while he was on routine patrol, intending to steal Rosas' night-vision goggles. Castro-Alvarez admitted he was part of a group of smugglers operating out of the nearby Mexican community of Jardines Del Rincon.

As a result of BPA Rosas' murder, the Border Patrol launched a major enforcement operation, to impede completely the operations of criminal organizations for 45 days in the Tecate Plaza operational area. The concerted effort weakened criminal effectiveness, chain-of-command, and organizational trust. Successful law enforcement operations created an environment in which DTO personnel exposed themselves to identification and arrest, thus

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000077 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.040

destabilizing the organizational effectiveness of the Tecate Plaza's chain-of-command. With the conclusion of that successful operation at the end of the FY 2009, the Border Patrol has transitioned to an ongoing enforcement campaign, which builds upon the success in FY 2009 by setting the performance target of gaining a greater level of operational control across the Tecate Plaza.

Law Enforcement Coordination Along The Southwest Border

The United States Attorneys have 564 prosecutors in the five Southwest Border districts, handling national and district-level priorities involving narcotics trafficking, gun-smuggling, violent crimes, and immigration offenses. Each of our Southwest Border offices works closely with federal, state, and local investigative agencies on the initiatives described above. Our offices are on the front lines of the national effort to prosecute both large-scale criminal enterprise cases involving significant drug trafficking and human smuggling organizations as well as other criminal offenses arising at the border with Mexico. We also coordinate with Mexican prosecutors to share evidence in appropriate cases to ensure that justice is achieved in either U.S. or Mexican courts.

For example, in the District of Arizona we have worked with the U.S. Immigration and Customs Enforcement Office of Investigations and the U.S. Customs and Border Protection Office of Field Operations to implement the Controlled Substance Project (CSP). Under CSP, some of the drug cases from the Nogales, Arizona Port of Entry that are declined in our office due to the intricacies of proving knowledge under Ninth Circuit case law are referred to the Mexican government for prosecution. The defendant is turned over to the Procuraduría General de la República /Ministerio Publico Federal (PGR/MPF), along with a sworn declaration and ratification of the probable cause surrounding the arrest and core samples of the narcotics, and PGR pursues the prosecution in the Mexican court system. Thus far, we have seen 22 cases with a total of 26 defendants referred for prosecution. To date, two individuals have been convicted in the Mexican court system, and each defendant received a sentence of 10 years in prison.

The Department's Criminal Division and law enforcement agencies likewise are working with the Department of State and DHS components and with our Mexican counterparts to enhance and strengthen Mexico's operational capacities to effectively combat narco-trafficking, firearms trafficking and other organized criminal enterprises, including human smuggling and trafficking in persons. During the past three years, the U.S. Attorney's Offices and the Criminal Division have seen a significant increase in the number of international fugitives returned to face justice in the United States through international extradition. OCDETF has established an OCDETF Mexico Unit within the Criminal Division's Office of International Affairs (OIA), to focus on extraditions and mutual legal assistance to Mexico in the highest-level drug trafficking and money laundering cases. The Unit will help to expand the current level of cooperation with our Mexican and other foreign counterparts in the arrest, extradition, and successful prosecution of cartel leaders and their subordinates.

These activities reflect the Department's strong support for the Mérida Initiative, which provides an unprecedented opportunity for a highly coordinated, effective bilateral response to criminal activity on our Southwest border. The Department has been and continues to be

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000078 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.041

actively involved with the State Department in Mérida Initiative planning and implementation both on an interagency and bilateral basis. In the last six months Department attorneys have trained hundreds of Mexican federal prosecutors and federal police on topics including Firearms Trafficking, Investigations, Human Trafficking, Trial Advocacy, Chain of Custody, and Extradition. Attorney General Holder met just last month with Mexican Attorney General Chavez y Chavez and reaffirmed the Department's commitment to working together with Mexican law enforcement counterparts.

Building on the groundbreaking CSP program, I recently met with PGR Delegate responsible for Sonora, Mexico. The Sonoran Delegate has regional responsibility for federal cases somewhat similar to a United States Attorney's office for a given District. As a result of that meeting, our office soon will launch a regional training program designed to strengthen our working relationships with the PGR in Sonora as they take courageous steps to prosecute drug traffickers and human smugglers under Mexican law. Our office has partnered with the Department's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) program operating under the Mérida Initiative. We will jointly develop a training curriculum and implement it with our counterparts, thereby strengthening their prosecutorial capabilities. Further, we will involve our law enforcement partners in training Mexican Federal law enforcement in their roles in the new system in a similar fashion. The PGR Delegate requested assistance in the area of oral trial training because Mexico is transitioning from an inquisitorial to a more accusatory criminal system. With eight Spanish-speaking attorneys, my office is uniquely situated to assist the Sonoran Delegate in his training efforts. We will follow up the oral trial training with training in specific areas such as drug trafficking, money laundering, and trafficking in persons and firearms. We hope this will be a model for other regional partnerships to support our neighbors to the south as they combat crime along the border and as we implement the Mérida Initiative.

In the same spirit of cooperation, and as a project within the Mérida Initiative, an asset forfeiture expert AUSA from my office recently traveled to Mexico as part of an asset forfeiture and money laundering training program hosted by the Conference of Western Attorneys General and funded through USAID. Together with experts from the Arizona Attorney General's office, our office provided training to Mexican state and federal law enforcement agents and prosecutors in the use of U.S. investigative and prosecution techniques that can be used in the context of asset forfeiture laws enacted in Mexico in recent years.

The Mérida Initiative provides increased support for our joint efforts with Mexico in these and other areas of mutual concern. These efforts have focused on the development of intelligence-based targeting and prosecutor-led multi-agency task forces, collection of evidence, and extradition. The Department has been and continues to be an active participant and partner in the Mérida Initiative interagency planning and implementation both in Washington DC and as an integral member of the country team at Embassy Mexico City.

In addition to the multi-agency Mérida Initiative, our federal law enforcement partners have reached across the border to share their expertise with Mexican law enforcement entities. For instance, ATF continues to expand its deployment of eTrace 4.0, the Spanish-language version of ATF's web-based firearms tracing software, to the government of Mexico and other

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000079 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.042

Spanish-speaking nations. Spanish eTrace allows Spanish-speaking law enforcement agencies to trace crime guns and identify firearms-trafficking trends of drug trafficking organizations and other criminal organizations funneling guns into Mexico from the United States. Spanish eTrace also helps develop investigative leads to stop firearms traffickers and straw purchasers before they cross the border. Currently, *eTrace* is available in most U.S. Consulates in Mexico (9 Consulates). In 2009, a total of 53,953 firearms recovered in Mexico were submitted to ATF for tracing; this is nearly five times the number of traces submitted in 2008. As of April 19, 2010, over 5,500 firearms recovered in Mexico have been submitted for tracing this year.

Additionally, FBI conducts a significant amount of training for its counterparts in Mexico. Last year, FBI's Legal Attaché office provided more than a dozen courses on drug trafficking and kidnapping to organized crime and counterterrorism to Mexican investigators, analysts, and prosecutors. Recently, the FBI's McAllen office hosted 30 Mexican police officers from all levels of law enforcement—federal, state, and local—for a week of training and information sharing.

In Arizona, the Border Patrol recently completed training for 48 officers from Mexico's Secretaría de Seguridad Pública (SSP) in tactical building entries, close-quarters combat, first aid, and all-terrain vehicular patrol and pursuit. SSP has dramatically increased its presence in Nogales, Sonora, working in close coordination with our DHS law enforcement partners. SSP is conducting patrols in areas in and around Nogales, Sonora where border violence is occurring, helping to curb the violence and prevent it from crossing over to Nogales, Arizona.

U.S. Attorneys' Southwest Border Prosecutions

As the Department of Justice declared in its Southwest Border Strategy, "Addressing the Southwest Border threat has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large criminal organizations operating simultaneously on both sides of the border."

In the District of Arizona, we work closely with our federal law enforcement partners to police the border through the use of reactive drug and immigration prosecutions while at the same time confronting the criminal organizations operating on both sides of the U.S.-Mexico border. In a recent operation, we worked with ICE, Border Patrol, DEA, the Bureau of Land Management, the Arizona Department of Public Safety, the Arizona National Guard, and the Pinal and Maricopa County Sheriffs and County Attorneys to gather intelligence and interdict armed scouts and backpackers smuggling marijuana and other drugs through the Vekol Valley region off Interstate 8 southwest of Phoenix. During the operation, agents and officers seized over 4,000 pounds of marijuana, over 4 pounds of methamphetamine, 9 firearms and 20 vehicles, and made 275 arrests for criminal and immigration violations.

As I mentioned earlier, our immigration caseload is indeed heavy. We filed nearly 3,200 felony immigration cases in fiscal year 2009, and over 22,000 misdemeanor cases. Of the 3,200 felony immigration cases, 2,272 were illegal re-entry cases prosecuted under section 276 of the Immigration and Nationality Act (8 U.S.C. § 1326). This represents a substantial increase over fiscal year 2008, largely as a result of the increase in resources we received in 2008.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000080 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.043

One way we seek to maximize our resources is to provide consequences to a wider range of offenders through innovative charging and plea strategies. Our Impostor Initiative is aimed at individuals who attempt to enter the country through a port of entry using a false identity document. Working closely with U.S. Customs and Border Protection's Office of Field Operations, we implemented an early disposition program that enabled our office to prosecute over 1,000 of these cases in calendar year 2009.

Likewise, our office has a robust currency exportation prosecution program. In 2009, our Tucson office prosecuted 29 bulk cash smuggling cases involving a total of $4,296,538.16. Thus far in 2010, we have filed 17 such cases, totaling $1,004,859. We continue to work with our agency partners and with banks and money transmitters to investigate currency exportation on a broader basis. We anticipate the Arizona Attorney General's recent settlement with Western Union will contribute to these efforts.

Aside from the reactive border-related caseload we handle on a daily basis, our Southwest Border U.S. Attorney's Offices are involved in a significant number of complex, long-term investigations into transnational organized criminal activity, including drug and firearms trafficking, human smuggling, and currency exportation.

Just last week in the District of Arizona, we unveiled the indictments in Operation In Plain Sight, a case that was more than two years in the making. The operation resulted in 49 criminal arrests, the execution of roughly 30 search warrants, and the seizure of over 50 vehicles. The investigation targeted every level of a cross-border human smuggling organization that used the guise of lawful shuttle transportation companies to move illegal aliens from Tucson to Phoenix after they were smuggled into the United States in the vicinity of Nogales, Arizona, with the intent of removing the entire infrastructure of the network. Every federal law enforcement agency in the State of Arizona—the ICE Office of Investigations and Office of Detention and Removal Operations, CBP's Office of Border Patrol and Office of Field Operations, along with FBI, DEA, ATF, the U.S. Marshals Service, along with the Arizona Department of Public Safety, the Phoenix and Tucson Police Departments, and the Pima County Sheriff's Office, participated in the takedown operation.

This case also highlighted the strengthening ties we have been building with Mexican federal law enforcement agencies. Mexico's Secretaría de Seguridad Pública (SSP) arrested one of the main targets in the case, and on April 15 executed search warrants and arrested organizational participants in Mexico simultaneously with our operation in Arizona. This level of cooperation and coordination is unprecedented. The professionalism and cooperativeness of SSP is a reflection of the progress our two governments have made in working together and of the willingness of ICE and other U.S. law enforcement agencies to provide training and logistical support. We will continue to work through the Department of State to assist the Government of Mexico in its quest to improve the judicial system and strengthen the Rule of Law in Mexico.

In the firearms trafficking arena, just last week six defendants were sentenced following their guilty pleas to an indictment charging them with conspiracy to smuggle semi-automatic assault rifles to Mexico. The indictment charged a total of thirteen defendants. The defendants who pleaded guilty admitted that one of the defendants in the conspiracy, Aaron Weeks, drove

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000081 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.044

young people who had no prior criminal histories to a firearms dealer, told them what to buy, and provided money to purchase the weapons. Weeks paid the co-conspirators a fee, took the weapons, removed their serial numbers, zip-tied them to the undercarriage of his car, and drove them to Mexico.

In a similar case in December 2008, ATF agents arrested ten individuals involved in a conspiracy to straw purchase firearms in Arizona for the purpose of supplying weapons to the Sinaloa drug cartel in Sonora, Mexico. The group was responsible for trafficking approximately 120 firearms, including .50 caliber rifles. The suspects were indicted in February 2009, and subsequently ATF was able to identify the Sinaloa cartel member who headed the conspiracy, Ruben Javier Elense Ruiz, who goes by the name "Rambo." ATF forwarded Rambo's fingerprints to the FBI, which in turn matched them to prints connected to the murder of a Mexican federal prosecutor in 2004. In March 2009, Rambo and several other cartel members were arrested in Mexico.

These cases are but a small sample of the work of the Southwest Border U.S. Attorney's offices. Each of our offices is prosecuting multiple large-scale drug-trafficking, firearms trafficking, money laundering and alien smuggling cases, and we will continue to focus on intelligence-driven, multi-agency cases designed to dismantle the violent drug and alien smuggling organizations that are perpetrating violence along the Southwest Border.

Thank you for inviting me to appear before you. I appreciate your continued support and would be happy to answer any questions at this time.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000082 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.045

Testimony
Before the Senate Committee on
Homeland Security and Governmental Affairs

Presented by:

The Honorable Octavio Garcia - Von Borstel
Mayor
City of Nogales, Arizona

April 20, 2010
Washington, D.C.

Chairman Lieberman, members of the committee, good morning.

My name is Octavio Garcia Von Borstel and I am the proud mayor of the City of Nogales, Arizona.. Before I start with the key issues we are here to raise with you, I want to thank you for the opportunity to participate in this hearing. It is a great honor to be before you today and for a community like Nogales, with population of approximately 25,000, it is indeed a rare occurrence when we are given an opportunity such as this.

That being said, allow me to get to heart of the matter. Gentleman, Nogales needs your help. Nogales is a community that is extremely dependent on the border and our neighbors to the south. The ability to cross the border effectively, efficiently and in a secure and safe environment is vital.

Since September 11, 2001 we have all recognized that our world is different. We now must look at security at the same time that we look at commerce, trade, and tourism. But that is also the key point that I would like

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000083 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.046

to make today, that we must not lose sight that we are working to secure the Homeland **so that** we can conduct our normal lives.

We have all seen or have experienced an increase on violence on border communities. I was deeply saddened recently when I heard the news of the deaths of our very own people, Americans from the US Embassy in Cd. Juarez who became victims of the Drug Cartel Violence. In fact, I was just at the Embassy last week, met with the Sub Ambassador and discussed the horror of the situation affecting American Citizens. Perhaps part of the solution we identified is to involve all governments – local, state and federal. Although I respect and understand it is a federal issue. The local governments have to be able to form part of the strategy because after all we are the ones who directly get impacted the most. I for one would like better communication in order to better support and address the violence and border initiatives.

To give you an idea, our community has 3 land ports of entry, Morley Gate which is a pedestrian only crossing, DeConcini which is a pedestrian, private vehicles, train and bus crossing and Mariposa, which is our commercial crossing, but we also cross pedestrians and private vehicles. Our three border stations currently process in excess of 15 million people, over 300,000 trucks and well over 3 million cars, each year – in a northbound direction. **Two way traffic is approximately 30 million people, 600,000 trucks and over 6 million cars.**

I want to thank our Congressional Delegation, in particular Senator John McCain that is with us today, and Senator Jon Kyl as well, for their active and continued support for the issues that we face in Nogales.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000084 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.047

And yes we are making great headway on some very important border issues. For instance, the Mariposa port of entry is currently undergoing a major reconfiguration, a project funded to the tune of $200 million dlls. under the American Recover Act. This project will double, if not triple our throughput for inspection of both commercial and non-commercial traffic at Mariposa. This project, which started in September of last year, should be completed by the Fall of 2013. We are currently working with the Arizona Department of Transportation and the Federal Highway Administration to improve the connectivity from the port of entry to the federal highway system. Additionally, we are working with our Mexican counterparts to ensure that necessary improvements are made to the Mexican side of Mariposa.

In recent years we have seen a clear focus at securing the border between the ports of entry. But there has been little attention to the ports of entry themselves. I truly believe that in order to have a safe and efficient border you must have an effective border. Customs and Border Protection has identified some $5 to $6 billion dlls. worth of projects on the US-Mexico border, yet the budget proposed for Fiscal Year 2011 shows only $93 million for one project. Our ports of entry are a national asset. - The budget does not reflect that.

The Violence between Drug Cartels have certainly created a paranoia across both Countries and has had a direct impact on border communities. Tourists going both South to North and North to South have lost confidence and are now afraid for their safety when traveling through Nogales. We continue to see human and drug trafficking I believe as a result of lack of resources to our border communities.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000085 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.048

Our current wait times in Nogales are well in excess of an hour, easily two hours or more during peak hours every day and, should be a long weekend, it can be up to 4 to 6 hours – and that is people waiting to cross the border legally.

Due to long wait times, we have seen a dramatic transition from people crossing the border in their cars to crossing on foot. But we were not ready for this transition and the increase of pedestrian traffic means that there are now wait times to cross on foot in excess of an hour. I have brought a copy of a recent article that was published in our local paper, which shows the long pedestrian line at the border. In fact, Senators McCain and Kyl sent a letter to Secretary Janet Napolitano of the Homeland Security Department, asking that the Department look into the excessive wait times for pedestrians.

At the same time, Secretary Napolitano recently issued a press release commemorating the first anniversary of the Southwest Border Initiative and touted the great results from an enforcement perspective. Yes, the program has seized many weapons and stopped many millions of dollars that were being laundered and shipped back to Mexico but at what cost to Nogales and all the other border communities. The DHS Initiative is centered on conducting inspections of trains, trucks and vehicles leaving the US. The unintended consequence, and one of the key points that I want to make before you today, was not a consideration when this Initiative was planned and deployed.

None of the ports at Nogales are equipped to handle southbound inspections. CBP lays down a few cones on the road, perhaps some jersey barriers and simply stop every vehicle departing the US into Mexico. And

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000086 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.049

although everyone talks about the random efforts, at Nogales, Customs and Border Protection has notified us that they are inspecting EVERY truck leaving the US through that port of entry. The traffic backups on a southbound basis reach well over an hour or more during the peak hours.

The end result, and thus the unanticipated consequence, is that people are now crossing less frequently as they have to wait 1 or 2 hours coming in and an hour or more going out. Our ports of entry at Nogales are already severely understaffed. Although I cannot get an exact figure from CBP, I am assured that it is in excess of 50 full time positions that are desperately needed today for NORTHBOUND operations. I am also informed that southbound inspections are conducted primarily by officers and staff on temporary assignment.

All this is now compounded by the deployment by Mexican Customs of the SIAVE program, a program that uses technology and systems to inspect each and every car entering Mexico. The Mexican government assured us that the SIAVE system would take approximately 8 seconds per vehicle. But this system is also creating long wait times and therefore backups entering Mexico. Without getting into the merits of the system, there is a clear lack of coordination between Mexico and the US on inspections.

Say you are driving into Mexico, DHS will inspect you and the car before you leave and perhaps 200 feet later the Mexican government is doing the same thing. What is the purpose of inspecting the same car twice within a few hundred feet of each other?

Another major issue in our community is the fence. While I will refrain from addressing the merits of the fence, the fence in our downtown area is in need

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000087 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.050

of major repairs and upgrading. As for the details on that front I will defer to the Border Patrol as to the specific details.

Mr. Chairman, Senators, unfortunately, I could easily continue describing the current situation but allow me to conclude by laying out some basic principles and recommendations for your consideration.

First, staff our ports of entry to the capacity that is required. Not only are we dealing with outdated and overburdened infrastructure but our ports simply don't have sufficient staff to deal with the security and facilitation demands of our community and our border.

Second, provide additional funding in an expedited and confirmed manner to our ports of entry. It should not be a battle between one community and another for funding. Ports of entry are a national asset that is currently treated as problem by the rest of the nation. Without efficient ports of entry, the safety at our border will remain a huge concern and that of our commerce, the goods and products shipped in and out of our nation would not get to their destination on time.

Third, DHS needs to come up with a plan to address the congestion, safety and other unintended consequences of the southbound inspection program. It is not acceptable for my City to have a line of cars 2 miles long for people leaving the country. The Nogales Police Department has to deploy patrols during several hours each day to help handle traffic due to the back up. These are police resources that are not policing during those hours so our police department is incurring additional overtime expenses. I would strongly urge that additional funds be sent to border communities to help defray this cost.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000088 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.051

Fourth, find ways to deploy trusted traveler programs for southbound traffic. For instance, the SENTRI program that is working so well for northbound travelers should be considered for southbound traffic.

Fifth, expand SENTRI to pedestrian crossers. Today, SENTRI is available exclusively for vehicular traffic. Our downtown merchants rely heavily on pedestrian traffic. Unless we can find a way to help separate the low-risk crosser from the high-risk crosser, our stores and therefore our sales tax revenues, will continue to decrease dramatically. I believe that a pedestrian SENTRI program could be part of the solution on this front.

Finally, there needs to be better coordination and sharing of information and intelligence with Mexico to help reduce the duplication of efforts and to ensure that we maximize the return of investment of our limited Homeland Security resources. Include ALL governments – local, state and federal in these efforts to increase the success of tackling the drug wars at the border.

We must be strong on securing the Homeland **but we must not forget the unintended consequences.**

Mr. Chairman, Senators, again let me thank you for the opportunity to be here to communicate our issues and needs. Please be assured that for me and Nogales, Security and facilitation are our top priorities - as that is essentially our livelihood. I thank you for your attention and I look forward to your questions and comments.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000089 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.052

Testimony of

Larry A. Dever
Sheriff, Cochise County, Arizona

INTRODUCTION:

Chairman Lieberman, Ranking Member Collins, thank you for inviting me to this hearing. It is good that we meet here today to discuss the very dire conditions that exist along our nation's southern border that threaten the security of our nation. It is sad that part of this discussion is precipitated by the murder of Rob Krentz, an Arizona rancher who was senselessly gunned down on his own property. His murderer was tracked to the Mexican border, and has since evaded capture.

BACKGROUND:

One year ago to the day, this committee convened a hearing on border violence in Phoenix, Arizona to take testimony from various State and local government officials. There was lengthy discussion about the violence in Mexico and the threat of that violence spilling over into this country. It was clear from that testimony that it already had, in many forms. Rob Krentz's killing put an exclamation point on that.

In each of my previous appearances before Congressional Committees, I have mentioned the fact that in 1987, then Tucson Border Patrol Sector Chief Jondal is quoted in a Sheriff's magazine that "Congress has mandated that we get control of our border. And that is exactly what we are going to do. Whether it is illegal aliens, drugs, terrorists, or whatever, we are going to get control of our border." Clearly, some 23 years later, that mandate is far from being achieved. In fact the Border Patrol Tucson Sector today accounts for almost 50% of all illegal aliens apprehended along the entire border and almost 50% of all the marijuana that is seized in the nation.

Agents on the ground will tell you that they estimate that they catch about one of every 3 to 5 illegal border crossers. About one quarter of a million people were caught last year in the Tucson region alone and about half a million overall.

WHAT WE KNOW:

One of the most startling reported facts is that 17% of the people caught illegally crossing our borders have previous serious criminal records in this country. In other words, they have been charged and sometimes prosecuted for serious crimes and were either deported or escaped to their homeland and have returned. That means, that at least 17% of those who evade capture upon re-entry are criminal aliens. If you consider that a significant part of the "getaway" population also have criminal records in their country of origin, then a very large number of illegal entrants are dangerous predators.

Violence associated with drug and people smuggling is increasing. It comes in many forms. People attempting to enter this county illegally are regularly subjected to robbery, assault, rape, kidnapping and all other kinds of atrocities. Much of this occurs before they ever cross the border. Competing organizations rob, steal and murder, also on both sides of the border. In Arizona, the transportation hub cities, Tucson and Phoenix experience these events daily. Kidnappings and murders south of the border are

57327.053

occurring at an alarming rate and some of it is migrating north as vulnerable groups move their families out of Mexico.

Smugglers working on the U.S. side of the border are more inclined to fight than to flee, have better telecommunications than many border law enforcement agencies, and have extremely sophisticated networks that challenge the best we have to offer in response.

RESPONSE AND INTEROPERABILITY:

The good news is that cooperation, communication and planning activities between the various federal, state and local law enforcement agencies on the border are more common today than ever before. A recognition and emphasis of these activities should remain a priority.

However, following the discovery of Rob Krentz's body, multiple agencies, federal, state and local engaged in the attempt to locate the shooter. During this effort, we were reminded again of the severe handicap we face by not being able to communicate quickly with each other. None of the participating agents could talk to each other via radio and cell phone coverage was non-existent. This led to much confusion and greatly hampered our ability to coordinate efforts. Until this deficiency is fixed, the bad guys will continue to win.

FISCAL IMPACTS:

One federally funded program has proven to be very useful and effective. "Operation Stonegarden" enhances border enforcement and cooperation by funding overtime and fuel costs for local law enforcement officers to support and enhance Homeland Security efforts. An expansion of this project, to include the permanent hiring of additional officers and deputies would significantly help mitigate the effects of crime committed by illegal aliens and drug smugglers.

Over the past 12 years, as much as 37% of local jurisdiction criminal justice system resources have been diverted to matters illegal alien related. We have always had to deal with the dynamics of drug smuggling, but the alien traffic has presented a whole new dimension of challenges. Property damage, theft, burglary and the trail of garbage and human waste left behind by countless numbers of illegal border crossers are the order of the day. Those who commit these crimes and who are housed in county jails and state prisons add to the cost. Since they cannot pay bond, declare indigence and often have serious medical problems, all this expense is shifted to local taxpayers.

In 1995, Congress authorized reimbursement to state and local jurisdictions through the State Criminal Alien Assistance Program, (S.C.A.A.P). This program is woefully under funded and needs to receive its full allocation of $950 million.

No U.S. citizen should have to live like they currently do in our border environment. Our

57327.054

forefathers would not have tolerated this situation and neither should we. If I have learned anything in my 34 years of law enforcement, it is that if I do not do my job someone will do it for me. Citizens of Cochise County and all of Arizona will no longer abide the lack of meaningful action by our Federal Government to end this crises.

CONCLUSION:

Sheriffs on the border have no interest is becoming immigration enforcement agents. But we cannot sit by while our citizens are terrorized, robbed and murder by ruthless and desperate people who enter our country illegally. Herein lies the real daily threat to the security of our homeland.

No U.S. citizen should have to live like we do today in our border environment. Our forefathers would not have tolerated this situation and neither should we. If I have learned anything in my 34 years of law enforcement, it is that if I do not do my job, someone will do it for me. Citizens of Cochise County and all of Arizona, for that matter, will no longer abide lawlessness in their back yards nor the lack of meaningful action by our Federal Government.

57327.055

United States Government Accountability Office

GAO

Statement for the Record
To the Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 5 p.m. EDT
Tuesday, May 4, 2010

SECURE BORDER INITIATIVE

DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border

Statement for the Record of Richard M. Stana, Director
Homeland Security and Justice Issues

GAO
Accountability * Integrity * Reliability

GAO-10-651T

May 4, 2010

GAO
Accountability · Integrity · Reliability
Highlights

Highlights of GAO-10-651T, a statement for the record to the Committee on Homeland Security and Governmental Affairs, U.S. Senate

SECURE BORDER INITIATIVE

DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border

Why GAO Did This Study

Securing the nation's borders from illegal entry of aliens and contraband, including terrorists and weapons of mass destruction, continues to be a major challenge. In November 2005, the Department of Homeland Security (DHS) announced the launch of the Secure Border Initiative (SBI)—a multiyear, multibillion dollar program aimed at securing U.S. borders and reducing illegal immigration. Within DHS, the U.S. Customs and Border Protection (CBP) provides agents and officers to support SBI. As requested, this statement summarizes (1) the findings and recommendations of GAO's reports on SBI's technology, known as SBI*net* (including such things as cameras and radars), and DHS's recent actions on SBI*net*; and (2) the findings and recommendations of GAO's reports on tactical infrastructure, such as fencing, and the extent to which CBP has deployed tactical infrastructure and assessed its operational impact. This statement is based on products issued from 2007 through 2010, with selected updates as of April 2010. To conduct these updates, GAO reviewed program schedules, status reports and funding and interviewed DHS officials.

What GAO Recommends

GAO has made numerous recommendations on SBI design and implementation, which DHS generally concurred with and has begun taking action to implement.

View GAO-10-651T or key components
For more information, contact Richard Stana at (202) 512-8777 or RichardS@gao.gov.

What GAO Found

Since the inception of SBI*net*, GAO has reported on a range of issues regarding design and implementation, including program challenges, management weaknesses, and cost, schedule, and performance risks; DHS has largely concurred with GAO's recommendations and has started to take some action to address them. For example, in October 2007, GAO testified that the project involving the first segment of SBI*net* technology across the southwest border had fallen behind its planned schedule. In a September 2008 testimony, GAO reported that CBP plans to initially deploy SBI*net* technology along the southwest border had slipped from the end of 2008 to 2011 and that SBI*net* would have fewer capabilities than originally planned. As of April 2010, SBI*net*'s promised capabilities were still not operational. Limitations in the system's ability to function have contributed to delays. GAO has also reviewed CBP expenditure plans and found a lack of specificity on such things as planned activities and milestones. GAO made recommendations, including the need for future expenditure plans to include explicit and measurable commitments relative to the capabilities, schedule, costs, and benefits associated with individual SBI program activities. While DHS has concurred with GAO's recommendations, and its expenditure plans have improved from year to year in detail and quality, the plans, including the one for fiscal year 2009, did not fully satisfy the conditions set out by law. Further, in September 2008, GAO made recommendations to address SBI*net* technological capabilities that were ambiguous or in a state of flux. DHS generally concurred with them. In January 2010, GAO reported that the number of new system defects identified over an 17 month period while testing was underway was generally increasing faster than the number of defects being fixed, not indicative of a maturing system. Given the program's shortcomings, in January 2010, the Secretary of Homeland Security ordered an assessment of the program, and in March 2010, the Secretary froze a portion of the program's fiscal year 2010 funding. GAO plans to report in May 2010 on the SBI*net* solution and the status of its September 2008 recommendations.

CBP has completed deploying most of its planned tactical infrastructure and has begun efforts to measure its impact on border security, in response to a GAO recommendation. As of April 2010, CBP had completed 646 of the 652 miles of fencing it committed to deploy along the southwest border. CBP plans to have the remaining 6 miles of this baseline completed by December 2010. CBP reported that tactical infrastructure, coupled with additional trained agents, had increased the miles of the southwest border under control, but despite a $2.6 billion investment, it cannot account separately for the impact of tactical infrastructure. In a September 2009 report, GAO recommended that to improve the quality of information available to allocate resources and determine tactical infrastructure's contribution to effective control of the border, the Commissioner of CBP conduct a cost-effective evaluation of the impact of tactical infrastructure. DHS concurred with our recommendation and, in April 2010, told GAO that the Homeland Security Institute had undertaken this analysis.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000094 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.057

Chairman Lieberman, Ranking Member Collins, and Members of the Committee:

I am pleased to submit this statement on the Department of Homeland Security's (DHS) Secure Border Initiative (SBI) program—a multiyear, multibillion dollar program aimed at securing U.S. borders and reducing illegal immigration. Securing the nation's borders from illegal entry of aliens and contraband, including terrorists and weapons of mass destruction, continues to be a major challenge. In November 2005, DHS announced the launch of SBI to help address this challenge. The U.S. Customs and Border Protection (CBP) supports this initiative by providing agents and officers to patrol the borders, secure the ports of entry, and enforce immigration laws.[1] In addition, CBP's SBI program is responsible for developing a comprehensive border protection system using technology, known as SBI*net*, and tactical infrastructure—fencing, roads, and lighting—along the southwest border to deter smugglers and aliens attempting illegal entry.[2] Since fiscal year 2005, SBI has received funding amounting to about $4.5 billion. Approximately $1.6 billion has been allocated to SBI*net* and $2.6 billion to tactical infrastructure.[3]

SBI*net* is to consist of surveillance technologies, such as sensors, cameras, and radars, as well as command, control, communications, and intelligence (C3I) technologies, including software and hardware to produce a Common Operating Picture (COP)—which, among other things, presents a display of activities within specific areas along the border at CBP command centers. SBI*net* technology is to be initially deployed in two geographic areas—referred to as Tus-1 and Ajo-1—that jointly span 53 miles of the Tucson sector.[4] In September 2006, CBP awarded a 3-year

[1]At a port of entry location, CBP officers secure the flow of people and cargo into and out of the country, while facilitating legitimate travel and trade.

[2]The SBI Program Executive Office, referred to in this statement as the SBI program office, has overall responsibility for overseeing all SBI activities for acquisition and implementation, including establishing and meeting program goals, objectives, and schedules for overseeing contractor performance; and for coordinating among DHS agencies. However, as of March 2009, the tactical infrastructure program office was realigned and is now managed on a day to day basis by CBP's Office of Administration Facilities Management and Engineering division.

[3]Remaining funds were allocated to program management and environmental requirements.

[4]The U.S. Border Patrol has 20 sectors in which it is responsible for detecting, interdicting, and apprehending those who engage in illegal activity across U.S. borders between official ports of entry.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000095 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.058

contract to the Boeing Company, with three additional 1-year options for the development and deployment of SBI projects. In September 2009, CBP extended its contract with Boeing for the first option year. As of December 2009, CBP had awarded 13 task orders to Boeing for a total amount of approximately $1.2 billion. Table 1 is a summary of the task orders awarded to Boeing.

Table 1: Task Orders Awarded to Boeing for SBI projects as of December 2009[a] (Dollars in millions)

Task Order Description	Date Awarded	Ceiling of Funds[b]	Approximate Task order obligation
Program Management: The mission engineering, facilities and infrastructure, systems engineering, test and evaluation, and program management services to develop and deploy the SBI*net* system.	09/21/2006	$146.9	$146.9
Project 28: Boeing's pilot project and initial implementation of SBI*net* technology for 28 miles of the border in the Tucson sector[c]	10/20/2006	20.7	20.7
Barry M. Goldwater Range (BMGR): The construction of 32 miles of vehicle and pedestrian barriers on the southern border of the BMGR in the Yuma Sector.	01/12/2007	122.2	122.2
Fence Lab: The testing of potential pedestrian and vehicle fence and barrier solutions.	03/14/2007	0.7	0.7
Design: SBI*net* deployment design solution, including design, environmental-clearance support, and locations for the SBI*net* technology solution in the Yuma, Tucson, and El Paso sectors.	08/01/2007	115.0	115.0
Project 28 Contractor Maintenance and Logistics Support: Provides Project 28 with the required maintenance and logistics support to operate the system.	12/07/2007	10.6	10.6
Command, Control, Communications and Intelligence (C3I) and Common Operating Picture (COP): The development of the next version of the SBI*net* operating software to design, develop, and demonstrate a functional SBI*net* C3I/COP system.	12/07/2007	73.0	71.0
Supply and Supply Chain Management: The development and implementation of a supply and supply chain management system solution to execute tactical infrastructure projects.	01/07/2008	318.6	318.6
System: A follow on to the program management task order, this task order specifies the program management and system-engineering activities required to achieve an integrated program across all task orders issues under the SBI contract.	04/15/2008	205.8	200.8
Arizona Deployment: Boeing's deployment of two projects of the SBI*net* system along approximately 53 miles of the southwest border in the Tucson sector.	06/25/2008	115.0	90.5
Integrated Logistics Support: Provides SBI*net* with the required maintenance and logistics support to operate the system.	08/16/2008	61.6	61.6
Design for Buffalo Sector: Provides for the design of a remote video surveillance system (RVSS) capability—a system of towers with cameras that transmit information to video monitors at a sector's headquarters—in the Buffalo sector.	02/05/2009	0.6	0.6
Northern Border Project: Provides for the design, installation, and deployment of surveillance technology capabilities in the Detroit and Buffalo Border Patrol sectors.	03/31/2009	22.4	20.9
Total		**$1,213.1**	**$1,180.1**

Source: CBP

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000096 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.059

[a]Values for Barry M. Goldwater Range, Fence Lab, and Supply and Supply Chain Management task order awards are as of July, 2009. All other values are as of December, 2009

[b]This is the maximum value of the task order. For example, the Northern Border Project task order has a "ceiling" of $22.4 million; however, as of December 2009, obligations under the task order were $20.9 million.

[c]The first SBI*net* deployment task order was a pilot or prototype effort known as Project 28 The scope of Project 28, as described by the task order, was to provide a system with the capabilities required to control 28 miles of border in Arizona.

In addition to deploying technology across the southwest border, DHS originally planned to deploy 370 miles of single-layer pedestrian fencing and 300 miles of vehicle fencing by December 31, 2008. Pedestrian fencing is designed to prevent people on foot from crossing the border and vehicle fencing consists of physical barriers meant to stop the entry of vehicles. In September 2008, DHS revised its goal, committing instead to having 661 miles either built, under construction, or under contract by December 31, 2008. As of January 2010, DHS officials told us that due to engineering and hydrology constraints, the agency revised its goal to 652 miles. Although some tactical infrastructure exists in all the southwest border sectors, most of what has been built through the SBI program is located in the San Diego, Yuma, Tucson, El Paso, and Rio Grande Valley sectors.

My statement is based on our extensive body of work on SBI over the last 3 years, including our most recent reports in September 2009[5] and January 2010[6] and selected updates we conducted in April 2010. All told, we have issued 16 reports and testimonies that collectively address the SBI program.[7] As requested, our statement (1) summarizes the findings and recommendations from our SBI*net* reports, and DHS's recent actions on the program; and (2) summarizes the findings and recommendations from our reports on tactical infrastructure and describes the extent to which CBP has deployed the SBI tactical infrastructure program and assessed its operational impact. Detailed information on the scope and methodology for each of the reports used to prepare this statement appears in the respective reports. To update our September 2009 report, we reviewed recently available DHS documents, including current program schedules,

[5]GAO, *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed,* GAO-09-896 (Washington, D.C., Sept. 9, 2009)

[6]GAO, *Secure Border Initiative: DHS Needs to Address Testing and Performance Limitations That Place Key Technology Program at Risk,* GAO-10-158 (Washington, D C Jan. 29, 2010).

[7]See list of these related GAO products at the end of this document

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000097 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.080

status reports, and funding information. We determined that funding and fencing mileage data provided by CBP were sufficiently reliable for the purposes of this statement. We based our decision on an assessment of each respective area by questioning cognizant DHS officials about the source of the data and policies and procedures used to maintain the integrity of these data. All of the work supporting this statement was performed in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

SBI*net* Program Challenges, Management Weaknesses, and Cost, Schedule, and Performance Risks Exist

Since the inception of SBI*net*, we have reported on a range of issues regarding program design and implementation. For example, in October 2007, we testified that DHS had made some progress in implementing Project 28—the first segment of SBI*net* technology across the southwest border—but had fallen behind its planned schedule.[8] In our February 2008 testimony, we noted that although DHS accepted Project 28 and was gathering lessons learned from the project, CBP officials responsible for the program said it did not fully meet their expectations and would not be replicated.[9] We also reported issues with the system that remained unresolved. For example, the Border Patrol, a CBP component, reported that as of February 2008, problems remained with the resolution of cameras at distances over 5 kilometers, while expectations had been that the cameras would work at twice that distance. In our September 2008 testimony, we reported that CBP had initially planned to deploy SBI*net* technology along the southwest border by the end of 2008, but as of February 2008, this date had slipped to 2011 and that SBI*net* would have fewer capabilities than originally planned.[10]

In September 2009, we reported that SBI*net* technology capabilities had not yet been deployed and delays required the Border Patrol to rely on

[8]GAO, *Secure Border Initiative: Observations on Selected Aspects of SBInet Program Implementation*, GAO-07-1141T (Washington, D.C.: Oct. 24, 2007).

[9]GAO, *Secure Border Initiative: Observations on the Importance of Applying Lessons Learned to Future Projects*, GAO-08-468T (Washington, D.C.: Feb. 27, 2008).

[10]GAO, *Secure Border Initiative: Secure Border Initiative: Observations on Deployment Challenges*, GAO-08-1141T (Washington, D.C.: Sept. 10, 2008).

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000098 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.061

existing technology for securing the border, rather than using the newer SBI*net* technology planned to overcome the existing technology's limitations.[11] As of April 2010, SBI*net*'s promised technology capabilities are still not operational and delays continue to require Border Patrol to rely on existing technology for securing the border, rather than using the newer SBI*net* technology planned to overcome the existing technology's limitations. When CBP initiated SBI*net* in 2006, it planned to complete SBI*net* deployment along the entire southwest border in fiscal year 2009, but by February 2009, the completion date had slipped to 2016. The first deployments of SBI*net* technology projects are to take place along 53 miles in the Tucson border sector, designated as Tus-1 and Ajo-1. As of April 7, 2010, the schedule for Tus-1 and Ajo-1 had slipped from the end of calendar year 2008 as planned in February 2008, and government acceptance of Tus-1 was expected in September 2010 and Ajo-1 in the fourth quarter of calendar year 2010.[12]

Limitations in the system's ability to function as intended as well as concerns about the impact of placing towers and access roads in environmentally sensitive locations have contributed to these delays. Examples of these system limitations include continued instability of the cameras and mechanical problems with the radar at the tower, and issues with the sensitivity of the radar. As of January 2010, program officials stated that the program was working to address system limitations, such as modifications to the radar. As a result of the delays, Border Patrol agents continue to use existing technology that has limitations, such as performance shortfalls and maintenance issues.[13] For example, on the southwest border, Border Patrol relies on existing equipment such as cameras mounted on towers that have intermittent problems, including

[11]GAO, *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed*, GAO-09-896 (Washington, D.C.: Sept. 9, 2009), and *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed*, GAO-09-1013T (Washington, D.C.: Sept. 17, 2009).

[12]The SBI program office defines government acceptance as the SBI program office taking ownership of the SBI*net* technology system from the contractor and comes before handing the technology over to Border Patrol.

[13]According the SBI Executive Director, starting in February 2010, Office of Border Patrol agents began to use the Tus-1 technology system during night operations as part of their early operational assessment of the system while Boeing works to complete deployment activities during the day.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000099 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.082

signal loss. Border Patrol has procured and delivered some new technology to fill gaps or augment existing equipment.

We have also been mandated to review CBP's SBI expenditure plans, beginning with fiscal year 2007. In doing so, in February 2007, we reported that CBP's initial expenditure plan lacked specificity on such things as planned activities and milestones, anticipated costs, staffing levels, and expected mission outcomes.[14] We noted that this, coupled with the large cost and ambitious time frames, added risk to the program. At that time, we made several recommendations to address these deficiencies.[15] These recommendations included one regarding the need for future expenditure plans to include explicit and measurable commitments relative to the capabilities, schedule, costs, and benefits associated with individual SBI program activities. Although DHS agreed with this recommendation, to date, it has not been fully implemented. In our June 2008 report on the fiscal year 2008 expenditure plan, we recommended that CBP ensure that future expenditure plans include an explicit description of how activities will further the objectives of SBI, as defined in the DHS Secure Border Strategic Plan, and how the plan allocates funding to the highest priority border security needs.[16] DHS concurred with this recommendation and implemented it as part of the fiscal year 2009 expenditure plan. In reviewing the fiscal year 2008 and 2009 expenditure plans, we have reported that, although the plans improved from year to year, providing more detail and higher quality information than the year before; the plans did not fully satisfy all the conditions set out by law.[17]

In addition to monitoring program implementation and reviewing expenditure plans, we have also examined acquisition weaknesses that increased the risk that the system would not perform as intended, take longer to deliver than necessary, and cost more than it should. In

[14]GAO, *Secure Border Initiative: SBInet Expenditure Plan Needs to Better Support Oversight and Accountability*, GAO-07-309 (Washington, D.C., Feb. 15, 2007).

[15] See GAO-07-309 for additional recommendations.

[16]GAO, *Secure Border Initiative: Fiscal Year 2008 Expenditure Plan Shows Improvement, but Deficiencies Limit Congressional Oversight and DHS Accountability*, GAO-08-739R (Washington, D.C.: June 26, 2008).

[17]GAO-08-739R, and GAO, *U.S. Customs and Border Protection's Fiscal Year 2009 Expenditure Plan*, GAO-09-274R (Washington, D.C.: Apr. 30, 2009)

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000100 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.083

particular, we reported in September 2008[18] that important aspects of SBI*net* were ambiguous and in a continued state of flux, making it unclear and uncertain what technological capabilities were to be delivered and when. Further, we reported at that time that SBI*net* requirements had not been effectively developed and managed and that testing was not being effectively managed. Accordingly, we concluded that the program was a risky endeavor, and we made a number of recommendations for strengthening the program's chances of success. DHS largely agreed with these recommendations and we have ongoing work that will report on the status of DHS's efforts to implement them. We reported in January 2010[19] that key aspects of ongoing qualification testing had not been properly planned and executed. For example, while DHS's testing approach appropriately consisted of a series of test events, many of the test plans and procedures were not defined in accordance with relevant guidance, and over 70 percent of the approved test procedures had to be rewritten during execution because the procedures were not adequate. Among these changes were ones that appeared to have been made to pass the test rather than to qualify the system. We also reported at this time that the number of new system defects identified over a 17 month period while testing was underway was generally increasing faster than the number of defects being fixed—a trend that is not indicative of a maturing system that is ready for acceptance and deployment.[20] Compounding this trend was the fact that the full magnitude of this issue was unclear because these defects were not all being assigned priorities based on severity. Accordingly, we made additional recommendations and DHS largely agreed with them and has efforts underway to address them.

Most recently, we concluded a review of SBI*net* that addresses the extent to which DHS has defined the scope of its proposed SBI*net* solution, demonstrated the cost effectiveness of this solution, developed a reliable schedule for implementing the solution, employed acquisition management disciplines, and addressed the recommendations in our September 2008 report. Although we plan to report on the results of this review later this month, we briefed DHS on our findings in December

[18]GAO, *Secure Border Initiative: DHS Needs to Address Significant Risks in Delivering Key Technology Investment*, GAO-08-1086 (Washington, D.C.: Sept. 22, 2008).

[19]GAO, *Secure Border Initiative: DHS Needs to Address Testing and Performance Limitations That Place Key Technology Program at Risk*, GAO-10-158 (Washington, D.C.: Jan. 29, 2010).

[20]GAO-10-158.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000101 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.064

2009, and provided DHS with a draft of this report, including conclusions and recommendations in March 2010. Among other things, these recommendations provide a framework for how the program should proceed.

In light of program shortcomings, continued delays, questions surrounding SBI*net*'s viability, and the program's high cost vis-à-vis other alternatives, in January 2010, the Secretary of Homeland Security ordered a department assessment of the SBI program. In addition, on March 16, 2010, the Secretary froze fiscal year 2010 funding for any work on SBI*net* beyond Tus-1 and Ajo-1 until the assessment is completed and the Secretary reallocated $50 million of the American Recovery and Reinvestment Act[21] funds allocated to SBI*net* to procure alternative tested and commercially available technologies, such as mobile radios, to be used along the border. In March 2010, the SBI Executive Director stated that the department's assessment ordered in January 2010, would consist of a comprehensive and science-based assessment of alternatives intended to determine if there are alternatives to SBI*net* that may more efficiently, effectively and economically meet U.S. border security needs. According to the SBI Executive Director, if the assessment suggests that the SBI*net* capabilities are worth the cost, DHS will extend its deployment to sites beyond Tus-1 and Ajo-1. However, if the assessment suggests that alternative technology options represent the best balance of capability and cost-effectiveness, DHS intends to immediately begin redirecting resources currently allocated for border security efforts to these stronger options.

As part of our continuing support to the Congress in overseeing the SBI program, we are currently reviewing DHS's expenditure plan for the fiscal year 2010 Border Security Fencing, Infrastructure, and Technology appropriation, which provides funding for the SBI program. Additionally, we are completing a review of the internal control procedures in place to ensure that payments to SBI*net*'s prime contractor were proper and in compliance with selected key contract terms and conditions. Finally, we are reviewing controls for managing and overseeing the SBI*net* prime contractor, including efforts to monitor the prime contractor's progress in meeting cost and schedule expectations. We expect to report on the results of these reviews later this year.

[21] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 162, 302 (2009).

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000102 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.065

SBI Has Completed Deploying Most of Its Planned Tactical Infrastructure and Has Begun Efforts to Measure Its Impact on Border Security

In addition to monitoring SBI*net* implementation, we also reported on the tactical infrastructure component of the SBI program. For example, in October 2007, we reported that tactical infrastructure deployment along the southwest border was on schedule, but meeting CBP's fencing goal by December 31, 2008, might be challenging and more costly than planned.[22] In September 2008, we also reported that the deployment of fencing was ongoing, but costs were increasing, the life-cycle cost for fencing was not yet known, and finishing the planned number of miles by December 31, 2008 would be challenging.[23] We also reported on continuing cost increases and delays with respect to deploying tactical infrastructure. In September 2009, we reported, among other things, that delays continued in completing planned tactical infrastructure primarily because of challenges in acquiring the necessary property rights from landowners.[24]

As of today, planned fencing-related deployments are almost complete, but their impact on border security has not been measured. As of April 2010, CBP had completed 646 of the 652 miles of fencing it committed to deploy along the southwest border. CBP plans to have the remaining 6 miles of this baseline completed by December 2010, pending resolution of litigation for portions of property along the border. Also, CBP plans to construct an additional 14 miles of pedestrian fencing in the Rio Grande Valley Sector by September 2010.[25] See table 2 for more information. While fencing costs increased over the course of construction, because all construction contracts have been awarded, costs are less likely to change. CBP plans to use $110 million in fiscal year 2010 funds for new construction costs—which includes $10 million for land acquisition—and $75 million for operations and maintenance of existing infrastructure. The life-cycle cost study prepared by a contractor for CBP shows that total 20 year life-cycle costs for all tactical infrastructure—including pre-SBI infrastructure as well as that planned for fiscal years 2009, 2010, and 2011—and consisting

[22]GAO, *Secure Border Initiative: Observations on Selected Aspects of SBInet Program Implementation*, GAO-08-131T, (Washington, D.C.: Oct. 24, 2007)

[23]GAO, *Secure Border Initiative: Observations on Deployment Challenges*, GAO-08-1141T (Washington, D.C.: Sept. 10, 2008)

[24]GAO, *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed*, GAO-09-896 (Washington, D.C., Sept. 9, 2009).

[25]With the addition of the 14 miles of pedestrian fencing, CBP plans to construct a total of 666 miles of fencing through December 2010.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000103 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.086

of deployment and operations and future maintenance costs for the fence, roads, and lighting, among other things, are estimated at about $6.5 billion.

Table 2: Tactical Infrastructure Deployment Progress as of April 2010

Infrastructure Type	Miles in place before SBI[a]	Miles deployed through SBI as of April 2010	Total miles in place as of April 2010	Current target	Miles remaining to meet target
Pedestrian fencing	65	282	347	367[b]	20
Vehicle fencing	72	227	299	299	0
Total fencing	**137**	**509**	**646**	**666**	**20**

Source GAO analysis of SBI data

[a]Seventy-eight miles of pedestrian fencing and 57 miles of vehicle fencing were in place before the SBI program began However, since SBI began construction, some miles of fencing have been removed, replaced or retrofitted resulting in mileage totals that are different from those we have reported in earlier reports

[b]Includes 14 miles of pedestrian fence planned for the Rio Grande Valley Sector that will be constructed as a stand alone project, not as a part of the original baseline

CBP reported that tactical infrastructure, coupled with additional trained agents, had increased the miles of the southwest border under control, but despite a $2.6 billion investment, it cannot account separately for the impact of tactical infrastructure. CBP measures miles of tactical infrastructure constructed and has completed analyses intended to show where fencing is more appropriate than other alternatives, such as more personnel, but these analyses were based primarily on the judgment of senior Border Patrol agents. Leading practices suggest that a program evaluation would complement those efforts.[26] Until CBP determines the contribution of tactical infrastructure to border security, it is not positioned to address the impact of this investment. In our September 2009 report, we recommended that to improve the quality of information available to allocate resources and determine tactical infrastructure's contribution to effective control of the border, the Commissioner of CBP conduct a cost-effective evaluation of the impact of tactical infrastructure on effective control of the border.[27]

DHS concurred with our recommendation and described actions recently completed, underway, and planned that it said will address our

[26]GAO, *Agency Performance Plans Examples of Practices That Can Improve Usefulness to Decisionmakers*, GAO/GGD/AIMD-99-69, (Washington, D.C.: Feb. 26, 1999)

[27]GAO-09-896

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000104 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.067

recommendation. In April 2010, SBI officials told us that the Homeland Security Institute was conducting an analysis of the impact of tactical infrastructure on border security. We believe that this effort would be consistent with our recommendation, further complement performance management initiatives, and be useful to inform resource decision making.

This concludes my statement for the record.

Contacts and Acknowledgments

For further information on this statement, please contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the contact named above, Frances Cook, Katherine Davis, Jeanette Espinola, Dan Gordon, Kaelin Kuhn, Jeremy Manion, Taylor Matheson, Jamelyn Payan, Susan Quinlan, Jonathan Smith, Sushmita Srikanth, and Juan Tapia-Videla made key contributions to this statement.

VerDate Nov 24 2008 14:29 Sep 06, 2011 Jkt 57327 PO 00000 Frm 000105 Fmt 06601 Sfmt 06601 P:\DOCS\57327.TXT SAFFAIRS PsN: PAT

57327.088

Post-Hearing Questions for the Record
Submitted to the Honorable Alan D. Bersin
From Senator Joseph I. Lieberman

"Border Security: Moving Beyond the Virtual Fence"
April 20, 2010

Question: One of the Committee's major concerns in the past has been the heavy reliance of the SBInet program office on contractors. This of course fits in with our larger concerns that DHS needs to reassess the balance of federal employees and contractors within the Department. The Committee was troubled to learn earlier this year that DHS has more than 200,000 contractors working for it, and many of these contractors are working in critical areas. According to an IG report released last year, the SBInet program office initially was staffed by 78% contractors, and that number had dipped down to about 51% by the end of 2008. That still means that the majority of the people working on SBInet at DHS are contractors. Our concern, of course, is that with this ratio, CBP itself lacks the capacity to oversee its contractor workforce and, ultimately, to control the SBInet program.

You noted in your testimony that CBP has strengthened its program management and its oversight over contracting activities. What is the current ratio of contractors to federal employees in the SBInet program office?

Has CBP conducted an analysis to determine what the appropriate ratio should be?

What specifically does CBP plan to do to reduce SBInet's reliance on contractors?

Response: The Secure Border Initiative (SBI) Executive Director has implemented an organization staffing plan that utilizes the maximum number of government personnel in key government value added areas—Program Management, System Engineering, and Business Management. SBI's goal is to have a total of 206 full time equivalents (FTE)—161 full-time government employees, and 45 contractors—in place by the end of Fiscal Year (FY) 2011 for a 3.6 to 1 ratio government employees to contractors. As of April 2010, the SBI program has a total of 175 FTE –87 government employees, and 88 contractors for a 1 to 1 ratio government employees to contractors.

Question: The Administration has informed the Committee that a preliminary review of the SBInet system would be completed by the end of April. Please provide the Committee with the relevant documents outlining the conclusions of this preliminary review.

Response: CBP will factor the data from that preliminary review into the longer-term deliberative process to determine whether or not SBI*net* as compared to other technologies is a viable option for selected areas of the Southwest border. Initial study reports may be available as early as July 2010.

57327.089

Post-Hearing Questions for the Record
Submitted to the Honorable Alan D. Bersin
From Senator Claire McCaskill

"Border Security: Moving Beyond the Virtual Fence"
April 20, 2010

Question: In your testimony, you state that the Department of Homeland Security (DHS) will reassess Secure Border Initiative Network (SBInet) to determine if there are alternatives that may more efficiently, effectively, and economically meet our nation's border security needs.

Who is performing the assessment? If it is a contractor, what contractual vehicle was used?

Was it a competitive solicitation and selection?

How long will the assessment take?

Response: In the near term, DHS has frozen $100 million in FY 2010 funds, and redeployed $50 million in Recovery Act funds originally intended to support SBI*net* Block 1, to procure other readily alternative technology systems—like individual cameras or Mobile Surveillance Systems to provide needed capability sooner than SBI*net* deployments could occur.

CBP has conducted a mid-term assessment utilizing an Interim Alternatives Analysis (IAA) process similar to the Office of Border Patrol analyses provided for fence segments. To inform the decision-making, the IAA process provided a "quick look" comparison among various technology options and relative contribution to mission outcomes and cost-effectiveness for two exemplar environments (e.g., stations). Preliminary data suggests that a range of technology options—including, but not limited to, SBI*net* Block 1—can be cost-effective.

The longer term assessment is being conducted by Homeland Security Studies and Analysis Institute (HSsaI), a DHS Federally Funded Research and Development Center (FFRDC) created under Part 35.017 of the Federal Acquisition Regulations to meet some special long-term research or development needs that cannot be met as effectively by existing in-house or contractor resources. FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. The contract to operate the HSsaI FFRDC was competitively awarded to Analytic Services Inc. on March 3, 2009. The first phase of the Analysis of Alternatives, which focuses on the Arizona border, has been approved and we anticipate its completion in the June/July 2010 timeframe. The HSsaI schedule, if DHS authorizes the continuation of the assessment, currently calls for completion of the full assessment in early CY 2011.

57327.070

Question: Secretary Napolitano put a freeze on SBInet funds beyond initial deployment to Tucson-1 and Ajo-1 until the assessment is complete. How much funding is actually on hold and what is the plan for those funds? Please explain.

Response: Slightly more than $100 million in Fiscal Year (FY) 2010 funding is on hold until a decision on the future SBI*net* Block 1 has been made. Depending upon the results of the assessment, the funding could be used to support additional SBI*net* Block 1 deployments, procure other alternative technologies, or some combination of both.

Question: I understand that the Customs and Border Protection (CBP) awarded a contract to install two other remote video surveillance systems by March 2010 near Detroit and Buffalo using the same prime contractor. If Secure Border Initiative Network (SBInet) funds are being frozen on the southern border until this assessment is complete, is CBP going to freeze the funds on other Northern Border SBInet related initiatives as well? Why or why not? What is the plan for those funds? Please explain.

Response: The frozen funds are associated with SBI*net* Block 1. CBP does not plan to freeze the funds supporting SBI Northern Border projects which are significantly different from SBInet Block 1. The installation of remote video surveillance systems in Buffalo is complete and the installation in Detroit is complete with the exception of one site that has been delayed due to land acquisition issues. This work was conducted under a firm fixed price task order which significantly limited the government's risk. Subsequent Northern Border work is also excluded from the freeze, since it is independent of Block 1.

Question: CBP extended the SBInet Indefinite Delivery, Indefinite Quantity (IDIQ) contract for one additional year in September 2009. Mark Borkowski, Executive Director of the Secure Border Initiative (SBI), in a September 2009 hearing told the House Homeland Security Committee members that "the contract is set up awkwardly and DHS would not use this approach in the future." The approach, as I understand it, is an IDIQ umbrella contract that contains various performance-based task orders that are treated as individual contracts. CBP knew when the contract was going to end and CBP knew that they did not like the way this contract was set-up. Why didn't CBP re-compete the contract in September 2009?

Response: Extending the contract allowed CBP to maintain continuity of effort for things like maintenance and support without committing to buying any new services. However, as SBI*net* matures, CBP may not require the services of an integrator for future deployments (if there are any). Under those circumstances, re-competition could take two forms: a new competition for an integrating contractor (either as a strong prime contractor or as a lead system integrator) or multiple competitions for the individual pieces of the system. Re-competition may offer cost savings if it reduces the add-on costs for the integrating contractor, but it also incurs a certain risk that new contractors may have difficulty replicating the former contractor's results. In addition, a new contractor might result in multiple configurations of systems—which tend to increase the cost and complexity of operations and maintenance. Any future decisions will be influenced by the Department ongoing re-assessment of the overall program.

57327.071

Question: I understand that the DHS assessment on the effectiveness and efficiency of a virtual fence will provide some answers, but if we end up moving forward with a virtual fence, how would you recommend CBP handle this contractually? What is CBP going to do differently to make sure that this doesn't happen again?

Response: Steps are already being taken to change the current IDIQ contract by combining the individual task orders into a smaller number of more comprehensive task orders. This will improve, but not totally correct, the structure of that contract should it be continued into the future. Alternatively CBP could compete contracts for any new deployments. This could involve competing for an integrating contractor (either as a strong prime contractor or as a lead system integrator) or multiple competitions for the individual pieces of the system. Re-competition may offer cost savings if it reduces the add-on costs for the integrating contractor, but it also incurs a certain risk that new contractors may have difficulty replicating the former contractor's results. In addition, a new contractor might result in multiple configurations of systems—which tend to increase the cost and complexity of operations and maintenance. Moving to a fixed-price type of contract for future deployments is also under consideration.

Question: The DHS OIG in July 2009 stated that "U.S. Customs and Border Protection continues to rely heavily on contract personnel, who comprise more than 50% of the Secure Border Initiative workforce. Furthermore, U.S. Customs and Border Protection has not clearly distinguished between roles and responsibilities that are appropriate for contractors and those that must be performed by government employees. U.S. Customs and Border Protection also has not provided an adequate number of contracting officer's technical representatives to oversee support services contractors' performance. As a result, contractors are performing functions that should be performed by government workers. This heavy reliance on contractors increases the risk of U.S. Customs and Border Protection losing control of decision making in Secure Border Initiative program management." What kind of progress has CBP made in making sure inherently governmental positions are being performed by government workers, and in making sure there is an adequate number of COTRs to manage the work?

Response: The Secure Border Initiative (SBI) Program Office does not have any contractor performing inherently governmental functions. In 2009, the SBI Executive Director completed and implemented an organization staffing plan that utilizes the maximum number of government personnel in key government value added areas—Program Management, System Engineering, and Business Management. By increasing the number of full-time equivalents, SBI is now at a more favorable 1 to 1 ratio of government employees to contractors. SBI has successfully addressed the OIG and GAO recommendations for needed improvement in contractor supervision and oversight. SBI has increased the number of government personnel with the necessary competencies and skills to provide better technical direction and management control over contractors.

In April 2010, The Department of Homeland Security's Chief Human Capital Office certified the SBI program office's Strategic Human Capital Management Plan. SBI has a total of 47 dedicated and trained Contracting Officer Technical Representatives (COTRs). 33 COTRs are assigned to 31 active contracts and interagency agreements, and 14 unassigned COTRs are available to accommodate possible future growth in contract actions.

57327.072

Post-Hearing Questions for the Record
Submitted to the Honorable Alan D. Bersin
From Senator Susan M. Collins

"Border Security: Moving Beyond the Virtual Fence"
April 20, 2010

Question: In March, the Government Accountability Office testified that the Department of Homeland Security needed to address testing and performance challenges that put SBInet at risk. What mitigation strategies is the Department implementing to address these challenges?

Response: In early 2010, the SBI Program Office established the Systems Engineering Division to improve management of testing processes by providing technical oversight of test schedules, test plans, test cases, and test procedures among other things. The SBI Systems Engineering Division is responsible for identifying and documenting systems engineering processes for use by the SBInet Program. One of the first processes addressed was the SBI risk process. In January 2010, SBI chartered the Enterprise Risk Management IPT to identify and address Gov't owned risks and issues. It is at these monthly Enterprise Risk Management IPTs where documented risks and their associated risk mitigation plans are approved. Also, government staffing is being increased to oversee the development and revision of critical management and systems engineering processes and plans for SBI*net*. The increased staffing has been working with the test personnel to improve and document their test processes in preparation for upcoming tests.

Question: I understand that the department is in the process of updating two key SBInet management documents – the "Operational Requirements Document" and the "Test and Evaluation Master Plan" – that were last updated in 2007 and 2008, respectively. When will the updates to these key guidance documents be completed?

Response: CBP is taking steps to improve the management, oversight, and documentation of SBI*net* requirements and testing. The prioritization of efforts is based on internal assessments of the areas most critical to the program and with consideration of available resources. If the DHS assessment of SBI*net* results in a decision to continue forward with Block 1, an appropriate requirements document will be developed to specifically define Block 1 requirements. Document would be available the first quarter of FY 2011. Should a decision be made to proceed beyond Block 1, appropriate requirements documents will be prepared to specifically address subsequent Blocks.

Presently, CBP is updating the SBI*net* Test and Evaluation Master Plan (TEMP) to include the scope of developmental and operational testing for the Ajo, AZ deployment currently scheduled for the first quarter of Fiscal Year (FY) 2011, the Availability Key Performance Parameter (KPP) test strategy, and a TUS-1 Maintenance Demo event. Updates for these additions are almost complete and it is anticipated that it will be staffed for signature/concurrence during the forth quarter of FY 2010.

○

57327.073